considering who was responsible for this man's neglect they were not to consider who had control over the work, but only who selected, engaged, and paid the man. Whatever the circumstances of the case may have been, the question of control is always an ingredient in considering who is responsible for a wrong done in the course of a work. I should be disposed to think that the true view of the law is that the person who is responsible is the man who does the wrong, or the first person in the ascending line of employers who had control of the work and in whose service the work is done. But at all events I should think that in ordinary circumstances the jury were entitled to consider not only the elements of employment specified in this direction asked but also the element mentioned in the direction given in the Lord President's charge. I quite agree with what has been said to the effect that there might be circumstances in which there was a question between mere control on the one hand and the terms of employment on the other hand, and it might be important that the jury in cases of that kind should be told and should consider the matter. On the other hand, in other cases it is more important to decide who controlled the work; but we have nothing in this bill to say whether this case is of the one kind or of the other. We can only be asked to sustain the exception if we consider it an absolute principle of law that the question of liability for the negligence of a servant never can depend on whether the person proposed to be made answerable had any control over the work or not, but must depend solely on whether that person has selected, engaged, paid, and is legally entitled to dismiss a wrongdoer. I have made these observations because I should have been sorry to throw out this bill of exceptions upon a merely technical point, however formidable that may be. But I think the objection to the bill is not technical—it goes to the whole substance of it—and we must consider it according to the terms in which it is set out. The whole point is that it sets out no tenable objection to what his Lordship directed the jury, and asks us to hold that the jury should have been directed in a manner that would have been wrong.

The LORD PRESIDENT—I concur.

The Court refused the motion for leave to print the notes of evidence, refused the bill of exceptions, and of consent applied the verdict, assoilzied the defenders, and found them entitled to expenses.

Counsel for the Pursuer—Campbell, K.C.—Hamilton. Agents—Gardiner & Macfie, S.S.C.

Counsel for the Defenders—Ure, K.C.—Guy. Agents — Webster, Will, & Co., S.S.C.

Thursday, October 16.

FIRST DIVISION.

[Jury Trial.

GLASS v. PAISLEY RACE COMMITTEE.

Reparation—Injuries through Collapse of Stand—Liability of Lessors of Ground—Sub-Lease.

An action of damages was raised against a race committee for injuries sustained by the pursuer through the collapse of a stand which had been erected in a park leased by the defenders, but on ground sub-let by them to a person for the purpose of erecting the stand. The case was tried before a jury, and the defenders asked the presiding Judge to direct the jury (1) that by letting ground to a tenant for the erection of a stand they were not liable for the fault of the tenant or his contractor in designing or erecting it; and (2) that if the jury thought the fault due to the defective design or construction of the stand, and that the defenders did not design or construct it either by themselves or by others acting under their orders, or make any charge to or have any contract with the pursuer for admission thereto, then the jury must find for the defenders.

The presiding Judge refused to give these directions, and the defenders presented a bill of exceptions.

The Court *refused* the bill of exceptions on the ground that the directions asked were rightly refused.

Process—Jury Trial—Bill of Exceptions—Form of Bill—Court of Session Act 1868 (31 *and* 32 *Vict. cap.* 100), *sec.* 35.

A bill of exceptions narrated the issue and the directions, but contained no statement of the circumstances of the cause or purport of the evidence; but the notes of the evidence were printed by the party presenting the bill.

Opinions (*per* LORD ADAM and LORD M'LAREN)—That the bill was not in conformity with the provisions of section 35 of the Court of Session Act 1868 (quoted *ante*, p. 14).

The Paisley Race Committee, who were in charge of races held on 8th and 9th August 1901, leased from the Town Council for the purposes of the race meeting a park known as St James' Park, Paisley, which formed part of the common good of Paisley. In the park there was a permanent stand belonging to the burgh. The Committee let to Alexander Wood, restaurateur, Paisley, part of the field for the purpose of erecting a stand upon it. A fee of 6d. was charged by the Committee to the public for admission to the field. Mr Wood erected a stand on the ground sub-let to him, and sub-let the stand to Mr Bridges, a bookmaker, who charged an admission fee of 2s. 6d.

During the races, on 8th August 1901, this stand collapsed, and the occupants were precipitated to the ground.

Robert Glass, machineman, Glasgow raised an action of damages against the Paisley Race Committee in respect of injuries caused to him by this accident.

The case was tried by a jury before Lord Kinnear upon the following issue:—"Whether on or about 8th August 1901, and in or about St James Park, Paisley, the pursuer was injured in his person through the fault of the defenders, to the loss, injury, and damage of the pursuer? Damages laid at £500 sterling."

The jury returned a verdict for the pursuer, and assessed the damages at £115.

The defenders presented a bill of exceptions, in which they set out the issue and the following statement:—"And upon the trial of the said issue the counsel for the parties adduced evidence to maintain and prove their respective contentions under said issue. And the counsel for the parties having addressed the jury, Lord Kinnear charged the jury. Whereupon counsel for the defenders asked Lord Kinnear to give the following directions to the jury—'(1) That the defenders, by letting ground to a tenant for the erection of a stand, are not liable for the fault of their tenant or for the fault of contractors employed by their tenant in designing and erecting the stand in question. (2) That if the jury are of opinion that the accident arose from the defective design or construction of the stand, and that the defenders did not by themselves or by others acting under their orders either design or construct the stand or make any charge from the pursuer for admission thereto, or make any contract with him for the use thereof, they must find for the defenders.'—Which directions Lord Kinnear refused to give. Whereupon the counsel for the defenders excepted to the ruling and refusal of Lord Kinnear."

At the hearing the Court referred to the case of *Connelly* v. *Trustees of Clyde Navigation*, *ante*, p. 14, which had just been decided, and pointed out that the bill of exceptions contained no statement of the purport of the evidence.

The notes of evidence had been printed by the defenders.

Argued for the defenders—(1) The bill of exceptions was in the form given in the Juridical Styles, which was the form regularly in use hitherto. Though the bill did not contain a specific statement of the purport of the evidence, there was quite enough in it, read along with the record, to enable the Court to understand the facts. Moreover, the defenders had printed the evidence. This was more satisfactory than any *ex parte* statement of its purport could be. The bill accordingly was in compliance with the statutory formalities. (2) *On the First Direction*—The defenders were not, from the fact of their having let the ground for the stand, responsible for the fault of their tenant in the erection of the stand—*Henderson and Thomson* v. *Seewart*, June 23, 1818, 15 S. 868; *Lyons* v. *Anderson*, June 25, 1886, 13 R. 1020, 23 S.L.R. 732. *On the Second Direction*—In order to found liability on the ground of invitation it was necessary that the defenders should be owners of or in possession of the premises or apparatus which were in fault, that such premises or apparatus should be entirely under their control, and that they should for their own advantage have invited the public to come on the premises or use the apparatus. These elements had been present in all the cases in which invitation had been held a ground of liability. In this case these essential elements were all absent. The stand was not the property or in the possession of the defenders; it was not under their control, and persons entering on the stand were not invited and did not contract with the defenders. The following cases were referred to:—*Smyth* v. *Caledonian Railway Company*, 1897, 24 R. 488, 34 S.L,R. 367; *Caledonian Railway Company* v. *Warwick*, 1897, 25 R. (H.L.) 1, 35 S.L.R. 54; *Nelson* v. *Scott, Croal, & Sons*, 1892, 19 R. 425, 29 S.L.R. 354; *Patterson* v. *Kidd's Trustees*, 24 R. 99, 34 S.L.R. 69.

Counsel for the pursuer were not called upon.

LORD PRESIDENT—There is no motion here for a new trial on the ground that the verdict is contrary to evidence, and so far as that aspect of the case is concerned the verdict must be taken to be right. But exception is taken to it upon two grounds of law, and the question is whether either or both of the directions asked should have been given. Lord Kinnear charged the jury, and no exception was taken to any part of his charge, and therefore we are bound to assume that the charge given by his Lordship to the jury was correct, except in so far as he declined to give the directions asked by the defenders. The first of the directions which his Lordship was asked to give was this—"That the defenders by letting ground to a tenant for the erection of a stand are not liable for the fault of their tenant or for the fault of contractors employed by their tenant in designing and erecting the stand in question." That is one particular part of the case selected from the rest and sought to be made the subject of a direction, and in considering whether this direction should have been given we are bound to assume that in so far as his Lordship gave directions they were correct. It seems to me that his Lordship would have erred if he had given the direction asked, because it is founded upon a view that, whatever else may be proved outside of the matter referred to in the direction, the direction would exclude all liability. But the direction covers a very small part of the facts of the case, and it seems to me that the question whether it was a true proposition or not must depend upon many other matters that were proved in the case. If it was a sound proposition as his Lordship was asked to give it, then apparently, even although the tenant might have erected a manifestly unsafe structure, and apparently, even if the defenders had known that it was unsafe, there was no liability, because the absolute proposition which his Lordship was asked to lay down was in effect that merely by letting the ground

the defenders exempted themselves from all liability. However patent and obvious the fault might be, and notwithstanding that the defenders remained in possession of the rest of the ground, they were to be exempt from liability. Now, it seems to me that to ask the presiding Judge to lay down that as an exhaustive statement of the law was to invite him to state what might upon the facts proved have been not only inadequate but misleading. What were the short facts of this case? The committtee appears to have taken the racing ground from the municipal authorities; they fenced it round and put a gate upon it, and apparently for a charge of sixpence admitted persons within the enclosure. They also let a part of it to Mr Wood, a restaurateur, for the purpose of his erecting (as he did erect) a stand upon it, and Mr Wood sub-let the stand to Mr Bridges, a bookmaker. At the time of the accident the stand was in the hands of Mr Bridges, but still it was within the ground of which the defenders were lessees and occupants. On payment of sixpence people obtained access to the ground, so that they could come in contact with the stand and get on to the stand on payment of half-a-crown. Now, such being the relation of the defenders to the stand, it appears to me that to have laid down in absolute terms that the mere fact of the stand being let to a tenant absolved the defenders from all liability in respect of danger or fault would have been a mistaken direction, which the learned Judge was right in not giving. Then the second direction asked was—"That if the jury were of opinion that the accident arose from the defective design or construction of the stand, and that the defenders did not by themselves or by others acting under their orders either design or construct the stand or make any charge from the pursuer for admission thereto, or make any contract with him for the use thereof, they must find for the defenders." This direction is founded very much upon the same idea as the other. The broad proposition which his Lordship was asked to lay down was in effect that the defenders had no responsibility either with respect to the design or construction or condition of the stand. Now, for the reasons which I have already given in regard to the first direction sought, it appears to me that this would have been a misleading direction to have given to a jury. It was for the jury, on a consideration of the facts proved to them, to say whether they did or did not think that there was such a devolution of the possession, use, and control of the stand as to have taken all duty off the defenders. It was for the jury, on the whole facts of the case, and not on a part of these facts as put in the direction asked, to say whether the relation of the defenders to the stand was such even although they had let it; they had a certain duty to the persons whom they invited and admitted to the ground to see that the stand was reasonably safe; and upon the evidence the jury found against the defenders. For these reasons it appears to me we should refuse this bill.

LORD ADAM—I agree, but I wish also to state that I should have been prepared, as we did in the last case, to refuse this bill in respect that it is not in conformity with the 35th section of the Act which provides for the matter. The notes of evidence have been printed, and we were referred to this print and were told that it was impossible to understand the case without having these notes before us. Now, we have perfectly understood the case upon the statement made by Mr Irvine as to the circumstances in which the exception or exceptions were taken. The Act of Parliament says that a statement of the circumstances in which the exception or exceptions were taken, such as would enable us to judge of the exception or exceptions from it, should be put into the bill to enable us to understand it. That might easily have been done. As to the notes of evidence printed, we have not been once referred to them. On these grounds I am of the same opinion as I was in the last case, that the bill of exceptions is not in conformity with the statute. I agree also on the merits with what your Lordship has said.

LORD M'LAREN—I agree with your Lordships that this Bill of Exceptions is not framed in conformity with the statute, because it neither contains excerpts from the evidence nor a statement of the purport of the evidence sufficient to raise the question of the validity of the exceptions. But as the statute leaves a large discretion to the framer of a bill, and as counsel undertook to satisfy us that his exceptions could be maintained irrespective of the evidence of the case, we allowed the argument to go on. I am afraid this undertaking has not been fulfilled, because the exceptions have not been established. But possibly if they had been good they might have been established without reference to the notes of evidence.

Now, as to the first of the directions which the presiding Judge was asked to give to the jury, I think it is a sufficient reason for the refusal to give it that the direction is not expressed with the clearness and precision that are desirable in a judicial direction to a jury. But I take the proposition to mean that, as the defenders did not erect the stand but let the ground to a tenant for the purpose of erecting a stand, the defenders incurred no responsibility for the safety of persons making use of the stand. That seems to be the true meaning of the suggested direction, and if this be the meaning, then I think the direction was not one which the judge ought to have given in the circumstances explained to us, because it ignores the duty on the part of anyone who lets his land for purposes involving risk or danger to the public to exercise due care in selecting the persons to whom he makes over his ground, and also to put these persons under proper structural conditions in regard to the buildings to be erected. It is not necessary to consider whether as

matter of fact the tenants were put under proper conditions, because that is not the direction which was asked for. The direction asked was an unqualified direction that the landlord who lets his ground for such a purpose will incur no responsibility. The second exception is if possible more objectionable, because it really amounts to this, that as matter of law a person who lets his ground can never under any circumstances be responsible for a breakdown. I think it can almost never happen that a judge would be disposed or that it would be his duty to give directions in such unqualified terms. I would also say that, while agreeing that these directions were not suitable to the case, I have no doubt from all that has been said to us on the subject that the directions actually given were sufficient for the guidance of the jury in the disposal of the case.

LORD KINNEAR concurred.

The Court refused the bill.

Counsel for the Pursuer—Watt, K.C.—J. A. Chrystie. Agents—St Clair Swanson & Manson, W.S.

Counsel for the Defenders—Clyde, K.C.—Irvine. Agents—Constable & Johnstone, W.S.

Tuesday, October 21.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

M'KECHIE *v.* BLACKWOOD & SONS.

Reparation—Slander—Magazine Article—Charge of "Want of Womanly Delicacy"—Issue—Innuendo—Counter Issue.

A magazine article describing the life of the miners in the village of K. contained, *inter alia*, the following passages:—"One evening there were several neighbours calling, and the party in the kitchen numbered more than a dozen. The lassie of seventeen, growing tired, got up, and in our midst without hesitation prepared herself for her bed and got into it. . . . Now this might be called 'indelicate.' Delicacy, however, is a standard of the more complex world, and this girl knew nought of it." In an action of damages for slander brought by a girl, who averred that she was referred to in the above passage as "the lassie of seventeen," and innuendoed the passage as meaning that she was without natural and proper womanly delicacy of mind, and was immodest and indecent, *held* that the pursuer was entitled to an issue.

Terms of issue *approved.*

Terms of counter issue *refused.*

This was an action at the instance of Helen M'Kechie, daughter of and residing with James M'Kechie, brickmaker, Kelty, Fife, against William Blackwood & Sons, publishers and proprietors of *Blackwood's Magazine*, for slander alleged to be contained in an article in the magazine.

The article, which was entitled "Among the Fife Miners," contained the following passage:—"Where wages are good in comparison with the cost of living early marriages are always common. House rents in Kelty are moderate. The oldest houses in the village rent for £4, 10s.; the newer and average houses rent for £7 and £8 a-year, and the best of them for £10. The great trouble is that there are not nearly enough of them, hence the evil of overcrowding is forced upon the people, who are only too eager to have homes of their own. That overcrowding is an evil and a sore one there is no contradicting, but from what I saw of it in Kelty I am inclined to think that it is a much misunderstood evil, just as the drink problem has until recently been much misunderstood. From a hygienic standpoint the wrong that is done the people who are forced to corral together like sheep can scaccely be exaggerated. In summer the atmosphere becomes stifling; in our house we never had sheets over us, merely rough blankets, and at times these were 'gey ill to thole.' There was one window in the room four feet two inches high by two feet five inches wide. This dropped down about half-way from the top, so that we could get some fresh air, though often it was hot. In winter, however, everything is kept shut tight—'to keep out the cold,' as the people say—and in the kitchen, where four or five persons sleep and all the food is cooked, the air becomes poisonous. Granting then that all that is said on this point is justified, and that on these grounds alone the evil is a scourge that is threatening a definite proportion of the working class, and is therefore a blot on the scutcheons of those whose indifferentism prevents its remedy, what of the other point so often dwelt upon by reformers, namely, morality. In Kelty I found myself enjoying life in the rough. There was the maximum of naturalness and the minimum of convention. It was a bold illustration of life without the limelight glare of etiquette and fashion. Society is buried beneath its forms. But the workers never masquerade; they live their lives with a wholesome freedom from sham that developes hearts and souls if not fine manners, and holds honesty and truth above ability to amuse and entertain. In ordinary weather when the men got ready for bed they threw off their jackets and boots and rolled under their blankets. The heat sometimes necessitated a somewhat further preparatory disrobing, but save in exceptional instances a man was ready for his bed in a few seconds or at most a minute. One evening there were several neighbours calling, and the party in the kitchen numbered more than a dozen. The lassie of seventeen, growing tired, got up, and in our midst, without hesitation, prepared herself for her bed, and got into it. The act was accompanied by no embarrassment on her