trespass; and that the result of this trespass was the accident to the pursuer. It is obvious that the case thus presented is in a totally different chapter of law to that which I have just discussed. The case which I have discussed was that of lawful occupation of ground adjacent to a road, and the case advanced against them was that they had violated the maxim, *Sic utere tuo ut alienum non lædas.* The case now presented makes trespass the gravamen against the defender, the form of trespass alleged being the deposit of manure on ground which he had no right to use for such a purpose—road or no road. Now, I consider this case relevant, and although it is very badly stated, and the pleas as applied to it quite unscientific, I think the pursuer is entitled to an issue.

The issue now proposed by the pursuer, however, is not appropriate, and does not present the question which I have stated. The primary question for the jury, with the aid of the Judge, will be whether the defender committed a trespass by putting his manure where he did, apart altogether from the nearness of the road and solely with regard to the rights of the pursuer under his lease. The next question arises only if this one be affirmed, and it is, whether the shying of the horse was caused by the manure heap being placed where it was? The issue which I propose is as follows—"Whether on or shortly before the 12th day of May 1893 the defender wrongfully placed a quantity of bags of manure, furnished with a tarpaulin covering, on ground then in the occupation of the pursuer under lease between him and the defender of the farm of Airds in the parish of Crossmichael; and whether on or about the said day the pursuer was injured in his person through his horse taking fright at the said bags or tarpaulin, to the loss, injury, and damage of the pursuer? Damages laid at £500."

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent at the hearing.

Counsel for Pursuer and Appellant—Salvesen—Wilton. Agent—T. M'Naught, S.S.C.

Counsel for Defender and Respondent—Jameson—Macfarlane. Agents—Macrae, Flett, & Rennie, W.S.

Wednesday, January 31.

SECOND DIVISION.

[Sheriff of Lanarkshire.

SCOTT *v.* GLASGOW POLICE COMMISSIONERS.

Reparation—Road—Street—Responsibility of Police Commissioners for Condition of Street in Burgh—Alteration of Rule of Road in Particular Street.

A steep street in the city of Glasgow before it was taken over by the city authorities, about forty years ago, had a stone tram track sloping diagonally across and going up the right side of the street for the purpose of easing the traffic. The tram, at the place where the accident after mentioned happened, was about 18 inches from the pavement. The tram line was 3¾ inches above the pavement, and between them was a gutter 6 inches below the tram. This condition of the street was continued by the city authorities after the street came under their charge. A policeman was placed at the foot of the street in order to regulate the traffic.

On 1st June 1891 while two carts in charge of a man seated on the left side of the first cart was going up the street along the tram, a child, who had been playing with a tin can on the pavement, rushed out after it into the street, and tripping on the gutter fell under the second cart, and was killed by it passing over her.

The father having raised an action against the Police Commissioners for compensation for her death—*held* that no actionable fault had been proved against the Police Commissioners.

Forth Street, Port Dundas, Glasgow, is a steep street lying east and west leading up from Port Dundas Road to the canal. It was taken over by the city from the canal proprietors about forty years ago. At some time prior to its being taken over by the city, a stone cart or tram track was placed on the street, evidently for the purpose of easing the traffic up the hill towards the canal. This track sloped diagonally across the street from the lower end at Port Dundas Road, and near that end the line of the cart track brought it on the south side for some yards in close proximity to the pavement, the distance at the place where the accident after mentioned happened being little more than 18 inches. There was a water-channel between the cart-track and the pavement, and the cart-track at the place in question was 6 inches above the water-channel and 3¾ inches above the kerbstone of the pavement, while the depth from the kerbstone of the pavement to the gutter was 2½ inches. Immediately to the north of the cart-track the street was causewayed for a short distance, and beyond that it was macadamised for the use of the traffic downhill. In this way the rule of the road was to some extent reversed in the case of vehicles passing up and down the street. This condition of the road as already mentioned existed before it was taken over by the city authorities, but it was continued by them after it came under their charge. During the day there was a constant stream of heavy traffic on the street, which was regulated by a policeman stationed at the foot.

On 1st June 1891 Thomas Currie was going up the street along the cart-track towards the canal with two carts, each drawn by one horse, he being in the leading cart, to which the second horse and cart were attached, and sitting on the left-hand side of the cart, the side furthest from the pave-

ment. After the first cart had passed, and when the second cart was opposite a passage, a little below the house where Adam Scott lived, his daughter, a little girl of five years of age, who had been playing on the pavement along with some other children with a tin at a game called "kick-the-bucket," suddenly ran off the pavement after the tin, which had been thrown or had rolled off so as to fall under the feet of the second horse. The child tried to stop herself at the edge of the pavement, but her foot having caught in the gutter or water-channel, she fell over on the cart-track, and was run over and killed by the wheel of the second cart. No accident leading to an action had ever occurred before in the street.

Adam Scott raised an action for £250 as compensation and *solatium* for the loss of his daughter against the Lord Provost, Magistrates, and Council of the city of Glasgow, being the Commissioners of Police for Glasgow. He averred, *inter alia*—"The death of the pursuer's said child was caused by the fault of the defenders the Magistrates and Council of Glasgow—(1) Owing to the defective and dangerous formation of said roadway, which tripped or caused said child to fall thereon; (2) owing to their having constructed or retained on the wrong side of said street, and close to the pavement, so as to endanger the lives of passengers, a track on which they thereby specially invited and instructed vehicles to proceed."

The defenders lodged defences and pleaded, *inter alia*—"(2) The death of the pursuer's child not having been caused through the fault of the defenders the Police Commissioners, they ought to be assoilzied with expenses."

After hearing proof the Sheriff-Substitute (GUTHRIE) on 2nd August 1892 pronounced the following interlocutor:—"Finds that the pursuer has failed to prove that the accident to the pursuer's daughter Annie Derry Scott, on 1st June 1891, in Forth Street, Port Dundas, was due to the faulty formation of the road, for which the defenders are responsible: Therefore assoilzies the defenders, the Lord Provost, Magistrates, and Council of the city and royal burgh of Glasgow, and decerns."

The pursuer appealed to the Sheriff, but on 14th June 1893 the Sheriff (BERRY) adhered.

The pursuer appealed to the Court of Session, and argued—The Police Commissioners were liable, because (1) the tramway was on the wrong side of the road. The carter therefore being seated in his proper place at the left side of his horse had been on the side furthest from the pavement, and was thus unable to see the child fall, and to pull up and prevent the accident; (2) the tram line was too near the footway. Anyone tripping on the pavement might be precipitated on to the tram. The road was a wide one, and the tram could easily have been placed in a less dangerous position; (3) the gutter was much too deep and rough, and the tram was raised above the pavement. The accident would not have occurred if the child had not tripped in the deep rut of the gutter.

Argued for the defenders—No fault had been proved against them. The rule of the road had to be reversed in this street for a good reason, viz., in order to render the up-traffic easier, and a policeman was specially stationed to look after the traffic. The street had been in its present condition for upwards of forty years and no accident had occurred before, and no complaints had ever been made as to its condition—*Dargie* v. *Magistrates of Forfar*, March 10, 1855, 17 D., Lord Ivory's opinion, p. 737.

At advising—

LORD JUSTICE-CLERK—This is a sad accident, but the question is, whether it is attributable to the fault of anyone?

The traffic at the particular place where it happened was for very good reasons specially regulated, and I think that authorities having charge of a street are quite entitled to regulate the traffic along it, without regard to the ordinary rule of the road, if they are of opinion that circumstances seem to render this desirable.

Here owing to the steep gradient it was thought better in the opinion of the burgh's engineers that there should be a stone tramway, and that it should start from the right side going up, and should gradually curve across the road thereby to a certain extent easing the gradient, and they also had a constable directed to be upon the spot to regulate the traffic, and that was quite right. Further, I have no difficulty in holding that a vehicle is not in fault because it happens to be on a particular side of a roadway if there is no other traffic to make it a duty that it should be on one particular side for the purpose of passing or crossing another vehicle. Driving on a particular side is a matter entirely within the discretion of the driver, except where he has to pass or meet another vehicle. In that case, of course, he must conform to the rule of the road, either the general rule or any special rule prescribed by authority. No fault is therefore attributable to the Magistrates or other authorities because they specially arranged that this tramway should pass up the hill on the right instead of the left side of the road.

It is next said that it was dangerous to have the gutter 6 inches below the level of the pavement. We have familiar instances however of this, and in every town, where, unless the depth was 6 inches, the surface water could not be carried away. The drop may be dangerous to persons who are not careful, or to children under no supervision. But the danger is one which must be faced, and, as has been often observed in this Court, in the case of children whose parents cannot afford to give them such supervision, the risk must be taken. It is wonderful how some children in this position learn to appreciate the danger, and how few accidents there are. I am of opinion, then, that there was no fault on the defenders' part in having this gutter as it was.

The only other danger suggested is that the tramway was set at a certain height above the gutter, which necessitated having

a slope up to the tramway. It has been in this condition for forty years, and apparently no accident has happened. I do not think that this was a danger against which the Magistrates were bound to provide.

On the whole matter I think we must affirm the judgment appealed against.

Lord Young—In all towns some streets from their lie are attended with more danger to the people using them than others. We are all quite familiar with the existence of such streets, and no instances are more familiar than streets formed on ground sloping upward or sloping to one side. Forth Street seems to be on ground of that kind. The question we have to decide is this—Are the public authorities at fault in allowing this street to be there, because it may be attended with danger to those using it for traffic or to children playing on it at "kick-the-bucket?" To say so would be ridiculous. No actionable fault or wrong was committed either by private individuals or by the public authorities in allowing such streets to be constructed and used.

If there had been no tramway in Forth Street, as might easily have been the case, and this accident had happened by reason of a carter driving his horses in the same line as the tramway runs, it was not suggested that there would have been any case against the Magistrates. But because forty years ago it had been thought prudent to put a tramway in this street in order to ease the burden of horses going up the street, and because the Commissioners of Police had not altered the street since they took it over, it was said that they were liable. I must say that appears to be a ridiculous proposition. It was a question for consideration upon which side of the street that tramway might have most efficiently been constructed, and there might be conflicting views as to which was the best side for its position in order that it might ease the traffic, but it did not seem to be suggested that the Magistrates had erred in the exercise of their judgment. There were a great many considerations besides the primary one of easing the horses as to the side on which the tramway should be. One side might have more houses and shops on it than the other. The middle of the street might seem to some as the best place for the tram lines, but I am not going to determine such a question. I am satisfied that there is no ground whatever for attributing the accident to the fault that the tramway was there.

On the whole matter, and without any doubt, I am satisfied with the findings in fact and law of the Sheriff-Substitute.

Lord Rutherfurd Clark—I am satisfied that no blame has been proved against the defenders, and that therefore the defenders should be assoilzied.

Lord Trayner—That is my opinion also. I think that no fault at all has been proved against the defenders.

The Court refused the appeal.

Counsel for the Pursuer—Shaw—Sym. Agent—Robert Stewart, S.S.C.

Counsel for the Defenders—Lees—Ure. Agents—Campbell & Smith, S.S.C.

Wednesday, January 31.

FIRST DIVISION.

SYMINGTON *v.* CAMPBELL.

Title to Sue—Action of Damages—Title of Party Purchasing Ship to Sue in respect of Damage done Prior to Purchase—Title to Sue of Assignee to Claim of Damage where Assignation Executed after Service of Summons.

Held (1) that the purchaser of a ship had no title to sue in respect of damage done to the vessel prior to the date at which he became the owner; and (2) that the defect in his title was not remedied by an assignation to the claim of damages executed in his favour by the previous owner after the summons had been served.

This was an action of damages at the instance of Joseph A. Symington, "for his individual interest, and also as assignee of Robert Symington," against James Campbell of Jura.

The summons was signeted and served upon 28th June 1893.

The pursuer made averments to the following effect—"The pursuer is the owner of the vessel 'Alarm,' which he purchased in May 1893 from its former owner Robert Symington, who had purchased the vessel in June 1890 from James M'Allister and James Nelson." The defender raised an action of interdict and damages against James M'Allister and James Nelson, the summons in which, containing the usual warrant to arrest on the dependence, was signeted on 31st January 1893. Robert Symington was called for his interest, but no conclusions were directed against him. About the same date the defender obtained the authority of the Lord Ordinary to put the warrant of arrestment into execution. The vessel was, by the defender's instructions, seized on 3rd February. The warrant to arrest contained no authority to arrest Robert Symington's vessel, and the seizure was illegal. The defender was aware before the date of the arrestment that the vessel was the property of Robert Symington. The defender having seized the said vessel, had since detained it in his possession. After seizure the messenger-at-arms employed . . . proceeded to dismantle the vessel . . . The process of dismantling was carried through negligently and without reasonable care and skill. Further, instead of keeping the vessel in safe harbour and taking reasonable precautions for its safety, as the defender, or those acting for him, were bound to do, the vessel was allowed to drift, and was ultimately run aground on the open beach, where it still remained,