funds shall be eaten up more or less gradually? and being tied down to give the one answer or the other, I am of opinion that the more slowly it is done so much the more reasonable and the better. On that ground alone I am of opinion that the Lord Ordinary's judgment is right and ought to be adhered to.

Lord Mure—The only point decided in the interlocutor under review is the question of law. [*His Lordship here read the interlocutor*]. That is the whole judgment, and in that general finding of law I entirely concur. It is to be gathered from the rules laid down in several cases that were before this Court, and more particularly in the case of the *Incorporation of Wrights of Leith*, 18 D. 981, in which the Court refused to sanction certain bye-laws substantially on the ground that the funds of the Corporation would thereby be exhausted. It is unnecessary to go into the question whether the proposals here will end in the extinction of the fund. The parties on the one side have disputed that, but there has been for several years an excess of expenditure over income of £279, 8s. 3d., and in order to meet that loss it has been necessary to borrow. It is clear that this Court cannot sanction such a course of proceedings.

Lord Shand—Looking to the fact that this Incorporation is so reduced in numbers, and is no longer serving the purpose for which it was instituted, I should have been very willing to have sanctioned any arrangement on an equitable footing by which, with all due security to the rights of the annuitants, the affairs might have been put an end to entirely. But on mature consideration I do not see my way to do this, and I do not think that the pursuers' counsel have been able to suggest any arrangement by which this might be done consistently with the interests of those who are still to benefit by the fund. It is true that the proposals in the former cases were objected to because they lead to a direct diversion of the funds from the purposes pointed out in the charters of the corporations. Here it is proposed to encroach on the capital in order to extend the benefits of the Corporation in the line of its charter. But, as the Lord Ordinary has pointed out, this will lead to the exhaustion of the fund. If the present system goes on, it may soon happen that the annuitants, who are dependent on the capital, will be left without adequate provision. I am therefore for adhering.

The Lords adhered.

Counsel for Reclaimers (Defenders) — Mackintosh—Wallace. Agent—Lindsay Mackersy, W.S.

Counsel for Respondents (Pursuers)—D.-F. Kinnear, Q.C.—J. P. B. Robertson. Agents—Macandrew & Wright, W.S.

Friday, November 18.

SECOND DIVISION.

[Sheriff of Lanarkshire.

RAMSAY *v.* THOMSON & SONS.

Reparation — Personal Injuries — Damages—Tramway Car—Want of Ordinary Care on Part of Person Injured—Rule of the Road.

A person travelling in a tramway car which had stopped to allow passengers to alight, was knocked down as he was in the act of crossing the street to the pavement by a waggonette which was attempting to pass the car on the left side. In an action of damages for personal injuries laid against the owners of the waggonete, the Court, on a consideration of the proof, while of opinion that there was (*diss*, Lord Young) fault on the part of the defenders' servant, were unanimously of opinion that there was also proved on the part of the pursuer such want of ordinary precaution and care as barred his action.

Observations per Lord Justice-Clerk and Lord Young on the rule of the road.

Sheriff—Proof.

Observations per Lord Justice-Clerk on the duty of keeping proof taken in inferior courts within the limits of relevancy.

William Ramsay, ironmonger, residing in Crosshill, was returning home on the afternoon of 8th October 1879 by tramway car. It stopped at Victoria Road, nearly opposite Dixon Avenue, to allow passengers to alight. Ramsay accordingly stepped off the car on the left-hand side, and as he was crossing the street was knocked down by a waggonette belonging to Thomson & Sons, wholesale cabinetmakers, Ritchie Street, Glasgow, which was attempting to pass the car on the left in the space between it and the street, and one at least of the wheels went over his ankle. The result was that he sustained severe personal injuries, his legs being severely bruised, and his nervous system so shattered that he had been prevented from attending to business ever since. In these circumstances he raised the present action of damages against Thomson & Sons for £250, his ground of action being that the accident had happened by and through the fault, culpable negligence, and gross carelessness of the defenders' servant, who had driven in a careless, reckless, and culpable manner.

He pleaded—"(2) The pursuer having, in consequence of the foresaid injuries, caused by the fault, culpable negligence, and gross carelessness of the defenders' servant, sustained loss, injury, and damage to the amount of £250 sterling, decree ought to be pronounced therefor against the defenders, jointly and severally, or severally, in name of damages, and as *solatium* due to the pursuer."

The defence was that the accident was the result of the pursuer's own carelessness; or, at all events, that it was no fault of defenders' servant, who was driving in a proper place, and in a proper and careful manner.

The pleas in defence were:—"(1) The defenders were not liable in the sum sued for, in respect that the accident occurred entirely

through and in consequence of the carelessness and fault of the pursuer himself; or otherwise, and *separatim*.—(2) The pursuer having contributed to the accident by his own conduct, had no claim against defender, and the latter should be assoilzied, with expenses."

The Sheriff-Substitute (ERSKINE MURRAY), after hearing evidence, found:—"(1) That pursuer, an elderly gentleman, residing at Cross-hill, was returning home on the afternoon of 8th October 1879 by tramway car; (2) that when the car came to Dixon Avenue it was stopped, and a lady alighted, and hurried across the roadway to the footpath; (3) that the pursuer, who had been sitting with some friends about the middle of the car, also got up, went out on the platform, and proceeded to leave the car in a leisurely way, taking hold of the handle on the body of the car as he stepped off, and facing forwards in the direction in which the car was going, apparently because at the same moment the conductor was starting the car; (4) that a waggonette belonging to the defender A. Thomson senior, residing at Langside, and driven by a lad, then of sixteen, was following the car southward along the rails when the car stopped, on which the driver of the waggonette turned it to the left, so as to pass between the car and the footpath on the same side; (5) that he was driving at an easy rate, by no means fast, but did not appear to have slackened his pace; (6) that the lady crossed about three yards in front of the waggonette horse, and the pursuer, when he got out facing south, did not notice the coming waggonette at all, but made another step into the road, and the waggonette apparently struck the pursuer, knocked him down, and one at least of the wheels went over his ankle: (7) that he was pretty severely injured, was laid up for some months, incurred a doctor's bill, and was prevented from attending to business for a longer period; and had now raised the present action of damages." His Lordship therefore found "on the whole case, and in law—(1) That the defenders' driver could not be held in the circumstances to have acted wrongly in passing the car on the left-hand of the car; (2) that he must be held in the circumstances, however, to have driven incautiously, and that the main cause of the accident was his want of due care in attending to the safety of the lieges as he ought to have done; (3) that the pursuer was also guilty of contributory negligence in not looking about him before he got off the car, and having in consequence thereof walked straight against the waggonette: Therefore assoilzied defenders from the craving of the petition," &c.

He added this note:—"The old rule of the road, that a faster vehicle coming from behind must pass a vehicle in front on the right or off side, is manifestly inapplicable to the case of tramway cars, and the practice has naturally been changed. Except in the case of tramway cars, it was absolutely necessary to have a fixed rule in the case of passing, for unless the driver in front knew which side of him the driver from behind was bound to keep, collisions would be inevitable. But a tramway car is fastened to its rails, and cannot move either way, and therefore the faster vehicle behind it is safe to take whichever side is open, so far as it is concerned. But it must be remembered, moreover, that the object of all rules of the road is to avoid collisions. Now, the very safest place for a vehicle passing a tramway car to be in is on its near or left side, for no other moving vehicle could possibly be there coming from the opposite direction. Therefore the proper side, as a rule, on which to pass a tramway car is manifestly on its left side.

"But all the more is it necessary for a driver passing a tramway car on its left side to be on the look-out for passengers dismounting, as that is the side on which they may be expected to dismount. In the present case the waggonette driver had been warned by the car stopping. He therefore ought to have been on the look-out for more passengers than one alighting, and should have held back until the car was fairly on its way again. Not doing so, he acted recklessly, and was the chief cause of the pursuer's accident.

"The point of contributory negligence is that on which the Sheriff-Substitute has had most difficulty. On the whole, however, he cannot but think that the pursuer was in fault in not looking about him before he descended, or even after he descended. Had he done so, he certainly would have seen the waggonette and avoided the accident. His friend Mr Brown, who was in the middle of the car, saw the waggonette fully 10 or 20 yards before it ran down Mr Ramsay, and the latter could certainly have seen it had he looked. Now, a certain amount of caution is necessary on the part of passengers dismounting in the middle of a public thoroughfare; and, on the whole, the Sheriff-Substitute thinks that the pursuer failed to exercise the necessary caution."

On appeal the Sheriff-Principal (CLARK) found that the pursuer had established liability against the defender Andrew Thomson for the injuries received on the occasion in question, and that upon two grounds—(1) that the driver of his waggonette, for whom he was responsible, committed a breach of the rule of the road in passing the tramway car on the left side; and (2) that he was guilty of recklessness in so passing while the pursuer was in course of alighting from the car. He gave decree accordingly for £50.

He added this note:—"The findings in fact of the Sheriff-Substitute may be taken in the main as substantially correct. It is as to the findings in point of law that I consider myself compelled to differ with him. It appears to me that the driver of the waggonette was in fault in two respects. First, he was wrong in passing on the left side of the car which he was overtaking, inasmuch as this was in direct violation of the rule of the road; and second, he was in the wrong in continuing to drive forward when he saw the car at a standstill and in course of discharging passengers. These two faults to some extent run the one into the other, but both may be dealt with separately, and either seems to form ground of liability. First—Passing on the left-hand side of the car. The long established and well-known rule of the road in this country is that when a vehicle meets another it shall pass on its own left, and when one vehicle overtakes another the overtaking vehicle shall pass on the right of that overtaken. There is not much to be said for these rules in the abstract. For all practical purposes they might have been made just the reverse, as is the case in most Continental countries, and would work equally well. The important thing is that there shall be a fixed rule one way or the other, and that it shall be rigidly adhered to. In this way only

can collisions be prevented, as experience has aptly demonstrated. Now, important as the observance of the rule as it stands is in the case of ordinary vehicles, it seems to become of still greater importance when tramway cars are on the road, inasmuch as it forms the basis and reason of a rule specially applicable to that class of vehicles, and absolutely necessary for the protection of their passengers. The rule referred to is No. 2 of the bye-laws and regulations made by the municipal authorities in relation to the Glasgow Tramways, and confirmed by the Sheriff of the county, under the powers conferred by the Glasgow Corporation Tramways Act 1875, and is as follows:—'Every passenger shall enter or depart from a carriage by the conductor's platform in the rear of the carriage *on the side next the pavement and not otherwise.*' This last provision obviously proceeds on the assumption that no other vehicle shall be passing on the side next the pavement, and that the way shall therefore be clear for the passenger to gain the side pavement in safety. Now, while the old rule of the road is in observance, the left side of the car must always be clear; but if that rule is to be violated, and vehicles are allowed to pass on the right when meeting, and on the left when overtaking a tramway car, the rule that passengers shall leave by the left of the car, instead of conducing to their safety, will directly throw them in the way of every passing vehicle. This consideration is of such vital importance to public safety that even though the old rule of the road might admit of relaxation in the case of ordinary vehicles without very great risk, its rigid observance when a tramway car is met or overtaken would seem imperative. It is said, however, that a contrary practice has prevailed in Glasgow, and that non-observance of the old rule of the road when a car is overtaken has not only become common, but is in some sense the proper thing to do. On turning, however, to the evidence, it will, I think be seen that this view is altogether without sufficient foundation. . . . I cannot, therefore, hold that there is any reliable evidence to show that the old rule of the road, so salutary in itself, and indeed so necessary for the safety of the public using tramway cars, has been at all abrogated, either by authority or practice. It is no doubt plain enough that a rigid adherence to the old rule brings with it certain inconveniences to ordinary vehicles when overtaking tramway cars. Yet this inconvenience seems much exaggerated. It merely amounts to this, that the overtaking vehicle must remain behind the car for a short time till the way is clear. But this inconvenience, whatever it may be, cannot be set against the great dangers to public safety which a departure from the old rule would necessarily involve. I must therefore hold that in passing the car on the left side the driver of the waggonette was plainly violating an important rule of the road.

"But, further, and in the second place, he was guilty of recklessness in another respect, equally, if not more, important. All the witnesses concur in this, that if the waggonette driver chose to attempt to pass on the left side, he was bound to do so with the utmost care, and should not have attempted to do so when passengers were in the act of alighting, and when the car was stationary for that purpose. Now what are the facts? The car had stopped to let passengers alight. A lady had gone out, and the pursuer was following. The car still remained stationary, as it was bound to do till all desiring to do so had alighted. The driver of the waggonette, on his own showing, saw what was going on while he was yet a great way off, and in perfectly good time to pull up, yet he drove on before the pursuer had got across to the pavement by the only side he was entitled to use, the waggonette was driven against him, and the injuries libelled were sustained. Upon this ground alone, therefore, it seems to me plain that liability has been incurred. It was maintained that the pursuer is barred from recovering damages by contributory negligence. I do not think this is at all made out. In the first place, it is not every sort of omission that founds such a plea. The utmost that can be said against the pursuer in this respect is that he did not look back as well as forward before alighting. Now, it is very questionable whether in strictness he was bound to do this. If I am right in my view of what is the rule of the road and the rule of the tramway cars, the pursuer was entitled to assume that in ordinary circumstances no vehicle whatever would come up behind the car on the left side, by which alone he was entitled and bound to alight. But, in any view, the omission, even if it were an omission, was not of a kind sufficient to sustain the plea of contributory negligence.

"The next question is the amount of damage. On a careful consideration of the medical evidence and the other facts in the case bearing on this subject, I have come to be of opinion that the damages claimed are very much in excess of that which is proved, and that, all things considered, £50 is a sufficient sum to award."

The import of the proof sufficiently appears in the Sheriff-Substitute's judgment and the Judges' opinions.

The defenders appealed, and argued—(1) Tramway cars were to be regarded as fixed objects, and therefore their servant was acting with discretion, and with a proper regard to the rules of the road to be adopted in passing such objects, when he drove past the car on left hand side. (2) Their servant was driving at a moderate speed; and if the pursuer had used reasonable care he would have escaped the accident. Therefore the damage must lie where it fell, and they must be assoilzied.

The pursuer replied—He was getting out of the car on the left-hand side in accordance with a bye-law of the tramway company which made this provision, having regard to the fact that the proper rules of the road require that a passing vehicle should do so on the right. The defenders' servant therefore was on his wrong side of the road, and even if he was on the right side, he was not entitled to run over the lieges—*Clerk* v. *Petrie*, June 19, 1879, 6 R. 1076; *Radley* v. *Directors of London and North-Western Railway Company*, 1 L.R. App. Cases (H. of L.) 754.

At advising—

Lord Justice-Clerk—The facts in this appeal lie in a narrow compass, and, as far as I can see, nothing material is disputed. The action is one of damages at the instance of a Mr Ramsay on account of injuries sustained by him in an accident which was the consequence of the negligence of one of Thomson & Sons', the defenders, servants. The way in which the accident occurred was this:—Mr Ramsay was travelling on a tram-

way car in Victoria Road, Lanark, in a crowded thoroughfare, and the defenders' waggonette was coming up behind the tramway car on the left-hand side of it, when the tramway car stopped to allow passengers to alight on the left hand side. A lady got out, and the waggonette stood to let her cross to the left side of the street. Then it went on, and meanwhile Mr Ramsay, who had been delayed by the egress of the other passenger, descended from the tramway car, and was in the act of crossing to the pavement when he was struck by the defenders' waggonette, which was apparently only a yard and a-half from the car at the time. It is in consequence of injuries sustained in a sprained ankle and gouty symptoms which subsequently appeared, that the present action has been raised against the Thomsons in consequence of the negligence of the driver of their waggonette. I think these are all the facts, and the narration of them has not taken me five minutes. But yet we have a very long proof on the subject, and anything more inexcusable than the state of it I have never seen. It is utterly discreditable that the money of clients should be thrown away in questions which have nothing earthly to do with the matter at issue. It is a state of things which calls loudly for a remedy, and I hope the Judges of the inferior courts will do their best in the future to check it.

Now, on this state of the facts the Sheriff-Substitute has assoilzied the defender on the ground that no liability has been established. The Sheriff-Principal has taken a different view, and found (1) that according to the rule of the road the Thomsons' waggonette was on the wrong side of the road, and therefore, *prima facie*, any accident occurring is attributable to him; (2) that there was negligence on the driver's part which led to the result; and therefore he has altered the Sheriff-Substitute's judgment and given damages. I have read the proof fully, and I am clearly of opinion that the Sheriff-Substitute is right. The Sheriff-Principal in his first finding finds that the Thomsons' waggonette was on the wrong side of the road according to the rule of the road; now, I am of opinion that he is entirely mistaken, and that the Thomsons would have been entirely wrong if they had been on any other side than where they were. In theory the rule of the road is this—The highway is divided into two parts, half of it being appropriated to the traffic going one way, and half to the traffic going the other way. When the two traffics meet they are bound to keep each other on the whip or right side; thus each is restricted to one half of the highway. Where one vehicle is coming in the same direction as another, and the one behind is going faster than the one in front, the rule is, not that the one behind is to go across the *medium filum* to the other half of the road, but that the one in front shall draw to the side, and let the faster vehicle pass, and this is essential, because if there is an obstruction in the centre of the road then the one coming behind is not bound to take the right side—he must take the vacant part of his side of the road. This is the *rationale* of the rule of the road where the thoroughfare is crowded. The effect of legalising a tramway line in the centre of the road is to place a permanent obstruction on that part of the road, and it must be dealt with as such. There are only two ways of passing such an obstruction—either by taking the vacant part of the left-hand side of the road after the tramway car has passed, or by crossing the lines on which the car is travelling. To cross to the other line of rails would be clearly out of the question, because there might be a collision with a tramway car coming that way, or by the other system of traffic upon the other side of the road coming in the opposite direction. Such a rule would be a very dangerous one. The fact of the tramway coming in the centre of the road must modify the state of the rule of the road which is to be observed by the traffic on the other side, and it would be impossible to follow it where the obstructing vehicle is not able to draw to the side. All this is not a complicated or recondite matter. It is a matter of common sense, and the municipal authorities can regulate it for themselves. There is no statute with regard to the rule of the road, but to hold there is an obligation on the part of the driver of the waggonette to steer round the tramway car, and run the risk of meeting one coming in the opposite direction, and then that he must come round to the same side of the road in front, is out of the question. Holding, then, that the waggonette was on the right and appropriate side of the road, the next question is, Was there fault on the part of the driver? I am of opinion that there was in a certain sense, because if the driver had been exercising proper care he would have seen the pursuer, and if he had seen him he could have prevented what happened. But that is by no means sufficient for the solution of the case, because I think the result is attributable solely and entirely to Mr Ramsay's carelessness and negligence in omitting to take the most ordinary precautions. In his own statement as to what occurred we find—"(Q.) When you came out did you not look about you at all—did you not see the waggonette?—(A.) No; I did not see the waggonette. I have explained already this temporary obstruction to my getting out safe—this lady passing before me lingered a little for a second or two, and that took off my attention, and when she got down, I jumped down afterwards, and I was caught. I think she passed in front of the waggonette." The true state of matters, then, seems to be that Mr Ramsay, from some cause or another, did not look to see whether there was any obstruction, and he got down from the car and walked against the waggonette, which was only about a yard off him. Now, if passengers leaving tramway cars neglect the usual and obligatory precautions of looking to see whether the causeway of a crowded thoroughfare is clear, and have their attention instead attracted by something else, they must hold themselves to blame when an accident occurs. In this case one is sorry for what happened, but it is clear that if Mr Ramsay had paused to look for his safety he must have seen the waggonette. That being my view, I am of opinion that this unfortunate occurrence was brought about by the stupidity of the pursuer himself. No one is entitled to thread the streets of a thoroughfare such as this so preoccupied in mind as not to take reasonable precautions for his own safety. The conductor says Mr Ramsay was talking to the inside passengers while leaving the car, and although this statement is not altogether corroborated, my impression is that the conductor's account is right. Therefore I cannot see sufficient ground for

making the defenders liable for what occurred—their driver having only continued his course when he believed the road was clear. Something has been said about a car stopping to let passengers alight, and that no one has a right to run them down when so doing. This, I think, must be taken with reservation, for it is not the case that the traffic is bound to stop at every place where passengers alight from the car and cross the street. The first duty of the public is to see that the coast is clear, and if it is not, they must wait for an opportunity of crossing. It is the neglect of such a duty that disables them from suing successfully in an action like this. Therefore, on the whole matter I am of opinion that we should sustain the appeal, recall the judgment of the Sheriff, and assoilzie the defender.

Lord Young—I am of the same opinion in all respects, and I must say the Sheriff's statement in his note of the rule of the road, as he understands it, surprises me. He says—"It is no doubt plain enough that a rigid adherence to the old rule brings with it certain inconveniences to ordinary vehicles when overtaking tramway cars. Yet this inconvenience seems much exaggerated. It merely amounts to this—that overtaking vehicles must remain behind the car for a short time till the way is clear." This might be established by statute, but it is certainly not the rule of the road, which to me appears to be this—If the way in front of you is obstructed by a vehicle travelling in the same direction as you, and you are going at a more rapid pace than it, if there is not room enough to pass on the right, then the slower vehicle must so keep to the left as to leave room for you to pass on the right. A tramway car neither obstructs on the left or on the right, for it must be on the rails in the centre.

The real proof in this case has been complicated by considerations about tramway cars which seem to me to have little to do with it. The streets of Glasgow, and other towns where tramways have been introduced, have to be crossed by passengers as they were before their introduction, and this is just an accident to a gentleman crossing the street, and it would have been the same if he had been crossing all the way, and not only from the centre of the street. The question would have been, Was it owing to his own carelessness or to the misconduct of the driver of the waggonette? It is safer to cross from the middle of the street, because there is only half the danger, and accordingly in London and in other towns the public safety is provided for by erections in the middle of the street with posts to allow passengers to effect a crossing in two parts. They first get to the posts in the middle, and then they wait till the way is clear to cross the other half of the street. Now, anyone coming from a tramway car is just in the position of a person coming from these posts; he has only half a crossing to make, and can thus more easily see that the other half is free from danger before he ventures to cross it. I fail to appreciate what the Sheriff quotes with approbation as the rule made by the municipal authorities—that "Every passenger shall enter or depart from a carriage by the conductor's platform in the rear of the carriage on the side next the pavement, and not otherwise." There are generally two pavements, and it is difficult to know which side is referred to here. If it means that passengers leaving a tramway car are bound to go to a side of the street to which they do not want to go, and then are bound to cross the whole street again to get to the side of the street which they have in view, it is ridiculous, and is simply multiplying the dangers of crossing. Again, if passengers desired to enter a car, and were on the wrong side, they would require, according to the interpretation of this rule, to cross the street, and then come back one half of the street. The whole question, which has not, I think, been sufficiently considered, is obviously one of safe crossing one-half of the street, but according to this rule passengers must cross three halves. There is always some danger in street crossing, and one generally takes care to see that the way is clear, and if a vehicle is seen coming, one makes up one's mind either to cross in front of it or to stay behind it. The introduction of tramways makes no difference in the case. Now, as to the second question in this case, I am of opinion that no blame attaches to the driver of the waggonette, and I am not disposed to impute it as a fault to him that he did not see Mr Ramsay. People do not remember all they see in the streets. It is only where a circumstance specially attracts that one remembers it. He may remember being required to pull up, but as the other passenger was in no danger where ordinary care was used, it is not surprising that he does not remember even seeing Mr Ramsay. Now, I am of opinion that Mr Ramsay was never in a position to require the driver to do anything on his account if he took reasonable care of himself. He plunged into the middle of the waggonette, and there was therefore no blame attaching to the driver. He could, if he had chosen, have remained behind, and allowed it to proceed before he crossed the street. I cannot call it fault in a technical sense, but it is just the case of a gentleman not so self-possessed as persons are required to be in the streets. I am of opinion, then, that the action cannot be maintained.

Lord Craighill—I concur in the result arrived at by your Lordships. The ground of action in the case is that there was fault on the part of the defenders' servant who was driving the waggonette. The defence is that there was no fault on the part of the latter, and even if there was, that there was contributory fault on the part of the pursuer. The Sheriff-Substitute has found that there was fault on the part of the driver on one ground, and the Sheriff-Principal on two grounds. The Sheriff-Substitute has found there was contributory negligence on the part of the pursuer, but the Sheriff differs from him, and has awarded the pursuer £50 damages. Now, I agree with the Sheriff-Substitute's view of the matter; but I concur with your Lordship in the chair in thinking that there was fault on the driver's part, but not because he attempted to pass the tramway car on the left, for I think that, on the contrary, he would have been wrong if he had been anywhere else. Your Lordships have entered so fully into the rule of the road that it would be superfluous for me to attempt to add anything to what your Lordships have said on the subject, but I may say that I am satisfied on the proof that the practice which the defenders' servant observed is the practice observed in Glasgow, and is further the practice which we

observe here in Edinburgh. We see carriages always passing tramway cars on the left, and obviously the rule has been introduced for the public safety. But while this is so, I repeat that I think that there was fault on the part of defenders' servant, in that he was, as the Sheriff-Substitute has found, guilty of recklessness in the manner in which he drove. He says he stopped till the lady crossed, and I am satisfied that he must have seen that Mr Ramsay was preparing to alight also. I take it on the evidence of the conductor. He says that when the pursuer made preparations to descend, Thomson's horse was only three yards from the car. If the driver had been looking ahead as he ought, he could not but have seen the pursuer descending, but instead of paying attention he proceeded just as if there was no passenger in his way. But while this is so, I am of opinion that there was also fault on the part of the pursuer. Passengers owe a duty to themselves to see that the way is safe when they cross the street, and they can and ought always to go to the side if the way is not clear. There are two periods at which the pursuer ought to have looked about him—(1) when he was preparing to leave the car, and (2) when he reached the street. At both these periods he neglected proper and ordinary precautions, and hence the accident. It is impossible to relieve him of this charge. It is quite possible that if the driver of the waggonette had been cautious no accident would have occurred, but the pursuer had no right to trust to others taking that care which he was himself neglecting to take. On the whole matter I agree that the defenders must be assoilzied.

The Lords therefore sustained the appeal, recalled the judgment of the Sheriff, and assoilzied the defenders.

Counsel for Appellants — Trayner — Lang. Agents—Smith & Mason, S.S.C.

Counsel for Respondent — Solicitor-General (Asher)—Pearson. Agents—J. & J. Galletly, S.S.C.

Tuesday, November 22.

SECOND DIVISION.

(Before the Lord Justice-Clerk, Lord Craighill, and Lord Rutherfurd Clark.)

WATERSON *v.* SIR A. D. STEWART AND OTHERS.

Landlord and Tenant—Lease—Terms of a Renunciation importing Discharge of Landlord's Obligation—Executor—Mora.

A tenant held a farm from an entailed proprietor under a lease in which the latter "bound and obliged himself to put the buildings on the farm in a proper state of repair." The tenant subsequently renounced his lease, and on vacating the farm he entered into an agreement with the succeeding heir of entail in which "he renounced all claims under the lease, with the whole claims and obligements therein contained." No claim for repairs was made during the currency of the lease, nor until two years after the expiry of the lease. In an action of damages by the tenant for non-implement of the landlord's obligation, raised against the heir in possession and the executor of his predecessor, the Court *held* (1) that he was barred by the renunciation in a question with the heir, and (2) in a question with the executor of the original landlord, by the general terms of the renunciation, and his failure to give timeous notice of his claim.

Question (*per* Lord Justice-Clerk and Lord Rutherfurd Clark) as to whether the discharge granted to the heir in possession could be competently pleaded by his predecessor's executor, on the footing that the heir had treated with the tenant for himself and for the executor.

John Waterson became tenant of the Garth Farm of Airntully under a lease for nineteen years from Martinmas 1870, granted by the late Sir William Drummond Stewart, Bart., of Murthly, Grandtully, and Strathbraan. The lease was never signed, but a draft of it was adjusted, and in the renunciation afterwards mentioned that draft was treated, and the parties agreed that it should be held, as a duly settled lease. This draft lease contained the following clause:—"The proprietor binds and obliges himself to put the whole buildings, fences, hedges, and ditches on the farm in a proper state of repair."

Sir William Drummond Stewart died on or about the 28th of April 1871, and was succeeded as heir of entail in the estates of Murthly, Grandtully, and Strathbraan, of which the farm of Garth of Airntully forms a part, by Sir Archibald Douglas Stewart. The latter recognised the lease and took payment of the rent under it from the date of his succession.

In March 1879 Waterson fell into arrear with his rent, and sequestration was applied for against him. After some negotiation it was arranged that he should renounce his lease and right in the lands in favour of Sir Archibald Douglas Stewart as at the term of Martinmas 1879, and a deed of renunciation was accordingly prepared and executed of date 30th March 1879. The said deed, after narrating the holograph offer, acceptance, and draft lease, proceeded in the following terms:—"And now seeing that I find I have not capital to enable me to continue the profitable possession of said farm, and have requested Sir Archibald Douglas Stewart of Grandtully, Baronet, now heir of entail in possession of said lands and others, to take said farm off my hands, and have proposed to him that, I should renounce all right of possession competent to me under the said holograph offer and acceptance and draft tack as from the term of Martinmas next, 1879, and that the present year 1879 should in all respects be treated as the last year of the tack, and that all the provisions and stipulations therein contained applicable to the year of expiry should apply to it as if the said tack had come to its natural termination, and that the said request and proposal have been acceded to by the said Sir Archibald Douglas Stewart: Therefore I have renounced and overgiven, as I hereby renounce, *simpliciter* upgive and overgive, to and in favour of the said Sir Archibald Douglas Stewart, his heirs and successors, the said tack, and my possession of the lands and others foresaid in virtue thereof, or in virtue of the said holograph offer and acceptance,