

which I have quoted, and the case therefore can be no authority of general application. The decision naturally was that the double payment, the amount of which was specified, and nothing more, was exigible in each nineteenth year, but that cannot help to interpret either the term "a double," or the term "a duplicand" occurring in any other case. It was rather, I think, relied on by the respondent for a remark of Lord-Justice Clerk (Macdonald) which may be held as re-echoing the expression of his predecessor in the *Earl of Zetland's* case. All that can be deduced from *Alexander's* case is that the Court there held that doubling meant literally doubling, but in the collocation in which it was used, that the double feu-duty was substitutional for and not cumulative with the feu-duty of the year.

Besides the *Heriot Trust* case, and the above cases referred to in it, there was also quoted to us the following:—*The Magistrates of Dundee*, 1883, 11 R. 145, 21 S.L.R. 107, in which the expression in the feu-disposition (dated prior to 1874) was "shall be bound to pay a duplication of the said feu-duty at the expiry of every twenty-fifth year." The question at issue was not what was meant by duplication, but what did the sum stipulated under that expression, whatever was its amount, cover. Dissenting Lord Rutherford Clark, the Court held that it covered all casualties, and not merely relief. It has therefore no bearing upon the present case. There was next the *Church of Scotland v. Watson*, 1905, 7 F. 395, 42 S.L.R. 299, which is in the same position. The title, also of old date, included a clause "doubling the feu-duty at the entry of each heir and singular successor." But the question was not what was the meaning and effect of the term "doubling," but whether the conventional provision in which it occurred made the payment exigible on a transmission to a singular successor so long as the last-entered vassal was still alive. Again in *Inglis v. Wilson*, 1909 S.C. 1393, 46 S.L.R. 979, the title was couched in very special terms with the object of preventing subinfeudation. It was dated in 1862, and taxed the entry of singular successors at a "duplicand" of the feu-duty, and in respect of that taxation obliged each singular successor to enter at once on the transmission to him, and failing his so entering, stipulated for "a duplicand" of the feu-duty for each year that he laid out unentered. The question on which the case turned was not what was meant by "duplicand" in this provision, but whether or not there had been an implied entry which avoided the superior's claim which was for duplicands over a long series of years. The Court held that there had been such implied entry, and therefore there was no cause for determining the meaning of the term "duplicand" in the clause of the feu-contract founded on.

I think that that exhausts the cases adduced by counsel, excepting that of *Murray*, 1917, 1 S.L.T. 20, where Lord Hunter in the Outer House had to deal with the expression "a duplication" in a contract of ground annual. From his Lordship's opinion I can only gather that he would have had

the same difficulty that I had in following the interpretation by the First Division of the term "a double" in the *Heriot Trust* case.

So far, then, as precedents have been adduced, there is no ground for saying that the decision in the *Earl of Zetland v. Carron Company* has stamped on the expression "duplicand" a technical meaning, which it must now receive, whenever it occurs in the reddendo clause of a charter or feu-contract.

If so, then I find nothing to prevent our giving it here the meaning which it originally had, and which I think is its natural and proper meaning, and the one which the parties to the feu-contract intended it should receive.

The Court adhered.

Counsel for the Pursuer (Respondent)—
Christie, K.C.—Gentles. Agents—J. & J. Jack, W.S.

Counsel for the Defender (Appellant)—
Chree, K.C.—D. M. Wilson. Agents—
Miller, Mathieson, & Miller, S.S.C.

Tuesday, March 6.

SECOND DIVISION.

[Lord Anderson, Ordinary.]

M'ALLESTER v. GLASGOW CORPORATION.

*Reparation—Negligence—Motor Car—Street
—Collision between Tramway Car and
Motor Car—Duty of Chauffeur in Emerg-
ing from Side Street into Main Road—
Contributory Negligence.*

A tramway car proceeding along a main road collided with a motor car which, having emerged from a side street, was attempting to cross the car rails diagonally in front of the approaching tramway car in order to reach its own proper side of the road. The driver of the motor car on emerging from the side street saw the tramway car approaching and thought he had time to cross in front of it, but turning on the slant as he did he lost sight of the tramway car.

Held (dis. Lord Anderson) that the accident was due to the contributory negligence of the pursuer, and the verdict in his favour *set aside*.

Robert M'Allester, motor driver, Glasgow, pursuer, brought an action against the Corporation of the City of Glasgow, defenders, for payment of the sum of £550 as damages for personal injuries resulting from a collision between a motor taxi-cab driven by himself and one of the defenders' tramway cars.

The defenders pleaded, *inter alia*—"3. Any injuries sustained by the pursuer having been caused or materially contributed to by the fault of the pursuer, the defenders should be absolved."

The facts appearing from the evidence so

far as bearing on the question of *contributory negligence* were these—On 25th December 1915, about 3:30 p.m., the pursuer was driving a motor car belonging to Wylie & Lochhead, Limited, from Huntly Gardens, Glasgow, by way of Saltoun Street and Great Western Road eastwards into the city. Saltoun Street joins Great Western Road on the south side and at right angles thereto. The pursuer on reaching Great Western Road proceeded in a slanting direction towards the north-east so as to pass on his right an electric standard situated in the centre of Great Western Road, a short distance to the east of Saltoun Street, with the intention of thereafter proceeding eastwards on the north side of Great Western Road. On emerging from Saltoun Street he saw a tramway car approaching from the west and judged that he had time to cross in front of it, but turning as he did on the slant he lost sight of it. While the motor car was being so driven the tramway car ran into the motor car with great violence, striking it on the near side towards the rear of the motor car.

On 10th January 1917 the action was tried before Lord Anderson and a jury, who returned a verdict for the pursuer. The defenders, in the Second Division, moved for and obtained a rule upon the pursuer to show cause why the verdict should not be set aside.

The pursuer argued on contributory negligence—The Court must look to the proximate cause of the accident. Even if the pursuer was originally at fault, the defenders were liable if they made no attempt to avert the accident by the exercise of reasonable care. The question whether the pursuer had reasonable cause to think that he could cross the car rails before the tramway car should reach him was a pure question of fact for the jury and depended entirely on the speed, and distance from the pursuer, of the tramway car. Accordingly the jury's verdict ought to stand.

The defenders argued on contributory negligence—The driver of a vehicle was bound to give way to traffic on a main road when entering it from a side road—*Macandrew v. Tillard*, 1909 S.C. 78, 46 S.L.R. 111. Moreover, attempting to cross tramway rails in front of a tramway car amounted to negligence, and persons could only do so at their own risk—*Fraser v. Edinburgh Street Tramways Company*, 1882, 10 R. 264, 20 S.L.R. 192. In the circumstances the verdict ought to be set aside.

At advising—

LORD JUSTICE-CLERK—In my opinion this verdict is contrary to evidence, and therefore cannot stand—[*His Lordship narrated the facts, and considered the evidence as to the alleged fault on the part of the driver of the tram car, stating his opinion that there was no evidence of fault.*]

In my opinion the collision was due to the pursuer's own fault. When he first saw the car I have no doubt he formed the opinion that he had time enough to cross. But he never looked for the car or saw it again. He crossed part of Great Western Road

in a straight line, and then when he was approaching the dangerous point—without looking where the car was—he turned his cab so that he could not see the car, and proceeded to cross in front of it diagonally, and within a second or so the collision took place. I think in so acting he directly and immediately brought about the collision. Even if contrary to my view the evidence had shown that the car was proceeding faster than usual, I think the present case would have been covered by what was said in *Fraser v. Edinburgh Tramways*, 10 R. 264. If people proceed to cross tramway lines when they know or ought to know that there is an approaching car in very close proximity, and put that car outwith their line of vision, without looking previously to see how far off it is before they enter the danger zone, they have themselves to blame if they get hurt.

LORD SALVESEN—This case arises out of a collision which took place between a taxicab driven by the pursuer and a tramway car belonging to the defenders. The accident took place on 25th December 1915 about 3:30 p.m. The material facts are not in controversy. [*His Lordship reviewed in detail the evidence as to fault on the part of the driver of the tramway car, and stated his conclusion that the driver was not in fault either in driving at an excessive speed or in failing to stop in time to avoid the collision.*]

There is, however, in my opinion, no doubt whatever that even if there had been fault on the part of the driver there was contributory negligence on the part of the pursuer. He was emerging from a side road into a main road, and according to Lord President Dunedin in *Macandrew v. Tillard*, 1909 S.C. 78, at p. 80, "if there is one rule more than another that it is necessary to lay down for the practical conduct of traffic, it is that it is the business of those who are on the cross road and going to cross the main road to look out when they enter the main road and to give way to all traffic which is coming along the main road." The pursuer violated this rule, and did so deliberately. He had three courses open to him. He could either have taken more sharply to the right, the road being quite clear, and waited to go to the north side of the road till after the car was past; or he could have proceeded slowly and if necessary stopped till the car was past; or he could have proceeded straight across the lines, in which case he would have got quite clear. Instead of this he elected to go on a course that would bring him on a slanting curve across the lines on which he knew the car was proceeding. He misjudged the speed at which the car was going, or the speed at which his own vehicle was going, and the accident was the result. He elected to take a course that involved risk instead of taking one of three other courses, each of which was perfectly safe. To use the words of one of his own witnesses, he simply tried to cut across in front of the tramway car.

There is another decision to which reference is not sufficiently often made, and which in my opinion also concludes this

case against the pursuer. I refer to the case of *Fraser v. Edinburgh Street Tramways Company*, 10 R. 264. In that case a boy six years old, while attempting to cross a street, was run over by a tramway car. The car was proved to have been going at a speed greater than the authorised or legal speed, but the boy was held to have been guilty of contributory negligence, and the verdict in his favour was set aside. The case was a hard one because the Court applied practically the same standard to a boy of six years as they would have applied to a grown-up person. Lord Shand said (at p. 268)—“I cannot doubt that if a grown-up person had in these circumstances made a nice calculation as to whether he had time to get over in safety, and had failed, he must have done so at his own risk, and this would have been a case of contributory negligence.” Again, after referring to the fact that perhaps the same degree of care could not be expected of a child, he said—“The boy may very likely have wrongly estimated the pace of the car, but taking it even that the car had been going slower, it was grossly imprudent of him not to wait till it had passed.” Now here the pursuer was a grown man accustomed to drive a taxi in Glasgow, and knowing quite well the rate at which the cars there are authorised to go. I think it is impossible to absolve him from fault if, in the circumstances known to him, he attempted to cross in front of a car whose speed he misjudged. Such a thing is no doubt often done, and great risks are taken, but when on any occasion disaster results, the taxi-cab driver has only himself to blame. It is in the interests of the public at large that drivers should not be encouraged to take unnecessary risks on the footing that if they are injured in so doing they will be compensated by a sympathetic jury. I think I have seldom seen a clearer case of contributory negligence than this, and even if I thought the car had been going at a somewhat higher speed than the legal speed, I should have been of the same opinion, and should simply have reaffirmed the rule laid down in *Fraser's* case, which has never since been questioned.

LORD GUTHRIE—I am of the same opinion. I agree with your Lordships that this case, on the pursuer's version of it, is ruled in law by the case of *Fraser*, 10 R. 264, under the head of contributory negligence. The principle involved in *Fraser's* case is founded on common sense and daily experience and observation. That rule as applied to circumstances such as we have in this case I take to be that a person whether on foot or on horseback or in charge of a vehicle, crossing a public street is not reasonably entitled to rely solely on the estimate he makes before leaving one side of the street of the proximity and speed of traffic which he sees approaching his crossing-place, and of the possible appearance and speed of other traffic at the moment beyond his vision which may appear before he has effected his crossing. In addition as an ordinary and reasonable precaution for his own safety and the safety of the property under his

charge, he must while crossing continue to a reasonable extent to look in the various directions from which traffic is approaching or from which traffic may approach. It is not possible for any person leaving the one side of a public street, even although that person has special skill and is at the time under favourable personal and local conditions to form an estimate of the distance and speed of traffic which he sees approaching and of the possible appearance and speed of traffic which may approach, on which he can reasonably rely for his safety and the safety of property under his control in crossing the whole distance from the one side of the street to the other. The calculation involves elements too numerous, too complicated, too liable to be affected by obscure and unknown circumstances, to make it one on which a man can reasonably rely as his sole and sufficient protection. But in view of the pleadings and the proof that question only arises if the pursuer has led evidence on which the jury might reasonably find the defenders in fault in respect that their tramway car on the occasion in question was being driven at an excessive speed in the sense either (a) of a speed in excess of the statutory limit, or (b) beyond the ordinary speed in similar circumstances, or (c) at a speed dangerous in view of the traffic actually on the spot at the time. I concur with your Lordships in thinking that there was no such evidence before the jury. [*His Lordship reviewed the evidence and stated his conclusion that the tram-car was not going at an excessive speed.*]

Therefore whether the case be taken on the facts or the law the verdict cannot stand.

LORD ANDERSON—I am of opinion that the jury reached a right decision in this case, and that the rule should be discharged.

There are two explanations of the accident which resulted in the pursuer's injuries—that given by the defenders and that by the pursuer. It was for the jury to determine which of these explanations they preferred, and I am not surprised that they favoured the account given by the pursuer and his witnesses. [*His Lordship reviewed the evidence in detail, and stated his grounds for preferring the pursuer's account of the accident.*]

But then it is said that the pursuer was also in fault, and that his negligence was a contributory cause of the accident. This part of the case may be most compendiously disposed of by considering the three authorities which were referred to at the hearing on the rule. The first of these cases is that of *Macandrew*, 1909 S.C. 78, as explained in the case of *Robertson*, 1912 S.C. 1276, 49 S.L.R. 916. The pursuer here was entering a main road from the side road, Saltoun Street, and the practical rules which Lord President Dunedin lays down in *Macandrew* for the observance of the driver coming from the side road are these—(1) that in coming from the side road the driver should travel at such a pace as to have his car entirely under control; (2) that as soon as the main road is entered the driver should look out for approaching

traffic thereon; and (3) that the driver should, if necessary to avoid an accident, give way to all traffic which is coming along the main road. Now as the collision in the present case occurred after the pursuer had safely entered upon the main road, after he had crossed it to the extent of two-thirds or thereby of its breadth, and after he had proceeded on the main road to some distance to the west of the side street, my own opinion is that the case of *Macandrew* does not apply, but that the taxi-cab had, so to speak, obtained such possession of the crossing that if there was a special duty of care on either vehicle it was on the tramway car to avoid running down the taxi-cab. But I directed the jury to assume that the case of *Macandrew* did apply, and asked them to consider whether the pursuer had used all reasonable precautions in emerging from the side street. The jury's verdict shows that they considered that the pursuer had exercised proper care in coming out of Saltoun Street.

The next case to be considered is that of *Fraser*, 10 R. 264. This case, as I read it, lays down no general principle as to contributory negligence. In particular it does not affirm that it is necessarily negligent to cross in front of an approaching vehicle. *Fraser* was decided as it was because of the particular act of negligence committed by the injured boy. He made to cross a distance of 17 feet while the approaching car was only 5 or 6 yards from the place where he was knocked down by the horses. The opinions of the Lord President, Lord Mure, and Lord Shand make it plain that they were deciding the case on these special facts. Thus Lord Mure says—"There are two points to be considered—first, the distance the boy had to go after he left the pavement; and second, the distance the car was from the point at which he attempted to cross at the time he left the pavement." And Lord Shand says—"The short distance which the car had to travel before it reached the place where the boy left the footpath and tried to cross is a most material circumstance." There is nothing in the opinions of the judges of the majority or in the decision in the case which is inconsistent with Lord Fraser's general statement—"In itself it cannot be held to be rashness to cross a street in front of an advancing carriage. It must depend upon the distance from the carriage whether it would be safe and proper, or foolhardy and rash, to make the attempt." That seems to me to be sound common sense, and also good law, which should never be divorced from common sense. We know that damages are frequently awarded in cases of this description, and we were informed that only the other day, in a case against the Musselburgh Tramways Company, not reported, the Extra Division, in a case whose facts closely resembled those of the present case, found that the driver of the crossing vehicle was not in fault, but that the sole cause of the accident was the negligence of the driver of the tramway car. The question of the conduct of the injured person seems thus to be a jury question, and the decision of

the jury ought to stand unless it be shown that, in the language of Lord Fraser, the attempt to cross was a "foolhardy and rash" act. There must always be calculation in crossing a street and sometimes miscalculation, but whether in the latter case there is negligence in the sense of the law of reparation depends on the particular circumstances of the case. In the present case my opinion is that the pursuer took reasonable precautions for his own safety, and it was because his calculations were upset by the abnormal conditions under which the tramway car was driven that the accident took place. I am therefore of opinion that the jury were right in holding that the defenders had not proved that the pursuer had been guilty of contributory negligence.

The last case referred to was that of *Radley*, 1 App. Cas. 754, which was explained by Lord President Dunedin in the case of *Mitchell*, 1909 S.C. at p. 749. Assuming contributory negligence on the part of the pursuer, I am of opinion that the driver of the tramway car had time and opportunity to obviate the consequences thereof, and that accordingly he alone was to blame for the accident. There was time for the driver of the tramway car, after the pursuer had placed himself in jeopardy, either to warn the pursuer to slacken the speed of his car, or if necessary to stop his car altogether. He did none of these things, and the doing of them would in all probability have prevented the accident.

The Court set aside the verdict and granted a new trial.

Counsel for the Pursuer—G. Watt, K.C.—D. Jamieson. Agents—Manson & Turner Macfarlane, W.S.

Counsel for the Defenders—Wilson, K.C.—M. P. Fraser. Agents—Simpson & Marwick, W.S.

HOUSE OF LORDS.

Friday, April 27.

(Before Earl Loreburn, Lord Shaw, Lord Parker, Lord Sumner, and Lord Parmoor.)

LYONS v. WOODILEE COAL AND COKE COMPANY, LIMITED.

(In the Court of Session, May 30, 1916, 53 S.L.R. 538, and 1916 S.C. 719.)

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 1 (1)—Accident—Death Due to Chill Contracted by Miner while Waiting at Shaft-Bottom—Delay Due to a Protracted Statutory Inspection of Shaft.

A miner went to the shaft-bottom to be raised to the surface, about the time when the statutory inspection of the shaft was taking place. He was kept waiting and caught a chill from which he died. The statutory inspection occupied a varying amount of time, and on