SUMMER SESSION, 1921.

COURT OF SESSION.

Thursday, May 12.

FIRST DIVISION.

[Lord Ashmore and a Jury.

BUCHANAN *v.* GLASGOW CORPORATION.

(Reported *ante* June 6, 1919, 56 S.L.R. 469, and 1919 S.C. 515).

Reparation — Negligence — Contributory Negligence—Tramway—Passenger Leaving Seat and Standing on Platform of Car in Motion—Bill of Exceptions.

A passenger on a tramway car was standing on the rear platform waiting to alight at a stopping-place. The car did not stop, and the passenger was pushed off the platform by a rush of people to board the car. In an action of damages by the passenger against the corporation which ran the cars the defenders requested the presiding judge to direct the jury "that as the pursuer admits that she left her seat and stood on the platform while the car was in motion, this action on her part was a contributory cause of her injuries, and the defenders were entitled to the verdict of the jury." His Lordship having refused the direction the defenders brought a bill of exceptions. *Held* that the direction tendered had been rightly refused.

Opinion of Lord Mackenzie in *Watt* v. *Glasgow Corporation*, 1919 S.C. 300, 56 S.L.R. 225, "that contributory negligence can only be judged of with reference to the particular facts of the case, and that it cannot *ab ante* be laid down as a proposition of the common law of Scotland that a passenger who is on the platform of a tramway car in motion is there at his or her peril," *approved.*

This was a bill of exceptions for the Corporation of the City of Glasgow, *defenders*, in an action against them at the instance of Mrs Martha Buchanan, 10 High Street, Renfrew, *pursuer*, in which she claimed £250 damages for personal injuries, sustained, as she alleged, through the fault of the defenders.

The case was tried on 7th December 1920 before Lord Ashmore and a jury. The jury having returned an unanimous verdict for the pursuer, the defenders on 7th January 1921 brought the present bill of exceptions.

In the bill the defenders stated—"The pursuer, *inter alia*, deponed that she had travelled on the tramway route from Renfrew to Shieldhall daily for a number of years; that prior to the day of the accident the car had invariably stopped at the station; that she was in the habit of going from her seat on to the rear platform when the car was slowing down to stop at the station so as to be ready to get off, but that she never left the platform or tried to get off until the car had come to a standstill; that on the day of the accident she knew there would be a crowd at Shieldhall station and thought it likely that men would jump on the car before it stopped at the station; that before reaching the station she saw a number of men waiting for the car; that when the car was approaching the station it slowed down a bit and she expecting it to stop went as usual from her seat out on to the platform and stood holding the rod; that the car instead of stopping at the station put on speed and went on past the station at increasing speed; that when the men waiting at the station saw the car go past they rushed after it swinging on to it; that they made such a rush that she had no chance; that she knew that it was her duty to remain seated until the car was stopped; that she did not discharge that duty because she thought the car was slowing down, and that she knew she ought not to get up though it was slowing down; she said, however, that the conductors had always told the passengers on that car when the car was coming to the station to get ready to go off at the Shieldhall station when the car stopped, and accordingly day after day when the car was slowing down to stop she rose and went on the platform and waited till it stopped; that the conductor was always on the platform at Shieldhall station prior to the day of the accident, but that on that day there was a new conductor and he was not on the platform. . . ."

The bill further stated—"On the conclusion of the evidence adduced for the pursuer in the cause, the Lord Advocate, as counsel for the defenders, stated that he did not propose to lead any evidence, that he proposed only to raise questions of law, and that in these circumstances he did not propose to address the jury but would confine his observations to the Court. He then moved the Court to give the following two rulings and to direct the jury to enter a formal verdict in accordance with these rulings and directions, viz., (1) . . . . and (2) That as the pursuer admits that she left her seat and stood on the platform while the car was in motion, this action on her part was a contributory cause of her injuries and the defenders were entitled to the verdict of the jury. Counsel for the pursuer having been heard preliminary upon the Lord Advocate's motion the presiding judge reserved his direction to the jury, and counsel for the pursuer then addressed the jury on the whole case. And whereas the presiding judge proceeded to charge the jury, and after reading to the jury the issue in the cause, directed them as follows, viz., 'Gentlemen, you are the masters of the situation in regard to the question of fault mentioned in the issue.' The presiding judge then reviewed the evidence, explaining, *inter alia*, that if the jury came to the conclusion on the evidence that the pursuer was guilty of contributory negligence, the verdict should be for the defenders. The defenders' counsel excepted to the direction above mentioned as inapplicable to the case. The presiding judge thereafter refused to give either of the rulings asked for by the Lord Advocate, who respectfully excepted to said refusal."

At the hearing on the bill counsel for the defenders, in support of the second ruling asked for, argued — The pursuer admitted that she knew that it was likely that men would jump on to the car while it was moving, and that it was her duty to remain seated until the car was stopped. In leaving her seat and going on to the platform while the car was moving the pursuer did so at her own risk. The practice of going on to the platform before the car stopped did not constitute an invitation—*M'Skerry* v. *Glasgow Corporation*, 1917 S.C. 156, 54 S.L.R. 178. The case of *Watt* v. *Corporation of Glasgow*, 1919 S.C. 300, 56 S.L.R. 225, was decided on different grounds, but the opinion of the Lord President in that case supported the defenders' contention.

Counsel for the pursuer were not called upon.

LORD PRESIDENT—[*After dealing with the first direction which was asked*]—With regard to the second of the two directions, which is that the action of the pursuer in leaving her seat and standing on the platform while the car was in motion was "a contributory cause of her injuries," I think it is enough to read and adopt a passage from Lord Mackenzie's opinion in the case of *Watt* v. *Glasgow Corporation* (1919 S.C. 300 at p. 310, 56 S.L.R. 225, at p. 236) with which I entirely concur—"It appears to me that contributory negligence can only be judged of with reference to the particular facts of each case, and that it cannot *ab ante* be laid down as a proposition of the common law of Scotland that a passenger who is upon the platform of a tramway car in motion is there at his or her peril."

Accordingly I do not think this bill of exceptions can be sustained with regard to either of the two directions asked. Nor do I think it is possible to attack the proceedings before the jury on the other and general ground suggested, namely, that the case was left for the jury's decision too broadly and without sufficiently specific directions.

LORDS MACKENZIE, SKERRINGTON, and CULLEN concurred.

LORD ASHMORE—I also agree. I would like to explain that at the conclusion of the pursuer's evidence there was no motion made to withdraw the case from the jury. I pointed that out at the time, having in view the case of *M'Caffery*, 1910 S.C. 797, 47 S.L.R. 691.

With regard to the rulings which I was asked to give, my opinion at the time, since confirmed, was that to have given these two rulings would have been to withdraw from the jury what it was really their function to dispose of. In short, the questions for determination were questions of fact. I fully explained to the jury the circumstances and in particular the bearing of the law of contributory negligence, and that is stated in the bill of exceptions.

The Court refused the bill.

Counsel for the Pursuer—Graham Robertson—Macgregor Mitchell. Agents—Paterson & Salmon, S.S.C.

Counsel for the Defenders — The Lord Advocate (Morison, K.C.)—Gentles. Agents —Simpson & Marwick, W.S.

Friday, May 13.

SECOND DIVISION.

[Sheriff Court at Dumfries.

REID *v.* DOBIE.

Succession—Fee or Liferent—Destination—"After him"—Executors (Scotland) Act 1900 (63 *and* 64 *Vict. cap.* 55), *sec.* 3.

A testatrix left a holograph will in the following terms, viz.—"All I possess I leave to my husband A, and after him to my sister B." In a competition between A and B for the office of executor, *held* that A was entitled to the appointment in respect that under the will he took a full fee, not limited to a liferent.

The Executors (Scotland) Act 1900 (63 and 64 Vict. cap. 55) enacts—Section 3—"Where a testator has not appointed any person to act as his executor, or failing any person so appointed . . . any general disponee or universal legatory or residuary legatee