Now, the next plea which has been sustained by the Dean of Guild relates to the construction to be put upon the Act of 1890. Under the 39th section of the Act of 1867, which I have hitherto alone referred to, the local authority was entitled to provide hospitals, but they must confine themselves to their own district.

But the Act of 1890 enables burghs to pass out of their own district, and take ground for an hospital within a convenient distance of such district. Now, it is said that because this power to invade a neighbouring district is conferred upon a burgh, it therefore follows that the invaded territory must necessarily be a landward district. I confess that seems to me a complete *non sequitur*. What is required is merely that the burgh is to be enabled to take ground, subject of course to the approval of the Board of Supervision, where ground is to be had more easily or conveniently.

As we know, many burghs, except in the matter of jurisdiction, are really country districts as regards part of their area, and many burghs also have more free land than their contiguous neighbour burghs, but to say that you must go to the county to get land seems to me to interpolate into the statute a limitation which is certainly not expressed in it, and which does not seem at all congenial to the theory of expediency and convenience which animates the enactment.

Now, I think that that is the last of the pleas which have been maintained in argument at the bar, and I consider that the proper result is that all the pleas stated by the burgh of Leith should be repelled.

I suppose your Lordships will necessarily, in repelling these pleas, remit to the Dean of Guild to proceed as shall be best. The remaining matter, therefore, will be the examination and approval of the plans, and I cannot doubt that these matters will be treated in the business-like spirit proper to the Dean of Guild Court.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court sustained the appeal, recalled the interlocutor appealed against, and remitted to the Dean of Guild to proceed.

Counsel for the Petitioners — Comrie Thomson—Boyd. Agent—William Asher, S.S.C.

Counsel for the Respondents — D.-F. Asher, Q.C. — Salvesen. Agents — Irons, Roberts, & Company, S.S.C.

---

*Tuesday, January* 14.

## FIRST DIVISION.

## CLARK *v.* GIBSON.

(*Ante*, p. 174.)

*Process—Appeal to the House of Lords—Interim Execution pending Appeal—Poor's Roll.*

The defender having presented a petition of appeal to the House of Lords, and obtained an order of service thereon, the pursuer presented a petition for execution pending the appeal, in terms of the Act 48 Geo. III. cap. 151, sec. 17. The petitioner argued that it was the invariable custom to grant such petitions. The defender opposed the petition, pointed out that the determination of the matter was left by the statute in the absolute discretion of the Court, and stated that he had presented an application to the House of Lords to be admitted to the poor's roll. *Held* that the rule and practice being clear, there was nothing in the present case to take it out of the rule, and the prayer of the petition accordingly granted.

*Cochrane* v. *Bogle*, Dec. 11, 1849, 12 D. 302, and *M'Beath* v. *Forsythe*, October 25, 1887, 15 R. 8, *referred to* by petitioner.

Counsel for the Petitioner—Clyde. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Respondent—W. Thomson. Agent—Thomas M'Naught, S.S.C.

---

*Tuesday, January* 14.

## FIRST DIVISION.

## RELIGIOUS TRACT AND BOOK SOCIETY OF SCOTLAND *v.* SURVEYOR OF TAXES.

*Revenue — Income-Tax — Income-Tax Act* 1853 (16 and 17 *Vict. cap.* 34), *sec.* 2, *Schedule D—Profits Arising from Trade —Deduction.*

A society whose object was "by the circulation of religious books to diffuse a pure and religious literature among all classes of the community," carried on the trade of bookselling on strictly commercial principles at a depository, and at the same time distributed books throughout the country by means of a colportage agency, which was not, and could not by itself be, carried on at a profit as a commercial undertaking, and required the aid of voluntary subscriptions. The profits of the bookselling department were applied to cover the loss incurred in the colportage department.

In a question with the Surveyor of Taxes, *held* that the profits of the bookselling department were liable to assess-

ment to income-tax under Schedule D of the Act 1853, without any deduction in respect of the loss on the colportage department, on the ground that the bookselling department was a trade irrespective of how the profits were applied, and that the colportage department was not a trade adventure but a philanthropic undertaking.

The Religious Tract and Book Society of Scotland appealed against a decision of the General Commissioners of Income-Tax for the County of Midlothian sustaining an assessment for the year 1894-95 under the Income-Tax Acts, Schedule D, on £532, 15s. 6d. as profits derived from bookselling at the Society's central depository, Edinburgh, after deducting loss to the extent of £210, 18s. 6d. on the business of the Society's depository at Belfast.

The following facts appeared from the case stated by the Commissioners under the Taxes and Management Act 1880:—"The constitution of the Society provides (article 2) that 'The object of the Society shall be, by the circulation of religious tracts and books, to diffuse a pure and religious literature among all classes of the community,' and (article 3) 'This object shall be carried out by the establishment of central and branch depositories and of auxiliary societies and by means of colportage and other agencies.' Separate accounts are kept of the receipts and expenditure of each of the depositories, and of the colportage department. The accounts for each of the three years immediately preceding the year to be assessed (1894-95) show a profit on the business of the Edinburgh depository, but a loss on the Belfast depot, and a loss upon the colportage department. The result is, that placing the loss upon the Belfast depot and the colportage agencies against the profit on the Edinburgh depository, there is overhead a considerable loss on the Society's operations, which is only made good by subscriptions and donations from the public. As stated in the annual reports of the Society, the business of the depositories is conducted on strictly commercial principles, no subscriptions being received or sought on their behalf."

The following admissions, *inter alia*, were made by the parties:—"3. The Society's colporteurs are to a certain extent cottage missionaries; they are often to be found reading the Scriptures, or praying with the sick and others, or conversing with them on spiritual matters; and the directors attach importance to that portion of their work. But this does not represent the chief part of a colporteur's duties. The first instruction put into the hands of every applicant for service as a colporteur, after referring to cottage visitation, declares explicitly that 'as the Society exists to spread the knowledge of the Gospel and promote the Kingdom of Christ by means of the press, and to circulate pure and healthy general literature, a colporteur's chief duty is to sell Bibles and the books and periodicals which are supplied to him.' 4. The two departments of the Society's work (the depository and the colportage) are alike missionary in character, as stated in the constitution of the Society, and are alike carried on by selling to the public at ordinary retail prices; but the colportage agency could not by itself be carried on at a profit as a commercial undertaking, and required the aid of subscriptions. Before the colportage agencies were added, and when the Edinburgh depository stood alone, even the latter was carried on at a loss, and the Society required and received subscriptions. That depository continued to show financial loss for many years, both before and after the addition of colportage."

The Society maintained that its business should be treated as a whole, and that any loss on one department should be deducted from profit made in others before striking the balance on which assessment was made.

The Surveyor of Taxes maintained that the profits from the business of bookselling carried on on strictly commercial principles by the depositories could not be distinguished from ordinary profits of trade, and that the application of such profits to religious or charitable purposes did not exempt them from assessment. He also maintained that the deficiency on the colportage agencies, they being missionary and philanthropic, not business undertakings, could not be set off against the profits from the depositories.

The question of law stated for the opinion of the Court was:—"In ascertaining whether the Society has earned profits assessable under Schedule D, does the deficiency on its operations in the colportage agencies fall to be set against its profits in the Edinburgh depository?"

The assessment was laid on under the Property and Income Tax Act 1853 (16 and 17 Vict. cap. 34), sec. 2, Schedule D, and the Property and Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, Case 1, rule 3.

Argued for the appellant—The decision of the Commissioners was wrong. The business of the Society must be viewed as a whole, and therefore the Society was entitled to a deduction in respect of any loss incurred in any part of the concern. The Inland Revenue allowed a deduction in respect of loss on the depository at Belfast. Why was it not logical enough to allow a deduction on the colportage branch of the business? An endowed hospital which took paying patients at remunerative prices had been held to be within the exemptions from Income Tax, Schedule A—*Cawse* v. *Nottingham Lunatic Hospital*, L.R. [1891], 1 Q.B. 585. It might well be doubted whether the Society earned trade profit at all—*Last* v. *London Assurance Corporation*, L.R., 12 Q.B.D. 389.

Argued for the respondent, the Surveyor of Taxes—The Commissioners were right. The shop business was quite distinct from the colportage business. It made no difference that the trade profit of the shop was devoted to a philanthropic object.

LORD PRESIDENT—It may be conceded to the appellants that the object of their Society is not that of making profit but the

diffusion of religious literature among all classes of the community. But incidental to that large and beneficial purpose they engage in trade, and this assessment proceeds upon the very intelligible theory that the business of bookselling cannot be taxable or not taxable according to the motive of the bookseller. Now, quite consistently, in that businesslike view, the Revenue find that this Society has a bookseller's shop in Edinburgh and a bookseller's shop in Belfast, that it is the same business, and accordingly they allow the loss on the shop in Belfast to be deducted from the gains of the shop in Edinburgh. But then they are moved to bring into the account of this bookselling establishment the accounts of the colportage which is carried on by the Society. Now, the legitimacy of the importation into the account of the colportage must depend entirely on whether it, as well as the shops, is a business, trade, or adventure carried on on commercial principles. Now, it seems to me that the statements in the case entirely negative that view. It appears that the colportage agency could not be carried on at a profit as a commercial undertaking, and is persevered in merely because the Society find that by appealing to the religious public they are able to obtain subscriptions which enable them to fill up the deficit. When we turn to the methods of the colportage it appears that they are not commercial methods, that is to say, that the business carried on is not purely that of pushing the sale of their goods, but that on the contrary the duty of the salesman is to dwell over the purchase and make it the occasion of administering religious advice and counsel. Now, under these conditions, it seems to me to be impossible to hold that this is a business, trade, or adventure which is unfortunately resulting in loss. It is really a charitable mission in which the sale of the Scriptures is made the occasion for doing something more than merely effecting the sale of books. And accordingly, while I completely assent to the view that the establishment and conduct of the shops and the establishment and conduct of the colportage all rest upon the same ultimate motive, yet at the same time the two operations seem to be essentially distinguished. The shops are simply booksellers' shops, the other is a combination of the sale of books with a missionary enterprise, and therefore I think the judgment is perfectly right.

LORD ADAM—I am of the same opinion. I think this question arises upon the matter of striking the balance-sheet of the trade or business carried on by this Society. If this colportage be a proper part of the trade or business carried on by them along with the two shops which they keep, then the loss arises from the business, and falls to be taken into account in striking the balance under the first rule of Schedule D. I do not think it arises under any question about loss connected with or arising out of some different concern altogether. Now, I think the Society is carrying on the trade of bookselling. It keeps two shops—I do not care whether you call them depositories or shops—for the sale of books, the one in Edinburgh and the other in Belfast, and that being the trade carried on by this Society, the Crown very properly put these two parts of the business of bookselling together, and seeing there is loss on the Belfast shop, they deduct that from the gain on Edinburgh, and that is according to ordinary practice. Now, I agree with your Lordship that if a party takes to selling books, it does not matter to the Crown what his object is in doing so—whether it is to put profit into his own pocket, or, having made profit, to expend that in charity or donation. I do not think that matters. I think therefore it makes no difference in this case what is the object with which these two shops are carried on, or the purpose for which they expend the profits made in these shops. I think the true question is, whether this colportage system to which the profits of the shops are applied is or is not part of the trade of bookselling carried on by the Society. Now, we are told in this case that this colportage system is not a commercial system at all. It is not carried on for the purpose of making profit. It is not carried on as a trade speculation, because we are told in this case that it could not be carried on at a profit. It appears to me to be a very remarkable trade as to which those who carry it on admit that they could not possibly make any profit out of it. It shows clearly that it is not carried on as part of the business of bookselling, but they carry on the business of bookselling for the purpose of making profit, and having made profit, they expend it on the charitable purpose for which this Society exists, namely, the sale of books by colporteurs.

LORD M'LAREN—This Society, as we are informed, is constituted for the purpose of promoting the circulation of the Scriptures and of religious books, and its objects are carried out in two ways—first, by keeping retail shops in Edinburgh and Belfast for the sale of their books; and secondly, by sending colporteurs about the country for the purpose of bringing the Bible and religious publications to the homes of the poor. It is stated that the shops, if taken together, are carried on at a profit, but that the colportage business results in a loss, and, as I read the case, it results in an intentional loss, because there is one element which appears to me to be decisive of this case, and that is, that not to meet an occasional loss, but as part of the system on which the Society's operations are carried on, the public are appealed to for subscriptions to make up so much of the loss arising on the colportage business as is not covered by the profits arising on the shop sales. Now, in their reports, as stated in the case, the Society disclaims the intention of asking the public to contribute towards meeting loss or reduced profits upon their proper commercial business, and one understands the reason why this disclaimer should be entered in the Society's

reports, because it is unlikely that the public would contribute money in order to allow the Society to undersell other dealers. But the subscriptions are asked expressly to meet the loss arising on the colportage business, which is of a combined missionary and charitable character. It appears to me therefore that these two branches of the Society's operations cannot be identified as one and the same trade, adventure, or concern, and therefore that under the third rule for estimating profits under Schedule D, the Society is not entitled to set off the loss arising from the colportage business in reduction of the profits upon which they fall to be assessed for their commercial business. The two being clearly separable, I think income-tax is payable upon the remunerative part of the Society's business.

LORD KINNEAR—I agree with your Lordships. I think the Society carries on the business of booksellers in Edinburgh and Belfast, and that their operations in disseminating books by the system of colportage do not constitute a trade, adventure, or concern in the nature of a trade at all, but form one of the purposes to which the profits derived from their trade of bookselling are applied. I agree that it is entirely in accordance with this distinction, and very significant, that they say they carry on their trade of booksellers on purely commercial principles, and do not seek or receive the aid of subscriptions for the purposes of that business, but, on the other hand, that they do ask and obtain subscriptions most legitimately in aid of the purpose to which their profits are applied.

The Court answered the question of law in the negative, affirmed the determination of the Commissioners, and sustained the assessment.

Counsel for the Appellants — Cook. Agents—R. C. Bell & J. Scott, W.S.

Counsel for the Respondents—Lord Advocate Pearson, Q.C. — A. J. Young. Agent — P. J. Hamilton Grierson, Solicitor to the Board of Inland Revenue.

---

*Friday, December 6.*

## OUTER HOUSE.

[Lord Moncreiff.

## HOOD *v.* NORTH BRITISH RAILWAY COMPANY.

*Lease — Removing — Tacit Relocation — Informal Notice to Remove by Landlord.*

In the case of an urban subject, verbal notice to remove given to the tenant by the landlord is sufficient to exclude tacit relocation.

This was an action of suspension and interdict at the instance of James Hood, scalebeam manufacturer, 3 Macdowall Street, Edinburgh, against the North British Railway Company, under circumstances which are sufficiently detailed in the Lord Ordinary's opinion, *infra*.

On 6th December 1895 the Lord Ordinary (MONCREIFF) refused the prayer of the note.

*Opinion.*—"I do not think that there is any serious doubt as to the facts of this case. I am satisfied that on 28th February 1895 the complainer, who was a yearly tenant of premises at No. 3 Macdowall Street, Edinburgh, was distinctly told by his landlord Mr William MacLachlan that he would have to remove from the premises at Whitsunday, as the respondents the North British Railway Company were then to enter into possession of them, and that the complainer distinctly understood this and acted upon it by taking other premises in Victoria Street. Mr MacLachlan candidly admits that on 28th February he did not go to the complainer's premises for the purpose of giving him warning; and he also admits that notwithstanding what passed on that occasion he intended that the complainer should receive a peace-warning at the proper time along with other yearly tenants. By some mistake the complainer's name was omitted from the list of yearly tenants; and it was upon finding that he did not receive a peace-warning that the complainer adopted his present attitude. He was under no mistake as to what was intended. He knew that every other tenant in the tenement had been warned out, and that the omission, if omission there was, must have been accidental. The subjects were long ago removed, and therefore the present proceedings are being insisted in solely with a view to ultimately obtaining compensation from the respondents, which otherwise, being a yearly tenant, he could not have obtained. But of course if he was not properly warned out he is within his rights. . . . . .

"In the case of urban subjects a formal warning or formal notice on either side is unnecessary. It has been held sufficient that intimation was verbally made to the tenant forty days before the term that he was to remove at the term, and that he acknowledged and acted upon the information. The old case of *Tait* v. *Sligo*, M. 13,864, is a case in point, and the recent case of *Gilchrist* v. *Westren*, June 24, 1890, 17 R. 363, is a strong authority to the same effect in the converse case of notice being given by the tenant. The latter case is peculiarly in point, because the notice given by the tenant that he intended to leave at the term, which was held to be sufficient, was made in the course of conversation with the landlord's factor. The tenant did not go to the factor's office with the intention of giving notice, but in the course of conversation he intimated to the factor that he would quit the premises at Whitsunday 1889 unless he received intimation that a reduced rent would be accepted. He received no such intimation, and he was held at liberty to go. The Court, proceeding on the circumstances of the case, held that the notice given was timeous and sufficient. The only difficulty in the present case