

of Lanarkshire, 1901, 3 F. 461; *Maxwell-Scott v. Assessor for Roxburghshire*, 1890, 17 R. 833, 27 S.L.R. 606.

At advising—

LORD SANDS—This is an appeal against an increase of £2 per house on the annual value of certain houses in Haddington. The ground of the proposed increase is the conclusion of an agreement by the proprietors of these houses for the acquisition of a negative servitude of unobstructed outlook over certain adjoining lands.

The acquisition of a negative servitude over the land in front, whereby it was secured that their present amenity should never be disturbed, presumably increased the capital value of the houses here in question. But in my view the advantage secured by the agreement was to insure that, other things remaining as they are, the present letting value of the houses should not be diminished at some future date by the loss of this amenity. It did not operate to increase the rent for which these houses under present conditions can be let from year to year. It may be that in view of change of circumstances the houses here in question are entered at too low a valuation. That might be quite a proper consideration for the assessor to take action upon and bring before the Court if necessary. But the only change of circumstances here suggested is the completion of this agreement, and in my view this is not a change of circumstances which operates to increase the annual letting value of each of these houses by £2 per annum. If a row of houses were new, or if for any reason an assessor thought it proper to make a fresh survey with a view to revaluation, very probably he would take into account the free and agreeable outlook as a favourable factor, but unless there were some immediate prospect of building I do not think that any assessor would or could reasonably examine the titles in order to ascertain whether this pleasant outlook was perpetually assured. In a mining district the completion of a bargain for a right of support would increase the capital value of a house, but unless undermining were imminent it would not affect the present annual letting value of the house.

Conceivably a tenant might be found who desired to settle for life, and who would dislike taking a house even for a single year the security or amenity of which might be interfered with five years hence. But that, in my view, is an element too vague and speculative to be taken account of in the determination of present letting value.

I am accordingly of opinion that the appeal falls to be sustained, and the valuation be reduced by the sum of £2 as regards each house.

LORD ASHMORE—In my opinion the appeal should be sustained. As it was proposed to increase in the roll for this year the valuations at which the houses stood during the immediately preceding

years, I think that it was incumbent on the assessor to justify the additions.

Now the only change of circumstances which can be suggested is the transaction carried through in August 1922 under which the appellants as proprietors of the houses, in consideration of a cumulo payment of £1000, obtained a perpetual negative servitude *non edificandi* over an adjoining field in order to preserve the existing view from the houses. In my opinion the creation of the servitude does not imply any increase in the lettable value of the houses this year as compared with the preceding years. As far as appears there has been no change whatever in the physical conditions of the houses or their surroundings. Accordingly this year, as in the previous years, the hypothetical tenant would presumably see the same houses, and in each year would find that the houses had the same outlook over the adjoining field. In short, I can see no reasonable ground for the assumption that the creation of the negative servitude referred to can affect in any way the rent at which one year with another the houses might in their actual state be reasonably expected to let from year to year. I think, therefore, that the determination of the magistrates is not based on any adequate foundation of facts proved or admitted, and that we should find their determination to be wrong and should restore the previous valuations.

LORD HUNTER concurred.

The Court sustained the appeal.

Counsel for the Appellants—R. M. Mitchell.
Agents—Vert & Mitchell, S.S.C.

Counsel for the Assessor—W. H. Stevenson.
Agents—John C. Brodie & Sons, W.S.

COURT OF SESSION.

Saturday, February 3.

FIRST DIVISION.

[Lord Ashmore and a Jury.

M'NAIR v. GLASGOW CORPORATION.

Reparation—Negligence—Collision—Motor Lorry and Tramway Car—Duties of Drivers on "Main" Road and "Side" Road.

When a vehicle is entering a road from another road there is a duty upon the driver to drive in such a way as will not endanger the traffic using the other road, and the traffic on the other road must accommodate itself to the entrance of the vehicle so as not to endanger it, and has no right to disregard it and continue course and speed.

Circumstances in which the Court refused to disturb a verdict of a jury finding that the driver of a tramway car was responsible for a collision between the tramway car and a lorry

which had emerged from a road leading into that along which the tramway car was proceeding.

Macandrew v. Tillard, 1909 S.C. 78, 46 S.L.R. 111; and *Robertson v. Wilson*, 1912 S.C. 1276, 49 S.L.R. 916, commented on.

Process—Jury Trial—Hearing on Rule for New Trial—Rule Granted at Instance of One of Two Defenders—Necessity for Pursuer's Concurrence.

In an action of damages for personal injuries against two defenders the pursuer obtained a verdict against one of the defenders. The unsuccessful defender moved for a new trial on the ground that the verdict was contrary to evidence. A rule was granted, and at the hearing the Court intimated that if the pursuer did not support the verdict it could not be sustained. The pursuer thereupon intimated that she supported the verdict and intended to concur in the argument for the successful defenders.

Mrs Mary Buntin or M'Nair, Glasgow, *pursuer*, brought an action against the Glasgow Corporation and John Steven & Company, contractors, Govan, *defenders*, for £500 damages in respect of injuries sustained by her through a collision between a tramway car belonging to the first named defenders in which she was a passenger and a motor lorry belonging to the second named defenders.

The parties averred, *inter alia*—“(Cond. 2) On or about the morning of 19th September 1921 the pursuer, after being released from her professional duties, boarded an electric car going to Paisley Road Toll, at the top of Cumbernauld Road, with the intention of proceeding home. She took a seat inside the car. While the car was proceeding down Belgrove Street it collided with a motor lorry which was crossing the street in front of it and had almost got clear of the car rails, and the pursuer was seriously injured as after mentioned. (Cond. 3) The said accident was due to the fault of the driver of the said car, who was a servant of the first-called defenders and was at the time acting in the course of his employment. He was driving the car recklessly and carelessly, failed to keep a proper look-out, and to have the car under proper control. It was his duty to drive carefully, to keep a proper look-out, and to have the car under proper control. All these duties he failed to perform. The said accident was also due to the fault of the driver of the said motor lorry, who is the sole partner of the second-called defenders' firm, or alternatively to his fault alone, in respect that he suddenly and without warning emerged at a considerable speed from Brandon Street into Belgrove Street and attempted to cross the latter street immediately in front of the said electric car. The averments of both defenders in answer hereto in so far as not coinciding herewith are denied. (*Ans. 3 for the Corporation of the City of Glasgow*) Denied that the said accident was due to fault of these defenders' servant who was driving their car. Denied that the said driver was driving the car recklessly and

carelessly, and that he failed to keep a proper look-out, and to have the car under proper control. The statement of the duties of the said driver is admitted. Denied that he failed to perform those duties, and that the accident was the result of any such failure on his part. Explained and averred that the said car, after stopping at the car station opposite the railway station in Belgrove Street, proceeded at a moderate rate of speed along Belgrove Street towards Brandon Street, which enters Belgrove Street at right angles from the east. As the car approached Brandon Street the driver sounded his gong. When the car was within a short distance of the north-most corner of Brandon Street a motor lorry, the property of the other defenders J. Steven & Company, driven by John Steven, a partner in the said firm, suddenly and without warning emerged at a considerable rate of speed from the said Brandon Street on the wrong side of that street, which was the north side and the side nearest to the approaching car, and attempted to cut across Belgrove Street diagonally to the west side thereof in front of the car. Immediately he caught sight of the said motor lorry the driver of the car applied his magnetic brake, but the motor lorry emerged from Brandon Street at a moment when the car was in such a position that it could not be brought to a standstill before it struck the motor lorry. It is further explained and averred that the said collision was due solely to the fault and negligence of the driver of the said motor lorry, who drove his lorry at an excessive rate of speed out of a side street on to a main street and on his wrong side of the said side street, and failed to keep a proper look-out for traffic on the main street, and especially for approaching tramcars, which he knew or ought to have known ran along that street. Further, the driver of the motor lorry failed to give any warning whatsoever of his emergence from the side street, and he failed to have his lorry under proper and effective control. *Quoad ultra* these defenders admit and adopt the averment of the pursuer in the condescendence under answer with respect to the fault of the driver of the motor lorry with the exception of the word “also” in that averment. The averments of the defenders second called in their answer 3 are denied, and in particular it is denied that the driver of these defenders' car failed to keep a proper look-out owing to his attention being distracted by a vehicle which was moving alongside of him. (*Ans. 3 for John Steven & Company*) The averments of the pursuer in regard to the servant of the Corporation of Glasgow driving the said tramway car at the time of the accident are admitted. *Quoad ultra* denied. Explained that these defenders, who were not originally called as defenders, were in no way to blame for said accident, which was entirely due to the fault of the driver of the said tramway car. The said driver was proceeding at an excessive rate of speed and was not keeping a proper look-out, his attention being directed to a vehicle running alongside of him which he

was trying to pass and had not his car under proper control. Further, he failed to sound his gong or whistle or give warning of his approach. Had the said driver been keeping a proper look-out and going at a reasonable rate no accident would have happened. If he had had proper control of his car he could easily have avoided the accident. The allegations made by the other defenders against these defenders' driver are denied. These defenders' lorry was being driven at a slow rate of speed on its proper side of the roadway, its horn was repeatedly sounded before and upon reaching Bellgrove Street, and it had almost cleared the tramway rails when the tramway car, driven recklessly, collided with the rear end of it. The driver of the lorry was keeping a good look-out.

The case was tried before Lord Ashmore and a jury on 14th, 16th, and 17th November 1922. The jury having returned a verdict in favour of the pursuer, and also in favour of defenders John Steven & Company, and assessed the pursuer's damages at £100, the defenders the Corporation of Glasgow moved for a new trial on the ground that the verdict was contrary to evidence.

On December 2, 1922, the Court granted a rule.

The nature of the evidence as bearing on the above averments sufficiently appears from the Lord President's opinion.

At the hearing, counsel for the pursuer, in response to an indication from the Court that if she did not support the verdict it could not be sustained, intimated that the pursuer supported the verdict and intended to concur in the argument of the defenders John Steven & Company.

Argued for the defenders John Steven & Company—The verdict should not be set aside. There was evidence upon which the jury was entitled to find that the driver of the lorry was justified in proceeding to cross the street, and that the collision was due solely to the fault of the driver of the tramway car. These were purely jury questions. There was no rule that the driver of a vehicle emerging from a side road was bound to give way to main road vehicles in all circumstances. The decision in *M'Andrew v. Tillard*, 1909 S.C. 78, 46 S.L.R. 111, only applied where there was an apparent danger of collision. On the other hand there was a duty on the driver of a vehicle using a main road to avoid colliding with vehicles emerging from side roads, and he was not entitled to ignore them and continue course and speed—*Robertson v. Wilson*, 1912 S.C. 1276, 49 S.L.R. 916. The decision in *M'Alister v. Glasgow Corporation*, 1917 S.C. 430, 54 S.L.R. 401, was purely a judgment on fact and could not apply here. In any event, if there was fault on the part of both drivers, the jury was entitled to hold that the fault of the driver of the tramway car was the proximate cause of the collision—*Barty v. Harper & Sons*, 1922 S.C. 67, 59 S.L.R. 86.

Argued for the defenders the Glasgow Corporation—On the evidence the driver of the motor lorry could not be excused. He had failed in his duty to give way to the traffic using the main road—*M'Andrew v.*

Tillard (cit.), per Lord President at p. 80. On the other hand the evidence showed no fault on the part of the driver of the tramway car. It was a logical conclusion from *M'Andrew v. Tillard* that he was entitled to maintain course and speed until it became evident that the vehicle entering the main traffic was not going to give way. He was, further, entitled to rely on the other vehicle giving way—*Robertson v. Wilson (cit.)*. When he saw the other vehicle was going to cross he had done all he could to avoid the collision. The driver of the lorry was therefore alone to blame. *M'Alister v. Glasgow Corporation (cit.)* was in point. The Court was entitled to interfere with the verdict—*Frasers v. Edinburgh Street Tramways Company*, 1882, 10 R. 264, 20 S.L.R. 192. Counsel also referred to *Clerk v. Petrie*, 1879, 6 R. 1076, 16 S.L.R. 626, on the duty of giving signals and seeing that they are obeyed.

At advising—

LORD PRESIDENT—At the commencement of the debate the pursuer took up an attitude of indifference as to the granting of a new trial, and was disposed to treat the matter as concerning only the two defenders. When it was pointed out that if she did not support the verdict she had obtained it would be impossible to sustain it, and that the effect might be to make her liable in the expenses of the trial that had taken place, she intimated that she supported the verdict and that she intended to concur in the argument of the successful defender. The debate proceeded on that footing.

As has often been remarked, the one question which in a case of this kind has to be kept constantly and steadily in view is whether the verdict is one at which an intelligent jury could reasonably arrive on the evidence submitted to it. Counsel defending a verdict which is attacked on the ground that it is contrary to the evidence often aims at a higher mark, and seeks to persuade the Court that the conclusion on the evidence which the verdict implies is not merely one of two or more views which may reasonably be taken with regard to it, but is the right view. Mr Watt very naturally and very properly did his best to carry the Court with him to that length, but so far as my own opinion goes I am not prepared to say that he succeeded. Reverting, however, to the point on which the propriety of granting a new trial depends, I ask myself whether there was not evidence before the jury in this case on which they were entitled in the exercise of the function of reasonable human judgment—fallible as it is no doubt—to affirm the following six propositions:—1. The lorry came out of Brandon Street on its own side of that street at 5 or 6 miles per hour and turned into Bellgrove Street on an angle or curve to the northward. 2. While proceeding on that angle or curve, the lorry was struck a heavy blow on the hind wheel by a south-going tramway car at a point opposite or nearly opposite the end of the north foot-pavement of Brandon Street. 3. When the lorry first emerged from Brandon Street, and it and the tramway car became visible to each other, the

tramway car was about 50 yards distant to the north. 4. There was at that time nothing in the distance between the vehicles or in the speed of the tramway car, so far as observable to the lorryman, to apprise him as a careful driver of any risk in proceeding the short distance required to cross the south-going line of tramway rails before the tramway car arrived. 5. At this time the driver of the tramway car was not looking in front of him, his attention being engaged by the occupants of another lorry which had been travelling alongside of him. 6. The tramway car was in fact coming south at a speed of about 15 miles an hour or more, which speed in consequence of the driver's faulty look-out was maintained until almost the moment of impact.

If these six propositions could reasonably be drawn from the evidence as presented to the jury as I think they might (I do not say they would be my conclusions), the jury's verdict seems to me to be unassailable, for it must be kept in view that the jury were entitled to form their own judgment on the credibility of the witnesses. At many points in the evidence of this case serious questions of credibility arise.

But it was maintained on behalf of the Corporation that, even assuming the validity of the fourth of the propositions above enumerated, the lorry was nevertheless inexcusable in respect of its non-compliance with what was called "the rule of main road and side road," supposed to have been established in *Macandrew v. Tillard*, 1909 S.C. 78. The argument was, that because the lorry entered Bellgrove Street (said to be a main road) from Brandon Street (said to be a side road), it was not only under the general legal obligation to use all reasonable care to avoid collision with other traffic, including any traffic which might be in Bellgrove Street at the time, but incurred a much heavier one, namely, an obligation to avoid causing any interference with the course and speed of the traffic in Bellgrove Street. The tramway car was said to have "the right of the road" in respect both of its course and of its speed. The course of the tramway car was unalterable owing to its flanged wheels. But the speed of the tramway car being actually such at the time as to create a possibility of mishap if maintained, the lorry must, it was contended, be held to be blameworthy because it did not keep out of the way. This argument attributes to traffic in the main road, in relation to traffic in the side road, a position similar to that which is attributed under the Regulations for the Prevention of Collisions at Sea to a vessel to which it is the duty of another vessel to give way. It will be seen that the argument is founded on a supposed rule of law, which if arising on the facts of the case would have been proper matter for a request to the presiding judge for directions, and (if he refused) for a bill of exceptions.

This is a travesty of anything that was decided in *Macandrew v. Tillard* or in the subsequent cases (*Robertson v. Wilson*, 1912 S.C. 1276; *M'Allester v. Glasgow Cor-*

poration, 1917 S.C. 430), whatever may be said of some of the expressions used in the opinions. There is no variation in the standard of care exacted by the law of Scotland from all traffic to avoid bringing other traffic into danger. Where variation does occur is in the circumstances in which this universal standard of care has to be applied and exercised. The same precautionary means will not suit all circumstances alike, and the greater the risks involved in the circumstances the higher are the precautions called for in them. In this sense the driver's duty is said to be "higher" in some situations than in others. Generally speaking, the duty of a driver whose course is calculated to disturb or interfere with the ordinary streams of traffic on a road is of this "higher" order. But the actual precautions called for in any particular situation—whether the case be one of turning in or crossing a road, of entering upon or diverting from it—is a practical question, and depends on the facts of the particular situation, not on any supposed rule of law putting the whole obligation of avoiding collision on the disturbing or interfering traffic, and still less on any imagined absolution from the legal obligation of care in favour of the traffic which follows the ordinary or main stream.

Suppose a vehicle which forms a constituent of the volume of traffic in a busy street wishes to cross that street to premises on the other side or to turn and go back the way it came. The difficulties of the traffic problem thus presented are aggravated in character simply because the manœuvre involves an interruption of the main or ordinary currents of traffic prevailing in the street. Special methods of care may have to be used by the vehicle before performing and during the performance of this manœuvre. For example, a warning may have to be given, a little time may have to be allowed, to other vehicles following the ordinary stream of traffic to adjust their movements, and so on. But it is obvious that the actual form of precaution required belongs to the sphere of practical good sense, depends on the circumstances of the case, and is not prescribed by any special code of legal right on the part of the traffic following the ordinary stream, and of legal obligation on the part of the interrupting traffic. In short, the legal duty of traffic to other traffic is general and invariable—the manœuvre of the turning or crossing vehicle must be so performed as not to endanger the other traffic; but the other traffic, duly apprised of the intended manœuvre, has no right at law to ignore it and to continue course and speed, but must accommodate itself to the manœuvre so as not to endanger the vehicle performing it. The common-sense solution of the problem may be seen in operation any day in the streets of our large cities.

The case just considered does not differ in any essential particular from that of the incursion into a road carrying a considerable volume of through traffic of an occasional vehicle coming from a relatively unfrequented side road and desiring to turn

into one of the streams of traffic running on the former or to cross through them. This was the *species facti* presented in *Macandrew v. Tillard*. Such an incursion is calculated to cause interruption of the general currents of traffic in the busier road. Warning by the vehicle in the side road that it is about to turn into or cross over the main road may (according to the circumstances) be impossible or inadequate to meet the requirements of the situation. If so, the side-road vehicle must effect its introduction into the larger community of traffic occupying the main road in such a manner as not to endanger it. By the very nature of the case (as in the case of the vehicle crossing or turning in a busy street) this may mean that the side-road vehicle may have to stop and allow some of the traffic with which it interferes to pass by before entering or crossing the main road. The case of traffic entering any public road whatever from a field gate, or from an entrance into private property, presents practically the same problem and meets the same solution—a solution which, I repeat, depends upon practical good sense as applied to the circumstances of the case and not on any code of specific legal rights and duties superadded to the general obligation of respecting the safety of others—see *Campbell v. Train*, 1910 S.C. 556, especially *per Lord Low* at pp. 560-561; 47 S.L.R. 475, referred to by Lord Dunedin in *Robertson v. Wilson*, *supra*.

The distinction between a "main road" and a "side road" is itself a question of circumstances so variable and uncertain in character as to be unreliable and impracticable in a vast number of instances. The preference—if I may use that expression—shown in *Macandrew v. Tillard* to the traffic on the road forming the main line of communication between Edinburgh, Queensferry, and the north, over the traffic on the local road between Blackhall and Cramond is explained by the notorious disparity found to exist in that case between them, both in amount and in importance, which made it legitimate to regard the latter as interrupting the regular streams of the former. But that preference implied no right whatever on the part of the traffic in the busier road to refuse to accommodate the entry of the side-road vehicle on to the more important road, by maintaining course and speed, notwithstanding that its presence and intention are made known. How far the decision in *Macandrew v. Tillard* is from setting up a special code of legal rights and duties for the case of a side-road vehicle entering or crossing a main road is shown by the obvious reflection that the adoption of appropriate methods of care by a side-road vehicle seeking to leave the side road and join the regular current of traffic in a main road is equally incumbent on a vehicle in the main road seeking to leave it and join the sparser current of traffic on a side road.

In no case is there any justification for the idea that the traffic whose current is disturbed by an incoming vehicle is absolved in law from the duty of itself using care to

avoid collision with the incoming vehicle once its presence is made known. Accordingly it seems to me impossible to accept the view that the lorry was inexcusable in the present case on the ground that it was bound in law to conform itself to the supposed legal right of the tramway car to persist in the speed of its approach notwithstanding the overt presence of the lorry on the street.

LORD SKERRINGTON—The Corporation of Glasgow attack the verdict upon the ground that there was no evidence which entitled the jury to find them liable in damages to the pursuer, and upon the further ground that in any event there was no evidence which entitled the jury to acquit the defenders John Steven & Company of blame for the accident. When one looks at the evidence one finds that there was evidence both ways on the question of whether the driver of the tramway car was in fault. Witnesses adduced both by the pursuer and by John Steven & Company testified that he approached the place of the accident at a speed which, though within the statutory limit, was excessive and dangerous in the circumstances, and also that he was not attending to his duty and did not have his car under control. The same is true in regard to the question whether the driver of the motor lorry was guilty of the faults attributed to him by the Corporation. These faults, if I remember rightly, were four in number. It was said that he emerged from Brandon Street at an excessive speed, on the wrong side of the road, without having given any warning of his coming, and at a time when the tramway car was so near that it was impossible for its driver to do anything to avoid the collision. There being evidence both ways upon all these questions of fact, it seems surprising that the Corporation's counsel should have said that there was no evidence for the jury to consider, but at an early stage in his speech he disclosed that he was not using that expression in the ordinary sense. He explained that what he meant was that there was no evidence which the jury was legally entitled to consider, and he based that contention upon an alleged rule of law which he described as a rule admitting of no exception. This rule he extracted from certain observations of one or more eminent judges in recent cases, and to these observations he attributed a binding and inflexible character such as, in my view, can be attributed only to an Act of Parliament or to a statutory rule or order. What then was this rule of law which made it incompetent for the jury to return a verdict according to their view of the evidence which had been given without any objection on the part of the Corporation's counsel? The alleged rule is that if the driver of a vehicle approaching a main road from a side road attempts either to cross the main road or to join one or other of the streams of traffic passing along it he cannot be acquitted of negligence if he does so under circumstances which require that any of the persons driving vehicles along the main road should

reduce their speed. Stated conversely, the proposition is that every person driving a vehicle along a main road is entitled to maintain his course and speed until he has brought matters to such a point that there is risk of him colliding with a vehicle which has entered the main road from a side road. These propositions are certainly novel and startling, and it would be easy to demonstrate that if applied rigidly, as we were asked to apply them, they would not conduce to the public advantage, but on the contrary that they would lead to confusion, obstruction, and danger. I have carefully studied the observations upon which this rule of law is supposed to be based. It is certain that no judge ever laid down such a rule in express terms. Further, when one reads these observations carefully, it is plain to my mind that they negative the existence of any such rule of law. In particular, I refer to what was said by Lord Dunedin in the second of the cases which were quoted to us—*Robertson v. Wilson*, 1912 S.C. 1276. In that case his Lordship said that certain observations of his in the case of *Macandrew v. Tillard* (1909 S.C. 78) had been misunderstood, and he proceeded to point out in what respects his observations had been misunderstood. He then stated in his own words the direction which he assumed that the judge had given to the jury at the trial in *Robertson's* case, and which, as I understand, he regarded as a proper direction in the circumstances, viz.—“that where two persons are approaching each other, one on the side road and the other on the main road, and if owing to the direction they are taking—be it with due care on the part of each—they would be bound to meet, it is the person coming from the side road who must give way and not the other.” This direction must be interpreted consistently with the general law which would leave it to the jury to decide in any particular case whether the drivers had exercised “due care,” the one when he failed to reduce his speed, he having it in his power to do so, and the other when he relied upon the former not running him down. The Corporation's counsel misinterpreted Lord Dunedin's observations by ignoring the hypothesis that the only fault attributable to either party was that of the driver who came in from the side road and thus made a collision inevitable.

For these reasons I have no doubt that the verdict must stand. I desire, however, to add that I entirely agree with what your Lordship has said in regard to the case of *Macandrew v. Tillard* and to the law which is applicable to the present case.

LORD CULLEN—The evidence in this case is very conflicting, but I think that the jury were entitled to hold that the speed of the tramcar was 15 miles per hour or thereby; that the two vehicles were at a distance which made crossing by the motor lorry a justifiable proceeding in point of safety on the footing that the driver of the tramcar regulated his speed with the ordinary care which the exigencies of street traffic calls for; that he did not do so, but

imprudently maintained his speed of 15 miles until collision was unavoidable; and that in these circumstances the blame for the collision lay with him.

Mr Robertson's contention was that the tramcar was entitled to maintain its speed, because Brandon Street is a street with a smaller volume of traffic than Bellgrove Street, the former being what he called a side street and the latter a main street. I am unable to accept this view. I do not think that vehicular traffic in a large city, where so many streets of various kinds continually abound in traffic, could be safely carried on in accordance with it. Crossing vehicles in such streets are a constantly recurring feature which has to be reasonably provided for. The high degree of care incumbent on any vehicle coming laterally into a stream of traffic is undoubted. But I think there is a corresponding duty of care incumbent on vehicles in the street on which crossing lines of traffic open, and it appears to me that to give a licence to the latter vehicles to maintain course and speed on a nice appreciation of the comparative volumes of traffic in one street and another would be a dangerous rule.

LORD SANDS—I agree that this rule must be discharged. I should be sorry, however, to think that in this case we were doing anything to impair the authority of the rule of the road formulated by Lord Dunedin in *Macandrew v. Tillard*, 1909 S.C. 78, as explained by him in *Robertson v. Wilson*, 1912 S.C. 1276. That rule I take to be that when two vehicles are approaching a place where two roads meet and there is any danger of collision in view of their respective distances from the crossing point and their respective speeds, it is the duty of the vehicle on the side road to give way to the vehicle on the main road and to allow it to pass first. Doubtless there may be cases where it is uncertain which is the main road, but these cases have not been found so numerous as to interfere with the practical working of the rule, which is one now well understood by motorists and drivers, and even by cyclists. There are reasons of good sense behind the rule. But the value of the recognition of the rule is not altogether dependent thereupon. If collisions are to be avoided, it is of importance that there should be a recognised rule, even though it be an arbitrary one. I may illustrate the matter thus. Suppose two cars, one on the Queensferry Road and the other on the Cramond Road, are crossing at Davidson's Mains, and no other car is in sight on either road. There is therefore no question of a stream of traffic. But the two cars are so situated that they may collide if both keep their speed. One must give way. In these circumstances it is in accordance with the rule of the road that the side-road car should allow the main-road car to pass first. The rule does not infer that the vehicle from the side road is never to cross when an approaching vehicle on the main road is in sight, nor, in my view, does it infer that a road is never

to be crossed even by a slow-moving vehicle when another vehicle is approaching, which if it maintains its speed may reach the crossing point before the main road is clear. If that were the meaning of the rule it might be hardly possible for farm carts or heavy lorries to cross a busy main road, or, to take a particular case, for a waggon going along Rose Street to cross Hanover Street, as I see them constantly doing. To bring the rule into operation there must be some danger of collision. The driver of the crossing vehicle is entitled to assume that the main-road driver, if he has a clear view and is allowed ample time, will act reasonably and slow down when he sees the crossing vehicle in front of him. The maritime rule of maintaining course and speed until a stage of agony is reached does not apply to a main-road driver. Subject to this understanding, the rule of the road that side-road or crossing-road traffic gives way to main-road traffic appears to me a useful one. The driver on the side or crossing road knows that he is doing wrong if he tries to cut in or to cut across first. It is not the province of the Court to invent new rules of law. But it is part of the law which the Court administers that drivers must observe the rule of the road. The origin of some of these rules may be obscure. But I can conceive of no more respectable parentage for such a rule than that it was formulated by Lord Dunedin and adopted in practice both in Scotland and England.

As regards the present case I assume that the rule of the road, as I understand it, was explained to the jury, and although I do not myself agree with the verdict in so far as it exonerates the driver of the lorry, I think that it was a possible view for the jury to take that the circumstances as they presented themselves to the driver of the lorry were such as justified him in crossing the road without any transgression of the rule of the road.

LORD ASHMORE—In this case the jury, over which I presided, had to consider evidence which in material respects was contradictory, and had to determine questions as to the credibility of several of the witnesses; but whatever difficulties of that kind faced the jury, and however they solved these difficulties, the verdict at which they arrived can be set aside only if it can be held to be contrary to the weight of the evidence.

I assume that *prima facie* it was the duty of the driver of the motor lorry before he left the side street to look out for traffic on the main street and to give way to any traffic coming along the main street. These precautions I take to be incumbent on him in accordance with a rule of the road which is based on common sense and which has been judicially recognised in a series of decisions both in this Court and in the Sheriff Courts, but which of course must be applied reasonably with reference to the circumstances (*Macandrew v. Tillard*, 1909 S.C. 78; *Campbell v. Train*, 1910 S.C. 556; *Robertson v. Wilson*, 1912 S.C. 1276; *M'Alister v. Corporation of Glasgow*, 1917 S.C.

436). In 1910 in *Campbell v. Train* (cited *supra*), Lord Justice-Clerk Macdonald stated and justified what he described as a well-established rule, and I take from his opinion the following passage—"Now," said his Lordship, "it is a well-established principle that where there is a main road, such as a road capable of carrying two lines of tramway rails on it—a main road leading from one public place to another—any person entering with a vehicle from a cross road is bound to look out and keep clear of traffic coming along the main road, and this is for a very obvious reason. Traffic coming along the main road is necessarily expected to be going at a considerable pace because it is not coming to a corner at all. It is crossing a corner but not coming to a corner in order to turn, whereas the driver who is going to go round the corner necessarily should be going slowly.

Assuming the general rule as above stated, however, the question remains—Is the Court justified in view of the verdict of the jury—a verdict against the Corporation and in favour of the other defenders—in holding that the driver of the motor lorry disregarded the rule and was guilty of contributory negligence? Now the jury had evidence before them to this effect—that the driver of the tramway car when approaching the mouth of Brandon Street was behaving and driving carelessly and incautiously, and that in consequence, instead of seeing that the motor lorry was in the act of crossing, and putting on his brake in time to avoid an accident, he negligently drove on into the lorry. If the jury believed that evidence, that would explain their verdict in point of fact and would support it in point of law. I refer to such cases as *M'Dermid v. Edinburgh Street Tramways Company, Limited*, 1884, 12 R. 15; *Radley v. London and North-Western Railway Company*, 1876, 1 App. Cas. 754; and *Barty v. Harper & Sons*, 1922 S.C. 67. I think, therefore, that the answer to the question under consideration must be in the negative. It is a question of fact, and on questions of fact, including questions of credibility, the verdict of the jury is conclusive, unless indeed the Court could hold that there is no evidence to support the verdict, which in my opinion the Court is not warranted in doing.

For the reasons which I have given I have come to the conclusion that the rule ought to be discharged.

The Court discharged the rule.

Counsel for the Pursuer—Morton, K.C.—Macdonald. Agents—Hume, M'Gregor, & Company, S.S.C.

Counsel for the Defenders the Glasgow Corporation—Robertson, K.C.—Dods. Agents—Campbell & Smith, S.S.C.

Counsel for the Defenders John Steven & Company—Watt, K.C.—Paton. Agents—Fraser, Stodart, & Ballingall, W.S.