

# VOL. III—PART LIII

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NO. 190—IN THE HOUSE OF LORDS, 6TH AND 9TH MARCH, AND  
31ST JULY, 1896

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MAYOR, &C. OF MANCHESTER *v.* McADAM (SURVEYOR OF TAXES) <sup>(1)</sup>

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*Income Tax—Schedule A—Exemption—Literary or Scientific Institution—Free Library—A building is owned by a Municipal Corporation, and is maintained for the purposes of a Free Library under the provisions of the Public Libraries Act, 1892.*

Held, (by Lords Herschell, Macnaghten, and Morris, Halsbury, L.C., dissenting) that the building is within the exemption from Income Tax granted to Literary or Scientific Institutions by 5 & 6 Vict., c. 35. s. 61, No. VI.

*Decision of Court of Appeal reversed.*

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This was an appeal by the Mayor, etc., of Manchester against the decision of the Court of Appeal, reported *ante*, p. 325:

Lawson Walton, Q.C., and Reginald Brown appeared for the Appellants, and Sir R. B. Finlay, S.G., and Danckwerts for the Surveyor.

*Cur. adv. vult.*

## JUDGMENT

**Lord Chancellor.**—My Lords, I regret I am not able to concur in the view that the majority of your Lordships have taken of the statute the construction of which is in question here.

The Act takes its rise, in respect of this exemption, from Sir Robert Peel's Income Tax Act of 1842. It is quite legitimate to refer to the history of that period to understand what was the subject matter with which the Legislature

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(1) [1896] A.C. 500.

(Lord Chancellor)

was then dealing, and a glance at the Parliamentary records of that year will show that a variety of petitions from literary and scientific institutions so described, were presented to Parliament inviting consideration to their cases, and petitioning to be exempted from the new tax. There were at that time a great many institutions so described, and I think it may be asserted that Parliament was then dealing with known institutions.

The Master of the Rolls and some of your Lordships appear to construe this exemption as if everything comprehended within its language, "literary," "scientific," and "institution," would satisfy the meaning of the Act, so as to establish the exemption. I cannot so construe it. I think in 1842 the Legislature was dealing with a known thing. It was not selecting the language which should for all time embrace any institution which was literary or scientific or both, within the ambit of the exemption. What a literary institution then was, was I think well understood and known to the Legislature, and I think the language must be construed in relation to the thing in respect of which the Legislature was acting.

It may well be that a municipal corporation is an institution. It may well be that it may become both literary and scientific; but the question may still remain whether it is a literary and scientific institution within the meaning of the exemption of 1842.

The mode by which a municipal institution has become literary and scientific is that, by the machinery of the Free Libraries Act, a municipal corporation may provide for literary and scientific development, and may make rates for the purpose.

I agree with Lord Justice Lindley that no such thing was contemplated, and that it is a misapplication of the terms to a public library established by a municipal corporation and supported by a compulsory rate not the less, I think, distinguishing it from the voluntary character of a literary and scientific institution such as existed in 1842, simply because the adoption of the Free Libraries Acts, and the consequent liability to rates, has to be passed by a popular vote.

My Lords, I am of opinion that the exemption ought not to be allowed.

I must add that I do not understand how it can be contended, as it is by the Master of the Rolls, that we are not to construe the Act of 1842 at all.

I should say, on the contrary, that that is the Act we have to construe, or its repetition in subsequent statutes, and that the Act which his Lordship says we have to construe, namely, the Free Libraries Act, is one which may be relevant enough when we have first made up our minds what the exemption is, to see whether it comes within that exemption, but I think can have no operation in guiding us to the true construction of what the Legislature intended in 1842.

**Lord Herschell.**—My Lords, by the Income Tax Act allowance by way of exemption from Income Tax is to be made in respect of the duties charged on any building the property of any literary or scientific institution used solely for the purposes of such institution, and in which no payment is made or demanded for any instruction there afforded by lectures or otherwise.

In 1893, the Income Tax Commissioners for the city of Manchester assessed the Appellants to Income Tax, as being the owners of buildings in that city which were used solely for the purposes of four free public libraries. The question is, whether the words of exemption apply to these buildings.

The municipal borough of Manchester, in 1852, upon a poll of the burgesses, duly adopted the provisions of the Public Free Libraries Act, 1850. That Act was repealed by the Public Libraries Act, 1855. This statute empowered a town or city council to appropriate any land for the purposes of the Act, and to erect any buildings suitable for public libraries (section 18). It vested the general management of the libraries in the council (section 21), and provided that lands and buildings appropriated or purchased for such purposes should be vested in the same body (section 22). The buildings in question were provided by the corporation for use as public libraries between the years 1855 and 1892.

The Act of 1855 was repealed by the Public Libraries Act, 1892. By section 11 of that Act it was enacted that the library authority of any library district might, subject to the provisions of the Act, provide "all or any of the following institutions." Amongst those mentioned are "public libraries." The Corporation of Manchester is, under the same statute, the library authority; but their power and duties have, pursuant to section 15, been delegated to a committee of the corporation called "The Public Free Libraries Committee."

In the Queen's Bench Division the case was concluded by a previous decision of the same Court, relating to a free library at Bristol (*Andrews v. The Mayor of Bristol* (1)). In the Court of Appeal, Lords Justices Lindley and Rigby were of opinion that the Appellants were not entitled to the exemption claimed; the Master of the Rolls arrived at the contrary conclusion. The learned Judges who formed the majority considered that the Corporation of Manchester, even in its character of library authority, could not properly be called a "literary institution". Lord Justice Lindley was of opinion, further, that a library supported by rates could not be a literary institution within the meaning of the Income Tax Act.

Apart from any question of the ownership of the buildings, or of the maintenance of the libraries by a rate levied on the occupiers within the city, I do not think it was doubted that a public free library is a literary institution. Its object is to spread a knowledge and love of literature among the people.

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(1) 3 T.C. 236.

**(Lord Herschell)**

Such an institution is, in my opinion, quite aptly termed "literary". The difficulty arises from the other words used. To be exempted the building must be "the property of" a literary institution. The view taken by the majority in the Court below appears to have been that you must first ascertain who is the owner of the building in respect of which the allowance is claimed, and then whether such owner can be said to be a literary institution, and that unless that is the case the exemption is not made out. The words "the property of any literary or scientific institution" must be read together, and I cannot think that the words "property of" used in this combination can properly be construed in the narrow sense adopted.

It may be well to consider, first, what is the meaning of the word "institution" as used in the section. It is a word employed to express several different ideas. It is sometimes used in a sense in which the "institution" cannot be said to consist of any persons, or body of persons, who could, strictly speaking, own property. The essential idea conveyed by it in connexion with such adjectives as "literary" and "scientific", is often no more than a system, scheme, or arrangement by which literature or science is promoted, without reference to the persons with whom the management may rest, or in whom the property appropriated for these purchases may be vested, save in so far as these may be regarded as a part of such system, scheme, or arrangement. That is certainly a well-recognised meaning of the word. One of the definitions contained in the "Imperial Dictionary" is as follows:—"A system, plan, or society, established either by law, or by the authority of individuals, for promoting any object, public or social". An illustration of this use is to be found in the Libraries Act itself. When the libraries which the authorities referred to in that Act may provide are termed "institutions", the term conveys the idea of buildings stored with books, with access to them by the public for the purpose of reading, together with the arrangements made for their use. Another illustration is seen in the Act of the 17 & 18 Victoria, c. 112, the object of which is to give greater facilities for procuring sites and buildings "for institutions established for the promotion of literature, science, or the fine arts". And it is, I think, in the sense I have indicated that the word is used in the enactment under consideration. What, then, is meant when "the property of" such an institution is spoken of? No more than this, I think, that it is property appropriated to, and applied for, its purposes. It is not open to doubt that institutions in connexion with which there is no incorporated body in whom property can vest are within the scope of the enactment. In the case of an institution of this description any building appropriated exclusively for its use must be vested in individuals as trustees; but these trustees are certainly not the institution nor are the individuals

**(Lord Herschell)**

who manage it. Counsel were asked what persons are in that case the institution owning the property? The answer given was, the members. But where the institution is "established for the use of the public" at large it cannot be said to consist of any members who can be regarded as the beneficial owners of the property. No one could question that a building "conveyed to trustees for use by the public" for purposes scientific or literary was intended to be within the exemption as being the property of a literary or scientific institution. Suppose the trustees were afterwards, by arrangement with the Corporation of Manchester, to convey the building to that corporation to be held for the same uses as before, would the exemption cease because they became the owners of the building, and could not properly be designated a literary or scientific institution? It seems to me impossible to arrive at such a conclusion.

It is not an uncommon use of the expression "property of" in connexion with such a word as institution to employ it to describe property appropriated to the purposes of the institution. For example, by the Act of the 17 & 18 Victoria just referred to, which by section 33 was to apply to "every institution for the time being established for the promotion of science, literature, the fine arts", etc., it was provided (section 11) that where an institution is not incorporated, the grant of any land for the purposes of such institution may be made to any corporation, sole or aggregate, and (section 21) that unincorporated institutions may be sued in the name of an officer; and by section 23 it was enacted that if judgment be recovered against an officer on behalf of an institution, such judgment is only to be put in force against "the property of the institution". Here the words "the property of" obviously mean no more than held for or appropriated to the purposes of.

Again, in the Charity Trusts Act of 1853, "the property of" a charity is spoken of in more than one section.

I think, therefore, that even though the Corporation of Manchester in whom the buildings, the taxation of which is now in question, are vested, cannot be said to be itself a literary institution, nevertheless, the buildings being appropriated, for the purpose of free public libraries, being devoted exclusively to that use, and incapable of being legally applied to any other purpose, may properly be said to be the property of a literary institution.

The question remains whether a literary or scientific institution, supported by rates, is within the meaning of those words in the Income Tax Act. Lord Justice Lindley thought it was not. He considered that the object of exempting literary and scientific institutions from Income Tax was to encourage private landowners to give land, or allow it to be used, by literary or scientific institutions supported by voluntary gifts or subscriptions, and so encourage such



**(Lord Herschell)**

institutions, and that an institution supported by rates was not within the contemplation of the Legislature. I do not feel myself at liberty to speculate on the intention of the Legislature except in so far as it is to be discerned in the language employed. If a free public library is a literary institution, supposing it to be founded by a voluntary benefaction, even though its property be vested in and it be managed by a public corporation, I cannot see how it would become less a literary institution if that corporation were empowered to levy rates for its maintenance and exercised that power. I can find no words in the statute to justify, on that account, the exclusion of an institution otherwise within its terms, or to warrant a restriction to institutions supported by voluntary contributions. This is not made a condition of the exemption, as it is in the Rating Act of the following year. The leading object of the exemption from Income Tax obviously was to encourage the formation of literary and scientific institutions, because they were regarded as of public utility. I can see nothing extravagant, therefore, in a construction which would comprise such institutions, even though they be supported by municipal rates. I move your Lordships that the Judgment appealed from be reversed, with costs here and in the Courts below.

**Lord Macnaghten.**—My Lords, there are, it seems, four public libraries in Manchester, which were all established some years ago, and are now vested in the corporation of that city as the Library Authority under the Public Libraries Act, 1892. The corporation claims to be entitled to allowances for the duties charged under Schedule A in the Income Tax Act, 1842, in respect of the library buildings. The whole question turns upon some half dozen words in the catalogue of allowances, No. VI in section 61. Allowances are granted for the duties on any building “the property of any literary or scientific institution” used solely for the purposes of such institution. It is admitted that the buildings in question are used solely for library purposes, and it is also admitted that the other conditions of exemption required by the statute are fulfilled.

The claim has been rejected by the Court of Appeal (Lords Justices Lindley and Rigby), Lord Esher, Master of the Rolls, dissenting. The learned Judges who formed the majority of the Court rest their decision on two grounds. In the first place, they seem to consider that a public library, though a literary institution for some purposes, is not a literary institution within the meaning of the Act of 1842, because at the date of that Act there was no such thing as a literary or scientific institution established or supported by rates. In the opinion of Lord Justice Lindley, the object of the exemption was “to encourage private landowners to give land, or allow it to be used by literary or scientific institutions supported by voluntary gifts or subscriptions, and so to encourage

**(Lord Magnaghten)**

"such institutions". There is, however, nothing in the Act of 1842 declaring or tending to show that that particular object was in the contemplation of the Legislature. The object of the Legislature, no doubt, was to encourage, or rather, perhaps, to avoid discouraging literary and scientific institutions; but it seems to me, as far as I can gather the intention of the Legislature from the language it has used, that it is the character of the institution, not the circumstances of its origin or the means by which it may be established or supported, that gives rise to the claim for exemption. In dealing with the exemption from local rates conferred upon certain literary and scientific institutions by the Act of 1843, Lord Chief Justice Erle, then Mr. Justice Erle, makes the following observation (*Bradford Library Society v. Churchwardens of Bradford*)<sup>(1)</sup>, "the Legislature, I think, intended to protect from rateability all institutions of which the object was to improve the public tone of mind, an object far more valuable than any pecuniary saving to the parish which would be attained by rating such institutions". If one is to speculate on the intention of the Legislature, the broader view indicated in that passage is, perhaps, preferable to the narrower view which has commended itself to the Court of Appeal.

It is a little difficult to define the meaning of the term "institution", in the modern acceptation of the word. It means, I suppose, an undertaking formed to promote some defined purpose, having in view, generally, the instruction or education of the public. It is the body (so to speak) called into existence to translate the purpose as conceived in the mind of the founders into a living and active principle. Sometimes the word is used to denote merely the local habitation or the headquarters of the institution. Sometimes it comprehends everything that goes to make up the institution, everything belonging to the undertaking in connexion with the purpose which informs and animates the whole. A public library may, I think, be properly called an "institution" in that sense. At any rate, public libraries are described as institutions by the Legislature itself in the Public Libraries Act, 1884, and in the Act of 1892. A free public library is a literary institution above all things. It is, perhaps, the very ideal and pattern of a literary institution. The Manchester free libraries come within the words of the exemption in the Income Tax Act, 1842, and I can see no reason why they should be excluded from the benefit of that exemption. I should have been of this opinion if the Act of 1842 had been passed once and for all. But in view of the observations of the Court of Appeal, it is not, perhaps, immaterial to notice that the Act was only a temporary Act. It has been revived and re-enacted over and over again, and certainly more than once or twice since the Legislature applied the term "institution" to a public library.

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(<sup>1</sup>) 1 E. & E., p. 96.

**(Lord Macnaghten)**

The other ground on which the majority of the Court of Appeal proceeds, is that a municipal corporation is not a literary institution. I must confess that it never would have occurred to me that the contrary of that proposition could be gravely maintained. But it seems to have been so argued in the Court of Appeal, and argued in such a serious way that it is the only point dealt with in the judgment of the majority of the Court other than the point which has been already discussed. Assuming that a public library is a literary institution, are the library buildings the "property" of the institution? What is the meaning of the word "property" in that connexion? Does it import legal ownership, or does it mean that the buildings are the property of the institution, in the sense that they are appropriated to the purposes of the institution; that they are not only used for the purposes of the institution, but that they cannot be used or applied legally for any other purpose? Lord Justice Rigby observes, "The terms of the exemption granted by the Income Tax Act, 1842, have relation, not merely to the purpose for which the building is applied, but also to the position and character of the owners of the building". "We have, therefore," he adds, "to consider not merely the character of the building itself, and the purposes for which it is used, but also the position and character of the owners of the building as distinct from the building itself". I cannot find anything of that sort in the Act. The buildings, no doubt, are vested in the corporation, but merely for a special purpose. I cannot see that it matters in the very least who the trustees are, or what may be their position or character, or in whom the legal ownership of the buildings is vested, provided the buildings themselves are legally appropriated to the purposes of the institution. That seems to follow from a consideration of the circumstances which existed when the Act of 1842 was passed. At the date of that Act there were, no doubt, some literary and scientific institutions incorporated by charter or statute. But certainly such institutions were usually unincorporated. So it would appear from the numerous reported cases relating to literary and scientific institutions, and from the provisions of the Literary and Scientific Institutions Act, 1854, 17 & 18 Vict. c. 112. If the majority of the Court of Appeal is right all unincorporated institutions must be excluded from the benefits of the exemption in the Income Tax Act, 1842. It is impossible to suppose that this could have been the intention of Parliament. It seems to me, therefore, that the word "property" in the exemption in question cannot import legal ownership. It imports the right of possession and exclusive enjoyment. Moreover, that is the ordinary meaning of the term. The word "property" is not a technical expression. No one in ordinary language would speak of land or buildings vested in a trustee, and



**(Lord Macnaghten)**

in which the trustee has no beneficial interest, as his "property". I may observe that, if your Lordships will turn to the Act of 1854, to which I have just referred, you will find the very expression "property of the institution," used in more than one place to denote real and personal property held on trust for the purposes of the institution, though not legally vested in the institution itself.

I am, therefore, of opinion that the judgment of the Master of the Rolls is right, and that the appeal should be allowed with costs.

**Lord Morris.**—My Lords, I have read the judgments which my noble and learned friends opposite (Lord Herschell and Lord Macnaghten) have just delivered, and I concur in them.

*Questions put.*

That the judgment appealed from be reversed.

*The Contents have it.*

That the costs, both here and below, be paid by the Respondents.

*The Contents have it.*

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