effect as the opinion of the senior counsel who was appointed by the Dean of Faculty, namely, that the case presents no probability of success whatever. In these circumstances the defenders in the action have moved for the removal of the pursuer from the poor's roll, and also for an order upon him that he should find caution for expenses as a condition of proceeding with the reclaiming note.

I am clear that in the particular circumstances of this case it would be wrong to allow the pursuer to remain on the poor's roll. On the other hand, I do not think that the circumstances would justify us in disabling him, if he chooses, from going on with his litigation by imposing a condition that he should find caution. I think therefore that he should be removed from the poor's roll, but that no order for caution should be made.

LORD SKERRINGTON and LORD CULLEN concurred.

The Court found and declared that the pursuer had forfeited the benefits of the poor's roll, and ordered him to be removed from the poor's roll, and *quoad ultra* refused the prayer of the note,

Counsel for Pursuer and Reclaimer—Party. Agent—Party.

Counsel for Defenders and Respondents—Garrett. Agents—T. & W. Liddle, Maclagan, & Cameron, W.S.

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*Friday, November* 17.

## SECOND DIVISION.

[Lord Blackburn and a Jury.

## MADDEN *v.* GLASGOW CORPORATION.

*Process — Jury Trial — New Trial — One Farthing Damages—Application by Pursuer for New Trial — Jury Trials (Scotland) Act* 1815 (55 *Geo. III, cap.* 42), *sec.* 6—*Jury Trials Amendment (Scotland) Act* 1910 (1 *Geo. V, cap* 31), *sec.* 2.

A woman who had been injured by putting her foot in a hole in a Glasgow street brought an action of damages against the Corporation, in which she obtained a verdict and was awarded one farthing damages. It was clear that if she was entitled to a verdict—which on the evidence she was not, as the defenders were not in fault—she had suffered damage to the extent of at least £8 or £9. In an application at her instance for a new trial on the ground that the damages were insufficient, the defenders maintained that the verdict should stand, or that, alternatively, it should be entered for the defenders in terms of the Jury Trials Amendment (Scotland) Act 1910. *Held* that it was not "essential to the justice of the case" in the sense of the Jury Trials (Scotland) Act 1815 that a new trial should be granted, and rule discharged.

*Observations* on the competency of entering such a verdict for the defenders under the Jury Trials Amendment (Scotland) Act 1910.

Mrs Elizabeth Madden, Glasgow, *pursuer*, brought an action against the Corporation of the City of Glasgow, *defenders*, in which she claimed £300 in name of damages for personal injuries. An issue was allowed, and the case was heard before Lord Blackburn with a jury, and a verdict was returned awarding the pursuer one farthing damages. The pursuer applied for a new trial upon the ground that the damages awarded were insufficient, and a rule was granted.

At the hearing on the rule, argued for defenders—As the result of the verdict was really in the defenders' favour, the verdict should either be allowed to stand or be entered for the defenders under the Jury Trials Amendment (Scotland) Act 1910 (1 Geo. V, cap. 31), sec. 2. In special circumstances too small an award had been held a sufficient ground for granting a new trial under the Jury Trials (Scotland) Act 1815 (55 Geo. III, cap. 42), sec. 6, on the ground that it was essential to the justice of the case—*Black* v. *Croall*, 1854, 16 D. 431; *Reid* v. *Morton*, 1902, 4 F. 438, *per* Lord Kinnear at p. 441, 39 S.L.R. 313. The "justice of the case," however, involved the question of proof of fault, and if this test were applied it was clear on the evidence that no fault was proved, and the verdict should therefore be allowed to stand. If the defenders were satisfied, the Court should not interfere on the ground of the apparent perversity of the result. Further, under the Jury Trials Amendment (Scotland) Act 1910 the defenders were entitled to have the verdict entered in their favour. The words "contrary to evidence" in that Act must be construed as embracing challenge on questions of amount. In any event the verdict was based on an assertion of liability, for which on evidence there was no ground.

Argued for the pursuer—The defenders' position was illogical. They were asking the Court to sustain a verdict on the ground that it should be set aside. The proper procedure in the circumstances was to have a new trial — C.A.S., F, iii, 5. The Court could not consider the question of fault, but must limit itself to the question whether the damages were sufficient. If fault were considered, then it must be held to have been established. If a new trial were not granted, it was not competent under the Jury Trials Amendment (Scotland) Act 1910 to enter the verdict for the defenders.

LORD HUNTER—In this case the pursuer was injured by putting her foot into a hole in the pavement in one of the streets within the jurisdiction of the defenders. She brought an action of damages against them on the ground that her accident was caused by their fault, and she averred several grounds of fault. The street was at the time shut to vehicular traffic because there was a fire in the neighbourhood, and a hydrant in the hole into which she put her foot was being used. She alleged that the defenders were in fault because they had not taken certain precautions, viz., that they did not place

anyone to warn foot-passengers of the presence of the opening, or otherwise that they had not barricaded the opening, and at all events that there was not sufficient light to enable her to see the opening. At the conclusion of the case the jury returned a verdict in favour of the pursuer and awarded her one farthing damages. On the evidence led it was clear that the pursuer, if she was entitled to a verdict at all, had suffered specific damage to the extent of at least £8 or £9. On the face of it therefore the verdict is an illogical verdict. It is, if one may say so, a nonsensical verdict. The pursuer applied for a new trial upon the ground that the damages awarded to her were insufficient. A rule was granted, and we have heard the defenders on the rule.

The position of the defenders, as I understand it, is this. They say—"Upon the evidence it was established that there was no fault upon our part at all, and we ought to have got a verdict of complete absolvitor, but we are satisfied that the verdict should stand." Now the question arises whether, to force us to grant a new trial, it is sufficient for the pursuer simply to say an insufficient amount of damage has been awarded. I think that it is necessary, in considering an application by the pursuer under such circumstances, to consider the case as a whole to see whether it is necessary in order to prevent the ends of justice being defeated that a new trial should be granted. The causes for granting a new trial enumerated in the Act of 1915 do not include insufficiency of the damages awarded. What is said is if the damages awarded are excessive there may be a new trial. But there have been decisions to the effect that if a pursuer shows that the award of damages was insufficient the Court may grant a new trial. I do not, however, think the Court is under any obligation necessarily to grant a new trial. The question therefore arises in the present case, Would it be just and fair to allow a new trial? In my opinion it would not. On a careful perusal of the evidence I am satisfied that the pursuer established no case of fault against the defenders. It is said we must assume that the jury have found fault because they have awarded damages. I do not know whether that is so or not, but the verdict is on the face of it so illogical that I do not think we are bound so to assume. But I do think that as the pursuer is coming before us and asking us to grant a new trial, it rests upon her to show that the case is one where a new trial ought to be granted. As I have said, I do not think that has been done.

It was suggested as a course which we might adopt that under the Act of 1910 we might enter the verdict for the defenders on the ground that we were satisfied (first) that the verdict was contrary to evidence, (second) that there was no reasonable prospect of new evidence being led having a material bearing, and (third) that we are all unanimous. Speaking for myself, although I understand that your Lordships do not all agree, I should have been prepared in the present case to have acted under that statute, at least in the light of the argument that was advanced to us to-day. But the case was perhaps not fully argued, and therefore it is not necessary to express a final opinion upon that matter. I merely express my own view that, as at present advised, the intention of that Act was to give the Court the power to enter the verdict for the defender where in circumstances like the present they thought that that was the verdict which ought to have been given by the jury.

LORD ORMIDALE—I think this question is attended with great difficulty, and logically and technically I am not quite certain that I see my way to come to the same conclusion as that reached by Lord Hunter. But, on the other hand, I am very much impressed with the consideration that the conclusion reached by him is in the circumstances a just conclusion, and on that general ground I am not prepared to dissent.

In regard to the Act of 1910 I desire to reserve my opinion. My interpretation of that statute is contrary to that indicated by Lord Hunter. As at present advised, with the argument we have heard, I think the situation is not covered by the Act of 1910.

LORD ANDERSON—I agree with what Lord Hunter has said with this qualification, that I desire to reserve my opinion as to the effect of section 2 of the Jury Trials Act of 1910. My present impression—but it is nothing more than an impression—is that that section is limited to the case of an attack upon a verdict on the ground that the verdict is contrary to evidence on the merits of the case, and that in no other case is the Court empowered to interfere with the verdict of a jury by way of entering up a verdict in favour of the unsuccessful party.

LORD BLACKBURN—I agree with Lord Hunter. When the case was before the jury I was asked at the conclusion of the evidence for the pursuer to withdraw the case from the jury on the ground that there was no evidence of fault on the part of the defenders. I declined to take that extreme course, but at the conclusion of the defenders' evidence I had no doubt whatever in my own mind that the pursuer had failed to establish any ground of fault which entitled her to damages from the defenders. I did my best to make that quite plain to the jury, but in the conclusion of my charge I told them that if they took the opposite view and found that there was fault on the part of the defenders, it was a case in which a substantial sum would require to be awarded in name of damages, and that that was a matter for them. They retired and returned the verdict now under consideration, finding for the pursuer and assessing the damages at a farthing.

Had they awarded a substantial sum I do not doubt that the defenders would have appeared before this Court and asked that the verdict should be set aside on the ground that it was contrary to evidence,

in respect that there was no evidence of fault on the part of the defenders. Had that been the position, I, as I have indicated, would have supported that view, and held that the verdict ought to be set aside. What has happened is that the pursuer, who holds the verdict nominally, has appeared and asked that it should be set aside on the ground that the damages were too little. I sat in this Court when the motion for a rule was granted, and my recollection of what happened is that the rule was allowed on the ground that the verdict was obviously illogical because of the amount of damages awarded. I did not think it was a case in which, on a consideration of the whole evidence, a rule should be granted, but there was no doubt that the verdict was quite illogical. Under these circumstances the pursuer appears and maintains that the Court is confined to considering only the question of damages, and that she having been successful in showing that the damages awarded are inadequate is entitled to have the verdict set aside and a new trial granted.

I am quite unable to accept that view of the position. She is really in the position of the pursuer in the issue now before the Court, which is—is there to be a new trial or is there not? I cannot divest myself of the view that whatever argument she chooses to submit to the Court the real question is whether she suffers by the verdict which has been pronounced. Has she suffered a legal wrong which she can satisfy the Court she might have put right if the Court gave her the opportunity of having a new trial and going again before a jury? If the question is put in that way I am satisfied that she has not suffered any legal wrong which there is any chance of her having put right if she is awarded a new trial and is allowed to go before another jury, because assuming, as I must assume, that the whole evidence available to her on the question of fault was put before the last jury, I can only reach the conclusion that if she went before another jury and succeeded in getting a larger amount of damages awarded her, that verdict would be set aside on the ground that it was contrary to evidence and that no fault had been proved against the defenders. Under those circumstances it seems to me idle to set aside the verdict and order a new trial. The defenders are satisfied to let the verdict stand as it is and make no complaint, and they urge that if we adopt the course the pursuer asks us to adopt no possible benefit for her can result. I think their argument is sound, and for these reasons I think the course proposed by Lord Hunter is right.

LORD JUSTICE-CLERK—This case stands in a novel and even whimsical position. The parties against whom the verdict was given ask that it should stand, and the party in whose favour the verdict was given asks that it should be set aside. The verdict is, in my view, manifestly perverse and even stupid, and for myself I should have thought the logical and best course would have been to proceed under the terms of the Statute of 1910. So far as I am concerned, I think that that would have been a competent course, but we are precluded in the present case from following it. Inasmuch, however, as the defenders have no interest to set aside this verdict and profess themselves contented with it, and inasmuch as the pursuer's only right to ask for a new trial is that it is essential to the justice of the case, to quote the words of the Statute of 1815, and as she has not in my view satisfied that criterion, with some reluctance and hesitation I concur in the course which your Lordship has proposed.

The Court discharged the rule.

Counsel for the Pursuer—Fraser, K.C.—Gibson. Agents—Warden, Weir, & Macgregor, S.S.C.

Counsel for the Defenders—Moncrieff, K.C. — Crawford. Agents — Campbell & Smith, S.S.C.

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*Thursday, November* 18.

## FIRST DIVISION.

[Sheriff Court at Aberdeen.

## GEORGE DONALD & SONS AND OTHERS *v.* ESSLEMONT & MACINTOSH, LIMITED.

*Burgh—Street—Common Interest therein of Members of the Public Community—Preservation of Character of Street—Interdict.*

*Road—Public Street—Rights of Frontager on Public Street—Right to Light from Street—Interdict.*

The proprietor of two tenements, one on each side of a public street and directly opposite each other, proposed to connect the tenements by constructing a gangway or covered passage above the street. In an action for interdict at the instance of neighbouring proprietors as members of the public and as frontagers on the street, *held* that the pursuers were entitled to interdict on the following grounds, viz., (1) that the gangway would cause an alteration in the character of the street which would constitute an illegal interference with the pursuers' rights therein as members of the community, and (2) that the gangway would infringe the rights of the pursuers, as frontagers, to light from the street.

George Donald & Sons, decorators and wholesale oil and colour merchants, Netherkirkgate, Aberdeen, Sangster & Henderson, drapers, Union Street and Netherkirkgate, Aberdeen, and Miss Margaret Jane M'Killiam, Auchinblae, Kincardineshire, *pursuers*, brought an action in the Sheriff Court at Aberdeen, against Esslemont & Macintosh, Limited, manufacturers and