was remonstrating with and scolding the pursuer for behaving in that unbecoming manner—walking on the street gaudily dressed with young men, and being late for school—and that there was no intention on her part, and it was not understood that she was imputing actual prostitution—that is, walking the streets as a prostitute. I put the question to Mr Rhind, "Was it consistent with any such belief on either side when the party who gave the scolding kept the girl in the school as a pupil-teacher, and when the party who received it remained there for two years? If such a charge had been actually made—if she had believed the pursuer to have been in reality a street-walker—she would never have kept her a moment longer; if the pursuer had believed the charge was made in that sense, she never would have remained. Therefore, so far as the parties are individually concerned, the defender, in the exercise of her right and in the discharge of her duty, administering a rebuke and a scolding, and the pursuer being the party receiving it, it was not understood on the one side or the other that there was an imputation of being a prostitute. Nor do I think any reasonable person listening to a scolding of that kind would suppose that the school-mistress really intended to impute the crime of being a prostitute to the girl. Nobody would understand it to be so. I quite agree that it is a material question what the hearers of any defamatory language understand by it. The worst of all slander is slander which a person does not believe but which he intends the hearers to believe. A person knowing another to be perfectly pure, accuses that other of immorality, in language intended to be so received and understood. That is the worst of all slander. I think it quite clear upon the evidence, and from all the circumstances, that the hearers did not understand that the defender did mean the pursuer or anybody else to believe that she was accusing pursuer of being a prostitute; and I am quite satisfied from the circumstances connected with the case that nobody present understood the language used to be anything but a very proper scolding—it might be in somewhat rough language—of a girl of fifteen for her impropriety and levity of conduct, which had attracted attention, and was the subject of complaint. I am therefore, on the whole matter, repeating my regret that the case ever came here, of opinion that the judgment of the Sheriff should be sustained.

Lord Craighill concurred.

Lord Rutherfurd Clark.—Had I been satisfied that defender called pursuer (individualising her) a street-walker, I should have had very great hesitation in assoilzieing defender, whatever her meaning, when she used the expression alleged. But on considering the evidence I have come to the conclusion along with the Sheriff that it is not proved that she used the language complained of. Having regard to the fact that this action was not brought until more than two years had elapsed after the events took place, I cannot say it is proved to my satisfaction that the expressions libelled were used by the defender. It is upon that ground, and upon that ground only, that I concur in the judgment of the Court. I confess, however, that while so concurring, I think the language which was used was not such as I can approve of as proper to be used on such an occasion.

Lord Justice-Clerk — On first reading the evidence I had formed an impression unfavourable to the pursuer's case. This impression has strengthened during the hearing, and the result is that I concur entirely in the opinion of Lord Young.

The Court dismissed the appeal and affirmed the Sheriff's interlocutor.

Counsel for Pursuer (Appellant)—Campbell Smith—Rhind. Agent—William Officer, S.S.C.

Counsel for Defender (Respondent)—The Hon. H. J. Moncreiff—Dickson. Agents—M. M'Gregor & Co., S.S.C.

---

*Saturday, May* 19.

## FIRST DIVISION.

[Exchequer Cause.

## WILSON (SURVEYOR OF TAXES) *v.* FASSON.

*Revenue—Inhabited House Duty Act* (48 *Geo. III. c.* 55), *Schedule B, Case IV.—Exemption—Hospital*—14 *and* 15 *Vict. c.* 36.

The Act 48 Geo. III., c. 55, exempts from assessment for inhabited-house-duty, *inter alia*, "any hospital."

*Held* that the dwelling-house of the medical superintendent of an infirmary situated within the infirmary grounds, was exempt from inhabited-house-duty, because it was a necessary part of the infirmary.

In this case Charles H. Fasson, Deputy Surgeon-General, Superintendent of the Royal Infirmary, Edinburgh, appealed to the Commissioners for the county of Edinburgh against an assessment of £2, 5s. as inhabited-house-duty, at the rate of 9d. per pound on £60, the annual value of a dwelling-house occupied by him within the precincts of the Royal Infirmary grounds.

The house, which was self-contained, and occupied by Mr Fasson and his family, was a part of the Infirmary buildings, but separate and distinct from the Infirmary itself, being distant about 30 yards from the nearest point of it. There was an entrance to the house by the principal gate of the Infirmary in Lauriston Place, but there was also a private entrance for the superintendent and his family from the Meadow Walk, a public thoroughfare, though for foot-passengers only.

There was nothing in the constitution of the Royal Infirmary which required the superintendent to reside within the precincts of the Infirmary, and for a time the appellant had lived in a house provided for him by the managers in another part of the city, but on 16th October 1876 the Building, House, and Finance Committees of the managers adopted a joint report in which they came to the "unanimous conclusion that the superintendent should be required to live within the Infirmary grounds, and that a suitable residence should be provided for him there." They came to this conclusion on, *inter alia*, the following grounds. —"The experience of the last four years seems to the committee to have proved that the duties of superintendent cannot be efficiently and in their entireness carried out unless he resides at the Infirmary. He cannot, living at a distance,

exercise constant supervision and control over the large staff of a great establishment such as the new Infirmary; he cannot be at all times easily accessible to those who may have occasion to apply to him for advice or assistance; he cannot conveniently, especially at night, visit from time to time the wards to see that matters are properly conducted; he cannot take effectual cognisance of the stores; nor, in short, can he keep himself continuously acquainted with the whole working of the institution, for which he is answerable to the managers."

The managers by their minute of 30th October 1876 adopted this report, and instructed the Building Committee to provide a suitable house for the superintendent, which was accordingly done.

The Commissioners sustained the appeal and granted relief from the assessment for inhabited-house-duty. With this decision the surveyor declared his dissatisfaction, and in terms of section 59 of 43 and 44 Vict. cap. 19 (The Taxes Management Act 1880) craved a Case for the opinion of the Court of Exchequer.

It was therein set forth that "the appellant (Fasson) had contended that the house occupied by him being part of the Infirmary buildings, and occupied by him in his official capacity as superintendent of the Royal Infirmary, fell under Case 4 of the exemptions, Schedule B, of the Act 48 Geo. III. cap. 55, which exempts from inhabited-house-duty 'any hospital, charity school, or house provided for the reception or relief of poor persons,' and which exemption is still continued in force by the Act 14 and 15 Vict. cap. 36." And further, "That his case was ruled by the decision of the judges in the Exchequer (England) case, *Jepson* v. *Gribble*, L.R., 1 Ex. D. 151, Exchequer Cases, Income Tax and Inhabited House Duties, part 5, No 16, in which the resident medical superintendent of a lunatic asylum was held not to be liable for inhabited-house-duty in respect of the house provided for him, 'separate and detached from, but within the grounds of the asylum."

The Case further stated that for the surveyor of taxes it had been contended "that but for the exemption relied upon by the appellant the whole of the Infirmary buildings would, under the Act 14 and 15 Vict. cap. 36, be chargeable; that the exemption was meant to prevent such a result; but that it was straining it to hold it as applicable to the family dwelling-house of the superintendent, in which patients are neither received nor treated. The fact of the house being situated within the grounds of the Infirmary might affect its annual value (which is not objected to), but could not constitute a right to exemption. The surveyor further contended that a material difference existed between this case and that of *Jepson* v. *Gribble*, inasmuch as in that case it was provided by statute (16 and 17 Vict. cap. 97) that the medical superintendent shall be resident in the asylum, whereas in this case no such obligation exists either under a statute or the constitution of the Royal Infirmary."

At the discussion the following additional authority was cited for the surveyor of taxes—*Congreve & Brushfield* v. *Overseers of Upton*, Jan. 23, 1864, 33 L.J., Mag. Cases, 83.

At advising—

Lord President—The simple question here is whether the medical superintendent's house in the Royal Infirmary of Edinburgh is part of the hospital within the meaning of the exemption contained in the Act 48 Geo. III. cap. 55, which exempts from inhabited-house-duty "any hospital, charity school, or house provided for the reception or relief of poor persons."

Now apart from authority altogether, I think this is a case about which there can be little doubt. This hospital is a very large establishment. I am not aware how many beds it contains, but it is one of the largest in the kingdom, and *prima facie* it would appear absolutely necessary that a medical superintendent should reside within the walls. Accordingly we find that the managers of the Infirmary when they removed from the old building and got possession of the new, by a minute of 16th October 1876, following on a report, "came to the unanimous conclusion that the superintendent should be required to live within the Infirmary grounds, and that a suitable residence should be provided for him there." They came to this conclusion on the following grounds—[*reads as above*]. It is not said, nor was it suggested in argument, that the managers were wrong in coming to this conclusion, or that it was not a step which was absolutely necessary for the working of the institution. If it was necessary—and I think there is no doubt of that—for the superintendent to visit the Infirmary at night, and throughout the night, it follows that it was necessary for him to reside within the building; and I think it impossible, if the statement of the managers is consistent with fact, to doubt that such an arrangement was necessary for the well-being of the institution.

If it was necessary that there should be a resident superintendent at the hospital, what did it matter whether the rooms he occupied were connected by a covered passage, or whether he inhabited a separate house. In either case his dwelling was still within the grounds and walls of the hospital.

I do not think this is a technical question at all; it is a single question of fact, and I quite agree with Chief-Baron Kelly that it is to be looked at with the eye of common sense; and so regarded, I think this house was a necessary part of the establishment, and that the hospital could not be administrated without a resident medical superintendent. We were told that his residence within the building was not a statutory necessity, and while I admit that, I do not see the relevancy of it, for the statute would not make this house more a part of the Infirmary than the absolute exigencies of the institution. I think that the requirements of the case make it just as much part of the Infirmary as if it had been made part by the statute. The cases of *Jepson* and *Congreve* are strong authorities to this effect, but I desire to give my opinion on the broad question, without reference to authority at all; and on the merits of the case I have no doubt that this house is exempt.

Lord Deas—I am of the same opinion. The question is whether the house occupied by the medical superintendent is part of the Infirmary or not, and I do not think it matters whether the statute makes it part of the Infirmary or not; it is still part of the hospital, whether there is any statutory provision on the subject or not. *All*

the cases we have had cited to us go to support that proposition.

It was argued that if the house of the medical superintendent was part of the hospital, so is that of the chaplain. I do not think that follows at all. The duties of the two may be equally important, but they are not equally connected with the establishment, for the duties of the chaplain relate to the next world while those of the medical superintendent relate to this; the duties of the one are more immediate than those of the other. Therefore there is no use in arguing that if the one is part of the hospital the other must be also. It is of no consequence whether the necessity arises from a statutory condition or not; the question is one of fact, and on the facts I hold that this house is not only a part but a necessary part of the hospital. Even if there had been no authority, I should be of opinion that on a mere statement of the case this house was part of it. The managers have so found, but I do not go upon that, for it is not necessary. Apart from the conclusion of the managers, I am clearly of the same opinion as your Lordship.

Lord Mure—I have no difficulty in concurring, for it is clear that it was just as necessary that this gentleman should live in the precincts of the Infirmary as it was in the English cases cited, where there was a statutory provision to that effect.

Lord Shand concurred.

The Court affirmed the determination of the Commissioners.

Counsel for the Inland Revenue—Solicitor-General (Asher, Q.C.)—Lorimer. Agent—D. Crole, Solicitor of Inland Revenue.

Counsel for Fasson—Pearson. Agents—Hope, Mann, & Kirk, W.S.

---

*Saturday, May* 19.

## SECOND DIVISION.

[Lord Lee, Ordinary.

## WAUGH *v.* THE CITY OF GLASGOW UNION RAILWAY COMPANY.

## INGLIS *v.* THE SAME.

*Reparation—Railway—Obligation to Fence—Relevancy.*

A person having charge of a locomotive in the employment of a trading company whose works communicated by a siding with the main line of a railway company, raised an action of damages against the railway company setting forth that while upon the siding on a dark night in the discharge of his duty, and when about to move certain points thereon, he fell over an embankment on to the main line and received severe injuries. He further averred that it was the duty of the railway company to fence the siding at the place in question, and that the accident was due to the absence of such fencing. *Held* that the obligation to fence was a question of circumstances, and that the pursuer was entitled to an issue for the trial of the cause.

Hugh Waugh, brakesman, and James Inglis, weigher, both in the employment of the Steel Company of Scotland (Limited), at their works at Blochairn, near Glasgow, raised the present actions against the City of Glasgow Union Railway Company for damages for personal injuries by falling in the darkness of a winter morning over an embankment on to the defenders' railway.

The pursuer Waugh set forth that he was the fireman or stoker of an engine connected with the Steel Company of Scotland at Blochairn. The pursuer Inglis set forth that he was "weigher" in connection with the same engine. Both pursuers averred that the engine with which they were connected carried a crane for lifting ingots, and a weighing machine for weighing them. They further averred—"The defenders have a line of railway or siding which leads into the works of the said Steel Company at Blochairn, which is called or known as the Blochairn siding of their system of railway lines. This siding or railway is the property of the defenders, and is formed on an incline by archways of brick, leading off their main line of railway up to the Steel Company's works at Blochairn, and it is by this siding or railway that the said Steel Company, by arrangement with the defenders, take in and put out the material for their works. The said Steel Company have also, by arrangement as aforesaid, the use of the defenders' ground and railway to the south-west of their works for laying down ingots and blooms, as also ores and other materials, before they are taken into their works." The pursuer Waugh averred—"Upon the morning of Wednesday the 1st day of November 1882, at about three or half-past three o'clock, being then very dark, the pursuer was, with his engine, No. 4 'crane pug' aforesaid, engaged at the outside of the Steel Company's works, and upon the defenders' said railway siding, when, having to get down to examine the points, which are situated near to the corner of a wooden bridge at the west end of the Steel Company's works, he, in the dark, fell over the defenders' embakment there, which is perpendicular, aud at least 15 feet in height, and is not protected by any fence, paling, or protection whatever." The pursuer Inglis averred that on the same morning he was with the engine engaged at the outside of the Steel Company's works, and upon the defenders' railway siding, "when, having been engaged at his ordinary employment as a weigher on said engine, and having occasion to alight therefrom to assist in examining the points, or do some other business along with the said Hugh Waugh near to the corner of a wooden bridge at the west end of the Steel Company's works, they in the dark fell over," &c. Each pursuer averred that in consequence of the fall he had sustained severe injuries, and each averred—"The place where the pursuer fell and sustained his injuries is totally unfenced and unprotected. There was a railing or fence at the same place about twelve months previously, but it was removed by the defenders, and nothing was put up in its stead. The place is a very dangerous one, and should have been kept properly fenced and protected by the defenders, as it was their duty to the Steel Company and their servants, and all others having right to use and being lawfully on the said railway or siding, to