guilty of contributory negligence in the circumstances of that case. I think very much the same consideration applies here, and I accordingly think the verdict was one which the jury were entitled to give, although it may well be that a judge might not have reached the same conclusion as the jury upon the whole evidence as led.

With regard to the direction, although I had not the case of *Hogg* v. *Campbell* (3 Macph. 1018) prominently before me, it was really upon the views expressed by Lord Deas that I refused to give the direction. In the first place I thought it was a statement of an abstract question of law which it might be misleading for me to give to the jury at the conclusion of my charge. I had told the jury that in my view the Magistrates had no special duty to the blind in this sense that they were not bound to make ordinary street structures less dangerous to the blind than to other people. They did not need to pad the lamp-posts for instance because blind people used the streets. I do not think the facts raised that question because the primary question was—Was there negligence to the public as a whole? not whether special precautions should be taken for persons who were blind or were otherwise deficient in normal faculties. And then I further thought that the proposition was too absolute and too wide, and that while it might be perfectly sound under certain conditions, such as those I have figured, it could not be laid down as a general proposition applicable to all circumstances. The streets of any city are open to be used by persons of more or less defective eyesight, hearing, and capacity, and I think, as a general proposition in law, that the Magistrates must take note of that fact, and if they are guilty of negligence they cannot escape the consequences by saying that a more vigilant person than the one who was injured would in all probability have escaped injury. The first question is —Are they guilty of negligence? and then the subsidiary question is—Was the person injured guilty of contributory negligence? and I think it clear that the pursuer was not. On these grounds, substantially, I refused the direction, which in certain circumstances, different from those which I had before me, might embody a perfectly correct proposition in law, but as I thought was not applicable to the particular circumstances before me.

The Court discharged the rule, disallowed the exceptions, and of consent applied the verdict and granted decree for £200.

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

Counsel for the Defenders—M'Clure, K.C. —Gilchrist. Agents—Campbell & Smith S.S.C.

Friday, May 28.

SECOND DIVISION.

M'CALL & STEPHEN, LIMITED (LIQUIDATOR OF) AND OTHERS, PETITIONERS.

Company — Winding-up — Dissolution — Conveyance of Heritage after Dissolution —Petition to Declare Dissolution Void— Necessity for Remit to Man of Business— Companies (Consolidation) Act 1908 (8 *Edw. VII., cap.* 69), *sec.* 223.

Within two years of its dissolution the liquidator of a limited company presented a petition in which he craved the Court in terms of section 223 of the Companies (Consolidation) Act 1908 to declare the dissolution void, so as to enable him to grant a title to certain heritage belonging to the company which had been sold subsequent to its dissolution. The Court *did not require* a remit to a man of business, and *granted* decree as craved.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 8), section 223, enacts—"(1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved."

Findley Caldwell Ker, liquidator of M'Call & Stephen, Limited, John Stewart Roberton, as trustee of the late Hugh Wilson, engraver and lithographer, Glasgow, and the Clydesdale Bank, Limited, having their registered office at 30 Saint Vincent Place, Glasgow, *petitioners*, presented a petition for an order declaring the dissolution of the company to have been void.

The petition stated, *inter alia*—"That M'Call & Stephen, Limited, incorporated under the Companies Acts 1862 to 1906, biscuit manufacturers, Adelphi Biscuit Factory, Adelphi Street, Glasgow, went into voluntary liquidation on or about 22nd December 1911. That the petitioner the said Findley Caldwell Ker was appointed liquidator at an extraordinary meeting of said company held at Glasgow on 22nd December 1911. That part of the assets of the said company consisted of the heritable subjects known as the Adelphi Biscuit Factory. That the petitioner the said John Stewart Roberton is sole surviving assumed trustee of the late Hugh Wilson, engraver and lithographer, Glasgow, under his trust-disposition and settlement dated 2nd March 1858, and with codicil thereto registered in the Books of Council and Session 13th July 1869. That the petitioner the said John Stewart Roberton as trustee foresaid is vest in a bond and disposition in security for £4000 over said heritable subjects. That the petitioners the said Clydesdale Bank, Limited, are vested in a bond of cash-credit and

disposition in security for £7000 over said heritable subjects. That the petitioner the said Findley Caldwell Ker being *in titulo* to grant a title to said security subjects, acting with consent of the said heritable creditors, exposed the said subjects to public roup within the Faculty Hall on 17th June 1914 at the upset price of £5000, under and in virtue of certain articles and conditions of roup. There was no offerer for said subjects, and the said exposure was adjourned. That the petitioner the said Findley Caldwell Ker thereafter, with consent of said security holders, let the said subjects on leases expiring in the year 1925. . . . That the petitioner the said Findley Caldwell Ker, in virtue of [section 195 of the Companies (Consolidation) Act 1908, providing for certain procedure to be followed in the winding up and dissolution], made up an account of the winding-up of the said liquidation, and laid said account before a general meeting of the shareholders of the said M'Call & Stephen, Limited, held at Glasgow on or about 14th January 1919. He also made a return to the Registrar of Companies of the holding of said meeting and of its date. Said return was forthwith registered by the said registrar. That the petitioner the said Findley Caldwell Ker, at the request and with the consent of the said security holders, re-exposed the said security subjects to public roup and sale within the Faculty Hall, Glasgow, aforesaid on 2nd July 1919 at the upset price of £5500 sterling. The said subjects were sold at the price of £11,260. This sum even with the accruing rents under the existing leases will not be sufficient to pay off entirely the company's indebtedness to the petitioners John Stewart Roberton and the Clydesdale Bank, Limited. That the purchasers of said subjects refused to accept a conveyance thereto by the petitioner the said Findley Caldwell Ker, with consent of the said security holders the petitioners the said John Stewart Roberton, as trustee foresaid, and the said Clydesdale Bank, Limited, in respect that in accordance with the registration of the foresaid return the said company of M'Call & Stephen, Limited, became dissolved on or about the 15th day of April 1919."

No answers were lodged.

Argued for the petitioners—The Court had express authority under section 223 of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69)—*Collins Brothers & Company, Limited*, 1916 S.C. 620, 43 S.L.R. 454. No remit to a man of business was necessary, and the additional expense of such remit should if possible be avoided.

The Court granted the prayer of the petition.

Counsel for the Petitioners—D. A. Guild. Agents—Ronald & Ritchie, W.S.

Saturday, May 22.

FIRST DIVISION.

[Lord Cullen, Ordinary.

GREENOCK AND PORT-GLASGOW TRAMWAYS COMPANY *v.* GREENOCK CORPORATION.

Contract—Emergency Legislation—Suspension of Contract—Clauses of Lease Fixing Maxima for Fares and Conditions of Purchase of Tramway Undertaking—Courts (Emergency Powers) Act 1919 (9 *and* 10 *Geo. V, cap.* 64), *sec.* 1 (1).

A company leased tramways from a burgh corporation. The lease contained clauses prescribing maximum fares, and gave the corporation an option to purchase the whole undertaking of the company within the burgh at a break in the lease on basis of its value as a going concern. The company owing to the conditions resulting from the war could not carry on their undertaking so long as they were limited to the maximum fares in the lease except at a loss, and they presented an application under the Act of 1919 to have the clauses fixing maxima suspended or annulled. The Court of consent of parties *suspended* until further orders the clauses fixing maximum fares upon condition (1) that certain maxima proposed by the company should not be exceeded, and (2) that the suspension should not be founded on in any proceedings for taking over the undertaking unless with the sanction and authority of the Court upon application made thereto, and on such terms and conditions as it might think fit.

The Courts (Emergency Powers) Act 1919 (9 and 10 Geo. V, cap. 64) enacts—Section 1—"(1) Section one of the Courts (Emergency Powers) Act 1917, which confers on the Court power to suspend and annul certain contracts shall have effect as if—(*a*) For subsection (1) thereof the following sub-section were substituted:—Where, upon an application by any party to a contract (including a contract confirmed by Act of Parliament or Order having the force of an Act) entered into before the first day of January Nineteen hundred and seventeen, the Court is satisfied that, owing to . . ., the alteration of trade conditions, occasioned by the present war, the contract cannot be enforced according to its terms without serious hardship, the Court may, after considering all the circumstances of the case and the position of all the parties to the contract and any offer which may have been made by any party for a variation of the contract, suspend or annul, or with the consent of the parties amend as from such date as the Court may think fit . . . the contract or any term thereof or any rights arising thereunder on such conditions (if any) as the Court may think fit. . . ."

The Greenock and Port Glasgow Tramways Company, *applicants*, brought an application under the Courts (Emergency Powers) Act 1919 (9 and 10 Geo. V, cap. 64) craving the Court to make an order sus-