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;

Cockle v. *London and South-Eastern Railway Company*, 1872, L.R., 7 C.P. 321; *Bridges* v. *Directors of North London Railway Company*, 1874, L.R., 7 Eng. & Ir. App. 213; *Rose* v. *North-Eastern Railway Company*, 1876, L.R., 2 Exch. Div. 248.

Argued for the defenders — The fault alleged against the defenders was that their servants had failed to warn the pursuer in time to keep her seat, but the real cause of the accident was the incautious haste with which the pursuer alighted without waiting for any warning. In all the cases on which the pursuers relied the passenger who had been injured had had good reason to believe that the train had come to a final standstill and that he must get out. That was not so here, for there was no evidence that the train had stopped long enough before the pursuer got out to suggest to her that it had reached the proper place for passengers to alight. Assuming that the end of the platform was badly lighted, that would have shown to anyone who was taking care that it was not time to alight. The verdict was therefore contrary to the weight of the evidence, and should be set aside.

At advising—

LORD KYLLACHY—The pursuer in this case claims damages from the North British Railway Company in respect of personal injuries received by her on a night in September last in alighting from a train on the defenders' railway at one of their stations between Edinburgh and Leith. The accident happened in this way—The carriage in which the pursuer travelled was the last in the train, and was drawn up opposite the sloping end of the station platform, and the pursuer stepped down upon the slope, which, being dimly lighted, she failed to distinguish from the level part of the platform. In making the descent she fell and sprained her ankle, and the jury have found by their verdict that in the circumstances the railway company were responsible for the accident.

I am not able to say that I think this verdict is contrary to the evidence.

The important facts seem to be these—The station was, as I have said, not a terminal but a wayside station, and the train, when the pursuer alighted, had drawn up within the station in the usual manner, and, so far as appeared, at the usual place. In point of fact the van and the last carriage projected beyond the platform and were opposite the slope before referred to, but this part of the station was dimly lighted, and the pursuer, as I have said, failed to observe the difference of level. So far as appeared, moreover, the train had come to final stop, for although after an interval it again moved forward and again stopped, there was nothing to indicate to passengers that such second stop was intended. It was not the practice to call out the name of the station or to give passengers otherwise any express invitation to alight. In fact, at this station the stoppage of the train was the only invitation to alight which passengers received. Further, the projection of the train beyond the platform was not an ordinary occurrence. The pursuer was in the way of travelling on the railway, and it had not previously happened in her experience.

In these circumstances I cannot say that I think it was too much to expect that the defenders, if they found it necessary on the night in question to run a train which was too long for their platform, and so to expose their passengers to a new and somewhat exceptional risk—it was not, I think, too much to expect that they should give some warning or make some provision against such accidents as that which happened. And indeed the defenders seem to have so far accepted this view of their duty, for they averred on record, and sought to prove at the trial, that before the accident—that is to say, before the train quite stopped—the guard jumped down from his van and called on the passengers to keep their seats. That being so, it became in my opinion a question for the jury whether the warning thus alleged was proved, and had been given. In other words, whether the jury were to believe the guard, whose evidence I think really implied that the pursuer left the train before it stopped, or were to believe the pursuer and her husband, whose evidence was distinct to the contrary.

Now, the jury rightly or wrongly preferred the evidence of the pursuer and her husband, and in doing so they were within their province, and I do not, for my part, see how upon such a question we can disturb their verdict.

It would no doubt be a different matter if we were prepared to affirm that notwithstanding the exceptional situation the railway company were under no obligation to give any special warning or take any special precaution, but were entitled to rely on the passengers appreciating the situation and looking out for themselves. Similarly, it might be different if we were prepared to affirm that the company were entitled to rely on the passengers keeping their seats for some period of time after the train drew up within the station and came to a standstill. But it does not seem to me to be possible to affirm either of those propositions generally or apart from circumstances. Neither am I able upon the evidence to say that the jury here were bound to find contributory negligence; what degree of vigilance shall be required of a railway passenger? how far such passenger is bound to be on the outlook against exceptional risks? how far, on the other hand, it is reasonable for them to assume in the absence of notice that things continue to be as usual? These are questions which, it rather appears to me, are and must be jury questions, and with respect to which no general rule can be safely or properly laid down. I adopt on this subject and refer to the opinion of the Lord President in the case of *Potter*, 11 Macph. 664, a case which in its main features seems somewhat similar to the present.

I have only to add that I say nothing to countenance the suggestion that this station as a whole was not sufficiently lighted, or that the defenders were in fault in running on the night in question a train too long for their platform. In my view, the fault which the jury were justified upon the evidence in affirming lay in the omission to give what they say and tried to prove they did give, viz., timeous notice to the passengers to keep their seats.

LORD ADAM—The pursuer in this case met with an accident at the Junction Road Station, Leith, on the North British Railway on 15th September 1890. That day was a trades holiday, and in consequence the railway company had expected, and in all likelihood rightly expected, that there would be a greater number of passengers than usual, and accordingly the train in which the pursuer travelled was longer than usual, with the result that when it was brought to a stand at the station the two last carriages projected beyond the level part of the platform to the part which sloped down to the level of the rails, and which perhaps was imperfectly lighted. So far, however, I cannot see that there was any fault on the part of the railway company. I think that a railway company is not bound to have a platform sufficiently long to accommodate the entire length of trains on all occasions, and even when the trains may be longer than usual. That being so, I think on the one hand that passengers are not expected to alight before they come to the platform although the train may have been brought to a standstill; but on the other hand I do not think that they are bound to sit in the carriages for an indefinite length of time with the risk of being carried on to the next station. It seems to me accordingly that if a railway company draws up a train at a station so as to lead the passengers to think that it has come to a final rest, they are bound to give what Lord Kyllachy called "timeous notice" to the passengers to keep their seats till the train is moved forward. In this case the question of whether there was fault on the part of the railway company turns on the question whether or not they gave timeous notice to the occupants of the hindmost carriages of this train to keep their seats. That is a question of fact, and a question in the first instance for the jury, and indeed for them alone to decide, unless there is no evidence to support the view adopted by them, or unless the weight of the evidence is against it. If I had been on the jury in this case I should probably not have concurred in the verdict, but have come to the conclusion that the pursuer left the train so precipitately after it came to a standstill that the company had no time to give her any warning. But it is not for me to decide that question of fact but for the jury, and the Court cannot disturb the verdict unless it can say that there was no evidence to go to the jury on the question whether the railway company failed to give the passengers timeous notice to keep their seats till their carriages were drawn up alongside the platform.

LORD M'LAREN—There is no doubt now as to the obligation of a railway company in regard to the safety of passengers alighting from its trains. It is certainly not bound to provide platforms of equal length to any train stopping at its stations. I would go further and say that a railway company is not bound to provide a platform at all—there is no statutory obligation upon it to do so. But platforms have come to be universally provided as a convenience to the public, and therefore if any part of a train stops beyond the end of the platform there is a risk that passengers being unaware of the fact may come to grief, and this risk imposes on the railway company the duty of giving warning to passengers to keep their seats till the train is drawn up to the platform, or to be careful in getting down. Now, in the present case it is admitted that the train had stopped before the pursuer got out, and therefore we have not here the question which sometimes arises as to whether an invitation to alight was given. Confessedly the train had stopped and the company were under an obligation to give notice to the passengers in the carriages which had not reached the level platform to keep their seats, but I cannot say that that duty had to be discharged by the guard getting out at the risk of his life while the train was travelling at a considerable rate of speed and running alongside these carriages. It must be remembered that with the present automatic brakes a train runs at a very considerable speed almost till it is stopped, and I cannot see that a guard should run such a risk. I would rather say that he should get out when the train is in the act of stopping. Generally the name of the station is called out, or some other invitation to alight is given. • In this case I think on the evidence that the pursuer is put out of court, because according to the evidence of her husband she left the train the instant it stopped—the husband says a second after—and therefore there does not seem to me to be any conflict of evidence between the pursuer's witnesses and the railway guard when the latter says that he gave the passengers warning and the pursuer did not wait to see where she was getting out.

Accordingly as a member of the jury I would not have agreed with the verdict, but all the questions in the case involve matter of credibility, and I do not think, especially where the presiding Judge has not told us that he dissents from the verdict, it would be in accordance with our practice to disturb it. If the case were otherwise, I only wish to say, as there may be other cases of the kind, that I do not decide this case on any personal opinion that there was failure of duty on the part of the servants of the railway company.

LORD PRESIDENT—The verdict in this case was unanimous. It is approved of by the presiding Judge, and the question left to be determined by the jury was a pure question of fact. In these circumstances it would be contrary to all our practice to disturb the verdict. When I say that the

question was a pure question of fact I mean that it depends on evidence certainly not reconcileable but to a certain extent conflicting, for the female pursuer and her husband are quite distinct in saying that they heard no warning until the female pursuer stepped out of the train, and that it was then at a standstill. On the other hand, the guard says that he stepped out when the train was in motion and at once shouted to the passengers to keep their seats. The carriage in which the pursuers were travelling was immediately adjoining the guard's van, and therefore it might very well be contended that if the guard's evidence was to be relied on, the pursuers must have heard the warning given by the guard before the female pursuer descended from the train. This raises a question of credibility, because there is thus a conflict of evidence. In these circumstances I quite agree with Lord Kyllachy that this is not a case in which we ought to disturb the verdict.

LORD KINNEAR was absent.

The Court discharged the rule.

Counsel for the Pursuers—M'Kechnie—Graham Stewart. Agent—Andrew Wallace, Solicitor.

Counsel for the Defenders—Asher, Q.C.—Ure. Agents—Millar, Robson, & Innes, S.S.C.

Friday, May 22.

SECOND DIVISION.

[Lord Wellwood, Ordinary.

GUTHRIE *v.* IRELAND.

Obligation—Illegal Consideration—Bill—Tippling Act 1751 (*24 Geo. II. cap.* 40), *sec.* 12—*Guest Resident in Hotel.*

A person brought a note of suspension of a charge upon a bill for £50 granted in payment of his expenses while resident in a hotel, on the ground that the bill was null and void under the Tippling Act, on account of some of the expenses being for spirituous liquors supplied in less quantities than 20s. worth at a time. The Court (adhering to the Lord Ordinary) *refused* the note, as the account produced and proved showed no item for spirits, and brought out an indebtedness of more than £50.

Opinion that Lord Abinger's view expressed in *Proctor* v. *Nicholson*, 1835, 7 C. & P. 67, that the Tippling Act "does not apply to cases where spirits are supplied to guests who are lodging in the house," was sound.

Charles Seton Guthrie of Scotscalder, Caithness-shire, upon 10th February 1888 granted a bill at three months for £50 in favour of Alexander Ireland, innkeeper, Georgemas, in payment of an account as the amount of his indebtedness for board, lodging, hires, &c., while resident in the inn from 5th October to 27th December 1887. Having failed to obtain payment of the bill at maturity, the said Alexander Ireland protested the same, and upon 23rd June 1890 charged Mr Guthrie to pay within six days. Thereupon Mr Guthrie brought a note of suspension of said charge against Ireland, on the ground that the said £50 included payment for spirits which were never supplied to the amount of 20s. at one time, that accordingly the bill was, under the Tippling Act of 1751, as construed by the Whole Court in the case of *Maitland* v. *Rattray*, November 14, 1848, 11 D. 71, null and void, and did not authorise the summary diligence which had been done upon it.

The complainer pleaded—"(1) The alleged bill on which the charge sought to be suspended proceeds, having been granted without legal value, and for an unlawful consideration, no action or diligence upon it could competently be raised, and the charge complained of should be suspended, with expenses. (2) The consideration for said alleged bill being illegal in whole or in part, it could not authorise summary diligence, and the complainer is entitled to suspension as craved."

The said Act of 24 Geo. II. cap. 40, by sec. 12 enacts that "No person . . . shall be entitled unto or maintain any cause, action, or suit for or recover either in law or equity any sum or sums of money, debt, or demands whatsoever for or on account of any spirituous liquors unless such debt shall have really been and *bona fide* contracted at one time to the amount of twenty shillings or upwards."

The Lord Ordinary (WELLWOOD) allowed a proof, at which the respondent produced an account recently made up from memory amounting to £73, and none of the items of which bore to be for spirits. It also appeared that complainer was in the habit of giving his friends spirits at the bar, which were not paid for at the time. The other material facts are sufficiently set forth in the opinion of the Lord Ordinary, who upon 4th February 1891 repelled the reasons of suspension and refused the note.

"*Opinion.*—In this process the complainer seeks to suspend a charge on a bill for £50 granted by him to the respondent on 10th February 1888. The ground of suspension is that part of the consideration for the bill consisted of furnishing of spirituous liquors to the complainer in quantities of less than twenty shillings' worth at a time. The complainer contends, on the authority of the case of *Maitland* v. *Rattray*, 11 D. 71, that the bill is wholly null and void, at least as a warrant for summary diligence in respect of the provisions of the Tippling Act (24 Geo. II. c. 40), sec. 12.

"This is no doubt a shabby defence, but if well founded it must receive effect. The first question, however, to be considered is, whether the bill was granted in part for an illegal consideration in the sense of a consideration struck at by the Act. It lies