PART XLI.

No. 141.—IN THE HOUSE OF LORDS. MARCH 20TH, 21ST, and 24TH, 1890, AND JULY, 20TH, 1891.

SPECIAL COMMISSIONERS OF INCOME TAX *v.* PEMSEL.

THE COMMISSIONERS FOR SPECIAL PURPOSES OF THE INCOME TAX *v.* PEMSEL.

Income Tax.—Exemption.—Charitable Purposes.—Lands are vested in trustees in trust to apply the rents and profits in maintaining (1) *the missionary establishments among heathen nations of the Moravian Church,* (2) *a school for the children of ministers and missionaries, and* (3) *certain religious establishments denominated choir houses.*

Held, *by Lords* Watson, Herschell, Macnaghten, *and* Morris (Halsbury, *L.C.* and *Lord* Bramwell *dissenting*) *that the trust is one for "charitable purposes" within the meaning of the Income Tax Acts; in those Acts the words charitable purposes are to be interpreted, not according to their popular meaning, but according to their technical legal meaning.*

Under an indenture dated the 11th day of February 1813 certain land, tenements, and hereditaments in the county of Middlesex were conveyed to certain trustees upon trust, after payment of costs and outgoings to apply the annuities, rent-charges, yearly issues, and profits, as follows:—

(1.) As to two equal fourth parts thereof, for the general purposes of maintaining, supporting, and advancing the missionary establishments among heathen nations of the Protestant Episcopal Church known by the name of Unitas Fratrum or United Brethren.

(2.) As to another equal fourth part, towards the maintenance, support, and education of the children of ministers and missionaries educated at the school and academy at Fulner, near Leeds, special regard being had to the children of such ministers as are at least able to support the expense of their children's education; or for the benefit and purposes of any similar school, academy, or establishment elsewhere within the United Kingdom.

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(3.) As to the remaining equal fourth part, or residue, for the maintenance and support of certain establishments appertaining to the said church for single persons, called choir houses, within the United Kingdom.

Under another indenture dated the 25th day of July 1815 certain freehold estates in the county of Middlesex were conveyed to trustees upon trust, after the payment of costs and outgoings, to apply the residue or surplus of the rents and profits of the said lands for the benefit and general purposes of a settlement or establishment of the said church existing at Gracehill, Ballymena, in the county of Antrim, and the dependencies of the said settlement or establishment as long as the same shall exist as a congregational settlement of the said church.

The sum of 73*l.* 8*s.* 3*d.* was paid to the Crown as Income Tax on the said lands for the year ending the 5th April 1886, and was duly allowed by the trustees to the lessees and tenants of the lands.

An application on behalf of the trustees was preferred to the Special Commissioners of Income Tax for repayment of the said sum of 73*l.* 8*s.* 3*d.*, on the ground that the rents and profits of the lands are rents and profits of lands vested in trustees for charitable purposes and are applied to charitable purposes. The application being unsuccessful, Mr. Pemsel, the treasurer of the trust or trusts declared under the said indentures, applied for and obtained an order of the Queen's Bench Division of the High Court of Justice calling upon the Commissioners to show cause why a writ of mandamus should not issue directed to them, commanding them to grant the allowance of 73*l.* 8*s.* 3*d.*, and to give a certificate of such allowance, together with an order for the payment of the same as provided by section 62 of the Act 5 & 6 Vict. c. 35.

On October 26, 1888, counsel for the Special Commissioners showed cause. The case was argued before *Coleridge, C.J.* and *Grantham, J.*, and on the 27th October an order was made in favour of the Special Commissioners, *Grantham, J.* dissenting.

Pemsel appealed, and on 23rd December 1890 the Court of Appeal made an order reversing the decision of the Divisional Court. *Lord Esher, M.R.* and *Lopes, L.J.* held that the words "charitable purposes" in the Income Tax Act must be taken in their ordinary signification, and not as technical legal terms. They considered that charity, in its popular sense, implies the relief of poverty, and that there must be in the mind of the donor an intention to relieve poverty; and they based their judgment in favour of the trustees on the ground that the trust was one for the religious instruction of poor heathens, who, but for the trust, would not get such instruction. *Fry, L.J.* decided in favour of the trustees on the ground that the words "charitable purposes" are to be taken as technical words, and that they comprise all the uses mentioned in the preamble to the Act 43 Eliz. c. 4, and all analogous uses.

The Special Commissioners appealed to the House of Lords. They submitted that the order of the Court of Appeal ought to be reversed, altered, or varied for the following (among other) reasons :—

1. Because a mandamus does not lie against the Appellants.
2. Because the lands conveyed under the indentures of the 11th day of February 1818 and the 25th day of July 1815 respectively are not vested in trustees for "charitable purposes" within the meaning of 5 & 6 Vict. c. 85. s. 61.
3. Because the rents and profits in respect of which the income tax claimed to be returned to the Respondent has been paid are not applied to "charitable purposes" within the meaning of 5 & 6 Vict. c. 85. s. 61.
4. Because the term "charitable purposes," being used in an act applying to the whole United Kingdom, is to be construed in reference to the ordinary or popular use of the word "charity," and not with reference to decisions of the English Court of Chancery in cases coming within 43 Eliz. c. 4.
5. Because no purpose is "charitable" which does not include within it the relief of poverty.
6. Because the charitable purposes intended to be promoted or benefited by the allowance or exemption granted under 5 & 6 Vict. c. 35. s. 61. No. VI. of Schedule A. are charitable purposes carried into effect within the United Kingdom or for the benefit of inhabitants of the United Kingdom or of some part of such inhabitants.
7. Because none of the allowances or exemptions contained in 5 & 6 Vict. c. 85. s. 61. No. VI. of Schedule A. are intended to benefit foreign charities.
8. Because the judgment of the Court of Appeal is erroneous in point of law.

Pemsel, on the other hand, submitted that the judgment of the Court should be affirmed :—

1. Because the meaning of the words "charitable purposes" as employed in the exemption clauses of the Income Tax Acts is to be gathered from their use in a series of statutes passed prior to the Act of 1885 (under which the return in question is claimed) as interpreted by judicial decisions.
2. Because whether the words "charitable purposes" in the said exemption clauses be interpreted according to their statutory and legal meaning, or according to their so-called popular meaning, the purposes to which the rents and profits of the hereditaments comprised in the trust deeds of 1818 and 1815 are applicable and have been applied are charitable within the meaning of such clauses.
3. Because the judgment of the Court of Appeal was right and consistent with the dealings of the Commissioners of Income Tax with the Moravian Brotherhood during the whole time that the tax has been in force.

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Pemsel's case for the House of Lords recited that the choir houses mentioned in the indenture are certain houses which have been in existence and used for the residence and support of single or unmarried persons belonging to the United Brethren for more than a century. They are maintained by means of the endowment created by the said indenture of 1813 and similar endowments and in part by periodical payments made by the inmates. The inmates are persons approved of by the congregation conferences as either deserving in themselves of the benefits of the endowments or as likely to advance its religious interests. They are divided into three classes: (1) single women who have been engaged in the educational department of the church and who have become incapacitated; (2) widows of ministers or missionaries and of poor members; (3) single men whose chief employments are to look after the young and to assist in education. Each of these choir houses contains a prayer hall in which the choir meet for prayer and worship.

Sir E. Clarke, S.G., of the Special Commissioners:—The judgments of Esher, M.R. and Lopes, L.J. in the Court of Appeal proceeded on grounds which were the right grounds although wrongly applied to the present case. If the proposition accepted by the majority of the Court of Appeal as properly defining a charitable institution were applied to this case, it would only cover the sums devoted to the maintenance of the choir houses and of the schools for children of missionaries.

[*Lord Bramwell.*—You do not dispute, then, that the second and third are charitable institutions?]—No.

[*Halsbury, L.C.*—Then in fact it comes to this: whether purpose number one is a charity or not?]—That is so; except that I also dispute the title to relief in respect of the lands mentioned in the deed of July 25, 1815.

The whole of the provisions of the Income Tax Acts show that there must be an eleemosynary character in charitable purposes. Charity there means the relief of poverty. In *Morice* v. *Bishop of Durham* (1) Sir W. Grant said that charity in its most restricted and common sense meant the relief of the poor.

There is a very clear distinction between the purposes of the statute of Elizabeth and the purposes of the exemption given in the Income Tax Act. As the Act of Elizabeth was intended to enable the Court of Chancery to protect from diversion to improper purposes, lands, &c., which had been left for specific objects, the Court has no doubt given a very wide interpretation to that statute.

Furthermore, the Income Tax exemption does not apply to money which is to be spent out of the United Kingdom. The Act requires proof that the income, in respect of which exemption is claimed, has been applied to charitable purposes, and if the money is spent abroad there is no means of testing in this country the actual expenditure. In *Attorney General* v. *Hope's*

(1) *Vesey.* 399.

Executors(2) it was held that the words at the close of section 88 5 & 6 Vict. c. 82, exempting from legacy duty legacies given for any purpose merely charitable, only applied when the charitable purpose was to be fulfilled in Ireland.

[*Lord Herschell.*—Was not that because the preceding words limited it to Ireland?]

The same thing which guided the Court in that case is found here. The duty is imposed on all lands, &c., in the United Kingdom. Then when one comes to the exemption in respect of lands vested in trustee for charitable purposes, so far as the same are applied to charitable purposes, I say the words "in the United Kingdom" are implied.

The charitable purposes of the Income Tax Acts cannot be the same as those of the statute of Elizabeth, because there are matters specifically dealt with by the Income Tax Acts which certainly would have come within the terms of the statute of Elizabeth. Section 149, 5 & 6 Vict. c. 85, makes a special exemption in favour of the British Museum, whereas by a decision given in the year 1826, *Trustees of British Museum* v. *White* (1) it had been settled that the British Museum is a charity within the statute of Elizabeth.

[*Lord Macnaghten.*—Is this exemption of the British Museum in the older Acts?]

I am told it was, but at all events the statute with which we are now dealing and which was passed in 1842, gave the British Museum the same exemptions "as are granted to charitable "institutions by this Act," and this assumes that it is not a charitable institution within the meaning of the Income Tax Acts. And in section 88 of the Act of 1842 there is an exemption in favour of dividends applicable solely to the repairs of any cathedral, college, church, or chapel or any building used solely for the purpose of divine worship. Those are purposes within the statute of Elizabeth, and yet we have this specific exemption put immediately after a general exemption in favour of charitable purposes. These two instances show that in the use of the words "charitable purposes" the Legislature was not intending to give them the scope or meaning which had been given by the Court of Chancery to the statute of Elizabeth.

In the Court of Appeal, Esher, M.R., said that in the minds of all ordinary persons charity implies the relief of poverty, and Lopes, L.J. concurred in his judgment. That is the proposition we have been contending for all along. Apart from their application to the particular case, I should claim these two judgments in my favour. There is nothing to show that these missions were to be sent only to those who, by reason of poverty, could not provide education and instruction for themselves.

Dicey, for the Special Commissioners.—The mere propagation of opinion, however salutary, is not charity—even if the propagation of the opinion is addressed to the poor.

(1) 2 Sim. and S. 594. (2) 2 Ir. C.L. Rep. 368.

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[*Lord Herschell.*—May there not be a distinction between religious instruction, the object of which is to bring to a particular religious belief people, whether they are rich or whether they are poor, and giving to those who belong to a particular religious communion instruction which they would certainly get but for their poverty?]

[*Lord Macnaghten.*—I find that in 1853 the Charitable Trusts Acts was passed, and the word charity in that Act was used in its widest possible sense. Then came an Act in 1855 which, at section 28, expressly notices the deduction of Income Tax, and provides for the exemption of dividends arising from any stock in the public funds which the Board (*i.e.*, the Charity Commissioners) shall certify to be subject only to charitable trusts and to be exempt from Income Tax. There is no hint given in either Act that it is the duty of the Charity Commissioners to discriminate between one charity and another, and that this certificate is only to apply to eleemosynary funds.]

Those are later Acts than the Act which confers the exemption here claimed. Moreover, I think it still comes round to the same question; because the question is what the Commissioners are to certify to be charitable purposes. You cannot take these Acts as interpreting the Income Tax Act; they should be rather taken as referring back to whatever is the right interpretation.

[*Lord Herschell.*—The Charity Commissioners have to certify two things: that the funds are held for charitable purposes and that they are exempt from Income Tax.]

These Acts do not refer to Scotland. They give certain powers to the Charity Commissioners for England, and it is very natural that their powers should be made to correspond with the subject of their administration, that is to say, with the Act of Elizabeth. Then there comes this question about exemption from Income Tax, and it is very remarkable that it does really seem that it was intended that there should be some distinction between the different kinds of charitable trusts, because the Commissioners are not only to certify that it is a charitable trust, but also that it is exempt from Income Tax. It comes to this, that the Commissioners have a wider range of charities to deal with than come within the Income Tax exemptions, and therefore they have to certify two things: First, that it is a charity within the wide sense; and, secondly, that it is a charity exempt from Income Tax.

It is extremely unlikely that the exemption can have been intended to apply to funds expended outside Great Britain. All the exemptions in No. VI., Schedule A., except that we are dealing with, of necessity exempt something done in Great Britain. The first three exemptions manifestly apply to Great Britain. The last is doubtful, but for two reasons, it was probably intended that this also should be interpreted as confined to Great Britain. Firstly, when an exemption is in favour of a charity whose funds are applied in Great Britain, there is a loss to the taxpayer on one side, but there is a benefit on the

other; and secondly, it is a very unusual thing in a taxing Act to diminish a tax for the benefit of foreigners.

If charity is to be interpreted as applying, in the first place, to all public objects, and, secondly, to any public objects in whatever country the work may be, it is certainly an extraordinarily wide interpretation.

[*Lord Watson.*—It is a little startling in this sense, that you might have an estate in England vested in trustees for the purpose of applying the proceeds in building a bridge in California?]—Yes. I now pass on to what I admit at once is a technical point, but a technical point of some importance. The procedure in this case is wrong entirely. The procedure should have been by petition of right and not by mandamus. No mandamus lies against the Crown or against its servants. *In re Nathan* (1). We did not argue this point in the Courts below in this case, because the Court of Appeal have held in a case analogous to this, although it did not arise, under the same section of the Act, that a mandamus did lie. *Queen* v. *Special Commissioners of Income Tax* (2).

Cookson Crackanthorpe, Q.C. (*Roberts* with him) for Pemsel:

[*Halsbury, L.C.*—We need not trouble you, Mr. Crackanthorpe, about the question of the mandamus.]

It is not a true description of the Moravian work to say that it is merely propagation of religious opinion. We have to deal with educational work as well as the relief of poverty. We establish day schools and Sunday schools in remote and untutored districts. We proclaim the gospel in foreign parts, and our teaching involves a great deal more than a religious trust. By discipline, education, and teaching of Christian doctrines we induce that order and civilisation which is certainly, when introduced, the best bulwark against poverty.

[*Halsbury, L.C.*—Do you confine your religious teaching to the poor?]—I do not know that we do. Mr. Pemsel's evidence does not show it, and therefore it must be taken that we do not. Naturally it is easier to approach the poor. We go amongst the lower classes and say to them, we have a teaching which will raise you in your position in life.

[*Lord Hersehell.*—What would you say are the limits of "charitable purposes," if you had not the Chancery definition to say what comes within these words?]—I say that all provisions for the material, the moral, and the spiritual welfare of mankind comes within the word charity. If that be thought too wide, I would limit it to that portion of mankind which could not get that benefit without the existence of such a fund.

[*Halsbury, L.C.*—You do not shrink from saying that there might be two societies, the one to convert the Jews to Christianity, and the other to convert Christians to Judaism, and they might both be charities?]—Quite so. They are both animated by charitable purposes.

(1) L.R., 12 Q.B.D., 461. (2) L.R., 21 Q.B.D., 313.

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If the word charity is to be interpreted according to its popular sense, I say the word is familiarly understood as covering all societies for the propagation of religion, and from religion we cannot entirely dissociate a certain amount of civilisation and discipline, which tend to remove poverty by increasing industry. If a sermon is preached in favour of the Society for the Propagation of the Gospel, is it not a "charity sermon" in popular, common, and familiar language?

[*Halsbury, L.C.*—People do not think it necessary to be very precise in ordinary conversation when using such language as that.]

I have here a newspaper cutting, headed "Charitable Bequests," and which mentions bequests of money to all sorts of institutions, to the Church of England for the spiritual use and benefit of parishes, and so on. It contains gifts to the Society for the Propagation of the Gospel and others. Can it be doubted that if any journal of the day summarised those gifts it would, according to popular language, summarise them as charitable.

No. VI. of Schedule A., 5 & 6 Vict. c. 35, grants an allowance in respect of the rents and profits of lands, &c., "belonging to any "hospital, public school, or almshouse, or vested in trustees for "charitable purposes so far as the same are applied to charitable "purposes." There a distinction is obviously drawn between incorporated bodies and non-incorporated. The lands can only belong directly to the institutions named if they are incorporated. But many hospitals, public schools, and almshouses are not incorporated.

The exemption in terms according to the Crown's view applied only to lands of incorporated public schools. If so, it follows that where you have trustees there is no exemption, and when you have no trustees there is exemption.

Further on, in No. VI. of Schedule A., we find the words "other trusts for charitable purposes." The use of the word "other" implies that the trusts enumerated are also for charitable purposes, and therefore trusts for charitable purposes includes public schools.

Another extraordinary conclusion must follow if the Crown are right. Under Schedule C. not even hospitals would be exempt, because nothing is mentioned but charity. There is nothing about hospitals, and nothing about public schools, and therefore, if public schools are not included under charitable purposes, a public school having 10,000*l.* in Consols vested in trustees will not get exemption, but if it owns land worth 10,000*l.* it will get exemption.

[*Lord Herschell.*—That may be so, but it is not certain, because you may have a public school and the land held for a public school, and yet the whole of the income of it may not be said to be applied to charitable purposes, which must be shown. You may have a school and only a portion of the income may be applied to that branch of the school which may be said to be charitable.] The words "so far as the same shall be applied to

charitable purposes" mean this. A man may constitute trustees for his lands primarily for charitable purposes, but may secure a jointure to his widow or portions to his children charged on those lands. The jointure and the portions must pay Income Tax; therefore the Commissioners have to see how far it is applied to charitable purposes.

With respect to the specific exemptions in favour of the British Museum and of the repairs of churches, it is not the first time we have seen tautology in an Act of Parliament. When the Act was introduced in 1842 its passage would be much facilitated by the Church party seeing that repairs of churches and cathedrals were in terms exempted. The insertion of these clauses arose simply from abundant caution.

There is a contemporaneous exposition of the meaning of charitable purposes in the Income Tax Act of 1842 by another Act passed in the same year. Section 88, 5 & 6 Vict. c. 82, provided that no legacy duty should be charged in respect of any legacy given for the education or maintenance of poor children in Ireland, or to be applied in support of any charitable institution in Ireland or for any purpose merely charitable; and in *Attorney-General* v. *Bagot*(1) it was decided that charitable institution in that section meant charitable institution within the purview of the statute of Elizabeth.

The true construction of section 28 of the Charitable Trusts Act of 1855 is of great importance, and Mr. Dicey has not by any means suggested the true construction. By the first section of that Act it is to be read as one Act with the Act of 1853, which constituted the Charity Commissioners. Section 51 of the Act of 1853 authorises the appointment of official trustees who may, by order of the Court or of the Commissioners, become the legal owners of charity funds. These funds must necessarily be charity funds, for the transfer involves a perpetuity and could not be made in the cases of any funds which were not charity funds and exempt from perpetuity under the statute of Elizabeth. Then the 28th section of the Act of 1855 says that all dividends on stock standing in the name of the official trustees which shall be certified by the Commissioners to be exempt from Income Tax shall be paid without deduction of such tax, and dividends on stock in any other names which shall be certified to be subject only to charitable trusts and to be exempt from Income Tax are likewise to be paid without deduction. Under the first part of the clause the Commissioners have not got to certify that the funds are charitable. They are with the official trustees and must necessarily be charities, but when the clause goes on to deal with funds which have not been transferred to the trustees, then the Commissioners are to consider, and they can only consider in the light of the statute of 1853 which defines what charity means, whether these funds are impressed with a charitable trust or not, within the statute of Elizabeth.

(1) 10 Ir. Com. Law Rep., 48.

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It is said against us that in the Customs and Inland Revenue Act of 1885 these words occur: "connected with any religious "persuasion, or for any charitable purpose, or for the promotion "of education," and it is asked why education is mentioned if charitable purposes include education. That argument can only be met by the old observation that you find enumeration more specific than necessary. It is redundant enumeration which we are all familiar with in Acts of Parliament.

Then it is part of the argument of the other side that foreign missions abroad, if otherwise within, are excluded by the fact of their being abroad.

[*Halsbury, L.C.*—I do not think that part of the Crown's argument made much impression on any of us.]

Then if I am relieved from it I will not deal with it.

The Act of Elizabeth did not create charity or charitable jurisdictions. In England, in Ireland, and in Scotland, there was an inherent jurisdiction in each of the Courts of Chancery to deal with trusts, public and private. The Act of Elizabeth was simply a special commission statute. It enumerated divers objects to which the Commissioners might properly address themselves, all of a public or quasi-public and most of them of a benevolent character. So far from being the erection of a new class of trusts, it was the cutting down of an old class; its obvious object being to exclude certain trusts which after the Reformation became illegal because they savoured of Popish practice and superstition.

[*Lord Bramwell.*—Is the trust for which you appear analogous to any of the enumerated trusts?]

Yes. In *Pember* v. *Inhabitants of Kingston*(1), a trust for providing ministers for the service of religion or for preaching was held to be charitable. So was the augmentation of livings in *Attorney General* v. *Bureton*(2). Also the benefit of ministers and Protestant dissenters and Quakers, *Attorney General* v. *Cock*(3). For a Gaelic minister in London, *Attorney General* v. *Stuart*(4). Bequests for general religious purposes, as the advancement of Christianity among individuals, *Attorney General* v. *City of London School*(5). For the distribution of Bibles and other religious books, *Attorney General* v. *Stepney*(6). For money to be employed in the service of my Lord and Master, *Re Lee*(7). For maintaining the worship of God, *Attorney General* v. *Wilson*(8). For the spread of the Gospel, *Lee* v. *Cook*(9).

[*Lord Watson.*—The question in all these cases seems to have been very much whether the purpose was a legitimate public work?]—Certainly.

(1) Duke,, pp. 83 and 109.
(2) 2 Vesey Senior, 426.
(3) 2 Vesey Senior. 273.
(4) 14 Equity, 17.
(5) I Vesey Junior, 243.
(6) 10 Vesey, 22.
(7) 34 Chan. D., 528.
(8) 3 Merivale, 353.
(9) 34 Chan. D., 538.

In the case of the *Incorporated Society* v. *Richards* (1 Drury and Warren, 320) it was held that there is in Ireland, as in England, an inherent jurisdiction in courts of equity by means of which gifts for charitable purposes could at all times have been enforced. It can be proved also that there is an inherent jurisdiction in Scotland, not by singling out these particular trusts and interpreting them by the statute of Elizabeth, but because they were public trusts. There were trustees in fact, and these trustees must do their duty.

[*Halsbury, L.C.*—Is not that a more correct mode of putting it, inherent jurisdiction to administer trusts of whatever character?]—Quite so. But there are Scotch Acts of Parliament which recognise charity in the wide sense for which we are contending. In an Act of 1633 (Chapter VI.) "charitable" and "pious" are used as convertible terms with reference to colleges, schools, hospitals and other uses.

Then there is an Irish Act of 10th Charles, which is a sort of Irish Statute of Elizabeth, and which speaks of highways, preaching the word of God, liberal arts and sciences, schools, and lectures in divinity, as lawful and charitable uses. It follows therefore that there are three statutes, one for England, one for Scotland, and one for Ireland, in which the word charitable is used in a wider sense than the sense the Crown contends for.

The decision of the Court in Scotland in the case of the Baird trustees is not binding on your Lordships. The exemption in that case was claimed not under schedule A. but under Schedule C., and there different considerations may apply. Moreover, the attention of the judges was not drawn to the fact of the inherent jurisdiction, and that charity, in the sense for which I am contending, existed without any statute of Elizabeth.

There would not be any difficulty in Scotland in ascertaining what is a good public charitable trust. As to Ireland, the Irish Court has never had any difficulty, because it has adopted the Statute of Elizabeth(1). And I suggest that in Scotland the Courts have done the same thing.

[*Lord Macnaghten.*—Section 88, 16 & 17 Vict. c. 34, is a singular section, because it exempts Scotch burgh customs which are devoted to a public purpose, and those would be in England unquestionably good charitable trusts. If burgh customs in Scotland are exempt, there is nothing to exempt the same sort of customs in England (that is to say, tolls granted to a town for public purposes) from Income Tax unless they are exempted under the words charitable purposes.

Lord Herschell.—If an Act of Parliament imposes a tax upon the people in a borough is that a charitable purpose?

Lord Macnaghten.—Certainly, if it is for the purpose of benefiting the people of the borough. The source is immaterial. That has been decided; whether it be by taxation, by grant from the Crown, or otherwise.

(1) *Powerscourt* v. *Powerscourt*, Molloy, 618.

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Lord Herschell.—Suppose the words in the exempting clause "charitable purposes" exempt them in England, these words being in an Imperial statute would exempt everything in Scotland which they exempted in England, because the expression means the same thing in both countries, we are told. Then why was that statute necessary in Scotland?

Lord Macnaghten.—I suppose *ex majore cautelâ*.]

Crackanthorpe, Q.C. (continuing).—In *Attorney General* v. *Brown*(1) it was held that a Parliamentary grant of a duty on coal imported into a town in aid of the pecuniary inability of the inhabitants to protect the town from the encroachment of the sea, is a gift to a charitable use.

The Scotch statute of 1633 uses pious uses and charitable uses as convertible terms. If the Scotch Court in the case of *Baird Trustees* v. *The Lord Advocate*(2) had had put to them historically the small importance of the statute of Elizabeth in considering what the idea of a public purpose is, then the non-application of the statute to Scotland would not have weighed in the way it did, and particularly if, as a counter attraction to the statute of Elizabeth, the Scotch statute of 1633 had been brought to their attention.

Sir E. Clarke, S.G. in reply.

Cur. adv. vult.

20th July, 1891

JUDGMENT.

The Lord Chancellor.—My Lords, in this case the Income Tax Commissioners have appealed against an order of the Court of Appeal, whereby a peremptory mandamus was awarded against them, commanding them to make an allowance and to grant a certificate of such allowance. If upon the merits of this case an allowance ought to be made, and a certificate granted, I cannot doubt that the order of the Court of Appeal was right.

The statute under which the Commissioners are acting is peremptory in its terms to the Commissioners to make the allowance, and to give the certificates in cases where they are commanded to be given. If therefore the case is made out that the facts show a case where the allowance ought to be made, and the certificate which is merely consequential should be given, there is a plain duty imposed by the statute on these executive officers, the neglect of which is properly enforceable by mandamus.

But the far more difficult question remains whether the facts proved here establish the proposition that the case for the allowance is made out. That depends upon the true construction of 5 & 6 Vict. c. 35. s. 61. No. VI., Schedule A., which is in these words:—"No. VI.—Allowances to be made in respect of the "said duties in Schedule (A). For the duties charged on any "college or hall in any of the universities of Great Britain in

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(1) Swanston 265. (2) 25 Sco. L.R. 533.

" respect of the public buildings and offices belonging to such " college or hall, and not occupied by any individual member " thereof, or by any person paying rent for the same, and for " the repairs of the public buildings and offices of such college " or hall, and the gardens, walks, and grounds, for recreation " repaired and maintained by the funds of such college or hall ."

" Or on any hospital, public school or almshouse in respect of " the public buildings, offices, and premises belonging to such " hospital, public school, or almshouse, and not occupied by any " individual officer or the master thereof, whose whole income, " however arising, estimated according to the rules and directions " of this Act, shall amount to or exceed one hundred and fifty " pounds per annum, or by any person paying rent for the same, " and for the repairs of such hospital, public school, or almshouse, " and offices belonging thereto, and of the gardens, walks, and " grounds for the sustenance or recreation of the hospitallers, " scholars, and almsmen, repaired and maintained by the funds " of such hospital, school, or almshouse :"

" Or 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; provided also, that " the said building be not occupied by any officer of such insti- " tution, nor by any person paying rent for the same :"

" The said allowances to be granted by the Commissioners " for General Purposes in their respective districts : "

" Or on the rents and profits of lands, tenements, heredita- " ments, or heritages belonging to any hospital, public school, " or almshouse, or vested in trustees for charitable purposes, so " far as the same are applied to charitable purposes : "

" The said last-mentioned allowances to be granted upon " proof before the Commissioners for Special Purposes of the due " application of the said rents and profits to charitable purposes " only, and in so far as the same shall be applied to charitable " purposes only :"

" The said last-mentioned allowances to be claimed and proved " by any steward, agent, or factor acting for such school, hospi- " tal, or almshouse, or other trust for charitable purposes, or by " any trustee of the same by affidavit to be taken before any " Commissioner for executing this Act in the district where " such person shall reside, stating the amount of the duties " chargeable, and the application thereof, and to be carried into " effect by the Commissioners for Special Purposes and according " to the powers vested in such Commissioners, without vacating " altering, or impeaching the assessments on or in respect of " such properties; which assessments shall be in force and levied " nothwithstanding such allowances."

The main debate turns upon whether the lands here are vested in trustees for charitable purposes, though the whole enactment is not without its importance in considering what is the extent of its application.

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The particular dispositions which give rise to the dispute are sufficiently set forth on page 2 of the Appellants' case, as follows: "4. Under an indenture, dated the 11th day of February "1818, certain lands, tenements, and hereditaments (herein-after "referred to as lands) in the county of Middlesex, are conveyed "by one Elizabeth Mary Bates to certain trustees upon trust, "after payment of costs and outgoings, to apply the annuities, "rent-charges, yearly issues, and profits (all of which are herein-"after referred to as rents and profits) of the said lands, as "follows; that is to say, (1.) As to two equal fourth parts "thereof for the general purposes of maintaining, supporting, "and advancing the missionary establishments among heathen "nations of the Protestant Episcopal Church, known by the "name of Unitas Fratrum or United Brethren (which Protes-"tant Episcopal Church is herein-after referred to as the said "Church). (2.) As to another equal fourth part towards the "maintenance, support, and education of the children of minis-"ters and missionaries educated at the school and academy at "Fulner, near Leeds, special regard being had to the children "of such ministers as are least able to support the expense "of their children's education, or for the benefit and purposes "of any similar school, academy, or establishment elsewhere "within the United Kingdom. (8.) As to the remaining equal "fourth part or residue, for the maintenance and support of "certain establishments appertaining to the said Church, for "single persons, called choir houses, within the United King-"dom. (5) Under another indenture, dated the 25th day of "July 1815, certain freehold estates (also hereinafter referred to "as lands) in the county of Middlesex are conveyed by the "said Elizabeth Mary Bates to certain trustees upon trust, "after the payment of costs and outgoings, to apply the residue "or surplus of the rents and profits of the said lands for the "benefit and general purposes of a certain settlement or estab-"lishment of the said Church, existing at Gracehill, Ballymena, "in the country of Antrim, and the dependancies of the said "settlement or establishment as long as the same shall exist "as a congregational settlement of the said Church."

Whether these dispositions or any of them are charitable purposes within the meaning of the exemption I have quoted above must be determined upon a consideration of what those words "charitable purposes" mean in the exemption in question?

Now, before proceeding to discuss the words themselves, I somewhat protest against the assumption that the alternative is to be between a popular and what is called a technical meaning, unless the word "technical" itself receives a construction different from that which is its ordinary use. There are, doubtless, some words to which the law had attached in the stricter sense a technical meaning, but the word "charitable" is not one of those words, though I do not deny that the old Court of Chancery in enforcing the performance of charitable trusts included in that phrase a number of subjects which undoubtedly no one

outside the Court of Chancery would have supposed to be comprehended within that term. The alternative, therefore, to my mind, may be more accurately stated as lying between the popular and ordinary interpretation of the word "charitable" and the interpretation given by the Court of Chancery to the use of those words in the statute of 43 Elizabeth.

My lords, to quote from the language of Chief Justice Tindal, when delivering the opinion of the Judges in the Sussex Peerage case (11 Cl. & Fin., 143), "the only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the Legislature it has always been held a safe means of collecting the intention to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Chief Justice Dyer (*Stowel* v. *Lord Zouch*, Plowden, 369), is a key to open the minds of the makers of the Act, and the mischiefs which they are intended to redress."

Now, I think, it is very material to consider what was the intent of Parliament in passing 43 Elizabeth. That Act itself is intituled "An Acte to redress the mis-employment of landes goodes and stockes of money heretofore given to Charitable Uses." And after reciting the objects with which certain lands and stocks had been limited, appointed, and assigned, it recites that the said lands, tenements, rents, and so forth nevertheless had not been employed according to the charitable intent of the givers and founders thereof by reason of frauds, breaches of trust, and negligence in those that should pay, deliver, and employ the same. "For redress and remedy whereof Be it enacted," &c. It then proceeds to create the tribunal and machinery for the restoration of the property so mis-employed.

My lords, it is very intelligible to my mind that the Court of Chancery, or any Court, should have given the widest possible interpretation to an Act intended to remedy such abuses. The enumeration of charitable objects in the preamble of the statute was very soon interpretated not to be limited to the exact charities therein referred to. Where a purpose by analogy was deemed by the Court of Chancery to be within its spirit and intendment it was held to be "charitable" within the meaning of the statute. In *Jones* v. *Williams* (Ambler, 651) "charity" is defined to be "a general public use." See also the case of *Thompson* v. *Shakespeare* (1 De G., F. and J., 399), where Lord Campbell, Lord Justice Knight Bruce, and Lord Justice Turner (though in the particular case, and for reasons beside the present controversy, they decide against the validity of the gift) show what width of interpretation in their view may be applied to the words "charitable use." Thus also "paving,

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lighting, cleansing, and improving a town" have been held to be within the equity of the statute of Elizabeth and "charitable." To build a house of correction or sessions house is a charitable purpose (Duke, 109, 136; *Att.-Gen.* v. *Heelis*, 2 S. & S., 76) also to found a botanical garden. A fund for the establishment of lectures against cruelty to animals is a "charitable use." A gift "to the Queen's Chancellor of the Exchequer for the "time being, and to be by him appropriated to the benefit and "advantage of my beloved country Great Britain" (*Nightingale* v. *Goulbourn*, 2 Phillips, 594) is a "charitable purpose." See also *Thelluson* v. *Woodford* (4 Ves., 235).

In these and many like cases it appears to me that the distinction between what is charitable in any reasonable sense and what trustees for any lawful and *public* purpose may be compelled to apply funds committed to their care has been, I will not say confused, but so mixed that where it becomes necessary to define what is in its ordinary and natural sense "charitable" what is merely public or useful is lost sight of. And indeed, for the purposes for which the Court was then enforcing the performance of the trusts, it is intelligible that such distinctions should be disregarded.

If it is never necessary to distinguish between such heads as "religious," "parochial," "educational," but if all public purposes whatsoever which the law would support and the Court of Chancery enforce are in all statutes to be comprehended within the phrase "charitable," then the question is easily solved; but I do not think any statute or any decision has ever countenanced such a proposition.

It is argued that the phrases "charitable trusts" and "charitable purposes" have always received the same construction in Ireland to which the Act 43 Elizabeth does not extend, and that therefore, apart from the particular statute, it has so to speak a technical and legal meaning of the law.

I think the argument is not sound; the statement of fact on which it rests is literally accurate, but misleading, inasmuch as between 43 Elizabeth (1601) and 10 Charles I. (1634) there is very little authority obtainable as to what the views of the Irish Courts were during that interval, and from that date the Irish Act, 10 Charles I., cretainly established what I will call the statutable meaning of those words as applicable to the subject matter with which it dealt just as much as 43 Elizabeth. To show that I am not overstating the identity of the statutes in question in their scope and object, it may be worth while to quote the language of Lord St. Leonards in the case of *The Incorporated Society* v. *Richards* (1 Dru. and Warr). In delivering judgment, as Lord Chancellor of Ireland, he observed: —"I minutely compared the two Acts, placing the charitable "uses enumerated in one in juxtaposition with those to be found "in the other; and I find very little difference between them. "Thus the statute of Elizabeth speaks of relief to 'aged, im-"'potent and poor people; the maintenance of sick and maimed "'soldiers and mariners'; it 'enumerates a list of such cases,

" whilst that of Charles has these comprehensive words ' or for " ' the relief or maintenance of any manner of poor, succourless, " ' distressed, or impotent persons.' It would be difficult to " show that any one of the particular charities set forth in the " Act of Elizabeth is not included within those general words. " Again, the statute of Elizabeth speaks of ' schools of learning, " ' free schools, and scholars of universities '; whilst that of " Charles is thus expressed : ' for the erection, maintenance, or " ' support of any college, school, lecture in divinity, or in any " ' of the liberal arts or sciences.' The Act of Charles, in this " respect, goes beyond that of Elizabeth, for the latter does not " comprise in words ' the liberal arts and sciences.' Then the " Act of Elizabeth recites those gifts which had been or might " be made, for the repair of bridges, &c.; ' some for repairs of " ' bridges, ports, havens, causeways, churches, sea-banks and " ' highways '; and I find in the statute of Charles mention " made of similar gifts, not as in the other, collected all together, " but in different parts : thus, ' for the building, re-edifying, or " ' maintaining in repair of any church, college, school, or hospi- " ' tal '; and, in another place, ' for the erection, building, " ' maintenance, or repair of any bridges, causeyes, cashes, paces, " ' and highways, within this realm.' The Act of Charles also " provides ' for the maintenance of any minister and preacher " ' of the Holy Word of God,' which was purposely omitted in " the statute of Elizabeth (Duke, 125). After this the general " words of the Act are : ' or for any other lawful and chari- " ' table use and uses, warranted by the laws of this realm.' The " statute of Charles seems, therefore, an almost exact pattern " of the statute of Elizabeth, and I have but little doubt that its " framers had the latter Act before them at the time they were " preparing it."

Then it is said that these exemptions have been allowed for a long period; that is true, but I am not able to assent to the view that the course pursued by the executive officers of the Crown is one which, under the circumstances of this case, could afford any clue to the true construction of the statute.

I do not deny that, in the language of Chief Justice Cockburn (*Feather* v. *The Queen*, 6 Best and Smith, 290), " where there " has been an exposition of the law by judicial decision or a " settled course of practice or understanding of the law among " legal practitioners, the language of an instrument (or of a " statute) may in certain cases be interpreted according to such " a standard." Take the case there referred to. I quote from the statement of facts by the Chief Justice (page 289) :—" It " certainly appears that at the time this patent was granted a " general understanding prevailed, founded on the practice of a " long series of years, that if patented inventions were used in " any of the departments of the public service, the patentee " would be enumerated by the ministers or officers of the Crown " administering such departments, as though the use had been " by private individuals. There can be no doubt that in numerous " instances payments had been made to patentees for the use of

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"patented inventions in the public service without objection "or difficulty; and not only does no question appear to have "been raised as to the right of the patentees by the Minister of "the Crown, but the legal advisers of the Crown appear also "to have considered the right, whether arising from the terms "of the patent, or from the existing practice, as so well settled "that we find Sir John Jervis, the then Attorney-General, on an "application for the renewal of the patent of *Pettit* v. *Smith* "7 Moore, Privy Council Cases, 188), before the Judicial "Committee of the Privy Council in the year 1852, two years "only before the date of this patent, endeavouring to obtain the "insertion of a condition that the Crown should have the use "of the invention without payment; a course which obviously "would have been unnecessary had the Crown been considered "entitled to use the invention without such a provision. That "the same view of the matter has prevailed until the present "question was raised in this case, and that of *Clare* v. *The* "*Queen*, which immediately preceded it, is plain, as we find "a similar application to that made by the Attorney-General "in the case of Smith's patent, repeated in the subsequent cases "of Carpenter's and Lancaster's patents, the application for the "renewal of the latter having occurred as late as in the last year. "There can be little doubt that on the faith of the understand-"ing and practice referred to, many inventors have, at a great "expense of time and money, perfected and matured inventions "and taken out patents in the expectation of deriving a portion "of their reward from the adoption of their inventions in the "public service."

And yet, notwithstanding this they held that the patent would not be construed in pursuance of such a practice. Or to put the limitation a little higher, as it is put by Lord Ellenborough, in *Isherwood* v. *Oldknow* (3 Maule and Sel., 396), "where the "general understanding of the law has not been speculative and "theoretical, but where it has been the groundwork and sub-"stratum of practice (such as in the case with which he was deal-"ing) upon which powers of the character then in debate had "been erected and acted upon, from the time of Henry VIII. "down to 1815."

I think it would be impossible to say that anything in the history of the administration of the Income Tax Act comes up to standard required, even apart from the history of how the practice of allowing the exemption in debate had grown up.

As a matter of fact, we know that the practice is directly in conflict with the opinion given by the Law Officers of the Crown, Sir Alexander Cockburn and Lord Westbury, when respectively Attorney and Solicitor General in the year 1856, who advised that "charitable purposes" were plainly distinguishable from "parochial purposes" in the Income Tax Acts, and accordingly advised against exemptions which certainly in the Court of Chancery would have been considered "charitable." We know also that the origin of the allowance was founded on the opinion of Mr. Fuller, to whom was assigned

the duty of superintending the business relating to the claims of charities for exemption in the year 1848.

The opinion given in 1856 does not appear, however, to have been acted on, since by a letter from the Treasury to the Commissioners of Inland Revenue, dated 1st October 1868, it was laid down that, notwithstanding the opinion of the Law Officers, the administration of the tax ought not to be altered by a purely administrative authority. All this appears from a return made to an Order of the House of Lords, dated 3rd August 1888. But I confess I should regard with very great hesitation any inference derivable from the parliamentary paper in question, except the inference which negatives a universal and adopted practice as expounding the law.

I cannot, therefore, agree that the statute receives any exposition from the fact that the practice has been such as has been described.

I also think the view of the true construction of an Act which is to apply to England, Ireland, and Scotland alike is that it ought to be construed according to the canon of construction laid down by the Court of Session in the case of Baird's Trustees. It is a rule which has been acted on, not only in respect of Taxing Acts, but of other enactments. Indeed, it is only part of a general principle of common sense, which Mr. Justice Grove laid down in a rating case (*The Queen* v. *Hogg*, 1 Term Rep., 788) "a universal law cannot receive different interpretations in different towns." And if (to quote the language of Lord Justice Fry) words construed in their technical sense would produce inequality, and construed in their popular sense would produce equality, you are to choose the latter. I should hesitate very much to qualify the rule of construction, by pointing to instances in which inappropriate words had been used in a statute. That, in fact, the language of an Act of Parliament may be founded on some mistake, and that words may be clumsily used, I do not deny; but I do not think it is competent to any court to proceed upon the assumption that the Legislature has made a mistake. Whatever the real fact may be, I think a court of law is bound to proceed upon the assumption that the Legislature is an ideal person that does not make mistakes. It must be assumed that it has intended what it has said, and I think any other view of the mode in which one must approach the interpretation of a statute would give authority for an interpretation of the language of an Act of Parliament which would be attended with the most serious consequences.

I am not satisfied, after fully considering the statutes and decisions which the care of my noble and learned friend, Lord Watson, has collected for our guidance, that the principle of the decision of the Court in the case of Baird's Trustees is not quite reconcilable with all of them That "godly" and "pious" are convertible terms and may be so treated is true. And with reference to the subject matter of the decisions to which my noble friend has referred, it is to be observed that the

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supply of education or the relief of poverty largely entered into the purpose referred to, and that the question then in debate did not raise the question now before your Lordships. In no one of them do I find such a latitude of interpretation of "charitable purposes" as those which I have quoted as being within the contemplation of the English Court of Chancery "charitable purposes," and they are also open to an observation of a more general character, which I shall have to make presently when dealing with the particular donation now before your Lordships for consideration.

In common with the Court of Appeal, I think that the principle laid down by the Court of Session in construing an Act which is to apply to the three kingdoms is a sound one, though perhaps, verbal criticisms may be applied to the language in which it is conveyed. Lord Campbell's observation in the case of *Lord Saltoun* v. *The Advocate General* (3 MacQueen) I think is the true rule, though even there, perhaps, criticism might be applied to the exact language in which it is expressed.

I cannot concur with the view which has found favour with one of your Lordships that the technicalities which Lord Campbell thought were to be disregarded were not technical expressions in the Act. The word which was in debate was "predecessor," and whether that word was to receive its meaning according to technical application in Scotch law, or its more popular meaning, was the turning point of the case, and it was with reference to the use of that word "predecessor" that Lord Campbell's observations were made.

Neither do I think one gets much light from the case of Gordon of Park, where, by the Act of Union itself, it was ordained "that the law of treason should be administered as "much as possible alike in the two countries." That Act therefore recognised that differences did exist, and enacted in somewhat loose phraseology, that they were to be administered "as much as possible alike."

I do not find that in any Scottish Act or in any Scottish decision "institutions for general public purposes," "protection of animals," "extension of knowledge," "museums," "libraries," or the like, "diffusion of geographical knowledge," "homes for lost dogs," or "anti-vivisection societies" would be treated in Scotland as the objects of charitable donation, and the argument involves the necessity of establishing, not that there are points in which the English and Scottish use of that word may be similar or even identical, but that generally, and in the Scotch and English law they must have practically the same meaning. I should hesitate very much to differ from the Court of Session on that subject, and certainly there is nothing which has been brought before your Lordships during the argument which to my mind justified the proposition that the use of the words "charitable purposes" in the Court of Chancery, which, as I have pointed out, comprehends all the above objects, has ever been adopted in the law of Scotland.

I admit the justice of the criticism which suggests that words are sometimes put into an Act *ex abundante cautelâ* and would not therefore rely upon mere redundancy of expression which, I agree, may be inserted for securing some particular institution which it is thought might otherwise be deprived of such statutable exemption, but I do not think that the same observation applies to a series of statutes in which "charitable" is distinguished from "public" purpose, or religious, or educational as indeed is the case in the statute upon which most reliance is placed (16 & 17 Vict. c. 51), where the words are charitable or public purpose. I do not deny the validity as an argument of the drafting of that clause, which having described the property as subject to a trust for "charitable" *or* "public" purposes, and having all through the clause spoken of "such" property, finally speaks of it as "the charity" property, a phrase in itself not quite accurate; but I agree that if a question were to arise whether there was the power of securing the amount of duty upon the property the subject of a trust for "public" or for "charitable" purposes any Court would construe the words "charity property" as being comprehended within the intended power to charge; but it would be rather upon the construction of the whole section, than that the words themselves import an identity between the words "charitable" and "public." The fact, however, remains that in various statutes the word "charitable" is distinguished by the Legislature from "public," "educational," "religious"; and in no one instance that I have been able to find do the words run "or *other* charitable purpose," which one would think would be the natural mode of expressing the meaning now insisted on.

One can understand the good sense of the effort to give the widest interpretation to such a phrase as "charitable uses," as in the English and Irish statutes, or the words "pious donations" of the Scottish statute of 1688. The evil was the same in all three countries, viz., the misapplication of donations made for the benefit of people who could not be represented by any particular litigant, and whose interests were neglected by the dishonest appropriation of gifts intended for useful public or charitable purposes. But such considerations have no application to a Taxing Act. There is no purpose in a Taxing Act but to raise money, and an exemption is just as much within this criticism as any other part of the Act, since every exemption throws an additional burden on the rest of the community.

It is suggested, indeed, that the reason for an exemption may justify the exemption. I cannot find any trace of such a principle in the statute, and I do not think it is borne out by decisions where the incidence of rates has been in question. It was undoubtedly thought that property held for public purposes was not rateable; but this is now clearly not the law. It is settled that no such exemption applies. See *Mersey Docks* v. *Cameron* (11 H.L. Cases, 443); *Clyde Navigation Trustees* v. *Adamson*

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(4 Macq., 931); *Commissioners of Leith Harbour and Docks* v. *Inspector of the Poor* (L.R. 1, H.L. Scotch App., 17).

The construction of a Taxing Act appears to me to present no analogy to the class of Acts, English, Irish, or Scotch, to which I have above referred, and I cannot apply to this Act the principle of construction which those Acts may very justly have received.

To come now to the particular bequests before us, and to the use of the word "charitable" in the particular Act we are construing, I would say, without attempting an exhaustive definition or even description of what may be comprehended within the term "charitable purpose," I conceive that the real ordinary use of the word "charitable" as distinguished from any technicalities whatsoever, always does involve the relief of poverty. No one would doubt what was the meaning of a charity sermon, a charitable school, or of a person giving service gratuitously because it was for a charity. And it seems to me that the Court of Appeal did not so much differ with the Lord Chief Justice as to the true exposition of the word involving the relief of property, as in the application of the proposition, what would be a relief of poverty? And as to that, I think it would be impossible to give an adequate exposition of what would presumably be in the mind of the Legislature, without regarding the circumstances of the time, and the state of public feeling when the legislation in question was under debate. At a time, for instance, when religious instruction was regarded as being as important as the maintenance of life, then if people were without the means of obtaining religious instruction, one can well understand the principle that to give them the necessary religious instruction, which the argument assumes they would not otherwise be able to obtain, would be, in the sense which I have indicated, "charitable."

But the difficulty I have in reconciling the decision of the majority of the Court of Appeal with the principle they have laid down is that in the particular gift under debate purposes appear to be contemplated having no relation to poverty at all. Take the first case of foreign missions: I suppose the conversion of the wealthiest chieftain to the views of the Moravian Mission would be just as much within the object of the trust as any other purpose.

The Master of the Rolls, whilst enlarging the purposes which may be described as charitable, beyond the mere relief of physical necessities, as to which I do not disagree, adds these words:—"You may desire to convert the richest people, and very often do. "If you desire to convert them to your religious opinions, whatever they may be, not on account of their poverty, but because "you think it is desirable that their religious views should be "like yours, that does not come within this canon. A religious "object is not necessarily a charitable object within the sense "that I have put it." With that view I entirely concur, and, as I have said, the difficulty I have is in applying such a rule to justify the exemption here claimed. I do not understand

how it can be said that this trust is only for a mission to convert simply poor heathens. It seems to me (to use the language of the Master of the Rolls himself) "a mission to convert heathens without regard to their poverty at all." And it is to be remembered that, so far as the property is entitled to exemption, it must not only be applicable to, but applied to the charitable purposes in favour of which the exemption is claimed. I think it would be a surprise to the Moravian body itself to find that their missions were either exclusively or substantially applied only to impoverished heathens, and that heathens well off in their own country were beyond the scheme of their missions. To my mind it is obvious that the object of the mission is the propagation of the Moravian tenets among persons whom the Moravian Brethren conceive to be in darkness, and whom they wish to enlighten by the views which they themselves profess, and that the element of poverty, as applicable necessarily to the object of their efforts, is as much beside the Moravian view as the colour of the converts or the situation of the territory.

That there are some objects which would be charitable objects under those trusts I do not deny; but the question here argued is whether the funds are *all* applicable *and applied* to charitable purposes.

For these reasons I am of opinion that the judgment appealed from ought to be reversed.

Lord Watson.—My Lords, by indentures, executed in 1818 and 1815, Mrs. Mary Elizabeth Bates settled real estate in England upon trust for purposes connected with the church of the United Brethren, commonly known as Moravians. The larger share of the trust income is appropriated to the support of the missionary establishments of the church among heathen nations. The other objects of the trust are (1) the maintenance and education of children of ministers and missionaries, special regard being had to the children of those ministers who are least able to bear the expense; and (2) the choir houses of the church, which provide homes for female teachers who have become incapacitated for work, for widows of ministers, missionaries, and poor members, and also for single men, engaged in attending to the young and assisting in their education.

Down to the year 1886, income tax upon the annual value of the trust estate was paid in the first instance by their tenants, and was then repaid to the trustees, under the enactment of Schedule A., Rule VI., of 5 and 6 Vict. c. 85., which provides that, in charging duty, allowances shall be granted in respect of "the "rents and profits of lands, tenements, and hereditaments, or "heritages, belonging to any hospital, public school, or alms-"house, or vested in trustees for charitable purposes, so far as "the same are applied for charitable purposes." An application made to the Appellants for allowance of the tax for the year ending 5th April, 1886, which had been paid by the tenants, was rejected upon the ground that the purposes to which the trust income is appropriated and applied do not bring it within the

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scope of these exemptions. In consequence of their refusal, the Respondent, who is treasurer of the church of the United Brethren, upon the 12th April, 1888, obtained an order *nisi* for a writ of mandamus to compel the Appellants to grant the allowance, and, with that view, to give a certificate, with an order for repayment in terms of the statute. It does not seem to admit of serious dispute that, if the purposes of Mrs. Bales' Trust, are "charitable purposes" within the meaning of the Act of 1842, the Appellants have declined to perform their statutory duty, and a mandamus must issue.

Had 5 & 6 Vict. c. 35. been an English statute, the present controversy would in all probability never have arisen. The expression "charitable purposes" is commonly, if not invariably, used, both in English law and English legislation, in a sense wide enough to include the missionary enterprises, and the choir houses of the *Unitas Fratrum*, as well as the maintenance and education of the children of its ministers and missionaries. But the Act applies to Scotland as well as to Engrity to support it; and hence the difficulty which the Courts below and at your Lordship's Bar, has been founded on the assumption that in Scotch law, the expression cannot, according to any legitimate construction, include the objects of Mrs. Bates' Trust settlements. That proposition is not without some authority to support it; and hence the difficulty which the Courts below have experienced in dealing with the present case.

The statutory words of exemption upon which the result of this appeal depends were for the first time, made the subject of judicial interpretation in *Baird's Trustees* v. *The Lord Advocate* (15 Sess. Ca., 4th Series, 682), which was decided by the First Division of the Court of Session in 1888. The truster in that case had directed that the funds settled by him, amounting to half a million sterling, should be expended for the support of objects and purposes in connexion with the Established Church of Scotland, all of a religious character, and for the aid of institutions having the promotion of such purposes in view, his desire being to mitigate spiritual destitution among the poor and working population of Scotland, through efforts for securing the godly upbringing of the young, the establishing of parochial pastoral work, and the stimulating of ministers and agencies of the church to sustained devotedness in the work of carrying the gospel to the homes and hearths of all. The Inner house, affirming the judgment of the Lord Ordinary (the late Lord Fraser), held that the income of heritable estate, vested in the trustees for these purposes, was not within the statutory exemption.

The learned Judges of the Court of Session refused to attach to "charitable purposes" the comprehensive meaning which the words admittedly bear in English law, being of opinion that they have no technical significance in the law language of Scotland. Accordingly, they held that in the Act of 1842, which is an Imperial statute, the words must be read in their ordinary and popular acceptation. The meaning of the words, when

interpreted in that sense, was thus defined by the Lord President (Inglis): "Charity is relief of poverty, and a charitable act or "a charitable purpose consists in relieving poverty, and what- "ever goes beyond that is not within the meaning of the word "'charity,' as it occurs in this statute." Lord Shand, adopting a still narrower definition, said; "I think it (*i.e.*, the statutory "exemption) relates to funds dedicated to the relief of physical "necessity or want; to funds given as alms, or as a provision for "the relief of poor persons from physical privations, or suffer- "ing arising from poverty, and that it goes no farther." Lord Adam, in agreeing with his brethren, observed: "It appears "to me to be quite impossible to extend the term 'charitable "purposes,' used in this Act, so as to cover religious pur- "poses."

In this case Lord Chief Justice Coleridge adopted the same construction of "charitable purposes" which had commended itself to the Court of Session. Mr. Justice Grantham dissented, upon the ground apparently that the Government by which the Act was introduced, and its successors in office, had for more than forty years invariably construed the words in the sense of English law, and allowed the exemptions which are now in dispute. In these circumstances the opinion of the senior Judge prevailed, and the order *nisi* of 12th April 1888 was discharged by the Divisional Court; but in the Court of Appeal that judgment was unanimously reversed, and it was decreed that a peremptory mandamus should issue to the effect specified in the Respondent's original application.

Lord Esher, Master of the Rolls, and Lord Justice Lopes, recognised the authority of *Baird's Trustees* v. *The Lord Advocate* (15 Sess. Ca., 4th Series, 682) as settling that, in Scotland, the term "charitable purposes" has not the meaning which is attributed to it by English courts. They therefore discarded that meaning; but in determining what, in a popular sense, constitutes a "charitable purpose," they adopted a much more liberal definition than the learned Judges of the Court of Session. They held that, in its ordinary acceptation, "charity" comprehends all benefits, whether religious, intellectual, or physical, bestowed upon persons who, by reason of their poverty, are unable to obtain such benefits for themselves without assistance. Lord Justice Fry did not accept the authority of the decision in the case of the Baird Trust; and came to the conclusion that the words "trusts for charitable purposes" have for all practical purposes the same legal significance in Scotland as in England or Ireland.

If I could accept, without reserve, the opinion expressed in the Baird Trust case with respect to the meaning of the term "charitable," I should still entertain doubts as to the rule applied to its decision which has been followed in this case by the majority of the English Judges. The only principle derivable from *Lord Saltoun* v. *The Lord Advocate* (8 Macq., 659), which can aid in the decision of this case, appears to me to be this, that the Act of 1842 must, if possible, be so interpreted as to

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make the incidence of its taxation the same in both countries. In that case the language which the Court had to construe, which was not technical, had, when read in the light of the context, the effect of producing the equality which the Legislature presumably contemplated. But there existed outside the Act a technical rule of Scotch feudal conveyancing, which would, if permitted to qualify the language of the Act, have disturbed that equality; and this House held, reversing the judgment of the Court of Session, that an extrinsic technicality productive of that result ought to be disregarded. It does not, in any opinion, necessarily follow from that decision that the popular meaning of a word employed in a taxing statute must be adopted in cases where the word has a definite legal meaning in England, and no definite popular meaning either in England or Scotland. I have been unable to find that the word "charitable," taken by itself, has any well-defined popular meaning in Scotland or elsewhere. It is a relative term, and takes its colour from the specific objects to which it is applied. Whilst it is applicable to acts and objects of a purely eleemosynary character, it may with equal propriety be used to designate acts and purposes which do not exclusively concern the poor, but are dictated by a spirit of charity or benevolence. In the latter sense, the meaning of the term is practically, although not absolutely, co-extensive with that which has been attributed to it by the Court of Chancery. Assuming, as the Court of Session has decided, that the term has no technical meaning in Scotch law, ought "charitable," as it occurs in the Act of 1842, to receive that wide yet legitimate popular interpretation which practically harmonises with its import in English law, or must its narrowest conventional use be accepted as a matter of fixed legal construction? I have not found it necessary for the purposes of this case to determine these questions, because I am satisfied that, in legislative language at least, the expression "charitable" has hitherto borne a comprehensive meaning according to Scotch as well as according to English law. On this point I have the less hesitation in differing from the learned Judges of the Court of Session, because I do not find that the considerations which have led me to that conclusion were entertained by them, or were even submitted to them in argument.

So far as I am able to discover, "godly" and "pious," as applied to trusts or uses, had, in early times, much the same significance in Scotland as in England. Their meaning was not limited to objects of a religious or eleemosynary character, but embraced all objects which a well-disposed person might promote from motives of philanthropy. For instance, the Scotch Act, 1592, chapter 162, applies the epithet "godly" to a gift by Queen Mary of lands and annual rents for sustentation of the ministry within the burgh of Edinburgh and the "entertainment" of its hospitals. The extensive signification of "pious" may be illustrated by the terms of the Act 1685, chapter 18, which deprived patrons of their rights to stipend accruing during

the vacancy of a cure, and enacted that it should in future be employed by them "on pious uses within the respective par- "ishes." Of these pious cases three are "more particularly" specified, these being "the building and repairing of bridges "repairing of churches or entertainment of the poor." In the case of *Lord Saltoun* v. *Lady Pitsligo* (M. Dict., 9948), the Court of Session held that the repair of a public harbour was a pious use within the meaning of the Act, although they disallowed the patron's outlay, on the ground that the harbour was beyond the limits of the vacant parish.

The expression "charitable," which is used in the Act of Elizabeth as a synonym of "godly," is employed in the same sense with "pious" in the Scottish statute 1633, chapter 6, which is entitled an Act against "the inverting of pious dona- "tions." It proceeds on the preamble that certain gifts in lands, heritages, and sums of money "in favour of colleges, "schools, hospitals, and other pious uses," had been inverted to other purposes, "to the evil example of others and the hind- "rance of *the like charitable works* against all reason and con- "science." It accordingly enacts that such inversions shall cease; and that action shall be competent to the "said kirkes, "colleges, and others," and to "the bishops and ordinaries "within the dioceses where the said kirkes, schools, and others "lye," against the heirs, executors, or others entrusted with the administration of the gift; and also provides that on application to the Court letters of horning shall issue without citation of parties.

According to the plain language of the Act of 1633 all donations for pious purposes, including gifts made to the Church for religious purposes, were regarded as charitable donations. I see no reason to doubt that the word "charitable" was so used in its ordinary and legal sense, or that Mr. Baird's Trust would have been considered a trust for charitable purposes by the legislators who passed the Act. If the Income Tax statute of 1842 had been enacted by the Scottish Parliament in 1633 I do not think the Lords of Session would at that time have adopted the narrow construction put upon the word "charitable" by their successors in the year 1888.

The use of the word in the early law of Scotland, or in statutes of the Scottish Parliament, would, no doubt, be of little relevancy to the present question if it could be shown to have acquired a more restricted meaning in the modern law language of that country. The reported decisions of the Court of Session throw little, if any, light upon the question, for a reason which is sufficiently obvious. Ever since its institution the Court has exercised plenary jurisdiction over the administration of all trusts, whether public or private, irrespective of the particular purposes to which the estate or income of the trust may be appropriated; and there has consequently been no room for those numerous questions, as to a trust being charitable or not, which have arisen in England under the statute of Elizabeth. Whilst the Scotch cases cannot be said to afford any precise

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definition of what constitutes a charitable trust purpose, some of them do appear to point to a more liberal interpretation than that which was adopted by the Court in the case of the Baird Trust. In *Fergusson and Marjoribanks* (15 Sess. Ca., 2nd Series, 687) which was decided in 1858, a testator had bequeathed a sum of money to trustees, with directions to apply the annual interest "in the erection of a free school in such part of the "parish of Bathgate as my said trustees or the major part of "them shall think fit and proper for the education of the youth "of the said parish." The benefits of the foundation were not confined to the poor, nor could they reasonably be said to be in the main intended for the poor. Yet the Lord President McNeill (afterwards Lord Colonsay) describes the bequest as one "in perpetuity for a charitable purpose;" and, in the note appended to his judgment as Lord Ordinary, Lord Rutherford, the most learned Scotch lawyer of the period, speaks of it as "the charity."

In this House, noble and learned Lords, in disposing of appeals from Scotland, have expressed themselves in terms which point in the same direction. Lord Gifford, delivering judgment in *Hill* v. *Burns* (2 Wilson and Shaw, 80), uses the expression "charitable" as equivalent to "charitable and benevolent." In the *University of Aberdeen* v. *Irvine* (2 Sc. and Div. Ap., 289), a trust for college bursars, who did not necessarily belong to the class of indigent persons, was dealt with as a charity, and the rules prevalent in England in cases of charitable trusts were applied to its decision. On the other hand, in *Magistrates of Dundee* v. *Presbytery of Dundee* (4 Macq., 228), where the trust under consideration was chiefly for the sustentation of ministers of the Established Church, the words "charity" or "charitable" do not occur in the judgments delivered by the House. I do not lay great stress on these authorities, or upon the decisions of this House, which were cited at the Bar, in *Clephane* v. *Lord Provost and Magistrates of Edinburgh* (4 Macq., 603, and 1 Sc. and Div. Ap., 417), and similar cases, because in the latter class the main objects of the trust consisted in ministering to the wants, physical or educational, of the really poor, and in neither class was the meaning of the word "charitable" in Scotch law an issue distinctly raised for the determination of the House. At the same time it does appear to me to be a relevant observation, that Scotch trusts, which are *ejusdem generis* with trusts falling within the statute of Elizabeth, are charitable in this sense, that they are all governed by the same rules which are applicable to charitable trusts in England.

If the cases to be found in the books afforded the only material for determining the meaning of "charitable" in a statute applicable to Scotland, they might be insufficient to warrant the conclusion which I have come to. But these authorities appear to me to go this length. In the first place, they establish positively that charity is not limited to relief of the physical wants of the poor, but includes their intellectual and moral

culture; and, in the second place, they suggest very strongly that purposes which concern others than the poor may nevertheless be charitable purposes in the sense of Scotch law. They do not contain any definition of the word "charitable," yet they do not, by any fair inference, exclude the legal meaning attached to it in the old Scotch statutes. The matter does not rest there, because in British statutes applicable to Scotland in which the words "charity" and "charitable" occur, they are employed in the wider sense in which they were used by the Scottish Parliament.

In the year 1888 a statute was passed intituled "An Act for "the better securing the *charitable donations and bequests* of "His Majesty's subjects in Great Britain professing the Roman "Catholic religion." The first section which recites that doubt had been entertained whether it was lawful for Roman Catholics in Scotland to acquire and hold in real estate the property necessary "for religious worship, education, and charitable "purposes," enacts that His Majesty's subjects professing the Roman Catholic religion "in respect to their schools, places for "religious worship, education, and charitable purposes in Great "Britain, and the property held therewith, and the persons "employed in or about the same, shall in respect thereof be "subject to the same laws as the Protestant Dissenters are "subject to in England, in respect to their schools and places for "religious worship, education, and charitable purposes, and not "further or otherwise." Comment upon that language is almost superfluous. "Charitable" is used in the same comprehensive sense with reference to England and Scotland alike. According to the title of the Act, donations and bequests for the promotion of any of the objects specified in the first clause, including education and the maintenance of public worship, are "charitable," and the section I have cited plainly shows that Roman Catholics in Scotland are, so far as concerns property held for "charitable purposes," entitled to have as wide a construction put upon these words as Protestant Dissenters in England. The word is again used in the same way, and with the same meaning, in the enactments of the Imperial statute 9 & 10 Vict. c. 49, which was passed in order to place Her Majesty's subjects in the United Kingdom professing the Jewish religion on the same footing as English Dissenters with respect to their "schools, "places for religious worship, education, and charitable purposes."

The only other Act I shall refer to is a taxing statute, viz., the Succession Duty Act of 1853 (16 & 17 Vict. c. 51). Section 16 imposes a duty of 10 per centum upon real estate which shall become subject to a trust "for any *charitable or public purpose*, "under any past or future disposition, which, if made in favour "of an individual would confer on him a succession." The clause then provides means for enabling the trusters of estates settled to these purposes to procure funds for payment of the tax, in these terms: "And it shall be lawful for the trustee "*of any such property* to raise the amount of any duties due in

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"respect thereof, with all reasonable expenses, *upon the security* "*of the charity property* at interest with power to him to give "effectual discharges for the money so raised." This is an Imperial Act, and it specifically describes heritable estate in Scotland held in trust for any public purpose unconnected with the poor, as "charity property."

The authorities to which I have referred appear to me to justify the conclusion that whilst in litigated cases there has been no occasion to determine, and therefore no determination of the precise import of the word "charitable" in Scotch law, it has been employed in the legislative language of the Scotch Parliament and of the British Parliament when legislating for Scotland in substantially the same sense in which it has been interpreted by English Courts. It must, therefore, in my opinion, receive that interpretation in the Income Tax Act of 1842.

Whilst I have found these reasons to be sufficient for the disposal of this appeal, I desire to express my entire concurrence in the opinion to be delivered by my noble and learned friends, Lords Herschell and Macnaghten, which I have had ample opportunity of considering in print. I move that the order appealed from be confirmed, and the appeal dismissed with costs.

Lord Bramwell.—My Lords, I agree that the Respondents are entitled to judgment as to one-half of the tax paid. As to the other half I entirely agree in the opinion of the Lord Chancellor, his reasons and conclusions, and the way he has applied his authorities. But I have some observations of my own to make.

The question that remains is whether lands with a trust to apply income for the purpose of "maintaining, supporting, and "advancing the missionary establishment among heathen nations "of the Protestant Episcopal Church known by the name of the "Unitas Fratrum or United Brethren," are "for charitable "purposes" within 5 & 6 Vict. c. 35. s. 61. It is said that they are on two grounds: first, that the natural meaning of the words "charitable purposes," includes such a trust, secondly, that whether it does or not, "charitable purposes" have a technical meaning, and include everything that would have been administered in Chancery under 43 Eliz. c. 4, or which had been administered, as I understand it, by the Court of Chancery, upon the same principle, before the passing of that Act.

It is somewhat remarkable that some of the opinions in favour of the Respondents are so on the first ground, and think the other wrong, whilst others are in their favour on the second ground and not on the first. Some are against them on both, my Lord Chancellor, Lord Coleridge, the Scotch Judges in Baird's case, and I must add myself.

I hold that the conversion of heathens and heathen nations to Christianity or any other religion is not a charitable purpose. That it is benevolent, I admit. The provider of funds for such a purpose doubtless thinks that the conversion will make the converts better and happier during this life, with a better hope hereafter. I daresay this testatrix did so. So did those who provided the faggots and racks which were used as instruments

of conversion in times gone by. I am far from suggesting that the testatrix would have given funds for such a purpose as torture; but if the mere good intent makes the purpose charitable, then I say the intent is the same in the one case as in the other. And I believe in all cases of propagandism there is mixed up a wish for the prevalence of those opinions we entertain, because they are ours.

But what is a "*charitable* purpose?" Whatever definition is given, if it is right as far as it goes, in my opinion, this trust is not within it. I will attempt one. I think a "charitable purpose" is where assistance is given to the bringing up, feeding, clothing, lodging, education of those who, from poverty or comparative poverty, stand in need of such assistance. (*See* per Lord Coleridge, 22 Q.B.D., 801.) That a temporal benefit is meant, being money, or having a money value. This definition is probably insufficient. It very likely would not include some charitable purpose, though I cannot think what, and include some not charitable, though also I cannot think what; but I think it substantially correct, and that no well-founded amendment of it would include the purposes to which this fund is dedicated. Todd's Johnson gives the meaning, "kind in giving "alms, liberal to the poor, kind in judging of others, disposed "to tenderness, benevolent." But of course the word must be construed in the sentence where it is found, and the first meaning alone is applicable, and the question is whether this trust is for charitable purposes within the Income Tax Act. Indeed the word "benevolent" seems to me to have caused the difficulty. The purposes of this trust are doubtless "benevolent"; good was wished to others; but certainly every benevolent purpose is not charitable. I think there is some fund for providing oysters at one of the Inns of Court for the Benchers; this, however benevolent, would hardly be called charitable; so of a trust to provide a band of music on the village green. I cannot quite accept Lord Esher's definition; he says, "allowances are to be "made when the rents and profits are given in trust to be expended in assisting people to something considered by the "donor to be for their benefit." But that would include such cases as I have put, which I do not think his Lordship would consider charitable purposes. He proceeds, and I agree with him, "and which assistance the donor intends shall be given to "people who in his opinion cannot, without such assistance, by "reason of poverty, obtain that benefit." Be it so, but that excludes this trust; there is no poverty contemplated in those who are to be benefited, nor any notion that an addition to their means would procure them that benefit. What of a trust for the conversion of the Jews? Is that a charitable purpose? If so, what of a trust for their re-conversion? It seems to me that the extended meaning of "charitable purposes" would include every case of amusement and pleasure that could be thought of. I cannot think this was the intention of the Legislature. It is suggested that a fund for the saving of shipwrecked sailors would be for a charitable purpose. That is not this case. But would

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it? If so, would jumping into the sea to save a sailor be an act of charity? We say, "He takes a charitable view of its conduct," "kind in judging of others," using the word as equivalent to "benevolent." It is confounding the two words that seems to me to lead to the difficulty. What was the intention, and why the exemption is made in the Act, is of course very much guesswork. But something like a reasonable ground may be suggested in this; that when the gift is of such a character as I have suggested in my definition, to tax the charity is to tax the poor; or take from the poor who would otherwise get the amount of the tax.

It is to be remembered, as has been mentioned, that to exempt any subject of taxation from a tax is to add to the burthen on taxpayers generally, and a very large exemption must be made, if the Respondents are right, for the benefit of so-called charities, many of which are simply mischievous.

On these considerations, I hold that the natural meaning of the words "charitable purposes" excludes one half of the income of these funds.

I now come to the other ground on which the exemption is claimed. It is said that whether or no the natural meaning of "charitable purposes" includes the purposes of this trust, those words have an artificial meaning, or a meaning given by statute or use, and must be interpreted accordingly. The argument, as I understand it, is this: the 43rd Elizabeth, c. 4., is entitled "An Act to redress the misemployment of Lands, Goods, and "Stocks of Money heretofore given to Charitable Uses." It then enumerates a variety of uses or purposes, some of which are not charitable according to any ordinary definition of the word; therefore "charitable uses" in the title means charitable uses, and more than those, benevolent uses, and uses for the public or general good, or that of portions of the public, or of individuals. Then it is said that this interpretation of "charitable uses" has been followed by other statutes, and by decisions from the passing of the statute hitherto, and so "charitable purposes," when those words occur in any statute, must be understood as including whatever would be held to be within the statute of Elizabeth, and that the purposes here would be so held.

I cannot follow this reasoning. It would fall to the ground if the title of the statute had been "charitable *and other benevolent uses*," or some similar expression, as it ought to have been, in strictness. Because, as I have said, I think it is certain that some of the purposes mentioned in the preamble are in no sense charitable. I cannot agree with Lord Justice Fry. It is a strange thing that the title should make things "charitable" which are not so, rather than that the preamble should be understood as going beyond the title, which compendiously and conveniently spoke of charitable uses only. I believe that all that has been done is what I have said, viz., that following decisions and statutes have spoken of cases of "charitable uses," meaning cases within or dealt with as though within the statute of Elizabeth. An example of this will be seen in the Charitable

Trusts Act, section 66, the interpretation clause of which says "charity shall mean every endowed foundation and institution "taking or to take effect in England and Wales, and coming "within the meaning, purview, and interpretation of the statute "of 43 Elizabeth, c. 4, or as to which, or the administration of "the revenues or property thereof, the Court of Chancery has "or may exercise jurisdiction."

I have said that some cases within the 43 Elizabeth could not, according to any reasonable definition of the words, be said to be "charitable purposes." I take, for example, "schools of learning," not limited to the poor; "repair of sea banks," "relief, &c., for houses of correction," which is in aid of rates not paid by the poor. So also a bequest for keeping chimes in repair has been held to be within the statute (*Turner* v. *Ogden*, 1 Cox, 316) perhaps because causing a lessening of church rates if indeed they could have been applied to such a purpose, which I do not know. So also a bequest upon trust to pay, divide, or dispose thereof, for the benefit and advancement of such societies, subscriptions, or purposes, having regard to the glory of God in the spiritual welfare of His creatures (3 Hare, 257) (*Townsend* v. *Carns*, a school for the sons of gentlemen, 1 Sim., 109). Let it not be supposed that I find any fault with courts of equity for calling every trust within the statute of Elizabeth a charity. It was not strictly accurate, but was concise, and saved a circumlocution.

There is a very difficult and embarrassing matter to be considered. Everyone admits, I believe, that the construction of the Income Tax Act ought to be the same in Scotland as in England; but the Scotch Courts say that the natural meaning of the words "charitable purposes" does not include such purposes as these, and that those words have not acquired a technical meaning to that effect. What answer is it to say that by English law it is so called for certain purposes? I do not agree it is so called; but suppose it were, what answer would it be? Suppose the case arose in England, and we were asked to interpret a statute, not according to its ordinary meaning, but according to some mode of expression used in Scotland? On the other hand, your Lordships have the advice of my noble and learned friend, Lord Watson, who says the words ought to be interpreted in favour of the Respondent in Scotland. I cannot think so. Lord Justice Fry says the words are technical, and should be interpreted in Scotland as in England. I cannot see why Lord Esher and Lord Justice Lopes do not agree. I do not know that they have a right to express an opinion on Scotch law, though we must. It seems to me that the argument shows that that has happened in Scotland which has happened in England, viz., that everything charitable, godly, pious, came to be compendiously called "charitable." I think this appears from the instances cited by my noble and learned friend, Lord Watson. Take the case of *The University of Aberdeen* v. *Irvine*, where "a trust for college bursars who did not necessarily belong to the class of indigent persons," was dealt with

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as charity. It was benevolent, doubtless, but not charitable. I think the judgment of this should be reversed.

Lord Herschell.—My Lords, two points were made on behalf of the Appellants, the Commissioners of Income Tax, at your Lordships' Bar. It was said, first, that the Respondent was not entitled to the allowance which he claimed under section 61 of the Income Tax Act; and it was next contended that even if entitled to that allowance, mandamus was not the proper remedy for a refusal to grant it.

At the close of the arguments on behalf of the Appellants, all your Lordships were of opinion that the latter point had not been made good. I confess it appears to me very clearly to be a case for a mandamus if the Commissioners have wrongly refused to grant the allowance and to give the certificate provided for by the statute. The duty of granting the allowance in certain specified cases is imposed upon the Commissioners by the statute in unequivocal terms, and no reason was assigned why the ordinary remedy by mandamus was inapplicable in the case of a breach of this statutory duty, except the suggestion that the Respondents should have proceeded by Petition of Right. The case of *Re Nathan* (18 Queen's Bench Division, 461) was relied on in support of this position. But that was a very different case. It was sought by that proceeding to compel the Commissioners of Inland Revenue to make payment of a certain sum of money to the Applicant for the mandamus; and it was held that for such a purpose recourse must be had to a Petition of Right. Here the Applicant does not ask that the Appellants should be commanded to make any payment. He seeks only that they should be compelled to grant an allowance and certificate which it is necessary for him to obtain before he is in a position to require payment of the sum which it is no doubt his ultimate object to recover. Until he obtains this allowance and certificate he is not in a position to maintain a Petition of Right.

The main, and indeed the only, question arising on this appeal, apart from the objection to the form of procedure with which I have already dealt, is to my mind one of very considerable difficulty. The Income Tax Act provides that allowances shall be granted by the Commissioners "on the rents and profits "of land, tenements, hereditaments, or heritages belonging to "any hospital, public school, or almshouse, or vested in trustees "for charitable purposes, so far as the same are applied to chari-"table purposes." The question in controversy is, what is the scope of the term "charitable purposes" in this enactment? The Respondent is the Treasurer of the Church of the United Brethren, commonly called Moravians. He claimed an allowance in respect of certain lands vested in trustees for objects connected with that community. Two fourths of the rent of these lands are by the trust deed directed to be applied to objects of an eleemosynary and educational character, which were admitted by the Appellants at your Lordships' Bar to be "charitable purposes" within the statute. It is only necessary therefore to

consider the application of the remaining moiety. The trust is in these terms: "As to two equal fourth parts thereof for the "general purposes of maintaining, supporting, and advancing "the missionary establishments among heathen nations of the "Protestant Episcopal Church, known by the name of Unitas "Fratrum, or United Brethren." The question at issue may be shortly stated thus: Are lands which are vested in trustees for the purpose of maintaining and advancing missions among the heathen vested in them for "charitable purposes" within the meaning of the statute? This is all that your Lordships have to determine, but it is impossible to determine it without arriving at a conclusion as to the construction to be put upon the words "charitable purposes" in the statute with which we are concerned. The question is consequently one of far-reaching importance.

It is said by the Respondents that the expression "trust for charitable purposes" is well known to the law of this country, and has acquired, by a current of decisions in the Court of Chancery, a clearly-defined meaning which has been recognised and adopted by the Legislature in numerous enactments, and that the same meaning ought to be attributed to it in the Income Tax Act. There can be no doubt that the words in question have, in the law of England and of Ireland also, the well-defined meaning alleged. And if the Income Tax Acts applied to England and Ireland alone, I do not think there could be any ground for hesitation in adopting the construction contended for, and interpreting the words in the sense in which they have been again and again employed by the Legislature.

But it is said on behalf of the Appellants that the Income Tax Acts extend to Scotland also, and that the suggested construction is on that account inadmissible, inasmuch as the words "charitable purposes" have, in Scotland, a much more limited meaning. The exemption, it is said, must have been intended to be co-extensive in the three countries; and, therefore, a meaning of the words must be sought for which obtains in all. If the words had a technical meaning in Scotland different from that prevailing in this country, I think the argument would be irresistible, and I should feel a difficulty in resisting it, if they had a well-defined and recognised meaning, even though it were a popular and not a technical one.

The construction to be put upon the enactment under consideration came before the Court of Session in the case of *The Trustees of the Baird Trust* v. *The Lord Advocate*. The learned Judges were of opinion that the words "charitable purposes" must be read in their popular signification, and could not have the comprehensive meaning attached to them in the English law. The Lord President said, "Charity is the relief of poverty, and a "charitable act or a charitable purpose consists in relieving "poverty; whatever goes beyond that is not within the meaning "of the word 'charity' as it occurs in this statute." Lord Shand took the same view, but apparently limited the application of the term to the relief of physical necessities resulting from

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poverty. He said: "I think the term 'charitable purposes "only,' used in a modern statute, in the absence of any words "indicating that a wider meaning is intended, is to be taken in "its ordinary sense, as referring to funds given for the relief or "pecuniary assistance of persons in poverty. I think it relates "to funds dedicated to the relief of physical necessity or want, "to funds given as alms, or as a provision for the relief of per-"sons from physical privation or suffering arising from poverty."

I am unable to agree with the view that the sense in which "charities" and "charitable purpose" are popularly used is so restricted as this. I certainly cannot think that they are limited to the relief of wants occasioned by lack of pecuniary means. Many examples may, I think, be given of endowments for the relief of human necessities which would be as generally termed charities as hospitals or almshouses, where, nevertheless, the necessities to be relieved do not result from poverty in its limited sense of the lack of money. Take, for example, an institution for saving the lives of shipwrecked mariners. Its object is to render assistance to those in dire want of it, to meet a form of human need which appeals to the benevolent feelings of mankind, but not one which has its origin in the lack of money. Nevertheless, I do not believe that anyone would hesitate to call it a charity, or to say that money expended in rescuing drowning men was applied to a charitable purpose. Or again, what of a society founded for the protection of children of tender years from cruelty? Would not this be commonly described as a charitable purpose? And yet it is not pecuniary destitution that creates the necessity which such a society is designed to relieve. It is the helplessness of those who are the objects of its care which evokes the assistance of the benevolent. I think, then, that the popular conception of a charitable purpose covers the relief of any form of necessity, destitution, or helplessness which excites the compassion or sympathy of men, and so appeals to their benevolence for relief.

Nor am I prepared to say that the relief of what is often termed spiritual destitution or need is excluded from this conception of charity. On the contrary, no insignificant portion of the community consider what are termed spiritual necessities as not less imperatively calling for relief, and regard the relief of them not less as a charitable purpose than the ministering to physical needs; and I do not believe that the application of the word "charity" to the former of these purposes is confined to those who entertain the view which I have just indicated. It is, I think, constantly and generally used in the same sense quite irrespective of any belief or disbelief in the advantage or expediency of the expenditure of money on those objects. It is a mistake to suppose that men limit their use of the word "charity" to those forms of benevolent assistance which they deem to be wise, expedient, and for the public good. There is no common consent in this country as to the kind of assistance which it is to the public advantage that men should render to their fellows, or as to the relative importance of the

different forms which this assistance takes. There are some who hold that even hospitals and almshouses which are specially mentioned by the Legislature discourage thrift, and do, upon the whole, harm rather than good. This may be an extreme view entertained by a few, but there are many who are strongly convinced that doles and other forms of beneficence, which must undoubtedly be included, however narrow the definition given to the term "charitable purposes" are contrary to the public interest; that they tend to pauperise and thus to perpetuate the evil they are intended to cure, and ought to be discouraged rather than stimulated. It is common enough to hear it said of a particular form of almsgiving that it is no real charity, or even that it is a mischievous form of charity. I think then that a purpose may be regarded by common understanding as a charitable purpose, and so described in popular phraseology, even though opinions differ widely as to its expediency or utility.

The truth is that the word "charity" has no sharply defined popular meaning. It is used at different times in varying senses, broader or narrower. Sometimes, no doubt, it is employed in the limited sense adopted by the Court of Session, but at others it serves to embrace all expenditure which motives of benevolence induce men to make for the benefit of their fellows.

If, then, one were driven to interpret the words under construction according to their proper signification, I think the proper course would be to prefer the broadest sense in which they are employed, and that such an interpretation would embrace the case with which your Lordships have to deal. But an examination of the statutes referred to by my noble and learned friend, Lord Watson, has satisfied me that in the language of Scotch legislation, they have been employed in a sense practically co-extensive with that attributed to them by the law of England, and there are, so far as I know, no decisions of the Courts of Scotland prior to the case of Baird's Trustees, which have put a narrower interpretation on them.

Under these circumstances, I think the proper course is to interpret the words in the Income Tax Act in the sense in which they have been used alike in the law of both countries.

I ought, perhaps, to notice the argument presented to your Lordships, that some more limited meaning of these words is suggested by the provisions in connexion with which they are found. and the specific exceptions contained in the statute. I think that an argument derived from the specific mention of certain subjects in the exemptions found in a Taxing Act is of little weight. Such specific exemptions are often introduced *ex majori cautelâ* to quiet the fears of those whose interests are engaged or sympathies aroused in favour of some particular institution and who are apprehensive that it may not be held to fall within a general exemption.

I concur in thinking that the judgment appealed from ought to be affirmed.

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Lord Macnaghten.—My Lords, the circumstances which have given rise to the present question are peculiar. The question itself is important, but it does not, I think, involve serious difficulty.

Income Tax Acts have been in force in this country without any intermission since 1842, and, with one long interval, ever since the close of the last century. Every Act has contained an exemption in favour of property dedicated to charitable purposes. What are charitable purposes within the meaning of these Acts the Legislature has nowhere defined. But from the very first it was assumed, as a matter not open to controversy, that the exemption applied to all trusts known to the law of England as charitable uses or trusts for charitable purposes. On that principle, without inequality and apparently without difficulty, the law was administered in England and Scotland, and afterwards when the tax extended to Ireland, throughout the United Kingdom. At length, about three or four years ago, the Board of Inland Revenue discovered that the meaning of the Legislature was not to be ascertained from the legal definition of the expressions actually found in the statute, but to be gathered from the popular use of the word "charity." Proceeding on this view, they refused remissions in cases in which the remission had been claimed and allowed as a matter of right for more than forty years continuously.

The action of the Board was confirmed in Scotland by the Court of Session in the case of "*Baird's Trustees* v. *Lord Advocate.*" There it was held that "in ordinary, familiar, and popular use" charity had only one sense, the relief of poverty, and that the exemption related to funds given as alms, or as a provision for the relief of persons from physical privations or sufferings arising from poverty, and that it went no further. The opinion of the Court was based on a proposition which I will state in the words of the Lord President: "It appears to me," his Lordship observed, "that in the construction of Taxing Acts the Court "must always take it for granted, where these Acts apply to "the whole United Kingdom, that the words used by the Legis- "lature are used in their popular and ordinary signification, "and are not technical legal terms belonging to one system of "jurisprudence which may exist in one part of the United "Kingdom and not in another. The occurrence of such techni- "cal terms as these in a Taxing Act would have the most dis- "turbing and confusing effect, and it would be very difficult "indeed to administer such a statute as applicable to the whole "United Kingdom. And, accordingly, we always find in these "Taxing Acts that the words used are words of ordinary mean- "ing, which are understood by everybody, whether in England, "Scotland, or Ireland, in the same sense."

In deciding the present case the Divisional Court (Lord Chief Justice Coleridge, Mr. Justice Grantham dissenting) followed and approved the reasoning of the Court of Session. The decision was reversed on appeal, but the majority of the Court of

Appeal agreed with the Lord Chief Justice so far as to hold that the legal meaning of the words in question must be rejected in favour of their popular signification. They thought, however, that the Lord Chief Justice had taken too narrow a view, Lord Esher, Master of the Rolls, with whom Lord Justice Lopes concurred, by way of giving an explanation of practical use, paraphrased the enactment as follows: "Allowances are to be made "in respect of the duties on the rents and profits of lands, tene- "ments, hereditaments, or heritages vested in trustees when the "rents and profits are given in trust to be expended in assist- "ing people to something considered by the donor to be for "their benefit, and which assistance the donor intends shall be "given to people who, in his opinion, cannot, without such as- "sistance, by reason of poverty, obtain that benefit, and where "the intention of the donor is to assist such poverty as the "substantial cause of his gift." Lord Justice Fry, differing from the Court of Session, considered that the expression "charitable purposes" had acquired a technical meaning in Scotland as it undoubtedly had in England and Ireland, and that consequently he was bound to adopt that meaning.

In the course of the argument at your Lordships' Bar, the learned Counsel for the Crown admitted that the construction adopted by the Court of Session and the Lord Chief Justice was too narrow, but they insisted the words must be construed in some popular sense, and, without attempting any definition they contended that the expression "charitable purposes" in its ordinary acceptation among persons of education would not include the purpose of converting the heathen.

In this state of perplexity the question remains for your Lordships to decide. It will be convenient, I think, in the first place, to deal with the more important considerations which seem to have weighed with the Courts below in approaching the subject. Foremost of all is the very broad proposition on which the decision of the Court of Session rests, and which has been adopted rather hastily, I think, by the Lord Chief Justice and the majority of the Court of Appeal. Is it true, as a matter of fact, that we always find in these Taxing Acts that the words used are words of ordinary meaning, understood by everybody in the three kingdoms in the same sense, and not technical legal terms in use in one part of the United Kingdom? I could wish it were so. But we are not living in Utopia, where a perfect or ideal lawgiver may be had very readily. The Income Tax Acts themselves form an instructive commentary on the proposition of the Lord President. In the earliest Income Tax Act, the Act of 1799, except when it deals with Commissioners for districts in Scotland, the language is the language of an English lawyer. So little attention was paid to the legal phraseology of Scotland, that the word "heritages" does not, I think, occur in the Act. The term used to denote real property is the expression "lands, "tenements and hereditaments."

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In the Acts of 1803 and 1806, the word "heritages" is introduced, but it will not be found inserted in all places where it seems to be required. Even in the Act of 1806 you will find the words "hereditaments" and "messuages," words, I should suppose, not of ordinary meaning in Scotland nor familiar in their English sense to Scotch lawyers used as applicable to all parts of Great Britain.

Another example, not without some bearing on the present question, is presented by the Succession Duty Act, 1853. That is a Taxing Act. It extends to the three kingdoms. No statute was ever drawn with more care, studiously and with great skill, it avoids technical expressions wherever they would be likely to create confusion. Yet there we find the very word "charity," which has given rise to all this argument, used in its technical sense according to English Law, and applied to property belonging to charitable or public trust in Scotland as well as to property dedicated to charitable purposes in England. In section 16 the Act provides for the case of "a succession to property subject to a trust for any charitable or public purposes," and it goes on to give the trustee of any such property who is made responsible for the duty and a debtor to the Crown, in the event of non-payment, power to raise the duty. How is it to be raised? All the Act says is, "upon the security of the charity property."

Again, I ask, is the Lord President correct in saying that in construing a Taxing Act extending to the whole of the United Kingdom, the Court must always take it for granted "that the "words used by the Legislature are used in their popular signi-"fication." I can find no authority for such a proposition. There is, indeed, a passage in the judgment of Lord Campbell in *Lord Saltoun* v. *Lord Advocate* (Macq., 659) which at first sight looks like an authority, and is so treated in the rubric. In reality, it has no bearing upon the point. The case was this: Lord Saltoun, under an entail created by his grandmother, succeeded to a settled property on the death of his uncle without heirs male of his body. What was the rate of duty? Was it three per cent., as on a succession from an uncle, or one per cent., as on a succession from a lineal ancestor? This House, differing from the Court of Session, took the latter view, and Lord Campbell began his judgment with these observations: "In construing "the statute on which the case depends, we must bear in mind "that it applies to the whole of the United Kingdom, and that "the intention of the Legislature must be understood to be that "the like interests in property taken by succession should be "subjected to the like duties, wheresoever the property may be "situated. The technicalities of the laws of England and of "Scotland, where they differ, must be disregarded, and the "language of the Legislature must be taken in its popular "sense." The technicalities to be disregarded were not technical expressions in the Act, but, as Lord Wensleydale I think very clearly points out, the technicalities of the law of real property

outside the Act altogether. In the Act itself, so far as it came under consideration in that case, there were no technical expressions belonging to the law of either country. But outside the Act there was the technical rule of Scotch law, by which each succeeding substitute takes the whole fee, and must be served heir to the preceding owner.

Since these remarks have been in print I have had the advantage of reading the criticism passed upon them by my noble and learned friend on the woolsack. I must say, I am rather surprised to learn that in Lord Saltoun's case "the word which "was in debate was 'predecessor';" that "the turning point of the case" was the question "whether that word was to receive its "meaning according to technical application in Scotch law or "its more popular meaning," and moreover that "it was with "reference to that word 'predecessor' that Lord Campbell's "observations were made." It is no concern of mine to defend Lord Campbell. For aught I know, he may have supposed that the term "predecessor" was a technical expression with Scotch lawyers. But even so, why should it be assumed that he thought its meaning open to debate in Lord Saltoun's case? The very Act before him defined the term "predecessor." The definition seems somewhat remote from the popular meaning of the word, and not less remote from any technical application of it that can be imagined. I am very sorry to differ from my noble and learned friend. I may be wrong. But I cannot help thinking that when you find a special meaning assigned to a particular word in an Act of Parliament, you must abide by that meaning in construing the Act. You cannot add to it or take away from it, nor can you substitute anything else for it. And therefore, with the utmost respect, I venture to doubt whether it would have been permissible in Lord Saltoun's case to have discussed the comparative merits of other meanings which the Act had not adopted. And certainly I have some difficulty in understanding how such a discussion, if permitted, could have presented or involved the turning point of the case.

It seems to me that statutes which apply to Scotland as well as to England, and which touch upon matters commonly dealt with in legal language, may be divided into three classes. Sometimes, but very rarely, all legal terms are carefully avoided, as in the Succession Duty Act. Sometimes in very recent statutes, as in the Bills of Exchange Act and the Partnership Act, every legal term according to English law is immediately followed by its equivalent in Scotch legal phraseology, and where no exact equivalent is to be found a neutral and non-legal expression is adopted. But in some cases certainly, and especially in the legislation of former days, the statute proclaims its origin and speaks the language of an English lawyer, with some Scotch legal phrases thrown in rather casually. The Income Tax Acts, I think fall within this class, though no doubt the Act of 1842 is less conspicuously English than its predecessors. How are you to approach the construction of such statutes? We

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are not, I think, quite without a guide. It seems to me that there is much good sense in what Lord Hardwicke says in his well-known letter to an eminent Scotch Judge. Incidentally he happens to deal with the very point. He observes that where there are two countries with different systems of jurisprudence under one Legislature the expressions in statutes applying to both are almost always taken from the language or style of one and do not harmonise equally with the genius or terms of both systems of law. That was perhaps rather a delicate way of stating the case, but one must remember to whom Lord Hardwicke was writing, and his meaning is perfectly clear. Then he explains how these statutes ought to be expounded. You must, he says, as in other sciences, reason by analogy; that is, as I understand it, you must take the meanings of legal expressions from the law of the country to which they properly belong, and in any case arising in the sister country you must apply the statute in an analogous or corresponding sense, so as to make the operation and effect of the statute the same in both countries. Thus you get what Lord Hardwicke calls "a consistent sensible construction."

A simpler plan is now recommended. Though the words have a definite legal meaning in England, you must not, it is now said, look at that meaning unless it be in vogue north of the Tweed. You must put out the light you have, unless it penetrates directly to the farthest part of the room. That was not Lord Hardwicke's view. He seems to have thought reflected light better than none.

In constructing Acts of Parliament it is a general rule, not without authority in this House (*Stephenson* v. *Higginson*, 3 H. L. C., 686), that words must be taken in their legal sense unless a contrary intention appears. Is a contrary intention shown merely by the circumstances that the legal meaning of the words used belongs more properly, or even exclusively, to the jurisprudence of one part of Great Britain? Agreeing with Lord Hardwicke rather than with the Court of Session, I am disposed to answer that question in the negative.

That, according to the law of England, a technical meaning is attached to the word "charity," and to the word "charitable" in such expressions as "charitable uses," "charitable trusts," or "charitable purposes," cannot, I think, be denied. The Court of Chancery has always regarded with peculiar favour those trusts of a public nature which, according to the doctrine of the Court derived from the piety of early times, are considered to be charitable. Charitable uses or trusts form a distinct head of equity. Their distinctive position is made the more conspicuous by the circumstance that owing to their nature they are not obnoxious to the rule against perpetuities, while a gift in perpetuity, not being a charity, is void.

Whatever may have been the foundation of the jurisdiction of the Court over this class of trusts, and whatever may have been the origin of the title by which these trusts are still known, no one, I think, who takes the trouble to investigate the question

can doubt that the title was recognised, and the jurisdiction established before the Act of 43 Elizabeth, and quite independently of that Act. The object of that statute was merely to provide new machinery for the reformation of abuses in regard to charities. But by a singular construction, it was held to authorise certain gifts to charity which otherwise would have been void. And it contained in the preamble a list of charities so varied and comprehensive, that it became the practice of the Court to refer to it as a sort of index or chart. At the same time, it has never been forgotten that the "objects there enumerated," as Lord Chancellor Cranworth observes (1 D. and J. 79), "are not to be taken as the only objects of charity, but are "given as instances."

Courts of law, of course, had nothing to do with the administration of trusts. Originally, therefore, they were not concerned with charities at all. But after the passing of the Act 9 George II., commonly known as the Statute of Mortmain, which avoided in certain cases gifts to "uses called charitable uses," alienations and dispositions to charitable uses, sometimes came under the cognizance of courts of law, and those courts, as they were bound to do, construed the words "charitable uses," in the sense recognised in the Court of Chancery, and in the statute of Elizabeth, as their proper meaning. I have dwelt for a moment on this point because it seems to me that there is a disposition to treat the technical meaning of the term "charity," rather as the idiom of a particular court, then as the language of the law of England; and yet of all words in the English language bearing a popular as well as a legal signification, I am not sure that there is one which more unmistakably has a technical meaning in the strictest sense of the term, that is, a meaning clear and distinct peculiar to the law as understood and administered in this country, and not depending upon or coterminous with the popular or vulgar use of the word.

In Ireland, though neither the statute of Elizabeth nor the so-called Statute of Mortmain extended to that country, the legal and technical meaning of the term "charity" is precisely the same as it is in England. As regards the law of Scotland, the case is somewhat different. I think that Lord Justice Fry, with whose very able judgment in other respects I concur, has gone rather too far in saying that the word "charity" has the same technical meaning in Scotland which it has in England. On the other hand, it seems to me that in the case of Baird's Trustees, the Court of Session has erred more seriously in the opposite direction.

To borrow the words of Lord Chelmsford (*Magistrates of Dundee* v. *Morris*, 3 Macq., 154), "I cannot discover that there "is any great dissimilarity between the law of Scotland, and "the law of England with respect to charities," and the result of such researches as I have been able to make is, that in the Scotch Act to which Mr. Crackanthorpe referred, the Act of 1633 in some statutes extending to Scotland, as in 2 and 3 Will. IV. c. 115, a Roman Catholic Relief Act and the Succession

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Duty Act, 1853, to which I have already referred in some opinions delivered by Scotch Judges in Scotland, as in the case of *Ferguson* v. *Marjoribanks* (13 Sess. Cases, 2nd Series, 537), and not unfrequently in this House, sitting as a Court of Scotch Appeal, as in the *University of Aberdeen* v. *Irvine* (1. Sc. and Div. App., 289), and *Andrews* v. *McGuffog* (11 Ap. C., 313) the words "charity," and "charitable," are used sometimes in the sense which they bear in English law, sometimes in a sense hardly distinguishable from it. If this conclusion is right, although the expression "charitable purposes" may not have acquired a technical meaning, properly so called in the law of Scotland, I cannot see that the use of the expression in a general Act, as a legal term without the addition of its equivalent according to Scotch law (if any such equivalent could be found) would of itself, and apart from other circumstances, either create surprise, or lead to any practical difficulty.

No doubt the popular meaning of the words "charity" and "charitable" does not coincide with their legal meaning, and no doubt it is easy enough to collect from the books a few decisions which seem to push the doctrine of the Court to the extreme, and to present a contrast between the two meanings in an aspect almost ludicrous. But still it is difficult to fix the point of divergence, and no one has as yet succeeded in defining the popular meaning of the word "charity." The learned counsel for the Crown did not attempt the task. Even the paraphrase of the Master of the Rolls is not quite satisfactory. It would extend to every gift which the donor, with or without reason, might happen to think beneficial for the recipient, and to which he might be moved by the consideration that it was beyond the means of the object of his bounty to procure it for himself. That seems to me much too wide. If I may say so without offence, under conceivable circumstances it might cover a trip to the Continent or a box at the opera. But how does it save Moravian missions? The Moravians are peculiarly zealous in missionary work. It is one of their distinguishing tenets. I think they would be surprised to learn that the substantial cause of their missionary zeal was an intention to assist the poverty of heathen tribes. How far then, it may be asked, does the popular meaning of the word "charity" correspond with its legal meaning? "Charity" in its legal sense comprises four principal divisions: trusts for the relief of poverty, trusts for the advancement of education, trusts for the advancement of religion, and trusts for other purposes benficial to the community not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law because incidentally they benefit the rich as well as the poor, as indeed every charity that deserves the name must do, either directly or indirectly. It seems to me that a person of education, at any rate if he were speaking as the Act is speaking with reference to endowed charities, would include in the category educational and religious charities as well as charities for the relief of the poor. Roughly speaking, I think

he would exclude the fourth division. Even there it is difficult to draw the line. A layman would probably be amused if he were told that a gift to the Chancellor of the Exchequer for the benefit of the nation was a charity. Many people, I think, would consider a gift for the support of a lifeboat a charitable gift, though its object is not the advancement of religion or the advancement of education or the relief of the poor. And even a layman might take the same favourable view of the gratuitous supply of pure water for the benefit of a crowded neighbourhood. But after all this is a rather academical discussion. If a gentleman of education, without legal training, were asked what is the meaning of "a trust for charitable purposes," I think he would most probably reply, "That sounds like a legal phrase; you had better ask a lawyer."

Having attempted to clear the ground so far, I come to the words of the enactment on which the question before the House depends. They are to be found in the Income Tax Act of 1842. By the 61st section of that Act it is provided that, under Schedule A., certain allowances are to be made for the duties charged on colleges or halls in the Universities, and on any hospital, public school, or almshouse in respect of their public buildings, offices, and premises. The allowances are to be granted by the Commissioners for General Purposes in their respective districts.

Then allowances are to be made "on the rents and profits of "lands, tenements, hereditaments, or heritages belonging to any "hospital, public school, or almshouse, or vested in trustees for "charitable purposes, so far as the same are applied to charitable "purposes." These allowances are in the hands of quite a different body. They are to be granted "on proof before the "Commissioners for Special Purposes of the due application of "the said rents and profits to charitable purposes only, and in so "far as the same shall be applied to charitable purposes only." They are "to be claimed and proved by any steward, agent, or "factor acting for such school, hospital, or almshouse, or other "trust for charitable purposes, or by any trustee of the same by "affidavit . . . stating the amount of the duties chargeable, "and the application thereof," and are to be carried into effect by the Special Commissioners without altering the assessments which are to be levied notwithstanding such allowances.

By the 88th section it is provided with respect to Schedule C., that exemption shall be given to "the stock or dividend of any "corporation, fraternity, or society of persons, or of any trust "established for charitable purposes only, or which, according to "the rules or regulations established by Act of Parliament, "charter, decree, deed of trust, or will, shall be applicable by "the said corporation, fraternity, or society, or by any trustee to "charitable purposes only, and in so far as the same shall be "applied to charitable purposes only, or the stock or dividends in "the names of any trustees applicable solely to the repairs of "any cathedral, college, church, or chapel, or any building used "solely for the purpose of divine worship, and in so far as the

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"same shall be applied to such purposes, provided the applica-"tion thereof to such purposes shall be duly proved before the "said Commissioners for Special Purposes by any agent or "factor on the behalf of any such corporation, fraternity, or "society, or by any of the members or trustees."

Section 98 contains directions as to the manner in which these claims of exemption are to be made and carried into effect.

Section 105 provides, by reference to the provisions of Schedule C., for similar exemptions under Schedule D. in the case of "any corporation, fraternity, or society of persons and "any trustee for charitable purposes only."

In the case of the British Museum, section 149 provides for the like allowances under Schedule A. "as are granted to col-"leges and other properties mentioned in No. VI. of that sche-"dule," and the like exemptions in respect of any dividends of stock "as are granted to charitable institutions in the Act."

Section 188 enacts that every provision applied to the duties in any particular schedule which is also applicable to the duties in any other schedule, and not repugnant to its provisions, shall be applied as fully and effectually as if the application thereof had been expressly directed. I do not think it necessary to refer to any other provisions in the statute.

What is the meaning of the expression "charitable purposes," as used in the Act of 1842? In order to determine that question, it is necessary, I think, to consider what the Act is speaking about, and whom it is speaking to. It does not help one much to take the word "charity" nakedly and in the abstract, and then to turn to dictionaries for its meaning. It is said that the most common signification of "charity" is conveyed by the word "alms." So it is when that meaning fits the context or the occasion. Perhaps by way of illustrating my meaning, I may be permitted to refer to a passage in the writings of one of the most popular authors of the last century, where a striking contrast is drawn between charity in its vulgar sense, and a gift for purposes which the law of England, rightly or wrongly—wrongly as some think—considers charitable. In one of his essays Goldsmith tells the story of a French priest at Rheims, so miserly in his habits, that he went by the name of "The Griper." Working incessantly in his vineyard, steadily refusing to relieve distress, he managed to save a large sum of money. Then the writer adds: "This good man had "long perceived the wants of the poor in the city, particularly "in having no water but what they were obliged to buy at an "advanced price: wherefore, that whole fortune which he had "been amassing he laid out in an aqueduct, by which he did "the poor more useful and lasting service than if he had dis-"tributed his whole income in charity every day at his door." No one can misunderstand the meaning of the word there. But the Act of 1842 has nothing to do with casual almsgiving or charity of that sort. Nor indeed has it anything to do with charity which is not protected by a trust of a permanent

character. The provisions of the Act which your Lordships have to consider are concerned with the revenues of established institutions, the income of charitable endowments. Such endowments, as I have already pointed out, form, according to English law, a distinct class of trusts, standing by themselves and owing their validity in each case, if the trust is a perpetuity, to the fact that the purposes are charitable in the eye of the law.

Then I ask, to whom is the Act speaking? In one sense, no doubt, it is speaking to all concerned. But it is addressed, I think, specially to that body under whose "cognisance and jurisdiction," to use the words of the Act, these particular allowances and exemptions are placed. All applications for these allowances and exemptions are to be made, not to the general Commissioners in their respective districts, but to the Special Commissioners and "at the head office for stamps and taxes in England." This is an express direction with reference to exemptions under Schedule C., and having regard to section 188 the same rule must hold good in all cases. So that in no case can the question come before any board or any commissioners in Scotland. Practically the Special Commissioners are identical with the Board of Inland Revenue, who now represent the Commissioners of Stamps and Taxes named in the Act of 1842. How are the authorities at Somerset House to determine what constitutes a trust for charitable purposes? The majority of the Court of Appeal tell them they must be guided by the popular meaning of "charity," and that "each individual case must be "decided on its own facts." There is certainly no indication in the Act that such a hopeless task as that was laid on the Special Commissioners. They have to satisfy themselves that the income in respect of which exemption is claimed is applied solely to charitable purposes, and they are told how that is to be proved. But the question, charity or no charity, if you accept the contention of the Respondent, is determined for them by the law of the country in which they sit to exercise their jurisdiction. In the case of Baird's Trustees, the Lord President observed that such a construction "would have a most disturbing and confus-"ing effect." With the utmost deference, it seems to me the only way to ensure uniformity in the administration of the Act.

On these grounds I have come to the conclusion that the expression "trusts for charitable purposes in the Act of 1842, and other expressions in the Act in which the word "charitable" occurs, must be construed in their technical meaning according to English law.

Although I rest my opinion on these broad grounds, it is, I think, satisfactory to find that every consideration to which the case has given rise, if examined closely, confirms this view, and that there is no indication in the Act pointing in the opposite direction. In the first place, it is plain, on the very words of Schedule A., that the Legislature considered the purposes of a public school to be charitable, and a public school to be a trust

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for charitable purposes, just as much as an almshouse or a hospital. This seems to me to be enough to displace the narrow view of the Court of Session.

Then, as Lord Justice Fry points out, every expression in the first provision which I have read from Schedule A. is a legal expression. But the argument may be carried further. Turn to the parallel passage in the Act of 1806, from which the Act of 1842 is copied. There the words are, "on the rents and profits "of messuages, lands, tenements, or hereditaments belonging to "any hospital, public school, or almshouse, or vested in trustees "for charitable purposes, so far as the same are applied to "charitable purposes." In that passage every expression is a legal expression, and what is more to the purpose, a legal expression according to English law. There is no trace of Scotch legal phraseology there. I am not sure that the omission of the word "messuages" and the introduction of the word "heritages" may not have had something to do with creating the difficulty which your Lordships have now to solve. It seems to me, too, that the expressions in Schedule C., "decree, deed of trust, or will," more properly belong to English legal phraseology than to Scotch. "Deed of trust" indeed is common to the legal language of both countries. But the word "decree," I think, points primarily to the decrees of the Court of Chancery, by which no small proportion of the charities in this kingdom have been established, and I rather doubt whether the word "will" would have been used there as it is if due attention had been paid to the language of Scotch lawyers.

There was an argument which appears to have had great weight with one of the learned Judges in the Court of Session, to which I cannot attach much importance. That learned Judge points out that in Schedule C. there is a special exemption in favour of funds dedicated to the repair of cathedrals, colleges, churches, and places of worship. From that he infers that such purposes are not charitable within the meaning of the Act, and so "without going outside of Schedule C.," he finds a construction conclusive, as he thinks, in favour of the claim of the Crown. But, my lords, in construing any document, it is not well to confine your attention to an isolated passage. It seems to me to be necessary to go outside of Schedule C. in order to understand the Act. If you turn to Schedule A. and to Schedule D. you will observe that these special exemptions are not to be found in either. So that if that learned Judge is right, we have this singular result: If property devoted to these special purposes is in land income tax attaches. If the land is taken by a railway company and there is an interim investment in Consols, or if the property is in any Government funds, home, foreign, or colonial, it is exempt, in any other form of investment it is subject to income tax. Why should a premium be offered for the investment of money intended for church repairs in the funds of foreign or colonial governments? A construction which leads to a result so whimsical ought not, think, to be adopted without good reason. It is not so very

uncommon in an Act of Parliament to find special exemptions which are already covered by a general exemption. Nor is surplusage or even tautology wholly unknown in the language of the Legislature. On the other hand, if the legal meaning of the expression "charitable purposes" be adopted, there may be a superfluous expression here or there, but the Act will be consistent throughout.

No argument can, I think, be founded on the special exemption of the British Museum. The clause relating to the Museum, which is also to be found in the Act of 1806, is obviously out of its place, and was probably introduced at the instance of the trustees of the Museum. It was necessary as regards the buildings and premises in the actual occupation of the Museum chargeable under Schedule A., and that being so it was natural, and not, I think, improper, that the exemptions to which the Museum would be entitled as a charitable institution, under Schedule C., should be also specially mentioned.

A strong confirmation of the view which I am presenting to your Lordships is, I think, furnished by the Income Tax section of the Charitable Trusts Amendment Act, 1855. The Charitable Trusts Act, 1853, which established the Charity Commission, provided for the transfer of charitable funds to official trustees, of whom the Secretary to the Commission was one. It appears from a Parliamentary paper ("Charities," 1865), which contains a correspondence between the Board of Inland Revenue as Special Commissioners of Income Tax and the Treasury, on the subject of income tax on charities, that it was the practice of the Board to give exemption to all stock standing in the names of the Official Trustees of Charitable Funds without further inquiry. This practice was confirmed; and the principle was carried still further by the Charitable Trusts Amendment Act, 1855, which enacts (section 28) that "all dividends arising from any stock in the public funds stand-"ing in the names of the Official Trustees of Charitable Funds "and which shall be certified by the Board" (that is, the Charity Commissioners) "to the Governor and Company of the Bank "of England to be exempt from the property or income tax "shall be paid or carried to the banking account of the Official "Trustees without any deduction of such tax, and all dividends "arising from any stock in the public funds standing in any "other names or name, and which the Board shall certify to the "Governor and Company of the Bank of England to be subject "only to charitable trusts, and to be exempt from such tax "shall be paid without any deduction thereof." By virtue of this enactment the income of a large proportion of the funds devoted to charity in this country, exceeding in amount for the year 1865 one million and a half, and now probably much larger, was entirely withdrawn from the cognizance and jurisdiction of the Board of Inland Revenue. Thenceforth, for the purposes of the Income Tax Acts, as well as for the purposes of administration, that income has been under the jurisdiction of a body bound by law to construe the expression "charitable

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trusts" according to its legal meaning, and to give certificates of exemption in accordance with that construction. The obligation is clear. The Charitable Trusts Amendment Act, 1855, is to be construed as one Act with the Charitable Trust Act, 1853, and the Act of 1853 contains a definition of "charity" by reference to the Act of Elizabeth and the practice of the Court of Chancery. I may add that section 28 of the Act of 1855 has always formed part of the Income Tax Code whenever the tax has been re-imposed, carrying with it into the Code, to a certain extent, at least, the legal definition of "charity."

I cannot help reminding your Lordships, in conclusion, that the Income Tax Act is not a statute which was passed once for all. It has expired, and been revived, and re-enacted over and over again. Every revival and re-enactment is a new Act. It is impossible to suppose that on every occasion the Legislature can have been ignorant of the manner in which the tax was being administered by a Department of the State under the guidance of their legal advisers, especially when the practice was fully laid before Parliament in the correspondence to which I have referred ("Charities," 1865).

It seems to me that an argument in favour of the Respondent might have been founded on this view of the case. The point, of course, is not that a continuous practice following legislation interprets the mind of the Legislature, but that when you find legislation following a continuous practice and repeating the very words on which that practice was founded, it may perhaps fairly be inferred that the Legislature in re-enacting the statute used those words in their received meaning. And perhaps it might be argued that the inference grows stronger with each successive re-enactment. However, as the point was not dealt with at the Bar, I forbear to express any opinion upon it.

With the policy of taxing charities I have nothing to do. It may be right or it may be wrong. But speaking for myself, I am not sorry to be compelled to give my voice for the Respondent. To my mind it is rather startling to find the established practice of so many years suddenly set aside by an administrative department of their own motion, and after something like an assurance given to Parliament that no change would be made without the interposition of the Legislature. In 1865 the Treasury communicated to Parliament the fact that they had come to the conclusion that the subject was "one which "should be reserved, to be dealt with by the Legislature, and "that in the meantime the practice which has hitherto pre-"vailed should be followed." For such a conclusion, even if the claim of the Crown had been originally well-founded, there would be much to be said. The Legislature declaring the law can at the same time grant immunity for the past. But a change of practice, established by judicial decision only, would leave the bulk of the charitable foundations in this country exposed to liabilities appalling in amount.

I am therefore glad to find that the claim of the Crown is based on what seems to me to be a very superficial view of the

meaning of the Legislature, and my opinion is that the appeal should be dismissed with costs.

Lord Morris.—My Lords, I have had an opportunity of reading and fully considering the judgment which has just now been announced by my noble and learned friend, Lord Macnaghten, and I can only add that I concur unreservedly in the reasons he has given and in the result he has arrived at.

Questions put.

That the judgment appealed from be reversed.
The Not-Contents have it.

That this appeal be dismissed with costs.
The Contents have it.