is too much the way for drivers to give a shout to the foot-passengers, as they drive on without ever slackening speed, leaving the unfortunate passengers to scramble out of the way if they can. On the whole, the Sheriff cannot regard the pursuer's forgetfulness as so culpable a thing as to liberate the defender. See Addison on Torts, 371.

"The decision on which the Sheriff-Substitute proceeds as ruling this case is that of *Grant*, 10th December 1870, 43 J. 115, when a child was killed at a private crossing on a railway. But that seems to the Sheriff to be a very different kind of case from the present. There it was impossible for the engine-driver to stop his engine so as to avoid the child crossing. Here it was not impossible for the defender to avoid driving against the pursuer. The Sheriff observes that the Lord President in giving his opinion in that case refers to this distinction when he says—'The train cannot pull up like carriages travelling at the rate of from five to eight miles an hour; the precautions taken must all be consistent with their still continuing their journey.' From this the Sheriff infers that his Lordship considered that a driver travelling at that rate was bound to pull up. The public know in the one case that the engine-driver can't stop or turn aside his engine so as to avoid a passenger, and in the other that the driver can."

The defender reclaimed.

At advising—

Lord Justice-Clerk—I have no doubt here in affirming the interlocutor of the Sheriff. The Sheriff-Substitute has found that there was contributory negligence on the part of the respondent, because while she looked three ways to see if there was any danger, she did not look the fourth. I am entirely of a different opinion. When a driver of a machine in broad daylight drives down a person crossing where she had a perfect right to cross, the presumption in fact and in law is that he was in fault, and the sooner this is understood the better.

In these days of careless driving, where so many lives are lost by it, I wish to lay this down strongly, that when a person is driving along a public road, and seeing some one in front of him, thinks his duty is complete when he has called out, he is mistaken. You had here an old woman crossing when she was quite entitled to do so, and a driver who, on his own statement of the pace he was going, could have pulled up whenever he pleased, but does not do so till he has knocked down and seriously injured the woman. I think in these circumstances the Sheriff's judgment was quite right.

Lord Ormidale concurred.

Lord Gifford—I concur. When a person driving in broad daylight, and with nothing unusual to prevent him, does not see some one in front of him till he is within 10 or 12 yards, there is a presumption of carelessness. But when he did see her, even then he was in fault, for when he called out he was bound so to drive that in case she did not hear no accident should occur. I cannot think there was contributory negligence on the respondent's part.

Appeal dismissed with expenses.

Counsel for Pursuer (Respondent)—Guthrie Smith—Strachan. Agent—T. F. Weir, S.S.C.

Counsel for Defender (Appellant)—Mair. Agent—W. Officer, S.S.C.

Thursday, June 19.

FIRST DIVISION.

[Sheriff of Aberdeen and Kincardine.

THE HERITORS OF PITSLIGO *v.* GREGOR.

Church—Repair of Manse—"Free" Manse—Ecclesiastical Buildings Act (31 *and* 32 *Vict. cap.* 96), *sec.* 3—*Competency—Removing Petition dealing with Repairs on a Manse from Presbytery to Sheriff Court—Appeal from Sheriff Court.*

The manse of Pitsligo was in 1874 declared free by interlocutor of the Court of Session, but the minister refused to inhabit it, on the ground that it was unhealthy and generally out of repair. The heritors of the parish thereupon presented a petition to the presbytery praying them to order the minister to inhabit the manse, or alternatively for the appointment of some one to take care of it at his expense. The minister lodged answers to this petition, in which he alleged that the manse was in a very bad condition, and that he and his family could not inhabit it without suffering in health. Subsequently he put in a minute offering to occupy it so soon as it was put in a fit state, and craving the presbytery to take the necessary steps for ascertaining its actual condition and for providing a suitable residence for him and his successors. The presbytery remitted to an architect to report. Proceeding on his report the presbytery found that the manse needed repairs, and that notwithstanding the interlocutor pronouncing it "free" an obligation rested on the heritors to remedy the defects. They therefore dismissed that portion of the petition praying for an order on the minister to inhabit, and ordered the heritors to take the necessary steps to make the manse habitable, and further found the expenses in the proceedings a burden upon them. The heritors then removed the proceedings to the Sheriff Court by petition under the provisions of the Ecclesiastical Buildings Act (31 and 32 Vict. cap 96), sect. 3. The petition prayed the Sheriff to stay the proceedings before the presbytery and to dispose of it himself. This was conjoined with a previous petition presented by the heritors to the Sheriff, and in the conjoined actions an interlocutor was issued in which the first petition of the heritors complaining of the minister's desertion was dismissed; and in the second petition the order of the presbytery for repairs was found to be incompetent and all further proceedings thereon were stayed. The respondent, the minister of the parish,

appealed. The Court *held* that though the proceedings before the presbytery had not been instituted under the 3d section of the Ecclesiastical Buildings Act, their deliverance fell within its action as being "a proceeding before a presbytery relating to repairs of a manse," and was properly transferred under the statute from the presbytery to the Sheriff Court, and therefore that the Court could not take the interlocutor of the Sheriff under review, as the Lord Ordinary on Teinds was the proper person to whom to appeal from the Sheriff Court.

Counsel for Petitioner (Respondent)—Kinnear—Jameson. Agents—Stuart & Cheyne, W.S.

Counsel for Respondent (Appellant)—Asher—Darling. Agent—A. Morison, S.S.C.

Friday, June 20.

FIRST DIVISION.

Lord Adam, Ordinary.

WILLS (BRAND'S CURATOR), PETITIONER.

Judicial Factor—Curator Bonis—*Special Powers to Grant discharge of Security.*

A *curator bonis* may grant a valid discharge of a bond and disposition in security executed by his ward without first obtaining the authority of the Court to do so.

Certain lands over which there was a bond and disposition in security for £250 were sold and the amount of the bond deposited in bank pending appointment of a *curator bonis* to the party in right of the bond, who was a lunatic. After the curator's appointment he applied to the debtor to pay over the £250 in exchange for a discharge of the bond which he, viz., the curator, was to grant. The debtor, however, refused to do this unless the discharge was granted by the curator in virtue of special powers obtained by him from the Court. The curator upon this presented a note to the Accountant of Court asking an opinion on the following points—(1) Whether the curator can in the circumstances grant a valid discharge of said bond and disposition in security without special powers to discharge the bond? and (2) Whether special powers should be applied for, or what other course the curator should adopt in order to recover payment of the amount due under said bond? The Accountant gave the following opinion:—

"*Edinburgh*, 26*th February* 1879.

"The heritable bond referred to being in name of the ward, the Accountant is of opinion that the factor requires special powers from the Court to enable him to grant a valid discharge. Though in practice discharges may in some cases be accepted by debtors from a factor without special powers, it appears to the Accountant that authority from the Court is necessary when insisted on by a debtor."

The curator then presented a petition to the Lord Ordinary (ADAM) praying for special powers. This petition was at the request of the petitioner reported to the First Division, in order to have it decided whether special powers were necessary. The Court took the case to avizandum in order to consult with the Judges of the Second Division.

When the case was put to the roll the Lord President announced that the Judges of the two Divisions were unanimously of opinion that in such cases it was not necessary for curators to obtain the sanction of the Court in order to grant a valid discharge.

Counsel for Petitioner—Kinnear—Jameson. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, June 20.

FIRST DIVISION.

THE LORD PROVOST AND MAGISTRATES OF EDINBURGH *v.* A. & G. WATSON.

Edinburgh Markets and Customs Act 1874, *sec.* 28 —*Slaughter-house—American Meat—"Cured and Preserved Meat."*

The 28th section of the Edinburgh Markets and Customs Act 1874 provides—"In order to prevent the evasion of the use of the slaughter-houses, all persons" bringing within the city for sale or consumption the carcase of any cattle slaughtered beyond two miles distance of the Police bounds shall be liable in "payment" of the same dues as are leviable on cattle slaughtered in the booths of the market. "Cured or preserved butcher's meat" was excepted from these provisions. *Held* that meat preserved in ice during transit from America, and introduced into Edinburgh in a fresh state, was liable to pay dues (*a*) as being slaughtered beyond two miles' distance of the police bounds of the city, and so being struck at by the statute, and (*b*) as not falling within the exception of "cured and preserved butcher's meat."

Statute.

Observations per the Lord President (Inglis) on the construction of remedial statutes.

Messrs A. & G. Watson, the second parties in this case, had for some time carried on the trade of dead meat salesmen within the police boundaries of Edinburgh. They traded in meat slaughtered in America and brought over to Scotland in ice in vessels specially prepared for that purpose. The meat was thus preserved during transit, and delivered in Edinburgh as fresh meat. The Lord Provost and Magistrates and Council of the City (the first parties in the case), as representing the community, and having the slaughter-house of the city under their management, claimed that they were entitled to levy a tax upon their meat in terms of the 28th section of the Edinburgh Markets and Customs Act, which proceeded on the narrative of the Edinburgh Slaughter-houses Act 1850, and enacted—"In order to prevent the evasion of the use of the slaughter-houses, all persons who shall bring within the city, for sale or consumption therein, the carcase, or part of a carcase, of any cattle or other animal, shall, on their bringing such carcase, or part of a carcase, within the city, be liable in payment to the corporation, or their chamberlain or collector for the