on events or contingencies of or relating to horse races and football matches."

The *question of law* for the opinion of the Court was—"Whether on the facts I was justified in finding the respondents not guilty of the charges in the complaint?"

Argued for the appellant—The Betting Act 1853 (15 and 16 Vict. cap. 119), section 1, prohibited the keeping of a house or office for credit betting. There was no decision to the contrary. In *Traynor* v. *Macpherson*, (1914) 7 Adam 509, 1914 S.C. (J.) 174, 51 S.L.R. 802, the Lord Justice-General (Strathclyde) expressly reserved his opinion as to whether credit betting was prohibited by the section—see 7 Adam 519, 1914 S.C. (J.) 180, 51 S.L.R. 806—and Lord Dewar also reserved his opinion on the point—see 7 Adam 525, 1914 S.C. (J.) 184, 51 S.L.R. 808. *Traynor* v. *Macpherson*, (1910) 6 Adam 407, 1911 S.C. (J.) 54, 48 S.L.R. 92, where the offence charged was one against the provisions of a police Act, was referred to.

Counsel for the accused were not called upon.

LORD JUSTICE-CLERK—I do not have any doubt about this case. The question has been decided already in the first case of *Traynor* (6 Adam 407, 1911 S.C. (J.) 54), and Mr Wark with his usual frankness admitted that he could not make any distinction between that case and this. I do not think it makes any difference that in a subsequent case—*Traynor* v. *Macpherson*, 7 Adam 509, 1914 S.C. (J.) 174—two of the Judges said they were not deciding this point and reserved their opinion upon it. There is a decision in this Court which is not challenged and which we are not competent to review, which affirms that credit betting is not struck at by the Act. We were not asked to remit this case to a full Bench, and I see no reason for doing so. I am of opinion that the question submitted to us should be answered in the affirmative.

LORD DUNDAS—I am of the same opinion. As the cases stand, I think this matter is really decided against Mr Wark. In answer to a question Mr Wark stated distinctly that he did not invite us to have the matter reconsidered by a fuller Bench, nor do I see any reason why it should be so reconsidered.

LORD SALVESEN—I agree.

The Court answered the question in the affirmative and dismissed the appeal.

Counsel for the Appellant—Solicitor-General (Murray, K.C.)—Wark. Agent—John Prosser, W.S., Crown Agent.

Counsel for the Respondents—Sandeman, K.C.—Garson. Agents—Balfour & Manson, S.S.C.

COURT OF SESSION.

Thursday, May 27.

SECOND DIVISION.

[Lord Salvesen and a Jury.

M'KIBBIN *v.* GLASGOW CORPORATION.

Reparation—Negligence—Public Authority—Street—Blind Person—Contributory Negligence.

While a partially blind woman was walking along a street pavement she stepped into an unguarded hydrant, opened by a servant of the corporation to obtain water, from which projected a swan-neck pipe and turncock two feet six inches in height. In an action of damages for personal injuries sustained by her she obtained the verdict of a jury in her favour. The defenders obtained a rule and brought a bill of exceptions. *Held* that the physical disability of the pursuer did not relieve the defenders from responsibility for the effects of the accident if they had been negligent, and, as there was evidence upon which a jury might have found negligence, the verdict must stand.

Observations on the duty that public authorities in burghs and cities owe to the blind who use their streets.

Process—Jury Trial—Exceptions—Judge's Charge—Direction Asked after Charge Concluded.

Held that where no exceptions were taken in the course of a judge's charge to a jury the judge could not be required at its close to give additional directions in the form of an abstract proposition, *Hogg* v. *Campbell*, 1865, 3 M. 1018, *followed*.

Mrs Euphemia Leitch or M'Kibbin, widow of the late Hugh M'Kibbin, Glasgow, *pursuer*, brought an action against the Corporation of the City of Glasgow, *defenders*, in which she claimed damages for personal injuries sustained, as she averred, through the fault of the defenders.

The parties averred—"(Cond. 2) On or about 28th January 1919, about 12 o'clock noon, the pursuer, who had defective eyesight, was walking along Cowcaddens Street, Glasgow, to the tramway car station at the corner of Cowcaddens Street and Cambridge Lane in order to get a tramway car to take her home. After crossing the carriageway of Cambridge Lane, Glasgow, and when walking along the pavement of Cowcaddens Street she stepped into a water toby in the said pavement which was uncovered, with the result that she fell and sustained severe injuries as after condescended on. (Cond. 3) The said water toby is within a few feet of the edge of the pavement fronting the carriageway of Cambridge Lane. The place was very busy and there were a lot of people walking along the street and standing about the pavement and round the toby. The said toby is about

19 inches long and about 14 inches wide and about a foot from the edge of the pavement in Cowcaddens Street measuring from the side of the toby fronting the carriageway of Cowcaddens Street. Owing to its situation [and the presence of the people on the street] it was not easily observed [and was a danger to ordinary members of the public walking along] *by anyone crossing Cambridge Lane to the pavement of* Cowcaddens Street. (Cond. 4) . . . The defenders knew that in a large city like Glasgow there are a great number of infirm and partially blind people who use and have to use the streets unattended as they cannot afford to pay for a companion to accompany them. The pursuer was entitled to expect that the said street would be in a safe condition. The defenders failed to perform their said duty and so caused the accident to pursuer. They should not have allowed the said toby to remain uncovered without taking means to warn passengers of the danger. They took no precautions and provided no warning to ensure the safety of passengers. (*Ans.* 5) . . . The said accident took place in broad daylight, and had the pursuer been proceeding along the street with ordinary caution said accident would not have taken place. The pursuer thus by her own want of care caused or materially contributed to the said accident." [The bracketed passages above were additions to, and italicised words a deletion from, the original condescendence.]

The defenders *pleaded*—"2. The pursuer not having been injured through the fault of the defenders the latter should be assoilzied. 4. The accident having been caused or materially contributed to by the fault of the pursuer the defenders are entitled to absolvitor."

An *issue* in ordinary form was allowed and the case was tried before Lord Salvesen and a jury, who returned a verdict in favour of the pursuer and assessed the damages at £200.

At the trial *evidence* was led to show that the Corporation of Glasgow recognised the right of blind persons to use their streets and provided them with free passages in their tramway cars.

A *bill of exceptions* was thereafter lodged by the defenders which set forth, *inter alia*, —"After the evidence of both parties had been closed, and after their respective counsel had addressed the jury, the presiding Judge charged the jury. No specific objection was taken to the charge, but at its conclusion counsel for the defenders did then and there request the presiding Judge to direct the jury:—That it is incumbent on the defenders as street authority to take only such precautions in the matter of the streets as are necessary to safeguard members of the public who are normal in mind and body, and that a special duty to the blind does not arise unless the special infirmity is brought directly to the defenders' notice in the individual instance. Which direction the presiding Judge refused to give. Whereupon the counsel for the defenders respectfully excepted to his Lordship's refusal."

The defenders also obtained a *rule* upon the pursuer to show cause why a new trial should not be granted on the ground that the verdict was contrary to evidence.

Argued for the defenders—There was no negligence on the part of the Corporation. An ordinary operation was being carried out in the usual way, and perfectly safely so far as regarded persons of average capacity, and when that was the case no negligence was attributable—*M'Lelland* v. *Johnstone*, 1902, 4 F. 459, 39 S.L.R. 326; *Plantza* v. *Glasgow Corporation*, 1910 S.C. 786, 47 S.L.R. 688; *Adams* v. *Magistrates of Aberdeen*, 1884, 11 R. 852, 21 S.L.R. 570. The direction asked for should have been given, because the judge's charge left it open to the jury to infer that the duty of the Corporation in safeguarding the streets extended to blind and other defective persons, but no such duty could be predicated —*Stevenson* v. *Glasgow Corporation*, 1908 S.C. 1034, 45 S.L.R. 860; *Haughton* v. *North British Railway Company*, 1892, 20 R. 113, 30 S.L.R. 111; Bevan on Negligence (3rd ed.), pp. 16, 17, 160; Glegg on Reparation (2nd ed.), 52.

Argued for the pursuer—No exception was taken to the charge until it had been concluded, and it was then too late to ask for the direction in question—*Hogg* v. *Campbell*, 1865, 3 Macph. 1018, partic. at 1021. In any event this was a danger for normal persons, and there was evidence on which a jury could so find, but even if it was not there was a duty in the Corporation to protect the blind, not necessarily against all dangers, but at anyrate against traps such as the present. Further, when special knowledge of the fact that the streets were used freely by the blind, as was established in the present case, was brought home to a public authority, it was bound to take special precautions — *Mackenzie* v. *Allan Line S.S. Company, Limited*, 1911, 1 S.L.T. 139; *Rennie* v. *Great North of Scotland Railway Company*, 1905, 12 S.L.T. 667.

LORD JUSTICE-CLERK (SCOTT DICKSON)—This action was brought by an old woman, who if not blind was nearly blind, against the defenders for damages for injuries sustained by her in consequence of her falling into an open hydrant — open because of certain operations which the defenders' servants were carrying on in a street in Glasgow. In the record the pursuer amended her averments to the effect that the condition of the street and the position of the hydrant were such as to form a danger to ordinary members of the public walking along Cowcaddens Street. The pursuer also averred—[*Here his Lordship read the averments quoted supra*]. I think the public authorities in a burgh or city such as Glasgow are bound to have the streets in an ordinarily safe condition for those who are using them, and I confess I demur to the view that blind people are not entitled to walk about the streets unless accompanied by some person in charge of them. I do not think that is the law. I think it is proved in this case that the Corporation recognised that there were blind

people who were to an appreciable extent rightfully using the streets of the city, and we have it in evidence that there are several hundreds of blind people in Glasgow who regularly walk about the streets, and the Corporation themselves from the most kindly of motives recognise that by providing that the Corporation tramways shall carry them free of charge.

Accordingly this pursuer was entitled to be on the street and was entitled, in my judgment, to assume that the street was reasonably safe for her. In point of fact there was a hole in the pavement used for a hydrant, the cover of which was removed leaving a space uncovered of 17 by 13½ inches, in which no doubt this swan-neck and turncock projected above the pavement and might have been seen by people of ordinary eyesight who were using the street. The averments of the pursuer were that the condition of the hydrant was a danger to the ordinary public, and the issue which was allowed was the ordinary issue — whether the pursuer had been injured in her person by the fault of the defenders. There was evidence to this effect that even to ordinary passengers this was a danger, no doubt much less likely to result in accident to an ordinary passenger than to a blind person; but I think it is impossible to say— dealing with the question of whether the verdict was contrary to evidence — that there was no evidence on which the jury were entitled to come to the conclusion that this open hole should not have been left— leaving the swan-neck and the turncock to give notice to those using the street. Witnesses gave evidence to that effect, and if that were accepted by the jury it would justify them in coming to the conclusion that there was negligence on the part of the defenders in leaving in a public street this open space without taking sufficient care to prevent it from being dangerous to anybody who was using the street and might inadvertently fall into the hole so left open. Therefore I cannot come to the conclusion that the defenders have shown any sufficient ground for setting aside the verdict upon the ground that it was contrary to evidence. I think there was ample evidence to justify the jury in arriving at the verdict they did. Even if there had been questions of credibility these would have been still more within the function of the jury, but no such question was raised. The motion for a new trial was based entirely upon the import and meaning of the evidence, and I cannot doubt that there was sufficient evidence, if the jury accepted it, to justify them in reaching the conclusion they did.

We have also before us a bill of exceptions in which the defenders claim that they asked certain directions to be given by the Judge which he refused to give contrary to what he ought to have done. The bill of exceptions sets out—[*Here his Lordship read the part of the bill of exceptions quoted supra*]. It is noticeable that the exception was taken after the Judge had concluded his charge. No objection was taken to anything which the Judge had said or to anything that he had failed to say in the course of his charge; but after the charge had been concluded the defenders thought proper to ask this specific direction which is now before us. I think it has been quite settled, since at least the case of *Hogg* v. *Campbell* (3 Macph. 1018) that a general direction which a judge is asked to give to a jury is a very troublesome thing, and may be a very dangerous thing to give. As Lord Deas said in *Hogg* v. *Campbell*, we are not only entitled but bound to presume that the Judge had previously told the jury all that he ought to have told them. To ask him after he had given the proper charge applicable to the circumstances to lay down an abstract proposition by itself is to ask him to take a very hazardous course and one exceedingly likely to mislead the jury. When a defender or one of the parties asks that some special affirmative direction should be given to the jury it requires to be scrutinised very carefully, and I confess that I do not think this direction is one which under any circumstances a judge would be in safety to give. It asks a direction to the effect that the defenders being a corporation entrusted with seeing that the streets are safe to members of the public are only required to provide for the members of the public who are normal in mind and body. I do not think that is a proposition which is sound in law at all. I think it is far too wide.

Then the direction goes on to say that a special duty to the blind does not arise unless the special infirmity is brought directly to the defenders' notice in the individual instance. I do not suggest that there is any special duty to the blind of the city so far as the condition of the streets is concerned, but I think that public authorities have imposed upon them such a duty as requires them to see that the streets, and the pavements particularly, have not open holes in them into which either blind people or seeing people may stumble and fall without fault on their part and merely in the ordinary course of passing along the street. Therefore I think that the direction which was asked here is contrary to the principles laid down in *Hogg* v. *Campbell*, which so far as I know have been followed ever since, and that the direction asked, moreover, is in itself too wide to be accepted as an accurate statement of the law.

LORD DUNDAS—I am of the same opinion. I think this verdict must stand. In the first place it seems to me that the rule obtained the other day by Mr Gilchrist must be discharged. The question is not whether we think the verdict was right, or whether we should have arrived at the same conclusion on the facts. The question is whether the jury were entitled to find as they did, and like your Lordship I hold that there was evidence upon which the jury were entitled to find as they did.

I also think that the bill of exceptions must be disallowed. The doctrine laid down in *Hogg* v. *Campbell* (3 Macph. 1018)—and there are plenty of other cases to the same effect—is a sound doctrine. As Lord Deas

puts it in that case—"The law presumes, and we are bound to presume, that the judge had previously told the jury all that he ought to have told them, unless in so far as one or other of the parties distinctly points out something done wrong or something omitted, and asks him to lay down correctly that which he either has not laid down at all or laid down incorrectly. Now there is nothing in these exceptions to indicate that the judge had not told the jury everything in its proper place. And to ask a judge, after (as we must assume) he has given the proper charge applicable to the circumstances, to lay down an abstract proposition by itself is to ask him to take a very hazardous course, and one exceedingly likely to mislead the jury." I think that applies to this case in terms. The judge's charge was not excepted to, and I do not think he was bound at the request of one of the parties to lay down, after he had finished his charge, an abstract proposition in law even if he had thought it was in the main soundly stated. I assume that the judge had sufficiently explained his views of the law as applicable to the facts of this particular case. He was not bound to do more, and, indeed, it might have been a hazardous and unwise course to pursue. That seems to me to end the matter.

But I may add that I also agree that the direction which he was asked to lay down was too widely stated and would require modification. It would not be easy, to lay down in a sentence or a couple of sentences the whole law applicable to the subject. Something must always depend upon the facts to which you are going to apply the law. I think in each case the jury would have to consider, in the case of a blind person, whether that blind person was in the circumstances fairly and reasonably treated by the Corporation or other defenders — whether he had or had not been duly warned and reasonably guarded. As I have said, I think it was unnecessary and perhaps would have been unwise for the judge to lay down any general proposition of that sort, and I see no reason why we should now lay down any general proposition further than the remarks your Lordship has made, in which I concur.

LORD SALVESEN—At the trial of this case I came to the same conclusion as your Lordships have done. I thought the first question, which was eminently one for the jury, was whether they thought there was evidence of neglect on the part of the Corporation in allowing this unfenced hole to exist on the pavement for an appreciable length of time. A hole in the pavement is just the typical kind of thing that occasions accidents, but when people are very careful of their safety and have perfect eyesight even a small hole in the pavement in daylight will be avoided by the ordinary passer-by. The law, as I understand it, is that the same degree of vigilance is not exacted in the case of persons using the pavements, which are presumed to be reasonably safe for the use of the passers-by, as in crossing a roadway or going on open ground.

In this case there was this distinction between an ordinary hole, which might have been a trap for anyone, that there was a projection of 3 feet—two iron structures which certainly operated as a warning to persons who were observant and which would have enabled them to avoid the danger which the hole itself constituted. I think that in the ordinary case I should have charged the jury that if a person fell into the hole and was injured—there being no obstruction to his vision, and there being nothing to withdraw his attention from the care which he owes himself in traversing the streets—he might well be held to be guilty of contributory negligence, even although the jury thought that some precaution, such as that indicated in the evidence, of placing there a barrow or a trestle or something of the kind which would prevent people from falling into the hole was necessary. Even in such cases I think it would be a matter of circumstances whether a jury, assuming they reached the view that it was a negligent thing to leave this hole in the pavement unprotected, would hold that a person of normal eyesight was guilty of contributory negligence if he fell into the hole and was thus debarred from maintaining an action.

When you come to the case of a blind or nearly blind person who is in the habit of using the streets, it is impossible, as it seems to me, to suggest a defence of contributory negligence. This hole in the pavement may be described as a trap which would certainly catch a blind person who was negotiating the pavement in his accustomed manner. It was a trap to an ordinary person, but the ordinary person had the advantage of a fairly prominent warning to keep him out of it. I think the case of *Rennie* v. *Great North of Scotland Railway Company* ((1905) 12 S.L.T. 667) is an authority for the proposition that on a question of contributory negligence you are entitled to take into account the defective eyesight or other infirmity of a person who meets with an accident. If the case of *Rennie* had been brought by a person of normal eyesight, one would almost have been disposed, even at the discussion on the relevancy—it being admitted that the accident happened in broad daylight—to have held that it could not have occurred without want of care on the part of the person who allowed himself to drop down to the ground when he could see for himself that there was an unusual drop.

But in the case of a blind person there was in the judgment of Lord Low in that case an averment sufficient to infer negligence against the railway company in inviting passengers to descend when two of the carriages had not reached the platform and when the passengers could not descend with the same safety as they would have been able to do if the train for all its length had been along the platform. Therefore that case seems to me to be really a judgment upon contributory negligence, and the defective condition of the pursuer's sight was taken into account in negativing the view that he had been

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