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

arises from the fact that Mr MacLachlan intended to give the complainer formal warning; and that affords ground for the observation that he did not regard what passed on 28th February as a final warning.

"But I do not think that the complainer can avail himself of this. The question is was the warning given such that the complainer was entitled to act upon it? Now the intimation which he received on the 28th February was such that had it been the landlord's interest, and had he tried to hold the complainer to his tenancy, he would at once have been successfully met by the defence that he had himself given intimation, and that on the faith of it the tenant had taken other premises. If, then, the notice given on 28th February was sufficient, the landlord was not bound to give, neither was the complainer entitled to receive further notice; and the fact that the landlord intended to peacewarn the complainer is only of importance in testing the credibility of the evidence which he gives as to what passed on 28th February. It would be unfortunate if the law could not give effect to the good faith of the case. I do not think I am straining it in holding that the intimation given on 28th February 1895, and acted on by the complainer, was timeous and sufficient."

Counsel for Complainer—M'Lennan—A. M. Anderson. Agents—Donaldson & Nisbet, Solicitors.

Counsel for Respondents — Dean of Faculty Asher, Q.C. — Cooper. Agent — James Watson, S.S.C.

Friday, January 17.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

THOMSON *v.* MAGISTRATES OF GREENOCK.

Church—Burgh—Minister—Stipend—Obligation to Pay Fixed Stipend.

A summons for the disjunction and erection of a parish *quoad sacra* in a burgh contained a conclusion that the magistrates of the burgh and their successors in office should be bound and obliged to provide the minister of the new parish "in a competent stipend."

On 8th March 1809 the Court pronounced an interlocutor in the action, by which they decerned "in the disjunction, erection, and annexation *quoad sacra* as libelled on the magistrates . . . engaging to be answerable for a stipend of £200 sterling per annum." Thereafter the magistrates by an act of council undertook to be answerable for a stipend "of not less than £200 per annum."

An action was raised in 1895 by the minister against the magistrates for a stipend exceeding £200, on the ground that the decree, as interpreted by the conclusion of the summons, and the subsequent act of council, imposed upon them the obligation to provide a competent stipend.

Held that the contract between the parties was unambiguously expressed in the interlocutor of 9th March 1809, and that under that contract the magistrates were liable only for a stipend of £200.

Peters v. *Magistrates of Greenock*, 19 R. 643, and 20 R. (H.L.) 42, *distinguished.*

In 1809 the Magistrates and Town Council of Greenock and the members of a committee of managers appointed by the proprietors of the East Chapel of Greenock brought a summons of disjunction and erection of the East Church and parish of Greenock. Prior to raising the action resolutions had been passed at a meeting of the Magistrates and Town Council of Greenock on 30th January 1809, which bore that the magistrates "agree to execute, as representing the town, the necessary bond for the payment of such stipend as the Commissioners for Plantation of Kirks may fix upon, not exceeding £150, and the usual allowance for communion elements, and on the conveyance and renunciation above mentioned being procured, authorise the clerk to prepare the requisite bond."

A bond embodying this obligation was lodged in the teind process.

In the summons this resolution was narrated with the omission of the words "not exceeding £150." The summons concluded (1) that certain parts and portions thereof should be separated and disjoined from the Old or West Parish of Greenock; (2) that these portions should be erected into a new and separate parish and pastoral charge, to be called in time coming the East Church and Parish of Greenock. The summons then proceeded—"And it ought further to be found and declared by decreet foresaid that the Magistrates and Town Council of Greenock for the time being, and a committee of seven to be named by and from the proprietors of seats reserved in the said chapel, shall in all time coming have the sole and undoubted right of patronage of the said church, and the right of presentation and calling a minister to serve the cure thereat, and as oft in time coming as any vacance shall happen, and of modelling and disposing of the said church and haill seats thereof and bounds within the same, under the exceptions before and after mentioned, and of setting the said seats, and uplifting the rents thereof, and of naming and appointing the beadles, bellmen, and doorkeepers of the said church, and readers, precentors, and clerks for the same and session thereof, from time to time as they shall think fit, and of disposing during any vacancy of the fund which shall be provided by them for a stipend to their minister, or for communion elements, manse, or schoolhouse." Then followed a reservation of certain existing rights in seats in the chapel, and a declaration freeing the heritors of the said parish of Greenock from liability for stipend, &c.; "and in