should have great difficulty in believing that at the date of the patent it was not known that vegetable and animal oils could be oxidised or thickened by the action of air and heat. It seems to be the obvious and necessary result of the application of these agents. But this matter is not left in doubt. For Mr Falconer King says—"It was known long before 1873 that vegetable and animal oils would thicken by exposure to air. It was also known that heat would accelerate the process." It was not suggested by the pursuer that this statement was not true, and for my part I cannot see any reason to doubt its truth. If this be so, the product which the pursuer claims as his invention is not new, and if it be old the patent is invalid. There is neither novelty nor invention.

But the pursuer, as I understood, maintained that the product was claimed with a qualification, inasmuch as the words of the first claim run thus—"(1) The subjecting of oils and fats in shallow layers to the joint action of air and heat, substantially as and for the purposes hereinbefore described." If the patent be for a product, as the pursuer contends, and if the words which I have quoted qualify or limit the claim, the meaning must be that the pursuer claims the product when made in a particular way and for a particular use. But he very expressly disclaimed all novelty in the process, and apart from this disclaimer I can see neither novelty nor merit in it. If therefore the process were part of the invention which is claimed by the pursuer, there would be much to say against the validity of the patent. But if the process be put aside, there only remains the specified purposes or uses.

It would seem to be the law that there cannot be a patent privilege for a new use of an old invention, even though there be merit in the discovery of the new use—*Kay* v. *Marshall*, 5 H.L. Cases, Clark & Finelly 425. But putting that question aside, let me consider what the uses are which are specified by the pursuer. I have said that he discovered that the thickened oil would combine with mineral oil so as to make a good lubricant. That is not the only use in connection with which the thickened oil is claimed as a novelty. The claiming clause uses the plural—"the purposes hereinbefore described." What are these purposes? One undoubtedly is to combine the thickened oil with mineral oil. The other, so far as I see, can be nothing else than to use it by itself as a lubricant. The specification sets out—"My said invention has for its object the treating of oils and fats in an improved manner, and so as to render them more suitable for making lubricants, and it consists mainly in subjecting the oils, whether mineral, vegetable, or animal, or the fat, to heat whilst exposed to the air in shallow layers." Further it says—"One important object of my invention is to oxidise or thicken vegetable or animal oils or fats so as to render them better adapted for mixing with mineral oils to form lubricants of various qualities." Reading these sentences together, it is plain enough that the preparation of the animal and vegetable oils, so as to make them better adapted for mixing with mineral oils, is not the sole invention which the pursuer claims. The words "one important object," as well as the plurality in the claiming clause, are conclusive on that point. If so, the animal and vegetable oils are treated in the manner described in the specification with a view to a use apart from the admixture of mineral oils, or in the words of the specification "for making lubricants." I take that to mean that the thickened oil is itself to be used as a lubricant. There is no other use suggested, and if the use was to be a part of the claim, the pursuer was bound to specify it. It is certain, as I have already said, that the thickened oil is claimed as being adapted to more than one use.

The result in my opinion is that the product claimed by the pursuer as his invention is a known product, manufactured by a known process, and intended for a known use. For I do not think that it can be said that there can be any novelty or invention in using thickened oil as a lubricant.

For these reasons I think that the patent is bad, and I have stated them in order that I might deal with the argument which was submitted to us. But I have further to say that I concur in the views expressed by the Lord Ordinary in his note.

The Court adhered.

Counsel for the Reclaimers—D.-F Mackintosh — Dickson. Agents—Davidson & Syme, W.S.

Counsel for the Respondents—Graham Murray —Kennedy. Agent—Gregor Macgregor, S.S.C.

Friday, June 1.

FIRST DIVISION.

[Lord Kinnear, Ordinary.

MORE (GRAEME'S TRUSTEE) *v.* GIERSBERG.

Bankruptcy—Trustee—Tantum et tale—Breach of Trust by Bankrupt—Personal Bar.

The trustee in a sequestration raised an action against the bankrupt's sister for payment of a debt alleged to be due by her to the bankrupt. As the defender was resident abroad the pursuer used arrestments to found jurisdiction in the hands of the executor of a lady who had left a legacy to the defender. The defender denied that the arrestments had the effect of founding jurisdiction, as the executor had no funds in his hands belonging to her. She averred that by her antenuptial marriage-contract all funds to which she might acquire right during the subsistence of the marriage were made over to the marriage-contract trustees for behoof of the spouses in liferent, and for the children of the marriage in fee. The pursuer replied that the marriage-contract had not been intimated to the executor at the date of the execution of the arrestments. The bankrupt was one of his sister's marriage-contract trustees.

Held (*diss.* Lord Shand) that as the trustee in the sequestration took the bankrupt's estate *tantum et tale* he was barred by the breach of duty on the part of the bankrupt in not intimating the marriage-contract, from making the legacy effectual for the payment

of the debt, and plea of no jurisdiction *sustained.*

This was an action at the instance of Francis More, chartered accountant, the trustee upon the sequestrated estates of P. J. F. Graeme of Aberuthven, against Mrs Giersberg, sister of the said P. J. F. Graeme, and her husband, for payment of the sum of £1509, 6s. 2d., the balance of advances alleged to have been made by the bankrupt to his sister.

The defenders were resident in Germany, and in order to found jurisdiction arrestments were used by the pursuer in the hands of the executor of Mrs Oliphant of Gask, by whom a legacy of £4000 had been bequeathed to Mrs Giersberg.

The defenders denied that the arrestments used had the effect of founding jurisdiction against them, Mrs Oliphant's executor having no funds in his hands belonging to either of them. They averred that the legacy bequeathed by Mrs Oliphant fell under their antenuptial marriage-contract, by which Mrs Giersberg had, with consent of her then intended husband, assigned, disponed, and conveyed to trustees, of whom the said Patrick J. F. Graeme was one, "the whole estates, heritable and moveable, real and personal wheresoever situated, then belonging to the said Amelia Ann Margaret Graeme, or which she shall conquest, acquire, succeed to, or become interested in during the subsistence of the said intended marriage."

The purposes of the trust were to pay the annual income of the trust-estate to Mrs Giersberg, exclusive of the *jus mariti* of her husband and of the diligence of her creditors, as an alimentary provision. The fee of the trust-estate was to be held for the children of the marriage, if there were any, and failing them for Mrs Giersberg's heirs and assignees.

The pursuer in reply stated that at the date of the execution of the said arrestments Mrs Giersberg's marriage-contract had not been intimated to Mrs Oliphant's executor.

The defenders pleaded no jurisdiction.

The Lord Ordinary (KINNEAR) on 21st February 1888 sustained this plea-in-law for the defenders, and in respect thereof, dismissed the action, and decerned.

"*Opinion.*—The question of jurisdiction depends upon the validity and effect of an arrestment by which the pursuer has endeavoured to attach a legacy bequeathed by Mrs Oliphant of Gask to the defender Mrs Giersberg, in the hands of Mrs Oliphant's trustees.

"By her antenuptial contract of marriage the defender conveyed to trustees the whole estate then belonging to her 'or which she should conquest, acquire, or succeed to, during the subsistence of the marriage;' and the purposes of the trust are 'to pay the annual income of the trust-estate to Mrs Giersberg exclusive of the *jus mariti* of her husband and of the diligence of her creditors as an alimentary provision,' and to hold the fee for the children of the marriage. If the trust had been brought into operation therefore so as to affect the legacy in question, it is clear enough that it could not be attached by the diligence which the pursuer has used, on the allegation that as trustee on the sequestrated estate of Mr Patrick Graeme, he is a creditor of Mrs Giersberg. But it is settled by the case of *Tod* v. *Wilson* (7 Macph. 1100) and *Whyte* v. *Campbell* (11 R. 1078) that such an assignation in an antenuptial contract must, like any other, be completed by intimation in order to exclude subsequent assignees for onerous causes or the diligence of creditors, and the assignation in question was not intimated to Mrs Oliphant's trustees before the date of the arrestments. The only question therefore is, whether the trustee on Mr Graeme's sequestrated estate was in a position to use this diligence as coming in place of the bankrupt.

"The objection is that Mr Graeme was himself a trustee under the marriage-contract, and it appears to me to be well founded. It is not disputed that Mr Graeme had accepted the trust, and it follows that assuming him to be a creditor of Mrs Giersberg, he could not attach for payment of his own debt funds which it was his duty to protect from the diligence of her creditors for the benefit of the children of the marriage. But the trustee takes the personal rights of the bankrupt subject to the conditions under which he himself held them; and if the bankrupt, supposing him to have recovered the fund in question, would have been bound to hold it for the purposes of his trust, it would appear to me to follow that his trustee cannot recover it for payment of a debt due to the bankrupt himself. It is said that the doctrine by which the trustee takes the bankrupt's rights exactly as they stood in him applies only to property actually vested in him so as to be carried by the vesting clauses of the Bankruptcy Act, and not to the property of his debtors, which the trustee may recover independently of him by the use of the diligence which is open to any creditor. But the trustee can have no right independently of the antecedent rights of the bankrupt. He has no title to sue the defenders in respect of their alleged debt to the bankrupt except by virtue of a personal right of action in the bankrupt, which carries with it as an incident the right to use diligence; and if the bankrupt's right of action would not enable him to attach the particular fund in question by the diligence of arrestment, the fund must be equally protected against the diligence of the trustee. The pursuer's argument is that the trustee in a sequestration may recover for payment of debts due to the bankrupt a fund which the bankrupt himself could not have recovered or applied to that purpose without a breach of trust. This appears to me to be inconsistent with the principle laid down by the House of Lords in *Fleeming* v. *Howden.* The fund lies open to the diligence of Mrs Giersberg's creditors by reason of the bankrupt's failure to perform his trust, and that is an omission from which neither he nor his trustee can in my opinion take benefit to the prejudice of the beneficiaries whose interests it was his duty to secure."

The pursuer reclaimed, and argued — The arrestments used had the effect of founding jurisdiction. The bankrupt had a claim against Mrs Giersberg, and that was now vested in the pursuer in virtue of the 102nd section of the Bankruptcy Act. The fund arrested had not passed to the trustees under the marriage-contract as the marriage-contract had never been intimated —*Tod* v. *Wilson*, 9 Macph. 1100; *Whyte* v. *Campbell*, 11 R. 1098. No doubt that was owing to a failure of duty on the part of the bankrupt

as trustee on his sister's marriage-contract. But the pursuer did not represent the bankrupt in that capacity. The bar against the bankrupt did not affect the claim, but merely the fund arrested. To exclude the pursuer's diligence the bar must not be personal against the bankrupt, but inherent in the title on which the claim was founded—Bell's Comm. i. 302 (7th ed.) 298; *Wylie* v. *Duncan*, M. 10,269; *Thomson* v. *Douglas, Heron, & Co.*, M. 10,229; *Inglis* v. *Mansfield*, 1 Shaw & M'L. 203. *Wylie's* case showed that in questions of heritable right the trustee could sue where the bankrupt could not. It would be an extension of the principle of *Fleeming* v. *Howden*, 6 Macph. (H. of L.) 113, to apply it to the circumstances of this case. An onerous assignee had been held not bound by latent equities affecting his cedent—*Jeffrey* v. *Paul*, 1 Shaw & M'L. 767.

The respondents argued—The *dicta* of the Judges in the case of *Fleeming* v. *Howden* —notably those of Lord Westbury—were directly applicable to the present case. The trustee in a sequestration took the estate *tantum et tale* as it stood in the bankrupt. He was subject to all the exceptions to which an assignee was subject under the rule *assignatus utitur jure auctoris* —*Gordon* v. *Cheyne*, 2 Shaw, 675; *Redfearn*, 1 Dow, 50, and 5 Paton 707; *Scottish Widows Fund* v. *Buist*, 3 R. 1078. In *Molleson* v. *Challis*, 11 Macph. 510, a trustee was held barred from taking advantage of the bankrupt's fraud. The principle of that case might equitably be extended to such a case of neglect as the present.

At advising—

Lord President—This action is raised by the pursuer as trustee on the sequestrated estates of Patrick James Frederick Graeme of Aberuthven. There is no doubt that if the debt in question is well founded the pursuer has a good title to sue. That right passes to the trustee in a sequestration along with the other rights of the bankrupt. But the defenders are not subject to the jurisdiction of this Court unless they have been made so by arrestments *ad fundandam jurisdictionem*. The question therefore is, whether those arrestments were good and effectual?

The debt sued for was for advances made by the bankrupt to his sister Mrs Giersberg from time to time, amounting to £1509, 6s. 2d. The fund arrested is a legacy payable in terms of the settlement of Mrs Oliphant of Gask to Mrs Giersberg.

By her antenuptial marriage-contract Mrs Giersberg conveyed her whole estate to trustees for behoof of herself in liferent, exclusive of the *jus mariti* of her husband, and of the diligence of her creditors, and for her children in fee. Now, it so happens that Mr Graeme was himself one of the trustees under the marriage-contract. If the marriage-contract had been intimated to the executor of Mrs Oliphant the legacy would have been transferred by the conveyance therein to the trustees under the marriage-contract. Unfortunately the marriage-contract was not intimated, and the Lord Ordinary says that the bankrupt was himself to blame for failure to intimate the marriage-contract to Mrs Oliphant's executor. That opinion of the Lord Ordinary's cannot, I think, be disputed. The duty in question was incumbent upon all and each of the trustees. Again, the Lord Ordinary thinks that the arrestments could not have been used by the bankrupt himself, as he was bound to hold the fund arrested for the benefit of Mrs Giersberg and her children, and it would have been a breach of trust on his part to arrest it for a debt due to himself. That is also, I think, indisputable.

The question consequently upon which this case hinges is, whether the trustee in the sequestration can do diligence though the bankrupt could not? The Lord Ordinary answers this question in the negative, and I think the Lord Ordinary is right. The position of the trustee in a sequestration does not seem to me to differ from that of any other assignee as regards a claim of this kind. This is an incorporeal moveable right which passes by assignation. The trustee is in no better position than an onerous assignee. The principle laid down in the House of Lords in the case of *Fleeming* v. *Howden* goes far to support this view of the Lord Ordinary. I agree with the principle so laid down, and generally with the opinions expressed, though I am not inclined to go so far as Lord Westbury, and to hold that the position of a trustee in a sequestration is the same as that of a gratuitous assignee. I should prefer to put it in this way—that a trustee in a sequestration is in no better position than an onerous assignee.

As to my opinion with regard to the maxim *assignatus utitur jure auctoris*, I can only refer to my opinion in the case of the *Scottish Widows' Fund* v. *Buist*. I agree with the Lord Ordinary in the present case that, as the bankrupt could not have used the arrestments without being guilty of a breach of trust, neither could his trustee. The right which the bankrupt had was a right to recover this debt, and that right passed to his trustee. But the bankrupt had no right to use these arrestments, and neither, I think, has his trustee.

Lord Shand—As my opinion in this case differs from that of your Lordship and the Lord Ordinary, I need not say that the question in dispute has had my best consideration. I have, however, been unable to change the opinion I formed in the course of the argument, and I think the judgment of the Lord Ordinary should be recalled, and the jurisdiction of the Court sustained, on the ground that the fund left by the late Mrs Oliphant to the defender Mrs Giersberg has been attached by the pursuer's arrestments.

The pursuer, as trustee on the sequestrated estate of Mr Graeme, Mrs Giersberg's brother, has right to the whole estate, heritable and moveable, which belonged to the bankrupt on 7th April 1887. The act and warrant of confirmation of that date, in virtue of sec. 102 of the Bankruptcy Act of 1856, transferred to and vested in the pursuer the whole moveable estate and effects of the bankrupt Mr Graeme. Part of his estate, as the pursuer alleges, was a debt of £1509, 6s. 2d. due by the defender Mrs Giersberg to her brother, the bankrupt, in respect of money lent. The defenders dispute the existence of the debt which is now sued for in this action, but in the present question as to the validity of the arrestments used to found jurisdiction against Mrs Giersberg, who lives abroad, the existence of the

debt must be assumed; and at least it is enough that the claim is made for recovery of a debt alleged to be due by her.

Now, it is admitted that the pursuer has right to the debt or claim which the bankrupt had against his sister, the defender Mrs Giersberg. It is admitted that the testamentary trustee of the late Mrs Oliphant is in possession of a fund, exceeding the debt now claimed, left by that lady to Mrs Giersberg as a legacy, payable in June 1887; and further, it is not disputed that the fund in Mr Oliphant's hands was liable to be attached by arrestment used by Mrs Giersberg's creditors. It is true that by her antenuptial marriage-contract entered into in 1874 Mrs Giersberg had assigned to the trustees therein named, of whom her brother the bankrupt was one, the whole estate which she might acquire during the subsistence of the marriage, but this assignation was never intimated to Mr Oliphant, Mrs Oliphant's sole trustee and executor, so as to transfer the fund as a vested right to the marriage-contract trustees. And consequently it remained subject to the diligence of arrestment at the instance of Mrs Giersberg's creditors on the principle to which effect was given in the cases of *Tod* v. *Wilson*, 7 Macph. 1100, and *Whyte* v. *Campbell*, 11 R. 1078, referred to in the judgment of the Lord Ordinary.

The pursuer as a creditor of Mrs Giersberg has used arrestments in Mr Oliphant's hands to attach this fund, both to found jurisdiction against Mrs Giersberg and also on the dependence of the action. But the Lord Ordinary has held that these arrestments are ineffectual. An arrestment at the instance of any other creditor of that lady would be effectual, for the fund was subject to her debts and deeds so long as the assignation contained in her marriage-contract was not intimated to the testamentary trustee. But it has been held by the Lord Ordinary that the pursuer is in this peculiar position that although a creditor of Mrs Giersberg he cannot use an arrestment which would be effectual. In that view I find myself unable to concur.

The ground of the judgment I understand to be that because Mr Graeme the bankrupt could not have effectually arrested the fund, it follows that no more can the pursuer as the trustee on his sequestrated estate do so. It is said that Mr Graeme having been an accepting trustee—not by written acceptance, but by his actings under the marriage-contract of his sister—was bound to intimate the assignation by Mrs Giersberg contained in that deed to the testamentary trustee of Mrs Oliphant, and that he could not be allowed in violation of his duty to arrest the fund for a debt due to himself; and it is further said that the same objection to an arrestment applies to the pursuer as trustee for Mr Graeme's creditors, because his rights have been derived from the bankrupt, and he cannot have greater rights than the bankrupt himself.

Now, I agree in thinking that Mr Graeme could not have effectually attached the fund, but I do not agree in thinking that the same objection applies to the pursuer as trustee for his creditors, and the ground of my opinion may be shortly stated. It is this—The reason why an arrestment by Mr Graeme would have been ineffectual is, that in his character as trustee under the marriage-contract it was his duty to intimate the assignation contained in that deed to Mrs Oliphant's trustee, and he would be barred from arresting the fund to secure a debt of his own, in breach or violation of his duty or obligation as trustee. But this consideration, in my opinion, has no application to the pursuer, because there is no similar bar which can be effectually pleaded against him when he used an arrestment. He has no trust duty arising out of the marriage-contract, and the fact that the bankrupt had and still has such a duty affecting him personally, which creates an obligation on his part to intimate the assignation, has no application to a trustee for his creditors using diligence to secure a debt who has no such duty, and is under no such obligation. It appears to me that if the bankrupt has failed in a duty and obligation to the beneficiaries under the marriage-contract this only raises a personal claim for any damage which has resulted, and for which the parties injured must claim and rank in the sequestration in the ordinary way. These beneficiaries cannot, I think, on sound principles protect the fund in the hands of Mrs Oliphant's trustee from arrestment unless they can show that the pursuer as trustee in bankruptcy had the same duty and obligation as the bankrupt, which clearly he had not. That trust was personal to Mr Graeme, and the pursuer as trustee for his creditors was not even entitled in any way whatever to act in that trust.

The reasoning in favour of the judgment is rested on the supposed application of the principle *assignatus utitur jure auctoris*, and of the rule that the trustee in a sequestration takes the estate *tantum et tale* as it stood in the bankrupt. There are no rules or principles in our law in reference to the transfer of rights which I should more anxiously guard and preserve in full vigour and observance than these, because if they be violated great injustice might often be done. But with great deference I am humbly of opinion that these rules are here sought to be used in circumstances to which they have no just application. What did the pursuer take under his act and warrant of confirmation? Only the right to the debt due by Mrs Giersberg. That right was assigned or transferred to him by the Bankruptcy Statute, and no doubt he could only take the right subject to any inherent qualification or condition affecting it in the bankrupt—that is, subject to such conditions or qualifications as would limit its extent, or, it might be, define its character showing it to be a right of trust only. That is the full meaning and effect of the rules abovementioned. If the debt due by Mrs Giersberg to her brother had been due to him as trustee for some one else, or if his right had thus been qualified inherently by a trust, the trustee for his creditors could only take up the right *tantum et tale*, and so could not acquire right to the debt unaffected by the trust. This is the full result of the decisions and the *dicta* in the case of *Fleeming* v. *Howden*, 11 Macph. (H. of L.) 113, including the *dicta* of Lord Westbury, in which I apprehend his Lordship was in error in saying that the right of a trustee in bankruptcy is that of a gratuitous alienee only, and also in the case of *Tod* v. *Wilson*, 7 Macph. 1100. But here there was no inherent qualification limiting the right of the bankrupt to the debt due by his sister. His right was absolute, and that absolute right

was transferred to the trustee for his creditors.

The right to raise an action and do diligence for the recovery of debt is a legal incident of the right to the debt. It arises as a common law right in favour of all creditors against their debtors, and the pursuer in using the arrestment in question is availing himself of that right only. Having an unqualified right to the debt, why shall he be prevented from doing so? Because, it is said, the bankrupt could not have effectually used these arrestments. The answer to that argument —an answer which I humbly think sound—is this, that the objection to an arrestment by the bankrupt is personal—a personal bar which applied to him individually, because of the duty or personal obligation which lay upon him to complete a title in the marriage-contract trustees to the fund by intimation; but although he has failed in his duty, and his failure might give rise to a claim of damages (which is by no means clear in this case, for the bankrupt has lived abroad ever since Mrs Oliphant's death), yet (1) this obligation in no way affects or binds the trustee for his creditors, who is not bound to fulfil personal obligations by the bankrupt, least of all obligations arising out of the bankrupt's holding the office of a trustee, and (2) the duty and obligation which affected and affect the bankrupt were not in any sense inherent qualifications of the right which the trustee in the sequestration acquired under the Bankruptcy Statute. So there is nothing to deprive him of the ordinary remedy of a creditor for recovery of his debt. The right to the debt being absolute, an objection as to the remedy for recovery of it, applying to the bankrupt, arising out of his position as trustee, is in my opinion entirely personal to him, and not an inherent qualification of the right transferred to the trustee.

A personal obligation by a bankrupt under a contract of sale or otherwise to transfer an heritable property, though binding on him, does not affect the trustee on his sequestrated estate, except as giving rise to a claim of damages, because it forms no inherent qualification of his right, and the same observation applies with even greater force in the case of such an obligation as attached to Mr Graeme as a trustee under the marriage-contract. Indeed it must be observed that such an obligation was independent of and altogether unconnected with the bankrupt's right to the debt due to him. It arose out of a question having no connection with the relation of debtor and creditor, and could not therefore, in my opinion affect or limit the power of an assignee for creditors on acquiring right to the debt to sue and use diligence against Mrs Giersberg like any of her other creditors.

On these grounds I am of opinion that the arrestments were effectual, and that the plea of no jurisdiction should be repelled.

Lord Adam—Mrs Giersberg is said to be indebted to Mr Graeme in the sum sued for, and the trustee has used arrestments for all sums due to Mr Graeme. The sum arrested is a legacy bequeathed to Mrs Giersberg by Mrs Oliphant of Gask. That is the sum out of which payment would be recovered. The trustee as in right of Mr Graeme cannot recover anything which Mrs Oliphant's trustee could not lawfully have paid to Mr Graeme, or which Mr Graeme could not have recovered from him. The whole case lies in this, that the trustee's title is rested solely and entirely on Mr Graeme and can go no further. Mr Graeme could never have come forward to claim payment out of the fund arrested, and consequently I have no difficulty in agreeing with your Lordship in the chair.

The Court adhered.

Counsel for the Pursuer and Reclaimer—H. Johnston. Agents—Mylne & Campbell, W.S.

Counsel for the Defenders and Respondents —Sir C. Pearson—Low. Agents — Murray & Falconer, W.S.

Friday, June 1.

FIRST DIVISION.

[Lord Fraser, Ordinary.

BAIRD TRUSTEES *v.* INLAND REVENUE.

Revenue—Income-Tax Act, 1842 (*5 and 6 Vict. cap. 35*), *sec. 88, Sched. C, Third Rule, sec. 105, Sched. D—Exemption—"Charitable Purposes only."*

Under the provisions of the Income-Tax Act of 1842, sec. 88, Schedule C, Third Rule, and sec. 105, Schedule D, the stock or dividends of any trust established for "charitable purposes only" are entitled to exemption from payment of income-tax.

The terms of a trust-deed, by which funds were bequeathed "for the support of objects and purposes in connection with the Established Church of Scotland, all of a religious character, as after described, and for the aid of institutions having the promotion of such purposes in view," stated that the object of the truster was to make provision against the existing spiritual destitution, particularly among the poor and working population of Scotland. The income of the trust for the year 1886-87 was applied to a large extent in building churches, partly to the endowment of churches, and partly to the augmentation of stipend, payments for lectures and to the trustees, and miscellaneous expenses. The trustees claimed that the revenue of the trust was exempt from income-tax, upon the ground that the trust was for charitable purposes only.

Held that the term "charitable purpose" should be interpreted in its ordinary and familiar sense, according to which the relief of poverty is signified, and that therefore the income of the trust, not being applicable, and not having been applied to charitable purposes only, was liable for income-tax.

Per the Lord President—"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 Legislature 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."