

interlocutor appealed against: Recal also the interlocutor of the Sheriff-Substitute dated 1st August 1894: Find that by charter-party dated 5th October 1893 the defenders chartered from the pursuer the steamship 'River Ettrick,' to carry a cargo of coal from Bo'ness to King's Lynn: Find that the coals were to be brought alongside in 48, or, as was afterwards arranged, 60 running hours, and if longer detained demurrage to be paid at 12s. 6d. per hour, unless detention arose from certain specified causes: Find that it was further provided that lay-days were to count from the time the master had got the ship reported, berthed, and ready to receive or deliver cargo, and given notice of the same in writing to the charterers or their agents during business hours, say between 9 a.m. and 5 p.m.: Find that the vessel arrived in Boness Roads on the 19th of October but was not able and was not allowed to enter said dock on account of the crowded state of the dock until the 26th of October, which day she was docked at 2.30 p.m.: Find that the loading of said vessel was completed on 28th October at 4 p.m.: Find that the 'River Ettrick' did not arrive at her charter port of shipment and that the lay-days did not begin to run until the said 26th day of October, when the 'River Ettrick' got into the dock: Find further that no notice was given in terms of the said charter-party to the defenders that the vessel was reported, berthed, and ready to receive cargo: Find that the defenders are not liable to the pursuer in any sum in name of demurrage: Therefore assolvie the defenders from the conclusions of the summons, and decern."

Counsel for the Pursuer—Ure—Aitken. Agents—J. & J. Galletly, S.S.C.

Counsel for the Defenders—C. S. Dickson—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Wednesday, June 26.

## FIRST DIVISION.

[Court of Exchequer.

### MUSGRAVE (SURVEYOR OF TAXES) v. DUNDEE ROYAL LUNATIC ASYLUM.

*Revenue—Inhabited-House-Duty—Exemption—Act 48 Geo. III. cap. 55, Case 4—Lunatic Asylum Originally Founded by Subscription but Self-Supporting.*

Case 4 of 48 Geo. III. c. 55, exempts from inhabited-house-duty "any hospital, charity school, or house provided for the reception or relief of poor persons."

Dundee Royal Lunatic Asylum was originally founded by charitable donations, and was governed gratuitously. It possessed two small mortifications,

out of the annual proceeds of which two indigent lunatics were in part maintained. The other inmates of the asylum consisted either of private patients paying board, or pauper lunatics for whom board was paid by the District Board of Lunacy, at a rate estimated to meet the cost of their maintenance and clothing. The accounts of the asylum showed that for some years the establishment had been maintained out of the board paid for patients without the aid of voluntary subscriptions. *Held* that the asylum being a self-supporting institution was not entitled to the exemption conferred by the clause above quoted.

At a meeting of the Income-Tax Commissioners for Dundee on 5th April 1894 the treasurer of the Dundee Royal Lunatic Asylum appealed against an assessment for inhabited-house-duty on £1300 as the full annual value of the Dundee Royal Lunatic Asylum for the year ending 24th May 1894, on the ground that the asylum was a charity and entitled to the exemption conferred by case 4 of 48 Geo. III. cap. 55, upon "any hospital, charity school, or house provided for the reception or relief of poor persons."

The Commissioners decided that the asylum was entitled to the exemption claimed, and the Surveyor of Taxes being dissatisfied with this decision, the present case was stated for the opinion of the Court of Exchequer, the question for the Court being—"Whether the Dundee Royal Lunatic Asylum is an hospital or house provided for the reception or relief of poor persons within the meaning of the Exemption stated under 48 Geo. III. c. 55, Case 4?"

The case contained the following statements:—"2. Hitherto the assessment for house-duty has been restricted to the portion of the asylum buildings estimated to have been used by private patients, amounting to £217.

"3. The asylum was originally founded in conjunction with an infirmary by charitable donations and subscriptions—a royal charter having been obtained in 1819 by which a body of contributors and donors were incorporated by the name of the Dundee Infirmary and Asylum. The corporation was to consist of two separate establishments, the estates and funds whereof were to be kept distinct from each other, the one to be called The Dundee Infirmary Establishment, and the other the Dundee Lunatic Asylum Establishment. As stated in the charter of 1819, the object of the infirmary was to provide for the relief of indigent sick and hurt persons, and the object of the lunatic asylum was to extend this relief to lunatics.

"4. In 1875 the directors of the asylum establishment applied for a charter separating the asylum from the infirmary establishment, and constituting the directors of the asylum a corporation. In the petition for the charter it was set forth that the asylum buildings had become insufficient for the purposes which they were intended to serve, and the new charter was desired in order that the

directors should be enabled to carry out their intention of erecting a new asylum at some distance from the town of Dundee, and to feu or sell the ground on which the present building was erected.

"5. Accordingly a new charter was granted in favour of the then directors by the name of the Dundee Royal Lunatic Asylum. They were empowered to acquire . . . lands, tenements, and any other heritage in feu or absolutely, or in lease . . . and also any other property and estate, heritable and moveable, real and personal, and to erect . . . and maintain all such houses and buildings as might be necessary or proper for the objects or purposes of the corporation, to sell, or feu, or lease any or any parts of any such lands and other property. They were also empowered to receive and hold and administer donations and legacies or other bequests for the purpose and benefit of the corporation. The establishment was separated from the infirmary establishment. . . .

"6. In the autumn of 1874 the directors took in feu the farm of West Green, situated about four miles to the west of Dundee, . . . and tenders were taken for the building of a new asylum—the old asylum having become unsuitable for patients, from the grounds being so much surrounded and overlooked by the tenants of dwelling-houses. The building of the new asylum was finished in 1882, and the patients removed into same. After the removal of the patients the directors proceeded to sub-feu the old asylum grounds, . . . of the 15 acres which belonged to the asylum, about 5 acres only remain to be disposed of.

"7. The feu-duties are being sold from time to time, and the proceeds applied in reducing the debt of the asylum.

"8. The debt . . . amounted at 31st March 1890 to £54,583, 18s. 6d.; at 31st March 1893 to £38,851, 19s. 2d., having been reduced to this amount by the proceeds of the sale of feu-duties, amounting to £14,065, 5s. 4d., . . . a donation of £1000; and the appropriation as 'rent' of a sum of £2000, out of the revenue of the institutions, said sum being applied, in the first place, in payment of the interest on the debt, and in the second place, in reducing the capital amount of the debt.

"9. According to the printed accounts of the asylum, the income for 1890-91 from board of patients was . . . £11,551 2 4

From rent of old asylum property . . . . .	19 10 0
From feu-duties from old asylum property . . . . .	42 16 4
And from sales . . . . .	87 1 3

£11,700 9 11

The expenditure during the same period was . . . . .	11,698 2 7
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Leaving a balance, which is entered as 'Profit on the Year,' of . . . . .	£11 7 4
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"The expenditure includes the above-mentioned sum of £2000 for 'Rent,' which,

however, was less than the interest due to the bank on building account for the year by £94, 14s. 2d.

"10. In 1891-92 the income was:—	
Board of Patients . . . . .	£12,165 14 6
Rent of old asylum buildings . . . . .	9 7 5
And sales . . . . .	108 0 4

£12,283 2 3

And the expenditure . . . . .	12,385 15 4
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The balance of . . . . .	£102 13 1
being entered as 'Loss on Year.'	

"The expenditure included the sum of £2000 for 'Rent,' said sum being applied in payment of interest to the bank £1848 10 1

And reduction of debt . . . . .	151 9 11
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£2000 0 0

"11. The income for 1892-93 was:—

Board of patients . . . . .	£12,201 8 11
Feu-duties from ground at old asylum . . . . .	135 12 2

And sales from the farm . . . . .	191 6 8
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£12,528 7 9

And expenditure (excluding a sum of £1386, 9s. 6d., 'special outlay on entry to Whitelawston Farm,' stated in the report to have been met out of two legacies amounting to £1574, 1s.) . . . . .

£12,126 9 5

Surplus . . . . .	£401 18 4
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"The expenditure also includes as 'Rent' £2000 applied towards interest £1447 19 5

And reduction of debt . . . . .	552 0 7
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£2000 0 0

But in none of the accounts before referred to is anything debited or allowed for depreciation of buildings, furniture, &c. It is averred by the asylum that £1000 a-year should be allowed for depreciation.

"12. The board of patients in the three years was as follows:—

1890-91. Private . . . . .	£2956
Pauper . . . . .	8594
1891-92. Private . . . . .	2761
Pauper . . . . .	9404
1892-93. Private . . . . .	3192
Pauper . . . . .	9008

"The pauper patients are boarded for the sum of £30, 11s. per annum, which is estimated to meet the cost of their maintenance and clothing.

"The number of patients may be taken as 355, in the proportion of 289 pauper patients to 66 private patients."

"13. It is provided by sec. 59 of the Lunacy (Scotland) Act 1857 that if there is an asylum established in a lunacy district having sufficient accommodation for the reception of the pauper lunatics of the district, or which can be easily rendered adequate to the reception of such pauper lunatics or a portion of them, the district lunacy board (on whom devolves the duty of providing

accommodation for the reception and treatment of the lunatics in their district) is, before proceeding to assess for or erect any district asylum, to contract with the proprietors or parties interested in any such asylum for the use of the whole or any part of the same, or for the reception and maintenance of the pauper lunatics of the district, or any portion of them, on such terms as shall be arranged between the district board and the proprietors or parties interested, and in the case of difference such difference to be subject to the decision of the General Board of Lunacy, but the portion of the asylum which in terms of any such agreement is appropriated to the reception of the pauper lunatics is to be and remain under the care and management of the proprietors or parties interested therein, subject to the power of inspection, visitation, and power of making regulations conferred by the Act upon the General Board. The pauper lunatics of the district in which the Dundee Royal Lunatic Asylum is situated are boarded therein or in another smaller public asylum in the district under agreement in terms of the foregoing section, but the district board of lunacy and the parochial boards are not represented on the directorate of the Dundee Royal Lunatic Asylum, and have no control of the asylum or any part of it or of its expenditure.

"14. The asylum has two mortifications, each for the maintenance of an indigent lunatic, and amounting together to £841, 19s. 3d. There is no separate investment to represent this sum, the amount having been applied towards the expenditure on the buildings. In respect of these, two indigent lunatics are maintained at less than their cost to the asylum, other patients, who having seen better days are yet not paupers, being esteemed deserving of the charitable operations of the asylum, are maintained at less than their cost. The number of these patients at present is sixteen.

"15. The asylum was originally founded by charitable donations; it is governed gratuitously, and no private person has any eventual interest in the property; during the seventy-three years of its existence sums amounting to about £23,000 have been raised in donations and subscriptions to the asylum, and the asylum property is still subject to a debt of about £25,000.

"16. It was contended on behalf of the asylum:—(1) That it is a charity, and exempt under 48 Geo. III. cap 55, Case 4, being an hospital or house provided for the reception or relief of poor persons; (2) that the proportion of pauper patients to private patients in the asylum being as 289 is to 66, the asylum is really for the reception and relief of poor persons; and (3) that the asylum is not a self-supporting institution, notwithstanding the accounts show apparent profits in some years, and is exempt in accordance with the decisions of the Judges in the cases of *Blake v. Mayor, &c., of London*, L.R., 19 Q.B.D., 79; and *Cause v. The Committee of the Lunatic Hospital, Nottingham*, L.R. (1891), 1 Q.B., 585.

"17. The surveyor of taxes, Mr Philip Mus-

grave, contended:—(1) That the asylum is self-supporting, and thus falls under the ruling in the case of *Needham v. Bowers*, 21 Q.B.D. 437; there have been profits during the last three years, according to the annual accounts (and allowing deductions conform to the Income Tax Acts, including repairs and renewals of plant and furniture, and repairs and upkeep of asylum buildings), out of payments by both classes of patients, as follows:—

Year 1891 . . . . .	£1591
„ 1892 . . . . .	1520
„ 1893 . . . . .	1703

and the profits have been expended in gradually reducing the debt on the asylum; and (2) that the asylum has no endowment; the feu-duties which remain unsold represent the old site, and, being a temporary conversion of capital, the proceeds of which will be applicable to clearing off the debt on the new buildings, not the creation of an endowment to yield an annual revenue. The mortifications are not separately invested.

"After hearing parties, the Commissioners find that profits were made in terms of the Income Tax Acts, per accounts appended to this amended case, as follows:—

Year 1891 . . . . .	£1591
„ 1892 . . . . .	1520
„ 1893 . . . . .	1703

without giving effect to the deduction claimed on account of the annual charge of £2000 including interest, mentioned under heads VIII., IX., X., and XI, of this amended case, and on which the bank does not, according to usual practice, allow deduction of income-tax. But, considering the nature of the institution, and being of opinion that the site of the old asylum buildings, which is of the value of about £36,000, is (along with the new asylum property) subject to the debt of about £25,000, mentioned in head XV., to be regarded as an endowment, decided that the asylum came under the exemption in Case 4 of 48 Geo. III. cap 55, and discharged the assessment."

Argued for Surveyor of Taxes—This was practically a self-supporting institution taking in no patients gratuitously, and therefore fell under the ruling of *Needham v. Bowers*, 1888, L.R., 21 Q.B.D. 436. It did not matter how the institution was founded originally. In the above case the institution was originally started by charity; and, moreover, there were points there in favour of exemption, viz., the fact that some patients were taken in gratuitously, which did not exist in the present case. What the respondents here called an endowment was not so regarded in that case. In the case of the *Governors of Charterhouse School v. Lamarque*, 1890, L.R., 25 Q.B.D. 121, there was an element of charity, and yet the institution was held liable. In the case of *Carose v. Nottingham Lunatic Asylum*, L.R., 1891, 1 Q.B. 585, where the right to exemption was sustained, there was a large endowment fund, and the ground of the Court's decision was that the income and maintenance of the institution de-

pended on charity, which it certainly did not in the present case.

Argued for the respondents—The exemption was expressed in general terms, and the Court was not bound to interpret it strictly. This asylum was none the less an "hospital" because the patients were able to pay. It came into existence as the result of charity, and was managed gratuitously, and no private person made any profit. This was not a question of assessing "profits" under Schedule B of the Income-Tax Acts. It was partly supported by donations. The money received from the parochial authorities was not of the same nature as that paid for board by private patients. They were bound to receive the Dundee paupers—Lunacy Act 1851 (20 and 21 Vict. c. 71), sec. 59, and if the latter were not admitted to the asylum they would be in the poor-house, which was admittedly exempt. This was an enforced charity, the asylum authorities being the medium through which the Board distributed charity. It was therefore an "hospital" devoted mainly to paupers, and was entitled to the exemption just as an institution not wholly charitable had been held exempt from property tax under Schedule A of the Income-Tax Act—*Blake v. Mayor of London*, 1886, L.R., 18 Q.B.D. 437. *Needham* was a different case, because the hospital there in question was designed originally for people who were not paupers, but who could and did pay, and the establishment yielded a profit, while here there was no real profit, and the asylum was founded for charitable purposes. In *Case* the same features were present as here, and the Court allowed the exemption. There really was an endowment here, consisting of the buildings and payments received from the district Board for paupers, and the question of the greater or less amount of the endowment did not signify. In the case of the *Surveyor of Taxes v. Fasson*, May 19, 1883, 10 R. 870, there were *dicta* to the effect that such questions as this were not to be looked at too strictly, but "with the eye of common-sense." In *Chalmers' Hospital v. Magistrates of Edinburgh*, March 8, 1881, 8 R. 577, there was a wing for paying patients, but that fact did not deprive the hospital of the character of a building "solely occupied for purposes of charity," and as such entitled to exemption from burgh assessment.

At advising—

LORD M'LAREN—This is a case under the Taxes Management Act, and it was adjourned for consideration not so much because of the difficulty of the question as because it was explained to us that it is a representative case—that this is one of a large number of institutions which may be described as appropriated to public objects and as not self-supporting—and the question is whether such institutions are entitled to exemption from Inhabited-House Duty under the clause of the statute regulating the incidence of that tax. This case must of course be decided upon the facts

set forth in the case, and therefore I shall endeavour to call your Lordships' attention briefly to those facts in order to see whether they constitute a case of exemption. It is not disputed that the claim relates to the Dundee Royal Lunatic Asylum, and it is not disputed of course that this is an inhabited house and would fall under the general provisions of the statute unless it is exempted. The words of the exemption are "any hospital, charity school, or house, provided for the reception or relief of poor persons." Now, it appears from the words which I have quoted, and is in accordance with the construction which has been put upon the exemption in English decisions, that the motive of the exemption is charity, and the claim is founded on the supposition that an asylum which entertains both private patients whose board is paid for out of their own funds or contributed by relatives, and also pauper patients, is in the position of a charity, at all events so far as relates to the wing of the house which is occupied by the pauper patients. It is stated in the 2nd article of the case that hitherto the assessment for house-duty has been restricted to the portion of the asylum buildings estimated to have been used by private patients, amounting to £217. Now, I do not think that it is necessary to exemption under this Act that the inhabited house should be exclusively appropriated to charity and to the relief of poor persons as it is described, but it would certainly appear that it must be an institution in whole or in part substantially appropriated to charitable purposes. The first point brought out in the case in article 3 is that the asylum was originally founded in conjunction with an infirmary by charitable donations and subscriptions, and a royal charter was obtained the terms of which are set forth at considerable length in articles 4 and 5. The fact that the institution was founded by voluntary contributions and not for profit is of course an element but only one element in the question, because there are other societies, such as literary societies and political clubs, which are occasionally built either wholly or in part out of money subscribed, and which clearly would not fall under the exemption that we are considering. But it is a circumstance which, taken along with others, might lead to the conclusion that this was a charity. Then in the 6th article we have a statement that the old asylum being inadequate was pulled down and a new one was built and the old asylum grounds have been sub-feued, the feu-duty being part of the revenue of the establishment. I do not know that this is very material. It is said that the feu-duties are sold from time to time and the proceeds applied in reducing the debt—(See article 7 of amended case.) All this seems to be nothing more than ordinary management of private property. But now I come to the critical part of the case, because the exemption is claimed mainly upon the ground that no profit is made by this establishment. In the 9th and 10th articles we have a specification of the income and ex-

penditure of the asylum for a series of years. These statements show only a very small balance of income over expenditure, and it is explained that that balance, like the proceeds of the feu-duty, is applied from time to time in the reduction of the debt upon the asylum buildings. Then in article 12 the income is classified, and we have for the same period of three years a statement of the amount of board paid by private and pauper patients respectively; and this important statement is added—“The pauper patients are boarded for the sum of £30, 11s. per annum, which is estimated to meet the cost of their maintenance and clothing.” I think that statement makes it impossible to maintain that the board of the private patients is made a source of profit out of which pauper patients are maintained. The pauper patients, according to the facts stated in the case, are completely maintained by means of the sum paid for their board by the District Lunacy Board. The authority under which the District Lunacy Board contracts with the asylum is set forth in the 13th article. That is governed by the 59th section of the Lunacy (Scotland) Act 1857, which provides that, if in a lunacy district there is an established asylum having sufficient accommodation for the reception of the pauper lunatics of the district, then the district lunacy board, before proceeding to assess for or to erect a district asylum, are to contract with the proprietors or parties interested in the existing asylum, and if they are unable to agree upon terms, provision is made for arbitration by the General Board of Lunacy, and the case states that the pauper lunatics of this district are boarded under an agreement in terms of the foregoing enactment. Of course the district boards have no control of the asylum or its expenditure, but that does not seem to be material to the question. There is one other element of charity—a very small one, but it is quite properly set forth in the case—that there are two mortifications under each of which one indigent lunatic is gratuitously maintained. And then the different grounds are summed up in the 15th article, and the 16th contains a statement of the argument and a reference to authorities.

Now, I think it is impossible to maintain that the circumstance that two lunatics are gratuitously maintained in this large establishment is sufficient to impress upon the building as a whole, and the administration as a whole, the character of a charitable institution; and so the argument maintained to us was that, because this institution maintains pauper patients, it is in terms of the exemption an hospital or house provided for the reception or relief of poor persons. I think that on a fair construction the meaning of the exemption is, that out of the funds of the hospital poor persons are entertained, either because it was expressly founded for the benefit of the poor, or because it is used for the purpose of the gratuitous or charitable entertainment of poor persons requiring medical relief. But this case, I apprehend, cannot

fairly be brought within the exemption, because the poor persons who are boarded in the asylum are not in any way maintained out of the funds of the asylum, but are maintained under contract by the District Board of Lunacy, and if they were not so maintained the inhabitants of the district would be assessed for their maintenance in a building provided by public taxation for the purpose. It is only in virtue of the statute referred to that use is made of the existing asylum as an establishment which is put under obligation to contract for the reception of pauper patients. The view which I present to your Lordships is, that the maintenance of these pauper lunatics being under contract with the District Board, and being paid for by money raised by public taxation, such maintenance in the asylum cannot be considered as charity, and accordingly that the case does not fall under the statutory exemption. If your Lordships agree with me, then the determination of the Commissioners must be reversed, because they have held that the asylum is entitled to exemption in terms of 48 George III., cap. 55, Case 4.

LORD ADAM—The Dundee Royal Asylum was originally founded in conjunction with an infirmary, by charitable donations and subscriptions. A charter was obtained in 1819 by which it was declared that the corporation was to consist of two separate establishments—the one to be called the Dundee Infirmary Establishment, and the other the Dundee Lunatic Asylum Establishment.

The object of the infirmary was to provide for the relief of indigent sick and hurt persons, and the object of the asylum was to extend this relief to lunatics.

Ground was acquired and an asylum built, but it had become surrounded with houses and otherwise unsuitable for patients, and in 1875 the then directors obtained a new charter by which they were incorporated under the name of the Dundee Royal Lunatic Asylum, and by which they were empowered to erect a new asylum at some distance from the town of Dundee, and to feu or sell the ground on which the existing asylum was erected.

The directors accordingly acquired ground in the neighbourhood of Dundee, and erected thereon the present asylum, which was finished and occupied in 1882. They have since feued about two-thirds of the old asylum grounds.

It appears that in 1890 the asylum was in debt to the amount of £54,583, 18s. 6d., and that in 1893 this debt had been reduced to £30,851, 9s. 2d. by the sale of feu-duties of the old asylum grounds, a donation of £1000, and an annual payment from the revenue of the institution of £2000. It is stated that the asylum property is still subject to a debt of £25,000.

As I have said, the asylum was originally founded by charitable donations and subscriptions, which during the 73 years of its existence have amounted to about £23,000, but during the years embraced in this case

no such donations or subscriptions appear to have been received.

The asylum is governed gratuitously, and no person has any eventual interest in the property.

The number of patients in the asylum is to be taken as 355, in the proportion of 289 pauper patients to 66 private patients.

The pauper patients are boarded at a sum which is estimated to meet the expense of their maintenance and clothing.

The receipts from the patients during the years from 1891 to 1893 inclusively were £11,551, 2s. 4d., £12,165, 14s. 6d., and £12,201, 8s. 11d. respectively, and the net profits (ascertained in terms of the Income Tax Acts), amounted to £1591, 5s. 10d., £1520, 10s., and £1703, 8s. 3d.

Such would appear to be the material facts as regards this institution with reference to which we are asked to decide whether it is an hospital or house provided for the reception or relief of poor persons within the meaning of the exemption stated under 48 Geo. III. c. 55, Case 4, and so not liable for inhabited-house-duty.

With reference to the question whether it is a house provided for the reception or relief of poor persons—there are in fact 289 pauper patients maintained in the asylum. But these do not appear to me to be "poor persons" in the sense of the Act. The whole cost of their maintenance and clothing is paid to the asylum by the District Lunacy Board, which is bound to maintain them, and I see no element of charity in the transaction.

The case therefore appears to me to turn upon the question whether the asylum is or is not an hospital in the sense of the Act?

We were referred to the cases of *Needham*, L.R., 21 Q.B.D. 436, and *Cause*, L.R., 1891, 1 Q.B. 585, as throwing light on the construction of the word "hospital" as used in the Act. In the first of these cases it was held that an institution wholly self-supporting, although originally built by charitable contributions and carried on gratuitously, was not exempt as an "hospital" in the sense of the Act, which must, it was decided, be restricted to hospitals maintained wholly or in part by charity, and in the subsequent case of *Cause*, Mr Justice Charles, who delivered the opinion of the Court in the case of *Needham*, further said that the word "hospital" did not include the case of an hospital with no charitable endowment, but did include an hospital with a substantial charitable endowment.

No doubt his Lordship used the word "substantial" in that case because he was dealing with a case in which the endowment was substantial. But I do not think that any endowment, however small, relatively to the other funds, applied to the maintenance of an institution would necessarily bring it under the exemption in the statute. It may no doubt be difficult to determine, in any particular case, what amount or proportion would be sufficiently substantial to produce that result, but I agree with Mr Justice Charles' opinion—with this

modification or addition—that I do not think it necessary that there should be an endowment in the technical sense of the word, but that it will be sufficient to bring an institution within the exemption of the Act if it be maintained in whole or in part by voluntary contributions.

There is another point on which the case of *Needham* is an authority in this case. In that case, as in this, the asylum was originally founded by charitable donations and subscriptions. It was urged on us, says Mr Justice Charles, "that as the hospital buildings and premises were originally purchased out of money subscribed by benevolent persons, there is a charitable element in this sense that the hospital has no rent to pay. But we do not think the fact that in its origin the institution was founded by voluntary charitable donations is sufficient to constitute it an institution partly maintained by charity." As I have said, the Dundee Royal Lunatic Asylum is not being, and has not been, during the years set out in the case, to any extent maintained by charitable donations or subscriptions.

The question then is, whether this asylum has any endowment applicable and applied to its maintenance. The Commissioners think that it has. They say that they are of opinion that the site of the old asylum buildings, which is of the value of about £36,000, is (along with the new asylum property) subject to the debt of about £25,000 to be regarded as an endowment. Now, it appears from the case that no part of the income from the old site of the asylum has ever been applied to the maintenance of the hospital. It has been applied towards payment of the principal and interest of the debt for which it is liable. It may be that in the future there may be a fund from this source applicable and applied to the maintenance of the asylum, but the asylum has been in the past and is being wholly maintained, except to the extent I shall presently mention, from the surplus profits derived from the inmates. I cannot, therefore, agree with the Commissioners that this is an endowment which brings the hospital under the exemption in the Act.

It appears from the case that the asylum has two mortifications each for the maintenance of an indigent lunatic, and amounting together to £841, 19s. 3d., and that in respect of these mortifications two indigent lunatics are maintained at less than their cost in the asylum.

It appears that there is no separate investment to represent this sum, as no doubt there ought to have been, but I do not think that fact material.

I do not think, however, that the fact of the existence of this small mortification or endowment, having regard to the small proportion it bears to the other funds applied to the maintenance of the asylum, is sufficient to bring the asylum under the exemption of the Act. I think it does not alter or modify the character of the asylum as being truly a self-supporting institution.

I therefore think that the determination of the Commissioners is wrong.

LORD KINNEAR—I am of the same opinion. I think it is settled by previous decisions, (1st) that the right to exemption does not depend upon the charitable origin of the institution, but upon its actual condition and character when it is alleged that liability to taxation has arisen; and (2nd) that a hospital which is entirely or mainly self-supporting is not within the class entitled to exemption. Upon the question of fact which arises under this second branch, I agree with Lord Adam and Lord M'Laren that the hospital in question is self-supporting, and therefore not entitled to the exemption.

The LORD PRESIDENT concurred.

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

Counsel for the Lunatic Asylum—Ure—Salvesen. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Surveyor of Taxes—A. J. Young. Agent—The Solicitor of Inland Revenue.

Wednesday, June 26.

FIRST DIVISION.

[Court of Exchequer.

REVELL (SURVEYOR OF TAXES) v.  
SCOTT.

*Revenue — Income - Tax — Occupation of Shootings—Farm and Right of Shooting Occupied by One Tenant under Separate Leases — Property and Income-Tax Act 1842 (5 and 6 Vict. cap. 35), No. 7, Schedule B, sec. 63.*

Held that a person who was tenant of a farm under one lease, and lessee of the landlord's shooting rights over the farm under another lease, was liable to be assessed under Schedule B of the Income-Tax Acts on the aggregate amount of the shooting and agricultural rents payable under the two leases.

At a meeting of the General Commissioners of Income-Tax for the county of Sutherland held at Dornoch on 20th November 1894, Mr Tom Scott, farmer, Rhifail, appealed against an assessment of £1042, 17s. 6d. made on him under Schedule B of the Income-Tax Acts for the year ended 5th April 1895, in respect of the occupation of Rhifail sheep-farm and shootings.

The Commissioners were of opinion that the assessment under Schedule B ought not to include the appellant's shooting rental, and that appellant was only liable to be assessed under said schedule on his rent as grazing tenant, and they reduced the assessment to £672, 17s. 6d. accordingly.

The present case was stated for the

opinion of the Court at the request of the Surveyor of Taxes.

The case contained the following statements:—"Mr Scott is tenant under the Duke of Sutherland of Rhifail sheep-farm, in virtue of a fourteen years' lease as from Whitsunday 1889, and he is also the lessee under another lease, applicable to the same period, of the landlord's shooting rights over said farm, and also of his angling rights over one beat of the river Naver. According to such leases he pays yearly the following separate rents, viz., £670 in respect of the occupancy and grazing of the farm, £370 for the shootings, including a furnished lodge-keeper's house and offices, and £100 for the angling, together with a further sum of £2, 17s. 6d. yearly of fire insurance, payable on the farm and other buildings rented by him. Mr Scott is in the actual occupation of Rhifail farm and resides upon the same all the year round. No assessment under Schedule B has been made in previous years upon Mr Scott in respect of the shootings and angling until the year 1893-94, when the Schedule B assessment, so far as it included the shooting rental, was discharged after a hearing before the Commissioners.

"The appellant contended (and his contention was admitted by the Surveyor) that if the shooting of Rhifail during his occupancy of the grazing right had been let by the proprietor to another person, the shooting tenant would not have been liable to income-tax under Schedule B in respect of the shooting rent; and that no distinction can be drawn between his position and that of a shooting tenant who pays a separate rent for the shootings. . . . This is the first occasion in the county of Sutherland, since the passing of the Income-Tax Act 1862, that the occupancy of shootings over and above the primary and beneficial occupation of the land as a sheep grazing farm (apart from deer forests) has been made the subject of assessment in respect of income-tax under Schedule B. . . .

"It was contended on behalf of the Crown that the Schedule B assessment of £1042, 17s. 6d., being the annual value of the farm and shootings thereon in the occupancy of the appellant (less the sum of £70 allocated to the shooting lodges), was rightly made according to No. vii., Schedule B, section 63 of the Income-Tax Act of 1845 (5 and 6 Vict. cap. 35)."

Argued for the Surveyor of Taxes—The appellant was undoubtedly an occupier of land by his possession under his shooting lease just as much as in virtue of his agricultural lease. The case of *Middleton v. Lord Advocate*, March 16, 1876, 3 R. 599 was directly in point. There, as here, the tenant had the exclusive use or occupation of the land, and the rent paid by him was its agreed-on actual value, in that case as a deer forest, in this for farming and shooting combined. Rule vii., Schedule B, section 63, of the Act of 1842 provided for the duty under Schedule B being charged in addition to the duty under Schedule A, according to the general provision in rule 1, Schedule A,