Tuesday, March 8.

SECOND DIVISION.

[Lord Adam, Ordinary.

THE DEAN OF THE FACULTY OF ADVOCATES & OTHERS (DIRECTORS OF CHALMERS' HOSPITAL FOR SICK AND HURT) *v.* THE LORD PROVOST, MAGISTRATES, AND COUNCIL OF CITY OF EDINBURGH.

Assessment—Burgh—Edinburgh Municipal and Police Act 1879, *sec.* 70—"*Building solely Occupied for Purposes of Public Charity.*"

Held (1) that the Chalmers' Hospital for Sick and Hurt "was a building occupied solely for purposes of public charity," within the meaning of the 70th section of the Edinburgh Municipal and Police Act 1879; (2) that this character was not taken away by the fact that a few patients who could afford to do so contributed 3s. a-day to the expense of their board; and (3) that therefore it was exempt from liability for burgh assessments in terms of that section.

George Chalmers died in the year 1836, and in a holograph codicil to his trust-settlement he directed that the whole residue of his estate should be paid over to the Dean and Faculty of Advocates "for the express purpose of founding a new infirmary or sick and hurt hospital," by whatever name it might be designed, and that the members of the Faculty of Advocates should lay out the proceeds of his estate accruing to them to the best advantage in any of the public funds till such time as that body should see fit to commence such an undertaking. Accordingly, the Dean and Faculty of Advocates of 1862 adopted a scheme for an hospital to be called "Chalmers' Hospital for Sick and Hurt," and proceeded with the erection of a building upon a site adjoining Lauriston Place, which had been purchased from the Earl of Weymss and March, conform to disposition dated 16th December 1854. The hospital was completed in 1863, and has since been carried on in terms of the above scheme. The title to the ground and building was in name of the Treasurer of the Faculty of Advocates and his successors in office for behoof of the Dean and Faculty, as trustees under Mr Chalmers' codicil. In accordance with Mr Chalmers' will the building was devoted to purposes of public charity. It was open to persons of all nations for surgical cases of all kinds, and also for medical cases of all kinds excepting certain specified infectious diseases. It is one of the rules of the institution that no one connected with it shall on any pretence directly or indirectly take any fee or gratuity from any patient or the friends of any patient. It is conducted as a charitable institution for the relief of the sick and hurt. Its funds amount to £43,000, are administered for the purposes of maintaining it as such, and when donations are made they are applied to the general fund of administration. During the year 1870-1871 the directors fitted-up and furnished two wards (one male and the other female), which afforded accommodation for eight patients, for the benefit of persons who while requiring hospital treatment could afford to contribute towards the cost of their board, which was estimated at 3s. per diem. During a period of five years the average annual number of patients treated in the hospital was 267, of whom 32 on an annual average contributed a small board. The funds of the hospital were so limited that the directors would be unable to keep the upper wards open unless the patients in them made some contribution towards payment of their board, but as regards medicine and medical attendance no such contribution is made or asked, the aid *quoad* these being purely charitable and eleemosynary.

By the Edinburgh Municipal and Police Act 1879, the Lord Provost, Magistrates, and Council are (sec. 67) authorised to lay on an assessment, sufficient to provide the sums of money estimated as therein required for the purposes therein specified, upon the owners and occupiers, as the case may be, of all lands and heritages within the burgh, but "subject to the restrictions in this Act contained," and subject also to the exceptions therein provided. By the said Act (section 70) it is enacted as follows:—"The burgh assessments shall not be imposed in respect of the Royal Palace of Holyrood, Queen's Park, Arthur's Seat, Duddingston Loch, nor houses or buildings in the Castle of Edinburgh; nor the Courts of Justice, General Register House, City Chambers, County Buildings, Prison of Edinburgh, nor the University of Edinburgh, and the buildings connected therewith, except those parts which are used as houses; nor the Royal Infirmary, the Royal Edinburgh Hospital for Sick Children; nor the Assembly Hall of the Church of Scotland, the Free Church College, the Free Church Assembly Hall, the Synod Hall of the United Presbyterian Church, and the buildings connected therewith, so long as these shall continue to be solely used for ecclesiastical purposes, or shall not be let for hire or other purposes, except those parts which are used as houses; or in respect of any house or building which is solely occupied for purposes of public charity, or any premises exempted from taxation by public law," &c. Prior to the year 1879 no assessment was made on the hospital, it being dealt with as a building solely occupied for the purposes of public charity, and further exempt from taxation by public law, and particularly by the statutes relative to the house-tax. In that year, however, the Magistrates and Council of Edinburgh assessed it in virtue of the powers conferred by the Edinburgh Municipal Police Act 1879, alleging that the payment exacted in 1870 for the first time of 3s. per diem from those persons who could afford to contribute towards the cost of their board, changed the original character of the hospital, and therefore that it should not be exempted from taxation as a building solely occupied for purposes of public charity. This action was therefore raised by the Dean of the Faculty of Advocates and others, as the directors of the hospital, against the Lord Provost, Magistrates, and Council of the City of Edinburgh, for the purpose of having it declared that the hospital was a house or building solely occupied for the purposes of public charity within the meaning of the 70th section of the Edinburgh Municipal and Police Act 1879, and as such exempted from taxation.

The pursuers pleaded—"(1) The building or premises in question being solely occupied by the pursuers for purposes of public charity, no burgh assessment can be imposed in respect thereof under the 'Edinburgh Municipal and Police Act 1879.' (2) In respect that the premises in question are, as an hospital, exempted from taxation by public law, and particularly by the statutes relative to the inhabited-house-duty, they are not assessable under the said 'Edinburgh Municipal and Police Act.'"

The Lord Ordinary (ADAM) assoilzied the defenders from the conclusions of the action, and appended the following note to his interlocutor:—"The question in this case is, whether the buildings known as Chalmers' Hospital are liable to have burgh assessments imposed upon them under 'The Edinburgh Municipal and Police Act 1879.' That, again, depends upon whether or not they are solely occupied for purposes of public charity, or are exempted from taxation by public law. In either of these cases they will fall within the exceptions specified in section 70 of the Police Act, and will be free from the imposition of such assessments; otherwise they will be liable to assessment.

"The facts which raise the question are these:—Mr George Chalmers, who died in 1836, left the residue of his estate to the Dean and Faculty of Advocates for the purpose of founding a new infirmary or sick and hurt hospital.

"The Dean and Faculty accepted the trust, and in 1863 they erected the buildings now occupied as 'Chalmers' Hospital for Sick and Hurt.' The building contains four wards—one for males and one for females on the lower storey, and the same on the upper storey. Each ward affords accommodation for eight patients.

"There are no limitations as to the persons who are admitted to the benefits of the charity. All kinds of surgical cases are admitted, and all kinds of medical cases except certain cases of infectious disease.

"When the hospital was opened in 1863 the funds at the disposal of Chalmers' trustees were insufficient to enable them to make use of all the wards, and the two lower wards only were used. In the year 1870–71 the trustees fitted up and furnished the two upper wards for the benefit of those who could afford to contribute to the expense of their board. The sum which they contribute is 3s. a-day.

"The daily average number of patients in the paying wards for the years 1877–78–79 was four, five, and eight respectively, and the sums received for their board in these years respectively were £209, 14s., £241, 4s., and £434, 5s.

"It appears to the Lord Ordinary that hitherto the trustees have not derived any profit from these paying patients, as from the smallness of their numbers the expense which they occasioned is considerable. Were these patients to become more numerous the Lord Ordinary thinks that the result would probably be different, and that the present rate of charge would probably yield a surplus. It also appears that so long ago as 1864 some pauper patients were sent to the infirmary by the parochial board, for whom payment was made. But that has not occurred since, and the Lord Ordinary thinks may be left out of view in the present question.

"The Lord Ordinary accordingly thinks that the question truly at issue is, whether the use which is thus made of the hospital for paying patients takes it out of the category of buildings solely occupied for purposes of public charity?

"That the scheme which the trustees have thus initiated is a most benevolent and excellent one the Lord Ordinary does not doubt. It no doubt has proved of the greatest benefit to the persons who, as appears from the evidence of the Vice-Dean of Faculty, have already taken advantage of it, and the Lord Ordinary has no doubt that as it becomes better known it will be more extensively made use of.

"If this result be attained, the Lord Ordinary thinks that the success will probably be attributable to the fact that those who make such use of the hospital are making a return for the benefits derived from it, and will not regard it in the light of an institution from which they are receiving charity. In order to be exempt from assessment the buildings must be solely used for purposes of public charity. The case may be taken, therefore, as if the hospital were solely used for paying patients. The Lord Ordinary has the greatest difficulty in seeing that such an institution could be considered as a 'public charity.' The rate of board charged—3s. a-day—must necessarily exclude the immense majority of the public and all the most necessitous.

"The word 'charity' has a wider and a more limited meaning. In its wider sense all benevolent schemes and institutions may be considered as charitable schemes and institutions, and in this sense the scheme of the trustees is a charitable one. But in its more limited sense charity means relief given to the poor gratuitously; and the Lord Ordinary thinks that in this Act of Parliament the word is used in this more limited sense. The Lord Ordinary has already said that in this case no profit is at present derived from the paying patients. Were it otherwise he does not suppose that it could be contended that this or any similar institution was solely a public charity. He does not see that its character as a public charity can depend upon the fact of whether or not in any particular year the contributions of the patients did or did not meet their expenses, or that any inquiry could be gone into on that matter. He thinks that there is involved in the idea of public charity that there shall be no return in money for the relief or benefit given. He is therefore of opinion that the hospital is not exempt from assessment in respect that the buildings are solely used for purposes of public charity.

"The next question is, whether the hospital buildings are premises exempt from taxation by public law? The pursuers contend that the buildings are exempt from taxation by public law, because they are exempt from taxation under the statutes relative to the House Tax and the Property and Income Tax Acts. The Lord Ordinary does not think that the meaning is to exempt from assessment buildings that may be exempt from taxation under any particular statute or statutes. He thinks the meaning is that they shall be exempt from taxation by public or general law, apart from statute—as, for example, property in the occupation of the Crown, or of persons using it exclusively in or for the service of the Crown. After the decision in the case of *The Mersey Docks*, 3 Macph. (H.L.) 102, note, it

may be difficult to say that any other class of property falls under this exemption, but in the opinion of the Lord Ordinary it is to property so exempted that the exception in the 70th section of the Police Act is intended to apply."

The pursuer reclaimed, and argued—The payment of 3s. a-day by patients able to afford it, made for the purpose of defraying the proper expenses incident to the keeping up of a ward which could not otherwise have been opened, did not divest the hospital of its charitable character.

Authorities — *The Queen* v. *St George the Martyr, Southwark*, 1st May 1847, 16 L.J. 129, Mag. cases; *M'Donald* v. *The Massachusetts General Hospital*, June 1876, 21 American Reports, 529; *The Manchester School* case, 1867, L.R. 2 Chan. App. 497; *In re Latymer's Charity*, 1869, L.R., 7 Equity Cases, 353.

Argued for defenders—The hospital was competently assessable, inasmuch as it was not a building used solely for public charity.

Authorities—*Governors of St Thomas Hospital* v. *Stratton*, 1875, 7 H. of L. Cases, 477; *Greig* v. *University of Edinburgh*, June 8, 1861, 1 L.R., Scottish App. 348; Guthrie Smith's Poor Law, 131; *The Queen* v. *Sterry*, 1840, 12 Adolph. and Ellis, 84; *The King* v. *Inhabitants of the Parish of St Giles*, May 5, 1832, 3 Barn. and Adolph. 573; *Mersey Docks*, 3 Macph. (H.L.) 102.

At advising—

Lord Justice-Clerk — This case has been carefully considered by the Lord Ordinary, and ably argued here, and involves the construction of a recent statute which may reach far, and therefore it may be said to be one of some importance in its result. The whole matter is this:—Mr Chalmers left the residue of his estate to the Faculty of Advocates for the purpose of founding an hospital for the sick and hurt. This meant that the sick and hurt should be treated in that hospital at the expense of the funds left by Mr Chalmers. The faculty accepted the trust, and as trustees proceeded to erect a building to receive a certain number of patients, and drew up also a scheme of management and administration; and there can be no doubt that this has been done with very great benefit to the public. The question now really is, whether under the 70th section of the Municipal Act of 1879 the building comes within the description of a building used solely for the purposes of charity? Before, of course, arriving at a satisfactory answer to this question we must have a definition of the word "charity" used in this sense. I think it may be defined as the application of funds for benevolent purposes for the benefit of those who are not otherwise able to provide themselves with the advantages which the charitable fund is intended to supply. It is not to be a building for pleasure, profit, or amusement, but a building which will confer on the destitute benefits which it would be otherwise impossible for them to acquire, and therefore, if that is so, then Chalmers' Hospital is charitable in every respect. The second question, however, that presents itself for consideration is, whether it is public? Some observations might, no doubt, be made as to this, but I think that it is beyond doubt a public charity, and subsists for the benefit solely of the public. That being so, we have the question as to whether under the 70th section of the Police Act of 1879 Chalmers' Hospital is to be exempt from police rates? That section says—"The burgh assessments shall not be imposed in respect of the Royal Palace of Holyrood, Queen's Park, Arthur's Seat, Duddingston Loch, nor houses or buildings in the Castle of Edinburgh; nor the Courts of Justice, General Register House, City Chambers, County Buildings, Prison of Edinburgh, nor the University of Edinburgh, and the buildings connected therewith, except those parts which are used as houses; nor the Royal Infirmary, the Royal Edinburgh Hospital for Sick Children, nor the Assembly Hall of the Church of Scotland, the Free Church College, the Free Church Assembly Hall, the Synod Hall of the United Presbyterian Church, and the buildings connected therewith, so long as these shall continue to be solely used for ecclesiastical purposes, or shall not be let for hire for other purposes, except those parts which are used as houses;" and then follows the clause for construction here—"or in respect of any house or building which is solely occupied for purposes of public charity, or any premises exempted from taxation by public law." This is a house occupied, in the words of the statute, for purposes of public charity, but it must also be solely occupied for such purposes. Now, it has been argued that "solely occupied" really means that no one shall reap the benefit of the building who contributes by money or otherwise towards defraying the expenses of his treatment within its walls, and we have had it explained that while the lower ward is open free, two upper wards have been fitted up for the use of patients who pay 3s. a-day for their sustenance, and the consequence is that perhaps some of better means do take advantage of the opportunity afforded them and pay their 3s. a-day for the benefits of the medical staff, nursing, and medicines. This I think a very narrow view indeed to take of the case. It is plain that the only purpose of exacting this 3s. a-day is to allow the directors to open a part of the hospital for out-patients which they might not be otherwise in funds to maintain. There is no harm done by this, and this cannot alter the general footing on which the scheme rests. The assistance given is merely medical treatment, and nothing extraneous to the purposes of the building. Besides, it is important to observe that the assistance so given is infinitesimal as compared with that given under the general scheme. During the last five years the average annual number of patients treated in the hospital has been 267, of whom only 32 on an average have contributed a small board. The question then comes to be, whether we are to hold that in respect of this custom Chalmers' Hospital ceases to be a public charity? I do not think so, and that being so, I am of opinion that it falls under the exemption clause of the Act.

Lord Young—I am of the same opinion. The case depends on a question which may be put in a single line, viz., whether this is a building occupied solely for the purposes of public charity? I think it is so clearly, and notwithstanding the small daily payments made by those who are the recipients of its charity. Of course if it could be shown that any payment was made which destroyed its real character, then there might be

some reason for hesitation, but there is no successful attempt to show this. We have nothing to do here with the political economy of the matter, but if we had, I should be quite able to sympathise with the magistrates, who are merely desirous of bringing within the area of assessment all persons whom the law permits them so to bring. This is a tax requiring that those who get the benefit of common services supplied to the inhabitants of the burgh should pay the cost price for them. The burgh assessment is for lighting, cleaning, watching, &c.; all these commodities have to be paid for, and all receiving them must *prima facie* pay the cost price on them, for if they do not, then the burden falls on the rest of the ratepayers. This is only my own view on this point, and I only refer to it to explain my sympathy with the magistrates, who I say not unreasonably seek to bring within the area of assessment all persons permitted by law to be so brought. The Legislature, however, has thought otherwise, and has made exemption in the case of buildings solely occupied for purposes of public charity. This hospital is of this character in my view, and therefore is exempt from the otherwise exigible police rates.

Lord Craighill concurred.

The Court recalled the interlocutor of the Lord Ordinary, and found and declared in terms of the conclusions of the summons.

Counsel for Reclaimers—D.F. Kinnear, Q.C. — Thorburn. Agents — Morton, Neilson, & Smart, W.S.

Counsel for Respondents — Mackay. Agent—W. White Millar, S.S.C.

Wednesday, March 2.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—BROWN AND OTHERS, PETITIONERS.

Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79)—*Trustee Discharged—New Trustee Appointed to Fulfil an Obligation of Bankrupt.*

Where the trustee in a sequestration had been discharged, and the bankrupt had died undischarged, the Court, on the petition of the former trustee and two creditors, remitted to the Lord Ordinary on the Bills to appoint a meeting of creditors to be held for the election of a new trustee, in order that he might concur in granting a title to property which the bankrupt had sold, but of which the titles turned out to be defective.

The late John Buchanan, merchant in Glasgow, was a partner of the firm of Grasemann & Company, merchants in British Burmah, of which firm he latterly was the sole partner. In 1859 Grasemann & Company purchased certain land and premises at Poozoondoung, Rangoon, on which they erected rice mills. The firm became unsuccessful. It stopped business, and was wound up as an insolvent concern at Rangoon in the end of 1867. The heritable properties above mentioned were exposed to sale by public auction by and for behoof of the creditors of the company, and were purchased by Mr Thomas Matthew, merchant, Glasgow, at the price of about £20,000; Mr Matthew also took over what remained of Grasemann & Company's business, and carried it on in partnership with Mr Buchanan, under the firm of Matthew, Buchanan, & Company of Glasgow, and Buchanan & Company of Rangoon. Mr Buchanan's interest in the new concern was merely nominal.

Grasemann & Company had received advances from the City of Glasgow Bank, and were also indebted to Mr John Hunter, merchant, Glasgow. The money with which Mr Matthew paid for the above properties was also borrowed from the City of Glasgow Bank; and it was resolved to take the title in the joint names of Mr Matthew and Mr Hunter, so as to afford some security to Mr Hunter and to the bank. In order to carry out this intention, Mr Buchanan, in whom the title to said properties was vested as sole surviving partner of Grasemann & Company, with Mr Matthew and Mr Hunter, executed a power of attorney in favour of Mr Alexander Hotson, Buchanan & Company's representative at Rangoon, in which it was recited that it had been determined that the above subjects should be transferred to and registered in the names of Mr Matthew and Mr Hunter till further instructions; and power was given Mr Hotson to take whatever steps might be necessary for completing Mr Matthew's and Mr Hunter's title; but acting on letters from Mr Matthew and Mr Buchanan he in April 1868 executed a conveyance to Mr Matthew alone.

In 1873 Mr Buchanan retired from partnership with Mr Matthew. On 30th April 1874 his estates were sequestrated by the Sheriff of Lanarkshire, and on 15th May 1874 William Brown was duly confirmed trustee thereon. The trustee realised the estates so far as known at the time, and divided the whole free realised funds in common form. The funds were insufficient to pay the creditors in full. The trustee was thereafter, on 16th December 1875, duly discharged by the Sheriff of Lanarkshire. Mr Buchanan died on 8th January 1875 without being discharged.

On 18th November 1878 the firms of Matthew, Buchanan, & Company and Buchanan & Company were adjudicated bankrupts by the London Bankruptcy Court, and Mr William Hurlbatt, accountant, of 8 Old Jewry, London, was appointed trustee thereon. He sold the Rangoon properties, which formed part of the bankrupt estate, but difficulties arose regarding the title to be given to the purchaser owing to the directions contained in the power of attorney above mentioned to convey the properties to Mr Matthew and Mr Hunter not having been duly observed, but the conveyance taken to Mr Matthew alone. It had become impossible, on account of Mr Hunter's death, to obtain his concurrence in a new conveyance, and in consequence of Mr Buchanan's death and his trustee's discharge it was also impossible to obtain any consent on his part thereto. The sole persons interested in the estates of Matthew, Buchanan, & Company and Buchanan & Company were their creditors the City of Glasgow Bank and liquidators, and they were advised by their solicitors in Rangoon that