through the fault of the defender—being framed in accordance with the invariable practice of the Court, and it was necessary therefore to prove fault on the defender's part in order to secure a verdict for the pursuer. I told the jury that a proprietor in circumstances such as here occurred was bound to use all reasonable care and precaution in making provision for the protection of the public in passing over that part of his property which consisted of a cellar covered over by a flagstone, and that the absence of such care and precaution would constitute fault within the meaning of the issue, and entitle the pursuer to a verdict, assuming that injury was proved—a matter which was not indeed disputed, though the case was said to be one of gross exaggeration. I understand that to be the law applicable to this class of cases. Neither party's counsel took any objection to it at the time, and if I had to deal with such a case again I should give the same direction to the jury. Proceeding further, I directed the jury that the question whether the defender had failed to exercise due care and precaution was one of fact, depending on the whole circumstances as disclosed in the evidence, and for them to determine. I may say frankly that I pressed upon them two circumstances which weighed in my own mind as deserving their serious consideration, viz.—*first*, that the *locus* of the accident was a populous place in the heart of Glasgow, constantly traversed by the public; and *secondly*, that the flagstone which gave way was not only used by the public passing over it, but that the tenant of the shop in the course of his business was in use to take heavy loads over it, which were sufficient to wear the stone down or to break it if the loads were incautiously taken over it, and I indicated that I thought a jury should exact very great care on the part of a proprietor in such circumstances. But all this did not take from them the question of fact, which was, whether the defender had or had not exercised due care and precaution? I confess that had I been on the jury I should have been inclined to give a contrary verdict, and to find that there had been fault on the defender's part, though at the same time I should have been for awarding a very small amount indeed of damages. But the question now is not what my verdict would have been, and I quite agree in thinking we should not now disturb the verdict which the jury have pronounced. There was evidence of skilled witnesses, who said that in their opinion all ordinary precautions requisite according to previous experience had been used; that there was nothing in the appearance or nature of the roof to lead the defender, or those representing him, to think the stone was not sufficient in strength and sufficiently supported; and that such an accident could not reasonably be anticipated. These considerations no doubt weighed with the jury in arriving at their verdict; and though they differed from the opinion I had formed, the case has been tried, and fairly tried, before them, and I am not disposed to send it to trial a second time. I think it is of great importance that parties when they go before a jury should know that if the case is fully and fairly tried, the Court will not afterwards disturb the jury's verdict as being contrary to evidence on light grounds, and unless it is made apparent that a clear injustice has been done.

The Lords discharged the rule, and of consent applied the verdict of the jury and assoilzied the defender, with expenses.

Counsel for Pursuer—Lord Advocate (Balfour, Q.C.)—M'Kechnie. Agent—R. Ainslie Brown, S.S.C.

Counsel for Defender — Robertson — Lang. Agent—Thomas Carmichael, S.S.C.

Wednesday, October 26.

FIRST DIVISION.

[Sheriff of Lanarkshire.

BROWNS *v.* FULTONS.

Reparation— Damages— Culpa— *Party Liable— Issue—Relevancy.*

In an action for damages against two defenders, a father and son, in respect of personal injuries sustained by the pursuer, who had been knocked down by a horse which belonged to the father, and was being ridden by the son, averments by the pursuer that the said horse was a powerful and spirited one, which the boy was unable to control owing to youth and inexperience, and that it had previously run away with him; that all this was known to both defenders; and that the father "culpably and carelessly authorised or allowed the boy to take it out for exercise" on the day in question, were *held* relevant to ground an issue of damages for the pursuer, and issue adjusted accordingly.

Agnes Sharp or Brown, wife of James Brown, commercial traveller, with consent and concurrence of her husband, and the said James Brown for his own right and interest in the premises, sued David Fulton, engraver to calico printers, Glasgow, personally and as curator and administrator-in-law to his son John Fulton, a minor fourteen years of age, and also the said John Fulton, in the Sheriff Court at Glasgow, for £400 in name of damages in respect of injuries sustained by the female pursuer through a fall occasioned by a horse which belonged to the said David Fulton, and was being at the time ridden by the boy John Fulton.

The pursuers' condescendence, after stating that the horse in question belonged, at the date of the accident after mentioned, to David Fulton, and was "a powerful and spirited animal, and known to him to be such," and that the boy, his son, "was at the date before referred to quite incapable of managing and controlling the said animal, and known to the other defender to be so," narrated that on 6th October 1880, while the pursuers were walking near the Alexandra Park gate in Glasgow, the female pursuer was knocked down by the horse, which was being furiously ridden by the said boy John Fulton, and was seriously injured thereby, in the manner and with the results set forth on record. The pursuer further averred—"(Cond. 7) In consequence of the injuries before referred to,

for which the defenders are responsible, Mrs Brown has suffered much. Her system has sustained a severe shock, and may be permanently affected. The pursuer James Brown has suffered much anxiety, has been put to great trouble and inconvenience, and has expended considerable sums of money in payment of medical outlays and fees; and the defenders are jointly and severally, or severally, liable to the pursuers in reparation and solatium, which they estimate at £400." "(Cond. 8) The said horse was known to both of the defenders as a powerful and spirited animal, but notwithstanding this the defender David Fulton culpably and carelessly authorised or allowed the boy defender to take it out for exercise, or so culpably, negligently, and carelessly kept the said animal, that the boy defender was on the morning in question in charge of the said horse, which he had neither the requisite strength nor experience to manage, being only about fourteen years of age and of slender build. It is believed and averred that the said animal has prior to the morning in question been in charge of the boy defender, when he was likewise unable to govern or control it, which was well known to the defender David Fulton, or ought to have been."

The Sheriff-Substitute (SPENS) having allowed a proof, the pursuer appealed to the Court of Session for jury trial.

On their proposed issue being lodged, counsel were heard in Single Bills on an objection by the defenders to the relevancy of the pursuers' averments.

The defenders argued—No relevant ground of damage to found an issue was set forth on record. There was no averment of "fault" against either of the defenders. As against the father, it was quite insufficient to aver that he culpably authorised or allowed the boy to ride a horse though he knew it to be strong and the boy weak. As against the boy the averment was even weaker—the best of riders might, without "fault" of his, be run away with on horseback, and the averment came to no more than that.

Argued for pursuers—If the horse was a strong one, and the father knew his boy could not control him, he was bound, on the analogy of such cases as *Galloway* v. *King*, June 11, 1872, 10 Macph. 788; *Campbell* v. *Ord & Maddison*, Nov. 5, 1873, 1 R. 149; *King* v. *Pollock*, Oct. 27, 1874, 2 R. 42, to take measures to keep him off the horse.

After a discussion the pursuers amended Cond. 8 so as to read thus:—"The said horse was known to both of the defenders as a powerful and spirited one, but notwithstanding this the defender David Fulton culpably and carelessly authorised or allowed the boy defender to take the horse out for exercise, which he had neither the requisite strength nor experience to manage, being only about fourteen years of age, and of slender build. The said horse had, prior to the morning in question, been in charge of the boy defender, when he was likewise unable to govern or control it, which was well known to the defender David Fulton, or ought to have been."

The issue, as finally approved for the trial of the cause, was as follows:—"Whether on or about 6th October 1880, at or near the Alexandra Park gate, Dennistoun, Glasgow, the female pursuer was knocked down and injured by a horse then belonging to the defender David Fulton, and at the time being ridden by the defender John Fulton, through the fault of the defenders, or either of them, to the loss, injury, and damage of the pursuers?"

Counsel for Pursuers — Dickson. Agent — Donald Mackenzie, W.S.

Counsel for Defenders — Trayner — Lang. Agents—Dove & Lockhart, S.S.C.

Friday, October 28.

FIRST DIVISION.

[Lord Curriehill, Ordinary.

THOMSON (INSPECTOR OF POOR OF RUTHERGLEN) *v.* KIDD (INSPECTOR OF POOR OF ROTHESAY) AND BEATTIE (INSPECTOR OF POOR OF BARONY PARISH, GLASGOW).

*Poor—Settlement—Lunatic—*8 *and* 9 *Vict. c.* 83, *sec.* 76.

Held (following *Crawford* v. *Beattie*, Jan. 25, 1862, 24 D. 357) that a person who had acquired an industrial settlement in a parish, and having become lunatic and a pauper had been relieved there, had lost that settlement by a subsequent absence for more than four years from the parish, during which time he ceased to be a pauper, although he continued to be a lunatic.

John Thomson, Inspector of Poor for the Parish of Rutherglen, raised this action against John Kidd, Inspector of Poor for the Parish of Rothesay, and Peter Beattie, Inspector of Poor for the Barony Parish of Glasgow, to have the said John Kidd ordained to pay him a sum of £45, 15s. 4d., being the balance remaining due of sums expended by pursuer on behalf of a pauper named Robert Wright from 23d October 1879 onwards; or otherwise, and in the event of it being instructed that at and subsequent to the said date the pauper's residential settlement was in Barony parish, to have the defender Beattie ordained to pay the said sum to the pursuer.

The material facts of the case, as stated in a joint-minute of admissions by the parties, were these:—"The pauper Robert Wright was born in the parish of Rothesay in the year 1836. His settlement of birth is in that parish, and there he resided till 1852, when he removed with his parents to the Barony parish. In that parish he resided, with various short absences, till 1st June 1864, when he became insane, and was admitted as a private patient to the Royal Gartnavel Asylum. On 1st September 1864 he became a pauper patient in that asylum, and was supported by the Barony parish till 21st September 1869, when he escaped from the asylum, and his name was removed from its books. On 1st December 1869, being still insane, he was admitted to the Barony Parish Poorhouse, and was maintained in the lunatic wards of that poorhouse till 27th November 1873. At that date he was handed over to the care of his relatives, with whom he