report to the governors upon his or her state of health and wellbeing. (8) The governors shall once a year obtain reliable information as to the health and wellbeing of such pensioners as are not resident within the district visited, as hereinbefore provided, by the medical officer on the staff of the charity. . . . (10) The governors shall have power to sell the building known as 'John Watt's Hospital,' Leith, with the site thereof, and ground attached thereto, and all rights connected therewith, or to feu out the said property, and further, to sell the heritable subjects belonging to the trust-estate in Thomson's Place, Leith."

The Court approved of the scheme submitted by Mr Maconochie.

Counsel for the Petitioners—W. C. Smith. Agents—Snody & Asher, S.S.C.

Tuesday, May 30.

FIRST DIVISION.

[Court of Exchequer.

MAUGHAN (SURVEYOR OF TAXES) *v.* FREE CHURCH OF SCOTLAND.

Revenue — Income-Tax — Allowances — Charitable Purposes — Income-Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *Schedule (A), sec.* 61, *No.* 6.

By 5 and 6 Vict. c. 35, sec. 61, No. 6, allowances in respect of the income-tax imposed by Schedule (A) are to be granted, *inter alia*, by the Commissioners for Special Purposes of the Income-tax on the rents and profits of lands, tenements, hereditaments, or heritages, vested in trustees for charitable purposes, so far as the same are proved to said Commissioners to have been applied to charitable purposes.

The Free Church Assembly Hall was held by certain trustees in trust for the Free Church. It was the place of meeting for the General Assembly and Commissioners of Assembly of said Church, and was also sometimes used for other purposes, principally of a religious or semi-religious nature, and for charitable and temperance causes. No rents or profits were made from the hall.

Held that the trustees of the Free Church, who had been assessed under the general rule of Schedule (A) on the annual value of the hall, were not entitled to the allowance granted by the clause quoted above, in respect that said allowance only applied where rents or profits received by trustees were applied by them to charitable purposes.

At a meeting of the Commissioners of Income-tax for the district of the city of Edinburgh, held on 24th January 1893, Mr Robert R. Simpson, W.S., Depute-Clerk of the Assembly of the Free Church of Scotland, acting on behalf of the general trustees of the Free Church of Scotland, appealed against an assessment made under the general rule of Schedule A (5 and 6 Vict. chap. 35), sec. 60, on the Free Church Assembly Hall, Mound Place, Edinburgh, on an annual value of £238, duty at 6d. per pound, £5, 19s.

The Commissioners allowed the appeal and relieved the assessment, and the Surveyor having expressed his dissatisfaction with this decision the present case was stated for the opinion of the Court of Exchequer.

The following statements were made in the case:—"The Free Church Assembly Hall is held by the general trustees of the Free Church of Scotland in trust for the Free Church. The hall was built expressly for the place of meeting of the Free Church General Assembly, held annually in the month of May, when it sits for about ten days, and also for meetings of Commissions of Assembly, who sit about three times a year. It is, however, occasionally used for other purposes, principally of a religious or semi-religious nature, and for charitable and temperance causes. On one occasion, many years ago, the use of it was given, in special circumstances, for a meeting at which Mr Gladstone spoke, and a course of lectures under the Health Society has also been delivered in it. On such occasions no charge is made for admission to the public, but a charge is made on the party engaging the hall of from £2, 2s. to £3, 3s. per day, which does not exceed the actual expenses of lighting, heating, and cleaning the hall on such occasions."

By 5 and 6 Vict. c. 35, sec. 61, No. 6 (Schedule A), allowances are to be granted by the Income-tax Commissioners "on the rents and profits of lands, tenements, hereditaments, or heritages, belonging to any hospital, public school, or almshouse, or vested in trustees for charitable purposes, so far as the same are applied to charitable purposes: The said last-mentioned allowance to be granted on proof before the Commissioners for special purposes of the due application of the said rents and profits to charitable purposes only, and in so far as the same shall be applied to charitable purposes only: The said last-mentioned allowances to be claimed and proved by any steward, agent, or factor acting for such school, hospital, or almshouse, or other trust for charitable purposes, or by any trustee of the same, by affidavit to be taken before any commissioner for executing the Act in the district where such person shall reside, stating the amount of the duties chargeable, and the application thereof, and to be carried into effect by the Commissioners for Special Purposes, and according to the powers vested in such Commissioners, without vacating, altering, or impeaching the assessments on or in respect of such properties, which assessments shall be in force and levied notwithstanding such allowances."

Argued for the Surveyor of Taxes—The allowance here claimed under head 4 of Rule 6 of Schedule A, assuming the claim

to be well founded, could only be granted by the Special Commissioners after proof had been adduced that the rents or profits received by the trustees had been devoted to charitable purposes. The claim, therefore, even if good, was made at the wrong time and in the wrong quarter. But the claim was not good, for the allowance claimed was not applicable in the present case. According to the statement made in the case no rents or profits were earned by the trustees from the Assembly Hall, and there were therefore no rents or profits to be applied to charitable purposes. The case accordingly did not fall under the decision in *The Special Commissioners of Income-tax* v. *Pemsel*, L.R., 22 Q.B.D. 296—*aff.* L.R., 1891, App. Cas. 531—and the assessment should be sustained.

Argued for the Free Church—The present case was ruled by the case of *Pemsel*, for the Assembly Hall was devoted to "charitable" uses in the sense of that decision, and the Free Church were entitled to the allowance made in the fourth head of Rule 6 of Schedule A. No distinction was to be drawn between the case of trustees who held property in their own hands and devoted it to pious uses and the case of those who let property and applied the proceeds to similar objects. The decision of the Commissioners should therefore be affirmed.

At advising—

LORD PRESIDENT—I am clear that the Commissioners are wrong. The Free Church Assembly Hall was assessed by the Surveyor under the general rule of Schedule A, and apart from the allowances which are specially expressed in the subsequent parts of the Act, there can be no doubt whatever that the assessment was right. The owners, however, of this hall, who are the general trustees of the Free Church of Scotland, appealed to the Commissioners, and their case was that they were entitled to an allowance being made under the rule No. 6 of section 61 of the Act.

Now, the hall in question is in the hands of these general trustees, and it is part of their case that they are not deriving any rents or profits from their hall. Accordingly I should have thought that *prima facie* their appeal must be made for an allowance on the building. But the first three branches of the rule No. 6 are so expressed as to put them entirely out of Court under those branches of the rule. To put it shortly, they are not a college or hall of any of the universities; nor is this an hospital, public school, or almshouse; nor can they say that they are a literary or scientific institution. Accordingly they have made their demand for an allowance under the fourth head of the rule, which reads thus—[*His Lordship read the rule*]. Now, I think it perfectly plain that this clause relates to rents and profits of lands as distinguished from lands themselves. The contradistinction is very well brought out by what was pointed out by the Solicitor-General—the double mention of hospital, public school, and almshouse, the first of these being in the second, and the other in the fourth head of No. 6. That the exemption in question, namely, the fourth, is applied to rents and profits as distinguished from buildings, is further made manifest by the procedure which is prescribed for the allowance being made in that case. Where an allowance on that head is asked, there is to be proof before the Commissioners of the application of the rents and profits; and it is contemplated that the application may be in part for charitable purposes and in part for other purposes. That is brought still more clearly out by the 62nd section, where the certificate which is to have the effect of granting the allowance is to set out the allowance to be granted under the schedule; and that series of enactments makes this perfectly plain, that the Commissioners before granting this allowance must first of all see what are the rents and profits derived from the buildings in question; secondly, the whole application of them; and then to what extent, if any, that application is for charitable purposes. That demonstrates that the allowance now asked is inapplicable to the case of the hall in regard to which the allowance is asked, being in the hands of the trustees who are claiming that allowance. No such procedure is practicable in the case of an unlet hall.

This view of the case makes it unnecessary to consider the question, which has been more or less discussed at the bar, as to the application of the decision in the case of *Pemsel* to the matter in hand. If I am right we do not reach the question whether the purposes are charitable purposes, because we have not got the thing which is alone to be applied to charitable purposes, namely, money.

I think, therefore, that the trustees of the Free Church have failed to make out that they are entitled to an allowance under any branch of head 6. That being so, the assessment is open to no objection, and accordingly I think we must sustain the appeal and reverse the decision of the Commissioners.

LORD ADAM concurred.

LORD M'LAREN—I accept entirely the argument addressed to us by the Solicitor-General, and especially the fundamental distinction to which he drew our attention between those clauses which relate to property in the personal or immediate occupation of any corporate or *quasi*-corporate body, and the taxation of the income of that body, or such part of it, as may be derived from heritable estate. One sees very cogent reasons for dealing separately with these two subjects, because there is hardly any corporation in the kingdom, or public body, which does not apply some part of its funds to what may be described as charitable purposes according to the wide extension which has lately been given to that term. But I suppose there are few who would maintain that the halls of such bodies as the London mercantile corpora-

tions should be exempt from taxation because these bodies spend a large part of their income on hospitality, and also give considerable sums towards the maintenance of schools or of charitable endowments. The hall in such a case is a proper corporate residence, a place for the transaction of the business of the company, and the entertainment of its friends, and is just as proper a subject of taxation as any private residence. Accordingly, the class of buildings in the personal occupation of a public body that are to be exempted from taxation is very strictly defined by statute. They include a very limited class of cases, and one may say only cases where the purposes to which the buildings are devoted are such as would be universally recognised as being of a beneficial character to the public. Such are university halls, literary societies, and hospitals for the cure of disease. We held in the case of the *Signet Library* and also in the case of the *Surgeons Hall* that clauses of exemption from taxation were not to be extended analogically, but were to be strictly construed.

When you come to the case of income derived from real or heritable estate, then the statute takes a very intelligible distinction, that you are only entitled to exemption in respect of so much of the income as you can prove in the manner there pointed out to be specifically appropriated to purposes of charity. In this way also the Exchequer is protected against the large exemptions which might otherwise be claimed on the ground that in some vague or partial sense the body corporate is a charitable institution. I agree with your Lordships with respect to the present case that while this may be a building which is applied to purposes which are laudable and beneficial to the community, yet these buildings do not fall within the class which are exempted from taxation; and that under this case we cannot consider the other matter, the application of rents which after all amounted only to a few pounds a-year, and which I do not understand to be involved in the appeal.

LORD KINNEAR concurred.

The Court reversed the determination of the Commissioners and sustained the assessment.

Counsel for the Surveyor of Taxes—Sol.-Gen. Asher, Q.C.—A. J. Young. Agent—The Solicitor to the Board of Inland Revenue.

Counsel for the Free Church of Scotland — Jamieson — Guthrie. Agent — John Cowan, W.S.

Wednesday, May 31.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

PATERSON *v.* WELCH.

Reparation — Slander — Verbal Injury — Issue.

In an action of damages for slander the pursuer averred that the defender had represented him to have said that the pupils of the Board School would "contaminate the genteel children" attending a certain college. *Held* (1)—*rev.* Lord Stormonth Darling—that the statement alleged to have been made by the defender was not slanderous, but (2) that the pursuer was entitled to an issue based on the averment that said statement was false, and was made with the design of exposing, and did expose him to public hatred and contempt.

This was an action at the instance of John Paterson, Provost of St Andrews, against James Ritchie Welch, writer, St Andrews, for payment of £500 in name of damages.

The pursuer averred—"(Cond. 3) At the annual meeting of the School Board, held in St Andrews on 11th June 1892, the defender presiding, he, in the course of submitting the annual financial statement to the Board, said in the presence and hearing of . . . or one or more of them—'That the School Board had lost during the past year the grant under the 39th section of the Madras College Scheme for the education of the pupils in the sixth and ex-sixth standards, and that the members of the Board who were governors of the Madras College were endeavouring to secure the £90 to which they were formerly entitled, under the Madras College Scheme, for pupils attending the Burgh School, to enable them to complete their education in the Madras College, but that this had met with an unqualified opposition from one of the governors of the College, who stated at a recent meeting of governors that the pupils from the board schools would contaminate the genteel children attending the Madras College.' . . . The governor of Madras College, who was in the foregoing remarks referred to by the defender, and alleged to have made the said statement, was the pursuer. (Cond. 4) On 26th October 1892 a public meeting was held in St Andrews for the purpose of nominating candidates to fill the ten vacancies caused by the retirement of the senior members of council. . . . The defender at this meeting, in the presence and hearing of . . . reiterated and confirmed the statement complained of in the preceding article . . . (Cond. 5) The statement made and repeated by the defender as aforesaid, that the pursuer had used the words attributed to him by the defender, is absolutely false. The pursuer did not use the said words, and did not use any words of like meaning or effect. The defender, when he made and repeated