

lisher, while refusing to disclose the name of his correspondent, were to attempt to take benefit and obtain mitigation of damages by proving that he received the letter in good faith and in the ordinary course of business, it would at once become material to the pursuer to have the means of testing this by ascertaining the author's name. Therefore in my opinion the defender should not be allowed to lead evidence to that effect.

There are passages in the opinions of some of the Judges in *Cunningham's* case which, taken apart from the circumstances, would seem to support the pursuer's application. But taken as a whole, I read that decision as proceeding upon the exceptional circumstances of the case.

In the result, while I think it will be open to the pursuer at the trial to object to the defender leading evidence of the averments contained in the third answer, I think that the diligence now asked should not be granted.

The Court pronounced the following interlocutor:—

“Recal the interlocutor reclaimed against: Refuse the diligence at the instance of the pursuer as mentioned in his specification No. 15 of process as amended, and remit the case to the Lord Ordinary to proceed therein as accords: Find the pursuer liable in the expenses of this reclaiming-note,” &c.

Counsel for the Pursuer—Ure—M'Lennan.
Agents—Forrester & Davidson, W.S.

Counsel for the Defender—D.-F. Asher, Q.C.—W. Campbell. Agents—Carmichael & Miller, W.S.

Thursday, February 4.

FIRST DIVISION.

TRUSTEES OF FREE CHURCH OF SCOTLAND v. BAIN (SURVEYOR OF TAXES).

Revenue—Inhabited - House - Duty—“Hall or Office”—48 Geo. III., cap. 55, Sched. B, Rule V.

The Assembly Hall and New College, which form three sides of a quadrangle, and consist respectively of a large hall with a smaller hall attached, and of a four-storied building containing class-rooms, dining-hall, library-hall, gymnasium, janitor's dwelling-house, &c., in the occupation of the Trustees of the Free Church, are used by them primarily for the purpose of holding their annual meetings, and for the training of candidates for their ministry. The Trustees were charged with the payment of poor and school rates in respect of the buildings. *Held* (1) that the buildings were a “hall or office” in the sense of the Taxing Statute, 48 Geo. III, cap. 55, Sched. B,

Rule V.; (2) that they did not fall within the exemption conferred by sub-sec. 2, sec. 13, of the Customs and Inland Revenue Act 1878 (41 Vict. cap. 15), inasmuch as they were not used for making a livelihood or profit.

At a meeting of the Income Tax Commissioners held at Edinburgh on 5th May 1896 the Trustees of the Free Church of Scotland appealed against an assessment for inhabited-house-duty on £1105, duty £41, 8s. 9d., made on them for the year ended 24th May 1896, as occupiers of the Free Church Assembly Hall and of the Free Church College Buildings, Edinburgh, and claimed exemption on the ground that the premises “are exempt from the inhabited house duties in respect that they are not inhabited houses, and are not within the provisions of the Acts, or if they are, that they are within the exemptions expressed in the Acts.”

The Commissioners refused the appeal, and the appellants obtained a case.

The case contained the following statements:—“(2) The buildings in question enclose three sides of a quadrangle on Mound Place, Edinburgh. On the north and west sides of the quadrangle stands what is known as the Free Church College, a building of four storeys, containing on the sunk floor cellarage and accommodation for the heating apparatus; on the ground floor, a janitor's dwelling-house, two class-rooms or halls, with professor's retiring-rooms attached, and a hall in which the Senatus and the College Committee of the General Assembly meet; on the first floor, four class-rooms and four retiring-rooms, a common hall for the use of students, where newspapers, books, &c. are placed, and where, since the institution of dinners for the students some years ago, the dinners are served, a large library hall and other library accommodation; and, on the second floor, other two class-rooms with two retiring-rooms, a gymnasium, and a museum. (3) The buildings known as the Assembly Hall, which stand on the south side of the enclosed quadrangle, contain a large hall, a smaller hall, which during the meetings of a General Assembly is used as a refreshment-room, and several retiring-rooms and lavatories. (4) A gateway from Mound Place leads through the northern side of the College buildings to the quadrangle, whence access is had by separate doors to the Assembly Hall and the College buildings. The janitor's dwelling-house on the ground floor, which is entered by a door within the gateway, and forms an integral part of the main building, now communicates internally with the sunk floor, which contains the furnaces, heating apparatus, and cellarage, and thence with the whole premises assessed. As the buildings were originally erected, there was no internal communication between the janitor's house and the remainder of the buildings charged. Some time ago, however, prior to 1896, an opening was made through part of the back wall of a press in the inmost room of the janitor's house, which opens on to a wooden gangway with steps

leading to the cellar in which the furnaces for the heating apparatus are. The remainder of the press is still used as such, and is boarded off from the opening. The communication was opened for the convenience of the janitor in attending to the furnaces, and to prevent the necessity of his going from the house through the quadrangle and then into the cellar. The heating apparatus is for the College only. The gateway leading to the janitor's dwelling-house and to the quadrangle is furnished with an iron gate which is locked at night, and thus shuts in the whole buildings, and establishes internal communication throughout the whole premises charged to duty. (5) The Assembly Hall was built expressly as a place of meeting for the General Assembly of the Free Church of Scotland, which meets annually in the month of May, and sits about ten days, and for the meetings of the Commission of the General Assembly, which are held about three times a year. The hall is occasionally let for meetings of a religious, semi-religious, or charitable character, or for temperance meetings, when a charge of from £2, 2s. to £3, 3s. a-day is made for its use, but the fees charged for admission to the meetings of the Assembly and the charges for the occasional use of the hall do not more than cover expenses. (6) The Free Church College is what is known in Scotland as a divinity hall, and it is in this sense that the word "college" is used in this case, and is intended primarily for the training of candidates for the ministry of the Free Church of Scotland when they have completed their undergraduate course at one or other of the national universities. (10) The janitor takes charge of letters addressed to professors and students at the College; attends to the gate and to the heating and ventilation, and superintends the cleaning of the whole premises. He also buys the food and superintends the serving of the students' dinners during the session. (12) The College and Assembly Hall are both charged to poor and school rates for the year to which the assessment to inhabited-house-duty applies. These rates were paid under protest."

The Surveyor of Taxes contended that the College and Assembly Hall were assessable as an "inhabited dwelling-house" in virtue of the schedule annexed to the House Tax Act 1851 (14 and 15 Vict. cap. 36), or alternatively as a "hall or office" under Rule V. of Schedule B, 43 Geo. III. cap. 55. That rule provides—"Every hall or office whatever belonging to any person or persons, or to any body or bodies politic or corporate, or to any company, that are or may be lawfully charged with the payment of any other taxes or parish rates, shall be subject to the duties hereby made payable as inhabited houses; and the person or persons, bodies politic or corporate, or company to whom the same shall belong, shall be charged as the occupier or occupiers thereof."

The appellants contended—"(1) That even on the assumption that the whole block of buildings, including the Assembly

Hall, New College, and janitor's house formed only one building, that then and in that event the case fell under sub-sec. 2 of sec. 13 of the Customs and Inland Revenue Act of 1878 (41 Vict. cap. 15), and that as the janitor resided within the said building solely for its protection, the duty was not exigible; and (2) but the Assembly Hall, New College, and janitor's house did not truly form one building, that as originally built the janitor's house was an entirely separate building. That although there has always been internal communication between the College buildings and the Assembly Hall, the heating apparatus is for the College only, and does not affect in any way the Assembly Hall and the rooms connected therewith. That the hole which had been knocked through in the wall of the press solely to enable the janitor during the night to visit the heating apparatus without going out into the quadrangle, did not transform the Assembly Hall and College into parts of the house in which he lived and so liable to inhabited-house-duty."

Sub-sec. 2 of sec. 13 of the Customs and Inland Revenue Act 1878, provides—"Every house or tenement which is occupied solely for the purpose of any trade or business, or of any profession or calling by which the occupier seeks a livelihood or profit, shall be exempted from the duties by the said Commissioners upon proof of the facts to their satisfaction, and this exemption shall take effect although a servant or other person may dwell in such house or tenement for the protection thereof."

Argued for appellants—(1) The buildings did not form an inhabited dwelling-house, for it was necessary for premises to be slept in to constitute a dwelling-house—*Reilly v. Read*, March 5, 1879, L.R., 4 Exch. Div. 100. This point had not been raised for discussion in Scotland. It was true there were *dicta* to the contrary, but they were unnecessary for the decision of the cases where they occurred—*Glasgow Coal Exchange Co. v. Solicitor of Inland Revenue*, March 18, 1879, 6 R. 850; *Corporation of Glasgow v. Solicitor of Inland Revenue*, Oct. 19, 1880, 8 R. 17; *Muat v. Shaw Stewart*, Jan. 27, 1890, 17 R. 371. (2) Nor were these buildings a "hall or office" in the sense of the statute. The section applied only to such halls as those belonging to London Trading Companies, where business really was carried on, not to colleges, where lectures were given. But even if the Assembly Hall was covered by the section, it did not apply to the class rooms forming the main part of the New College. (3) Assuming that the section applied, they came under the exemption attaching to premises used for business purposes. It was true that the buildings were not primarily used for these purposes, but they were used indirectly to make a profit, *i.e.*, by charging fees they endeavoured to avoid loss in carrying on the institution. Moreover, the professors who lectured there made their livelihood thereby.

Argued for respondents—(1) Both the

Act and a number of decisions showed that the term "dwelling-house" was not confined to premises which were slept in—*London Library v. Carter*, May 24, 1890, 2 Tax Cases, 594, *Law Times*, vol. 62, p. 466. The *dicta* of Baron Kelly were not approved in subsequent cases, and the point was specially raised in the case of the *Glasgow Coal Exchange Company*. (2) Alternatively, the building clearly was a "hall or office," and has been rated as such. The exemption could not be said to apply, for the appellants did not occupy the buildings for livelihood or to gain a profit.

At advising—

LORD PRESIDENT—In my opinion the Commissioners are right, but my judgment is rested solely on the 5th rule of Schedule B of the Act 48 George III. cap. 55. I think that these buildings consist of "halls" in the sense of that rule, and they are in fact (and without challenge) charged with the payment of poor and school rates (the requirement of the rule being thus satisfied). The argument that they are not halls in the sense of the rule was very weak, and consisted merely of a suggestion that the word "hall" was used as synonymous with office, or at least was meant to apply only to the premises of the trade companies in London. So far as the statute shows, this theory is fanciful.

The appellants' claim for exemption under sub-section 2 of sec. 13 of the Customs and Inland Revenue Act 1878 is untenable, for this plain reason, that the exemption is conferred on premises occupied for the purpose of any trade or business, or a profession or calling by which the occupiers seek a livelihood or profit. Now, it is set out in the case that the occupiers here are the General Trustees of the Free Church; they do not occupy the premises for any trade or business, or calling or profession by which they seek a livelihood or profit.

LORD ADAM—I am of the same opinion. I have never been able to see how the appellants got out of the clear enactment of Rule V. of Schedule B of the Act of 48 Geo. III. The description given of the premises, as your Lordship has said, is halls and offices connected therewith, which is just the description of premises specified in Rule V.; and then it is admitted in this case that the Assembly Hall and the halls in question are subject to the payment of rates, and in that case I do not think it is necessary to say more about the other grounds on which it is sought to assess these buildings.

LORD M'LAREN and LORD KINNEAR concurred.

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

Counsel for the Appellants—J. B. Balfour, Q.C.—Macphail. Agents—Cowan & Dalmahoy, W.S.

Counsel for the Respondents—Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. Hamilton Grierson, Solicitor of Inland Revenue.

Thursday, February 4.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

GUTHRIE v. PATERSON AND OTHERS (PATERSON'S TRUSTEES).

Succession—Destination—Destination in Moveable Bond—Bond of Clyde Navigation Trust.

It is a well-established rule of law (illustrated by *Walker's Executor v. Walker*, June 19, 1878, 5 R. 965, and *Connell's Trustees v. Connell's Trustees*, July 16, 1886, 13 R. 1175) that a destination in a moveable bond is effectual.

This principle *applied* to the case of a bond of the Clyde Navigation Trust, taken "payable to A and B, and the survivor of them," where B survived, and it was proved that A had authorised B to take the bond in these terms and had delivered it to B.

Observed that the evidence of the donee alone, without corroboration, would not have been sufficient to prove the authorisation.

Succession—General Revocation—Evacuation of Prior Special Destination in Moveable Bond.

• A general revocation does not necessarily or usually affect a previous settlement or destination of a special subject by the same testator.

This principle *applied* where the true debtor in a bond of the Clyde Navigation Trust, taken payable to herself and B and the survivor of them, had subsequently executed a general revocation of all previous deeds of settlement.

Expenses—Judicial Factor—Personal Liability—Expenses Refused to Successful Litigant.

Circumstances in which a judicial factor on the estate of a liferentrix under a trust-disposition and settlement *held* personally liable in expenses to the trustees thereunder, against whom he had unsuccessfully raised an action of accounting.

Circumstances in which a successful defender in an action of accounting *held* not entitled to expenses.

By trust-disposition and settlement, Robert Paterson, innkeeper, Holytown, who died in 1882, conveyed his whole means and estate to trustees, directing them, *inter alia*, to pay the liferent thereof to his widow. The said trustees accepted office, and appointed Daniel Paterson, a son of the testator and one of their own number, to be their factor. Mrs Jane Gray or Paterson, the liferentrix, died in July 1893, and the executor nominated by her having declined office, and there being a conflict of