rights." Now that sentence is hardly intelligible by itself, and I think that in the hurry of preparing this deed before the lady left the country, some word must have got in or been left out which makes the sense different from what was intended. We must, however, take the words as we find them, and taking them so, I think they bear the interpretation that if she should die before she could make another settlement, the residue of her estate should be divided among her relatives according to their legal rights. Therefore, as I understand that her nephew William Low Johnston and James Johnston are the only persons interested who are relatives in the legal sense as regards succession, I think we should answer the first alternative of the second question in the affirmative.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

LORD YOUNG was absent.

The Court were of opinion that the first and second questions stated in the special case fell to be answered in the affirmative.

Counsel for the First and Second Parties—D.-F. Balfour, Q.C. Agents—Watt & Anderson, S.S.C.

Counsel for the Third Party—Jameson—Ure. Agents—James Russell, S.S.C.

Wednesday, May 13.

SECOND DIVISION.

[Sheriff of Fife.

FOSTER *v.* RINTOUL.

Reparation — Damages—Culpa—Child Injured by Bicycle in a Street.

A cyclist rode a bicycle at the rate of six or seven miles an hour through a town when a number of people were standing or sauntering in the street. On overtaking a group of four persons he blew his whistle and they got out of his way with some difficulty. In consequence of the obstruction caused by these persons he did not see that a little girl of five years old was running down a cross street, and in the result she got in front of the bicycle and was knocked down and injured. In an action for damages by the child's father, *held* that the defender was in fault in not having his bicycle under such control that he could have stopped and so avoided the accident.

Upon 10th August 1890 while Richard Rintoul was riding a bicycle in one of the streets of Kirkcaldy he ran over and injured a little child about five years old.

Her father George Foster, potteryworker, residing in Kirkcaldy, raised an action in the Sheriff Court of Fife as tutor and administrator-in-law of his daughter for the injury done to her. Damages were laid at £30.

The pursuer averred that the defender was riding "in a culpable and reckless manner and at a furious rate." This the defender denied, and averred that the girl contributed to the accident by "culpably and recklessly" running against the defender's bicycle while he was riding at a reasonable rate.

Upon 1st October 1890 the Sheriff-Substitute (GILLESPIE) allowed a proof, and he thus stated the facts in his judgment on 29th October 1890:—"Finds in fact that about half-past eight o'clock in the evening of Sunday 10th August last the defender was riding a bicycle at a smart pace along Oswald Road; that there were a good number of people walking in twos and threes along the road; that as the defender was approaching the point where Oswald Road is joined to Park Road on one side and Mitchelstone Loan on the other there were four women or girls walking abreast in front of the defender, who sounded his bell, and they had just time to get out of the way, three of them stepping on to the footpath on the left hand, when the defender and his bicycle ran past; that almost immediately after, the pursuer's daughter Janet Foster, a child of five years old, was crossing Oswald Road from Park Road; that in consequence of the women above mentioned obstructing the view the defender did not see the child so soon as he probably would otherwise have done; that when he saw the child he endeavoured to stop and applied the brake, but that it was too late, and that the bicycle collided with the child who was knocked over, her right leg broken, and her face cut, the defender having also been thrown off and somewhat injured; that in the circumstances above mentioned the defender was riding too fast, particularly on approaching the opening of side roads from which persons might be crossing; and that he was thus to blame for the accident: Finds him liable in damages and *solatium*, which assesses at sixteen pounds: Finds him also liable in expenses," &c.

Upon 24th November 1890 the Sheriff (MACKAY) recalled the Sheriff-Substitute's interlocutor.

Authorities cited—*Fraser* v. *The Edinburgh Street Tramway Company*, December 2, 1882, 10 R. 264; *Grant* v. *The Glasgow Dairy Company*, December 1, 1881, 9 R. 182; *Martin* v. *Ward*, June 15, 1887, 14 R. 814; *Clark* v. *Petrie*, 6 R. 1076; *Williams* v. *Richards*, 3 C. & K. 81 (crossings).

The pursuer appealed.

At advising—

LORD JUSTICE-CLERK — This case is a very simple one, and there is very little possibility of difference of opinion about the facts. The defender was riding his bicycle along the narrow street of a village on a Sunday night when there were a number of the inhabitants standing or walking slowly about. He was going along at a pace of six or seven miles an hour, quite as high a rate of speed as could be used with propriety in such a street under any circumstances, and it appears

that he was coming on so rapidly that one group of persons standing at the corner of a street had difficulty in getting out of his way in time to save themselves from collision. His view having been obstructed by this group of persons he did not see a little girl, six years old, who came out of another street, and who got in front of the bicycle, with the result that her leg was broken and her face badly cut, while the bicyclist was thrown down and hurt. Now, I think that these facts show *prima facie* conduct on the part of the defender which is not permissible in such a situation.

The next question is, whether we are to attribute the accident wholly to the fault of the defender? Now, I have no doubt in my mind that the defender was in fault in not having his machine under such control that he could have pulled up and so avoided the accident. I do not mean to say that a bicyclist will necessarily be found liable in damages because when he is riding along the street of a town a little child dashes out into the street in front of the bicycle and gets itself injured. What I mean is, that when a bicyclist is riding along, and his view becomes obstructed, so that he cannot see what may be in front of him, he ought either to get off altogether or to go at much less speed than the defender in this case seems to have been doing. I can see no fault upon the child's part; she was only six years old, and it is always difficult to impute contributory negligence to a child of that age. But it is certain that if the group of people on the street obscured the view of the bicyclist, it equally obscured the view of the child, so that it could not see the approaching bicycle, and the child had no reason to anticipate that a cyclist would suddenly scatter the people before him and come past a corner at a fast pace.

As regards the damages, I would not be disposed to interfere with those awarded by the Sheriff-Substitute except in an extreme case. It is my view that he has dealt with them in a very reasonable manner.

LORD RUTHERFURD CLARK and LORD TRAYNER concurred.

LORD YOUNG was absent.

The Court recalled the Sheriff's judgment and affirmed the judgment of the Sheriff-Substitute, with the findings in law and in fact stated therein.

Counsel for the Appellant — M'Clure. Agent—Charles T. Cox, W.S.

Counsel for the Respondent—Stevenson. Agent—W. Ritchie Rodger, S.S.C.

Tuesday, May 19.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

SMITH *v.* MAGISTRATES OF EDINBURGH.

Process—Proof or Jury Trial—Reparation—Street Insufficiently Lighted—Edinburgh Municipal and Police Act 1879.

In an action against the Magistrates of Edinburgh, where a pursuer averred that he had sustained injuries through a street being insufficiently lighted, and the defenders, while admitting the accident took place as alleged, denied liability and referred to the Edinburgh Municipal and Police Act 1879 for its terms, the Lord Ordinary *approved* an issue for trial by jury.

The Inner House, while admitting the case might suitably have been tried without a jury, *refused* to interfere with the discretion exercised by the Lord Ordinary.

John Smith, M.D., Brycehall, Kirkcaldy, brought an action of reparation against the Lord Provost, Magistrates, and Council of the City of Edinburgh, for injuries sustained by him through tripping over a low protruding wall in an unfinished road off Comely Bank Road and being spiked upon the railings.

He averred that the place where the accident occurred was within the burgh, and subject to the jurisdiction and administration of the magistrates, who had undertaken the jurisdiction and administration of said street, and levied and collected rates and taxes from the proprietors and tenants in the usual way; that it was insufficiently lighted, and that the accident was due to the fault of the defenders.

The defenders admitted that the accident happened as the pursuer averred, but denied liability therefor. They explained that the street in question was a private one, and referred to the terms of the Edinburgh Municipal and Police Act 1879 (42 and 43 Vict. c. 132) in support of their position.

The Lord Ordinary (KINCAIRNEY) appointed the case to be tried by a jury and approved of the issue proposed.

The defenders reclaimed, and argued that the case should be tried without a jury, as there were virtually no facts in dispute, and nice questions might arise as to the interpretation of the Act referred to. The Inner House, in the analogous case of *Harris* v. *Magistrates of Leith*, March 11, 1881, 8 R. 613, had appointed a proof, and the recent somewhat similar case of *Prentices* v. *Assets Company Limited*, February 21, 1890, tried by the same Lord Ordinary as here and a jury had resulted in a new trial being allowed.

At advising—

LORD JUSTICE-CLERK—Jury trial exists and is the suitable form of tribunal for certain cases including those of damages caused by persons not keeping their pro-