(Restrictions) Act 1920. Differing from the Sheriff, I think that the expression "landlord" as used in section 5 (1) (*d*) of the statute includes a principal tenant. That seems to me to follow from the interpretation clause, section 12 (1) (*g*). Even if that were not so, it would, I think, be difficult to hold that a person who is in truth and substance a landlord, and who comes under the statutory restrictions in that capacity, should be deemed not to be a landlord within the meaning of section 5 (1) (*d*) merely because he was not "included" within a clause which was intended to enlarge and not to restrict the natural meaning of the expression.

LORD CULLEN—I am of the same opinion. Section 12 (1) (*g*) of the Act provides that the expression "tenant" includes "sub-tenant." It seems to me clearly to follow that the words "other than the tenant" contained in the same section must be read "other than the tenant or the sub-tenant as the case may be." [*His Lordship then dealt with a question which is not reported.*]

LORD MACKENZIE did not hear the case.

The Court recalled the interlocutors of the Sheriff and Sheriff-Substitute, and remitted to the Sheriff-Substitute to proceed accordingly.

Counsel for Pursuer and Appellant—Moncrieff, K.C. — Jamieson. Agents — Mackay & Young, S.S.C.

Counsel for Defender and Respondent—Carmont. Agents—Webster, Will, & Company, W.S.

Thursday, December 22.

FIRST DIVISION.

[Lord Ashmore and a Jury.

ELLIOT *v.* GLASGOW CORPORATION.

Reparation — Damages — Excessive Damages — Solatium for Death of Infant Daughter—Jury Trial.

A child of about two years of age, the daughter of a workman, was knocked down and killed by a tramcar owing to the negligence of the driver. In an action by the father for solatium, in which no pecuniary loss was averred, a jury awarded £300. *Held* that in the circumstances the damages were not so excessive as to justify the Court in interfering with the verdict.

Observations per the Lord President as to the limited character of a claim for solatium only, and the strict moderation required of a jury in fixing an award in respect of it.

John Elliot, machineman, 77 Canning Street, Bridgeton, Glasgow, *pursuer*, brought an action against the Corporation of Glasgow, *defenders*, concluding for decree for £500 damages for the death of his infant daughter which he alleged had been caused by the fault of the defenders' servant.

The case was tried before Lord Ashmore and a jury.

The pursuer's evidence was to the following effect:—The pursuer, who was thirty-four years of age, was standing at the mouth of the close leading to his house on the evening when the accident happened. The child who was killed came out of the house with another daughter of the pursuer about five years of age. When the pursuer saw the accident he was overcome and fainted, was unable to pick up his daughter, and was helped into his house by a woman who lived next door. He did not go with the child to the doctor's where she was taken, and heard afterwards that she was killed outright. He was much attached to the child, and her death, in the manner in which it took place, was a severe shock to him from which he had not fully recovered.

The jury having found for the pursuer assessed the damages at £300.

The defenders obtained a rule upon the pursuer to show cause why a new trial should not be granted. At the hearing on the rule the following authorities were referred to—*M'Kiernan* v. *Glasgow Corporation*, 1919 S.C. 407, 56 S.L.R. 285; *Horn* v. *North British Railway Company*, 1878, 5 R. 1055, 15 S.L.R. 707; *Young* v. *Glasgow Tramway and Omnibus Company*, 1882, 10 R. 242, *per* Lord President Inglis at p. 245, 20 S.L.R. 169; *Casey* v. *United Collieries*, 1907 S.C. 690, *per* Lord President Dunedin at p. 692, 44 S.L.R. 522; *Landell* v. *Landell*, 1841, 3 D. 819; *Adamson* v. *Whitson*, 1849, 11 D. 680, *per* Lord Jeffrey at p. 682; *Black* v. *North British Railway Company*, 1908 S.C. 444, *per* Lord Dunedin at pp. 452 and 453, 44 S.L.R. 340; *Webster & Company* v. *Cramond Iron Company*, 1875, 2 R. 752, 12 S.L.R. 496.

At advising—

LORD PRESIDENT—This is an action by the father of a little girl, about two years of age, who was run down by a tramway car and killed. No pecuniary loss was averred, the claim being solely in respect of "solatium for the injury to the pursuer's feelings." The sum claimed was £500 and the award £300; the question is whether this award is so excessive as to entitle the defenders to a new trial. The case closely resembles that of *M'Kiernan* v. *Glasgow Corporation* (1919 S.C. 407), for in both cases the circumstances of the unhappy victim of the accident, and his or her tender years, left no room for any claim of real damage or direct pecuniary loss. When there is nothing to place in the scales except the pain and grief which the accident has occasioned to a bereaved survivor no standard for fixing the amount to be awarded as solatium is available. No parent, for example, would pass through such an experience for any sum of money. On the other hand it is quite clear that solatium is not met by a nominal award.

There are other cases which occur in the department of reparation in which somewhat similar difficulties arise. Thus substantial, as distinct from nominal, damages are awarded for breach of commercial contracts, although no actual loss is proved and although no legal measure exists for

their assessment. Such awards are usually referred to general trouble and inconvenience caused by the breach of contract. Examples will be found in *Webster & Company* v. *Cramond Iron Company* (2 R. 752) and *Stroms Bruks Aktie Bolag* v. *Hutchison*, (1904) 6 F. 486. The latter case was reversed by the House of Lords ((1905) 7 F. (H.L.) 131) on grounds unconnected with those which were concerned with the assessment of damages. It is a far cry from such cases as these to the present, but the problem they present has the important point in common with that of assessing solatium, that, on the one hand, the sum to be fixed must be substantial, and that, on the other, there are no *indicia* pointing to any particular figure.

The only possible solution of the problem is that the sum awarded must be a substantial acknowledgment of the trouble and inconvenience in the one case and of the pain and grief in the other case, which the defender's action has caused, but must be strictly confined within a moderate range. The pursuer did not challenge the propriety of the conclusion to which the Court came in *M'Kiernan's* case to the effect that an award of £250, as solatium alone, for the death of a child six months old was, in the circumstances of that case, about twice as large as could reasonably be regarded as an adequate acknowledgment of the pain and grief which the accident caused to the child's parents. Moreover, it must be kept in view that the decision of the Court in that case constituted no new departure. In *Horn* v. *North British Railway Company* ((1878), 5 R. 1055) the jury's award had to distinguish between solatium and damages in respect of the death of a young man of twenty-five who was assisting his father in business, and the award for solatium alone was £150. In *Wallace* v. *West Calder Co-operative Society* ((1888) 15 R. 307) the jury awarded solatium and damages separately in respect of the death of a husband who was in trade as a builder in a small way; the award for solatium alone was £100. In *Middlemas* v. *North British Railway Company* ((1893) 1 S.L.T. 12) the jury awarded £500 as solatium alone in respect of the death of a daughter six years of age, and the Court reduced it to £250 on the ground of excess. Stating the matter very generally I think the usual award for solatium only—both according to the verdicts of juries and according to the course of decisions in which verdicts have been upset as excessive—runs in the neighbourhood of one or two hundred pounds according to the circumstances, whatever be the age or position in life of the victim of the accident. I am not laying down any taxative limit for all awards in respect of solatium only, for each case must depend on its own circumstances, and the award made in one case cannot be used to fix an unsurpassable limit or to help in forming a proportional scale or standard by which the amount of a reasonable award can be artificially determined in another case. Uniformity and standardisation are alike impossible counsels of perfection in such a department as this. But awards for solatium only which are excessive in relation to the measure—rough and flexible as it is—which I have indicated above may easily be held to exceed what could be reasonably regarded as an adequate acknowledgment of the pain and grief which have been caused to the surviving relative who stands pursuer.

In the present case the child was about two years of age, and I think this by itself constitutes an important differentiation in the circumstances of the case from those in *M'Kiernan's* case. Nevertheless the verdict for £300 in this case is certainly excessive, and our attention was not called to any specialty which justified it. Having regard, however, to the working rule suggested by Lord President Inglis in *Young* v. *Glasgow Tramway Company* (10 R. 242), by which a verdict ought not to be interfered with unless it appears to be at least twice as large as can be regarded as a reasonable award, I think it is just possible in the circumstances of this case to allow this verdict to stand, and the pursuer is entitled to the benefit of the doubt in this matter. My opinion therefore is that a new trial ought not to be granted. But it is desirable that juries who are called on to award for solatium, especially when the claim is for solatium only, should be made aware of the limited character of the claim, and of the considerations which require them to regard strict moderation in fixing their award in respect of it.

LORD SKERRINGTON—I agree with your Lordship. I may add that the application for a new trial comes with a bad grace from a party whose counsel, as we are informed, told the jury that he had nothing to say to them on the subject of damages, but that he left the matter entirely in their hands. It is, no doubt, difficult for a counsel who denies that his clients are in fault to argue as to the amount of the damages in the event of an adverse verdict, but the thing can be done tactfully, and in the circumstances of the present case the jury was entitled to such assistance as the defenders' counsel could afford them.

LORD CULLEN—I think the award of the jury in this case was distinctly too high, but I accept the considerations referred to by your Lordship as justifying us in thinking that this verdict may be allowed to stand. I desire to agree with the general observations on the subject which your Lordship has made.

The LORD PRESIDENT intimated that LORD ASHMORE concurred.

LORD MACKENZIE was absent.

The Court discharged the rule.

Counsel for the Pursuer—Mackay, K.C. —R. M. Mitchell. Agent—A. W. Lowe, Solicitor.

Counsel for the Defenders — Moncrieff, K.C. — Crawford. Agents — Simpson & Marwick, W.S.