

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, 26th 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

time being, for the purposes of the slaughter-houses, of the same dues as are leviable under the said fifth recited Act on cattle or other animals slaughtered by a flesher renting a booth in the said slaughter-houses: Provided that the distance of one mile beyond the bounds of police fixed and specified by clauses 25, 26, and 27 of the said fifth recited Act shall be read and construed as if the same were expressed to be two miles beyond such bounds for the time being."

The 27th section of the Act 13 and 14 Vict. c. 70 provided—"In order to prevent evasion of the use of the slaughter houses to be erected by virtue of this Act, that all persons who shall, after the publication of the last aforesaid advertisement, bring within the bounds of police for sale therein the carcase, or part of the carcase, of any cattle slaughtered beyond one mile's distance of said bounds, shall, on their bringing such carcase, or part of a carcase, within the said bounds, be liable in payment of, and the Magistrates and Council, by their collectors or tacksmen, shall be entitled to levy, collect, receive, and take, in respect of every carcase, or part of a carcase, so brought in, but excepting cured or preserved butcher's meat, the same dues as shall at the time be leviable under this Act on cattle slaughtered by a flesher renting a booth in the said slaughter houses."

The second parties contended that they were not liable—1st, on the ground that the meat they sold was not within the mischief struck at by the Act; and 2d, that it was exempt from dues, as falling within the exception of "cured and preserved meats." In these circumstances the following question was submitted for the opinion of the Court:—"Whether the corporation of Edinburgh is entitled to levy, under the provisions of the Edinburgh Slaughter-houses Act 1850, and the Edinburgh Markets and Customs Act 1874, upon the carcasses or parts of the carcasses of cattle slaughtered in America, preserved by the application of ice, and brought within the police bounds of the city of Edinburgh for the purpose of sale or consumption therein as fresh meat, the dues by the said Acts authorised to be levied upon the carcasses or parts of the carcasses of cattle slaughtered beyond two miles of the police bounds of the said city and brought within the city for the purpose of sale or consumption?"

At advising—

Lord President—This question depends upon the construction of the 27th section of the Edinburgh Slaughter-houses Act 1850 (13 and 14 Vict. c. 70) and the 28th section of the more recent "Edinburgh Markets and Customs Act 1874," which section is very much a repetition of the section in the earlier Act, but with one variation, which I shall mention further on. The statute of 1850 is therefore the one which immediately demands construction, and looking at the enacting words of the clause we find it provided as follows—[His Lordship here quoted the section as above]. In the later statute the distance of one mile mentioned in the clause is changed to two miles, the variation I have already alluded to. Now, nothing could be more comprehensive than the language here used—"All persons shall be liable." But it is argued on two grounds for the second parties in this Special Case, that the meat they import from America does not fall within the words of the clause. Their meat

when it reaches Edinburgh is undoubtedly in a fresh state, and fit for consumption as such, and therefore if nothing takes it out it is within the terms of the general enactment. But they argue that to interpret the clause so as to include this American meat is to carry the remedy further than is necessary to meet the mischief of the statute; and secondly, that this meat is within the exception of "cured and preserved" meat. These two contentions must be dealt with separately and on different principles.

As regards the first, the question comes to be, whether the enacting part of a remedial statute can be restrained so as to meet, and no more than meet, the mischief? That is the first question for consideration. It is necessary first to find out what the mischief struck at is—what is intended to be remedied—and when I say this I do not mean the mischief of the clause only, but of the whole Act, as well in the preamble as in the clause. This is an Act to provide public slaughter-houses in Edinburgh, and it proceeds upon a history of the Edinburgh slaughter-houses, going so far back as the 17th century. By an Act of that century all the fleshers of Edinburgh are prohibited from slaughtering cattle in their own houses, and premises were erected as slaughter-houses on the side of the North Loch. That was the first statutory enactment on the subject. Years after, the North Loch was drained, and, there being no water left, the locality was no longer suitable for the purpose. Accordingly in the reign of George III. a statute was passed ordering removal of the slaughter-houses from the side of the North Loch, first, because there was no water, but also because it was now in the centre of the town. Unfortunately this statute was never carried into effect, and another statute was passed (13 and 14 Vict. c. 70), which proceeds on the consideration that the above enactment was never put in execution. Now, while the slaughter-house was in the old position, near the now drained North Loch, more than one statute was passed declaring it to be a public nuisance. Therefore the Legislature set itself to provide a slaughter-house which should not be a public nuisance, and consequently found another situation for it, and the slaughter-house erected under the Act was the real object of the Act. It appears to me therefore that the real mischief of the statute was the slaughtering of cattle in such a place and in such a way as to be a public nuisance. All the clauses therefore must be read with reference to that purpose. To keep up these slaughter-houses, which were necessarily expensive, it is obvious that stringent restrictions were required, and one is that every one slaughtering cattle within two miles of the police boundaries, the distance as altered by the Act of 1874, except within the slaughter-house, is subject to a penalty, and that a heavy one.

In pursuance of the same policy, the section we have to consider enacts that a tax shall be payable upon all fresh meat killed without the two miles and brought within the city. It is no concern of ours to ask whether this was necessary or not. The Legislature granted the assessment "in order to prevent evasion of the use of the slaughter-house." Read in light of that mischief, the words of this 27th section can only have one construction. Certain assessments are made on all fresh meats imported into the town with the view of helping

to maintain the slaughter-house, and to prevent evasion of its use. It is said that to tax meat coming from a foreign country, though it is fresh when it comes into the city, is not needful for the use of the Act. That may be so, but certainly the Legislature has not excepted such meat, and we are not to speculate upon what the Legislature thought necessary and what it did not. It is a rule in the construction of remedial statutes to construe them liberally—that is, the cure of the mischief is to be construed so largely as to meet the mischief; but I do not know that there is any contrary rule of construction, viz., that the words are not to be read as broader than is necessary to meet it. On the contrary, the remedy of a statute often goes far beyond the mischief, for to make the one exactly equivalent to the other would be to run the risk of the remedy not always covering the evil. It is a safer rule to make a remedy certain to cover any mischief. Therefore, so far, I think, the second party cannot prevail.

But there is a second argument, namely, that this meat comes within the exception of “cured and preserved” meat. Now, it is contended for the magistrates that these words are synonymous, but I do not think it necessary to adopt that view. We all know what “cured” means—it has a fixed signification—and I am not surprised to find another word used to cover any case of a like kind, but which is not exactly covered by the word “cured”—for example, meat preserved in a semi-cooked state for ships going on long voyages, or preserved in air-tight tins. No one can doubt that such cases come fairly within the meaning of the word “preserved.” But the second party contends that all meat preserved for a considerable time from decay or corruption by use of any artificial means is within the exception, although the meat may present the appearance of fresh meat, and be really fresh meat when it enters the city. It seems to me that a fair and reasonable construction of the exception is to apply it to something which shows itself in the face of the article when it is brought into the city. If it is brought into the city in a cured or preserved state, then it is within the exception, but it is out of the question to say that the exception refers not to the existing condition but to something in the previous history of the meat. Any other interpretation is forced, and would lead to a defeating of the intention of the clause, for if we applied the term to meat brought from America in ships specially adapted for the purpose, must you not apply it to all other cases in which meat is preserved from decay for any period of time? If that were so, to what an extent it could be carried! In hot weather every prudent housekeeper adopts artificial means for preserving meat. They place it in as cool and dark a place as they can find—some in a draught of cool air—and that is using artificial means to a certain extent. But above all, if anyone adopts the simple mode of packing in ice, then he is distinctly using artificial means; and so if every farmer in Midlothian were to send his meat into Edinburgh in ice he would be within the exception. Therefore I think the only safe construction has reference to the state of the meat at the time it passes into the city. When it enters the city Mr Watson’s meat is sweet and fresh, or else I think he would not long retain the custom he receives. I think this question must be answered for the first parties.

LORD DEAS and LORD MURE concurred.

LORD SHAND—I concur. It is argued that if meat imported from America is not within the mischief of the statute, that is sufficient to decide the question in favour of the second party. But it is almost invariable that the narrative of a mischief struck at in a statute is followed by an enactment going beyond it. We have had lately before us such a case in Leeman’s Act. In remedying the evil there the Act went very much beyond it in its enactment. So here, taking it that the purpose of this Act was to “prevent evasion of the use of the slaughter-houses,” it is clear that the statute has gone beyond what was absolutely necessary. On the other question, as to whether this comes within the exception, I agree with your Lordships. The words are not absolutely synonymous, but they practically are, as they are intended to include every kind of preserved meat—salted or smoked, parboiled, preserved in air-tight tins, &c. In considering the meaning of the statute we must look at its date in the year 1850. Nothing of the kind was then in contemplation of the Legislature. Recent discovery shows that meat may be brought from foreign countries packed in ice or preserved by means bisulphate of lime. In both cases meat so treated is called “preserved,” but the word is evidently used in quite a different sense. We say that the statutory word covers the meaning in which it is now used.

The Court therefore found and declared “that the corporation of Edinburgh is entitled to levy on the carcasses or parts of the carcasses of cattle slaughtered in America, preserved during its transit to this country by the application of ice, and brought within the police bounds of the city of Edinburgh in a fresh state, for the purpose of sale or consumption therein as fresh meat, the dues authorised to be levied by the 25th section of the Edinburgh Slaughter-houses Act 1850, and the 27th section of the Edinburgh Markets and Customs Act 1874;” and decerned.

Counsel for First Parties—Kinnear—Mackay.
Agent—W. W. Millar, S.S.C.

Counsel for Second Parties—Asher—J. P. B. Robertson. Agents—Horne, Horne, & Lyell, W.S.

Friday, June 20.

FIRST DIVISION.

[Lord Young, Ordinary.]

MANN (T. AIKENHEAD & CO.’S TRUSTEE)
v. SINCLAIR.

*Bankrupt—Trustee in Sequestration—Title to Sue—
Need of Notice to Creditors where Partnership
Dissolved.*

A and B were in business as partners, but B’s name never appeared as a member of the firm, the firm being merely “A.” After some time the partnership was dissolved by private deed of agreement. The dissolution was never advertised, but certain of the creditors and customers of the concern who had become aware that B had been in part-