amount. The fact that a commission is to be paid over and above does not, in the circumstances of this case, make the sub-section applicable. No doubt there might be a case in which there was a fixed allowance, *e.g.*, board and lodging, or a money payment of an equivalent amount, and a further provision of a share of profits, which latter was really the remuneration. In such a case the fixed allowance would not prevent the sub-section from applying. Remuneration is recompense or reward for services rendered, and the share of profits in such a case would rightly be regarded as the *quid pro quo*. The man's keep or allowance in lieu thereof could not be regarded in that case as his remuneration. Assistance may be got from the negative term "unremunerative." That does not mean that nothing is got, but that what is got is not an adequate return for what is done.

The question in each case is, in my opinion, one of fact for the arbiter. In the present case the claimant had been employed one week previous to the accident, and his poundage amounted to 7s. His wages were 30s. It cannot, in my opinion, fairly be said that the claimant was remunerated by a share of the profits. His remuneration was his wages, and the commission was of the nature of extra pay. We were referred to the case of *Whelan* v. *Great Northern Steam Fishing Company, Limited*, 1909, L.T.R. 913, where a man who was called a "share-hand" on board a steam trawler was held not entitled to compensation for an accident which happened to him while employed as a stower on board a cutter that took the boxes of fish to market. That case, however, does not assist in arriving at a conclusion here. In the present case I think the commission was an incident in the contract of service, the leading provision of which was the performance of work for a fixed money wage. I am therefore of opinion, on the facts of this case, that the Sheriff-Substitute was entitled to take the view he did, and that the question should be answered accordingly.

The LORD PRESIDENT and LORD JOHNSTON, who were present at the advising, gave no opinion, not having heard the case.

The Court answered the question of law in the case in the negative.

Counsel for Appellant—Murray, K.C.—Carmont. Agents—Beveridge, Sutherland, & Smith, W.S.

Counsel for Respondent—J. R. Christie—Mercer. Agent—T. M. Pole, Solicitor.

Friday, July 12.

FIRST DIVISION.

[Lord Dewar and a Jury.

ROBERTSON *v.* WILSON.

Reparation—Negligence—Road—Motor Car and Motor Cycle—Duties of Drivers on Main and Side Roads towards Each Other.

While it is the duty of a person approaching a main road from a side road with the intention of crossing the main road to give way to traffic on the main road, there is also a duty on the part of those using the main road to approach a crossing with caution.

Circumstances in which the Court *refused* (1) to disturb a verdict of a jury finding that the driver of a motor car on the main road was responsible for a collision between the car and a motor cycle which had entered the main road from a side road, and (2) to *grant* a new trial on the ground of misdirection by the presiding Judge.

William Robertson, M.D., Ardmhor, Scone, *pursuer*, brought an action against J. W. Wilson, seed merchant, Perth, *defender*, for £500 damages in respect of injuries sustained by him through a collision between the defender's motor car and his (the pursuer's) motor cycle.

The *facts* as stated by the LORD PRESIDENT in his opinion (*infra*) were as follows—"A motor car was proceeding from Perth to Coupar-Angus along the main road. At a certain point on the road a side road, known as Crossford Road, enters the main road on the right-hand side at an angle of about 60 degrees. Consequently a person coming from Crossford Road and proceeding to Perth enters the main road at an acutely re-entrant angle. In front of the motor car was a cart which was going in the same direction as the car. At the time the accident happened the motor car had assumed such a position—I suppose with the intention of getting past the cart—as placed it, *i.e.*, the car, considerably to the right of the *medium filum* of the road, and in fact very near the verge. At that moment a motor cyclist emerged from the cross-road on his way to Perth, and a collision followed. In respect of the injury which he thereby sustained the motor cyclist has brought the present action against the owner of the car."

The case was tried before Lord Dewar and a jury on 19th January 1912 on the following issue—"Whether, on or about 18th July 1911, on the high road from Coupar-Angus to Perth, and at a point near the junction of said road and the road known as Crossford Road, the pursuer was injured in his person and in his property through the fault of the defender—to the loss, injury, and damage of the pursuer? Damages laid at £500."

The jury having awarded the pursuer £200 damages, the defender presented a bill of exceptions, and also moved for a

new trial on the ground that the verdict was contrary to evidence.

On March 5, 1912, the Court granted a rule.

The *nature* of the *evidence* as well as the *terms* of the bill of exceptions sufficiently appear from the Lord President's opinion.

Argued for pursuer—(1) *On the Rule.*—The question of fault was one of fact for the jury, and the Court therefore would not readily interfere with their finding. There was no proof of contributory negligence on the pursuer's part. What was reasonable care depended very much upon circumstances—*Campbell* v. *Train*, 1910 S.C. 556, *per* Lord Low at p. 560, 47 S.L.R. 475. (2) *On the Bill of Exceptions.*—The directions given were right, for while there was no doubt a greater duty on those using the side road towards traffic on the main road, there was also a duty on those using the main road towards traffic coming from the side road.

Argued for defender—(1) *On the Rule.*—The evidence clearly showed that there was contributory negligence on the pursuer's part, for he was bound to have contemplated the existence of traffic on the main road. Had he done so he would not have entered that road at so high a rate of speed. (2) *On the Bill of Exceptions.*—The directions given were wrong, for where there was any possibility at all of a collision it was the business of the person using the side road to give way to the person on the main road—*Macandrew* v. *Tillard*, 1909 S.C. 78, *per* the Lord President at p. 80, 46 S.L.R. 111, at p. 112.

LORD PRESIDENT—[*After the narrative ut supra*]—In order to recover damages the pursuer has to show two things—first, that there was fault on the part of the driver of the car; and second, that there was no contributory negligence on his own part, the *onus* as to this latter question, however, being upon the other side if he has established the first proposition. In the course of his charge to the jury Lord Dewar gave the following direction—"That it was the duty of the pursuer before he emerged from the side road to look out for and if necessary give way to all traffic on the main road, but"—(and here follow the words which give rise to the first exception)—"there was also a duty on those using the main road to take all reasonable care of traffic coming from the side road." Now it is clear that if this exception is valid it must be because the proposition which begins with the word "but" is unsound. It is impossible to say that it is so. In support of his argument counsel for the defender cited the case of *Macandrew* v. *Tillard* (1909 S.C. 78), and especially certain words which I there used, namely, "that where there is any possibility at all of collision it is the business of the person on the side road to give way to the person on the main road." Now I think no one can read my remarks in that case, and also those of Lord Mackenzie, without seeing that that case does not support the defender's contention; for what I pointed out in that case is this, that while there is a duty on those using the main road towards the traffic on the side road, there is a greater duty on the part of those coming from the side road with regard to traffic on the main road. That case, therefore, in no way supports this exception, for it must be assumed that the Lord Ordinary said all that was necessary regarding the higher duty incumbent on those using the side road.

The second exception is as follows—"Counsel for the defender further asked the Lord Ordinary to direct the jury 'that if the jury are satisfied that the pursuer entered the main road from Crossford Road at a period when a collision with the defender's motor car was inevitable, the collision was caused by the fault of the pursuer, who cannot recover damages.'"

To have given a direction in such terms would, I think, simply have been to mislead the jury. The proposition is expressed in a way which is not only confusing, but is not even a correct use of English, for one cannot conceive of the pursuer entering the main road in the knowledge that a collision was inevitable—it was only upon entering that he became aware that a collision must ensue. The underlying idea of the sentence, however, is clear enough, viz., that the defender's counsel wanted the Lord Ordinary to tell the jury what we must assume he had already told them—that where two persons are approaching each other, one on the side road and the other on the main road, and if owing to the direction they are taking—be it with due care on the part of each—they would be bound to meet, it is the person coming from the side road who must give way and not the other. So much for the bill of exceptions.

With regard to the motion for a new trial, there is no doubt that the motor car was on the right-hand side of the *medium filum* of the road—probably with the intention of getting past the cart—when the collision occurred. But it was for the jury to say whether the driver of the cart was in fault in choosing the *debouchement* of a side road for executing such a manœuvre. It was also for the jury to consider whether the pursuer was or was not guilty of such contributory negligence as to disentitle him to succeed. I do not of course mean that there must necessarily be the same degree of contributory negligence as was present in the case of *Watson* v. *North British Railway Company* (7 F. 220), for the degree of caution required must vary with the circumstances of each case. In that connection I would specially refer to what was said by Lord Low in the case of *Campbell* v. *Train* (1910 S.C. 556), where his Lordship pointed out that what was reasonable care depended very much upon circumstances. Whether the pursuer emerged from Crossford Road with reasonable care and caution, or whether he did so recklessly, was a question of fact for the jury, and they were quite entitled to find as they did that on his part there was no contributory negligence.

I am therefore of opinion that the bill of exceptions should be repelled and the motion for a new trial refused.

LORD KINNEAR—I agree with your Lordship on both points. As regards the bill of exceptions, I have only to add that I should have thought the first exception could not be sustained, even if that part of the sentence to which it is taken were open to challenge, which I do not consider it to be. If the exception were good, the proper direction to the jury would have been that it was the duty of the pursuer to look out for and give way to all traffic on the main road, and that there was no corresponding duty of care laid on the defender. For the exception is taken solely to the second branch of the direction quoted in the bill. Now I think if the case had been left to the jury on a statement of the pursuer's duty only, and without reference to the defender's duty, the jury would have been misled, not because the law so laid down taken by itself would have been wrong, but because it would have been incomplete. It would be a misstatement of the rule stated by the Lord President in the case of *Macandrew* v. *Tillard* that it is the business of those who are on the cross road and going to cross the main road to look out when they enter the main road and to give way to traffic which is coming along the main road; but at the same time that is certainly the business of persons driving on the main road to approach a crossing with caution. The direction to which exception is taken is entirely in accordance with the law so laid down. The rule laid down in that case applies to the drivers on both roads, and a duty of caution is imposed on the driver on the main road as well as upon the driver on the side road. As regards the second exception, I have no doubt that the direction asked for was properly refused.

On the question of the rule, both questions contained in the issue, namely, that of the defender's fault and that of the pursuer's contributory fault, are questions of fact for the jury to decide, and there was ample evidence to justify the verdict if the jury were of that opinion.

LORD JOHNSTON—I agree with your Lordships. In this case not only was there ample evidence to entitle the jury to arrive at their verdict, but I think that it was a sound verdict. I should have said no more but that I think this case is a valuable corollary to that of *Macandrew*. In that case when one person was driving along a main road and the other was approaching by a side road, it was held that it was the duty of the latter to give way. That does not mean that the person driving along the main road is relieved of all duty to the other. On the contrary, he also must attend to the safety of the other, although he is entitled to expect that the person coming in from the side road will give way. That, however, only applies when there is no other traffic. It assumes that the person on the main road is keeping to his own side so as to leave space for other traffic. This distinguishes the present case from that of *Macandrew*, where there was no other traffic. In the present case there was a cart going along the main road in the same direction as the defender; and it was on that account that the defender failed to take proper care for the safety of the pursuer by choosing his opportunity to pass the cart just when the cart was passing the end of the side road. There is a passage in Mr Rollo's evidence which is practically decisive of the case. He says that he was travelling at sixteen miles an hour, and was so near to the cart that he could not have stopped behind it. "We were almost on the cart at the time of the collision. Evidently the horse when it heard the noise had made a jump, and our chauffeur had to get past to keep clear, and after we passed he came in front of the cart for a short distance. I shouted to the driver, and it was on my instruction that he passed the cart and stopped where he did. He was just going to stop when I said 'Go on.' The car was going at such a speed that it could easily have been stopped in a short distance. I should think it was going at somewhere between sixteen and seventeen miles an hour." He also says—"I remember him"—the driver of the cart—"saying that his horse was very nearly into us. I said—'Yes; if we had not gone on a little bit he would have been.' That referred to the instruction I had given to the chauffeur to go on."

The result is to show that the motor was on the point of passing the cart at such a speed and so driven as to imply fault on the part of the driver, and his master as responsible for him. This narrative of the occurrence reveals a state of matters which fully justifies the verdict.

LORD MACKENZIE—I agree with your Lordship in the chair.

LORD DEWAR—I also agree.

The Court discharged the rule, disallowed the bill of exceptions, refused to grant a new trial, and of consent applied the verdict.

Counsel for Pursuer — Watt, K.C. — Lippe. Agent—P. MacLagan Morrison, Solicitor.

Counsel for Defender—Chree, K.C.—A. R. Brown. Agents—Aitken & Methuen, W.S.