send the case to the Summar Roll. The pursuers objected to the competency of the appeal on the ground that the appeal was really taken for the purpose of obtaining the judgment of the Court on the relevancy of the action, the case being quite unfitted for trial by jury, and founded on sec. 24 of the Sheriff Court Act of 1853.

Authority—*Shirra* v. *Robertson*, June 7, 1873, 11 Macph. 660.

The Court *held* the appeal competent, and sent the case to the Summar Roll.

Counsel for the Pursuer and Respondent—A. S. D. Thomson. Agent—David Turnbull, W.S.

Counsel for the Defender and Appellant—Macfarlane. Agents—Carment, Wedderburn, & Watson, W.S.

Wednesday, May 28.

SECOND DIVISION.

[Sheriff Court of Aberdeen.

ANNANDS *v.* ABERDEEN DISTRICT TRAMWAYS COMPANY.

Reparation—Person Injured by Tramway Car—Negligence.

A woman who was travelling in a tramway car placed a basket containing clothes upon the front platform of the car, as she was allowed to do by the regulations of the tramway company. On arriving at her destination, she got out and went to the front of the car, but while she was removing her basket the car was started, with the result that she was knocked down and seriously injured.

In an action by her against the tramway company, *held* that the defenders were liable in damages in respect that the accident was caused by the negligence of their servants.

Upon Monday 10th June 1889 Mrs Annand, a laundress, had occasion to travel upon one of the tramway cars of the Aberdeen District Tramways Company. She had with her a basket of clothes which she placed upon the front or driver's platform of the car in terms of article 12 of the company's byelaws and regulations. She then got into the car. Upon reaching her destination she alighted and went to the front of the car, but while she was in the act of stretching out her hand to pull the basket off the platform, the starting whistle sounded, and as the car was moved forward it struck her, knocked her down, and inflicted severe injuries upon her.

This action was raised by Mrs Annands and her husband against the Tramway Company for payment of £500 as damages for the injuries she had sustained. The pursuers averred that the car was started "by or through the fault, culpable negligence, and gross carelessness of the conductor and driver of the car."

After a proof, the result of which sufficiently appears from the note of the Sheriff-Substitute and the opinions of the Judges, the Sheriff-Substitute (DOVE WILSON) on 27th December pronounced this interlocutor—"Having considered the cause, finds that the pursuer was injured through the negligence of the defenders' servants; assesses the damages at £200 sterling, and decerns for that sum; finds the pursuer entitled to expenses, &c.

"*Note.*—This is a very narrow case upon the evidence, the accident having happened within a very brief time, and the witnesses to it being very few. This much is clear, namely—that the pursuer, while engaged in removing her basket from the defenders' vehicle, was knocked over by it, and very seriously injured. There is no evidence that she acted improperly in trying to remove her basket. No doubt she was removing it while the vehicle was moving, but she had reason to believe that the vehicle would stop again to let her get it, because after the vehicle had stopped to allow, among other purposes, her to get down, she called out loudly to those in charge to stop to let her get her basket when she saw the vehicle moving off again before giving her time to remove it. If she acted in any way indiscreetly, she cannot be blamed, as she was doubtless alarmed at the prospect of losing her basket, and had to act on the spur of the moment. On the other hand, if the defenders are to carry articles of luggage, as they are willing to do, it is clear that they must give the passengers time to remove them; and I think that when the pursuer called out, either the defenders' servant, who was at the rear of the car at the time, or the driver in front, should have heard and attended to her; and it is difficult to avoid the suspicion that the accident happened because those in charge thought that, although the vehicle was not at rest, the pursuer might safely enough remove her basket, as a younger person would easily enough have done. Be this, however, as it may, the fact remains that the defenders' servants ran down a person who has been able to show that she was not to blame, and that they have been unable to show that they were not to blame. In the circumstances, I think it was for them in a civil claim to make out that the injury they undoubtedly did was a thing which they could not avoid, and I think they have failed in doing so. As the pursuer has unfortunately suffered very serious injuries, which will affect her for life, the damages, if they are to be given at all, are moderately fixed at the amount stated in the judgment."

The defenders appealed, and argued—The pursuer was herself to blame. If she wanted to get her basket off the front platform she ought to have informed the officials in charge of the car, and they would have seen that she was not injured in doing so, but she did not. It was impossible for the driver to see her, because the stair to the top was built in such a way as to prevent him seeing anyone who came on that side of the car. The conductor was

on the rear platform, and therefore could not see where the pursuer was. There was therefore no fault on the part of the officials of the company, who therefore were not liable in damages to the pursuer.

Counsel for the respondents was not called upon.

At advising—

LORD JUSTICE-CLERK—This case is undoubtedly a narrow one, and I should not have been surprised had the Sheriff-Substitute come to the conclusion that the pursuer had failed to prove fault on the part of the Tramway Company. He has, however, come to be of opinion that the pursuer has proved her case, and on consideration of the evidence I am not able to say that he was wrong in doing so.

It appears to be the practice in Aberdeen for any person who makes use of the tramways there, to place any bulky article he may have with him on the platform in front of the car and in charge of the driver. If the Tramway Company sanction this practice, it is plainly the duty of the driver to deliver the article to the passenger, or, at all events, when the car stops, to allow the passenger an opportunity to take away his parcel. It is said that the construction of the car makes it impossible for the driver to see a passenger coming forward for this purpose. I think, however, it is only reasonable that the driver should be on the out-look in order that he may allow the passenger to remove his parcel before the car is started again on its journey. The evidence of the pursuer herself is to the effect that while she was in front of the car for the purpose of removing her basket, and was stretching out her hand to seize it, the car was put in motion. It is plain that if the driver had been looking out, as I hold he was bound to do, he would not have permitted his horses to start. Unfortunately we can get no explanation of the matter from the driver. This is not the fault of the defenders, as the driver has absconded, having committed some offence. It is rather their misfortune. We have then absolutely uncontradicted the evidence of the pursuer herself, who depones as to the position of the basket, and to its being taken over by the driver, and her word even is corroborated by independent witnesses.

As I said before, the case is narrow, but I do not see my way to disagree with the view taken of it by the Sheriff-Substitute.

LORD YOUNG—I am of the same opinion, and I only wish to say that I think this is one of those cases which ought to have had an end in the Sheriff Court. The case has been carefully and intelligently considered by the Sheriff-Substitute, who was in this case one of the men best qualified to judge in such a case, and who I am sorry to say in the interests of the public, whom he served so long, has now—no doubt for good reasons—retired from the bench. He says that he thinks the case a narrow one, and the case being really a very short one he states it quite satisfactorily in his brief note.

There is no question of law involved at all. The question is, whether the driver of this tramway car started it too suddenly, or whether there was rashness in this old woman rushing forward to seize her basket when the tramway car was in motion? The whole question is, whether the accident was due to the rashness of the driver on the one hand, or of this old woman on the other. In all reason I think that this case should have ended in the Sheriff Court. The Sheriff heard the witnesses, considered the question, and gave his judgment upon it, and it would take a great deal to make this Court interfere with the judgment of the Sheriff-Substitute in a case of this kind.

There is one other question: the damages given—£200—no doubt are large for a case of this kind, but in his note the Sheriff-Substitute shows that he was quite aware he was giving a comparatively large sum, and he gives his reasons for it, and when I read the account which the pursuer herself gives of the effects of this accident on her I cannot say that I think the damages excessive.

LORD RUTHERFURD CLARK—I think this is a narrow case, but I do not differ.

LORD LEE concurred.

The Court pronounced this interlocutor:—

"Find that the pursuer was injured through the negligence of the defenders' servants: Therefore dismiss the appeal, and affirm the judgment of the Sheriff-Substitute appealed against: Of new assess the damages at £200 sterling," &c.

Counsel for the Appellants—Ure. Agents—Macpherson & Mackay, W.S.

Counsel for the Respondents — Watt. Agent—Andrew Urquhart, S.S.C.

Friday, May 30.

SECOND DIVISION.

[Sheriff of Lanarkshire.

MURRAY *v.* MERRY & CUNINGHAME.

Reparation—Master and Servant—Fencing a Shaft—Reasonable Care — Unforeseen Accident.

A shaft above ground, 50 feet high, up and down which hutches with ironstone were hoisted on cages, was fenced from the top to within 10 or 12 feet of the bottom. A piece of ironstone fell from a full hutch at the top of the shaft, and in some unexplained way struck and fatally injured a workman, who was removing an empty hutch at the bottom, but who was standing outside the shaft.

In an action by this workman's widow against his employers, the owners of the shaft, *held* that the defenders were not liable in damages, as it was proved that the shaft was fenced in the usual manner, and there was no evidence to