consider to be clearly distinguished from the present case. In that case both the parties were in necessitous circumstances, and it was only after the defender had been deserted by her husband, and to some extent for the purpose of obtaining a livelihood, that she revisited her friends in houses of ill-fame and relapsed into her old mode of life.

I am therefore for granting the pursuer the decree which he craves.

The Court recalled the interlocutor of the Lord Ordinary, repelled the defences, and granted decree of divorce.

Counsel for Pursuer—D.-F. Macdonald, Q.C.—Trayner—J. A. Reid. Agents—Duncan & Black, W.S.

Counsel for Defender—Sol.-Gen. Asher, Q.C.—Scott. Agent—William Officer, S.S.C.

Friday, December 21.

SECOND DIVISION.

[Sheriff Court of Lanarkshire.

BEVERIDGE *v.* KINNEAR & COMPANY.

Reparation — Negligence — Faulty Condition of Defenders' Premises.

A bale of goods which was being lowered into a cart from the third flat of a tenement of warehouses, swung in its descent against the folding-door of a warehouse in the flat below, causing a part of it to fall out, with the result that a boy in the cart below was killed. In an action of damages by the boy's father, it was proved that the cause of the accident was that the door was in an insecure condition. *Held* that the tenants of the flat to which it belonged were liable in damages for the death of the boy.

In this action the pursuer William Beveridge sued the defenders for the sum of £200 damages for the death of his son, who was killed in the following circumstances:—On 3d January 1883, the lad, who was about twelve and a-half years of age, accompanied a friend of his named Craighead, who was employed as a carter by a contractor, to take in a load of oilcake, which was to be lowered by means of a rope and pulley to Craighead's cart from the third flat of a warehouse in Exchange Street, Dundee. The flat from which the oilcake was being lowered was occupied by Messrs Primrose & Martin. One of the bags of oilcake, weighing about 2 cwt., swung in its descent against a large iron-covered door opening in halves, which belonged to the flat immediately below, occupied by the defenders Kinnear & Company as a warehouse, when one-half of it fell down on the pursuer's son and killed him on the spot. The defenders had become tenants of their warehouse in the preceding month. The half of the door which fell had no hinges on it, and the other half had only one hinge. The door had been last open in the defender's business on the 30th of December, and when work was finished that day the part having the hinge was closed, and then that which had no hinge (being the part which subsequently fell) was also placed in position, a batten being placed inside to keep it from falling inwards, and the only way in which it was protected from falling outwards being by a projection of the other half and by the usual "door stock." Before the defenders took the premises there had been a batten also outside the door which prevented bales lowered from above striking it. A partner of the defenders' firm deponed that he had removed it to prevent some lads in his employment swinging themselves by means of it into another doorway immediately alongside.

The Sheriff-Substitute (CHEYNE) pronounced this interlocutor:—"Finds in fact—(1) That the pursuer's son George Turnbull Beveridge, aged about twelve and a-half years, was killed in a court off Exchange Street, Dundee, by the south half of the door of a warehouse tenanted by the defenders falling upon him; and (2) That while the cause of said half door falling was its being struck by a bag of oilcake which, while being lowered from Messrs Primrose & Martin's warehouse in the flat above, swung against it, it is proved to have been at the time in an insecure and dangerous condition, and the accident would not have happened but for the negligence of the defenders in leaving it in that condition: Finds in law that the defenders are liable to the pursuer in damages and solatium for the death of his son as aforesaid; assesses these at the sum of £60, &c."

"*Note.*— . . . The question is, as it seems to me, narrowed to this, Were the defenders bound to have in view the contingency of goods swinging against the door while being lowered from the two warehouses above them, and were they guilty of negligence in not so securing the door as that it should be able to resist an ordinary swing from such goods? These questions I answer in the affirmative, and I think no one who has occasionally seen the operation of lowering goods from warehouses going on would do otherwise. It is no doubt possible to lower goods quite steadily, but as a matter of fact the operation is in general carried on so hurriedly that the goods go swinging about and knocking against the walls in their descent, and that being so, I think the defenders were, in the circumstances, guilty of a breach of duty in leaving their door in the insecure state in which it was on 3d January. Whether the outside batten mentioned in the proof was put in for the purpose of preventing an accident like that which has given rise to the present action, or whether, had it been there at the time, it would have prevented the accident, are points upon which I am not in a position to pronounce a decided opinion; but the fact of the batten having been put in does appear to afford some indication that the defenders' predecessors in the occupancy of the warehouse were alive to the dangerous condition of the door, and it is much to be regretted that the defenders removed it."

On appeal the Sheriff (TRAYNER) recalled this interlocutor and found that the pursuer had failed to prove that the death of his son was occasioned through the fault of the defenders, and therefore assoilzied the defenders.

"*Note.*—Although the accident out of which this action arises is very much to be regretted, I see no reason for ascribing that accident or its results to the fault of the defenders. The door

which fell was secured by the defenders in such a manner as to afford reasonable ground for believing that it would injure no one, nor would it have injured anyone if it had been left alone. It is clearly proved that the door gave way under a pressure which was applied to it, not by the defenders or any of their servants, but by a stranger. I cannot hold the defenders liable for the negligence of that stranger. It is quite true that a stronger door, or one more completely secured, might have resisted the pressure applied, or even a stronger pressure. But in my opinion the defenders were not bound to secure their door so as to enable it to resist all force, however applied, or of whatever strength. The pursuer's contention must however, logically, be carried that length to entitle him to succeed."

The pursuer appealed, and argued — The proximate cause of the accident was the proved dangerous condition of the defender's door. It was their duty to see that it was in a condition to withstand all ordinary pressure, and no other was proved to have been applied. They must then be held liable in this respect for their duty.

At advising—

Lord Young—I am of opinion that the Sheriff-Substitute is right and the Sheriff wrong here. The evidence is to the effect that this unfortunate accident which caused the death of the pursuer's son was directly attributable to the faulty condition of the door on the defender's warehouse. It was a door with the hinges taken off it, and backed up with a batten behind, and certainly not in such a condition as it should have been. The defenders were responsible for its faulty condition, and therefore are responsible for the accident to which it is attributable. I cannot at all assent to the Sheriff's view of the defender's liability, when he says—"They were not bound to secure their door so as to make it resist all force, however applied, or of whatever strength. The pursuer's contention must however, logically, be carried that length to enable him to succeed." This I cannot assent to. No door ever was made which would resist all force of whatever strength. I daresay constructors of fortifications and ships would be very much indebted to anyone who could suggest anything which would resist all strength. That is really hardly dealing seriously with the case. The question is, whether the defenders were not bound to have the door in a sound enough condition to resist ordinary pressure, and, for the reasons which I have stated, I am of opinion that they were.

Lord Rutherfurd Clark—I am of the same opinion.

Lord M'Laren—I also concur. I think the door must be reasonably sufficient, not only to stand if left alone, but to meet the ordinary contingencies of danger in the purposes for which the building was appropriated.

The Lord Justice-Clerk and Lord Craighill were absent.

The Court pronounced this interlocutor:—

"Find in fact that the death of the pursuer's son is attributable to the faulty condition of the door mentioned in the record: Find in law that the defenders are responsible therefor, and are liable in damages accordingly: Therefore sustain the appeal; recal the judgment of the Sheriff appealed against; of new assess the damages at £60, and ordain the defenders to make payment of that sum to the pursuer," &c.

Counsel for Pursuer (Appellant)—Lang—Hay. Agent—D. R. Grubb, Solicitor.

Counsel for Defenders (Respondents)—Pearson—Moody-Stuart. Agents—Henderson & Clark, W.S.

LANDS VALUATION COURT.

Friday, December 21.

(Before Lord Lee and Lord Fraser.)

THE WATER COMMISSIONERS OF DUNDEE AND OTHERS.

Valuation—Principle of Valuation—Allocation of Total Valuation among Various Parishes—Water-Works—Direct and Indirect Profit.

Water for the supply of a town was brought from a distance for distribution in the town, through various parishes, in some of which there was merely a line of piping, while in others, and in the town itself, there were extensive works for storage and other purposes. The annual value of the whole undertaking having been ascertained, *held* that the proper method of allocating it among the several parishes was to allocate to each the proportion of the total annual value which the structural cost of the works in the parish bore to the whole structural cost of the undertaking.

The Dundee Water Commissioners were incorporated by Act of Parliament for the purpose of the supply of water to the inhabitants of Dundee and suburbs. The area of compulsory distribution was limited to the burgh and parish of Dundee, and the adjacent burgh of Broughty-Ferry, and a small portion of the also adjacent parish of Mains and Strathmartine. The Commissioners paid, at the time of acquiring their works, a sum of £232,160 to the former water company in name of goodwill. Powers of assessment over the house property of Dundee and Broughty-Ferry were given them by the Act. In 1871 the Commissioners acquired under Act of Parliament the Loch of Lintrathen for the purpose of increasing their water supply; they also obtained a way-leave to lay the necessary pipes in the parishes intervening between Lintrathen and Dundee. They paid £5000 for the loch, and spent considerable sums in making it fit for their purpose. The water supplied by them was brought from this loch, as well as from Monikie, whence water had formerly been brought, by underground pipes through a number of parishes in Forfarshire and two in Perthshire. The total capital account stood at £751,814 in the books of the company. The structural cost of the works in Dundee was £88,548, of which the value underground was £73,477, and the value above ground £15,071, or for water-works £12,507, and for offices, &c., £2564. The structural value of the works in the various landward parishes through which the water was conveyed to Dundee was £427,827,