been asked, even within six months of the last ordinary step of procedure, to ordain the Land Court to pronounce immediate judgment, and it would also follow that the Land Court would have been bound to state a special case asking whether, whatever the circumstances might be, they were not bound at once to pronounce judgment. I cannot accept the proprietor's distinction between what he calls "during the stage of procedure" and "after the stage of procedure." Till judgment is pronounced, the case is still proceeding. In this case the Court could, for instance, have ordered a re-hearing.

But it was said that the order of the Land Court, whatever its terms, looking to the first sentence in the note, is equivalent to a refusal to pronounce judgment until the conclusion of the war. I doubt the proposal to construe an unambiguous order by reference to the terms of a note. But if this be competent, the last sentence in the note, as well as reference throughout to "the present time," shows that the first sentence proceeds on the assumption of no change in circumstances.

The question of the wisdom or fairness of the Land Court's order seems to me irrelevant. If it were relevant, there are no materials before us on which to form any reliable opinion. The course taken has been resolved on in the public interest, which is not necessarily the same thing as the interest of the Board. The question whether the chance of the expenditure already incurred turning out ultimately remunerative is such as to justify the course taken, and the question whether the order is or will be, on the whole, in the proprietor's interest, or if not, to what extent he will suffer by it—these questions depend on local conditions, of which I only know, as at one time Sheriff of the county, that they are very special, and that they are capable of ascertainment only on the spot.

I am therefore of opinion that both questions should be answered in the negative.

LORD SKERRINGTON—If this had been an ordinary litigation raising a disputed question of civil right, I should have thought that after the case was ripe for judgment it was beyond the power of any Court to sist process for no other reason except that one of the litigants found it inconvenient to proceed with the litigation. In view, however, of the fact, that the application by the Board of Agriculture to the Land Court involved the exercise by the Court of a jurisdiction which in this particular case was administrative and discretionary rather than judicial, I should have had difficulty in reaching the conclusion that the Court had no power to grant the sist of process moved for by the Board of Agriculture, had it not been for a consideration which was not referred to in the argument addressed to us, but which seems to me to be conclusive. Section 35 of the Small Landholders (Scotland) Act 1911 imposes upon landlords, without any compensation, a serious disability, which endures so long as a scheme for the compulsory constitution of small holdings is under consideration, because it empowers the Land Court to veto during that period the constitution of small holdings outside of the Act. The right thus expressly conferred upon the Land Court implies, in my opinion, a duty on the part of that Court not to delay giving its judgment beyond the time necessary for inspecting the subjects, hearing the evidence, and coming to a decision upon the various matters enumerated in section 7 (11) of the statute. It seems to me to be inconceivable that Parliament intended to empower the Land Court to prolong indefinitely the duration of its statutory power to interfere with a landlord in the lawful administration of his property. Accordingly I think that the two questions of law submitted in the Special Case ought to be answered in the affirmative.

The Court, by a majority of four to three, answered the questions in the negative.

Counsel for the Applicants—W. T. Watson. Agent—Sir Henry Cook, W.S.

Counsel for the Respondent—Hamilton. Agents—Skene, Edwards, & Garson, W.S.

Saturday, December 16.

SECOND DIVISION.

LAW *v.* CORPORATION OF GLASGOW.

Reparation—Road—Burgh—Defective Condition of Roadway between Tramway Line and Footpath—Accident to Foot-Passenger Alighting from Tramway—Liability of Local Authority—Relevancy of Averment.

A lady brought an action of damages for personal injury against a burgh on averment that the surface of a road, and particularly that part of it which was opposite a certain tramway stopping-place, had fallen into a state of disrepair; that in alighting from a tramway car at this point she slipped into a hollow in the roadway about two inches deep, and thereby sustained injuries to foot and ankle. *Held* that sufficient facts had been relevantly set forth to warrant inquiry.

Margaret Gibson Law, 24 Battlefield Gardens, Langside, Glasgow, *pursuer*, brought an action in the Sheriff Court at Glasgow against the Corporation of the City of Glasgow, *defenders*, for damages in respect of injuries sustained in alighting from one of the defenders' tram-cars on 15th August 1915 at a point where the roadway was in a state of disrepair.

The pursuer *averred*—"(Cond. 1) The defenders are the Corporation of the City of Glasgow, and they are the local authority charged with the duty of managing, maintaining, and repairing streets and roads within the city of Glasgow, and are responsible for the condition of the same, including that part of Clarkston Road,

Cathcart, where the accident hereinafter complained of occurred. They have and exercise control of the maintenance and repair of the said streets and roads and the surface thereof, and it is their duty to keep the said streets and roads and the surface thereof in a condition safe for foot-passengers. . . . (Cond. 3) On or about 15th August 1915 the pursuer travelled as a passenger in one of the defenders' tramway cars from Battlefield Road, Langside, Glasgow, to the stopping station in Clarkston Road, Cathcart, the sign-post of which station was then situated at or near to the kerbstones of the pavement on the east side of Clarkston Road and about 9 yards to the north or north-east of the gate to the Cathcart Cemetery, at or near to which station the pursuer alighted after the car had stopped. The said sign-post has since been removed slightly from the position in which it was then placed. The defenders have the control of appointing and fixing the places at which the said tram-cars stop. It was their duty to select places safe for passengers to alight and to cross the roadway to the pavement. . . . (Cond. 4) Just as pursuer alighted from the car and had assisted a child to alight she made to go towards the east pavement when her left foot slipped into a hollow in the roadway, with the result that her foot and ankle were suddenly and violently bent to the side. She fell to the ground and collapsed with pain. . . . (Cond. 5) On said 15th August 1915 and for at least nine months prior thereto the said roadway opposite the said stopping station, and for 20 feet south thereof and 10 feet north thereof, all between the water channel of the east pavement and the causeway setts, forming a margin to the south-going or eastmost tramway lines, was in a dangerous and defective condition in consequence of the surface being broken and uneven. In particular, that part of the said roadway on to which the pursuer stepped when she sprained her ankle, and the roadway for several yards on each side thereof, were at the time of the said accident in a very defective and dangerous condition to foot-passengers, and particularly to passengers alighting or coming from a tramcar at the said stopping station. A few yards to the south-west of the said stopping-place the roadway was causewayed for a short distance, but beyond the causeway and at and around the stopping-place the surface had at one time been macadamised. At and for many months prior to the date of the accident the macadam surface had from lack of repair become broken up into numerous hollows of various depths. About opposite the said sign-post there was an iron grating surrounded by a number of granite setts about two inches above the average level of the said broken roadway. The tramway rails were also bordered by a line of setts which in the then state of the roadway were about two inches above the average level of the said broken macadam. The setts surrounding the said grating adjoin on one side the said setts bordering the tramway rails. At or near the junction of the tramway setts with the grating setts, and in the surface of the macadam, is the said hollow into which the pursuer's foot slipped. The tramway car, in accordance with the said stopping-place, stopped just where the pursuer on alighting would step or slip into the said hollow immediately on leaving the car. Accordingly on alighting as aforesaid she slipped from the relatively higher level of the setts near the said junction of the tramway setts and the grating setts into the said hollow and sustained the said injuries. . . . (Cond. 7) The accident was due to the fault of the defenders. It was their duty to have the said roadway in a safe condition for the pursuer in alighting from the car and crossing to the pavement. They failed in this duty. They knew or ought to have known of the said dangerous condition of the roadway at the points referred to, and it was their duty to have the same made safe to the pursuer and the public. Further, there was a duty on the defenders to select as a stopping-place a safe part of the roadway. They failed in this duty, and were at fault in selecting as a stopping-place for the cars a place where the roadway and the setts therein were in such relative position and condition as to make a slip or fall when or immediately after alighting from the car a probable occurrence. The accident was due to the defenders' said failures in duty. The pursuer had the right to be where she was on the said roadway. The roadway where the accident took place has since been repaired and causewayed and made uniformly level."

The defenders pleaded, *inter alia*, that the action was irrelevant.

On 26th January 1916 the Sheriff-Substitute (FYFE), sustaining the defenders' first plea, dismissed the action.

Note.—"The condescendence in this action is constructed as if it were an action against a heritable proprietor for failure to keep his property in a safe condition; but it is not that; it is an action against a public body whose powers and responsibilities must of course depend upon the statutes under which they have the control of the streets. The pursuer avers in a general way that the defenders failed to discharge their duty, but she does not aver what that duty was, nor specifically what their failure of duty was, nor does she allege that any defect in the roadway had been brought to defenders' notice and that they failed to remedy it; nor indeed does the pursuer aver that the roadway was in a dangerous condition, and that it was because it was in a dangerous condition that she was injured. The most that the pursuer avers is that she stepped into a hollow in the roadway, but I do not think that it necessarily infers fault upon the body which maintains a roadway that its surface is not at every point absolutely level. I do not suppose that any roadway exists, however carefully tended, in which there are no depressions; but these are not necessarily dangerous, and the pursuer here does not set out any circumstances which to my mind reasonably infer fault on the part of the Corporation which led to the pursuer's ankle bending under her, which is all that she says happened. I do not

think that the pursuer has set forth a relevant action, and I accordingly dismiss it."

The pursuer appealed to the Second Division of the Court of Session, and argued — *Lawrie* v. *The Magistrates of Aberdeen*, 1911 S.C. 1226, esp. *per* Lord Skerrington, 48 S.L.R. 957, was a direct authority in the pursuer's favour. In that case the dip in the roadway only amounted to 1½ inches, whereas in the present case the unevenness complained of was a hollow 2 inches deep. See also *Blackie* v. *The Magistrates of Leith*, 12 S.L.T. 529, *per* Lord Low. The case should be remitted back to the Sheriff for proof.

The respondents argued — The respondents had a duty to maintain the roadway in a reasonably safe state of repair, but that duty was to be measured by the requirements of vehicular traffic and not of pedestrians. The decision of the Sheriff-Substitute ought to stand.

At advising—

LORD JUSTICE-CLERK — I think the Sheriff-Substitute has gone a little too fast here. While the averments perhaps might have been more specific in some particulars I think they are sufficient to show the particular character of the roadway which is complained of, and I think it would be unsafe to dispose of the case without inquiry. The pursuer very reasonably says that she is willing that the case should be remitted for proof before the Sheriff-Substitute, and I think that is the course we should adopt.

LORD SALVESEN — I agree. The first ground upon which the Sheriff-Substitute proceeds is that the pursuer, while she avers in a general way that the defenders failed to discharge their duty, does not aver what that duty was, nor specifically what their failure of duty was. The Sheriff-Substitute has entirely overlooked the fact that the defenders admit that it is their duty to have the roadway in a reasonably safe condition, and that the pursuer had a right to be where she was. In the face of that admission it would have been quite superfluous on the part of the pursuer to give on record a detailed statement of the various statutes under which the city of Glasgow acquired the management and administration of the streets. Indeed I do not think that is ever necessary unless there is a special defence raised in a statement of facts as to the control of a particular part of the roadway not being vested in the defenders who are sued.

On the other point in the case I think the pursuer has most distinctly averred that this bit of the roadway, on which she was invited to alight, was not safe for foot-passengers, and she has set out the exact locality where she met with her accident, and has said that at that point there was a dangerous depression of two inches. According to a whole series of cases, partly in my own recollection and partly recorded in the books, that appears to me to be quite a sufficient averment to be remitted to proof.

LORD GUTHRIE — I agree. I do not think the Sheriff-Substitute has noted the specialties of the case. He says that the pursuer avers that she stepped into a hollow in the roadway. But she says much more; she alleges that the hollow is two inches below the causeway setts forming the margin of the tramway line. It is also alleged that the place where the hollow existed was the place where a passenger getting out at that particular spot had to descend from the car, and that the stopping-place was rendered dangerous by the presence of the line of granite setts which adjoined the macadamised roadway at a higher level. When one looks at the averments it is plain that whether the pursuer will succeed in making out a case or not she is clearly entitled to an opportunity of proving the averments she has made.

LORD DUNDAS was not present.

The Court recalled the interlocutor of the Sheriff-Substitute and, parties consenting, remitted the cause back to him for proof.

Counsel for the Appellant — Dunbar. Agent—C. Strang Watson, Solicitor, Edinburgh.

Counsel for the Respondents—Lord Advocate (Munro, K.C.)—M. P. Fraser. Agents—Campbell & Smith, S.S.C., Edinburgh.

Friday, December 22.

FIRST DIVISION.

[Sheriff Court at Greenock.

BEATTIE *v.* TOUGH & SONS.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 1 (1)—"*In the Course of the Employment.*"

A girl and her mate were employed as preparers at a ropework, and were working an intermediate frame. The foreman sent other employees to take charge of the frame. The girl and her mate moved to an adjoining, a finishing, frame. Shortly afterwards, when passing the intermediate frame on her way to see the foreman, the girl noticed on it some manilla threads becoming entwined on the rollers. Without being asked by the employees at the frame she attempted, as was customary and not prohibited, to remove them. Her arm was crushed in the machinery and had to be amputated. *Held* that there was no evidence before the arbitrator on which he could find that the girl injured was disentitled to an award of compensation.

Mary Ann Beattie, *appellant*, being dissatisfied with an award of the Sheriff-Substitute at Greenock (WELSH) under the Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58) in an arbitration by her against Alexander Tough & Sons, ropemakers, Greenock, *respondents*, appealed by Stated Case.

The Case stated — "1. That for about a