upon the footing that they had parted with their money before the race in respect of which he undertook to pay them something more than their money if they were successful in naming the winner.

Under those circumstances I see no reason for holding that the offence was not committed, as I entirely agree with your Lordship that there is no warrant in the terms of section 1 for holding that it is essential for the committal of the offence that the money should be actually received in the house carried on as the betting-house before the race is run.

The Court answered the question of law in the affirmative.

Counsel for the Appellants — Dean of Faculty (Sandeman, K.C.)—Gibson. Agents —Lindsay, Cook, & Dickson, S.S.C.

Counsel for the Respondents — T. G. Robertson, K.C.—Keith. Agent—A. Grierson, S.S.C.

COURT OF SESSION.

Tuesday, November 14.

FIRST DIVISION.

[Lord Anderson, Ordinary.

GORE *v.* WESTFIELD AUTOCAR COMPANY, LIMITED.

(Reported *ante* 58 S.L.R. 488.)

Process — Poor's Roll — Reclaiming Note against Advice of Senior and Junior Counsel—No Probabilis Causa—Removal from Poor's Roll.

A litigant *in forma pauperis* presented a reclaiming note contrary to the advice of his counsel, who had refused to sign it, and also against the advice of senior counsel appointed by the Dean of Faculty to consider whether a reclaiming note should be presented. The Court having as a special indulgence allowed the note to be received, thereafter, on the application of the defenders, remitted the case of new to the reporters on *probabilis causa litigandi*. The reporters having stated that in their opinion the case presented no probability of success whatever, the defenders presented a note craving the Court to remove the pursuer from the poor's roll. The Court *ordered* his removal from the roll.

Expenses—Caution for Expenses—Poor's Roll—Reclaiming Note Presented against Advice of Senior and Junior Counsel and after Unfavourable Report by Reporters on Probabilis Causa Litigandi.

Circumstances in which the Court, whilst removing a litigant, pursuer in an action of damages, from the poor's roll, *refused* to ordain him to find caution for expenses as a condition-precedent to proceeding with the reclaiming note.

Alexander Gore, 23 Albion Road, Edinburgh, *pursuer*, raised an action for breach of contract against the Westfield Autocar Company, Limited, Edinburgh, *defenders*.

The pursuer having been admitted to the poor's roll, proof was led, and on 24th May 1921 the Lord Ordinary (ANDERSON) assoilzied the defenders.

Contrary to the advice of his senior and junior counsel and agents, the pursuer presented a reclaiming note, signed by himself and not by counsel, which on 15th June 1921 the Court allowed to be received as a special indulgence in the particular circumstances.

On 12th January 1922 the Court, on the defenders' motion, remitted the case to the reporters *probabilis causa*, who on 2nd November 1922 reported that in their opinion the pursuer did not any longer have a *probabilis causa litigandi*, and that he accordingly should not continue to have the benefit of the poor's roll.

On 14th November 1922 the defenders presented a note, in which they craved the Court to order the pursuer's removal from the poor's roll and to ordain him to find caution for the expenses of the cause as a condition of proceeding with the reclaiming note, and parties were heard in Single Bills of that date.

Counsel for the defenders cited the following cases:—*M'Intosh* v. *M'Indoe*, (1821) 1 S. 218; *A B* v. *Fraser*, (1836) 14 S. 1114; *Robertson* v. *Meikle*, (1890) 28 S.L.R. 18; *Buchanan* v. *Ballantine*, 1911 S.C. 1368, 48 S.L.R. 111.

LORD PRESIDENT — This case presents features altogether unusual and exceptional. The pursuer obtained the benefits of the poor's roll, but on more occasions than one the counsel and agents who were appointed for the conduct of his case have refused to go on with it. The present position is that there has been a proof before the Lord Ordinary and a judgment against which the pursuer has reclaimed, contrary to an opinion obtained from senior counsel appointed by the Dean of Faculty to consider the question whether a reclaiming note should be presented. This opinion only confirmed the advice already given to the pursuer by the counsel who had been supplied to him by the Court and who accordingly refused to sign the reclaiming note. These are certainly very unusual circumstances, and when they were brought to our notice some little time ago we thought it right before doing anything to remit anew to the reporters on *probabilis causa litigandi* to report on the present position of the case. A remit in circumstances similar, but not of course the same, is specially provided for in the Codifying Act of Sederunt in the case of a cause depending before a Lord Ordinary in the Outer House, but, of course, the powers of the Division, whether expressly defined in the Act of Sederunt or not, include the right to make such a remit. The reporters have reported, and their report is to the same effect as the opinions which had been formed by those to whom the conduct of the case was entrusted from time to time, and to the same

effect as the opinion of the senior counsel who was appointed by the Dean of Faculty, namely, that the case presents no probability of success whatever. In these circumstances the defenders in the action have moved for the removal of the pursuer from the poor's roll, and also for an order upon him that he should find caution for expenses as a condition of proceeding with the reclaiming note.

I am clear that in the particular circumstances of this case it would be wrong to allow the pursuer to remain on the poor's roll. On the other hand, I do not think that the circumstances would justify us in disabling him, if he chooses, from going on with his litigation by imposing a condition that he should find caution. I think therefore that he should be removed from the poor's roll, but that no order for caution should be made.

LORD SKERRINGTON and LORD CULLEN concurred.

The Court found and declared that the pursuer had forfeited the benefits of the poor's roll, and ordered him to be removed from the poor's roll, and *quoad ultra* refused the prayer of the note,

Counsel for Pursuer and Reclaimer—Party. Agent—Party.

Counsel for Defenders and Respondents—Garrett. Agents—T. & W. Liddle, Maclagan, & Cameron, W.S.

Friday, November 17.

SECOND DIVISION.

[Lord Blackburn and a Jury.

MADDEN *v.* GLASGOW CORPORATION.

Process — Jury Trial — New Trial — One Farthing Damages—Application by Pursuer for New Trial — Jury Trials (Scotland) Act 1815 (55 *Geo. III, cap.* 42), *sec.* 6—*Jury Trials Amendment (Scotland) Act* 1910 (1 *Geo. V, cap* 31), *sec.* 2.

A woman who had been injured by putting her foot in a hole in a Glasgow street brought an action of damages against the Corporation, in which she obtained a verdict and was awarded one farthing damages. It was clear that if she was entitled to a verdict—which on the evidence she was not, as the defenders were not in fault—she had suffered damage to the extent of at least £8 or £9. In an application at her instance for a new trial on the ground that the damages were insufficient, the defenders maintained that the verdict should stand, or that, alternatively, it should be entered for the defenders in terms of the Jury Trials Amendment (Scotland) Act 1910. *Held* that it was not "essential to the justice of the case" in the sense of the Jury Trials (Scotland) Act 1815 that a new trial should be granted, and rule discharged.

Observations on the competency of entering such a verdict for the defenders under the Jury Trials Amendment (Scotland) Act 1910.

Mrs Elizabeth Madden, Glasgow, *pursuer*, brought an action against the Corporation of the City of Glasgow, *defenders*, in which she claimed £300 in name of damages for personal injuries. An issue was allowed, and the case was heard before Lord Blackburn with a jury, and a verdict was returned awarding the pursuer one farthing damages. The pursuer applied for a new trial upon the ground that the damages awarded were insufficient, and a rule was granted.

At the hearing on the rule, argued for defenders—As the result of the verdict was really in the defenders' favour, the verdict should either be allowed to stand or be entered for the defenders under the Jury Trials Amendment (Scotland) Act 1910 (1 Geo. V, cap. 31), sec. 2. In special circumstances too small an award had been held a sufficient ground for granting a new trial under the Jury Trials (Scotland) Act 1815 (55 Geo. III, cap. 42), sec. 6, on the ground that it was essential to the justice of the case—*Black* v. *Croall*, 1854, 16 D. 431; *Reid* v. *Morton*, 1902, 4 F. 438, *per* Lord Kinnear at p. 441, 39 S.L.R. 313. The "justice of the case," however, involved the question of proof of fault, and if this test were applied it was clear on the evidence that no fault was proved, and the verdict should therefore be allowed to stand. If the defenders were satisfied, the Court should not interfere on the ground of the apparent perversity of the result. Further, under the Jury Trials Amendment (Scotland) Act 1910 the defenders were entitled to have the verdict entered in their favour. The words "contrary to evidence" in that Act must be construed as embracing challenge on questions of amount. In any event the verdict was based on an assertion of liability, for which on evidence there was no ground.

Argued for the pursuer—The defenders' position was illogical. They were asking the Court to sustain a verdict on the ground that it should be set aside. The proper procedure in the circumstances was to have a new trial — C.A.S., F, iii, 5. The Court could not consider the question of fault, but must limit itself to the question whether the damages were sufficient. If fault were considered, then it must be held to have been established. If a new trial were not granted, it was not competent under the Jury Trials Amendment (Scotland) Act 1910 to enter the verdict for the defenders.

LORD HUNTER—In this case the pursuer was injured by putting her foot into a hole in the pavement in one of the streets within the jurisdiction of the defenders. She brought an action of damages against them on the ground that her accident was caused by their fault, and she averred several grounds of fault. The street was at the time shut to vehicular traffic because there was a fire in the neighbourhood, and a hydrant in the hole into which she put her foot was being used. She alleged that the defenders were in fault because they had not taken certain precautions, viz., that they did not place