

20th July 1921]: Find that the pursuers are entitled to claim from defenders an accounting for commissions, but only for the period between 26th February 1914 and 10th July 1916, but excluding from the accounting allowed all questions relating to over-prices: Assolzie the defenders from the conclusions of the summons so far as applicable to the period subsequent thereto, and also from the pecuniary conclusions of the summons stated in the second place, and decern."

Counsel for the Pursuers and Respondents—Gentles, K.C.—Aitchison. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Defenders and Reclaimers—MacRobert, K.C.—Black. Agents—Macpherson & Mackay, W.S.

Friday, June 2.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

FEACHAN v. GLASGOW SUBWAY COMPANY, LIMITED.

Reparation—Negligence—Property—Trap—Lighting of Common Stair—Averments—Relevancy—Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxviii), sec. 361.

The Glasgow Police Act 1866, sec. 361, enacts that the owner of heritable property "having an access by a common stair shall provide and maintain suitable gas pipes and brackets, lamps and burners, in such common stair to the satisfaction of the inspector of lighting . . . placed as the said inspector . . . may direct, . . . and the Corporation shall cause them to be supplied with gas and lighted during the same hours as the public street lamps," and should recover the cost from the owner.

In an action of damages for personal injuries against the owners of a tenement the pursuer averred that after dark in order to ascertain an address she entered the tenement and proceeded along the passage to the door of a house which was situated in a recess at the end of the passage. She averred that while there was a light in the passage, it was so placed that the recess was completely dark, and that while groping her way to find the door she fell down a stair leading to the basement and received the injuries complained of. She averred further that the stair was defective in construction, and that it should have been provided with a railing or door to mark it off from the recess. *Held* that the action was irrelevant (1) in respect that the pursuer's averments showed that the accident was due to defective lighting, and it was not averred that the defenders had failed to light the stair to the satisfaction of the inspector of lighting; (2) that *quoad* the construction of the stair the defenders owed no duty to the pursuer.

Gaunt v. M'Intyre, 1914 S.C. 43, 51 S.L.R. 30, *followed*.

Mrs Catherine M'Cormack or Feachan, Glasgow, *pursuer*, brought an action in the Sheriff Court of Lanarkshire at Glasgow against the Glasgow Subway Company, Limited, *defenders*, in which she claimed £100 damages for personal injuries.

The pursuer averred—“(Cond. 2) On or about 16th November 1921 pursuer was intending to visit her son Anthony Feachan. She was not sure of his address and went into the close in No. 16 Herbertson Street to inquire. When she went into the close she proceeded towards the door of the dwelling-house in the close at said No. 16 Herbertson Street, but before she could do so she fell down a stair which led from the lobby or recess in the close to a sunk area at the back. The floor of the sunk area at the back was about ten feet below the level of the floor of the close where the stair begins. She fell down the steps of the stair to the back area almost to the bottom, injuring herself very badly. She has not yet recovered from said accident, and her haunches and back have been permanently injured. (Cond. 3) The close or tenement in which the accident happened belongs to defenders, and is under their control as regards maintenance and condition. The close in No. 16 Herbertson Street goes straight in till it reaches the back wall of the building. There is a recess to the right in which an entrance into the house in the close is provided. Pursuer went into that recess in order to go to the door of the house, but the recess was completely dark, and no light was provided by which she could see where she was going. The top of the stair to the ground behind was also completely dark, and in searching for the door of the house in the close pursuer put her foot on the steps of the stair to the back, and missing her footing she fell down the stair. (Cond. 4) The cause of the accident was—(1) the bad construction of the building, in which a very steep and quite dangerous stair, of which the steps were too narrow and the slope or spread of which was too steep, was left as an approach to the back area; and (2) the want of a railing or door which should have been provided by the proprietors to mark off the stair from the recess or passage to the house in the close, and thus prevent persons going on to the stair, or at least warn passengers of its existence there; and (3) the want of light in the close to light the entrance to said back stair. There was at one time a gate on said back stair, but for a long time there has been no gate and no fence or railing to prevent passengers as aforesaid from falling. The lamp which lighted the close was not so placed so that it lighted the recess or entrance to the door of the house in the close and the entrance to the back stair referred to. It only lit a straight line of the close or entrance, with the usual effect of leaving the said recess or entrance to the stair in deeper shadow than if the light had not been there at all. Since the accident the defenders have altered the position of the light in the said close. It is explained

in reply to defenders' statements that it is the duty of defenders to light the said property, and that no application was made to the inspector of lighting to provide improved lighting. (Cond. 5) During the last two years a number of persons have fallen down said stair and been injured, and in December 1920 a woman who entered this close fell down said stair and was killed. The police complained of the dangerous nature of the stair, and defenders were made aware of the fatal accident having happened, but they refused or delayed to alter the arrangements so as to avoid further accidents, and thus left the stair in question as an open trap or pitfall adjoining the common stair of the tenement to which the public had access."

The pursuers pleaded—"1. Defenders being owners of the property, which was of a dangerous construction, should be held liable in damages to pursuer, with expenses. 2. Defenders having left a dangerous stair exposed in a common thoroughfare or close unguarded and of the nature of a trap or pitfall into which a member of the public was likely to fall, are liable in damages for having so left it, and with expenses. 3. Intimation having been given to defenders by the police authorities, and the defenders having been made aware otherwise of the condition of said stair by their knowledge of the accidents which happened on it that the said property owned by them was in a dangerous condition to persons entering said close, and having failed to alter the arrangements of same in any way, are liable in damages to pursuer with expenses. 4. In respect of the want of sufficient light in said close and recess, and of defenders' failure to provide a gate or fence as aforesaid, defenders should be held liable in damages with expenses as craved."

The defenders pleaded—"2. The pursuer's averments being irrelevant and insufficient to support the conclusion of the action, it should be dismissed with expenses."

On 17th March 1922 the Sheriff-Substitute (FYFE) allowed a proof before answer.

The defenders appealed, and argued—The action was irrelevant. The proprietor owed no duty to the pursuer, and in any event he was only bound to light the stair to the satisfaction of the inspector of lighting—*Gantret v. Egerton*, 1867, 2 C.P. 371; *Melville v. Renfrewshire County Council*, 1920 S.C. 61, 57 S.L.R. 68; *Gaunt v. McIntyre*, 1914 S.C. 43, 51 S.L.R. 30; *Driscoll v. Commissioners of Burgh of Partick*, 1900, 2 F. 368, 37 S.L.R. 294; *Baillie v. Glasgow Corporation*, 1918 S.C. 67; 1919 S.C. (H.L.) 13, 55 S.L.R. 71, 56 S.L.R. 141; Glasgow Police Act 1866 (29 and 30 Vict. cap. cclxxiii), section 4 (definition of common stair). A stair was not a trap. The real trap was the lighting.

Argued for the pursuer and respondent—The accident was due to a trap, and the defender was therefore liable—*Gavin v. Arrol & Company*, 1889, 16 R. 509, 26 S.L.R. 370. Whether a particular risk constituted a trap or not was a question of fact. No question of lighting could take away from the landlord his duty of so constructing his

premises as to avoid a trap—*Mellon v. Henderson*, 1913 S.C. 1207, 50 S.L.R. 708.

At advising—

LORD JUSTICE-CLERK—In the argument before us counsel for the defenders admitted that the pursuer must be taken to have been legitimately in the close in question. That was the hypothesis of the whole argument. The close was one to which access from the public street could be obtained without hindrance.

The pursuer avers, *inter alia*—"The top of the stair to the ground behind was also completely dark, and in searching for the door of the house in the close pursuer put her foot on the steps of the stair to the back, and missing her footing she fell down the stair." In their answer the defenders admit that the close in which the accident happened belongs to them and is under their control as regards maintenance and condition, and that towards the back of the close there is a recess in which an entrance into the house in the close is provided. In condensation 5 it is averred—"During the last two years a number of persons have fallen down said stair and been injured, and in December 1920 a woman who entered this close fell down said stair and was killed. The police complained of the dangerous nature of the stair, and defenders were made aware of the fatal accident having happened, but they refused or delayed to alter the arrangements so as to avoid further accidents, and thus left the stair in question as an open trap or pitfall adjoining the common stair of the tenement to which the public had access." The second and third pleas for the pursuer are in these terms—"2. Defenders having left a dangerous stair exposed in a common thoroughfare or close unguarded, and of the nature of a trap or pitfall into which a member of the public was likely to fall, are liable in damages for having so left it. 3. Intimation having been given to defenders by the police authorities, and the defenders having been made aware otherwise of the condition of said stair by their knowledge of the accidents which happened on it, that the said property owned by them was in a dangerous condition to persons entering said close, and having failed to alter the arrangements of same in any way, are liable in damages to pursuer. . . ."

So far as the case is founded on defective lighting alone, the case of *Gaunt*, which is binding upon us, affords, in my opinion, an answer to the pursuer's claim. But the action is laid not merely on defective lighting but also on defective construction of the building; it was left in such a condition as to create a trap, to guard against which the ordinary system of lighting adapted for a close where no such trap existed was not sufficient. There was a combination of negligence or fault on the part of the defenders and it may be also of the Corporation, who are charged with the duty of lighting. The Sheriff-Substitute's interlocutor allows a proof before further answer. If I had been disposing of this appeal alone I would have been inclined not to interfere with the Sheriff-Substitute's conclusion in such a

matter, for the pursuer's averments are not as specific as they might have been. But while these are my views I do not, having regard to the opinions of your Lordships, formally dissent from the judgment which your Lordships support.

LORD SALVESEN—The facts averred in this case may be very shortly stated. The pursuer on the evening of 16th November 1921, having forgotten her son's address, went into the common stair of the tenement No. 16 Herbertson Street, which belongs to the defenders, to inquire of the occupant of a house on the ground floor where her son lived. The passage along which she proceeded led right to the back of the tenement, the door of which was situated in a recess on the right. In the same recess there is a stair which leads to the back area, situated some 10 feet below the level of the floor of the close. There was a light in the passage, but according to the averments it was so placed that the recess was completely dark. While groping her way in the recess to find the door of the tenement the pursuer fell down the stair and hurt herself. She now sues the proprietors of the building, who admit that the close was under their control as regards maintenance and condition.

The grounds of action are (first) the bad construction of the building "in which a very steep and quite dangerous stair, of which the steps were too narrow and the slope or spread of which was too steep, was left as an approach to the back area, and (second) the want of a railing or door which should have been provided by the proprietors to mark off the stair from the recess or passage to the house and close and thus prevent persons going on to the stair, or at least warn passengers of its existence there.' In my opinion these averments do not suggest any ground of liability. A proprietor of a house is entitled to have any stair which he thinks fit to serve the purposes of the tenement, and there is no obligation on him to have it of any particular breadth or any particular standard of easiness of descent. Any form of stair is of course a source of danger to people who happen to fall down it. It is a novel proposition to my mind that a proprietor who lets a house in a close, with which his tenant is absolutely satisfied, shall provide a different form of stair in order that strangers who may be innocently there and fall down it may be less injured than if the stair were wide and easy of descent or carpeted. It has already been decided that the fact that a stair has winding steps, which to a person descending them, especially in the dark, may prove a greater source of danger than if the steps were straight, is not a defect which creates any liability on the owner. It is equally plain to my mind that there is no obligation on the part of a proprietor to put a railing or door at the top of a staircase so that people who are approaching the premises in the dark may be warned of its presence. If the door were always shut no doubt it would serve as a warning that the stair was immediately on the other side.

But the fact of its being left open by any tenant or other person who used the stair might in these circumstances prove a source of danger owing to reliance having been placed on the known presence of a door at this particular point. It is common knowledge that such a door is unknown in the vast majority of common stairs; and there is no case that suggests that a proprietor has any duty towards people who use the stair other than of keeping it in a reasonably safe condition. A stair, whether it leads upwards from the street entrance or downwards to a basement or back area, is a usual and necessary mode of access to the parts of the premises that are situated above or below. It may be noted that it is not stated anywhere that the stair was in close proximity to the door at which the pursuer intended to make her inquiry, so that a person going more or less directly to this door might inadvertently slip on to the first step. For all that appears the stair may have been a considerable distance along the recess from the place where the door was situated. These being the only averments which are now insisted in as against the defenders, I hold them to be plainly irrelevant as disclosing no breach of duty on their part.

The third ground of action, it is admitted, cannot now be maintained in the face of the decision in *Gaunt v. M'Intyre* (1914 S.C. 43). The true cause of the accident, on the pursuer's own averments, appears to have been that because the light in the passage was so placed as to leave the whole recess in shadow she was unable to see the stair or the door in the complete darkness which prevailed. But the duty of directing where the light is to be placed lies upon the Corporation of Glasgow and not upon the defenders, who if they comply with the instructions given them by the inspector, fulfil their duty. It may be that there is a ground of action against the Corporation for failing to see that the stair was adequately lit so as to guard against the particular kind of accident which happened to the pursuer. But the defenders were entitled to rely upon the Corporation fulfilling their statutory duty and were under no obligation to superintend, or control them in the exercise of their proper functions. If the recess had been properly lit, as the pursuer says it ought to have been, the stair would have been perfectly visible to anyone taking reasonable care for their own safety. There is no suggestion that the defenders had failed to comply with any order made by the Corporation; such a failure might conceivably have given rise to a claim against them. It will not make the case relevant to say that the stair when not lit constituted a trap or pitfall. The same may be said of any stair which a person endeavours to negotiate in the dark or approaches without knowledge of the precise spot at which it commences. The learned Sheriff-Substitute has, I think, fallen into two errors—(first) in saying that there was a common law duty on the defenders to light their premises in so far as that has not been displaced by the statutory obligation on the Corporation

of Glasgow, and (second) that their failure to call upon the Corporation to remedy the defective lighting, after it had been brought to their knowledge that a fatal accident had happened on the stair, may constitute negligence on their part. If there was a duty on the defenders to light the stair, no doubt they might be liable if they failed to fulfil that duty; but if the duty is cast upon a responsible body like the Corporation of Glasgow, I fail to see that they have a duty to direct the Corporation as to the mode in which they shall fulfil their statutory obligation. On the whole matter I am clearly of opinion that this action is irrelevant and that we should dismiss it.

LORD ORMIDALE—I concur. While it is true that the pursuer makes sundry averments as to the construction of the stair down which she fell, and as to the want of a railing or door to mark off the entry to the stair from the recess through which she was passing, the main ground of her complaint is the want of adequate lighting. It is quite apparent from all that she says that if she had been able to see the entrance to the stair neither the alleged steepness of the stair nor the narrowness of its steps nor the want of a railing would have been in any real sense sources of any danger. She was not attempting to descend the stair to the back area when she met with the accident—she was searching for the door of the house in the close, and in doing so she put her foot on the steps of the stair and missed her footing. That was the direct consequence of the want of light. In these circumstances it is impossible to understand what the pursuer really means when she avers as in part the cause of the accident the steepness of the stair or the narrowness of the steps or what standard of construction she has in mind when she describes them as too narrow and too steep. But taking a more general view I entirely agree with Lord Salvesen that the defenders owed no duty to the pursuer in relation to the sort of stair they thought fit to provide, and that they cannot be held responsible in law for the want of a rail or door at the head of it.

The accident was due to the pursuer's ignorance of the existence of the stair and her inability to detect its presence in the dark. Accordingly it was maintained for her that it constituted a trap into which a member of the public lawfully on the premises was likely to fall. It was not disputed that the pursuer had legitimate occasion to be in the recess, but I am not at all clear that the stair constituted a "trap" in the legal acceptance of the term. However that may be, I am satisfied that if trap there was the defenders were not responsible for its existence. The stair only became a trap in any sense because the recess was insufficiently lighted, and the lighting was entirely under the control, not of the defenders but of the Corporation of Glasgow. That is plain from the terms of the Glasgow Police Act 1866, section 361. The only answer made by the pursuer to the citation of that Act is that it is the duty of the

defenders to light the property and that no application was made to the inspector to provide improved lighting. But it is the duty of the Corporation to see to the lighting of a common stair, and there is no duty on the part of the owners to interfere with or control the exercise of their statutory duty by the Corporation. Their only duty is to provide gas fittings to the satisfaction of the inspector of lighting, and it is not said that the defenders failed so to do—*Gaunt v. M'Intyre*, 1914 S.C. 43. Nor in my opinion if there was a failure on the part of the Corporation in the present instance to supply sufficient light, did it become incumbent on the defenders to take steps to vary the existing state of their premises, otherwise free from defects, in order to prevent the risk of a possible accident when that risk was the direct consequence of the negligent performance by the Corporation of their obligations.

Accordingly I agree that we should sustain the appeal and dismiss the action.

LORD HUNTER did not hear the case.

The Court dismissed the action.

Counsel for the Pursuer and Respondent—Skelton. Agents—W. G. Leechman & Company, Solicitors.

Counsel for the Defenders and Appellants—Hon. William Watson, K.C.—Jameson. Agents—Alex. Morison & Company, W.S.

Tuesday, June 13.

FIRST DIVISION.

[Exchequer Cause.]

INLAND REVENUE v. SHAND.

Revenue—Income Tax—Employment of Profit—Commissions on Company's Profits—Whether Assessable on Three Years' Average or on Receipts of Year of Assessment—"Perquisites"—Income Tax Act 1853 (16 and 17 Vict. cap. 34), sec. 2, Schedule E—Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 146, Rules for Schedule E, Rules 1 and 4.

By the terms of his appointment the remuneration of the manager of a company consisted partly of an annual salary of fixed amount and partly of a commission or bonus on the company's net profits in each year. *Held* that the commissions fell to be assessed for income tax as "perquisites" under Rule 4 of Schedule E, and might be estimated therefore either on the basis of the preceding year or the fair and just average of the three preceding years.

The Income Tax Act 1853 (16 and 17 Vict. cap. 34) enacts—Section 2—"For the purpose of classifying and distinguishing the several properties, profits, and gains for and in respect of which the said duties are by this Act granted, and for the purposes of the provisions for assessing, raising, levying, and collecting such duties respectively,