that he was coming on so rapidly that one group of persons standing at the corner of a street had difficulty in getting out of his way in time to save themselves from collision. His view having been obstructed by this group of persons he did not see a little girl, six years old, who came out of another street, and who got in front of the bicycle, with the result that her leg was broken and her face badly cut, while the bicyclist was thrown down and hurt. Now, I think that these facts show *prima facie* conduct on the part of the defender which is not permissible in such a situation.

The next question is, whether we are to attribute the accident wholly to the fault of the defender? Now, I have no doubt in my mind that the defender was in fault in not having his machine under such control that he could have pulled up and so avoided the accident. I do not mean to say that a bicyclist will necessarily be found liable in damages because when he is riding along the street of a town a little child dashes out into the street in front of the bicycle and gets itself injured. What I mean is, that when a bicyclist is riding along, and his view becomes obstructed, so that he cannot see what may be in front of him, he ought either to get off altogether or to go at much less speed than the defender in this case seems to have been doing. I can see no fault upon the child's part; she was only six years old, and it is always difficult to impute contributory negligence to a child of that age. But it is certain that if the group of people on the street obscured the view of the bicyclist, it equally obscured the view of the child, so that it could not see the approaching bicycle, and the child had no reason to anticipate that a cyclist would suddenly scatter the people before him and come past a corner at a fast pace.

As regards the damages, I would not be disposed to interfere with those awarded by the Sheriff-Substitute except in an extreme case. It is my view that he has dealt with them in a very reasonable manner.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

LORD YOUNG was absent.

The Court recalled the Sheriff's judgment and affirmed the judgment of the Sheriff-Substitute, with the findings in law and in fact stated therein.

Counsel for the Appellant — M'Clure. Agent—Charles T. Cox, W.S.

Counsel for the Respondent—Stevenson. Agent—W. Ritchie Rodger, S.S.C.

Tuesday, May 19.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

SMITH *v.* MAGISTRATES OF EDINBURGH.

Process—Proof or Jury Trial—Reparation—Street Insufficiently Lighted—Edinburgh Municipal and Police Act 1879.

In an action against the Magistrates of Edinburgh, where a pursuer averred that he had sustained injuries through a street being insufficiently lighted, and the defenders, while admitting the accident took place as alleged, denied liability and referred to the Edinburgh Municipal and Police Act 1879 for its terms, the Lord Ordinary *approved* an issue for trial by jury.

The Inner House, while admitting the case might suitably have been tried without a jury, *refused* to interfere with the discretion exercised by the Lord Ordinary.

John Smith, M.D., Brycehall, Kirkcaldy, brought an action of reparation against the Lord Provost, Magistrates, and Council of the City of Edinburgh, for injuries sustained by him through tripping over a low protruding wall in an unfinished road off Comely Bank Road and being spiked upon the railings.

He averred that the place where the accident occurred was within the burgh, and subject to the jurisdiction and administration of the magistrates, who had undertaken the jurisdiction and administration of said street, and levied and collected rates and taxes from the proprietors and tenants in the usual way; that it was insufficiently lighted, and that the accident was due to the fault of the defenders.

The defenders admitted that the accident happened as the pursuer averred, but denied liability therefor. They explained that the street in question was a private one, and referred to the terms of the Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. c. 132) in support of their position.

The Lord Ordinary (KINCAIRNEY) appointed the case to be tried by a jury and approved of the issue proposed.

The defenders reclaimed, and argued that the case should be tried without a jury, as there were virtually no facts in dispute, and nice questions might arise as to the interpretation of the Act referred to. The Inner House, in the analogous case of *Harris* v. *Magistrates of Leith*, March 11, 1881, 8 R. 613, had appointed a proof, and the recent somewhat similar case of *Prentices* v. *Assets Company Limited*, February 21, 1890, tried by the same Lord Ordinary as here and a jury had resulted in a new trial being allowed.

At advising—

LORD JUSTICE-CLERK—Jury trial exists and is the suitable form of tribunal for certain cases including those of damages caused by persons not keeping their pro-

perty in order. This is therefore a case suitable for jury trial, and the Lord Ordinary has directed that it shall be so tried. I do not feel myself in a position to interfere with his discretion nor do I wish to imply that I think he was wrong or even probably wrong in so deciding.

LORD RUTHERFURD CLARK—There is a good deal to be said for this case being sent to a judge without a jury, but the Lord Ordinary has thought otherwise, and as it belongs to a general class usually tried before a jury I think we should adhere to his decision.

LORD TRAYNER—For myself I think this case is much more suitable for a Judge alone. There are very few, if any, facts in dispute, but I am not prepared to dissent from your Lordships' view. I concur however on this ground alone, that the Lord Ordinary has had the question before him, and has in the exercise of his statutory discretion decided that the case shall go to a jury.

LORD YOUNG was absent.

The Court adhered.

Counsel for the Pursuer and Respondent—Dewar. Agent—William White, S.S.C.

Counsel for the Defenders and Reclaimers—Dickson. Agent—W. White Millar, S.S.C.

Thursday, May 21.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

AITKEN *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation — Railway Company — Precautions for Safety of Passengers—New Trial.

In an action of damages against a railway company at the instance of a passenger who had received injuries in alighting from a train at a railway station, it was proved that owing to the length of the train the carriage in which the pursuer was seated had been stopped opposite the sloping end of the platform, that the pursuer in consequence of it being dark, and that part of the platform being dimly lighted, had failed to notice this, and had in in leaving the carriage fallen and hurt herself. The jury returned a verdict for the pursuer.

In a motion for a new trial on the ground that the verdict was against the evidence—*held* (1) that it was the duty of the railway company to give the passengers notice of the danger; and (2) that as there was conflict of evidence whether the accident was due to the company's failure to perform this duty timeously, or to the fault of the pursuer in leaving the carriage too precipitately, the verdict could not be set aside.

This case was an action of damages brought by Mrs Mary Aitken and her husband against the North British Railway Company on account of injuries sustained by the female pursuer in alighting from a train belonging to the defenders.

The trial took place before Lord Kyllachy and a jury on an issue of fault in the usual terms on 3rd February 1891. The material results of the evidence were as follows—The pursuers left the Waverley Station, Edinburgh, on 15th September 1890 by the 8·30 p.m. train for Leith. That day being a trades holiday, the train in which they were travelling was unusually long, and at the Junction Road Station, Leith, there was not room for the whole of the train opposite the level part of the platform, so that when the train drew up at that station the last carriage and the guard's van were opposite that part of the platform which sloped down to the level of the rails. The pursuers were in the last carriage, next the guard's van, and the female pursuer, who alighted first, did not perceive that the carriage was not opposite the level part of the platform, and in consequence fell and was injured. Both pursuers deponed that the train was at a standstill before the female pursuer left the carriage. Mrs Aitken's account was that she left the carriage "just as usual," and that she did not perceive where the train had drawn up, the sloping part of the platform being dimly lit. Mr Aitken also blamed the lighting of the station, and said that "it was a good second after the train stopped that his wife got out." Both pursuers deponed that they heard no warning given by the guard until after the accident occurred, and other witnesses corroborated the pursuers in this, and as to the insufficiency of light at that part of the platform. On the other hand, the guard of the train deponed that he left the train when it had "barely stopped," and at once ran forward, shouting "Keep your seats until the train is drawn forward;" and an experienced engineer gave evidence that the station and the platform, including the sloping portion, were "perfectly lighted."

The jury returned a unanimous verdict for the pursuers, and assessed the damages at £120.

The defenders applied for and obtained a rule.

Argued for the pursuers—The platform was too short, and was insufficiently lighted. If these facts were in themselves not sufficient proof of fault on the part of the company, at all events they imposed on the company's servants the duty of warning passengers, and there was evidence that they had failed to perform this duty timeously. Whether the female pursuer had contributed to the accident by leaving the carriage too precipitately was a question for the jury, and there being evidence to support their decision it was final—*Potter* v. *North British Railway Company*, June 7, 1873, 11 Macph. 664;