

it, it is as little likely that the posterior connection was the beginning of it. In either case it gives credit to the woman's story, and disposes one to believe her. I hope it will be understood that my observations are of a general nature, for there undoubtedly may be cases the circumstances of which show the importance of the distinction between connection anterior and connection posterior to the date of conception, when such connection is admitted or proved. But it is of no moment here; if he was in the habit of having connection with the girl either before or after the date of conception, the admission of either fact disposes me to believe that he had connection at the period averred by the girl.

These remarks are entirely in harmony with your Lordship's opinion, and have been only prompted by what I look upon as an erroneous statement by the Sheriff-Substitute in his note.

LORDS CRAIGHILL and RUTHERFURD CLARK concurred.

The Court sustained the appeal, and found it proved that the defender was the father of the pursuer's child.

Counsel for Appellant (Pursuer)—Lord Advocate (Balfour, Q. C.)—W. Campbell. Agents—J. & J. Galletly, S. S. C.

Counsel for Respondent (Defender)—Trayner—Rhind. Agents—Begg & Murray, Solicitors.

Wednesday, October 31.

## SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.

STEWART v. THE GLASGOW TRAMWAY AND OMNIBUS COMPANY (LIMITED).

*Reparation—Carriage—Passenger thrown from Tramway Car.*

A passenger directed the conductor of the tramway car on which he was travelling to stop the car. The conductor rang the bell for that purpose, and the car slackened speed, but the passenger, finding that he was being carried past his destination, himself pulled the bell, and then descended on to the step, and thence to the street. While he was doing so the driver, thinking the second ring was the signal to proceed, took off his brake, and the car went on, with the result that the passenger was thrown from the step of the car and injured. In an action by him against the company owning the car, the Court *assailed* the defenders, holding that the cause of the accident was not the fault of their servant, but that of the pursuer himself.

This was an action at the instance of John Stewart, a clerk in Glasgow, against the Glasgow Tramway and Omnibus Company (Limited), concluding for £250 as damages for injuries caused to pursuer by the alleged fault of the defenders.

On Friday the 19th January 1883 the pursuer, along with a friend (named David Gray), entered a car belonging to the defenders in New City Road. The pursuer was lame in his right leg, and walked with a limp. When the car arrived at Bath Street they told the conductor to stop the

car, which was at the time descending a considerable incline. The conductor pulled the bell, and Gray left the car while it was slowing. The car did not stop immediately, and the pursuer rang the bell and descended to the step. The driver of the car, who had never stopped it altogether, thought the ring of the pursuer was the signal to go on, and took off his brake and went on. The pursuer, who was at that moment descending to the street, in consequence fell heavily on to the street, and sustained a compound dislocation of the thumb and severe shock. More than one witness spoke to the pursuer's appearance as indicating that he had been drinking, but a medical man, to whose house in the same street he immediately went for treatment, deponed that he was perfectly sober, and this evidence was corroborated by his companion, and other friends with whom he had passed the earlier part of the evening.

After a proof on the 22d May 1883 the Sheriff-Substitute (LEES) pronounced the following interlocutor:—"Finds that on 19th January last the pursuer was a passenger by one of the defenders' cars, which arrived at Bath Street shortly before 11 p.m.: Finds that the pursuer, being lame, requested the conductor to give the signal to the driver for the car to be stopped in order that he might get out: Finds that the conductor accordingly rang the bell, and that the driver slackened his pace, but did not stop the car, and that the pursuer being afraid to get out whilst the car was descending the hill, and at the same time agitated at being carried past his destination, again rang the bell two or three times: Finds that the driver, without ever having brought his car to a stop, took off the brake, and let the car go forward: Finds that the pursuer, either through his lameness, or through the impetus given to the car, or through both, fell off the car on to the street, and sustained a compound fracture of his right thumb, whereby he has suffered much pain, and has incurred heavy medical expenses, and been incapacitated for his work, and has been to some extent permanently disabled therefor: Finds that in these circumstances the defenders are liable to him in compensation for the loss and injury he has sustained; assesses the sum to be paid to the pursuer at £50; decerns against the defenders for payment of said sum to the pursuer, with the legal interest thereon from the date hereof till payment: Finds them liable to the pursuer in his expenses," &c.

"*Note.*—The pursuer is forty-two years of age, and has been for the past ten years in the service of the Caledonian Railway Company as a clerk; and the fact that during the period he was disabled from working they paid him his wages regularly testifies alike to their opinion of the pursuer and to their generous treatment of him.

"As it seems to me, the vital point in this case is, Was the driver of the car seeking to bring it to a stop when the accident occurred? I am unhesitatingly of opinion that he was not. Not unnaturally there is some conflict of evidence on the point. But it is not disputed that till the accident occurred he had never stopped the car, and he himself admits—and it is proved by other witnesses—that, looking round and seeing the pursuer standing on the rear platform of the car, he took off his brake, and let the car go forward. This fact and his lameness are the causes that the pursuer assigns for his fall off the car. The

defenders, on the other hand, have sought to establish that the pursuer was the worse of liquor, and that his fall was due to that cause. The evidence, it seems to me, preponderates heavily in favour of the view that the pursuer was not under the influence of liquor; and it is a noticeable fact that of the three neutral witnesses who stated that they had taken the impression that he was under the influence of liquor, not one knew that he was lame; and further, as some of them admit that the conductor came into the car after the accident and said that the pursuer was the worse of liquor, one can the more readily understand the witnesses having taken the impression that they did. If it be not true that the pursuer was under the influence of liquor, then the defence wholly fails. If, on the other hand, it be true, then the conductor of the car discredits his own evidence to some extent, for he admits that he was well aware that the laws of the company forbid their servants to allow any person into the cars in a state of intoxication, and he asserts that before the pursuer came into the car he noticed the condition in which he was and yet allowed him to come in. He therefore is a witness who tries to screen himself and his employers from liability by the plea that he wilfully broke the rules of the company, to the possible risk and annoyance of the passengers, and to the risk of his own employers also.

“Taking the evidence as a whole, I do not think that the alleged condition of the pursuer removes liability from the defenders. All the persons who were with him that night say he was perfectly sober; and the fact which I have already mentioned, that the Caledonian Railway Company have not only had him ten years in their service, but paid him his wages during his disablement, seems to me to be strong evidence of the excellence of the pursuer's character.”

The defenders appealed to the Court of Session. In their argument they withdrew all imputation upon the pursuer's sobriety at the time of the accident, attributing the accident to his having himself rung the bell of the car in circumstances which induced the driver to think that a signal to proceed was intended.

The pursuer argued that the driver and conductor of the car ought to have stopped as desired, and that the former ought not to have concluded that the bell rung by the pursuer before he had obeyed the signal to stop was intended as a signal to proceed.

At advising—

**LORD YOUNG**—This does not seem to me to be a difficult case. The pursuer I shall assume to have been perfectly sober, although his appearance conveyed the impression to more than one witness that he had been drinking, and he certainly had been in a public-house. He wanted to leave the tramway car at Bath Street, and he told the conductor to stop there, and his friend who was with him gave similar directions.

I think, according to the evidence, that the conductor did all that it was his duty to do. He rang the bell, and thereupon the driver did all that it was his duty to do—he pulled up his horses and applied the brake. The pursuer's companion jumped off after the car had slowed, and the pursuer followed him on to the platform, and descended on to the step, and standing there

while the car was slowing, through agitation, as the Sheriff-Substitute says, at being carried past his destination, he rang the bell. He was in a position where he had placed himself, and it was a dangerous one. Upon hearing the bell the driver thought that the purpose of the signal to stop had been served, and that the ring by the pursuer was the signal to go on again, and it is for going on that fault is attributed. It is a pity that he went on. But he was attending to his duty, and if he thought the bell was the signal to go on, I cannot attribute any blame. I think the idea in accordance with which he acted was that which would most naturally occur to him when occupied in the performance of his duty. I am therefore of opinion that the pursuer had himself to blame.

**LORD CRAIGHILL**—I am of the same opinion. And while I differ from the Sheriff-Substitute, I think the findings in the early part of his interlocutor lead to a result different from that at which he has arrived. He finds that the pursuer, being lame, requested the conductor to stop the car; that the conductor accordingly rang the bell, and that the driver slackened his pace. It is not suggested by the evidence that the car would not ultimately have come to a standstill. Impatient at the car not stopping, the pursuer puts his hand to the bell. The question is, What conclusion did the driver come to? The pursuer's accident arose from the dangerous position in which he had placed himself. In my opinion both driver and conductor did all that could be expected of them, and all fault there was is to be attributed to the pursuer himself.

**LORD RUTHERFURD CLARK** concurred.

The **LORD JUSTICE-CLERK** was absent.

The Court sustained the appeal and assozied the defenders.

Counsel for Defenders (Appellants)—Solicitor-General (Asher, Q.C.)—Shaw. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Pursuer (Respondent)—R. Johnstone—Keir. Agent—John Gill, S.S.C.

## HOUSE OF LORDS.

Monday, July 16.\*

(Before Lords Blackburn, Watson, and Fitzgerald.)

**POE v. PATERSON.**

*Succession—Husband and Wife—Husband's Right to Succeed to Wife's Moveable Estate—Married Women's Property (Scotland) Act 1881 (44 and 45 Vict. c. 21), secs. 3 and 6.*

*Held (aff. judgment of First Division) that sec. 6 of the Married Women's Property (Scotland) Act 1881, which gives to a husband of a woman dying domiciled in Scotland the same share and interest in her moveable*

\* Unavoidably omitted from Vol. XX.