more necessary defenders, *e.g.*, in an action for the reduction of a deed where it is proper to call the disponee under the deed as well as the party who procured the granting of the deed, the one defender may be entitled to receive his expenses from the other. The same principle applies where a contractual relation exists between the two defenders as in an action directed against landlord and tenant, *e.g.*, an action to prevent a nuisance. To that extent I am of opinion that our jurisdiction exists, and if I were doubtful on the point I should feel bound by the authorities cited.

In the present case there were originally two distinct and independent actions, and if they had continued to be separate I think the present motion could not have been properly made, because the Court cannot in general find a person liable in expenses who is not a party to the cause. I must except the case where the true *dominus litis* does not appear as a party. But the result of the application to conjoin the actions was to put the two actions into the same position as if they had been originally one; and they are accordingly under similar conditions to those of the cases to which I have referred. At this stage we must assume that the Lord Ordinary had good reasons for conjoining the actions, though apart from specialties I should rather deprecate the indiscriminate conjoining of actions raised against separate defenders. But as the Lord Ordinary's judgment was acquiesced in, it must be assumed to be right, and the case must be treated as if it had been originally raised against two defenders called in one summons, who were both bound to appear if they did not wish decree in absence to be pronounced against them. For these reasons I concur with your Lordship.

LORD KINNEAR—I concur. I have no doubt after hearing your Lordship in the chair as to the circumstances of the trial and the questions raised, that there would be a grave miscarriage of justice if the pursuer were called upon to pay the expenses of the successful defender without relief against the unsuccessful defender. I think it would be a grave reproach against our system of procedure if we had not power to obviate this injustice by giving decree for expenses against the party who was really responsible for their being incurred. The authorities, however, show that we have such power, and there is a long continued course of practice in support of the decision proposed.

I agree with Lord M'Laren in attaching importance to the conjunction of the actions, and also in holding that at this stage we must assume they were rightly conjoined.

I wish, however, to reserve my opinion on the question whether the same result would not follow without their having been conjoined. The question does not arise, and it is unnecessary to express a definite opinion, but I am not persuaded that the same liability might not have been enforced if the actions had been technically separate. It is not incompetent for the Court to impose liability for the expenses of a case upon a person who is not directly a party to it; and I am not at present prepared to agree that the principle on which that has been done might not be applied to such a case as the present.

LORD ADAM was absent.

The Court pronounced this interlocutor—

"The Lords apply the verdicts found by the jury on the issues Nos. 19 and 21 of process, and in respect thereof decern against the defenders the Edinburgh and District Tramways Company, Limited, for payment to (first) the pursuer Nellie Turner Thomson, of One hundred and twenty pounds sterling, and (second) the pursuer Margaret Thomson, of the sum of Seventy-five pounds sterling: Further, apply the verdicts found by the jury on the issues Nos. 18 and 30 of process, and in respect thereof assoilzie the defender John Kerr from the conclusions of the summons: Find the pursuers and the defender John Kerr both in the separate and conjoined actions entitled to expenses against the defenders the Edinburgh and District Tramways Company, Limited," &c.

Counsel for the Pursuers—Jameson, Q.C. —A. S. D. Thomson. Agent—W. Croft Gray, S.S.C.

Counsel for the Defenders the Edinburgh Tramways Company, Limited — Watt, Q.C. — Chisholm. Agents — Anderson & Chisholm, Solicitors.

Counsel for the Defender John Kerr— W. Campbell, Q.C. — Glegg. Agents — Macpherson & Mackay, S.S.C.

Thursday, January 31.

FIRST DIVISION.

TRUSTEES OF COLLEGE STREET UNITED FREE CHURCH, EDINBURGH *v.* PARISH COUNCIL OF CITY PARISH OF EDINBURGH.

Burgh — Assessment — Exemption — Premises Exclusively Appropriated to Public Religious Worship—Church Hall—Mission Premises — Rating Exemptions (Scotland) Act 1874 (37 *and* 38 *Vict. cap.* 20), *sec.* 1.

By section 1 of the Rating Exemptions (Scotland) Act 1874 (37 and 38 Vict. cap. 20) it is provided that no assessment or rate for county, burgh, parochial, or other local purposes is to be levied on or in respect of "any church, chapel, meeting-house, or premises in Scotland exclusively appropriated to public religious worship."

A claim for exemption from assessment in terms of this section was made by the trustees of certain

churches in respect of premises owned by them, and used for the purposes of the respective congregations. These premises were in every case separate from the building used by the congregation as a church, and in two cases they were contiguous to it, but in the other case they were not. A similar claim for exemption was also made by the trustees for a mission not connected with any particular church, in respect of buildings owned by them and used for the purposes of the mission.

Facts with regard to the use made of these premises in each case, upon which *held* that they were not exclusively appropriated to public religious worship, and accordingly that they were not entitled to the benefit of the exemption.

Section 1 of the Rating Exemptions (Scotland) Act 1874 (37 and 38 Vict. cap. 20), enacts as follows:—"No assessment or rate under any general or local Act of Parliament for any county, burgh, parochial, or other local purpose shall be assessed or levied upon or in respect of any church, chapel, meeting-house, or premises in Scotland exclusively appropriated to public religious worship, or upon or in respect of any ground exclusively appropriated as burial ground: Provided also that such exemption shall continue although such church, chapel, meeting-house, or other premises, or any room belonging thereto, or any part thereof may be used for Sunday or infant schools, or for the charitable education of the poor."

This was a special case presented for the opinion and judgment of the Court by (1) the Trustees of College Street United Free Church, Edinburgh; (2) the Kirk-Session of St Bernard's Parish; (3) the Trustees of Mayfield United Free Church; (4) the Managers and Trustees for the Edinburgh Sabbath Free Breakfast Mission; and (5) the Parish Council of the City Parish of Edinburgh. The fifth parties had assessed for poor and school rates certain premises belonging to the other parties, who claimed exemption in virtue of the provisions of the Rating Exemptions (Scotland) Act 1874 (37 and 38 Vict. cap. 20), section 1, above quoted.

The following facts relative to the halls in question were set out in the case:—"The hall of the College Street United Free Church, Edinburgh, which is the subject of the assessments levied by the fifth parties on the first parties as aforesaid, adjoins said church and is connected with it by a passage. It can be entered either from the church door along that passage, or from a stair leading to the hall direct and to the first floor of an adjoining property. The said hall is and has been used for mission school and evening services, Band of Hope and temperance meetings, and also for social meetings and literary and musical entertainments given by societies in aid of or in connection with the congregational schemes and purposes. The said hall is never let for hire, but occasionally a charge of 6d. or 1s. is made on admission to the social meetings, or collections are taken at literary or musical meetings, not for profit, but solely for the purpose of defraying the extra expense incurred in connection therewith. The various meetings held in the said hall are as a rule opened with praise and prayer, and closed with a benediction.

"The parties of the second part, representing the Kirk-Session of St Bernard's Parish Church, West Claremont Street, Edinburgh, have a hall or halls at 24, 26, and 28 Dean Street, Edinburgh. The said hall or halls do not adjoin the said church. They are used for Sunday schools, sewing classes, and Boys' Brigade meetings. The halls are also used, in connection with the church and parish work, for sales of work, work parties, and soirees to Sunday school children, for admission to which no charge is made; also for Penny Readings, for admission to which a nominal charge is made towards defraying expenses. The premises are never let for hire.

"The parties of the third part, representing the Deacons' Court of Mayfield United Free Church, have a hall which is attached to their said church, but is under a separate roof, with a separate entrance, though connected with the church by a passage leading therefrom. The said hall is used for Sabbath schools, Young Women's Christian Association meetings, prayer meetings, sewing meetings, and sales of work connected therewith, Sabbath school soirees, and social and other meetings in connection with the work of the congregation. The said hall has never been let for hire, nor has payment ever on any occasion been made for admission, but a few years ago the hall was once given without charge for a School Board election meeting, and it has been, but is not now, and has not been for more than a year, used for meetings of Boys' Brigade.

"The parties of the fourth part, representing the Edinburgh Sabbath Free Breakfast Mission, have premises in Old Fishmarket Close, Edinburgh, consisting of large and smaller halls, also three classrooms used for Sunday school, ladies' retiring room, kitchen, two attic rooms, and caretaker's house. The sole object of the Mission is to gather in the poorest people in the city (who will not attend the ordinary places of worship) to religious services. The religious services carried on in the premises consist of services on Sundays and Wednesdays. There are also held during the week mothers' meetings, a service for poor girls, which is combined with a sewing class, and Gospel Temperance and Band of Hope meetings. There is also a Penny Savings Bank, which is managed by some of the workers in the Mission. At the Gospel Temperance Meetings a substantial tea is provided, and a charge of one penny has been made for admission. This is a nominal charge which does not nearly cover the outlay. The Mission is maintained by the voluntary contributions of the public. None of the workers in the Mission receive payment for their services. The premises are never let for hire."

The fifth parties maintained that the halls were not exempt, in respect that they were not exclusively appropriated to public religious worship.

The questions submitted for the opinion and judgment of the Court were as follows:—"(1) Is the hall connected with the College Street United Free Church exempt from assessment for said rates? (2) Are the halls connected with Saint Bernard's Parish Church exempt from assessment for said rates? (3) Is the hall belonging to Mayfield United Free Church exempt from assessment for said rates? (4) Are the premises belonging to the Edinburgh Sabbath Free Breakfast Mission exempt from assessment for said rates?"

The arguments of the parties sufficiently appear from the opinions of the Judges.

LORD PRESIDENT—It appears to me that under section 1 of the Act 37 and 38 Vict. cap. 20, two points might arise—first, whether the buildings in question fall within the leading enactment, and second, if they fall within that enactment, what is the effect of the proviso at the end of the section. If they fall within the leading enactment, we would require to consider whether the uses to which they are put answer any of the descriptions contained in the proviso, but it appears to me that we do not require to consider the proviso, because I think that on the statement in the case none of the buildings to which it relates come within the leading enactment. That enactment declares that "No assessment or rate under any general or local Act of Parliament for any county, burgh, parochial or other local purpose shall be assessed or levied upon or in respect of any church, chapel, meeting-house, or premises in Scotland exclusively appropriated to public religious worship, or upon or in respect of any ground exclusively appropriated as burial ground." I should be quite disposed to accept the argument which was submitted as to the meaning of the word "appropriated." I do not think it requires that public religious worship shall be practised in every part of the building—for instance, in the session-house or vestry—but it appears to me that the main building must be exclusively dedicated to public religious worship.

Now, upon the facts stated it is plain that none of the buildings in question are exclusively appropriated to public religious worship, nor do they seem to me to form parts of any buildings which are so exclusively appropriated. I think it would be a very dangerous argument for the persons interested in the churches if they persuaded us that the buildings in question formed parts of the churches, as they would then run a great risk of rendering the whole structures, including the churches, assessable, seeing that if the buildings were identified with the churches it could not be predicated of the combined buildings that they were exclusively appropriated to public religious worship. Upon the view now stated it is probably unnecessary to go through the different buildings in detail, but I may briefly refer to some of them. The first is the hall of the College Street United Free Church. Structurally it can be entered either from the church door or from a stair leading to it (the hall) direct. I say nothing about its structural connection with the church, as if that connection amounted to identification, this might (as already pointed out) render the whole combined structure assessable. As to the uses of the hall, it is stated that it is and has been used for mission school and evening services, Band of Hope and temperance meetings, and also for social meetings, literary and musical entertainments given by societies in aid of or in connection with congregational schemes and purposes. Collections are taken at literary or musical meetings, not for profit, but solely for the purpose of defraying expenses. This description of the purposes for which the hall is used indicates plainly the purposes for which it was built; [and if it was built for the purposes mentioned, that is just another way of saying that it was appropriated to these purposes, and religious worship occupies a very subordinate place among them. Accordingly, it would be impossible, in my judgment, to predicate upon that statement that the hall was a building exclusively or to any material extent appropriated to public religious worship. It is true that the purposes mentioned are excellent, and I have no doubt that such halls are built in pursuance of the larger views as to the duties of the Christian Church which now prevail, and of the advantages resulting from bringing the members of a congregation together otherwise than merely once or twice a week for religious worship. No doubt the halls are aids to the religious life and work of the church, but they are certainly not exclusively appropriated to public religious worship. If that be so, they do not come within the leading enactment. The case of the St Bernard's Halls is perhaps a more testing one, because the halls do not even adjoin the church. I think we were told that they are about a quarter of a mile distant from the church, and in a different street. These halls are not in any sense structurally a part of or adjuncts to the church, and if they are not so, the question whether they could get the benefit of its appropriation to religious worship would not arise. There, again, I think it would be a most dangerous argument to say that they were parts of the church. The case of the hall belonging to the Mayfield United Free Church is very similar to that of the hall of the College Street United Free Church. The Edinburgh Sabbath Free Breakfast Mission is no doubt a most excellent institution, but it is not associated with any church, and not only is it not exclusively appropriated to public religious worship, but it is not appropriated to public religious worship at all. There are religious services in the premises twice a week—on Sundays and Wednesdays—and mothers' meetings, a service for poor girls combined with a sewing class, and also

Gospel Temperance and Band of Hope meetings, together with a penny bank. To say that a place in which such incidental religious services are held twice a week along with so many secular uses, was exclusively appropriated to public religious worship would be a contradiction in terms.

For these reasons it seems to me that all the four questions should be answered in the negative.

LORD ADAM—The Act 37 and 38 Victoria says—"No assessment or rate under any general or local Act of Praliament for any county, burgh, parochial, or other local purpose shall be assessed or levied upon or in respect of any church, chapel, meeting-house, or premises in Scotland exclusively appropriated to public religious worship." Now, it appears to me that the premises we have to deal with here are not premises specifically mentioned, so to speak, in the Act. It is not a question of any church, chapel, or meeting-house at all, but certain premises connected with the several churches or chapels or meeting-houses of which the four parties to the case are owners. They, in three of the cases, being owners of certain premises undoubtedly exclusively appropriated, we must assume, to public worship, come here and ask us whether certain premises—some physically connected, but in one case at least not even physically connected with these churches—are proper subjects of assessment or not. I think that is the real case, and it is the footing upon which this case must be tried. Well then, not being, I think, on the face of it, either churches, chapels, or meeting-houses proper, the question is, whether they are premises in Scotland exclusively appropriated to public worship. Is that their character or not? If they cannot make out that, they are not entitled to exemption. The statement of the case is, that they are in connection with proper buildings — proper churches or proper chapels in which public worship is conducted. That was not the purpose of these auxiliary premises, whatever it was. We must see what the use of these various halls is, and see whether or not they are exclusively appropriated to public religious worship. Now, if that is the proposition, I think the solution is very easy. There is no statement in the case to the effect that the premises are exclusively appropriated to public religious worship, and it would appear to me that that is conclusive against the claim for exemption. I fail to see how mission schools or temperance meetings or social meetings, or anything of that kind, fall within the designation of public worship. It appears to me that that is the solution of the whole case, and one can quite understand why the case is brought in the form in which it is, because if these buildings were all to be treated as part of the church it appears to me that it would be rather dangerous for the exemption of the main building. This is simply a question of whether certain halls connected with these churches are to be exempt or not. I agree with your Lordship in thinking that they do not come under the exemption.

LORD M'LAREN—It was noticed in the course of the argument, and I think it is reasonably clear, that the question of the construction of this enactment might have been raised in a different form—that is to say, whether what are called mission halls or school halls for giving instruction as an adjunct to the services of a church would be within the exemption, or whether, being partly used for secular purposes, they might have the effect of subjecting the place of worship itself to taxation. But Mr Campbell explained that the Parish Council do not wish to raise that question, and that in the administration of their statutory powers they prefer to exempt the churches to which those halls are attached and to assess the halls as separate subjects. It is, then, a condition of the case that the halls are separate subjects, because the second article sets out that the Parish Council issued notices of assessment for poor and school rates on the halls belonging to the first, second, third, and fourth parties, and the question is whether they are separately assessable.

Now, in order to bring each and all of these halls within the exemption contended for it must be shown that they are primarily places appropriated to public religious worship. In looking over the case I do not find in regard to any one of them an admission in terms that these halls are appropriated to public worship, or such a circumstantial statement as might enable us to infer that they were appropriated to public worship. On the contrary, I think it is clear that they are not buildings of that character, although they are useful adjuncts to the work of a church, or material for applying the energies of a Christian congregation to a good object. Following your Lordships' opinions, this seems to me to be conclusive of the question, and it is not necessary to consider whether, if the halls were primarily places of public worship, those educational uses and mission uses to which the case refers would have the effect of taking the buildings out of the exemption.

LORD KINNEAR—I am of the same opinion. I do not understand that it is suggested there is any ground upon which the churches or places of worship belonging to any of the parties represented in this case are liable to assessment. The exemption of such churches is admitted. But then the case presented to us is that there are certain separate tenements belonging to the trustees or managers of certain churches, and in one case of trustees for a mission which does not seem to be specially connected with any particular church, which are free from assessment, not as churches but as separate buildings. Now, the exemption founded upon is an exemption of churches. The enactment is that no assessment shall be levied upon or in respect of any churches in Scotland; but then the word "church" is intended to be used in

the widest and most general sense in which it can be used in describing buildings as distinguished from a religious association. Therefore the section goes on to add after the word "church" the words "chapel, meeting-house, or premises in Scotland exclusively appropriated to public religious worship." Now, I think that last phrase is a very general description of what is meant by a church which, in the sense to which I have referred, is a building. There are, no doubt, religious bodies who deny the name of church to an unconsecrated building. There are others who might take exception to certain buildings for public worship, but speaking generally and in ordinary language, what is commonly meant by a "church," speaking of the church as a building, is simply in the words of the statute premises exclusively appropriated to public religious worship. Now, the exemption being in favour of such premises only, it appears to me to be perfectly clear on the description which is given to us of such halls as those for which the exemption is now claimed, that they are not such premises. They are not in any sense churches or exclusively appropriated to public religious worship. They are halls which have been erected or hired by certain congregations for charitable and educational purposes which they desire to prosecute, presumably as part of their proper work as Christian congregations, but which they do not think it fit or convenient to carry on within the church itself. It is for that last reason that they find it necessary to have separate buildings for carrying out these useful and charitable purposes. The only question therefore on the construction of the statute is, whether those separate buildings are churches or not, and I quite agree with your Lordship that they are not exclusively appropriated to public religious worship, or appropriated to public religious worship at all. They are therefore in my judgment not churches, and not within the exemption, and I agree that when that has been once determined, it is quite unnecessary to consider what is the effect of the proviso attached to the exemption, which is intended only to save churches or premises exclusively appropriated to public religious worship from being liable to assessment merely because of parts of them being used for Sunday or infant schools. I therefore agree with your Lordship in the way it is proposed to answer the question of law.

The Court answered all the questions in the negative.

Counsel for the First, Second, Third, and Fourth Parties—Sol.-Gen. Dickson, K.C.—Macphail. Agents — Menzies, Blair, & Menzies, W.S.

Counsel for the Fifth Parties—W. Campbell, K.C. — Clyde. Agent—R. Addison Smith, S.S.C.

Tuesday January 15.

SECOND DIVISION.

[Sheriff Court at Forfar.

PEAT *v.* PEAT'S TRUSTEES.

Succession—Annuity—Preference—Income Insufficient to Meet Annuity—Direction to Convey Specific Subjects on Death of Annuitant.

A testator by his trust-disposition and settlement directed his trustees to pay to his widow an annuity of £35 a-year, and after her death to divide the residue of his estate equally among his children. To secure the annuity the trustees were empowered to retain such a portion of the heritage as would yield a rental sufficient for the purpose, or to sell and invest such a sum from the proceeds as might be necessary to yield the annuity. The annuity was increased to £40 by a codicil, which was also subscribed by the testator's wife, who accepted that provision in satisfaction of her legal rights. By a later codicil the testator directed his trustees, upon the death of the survivor of himself and his wife, to convey to each of his children certain specified heritable subjects, thereby disposing of his whole heritable estate. The testator's executry funds were of trifling amount, and were exhausted in payment of debts and expenses. The income of the trust estate was not sufficient to pay the annuity, and the trustees made advances from time to time to make good the deficiency. After the widow's death one of the beneficiaries brought an action against the trustees for decree ordaining them to deliver to him a disposition of the heritable subjects bequeathed to him by the testator.

Held that the annuity was a preferable charge upon the *corpus* of the trust-estate, and that the trustees were not bound to convey to the pursuer the heritable subjects bequeathed to him except upon condition of receiving payment from him of his share of the advances made by them.

Expenses—Taxation as between Agent and Client—Trustees and Beneficiary—Extrajudicial Expenses.

Circumstances in which *held* that the trustees who were successful in an action brought against them by the sole remaining beneficiary were entitled (1) to expenses in the action taxed as between agent and client, and (2) to charge against the trust estate before accounting therefor to the pursuer all other expenses incurred by them during their controversy with him.

James Peat, shipowner in Arbroath, died on 30th August 1890, leaving a trust-disposition and settlement dated 4th August 1873, and four relative codicils, dated respectively 17th December 1877, 20th June 1884,