

It is undoubtedly true that in order to obtain a certificate under section 8 the workman who applies for it must satisfy the certifying surgeon that he is at the time when the certificate is granted suffering from a scheduled disease, and that if (under the schedule) any particular disease does not include its *sequelæ* and the workman at the time is suffering only from a *sequela* of a scheduled disease, then no valid certificate can be issued. If one were issued it would not be a certificate within the meaning of the Act. The workman may or may not in such a case have a claim for compensation under sub-section (10) of section 8 of the Act, but if he has his claim will lie altogether apart from the specialties of "industrial disease." The case of *Corser v. Russell* (1921 S.C. (H.L.) 31, [1921] 1 A.C. 351) has no bearing upon the question arising for decision in the present case. What was there held was that a man may still be certified as suffering (within the meaning of the Act) from an industrial disease although the diseased part has been surgically removed from his body, provided the removal was itself an incident in the treatment of the disease and the man's incapacity continues. It is obvious that the mutilation of a patient's body is not what is meant by a *sequela* of the disease. But in the present case the certificate is unimpeachable, and the question relates to the employers' liability under the memorandum of agreement proposed to be recorded. The employers' argument is that their liability ceased in respect that the workman's incapacity is no longer attributable to the scheduled disease mentioned in the certificate. Now it seems to me that the true question is whether the workman's admitted incapacity "results from the injury" (First Schedule 1 (b))—that is to say, from the dermatitis. The learned arbitrator has found that the affection of the kidneys resulted from the original "injury," *i.e.*, the dermatitis, and that the workman's incapacity results from the kidney trouble. This seems to establish the relation of cause and result between the dermatitis and the incapacity. If the workman had suffered from an ordinary accident, there is, I apprehend, no doubt at all that liability for his consequent incapacity would not be terminated by the circumstance that the after-consequences of the injury developed new forms, provided there did not intervene some fresh cause. The same principle applies to the after-consequences of an industrial disease even though such after-consequences are not scheduled *sequelæ* of the primary ailment.

It seems to me therefore that the learned arbitrator was right in ordering the memorandum of agreement to be recorded. The case puts to us two points for answer, of which the first raises a question whether the learned arbitrator was warranted in holding the claimant entitled to compensation. I do not see how this point arises, and I suggest it should not be answered. The second question, which is whether it was competent for him to grant warrant to record the memorandum of agreement, I

think we ought to answer in the affirmative.

LORD SKERRINGTON—I agree with your Lordship. The Stated Case discloses an unbroken chain of causation between the workman's total incapacity from nephritis on the one hand, and the fictional accident of dermatitis, evidenced by the surgeon's certificate, on the other hand. The workman never recovered from the industrial disease for which he was certified. It was said, however, that one of the results of that disease—one of the links in the chain of causation—was a disease of the kidneys known as nephritis, a different disease from that mentioned in the certificate. It was further said that nephritis was not scheduled as one of the *sequelæ* of dermatitis. All that is true, but it is in my opinion irrelevant if it is proved as the arbitrator found to be the fact, that the nephritis from which the man suffered was a consequence of the industrial disease mentioned in the surgeon's certificate.

LORD CULLEN—I concur.

LORD SANDS did not hear the case.

The Court refused to answer the first question of law, and answered the second question of law in the affirmative.

Counsel for the Appellants—King Murray, Agents—J. Miller Thomson & Company, W.S.

Counsel for the Respondent—MacRobert, K.C.—D. Jamieson. Agent—T. J. Addly, Solicitor.

Saturday, February 2.

## SECOND DIVISION.

[Sheriff Court at Airdrie.]

### M'KENNA v. COATBRIDGE MAGISTRATES.

*Reparation—Negligence—Safety of Public—Injuries to Children—Trap—Iron Fence 20 Inches high with Blunt Projections within Public Park—Child Injured when Crossing Fence to Recover Ball.*

A roadway within a public park was fenced off from an adjacent expanse of grass for a distance of 36 feet by an iron railing 20 inches high, on the top of which were blunt uprights which projected 5 inches above the top of the railing. The grass expanse could be reached without crossing the railing by going round the end of it. A boy aged ten when crossing the railing to recover a ball fell and sustained injuries. In an action of damages by the father of the boy against the municipal corporation who had the direction and control of the park, the pursuer averred that the railing was an allurement, a trap, and a danger, and that the defenders were in fault in permitting such a railing at a place where they knew that children were in the habit of playing. The Court dismissed the action as irrelevant.

John M'Kenna, Coatbridge, as tutor and administrator-in-law of his pupil son Anthony M'Kenna, pursuer, brought an action of damages in the Sheriff Court at Airdrie for £500 for personal injuries sustained by his son.

The pursuer averred, *inter alia*—" (Cond. 2) The defenders are in the public interest the owners or lessees of certain open spaces and parks in and around the burgh of Coatbridge. The open spaces and parks in the said burgh of Coatbridge are under the control, direction, and care of the defenders, and are open for the use and recreation of the public. In particular, the defenders are owners or lessees of that open space or park in the burgh of Coatbridge known as the West End Park. (Cond. 3) It is the duty of the defenders to provide that said public park and all fences, railings, implements, and furnishings used in connection therewith, are kept in a safe condition, free from traps or dangers to the public, who have the free use thereof. The said West End Park is much frequented and used by the children of the ratepayers in Coatbridge, and it is the duty of the defenders to provide that the park is kept free from anything which might be of the nature of a danger or a trap to children making use thereof. (Cond. 4) At the said West End Park the defenders have a number of partially enclosed spaces. The spaces are partially surrounded by spiked iron railings 20 inches or thereby in height. In particular, there is a space lying between one of the principal roadways in said park and the wall bounding the public highway at Langloan, Coatbridge. This space is separated from the roadway in said park by a spiked iron railing, which it is believed and averred is so situated, so constructed, and of such low height as to be an allurement, trap, and a danger to the children who play in the park in the immediate neighbourhood thereof. . . . (Cond. 5) The said Anthony M'Kenna on or about the 14th August 1922 was playing along with certain other children at said West End Park with a handball, as he was entitled to do, when the said handball was thrown by one of the children into the said space lying between the before-mentioned public roadway in said park and the said public highway, which space was separated from said public roadway in said park by the low-spiked iron railing of the description hereinbefore referred to. The said Anthony M'Kenna proceeded to go over the said iron railing to recover the said ball, and in the act of so doing he slipped and fell on said spiked iron railing, and received serious injuries by one of the spikes of the said railing. The said spike pierced his body on the right-hand side of the abdomen. Said accident occurred in said park at an enclosure on the west side, immediately on entering a gateway to said park, said gateway being at a point in Bank Street, Langloan, nearly opposite to that roadway leading to Iron Row aforesaid. . . . (Cond. 7) The said Anthony M'Kenna received his said injuries in consequence of the fault and negligence of the defenders, or of their servants, for whom they are

responsible, in failing to provide protection and safeguard to the members of the public. In particular, the defenders were at fault in placing around the said enclosure a spiked iron railing which was of an insufficient height, and the spikes so placed, as to constitute a serious danger to the public, and particularly to the children, making use of the said park. The defenders were aware that children were entitled to use, and did so use, the said park and enclosures therein for purposes of playing therein, and, indeed, children were permitted by the defenders to do so. The defenders ought to have anticipated that children would cross the said railing, and that a railing of the height and construction before condescended upon would be dangerous to children crossing over it, playing near it, or about it. If the defenders chose to neglect taking the necessary precautions against accidents, it was their duty to prohibit and to take action to stop and prevent the access of children to said park and enclosure, and in particular to prohibit and prevent the use of the ground in the immediate vicinity of the said gateway as a playground by said children. Instead of doing this the defenders actively encouraged and induced the children to play at said park and enclosures. Further, the defenders were aware that in the course of playing at handball or other games the handballs would go over into said enclosure, and that the recovery of such balls would be an allurement or attraction to children, and that the danger of crossing the said spiked iron railing was not obvious to children, so that the said spiked iron railing in its uncovered and insecure condition was in the nature of a concealed trap. In particular, it is averred that the railing ought to have been very much higher than it actually was, that the railing ought not to have been spiked at all, and that the spikes ought to have been protected, as they are now, by an iron band covering the points thereof. The defenders failed in their duties by leaving the spikes uncovered and unprotected, with the result that one of them entered the body of the said Anthony M'Kenna when he fell upon them, as condescended on. The defenders should, prior to the occasion of the accident to the said Anthony M'Kenna, have taken the steps which they have taken since said accident, and this failure to take such steps resulted in the injuries condescended upon to the said Anthony M'Kenna."

The defenders pleaded, *inter alia*—" 2. The averments of the pursuer being irrelevant and insufficient to support the conclusions of his action, the action ought to be dismissed, with expenses."

On 19th June 1923 the Sheriff-Substitute (MACDIARMID) sustained the second plea-in-law for the defenders and dismissed the action as laid as irrelevant.

The pursuer appealed to the Second Division of the Court of Session.

Argued for the appellant—It was necessary to take into account all the circumstances before deciding whether the case was one for a jury—*Reilly v. Greenfield Coal and Brick Company, Limited*, 1909 S.C. 1528, 46 S.L.R.

962, per Lord President (Dunedin) at 1909 S.C. 1336, 46 S.L.R. 967. The appellant had relevantly averred negligence and he was entitled to the verdict of a jury on his averments—*M<sup>4</sup>Kinlay v. Darnogavil Coal Company*, 1922 S.C. 714, 59 S.L.R. 553, per Lord Skerrington at 1922 S.C. 720, 59 S.L.R. 556, *affd.* 1923 S.C. (H.L.) 34, 60 S.L.R. 440, per Lord Chancellor (Cave) at 1923 S.C. (H.L.) 36, 60 S.L.R. 440, and Lord Dunedin at 1923 (H.L.) 37, 60 S.L.R. 441; *Taylor v. Glasgow Corporation*, 1921 S.C. 263, 58 S.L.R. 158, per Lord Justice-Clerk (Scott Dickson) at 1921 S.C. 273, 58 S.L.R. 163, *affd.* 1922 S.C. (H.L.) 1, 59 S.L.R. 14, per Lord Atkinson at 1922 S.C. (H.L.) 6 and 7, 59 S.L.R. 16 and 17; *Mackenzie v. Fairfield Shipbuilding and Engineering Company, Limited*, 1913 S.C. 213, 50 S.L.R. 79; *Findlay v. Angus*, (1887) 14 R. 312, 24 S.L.R. 237; *Lynch v. Nurdin*, (1841) 1 A. and E. 29, per Lord Denman, C.-J., at pp. 35 and 36. The cases cited by the respondents were distinguishable. In these cases the dangers were natural dangers. Moreover, Lord Kinnear's opinion in *Stevenson v. Corporation of Glasgow*, 1908 S.C. 1034, 45 S.L.R. 860, at 1908 S.C. 1045, 45 S.L.R. 867, was unsound in so far as he said that there was no difference between responsibility to adults and to children—see *Taylor v. Glasgow Corporation*, (*cit.*), per Lord Justice-Clerk (Scott Dickson) at 1921 S.C. 271, 58 S.L.R. 163, and Lord Atkinson at 1922 S.C. (H.L.) 7, 59 S.L.R. 17. The cases of *M<sup>4</sup>Murray v. School Board of Glasgow*, 1916 S.C. 9, 53 S.L.R. 66; *Cormack v. School Board of Wick and Pulteneytown*, (1889) 16 R. 312, 26 S.L.R. 599; *Latham v. R. Johnson and Nephew, Limited*, [1913] 1 K.B. 398, per Hamilton, L.J., at pp. 410, 413, 414, and 415; and *Williams v. Eady*, (1893) 10 L.T.R. 41, per Lord Esher at p. 42, were also referred to.

Argued for the respondents—The appellant's averments did not disclose matter which could reasonably go to a jury—*Hastie v. Magistrates of Edinburgh*, 1907 S.C. 1102, 44 S.L.R. 829, per Lord President (Dunedin) at 1907 S.C. 1105, 44 S.L.R. 830; *Stevenson v. Corporation of Glasgow* (*cit.*), per Lord M<sup>4</sup>Laren at 1908 S.C. 1838, 45 S.L.R. 863, and Lord Kinnear at 1908 S.C. 1040 and 1042, 48 S.L.R. 864 and 865, and Lord Mackenzie at 1908 S.C. 1046, 45 S.L.R. 867; *Clark v. Chambers*, (1878) 3 Q.B.D. 327. There was no distinction to be drawn between natural and artificial dangers—*Taylor v. Glasgow Corporation* (*cit.*), per Lord Shaw at 1922 S.C. (H.L.) 10 and 11, 59 S.L.R. 19 and 20. The children cases were all cases where a trap or allurement plus danger was alleged. In the present case the appellant's averments did not disclose a trap or allurement or danger. Even if the averments did disclose a danger, the respondents were not liable because the danger was obvious—*Hastie v. Magistrates of Edinburgh* (*cit.*); *Stevenson v. Corporation of Glasgow* (*cit.*).

At advising—

LORD ANDERSON—The pursuer in this action is the father of a boy aged ten who sustained somewhat serious injuries in the

West End Park, Coatbridge, on 14th August 1922. To obtain reparation for these injuries the pursuer has brought the present action of damages against the respondents as owners or lessees in the public interest of said park. The Sheriff-Substitute dismissed the action as irrelevant and the appeal has been taken against that judgment.

At the various gateways by which the West End Park may be entered the respondents have placed short lengths of low iron railing between the roadway of the park and the grass verges in order to keep the public to the roadway. At the gateway in Bank Street, Langloan, there was an iron railing leading into the park between the roadway of the park and a grass expanse adjacent thereto. This iron railing was 36 feet long and (according to the pursuer's averments) only 20 inches high. It consisted of four panels each 9 feet long. In each panel there were two horizontal bars, one on the ground and the other parallel thereto at the top some 15 inches above the lower bar. On the top bar at intervals of 18 inches were upright projections 5 inches in height and ½ths of an inch in diameter. The points or tops of these projections were blunt. The respondents refer to these projections as "ballusters"; the pursuer describes them as "spikes." Between each pair of ballusters or spikes there are two lower projections or uprights. These are of the same diameter as the ballusters but are only 3 inches in height. This railing, as I have pointed out, terminates 36 feet from the gateway. The grass expanse bounded by the railing may thus be reached without crossing the railing by going round the end thereof. The foresaid projections were probably placed on the top rail for æsthetic reasons, or they may have been intended to keep mischievous children from standing or walking on the top rail.

The pursuer avers that on the foresaid date his son was playing with certain other children in the park with a handball, which was thrown by one of the children into the grass space bounded by said railing. The pursuer states that his son "proceeded to go over the said iron railing to recover the said ball, and in the act of so doing he slipped and fell on said spiked iron railing, and received serious injuries by one of the spikes of the said railing." He further avers that the unfortunate occurrence was due to the negligence of the defenders. Whether or not the respondents were negligent depends on two considerations—(1) whether they owed a duty towards the injured boy, and (2) whether if they did they were in breach of that duty.

There is no doubt that the respondents as having control of the park owed a certain duty towards those frequenting it. The pursuer avers that this duty was to "provide protection and safeguard to the members of the public." In discharging this duty the respondents were in my opinion bound to have in view that children were, according to the pursuer's averments, entitled to use, and that they did use, the park and enclosures therein for purposes of play. They were also bound to assume that

children in the course of their play might step across or jump over the said iron railing instead of going round the end thereof. No objection can be taken to the relevancy of this general averment of duty. The pursuer's difficulties arise in connection with his averments alleging breach of the foresaid general duty of protection. The pursuer, as I understand his averments, suggests three grounds on which it is maintained that the respondents were in breach of their foresaid duty—(1) It is averred in condescendence 4 and condescendence 7 that the railing owing to its low height was an allurement and a trap containing a danger not obvious to children. This ground of fault is an attempt to assimilate the circumstances of this case to those of *Cooke*, [1909] A.C. 220, *Taylor*, 1922 S.C. (H.L.) 1, and *M'Kinlay*, 1923 S.C. (H.L.) 34, in which the judgments proceeded on allegations of allurement, trap, and hidden danger. The present case is plainly different from these cases. The pursuer himself avers that the allurement was not in the railing but in the handball. If there was danger in the railing it was certainly not hidden. (2) The second alleged ground of fault is that owing to the low height of the railing it should not have been spiked at all. The answer to this charge seems to be the opinion of Lord Shaw in *Taylor*, to which the Sheriff-Substitute refers in his note. If a danger is familiar and obvious there is no liability. Spiked railings of all heights, and with spikes both pointed and blunt, are a familiar feature of almost every public park in Scotland. If it was the presence of spikes that is complained of, the manifest rejoinder is that spikes are invariably found on railings in public places, and that these railings are of all heights. If the point of ditty against the defenders is the combination of low height and spikes, an attack seems to be made against a structure which is manifestly innocuous apart from gross misuser or unforeseeable mischance. If there was danger in the 5-inch protuberances on the top of this railing, the danger undoubtedly was obvious. The converse of the terms used by Lord Shaw are "unusual" and "hidden." In *Stevenson* (1908 S.C. 1034) Lord M'Laren observes "unusual or unseen" sources of danger would involve liability. Even if the danger was obvious, if it was also unusual, this would in a case like the present be sufficient. To use the illustration suggested during the debate, if the respondents had put up a fence of bayonets at this place they would undoubtedly despite the obviousness of the danger have been liable for injury to a playing child. But the structure complained of did not involve such unusual or extraordinary risk. (3) The last ground of fault suggested is that the defenders ought to have anticipated that children would cross the railing, and that the railing would be dangerous to children crossing it. I am quite unable to hold that the respondents ought to have anticipated any danger to a child crossing the railing. If a boy of ten was really trying to cross this low fence, it is difficult to understand how he failed to do so safely.

If he was injured in the way alleged, it is manifest that the proximate cause of the injury was not any defect in the structure of the railing but the carelessness or recklessness of the boy himself. I attach no importance to the fact that the respondents have since the accident covered the spikes with an iron band. Although the occurrence could not in my judgment have been anticipated and a similar accident might never have occurred, the respondents acted with propriety in taking steps to obviate even so unlikely a contingency.

It was urged that it was for the jury and not the Court to determine whether or not there had been a breach of duty by the respondents. But the Court has a duty at this stage to determine whether or not a relevant case has been averred. As Lord Kinnear puts it in *Stevenson* (at p. 1040)—"Whether the defender has or has not been negligent in point of fact in a particular case is a question for a jury, but there is, first of all, upon the relevancy of the record a question whether the negligence alleged constitutes a ground of legal liability, and that is a question for the Court." The test of relevancy seems to me to be this, that the Court will not hold a record to be relevant if it is satisfied that on the pursuer's averments being proved no reasonable jury could possibly return a verdict in his favour. Applying that test to this case I am of opinion that the pursuer's averments are irrelevant.

I therefore suggest to your Lordships that the appeal should be refused and the Sheriff-Substitute's judgment affirmed.

**LORD MORISON**—In this case the ground of action is the alleged fault of the defenders in the carrying out of their duties as the owners of the West End Park at Coatbridge.

I think it has always been the practice in this Court to consider with care the relevancy of an action laid against a public body which is charged with a breach of the duty which it owes to the public. There is usually room for difference of opinion on such a subject as to the best or most suitable method of the fencing-off of a piece of ground in a public park from a roadway in it. The decision of such a question is primarily a matter of park administration which is by statute and also by the common law committed to the public authority, and in my opinion no question raising only an issue of such administration can be submitted to the decision of a jury. A jury is the statutory tribunal which decides a question of negligence, and negligence in a case of this character if the action is relevant always raises a question of breach of duty. The defenders' obligation in this class of case is well settled. It is to give to members of the public lawfully using the park reasonable protection against all unusual or unseen sources of danger. The protection necessarily depends, I think, upon the character of the danger involved, and to some extent upon the invitation given to the public and the nature of the use made by the public of the park.

In the present case the purpose of the fence in question was to fence off a piece of ground in the park from one of its principal roadways. I am unable to accept the argument of the learned counsel for the pursuer that the defenders were bound to contemplate that children would climb on or over the fence and might thus injure themselves. It is clearly impossible for the defenders to prevent children playing in a public park or climbing on its fences, from meeting with accidents, and in my opinion there is no obligation imposed by law which requires the defenders in erecting a fence on a roadway in a public park to protect children from such risks as are the incidents of childish propensities. In a case of this kind it is the duty of the defenders to see that the fence which they do erect is reasonably safe for persons of ordinary intelligence who are lawfully using the park. I am unable to read the pursuer's averments, taken in conjunction with the admissions made at the bar, as making a relevant case of a breach of this obligation. The pursuer's record gives the most meagre and general description of the fence. The learned Sheriff-Substitute in his note records a statement of the facts upon which the legal argument before him was based. If it had been alleged that the fence erected was not of a kind in general use, or that the spikes at the end of it were sharp at the point and were in themselves a source of danger to the public using the park in ordinary course, I should have been disposed to allow an issue. But it is admitted that the spikes on the fence had blunt tops. I am quite unable to assent to the suggestion that blunt-topped spikes on a fence 1½ feet high and 36 feet long are "a concealed danger," or form an "allurement or attraction to children" which the defenders were under a duty to anticipate and provide against.

I think the interlocutor of the Sheriff-Substitute ought to be affirmed.

**LORD JUSTICE-CLERK (ALNESS)**—This action of damages is brought against the Provost, Magistrates, and Town Councillors of the burgh of Coatbridge. The pursuer avers that his pupil's son, aged ten, was injured while playing in a public park in Coatbridge, which the defenders control and direct, by falling on a spiked railing in that park. It appears from the pursuer's averments that in the park in question certain spaces are surrounded by spiked iron railings twenty inches high; that the pursuer's son and certain other children were playing with a handball in the vicinity of one of these railings, and that the ball was thrown by one of the children over the railing. What then happened I quote from the record—"The said Anthony M'Kenna"—the pursuer's son—"proceeded to go over the said iron railing to recover the said ball, and in the act of so doing he slipped and fell on said spiked iron railing, and received serious injuries by one of the spikes of the said railing." The spike was, so it is further averred, five inches in length and penetrated the boy's body. Then follow a series of

averments of a type with which the Court has become very familiar, to the effect that the railing was an allurement, a trap, and a danger, and that the defenders were in fault in permitting such a railing at a place where they knew that children were in the habit of playing.

It is impossible to withhold sympathy from the pursuer and his son because of the painful accident which occurred. But the only question which we have to determine is whether the record reveals legal liability on the part of the defenders for that accident. At first blush the pursuer's case seems to postulate that the use by public authorities of spiked iron railings in places frequented by the public generally and by children in particular is dangerous, and that if an accident happens these authorities should be penalised by a jury. I confess that the suggestion startles and alarms me. It is common knowledge that the Meadows and Bruntfield Links—to take but one familiar example—are surrounded by stretches of spiked iron railing over which children not infrequently clamber. But I have never heard it suggested before that a danger for which the public authorities are responsible is thereby created, and that such railings, in the interests of the safety of the public, and in particular of children, must be swept away. Some of these railings are, moreover, adjacent to a public school which is attended by hundreds of young children. It is true that the railings to which I have just referred are higher than the railing with which we are concerned in this case. But that consideration cuts both ways. It is much less likely that a child will be injured in stepping over a spiked railing 20 inches high than in climbing over a spiked railing which is twice that height. The relevancy of the pursuer's averments therefore falls to be scrutinised with care.

Let me shear off the embroideries of the pursuer's case and get, if I can, to its essence. It is obvious to my mind that this railing was neither a trap nor an allurement. A trap connotes a hidden peril. Here there was no danger which can reasonably be said to have been concealed from a boy of ten. Moreover, the railing was not an allurement. The ball was the allurement, not the railing. Further, the case does not seem to me to hinge either on childhood or on play. The child slipped and fell on the railing. An old man might just as likely have done the same, and might have sustained injury thereby. The case is not, be it observed, one where in clambering over a railing an accident happened. The railing was a mere incident in the occurrence. As regards play it is true that the mission of the boy when he was injured was to fetch his ball, but equally he might have gone to pick a daisy or to retrieve his hat. Neither the age nor the occupation of the boy, therefore, appears to me to be indispensably connected with the accident which he sustained. The pursuer's case, if he has one, depends on the averment that the railing was dangerous, and that the defenders knew that. Now, a person cannot make his case rele-

vant by merely affixing the red label of danger to an arrangement which does not commend itself to him. Vituperative averments are not necessarily relevant averments. For aught that appears on this record similar railings may have existed for an indefinite period, and may to-day exist not only in this park but in every such park in Scotland. It is not averred that the arrangement is unusual, far less that it had in the past led up to any accident. What I am asked to affirm is that the defenders were bound to contemplate as likely that a boy of ten, in stepping over a railing 18 inches high, would slip and fall upon it and so injure himself. The contention seems to me extravagant. The spiked railing was not in any true sense the cause of the accident. It was rather the occasion of the accident. The cause of the accident was the boy's slip. If the railing had been flat instead of spiked, he might, in the circumstances which he avers, have sustained injury just the same. No doubt the injury would not have been so severe, but that fact cannot affect the legal principle upon which it is sought to make the defenders liable. The accident appears to me to have been a pure mishap, for which no one is in law responsible. It might have happened even if the defenders had provided a nursemaid to look after the children who played in their park.

Now, the doctrine of relevancy is deeply rooted in our law, and if it is to continue to have any operative effect at all, then I think it should apply in this case. If the pursuer is to be held entitled to inquiry here, then—if I may borrow and adapt a historic phrase—we may shut our books on the doctrine of relevancy.

I am of opinion that the judgment of the Sheriff-Substitute should be affirmed, and the appeal dismissed.

LORD ORMDALE and LORD HUNTER were absent.

The Court pronounced this interlocutor—

“ . . . Dismiss the appeal: Affirm the interlocutor of the Sheriff-Substitute appealed against dated 19th June 1923: Of new dismiss the action as laid as irrelevant, and decern. . . . ”

Counsel for the Appellant (Pursuer)—  
Duffes. Agents—W. G. Leechman & Company, Solicitors.

Counsel for the Respondents (Defenders)—  
—D. P. Fleming, K.C.—Keith. Agents—  
Laing & Motherwell, W.S.

## VALUATION APPEAL COURT.

Wednesday, January 23.

(Before Lord Hunter, Lord Sands, and Lord Ashmore.)

ASSESSOR FOR MORAYSHIRE v.  
BRUCE.

*Valuation—Value—Grass Parks—Arable Land Converted into Grass Parks—Valuation as Ordinary Agricultural Land—Farm Valued as a Single Agricultural Subject—“Fair Annual Value.”*

Land which had been let as grass parks, and had been thereafter broken up for a course of cropping, was subsequently again laid out in grass parks in such a way that in the year in question the subjects had come to consist of first, second, and third years' grass and old grass in various proportions. The parks were let for the season at a certain rent per annum. The Valuation Committee valued the whole farm at a sum for which it might be expected to let from year to year as a single agricultural subject. Held on appeal that the Valuation Committee were wrong, and that the value ought to have been assessed at the rents actually received for the grass parks in the condition in which they were when they were let, subject of course to the recognised deductions.

*Duffus v. Assessor for Aberdeenshire* (1919 S.C. 484, 56 S.L.R. 115) followed.

At a meeting of the Valuation Committee of the county of Moray, held at Elgin on 14th September 1923, Major the Honourable Robert Bruce of Dunphail, respondent, appealed against the following entry of the assessor in the valuation roll for the county of Moray for the year 1923-24:—

Description.	Situation.	Proprietor.	Occupier.	Yearly Rent or Value.
Home Farm	Dunphail	Major the Hon. Robert Bruce, per Wm. Munro, Dunphail Estates Office, Glenferness, Nairn	Proprietor	£334

and craved that the valuation of the subjects should be restricted to £186, 18s. 2d.

The Committee having fixed the annual value at the sum of £243, 10s., the assessor obtained a Case for appeal.

The Case stated, *inter alia*—“The following facts were found or held as admitted:—The Home Farm of Dunphail, which extends to 248½ acres, or thereby, was for a number of years prior to 1916 let out in grass parks for the season, the whole subject being entered in the roll each year at a uniform annual valuation of £225. In the year 1916 the farm was broken up for a course of cropping, part of the land being retained in the proprietor's own hands, but the greater part being let to different tenants. Each portion let was separately specified in the valuation roll, with the tenant's name and the rent actually paid. The total valua-