Tuesday, January 14.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

M'CALLUM *v.* NORTH BRITISH RAILWAY COMPANY.

Reparation—Negligence—Railway—Injury to Passenger Owing to Crowd on Station Platform—Duty of Company.

At the Waverley Station, Edinburgh, on a Saturday night, the 1st of September (one of the busiest days of the year), three carriages were being attached to a train standing at a platform but not due to start until twenty minutes later. Some 200 persons had collected on the platform, to which they had been admitted by a gate on showing their tickets to two officials. There were besides one or two other servants of the company on general duty on or near the platform. There was ample standing room for everyone present, but, as the three carriages were being run in, a rush was made to secure places. No official of the company was actually accompanying the carriages or standing at the edge of the platform to warn back passengers. A woman who was standing close to the edge was pushed between one of the carriages and the platform and injured.

Held that the railway company were not liable.

Observations as to the extent of a railway company's duty to regulate the movements of passengers on occasions of extra and special pressure of business.

Isabella M'Callum, wife of Alexander M'Callum, Broxburn, raised an action of damages in the Sheriff Court at Edinburgh against the North British Railway Company, in which she sued for £100 as damages for personal injuries.

The defenders pleaded, *inter alia*—"(2) Any injuries sustained by the pursuer not having been occasioned by any fault or negligence of the defenders or their servants, the defenders are entitled to absolvitor with expenses."

A proof was taken by the Sheriff-Substitute (GARDINER MILLAR).

The *facts* appear fully from his interlocutor and note:—"*Finds in fact* (1) that on 1st September 1906 the pursuer, her husband, and three children left Broxburn in the afternoon to proceed to Edinburgh, where they did some shopping; that in the evening they proceeded to the Waverley Station in order to return to Broxburn by the train leaving Edinburgh at 8·38 p.m.; that on arrival at the gate at the end of the platform their tickets were checked by an official stationed there; (2) that the platform, No. 12, from which the Broxburn train started, is a wooden platform with a concrete margin of 2 feet 9 inches in breadth, and is capable of holding about 2000 persons; that there is a dock on each side for trains, and the Broxburn train was in the dock on the left-hand side of the platform; (3) that on entering the platform and proceeding to the train the pursuer and her husband found all the third-class carriages filled, but they were told to go in front as more carriages were to be added on; (4) that pursuer went to the front and waited at the point of the platform where the incoming carriages would likely be stopped; that at this place there was a hoist for goods which contracted the space for passengers; (5) that there were a few passengers already waiting for the carriages, but the arrival of more increased the crowd to about 200 persons; the crowd was orderly, consisting mainly of working people who had been in town shopping with their families; (6) that the pursuer, who had a child in her arms, stood on the wooden part of the platform, within the concrete margin; she was in front of the crowd with no one between her and the place to which the carriages were to be shunted; the platform at this part was well lighted with four powerful electric lamps; (7) that when the carriages were being shunted into the dock the crowd pressed forward; the pursuer did not attempt to get into the train, but was forced up against the carriages by the pressure from behind, and was thrown down and received severe bruises about the legs and right thigh; (8) that the company provided two men to check the tickets, two inspectors, porters, and policemen, who were sufficient to regulate any crowd that was on the platform at the time; (9) that there was no neglect of any duty cast on the Railway Company under the circumstances, and the damage that the pursuer sustained was due to the heedlessness of the crowd and not in consequence of any negligence on the part of the defenders: *Finds in law* that the defenders, not being guilty of any negligence whereby the pursuer was injured, are not liable in damages to her for any injuries she may have suffered; therefore sustains the second plea-in-law for the defenders, and assoilzies them from the conclusions of the summons: Finds the defenders entitled to expenses, and remits," &c.

"*Note.*—There was a little difficulty in connection with the proof in this case, as the Railway Company did not receive immediate notice of the accident, and their servants were not informed of the accident until some time after the date on which it is said to have occurred, with the result that it was with some difficulty that they could recall the precise circumstances in connection with the departure of the train upon this occasion.

"I think, however, it is fairly clearly proved that the pursuer and her husband and three children, one of whom was an infant in arms, went down to the Waverley Station on the 1st September 1906 in order to take the 8·38 p.m. train to Broxburn, and arrived at the station ten minutes or a quarter of an hour before the scheduled time for the train to start. At the entry to the platform there are two sliding gates,

one for passengers entering to go to the train on the one side, and the other for passengers going by the train on the other side. On the occasion in question only the gate on the Broxburn train side of the platform was open, and both ticket-collectors were there at the time. There is no division of the platform once you enter the gate, and it is open to the passengers going by the one train to cross over to the other side. On entering the platform the pursuer and her husband found all the carriages, six in number, going to Broxburn filled, at least in so far as the third-class carriages were concerned. They were directed, however, by an official to proceed to the front of the train as more carriages were to be added to the train. They went forward, and stood close to the goods hoist, which occupies a considerable part of the centre of the platform, and which was about a carriage length from the end of the carriages then in the dock. There were a few persons waiting for the carriages at the time she went forward, but a constant stream of incomers added to the number, so that when the carriages came in there was a knot or crowd of about 200 persons there. The pursuer and her husband were standing on the wooden part of the platform, but in front of the crowd, looking towards the dock into which the carriages were to be shunted. In my view, if the pursuer, who was not very strong, and who at the time was carrying a child, wished to be in safety, it was her duty to have taken up a position at the back of the crowd, and then there would have been no chance of such an accident happening. When the carriages came in the crowd pressed forward, and the pursuer was forced by the pressure up against the carriages, and was thrown down, and her right leg slipped between the carriages and the platform, with the result that she was severely bruised. I think it proved that she did not attempt to go into the train, but that the accident happened entirely through the pressure of the crowd. She was at once lifted up, and after sitting for a short time with her back to the hoist, she recovered sufficiently to be able to travel in a compartment of one of two carriages which were added to the three which had already been shunted on to the train. Neither she nor her husband made any complaint to any railway official either at the Waverley Station, or at Broxburn when they arrived.

"In these circumstances the pursuer alleges three grounds of liability as against the Railway Company—(*First*) That the platform was overcrowded; (*Second*) that it was insufficiently lighted; and (*Third*) that there were no officials present to regulate the crowd, and that if there had been an accident would not have happened.

"With regard to the first ground of action I think it is proved that, taking the space where the pursuer was standing with her husband, there was room, taking both sides of the platform and allowing 5 feet for each person, for 500 persons to stand, and taking the whole of the platform from end to end there was standing room for nearly 2000 persons. In these circumstances I think it impossible to say that the platform was overcrowded when there were only 200, or at most 230, persons there. Accordingly the first ground of action seems to me not to be proven.

"With regard to the question of lighting, although several of the pursuer's witnesses speak about this part of the platform being dark on the night in question, I think it is clearly proven that the platform was lighted in the ordinary manner on the night in question. They speak not only from their recollection but from reports which are entered in their books, and if anything had gone wrong upon that night they were bound to know from these entries. Now it is admitted that the lamps in the neighbourhood of the hoist are powerful lamps, and if they are burning, the platform is exceedingly well lit. In my view, therefore, the second ground of action must be held to be disproved.

"The third ground, and more difficult one, is that the pursuer avers that there were no railway officials present at the time. Undoubtedly at the gate there were two officials to check the tickets, and in their immediate neighbourhood several railway policemen, whose duty it was to regulate any crowd. On the platform there was the guard of the train, and in the neighbourhood there were two inspectors, Ogg and Mein, and also a foreman porter, and policemen whose duty it was to patrol the platform. None of these officials seem to me to recollect the occasion in question very clearly, but I think that is accounted for by the fact that a considerable time elapsed before this matter was brought to their notice, and on the occasion in question there does not seem to have been anything to call their attention to the circumstances, either in the demeanour or size of the crowd, or by their observing any accident at this place. The crowd admittedly was of quiet respectable working people who had been in town doing shopping and were returning in the evening. It is not averred that there was any brawling or fighting or riotous conduct of any kind. At the same time I think it proved that no one, when the carriages were shunted into the station, called out to the crowd to stand back, but I can scarcely think that, taking a crowd of that kind, the railway officials were bound to assume that their conduct would be anything but quiet and orderly. If a crowd of that character suddenly presses forward and an accident results, I do not think that the Railway Company can be held liable merely because there was no official present to call upon the crowd to stand back. Moreover, the pursuer's evidence is to the effect that even if there had been a call to stand back, the pressure upon those next the carriages was such as to make it impossible for them to obey the call.

"In these circumstances the law applicable to the case rests upon negligence being proved on the part of the Railway

Company. They certainly do not insure passengers who enter their premises against accident, and in the event of any accident occurring, before they can be held liable the pursuer must prove that there had been a neglect of a duty cast upon them under the circumstances, and that that neglect was the cause of the accident which had occurred. The cases I was referred to, so far as the Scotch Courts are concerned, were—(1st) the case of *M'Gregor* v. *Glasgow District Subway Company*, 3 F. 1131. That was the case of an intending passenger from a station of the Glasgow District Subway, who had been injured through being caught between the station platform and an incoming train. He averred that the trains of the company consisted of two carriages, each with a single entrance door, that only persons holding tickets were admitted to the platform, that on the day in question, owing to a breakdown, the trains were running at intervals of fifteen minutes instead of the advertised time of three minutes, with the result that a larger number of intending passengers than usual came to the station before the train arrived, that on the train entering the station, and while it was still in motion, the crowd concentrated at the point where one of the entrance doors would come to a stop, with the result that the pursuer was pressed against the moving train, and being caught between it and the platform received the injuries on account of which he sued. The pursuer there appealed for jury trial from the Sheriff Court, and parties were heard upon the relevancy, and the Court, with great difficulty, held the action relevant. Lord Young said—'I think that it is impossible to say that within the averments here the pursuer could not establish a case of fault against the defenders.' Lord Trayner said—'I have great doubt as to the relevancy of the pursuer's averments, but I do not dissent.' Lord Moncreiff says—'I say no more than that I think the pursuer is entitled to an issue.' And the Lord Justice-Clerk—'I have had great doubt, but I cannot say that the pursuer's averments are irrelevant.' Now that case seems to me to be much stronger than the present one, and if the Court there had so much doubt, I think their judgment tells against the pursuer's case here. The second case, that of *Fraser* v. *Caledonian Railway Company*, 5 F. 41, was an action of damages for personal injury against a railway company. The pursuer averred that the defenders were in fault in respect that they knowingly, and without taking any steps to prevent it, permitted a greater crowd of passengers, of whom the pursuer was one, to congregate in a station than its platforms could accommodate, and had failed to provide a sufficient staff of servants to cope with the crowd, and that in consequence, by the pressure of the crowd, the pursuer had been carried along and hurled from the platform on to the railroad and injured. The Lord Justice-Clerk says—'The pursuer avers that the servants of the company allowed the station to become so overcrowded as to be dangerous, and took no steps to prevent danger from this cause. The averments are certainly somewhat meagre, but I have come to be of opinion that the case cannot be satisfactorily decided without the facts being first ascertained.' Lord Trayner says—'I think, under the pursuer's averments, she may be able to establish fault against the defenders, involving liability, and I cannot say, especially looking to the state of the authorities on the subject, that the case as presented is one that cannot be made the subject of inquiry.' These are the only reported Scotch cases to which I was referred, but there is an unreported case which was decided by the First Division on Saturday, 5th July 1902. I was supplied with copies of the judgment in that case from which it appears that the pursuer was one of a company of 930 young men who went down to the station in order to proceed to a football match, and that there were on the platform seven railway servants to regulate this large crowd, and as the result of the crowd at the station he was pressed up against the train and was injured. The jury had found the defenders liable and had assessed the damages at £50, but the Court, on a motion for a new trial on the ground that there was no evidence to support the verdict, granted a new trial unanimously.

"The cases to which I was referred in England were—(First) *Hogan* v. *South-Eastern Railway Company*, 28 L.T. 271. In this case the female plaintiff was one of a crowd of passengers assembled at the defendants' railway station. The crowd, caused by special excursion traffic, of which the defendants had previous notice, had been allowed to enter the station and to disperse over the platform at will. No precautions were taken to regulate its movements. On the approach of a train the plaintiff was, through pressure caused by the swaying of the crowd, thrust off the platform and hurt. Baron Martin, who presided at the trial, non-suited the plaintiff on the ground that there was no evidence of negligence on the part of the defendants. On appeal, the Court of Appeal recalled the judgment and held that the case should have been allowed to go to the jury. It was decided that the question of negligence or no negligence was one for the jury, and not for the presiding judge. But in deciding the case Mr Justice Keating, at page 273, says—'I quite agree that it would be monstrous to expect the company to guard against the pressure of an inconsiderate crowd, and that if the accident did arise from the natural impulse of the crowd, then the defendants cannot be held liable, but it was for the jury to judge of the character of the crowd'; and Mr Justice Grove, who went mainly on the ground that there had been an unlocked gate with no attendant at it to prevent the influx of passengers, says—'I am far from saying that the jury ought to have found for the plaintiff; the only question for us is whether they might have done so.' The other cases in England do not raise the question directly. *Sturgess*

v. *Great Western Railway Company*, 56 J.P. 278, was the case of a passenger in a crowd tripping over a box containing signal levers, which projected about 2 inches above the level of the platform, and the Court held there that although Lord Chief-Justice Coleridge directed a non-suit, nevertheless the question of negligence ought to have been left to the jury. The case of *Welfare* v. *Brighton Railway Company*, L.R. 4 Q.B. 693, was a case of a man being injured by the fall of a plank and a piece of zinc from the roof of the station. There the Judge non-suited the plaintiff, and the Court of Appeal held that there was no evidence to go to the jury. The case of the *Metropolitan Railway* v. *Jackson*, 3 App. Cases, 199, was the case of a man whose thumb was crushed by the door of a carriage being hastily slammed to by a porter as the plaintiff had risen to protest against the influx of passengers after the carriage was crowded. The judgment mainly goes upon the question whether the question of negligence is to be left to the jury, or whether there is a duty upon the Judge to decide whether, in the circumstances, the proof showed negligence at all, but in the course of his judgment Lord Blackburn says—'In all cases of damages for a personal injury against railway companies, the plaintiff has to prove, first, that there was, on the part of the defendants, a neglect of that duty cast upon them under the circumstances; and, second, that the damage he has sustained was the consequence of that neglect of duty. A third question, whether the plaintiff is himself to blame, comes more properly by way of defence.' The case of *Shepherd* v. *Midland Railway Company* was the case of ice an inch thick allowed to remain upon a platform with the result that a passenger stepping upon it slipped and fell and was severely injured, and the Court there held that the defendants were guilty of actionable negligence in allowing the ice to remain upon the platform.

"There is a case in Ireland, *Cannon* v. *Midland Great Western Railway (Ireland) Company*, 6 L.R. (Irish) 199. That was the case of a harvester pushed off a platform by a sudden inrush of people on the platform already filled by a disorderly crowd. The railway company were found not liable, and it was there decided that a railway company is not bound to provide a staff sufficient to cope with the force and violence of a lawless crowd rushing through a station.

"Looking at all these judgments, it seems to me that no sufficient case has been made out against the present defenders. It can scarcely be said because there was not an official to call out 'stand back,' when the carriages were shunted into the platform, to a group of persons who were all orderly and quiet at the time, that therefore they are guilty of such negligence as to make them liable for the sudden rush of the crowd towards the carriages. In the whole circumstances, therefore, I am of opinion that the defenders are entitled to be assoilzied, with expenses."

The pursuer appealed, and argued that the Railway Company were liable, as they had permitted a crowd to assemble on their platform and had not provided a staff of persons to control the crowd, or, at any-rate, warn it against rushing forward. Counsel founded on *Macgregor* v. *Glasgow District Subway Company*, July 19, 1901, 3 F. 1131, 38 S.L.R. 480; *Fraser* v. *Caledonian Railway Company*, November 4, 1902, 5 F. 41, 40 S.L.R. 43; *Hogan and Wife* v. *South-Eastern Railway Company*, 1873, 28 L.T. 271.

The defenders argued that the accident was solely due to the fault of the crowd, and that the company had taken all precautions against accident reasonable in the circumstances.

LORD JUSTICE-CLERK—I do not think that any sufficient ground has been shown for interfering with the Sheriff-Substitute's interlocutor here. It is quite certain that it is the duty of the Railway Company to provide as best it can and in a reasonable way for the safety of persons assembled on the platform and wishing to get into a train. It is quite certain also that in fulfilling that duty in a reasonable sense they cannot always be able to control the crowd on the platform. They cannot always, in a large and busy station, be at every spot where a number of people may congregate. Something must be left in these circumstances to the reasonable discretion of the people who are going to get into the train. I am sorry to say that very often that reasonable and moderate discretion is not exercised. Particularly it is not exercised by men. If it were exercised by men there would be no difficulty with women at all. Of course it is very natural that people who have been in Edinburgh all day on an excursion, and who desire to catch the 8·38 train back, should be anxious and take precautions not to be left behind. A practised traveller would have no difficulty about that, because he would insist on being provided with a seat. Still it is a natural impulse which is not sufficiently resisted by some people, to rush at the train if they think there is a crowd who will be able to get in in front of them. Here it is alleged that there was a crowd of 200 people on the platform. I cannot say that I think that was a great or a dangerous crowd, nor can I say that at the time it was assembled there, which was a very considerable time before the train was to start, it was the absolute duty of the Railway Company necessarily to find officials to be at that train. These officials were probably just as much wanted at that moment at some other train which had to start earlier. If they were engaged at their ordinary work in examining trains which were leaving, or just about to leave the station, they could not possibly give the attention which they might have given on an ordinary occasion to a train which was only being made up and was not to start for some time. The two things would have to be worked out to the best of their ability. But it does not seem to me that

this train was neglected. The train was a train of six carriages waiting for passengers, and according to practice, the day being a Saturday, three carriages from a train arriving about eight o'clock were put on to the front of the train, because on Saturdays there would be more people to be carried than on an ordinary week day. When these three carriages were put on, that was simply making up the train to what it was to be when it came to start some twenty minutes afterwards. Apparently there was a rush made for the train when the three carriages were put on, and this lady seems to have been run up against a carriage and was to some extent injured. I am unable to say that I can find in this evidence proof that the Railway Company were at fault in not having prevented that. I think the Sheriff-Substitute has considered the case with great care, and has given a very moderate and ample statement of the case. Upon the whole matter I do not see that we would be justified in holding that he was wrong in the decision to which he came, and I think his judgment ought to be affirmed.

LORD LOW—I am of the same opinion. I do not think that fault is proved on the part of the defenders. It seems to me that this was no unusual occasion, and they had no reason to anticipate that there would be any great crowd or any unusual danger to passengers, and it is perfectly plain that there was the ordinary and usual number of officials to look after the safety of passengers connected with this particular train. The accident which the pursuer sustained seems to have been a pure accident for which the defenders are in no way responsible.

LORD ARDWALL—I agree. The question is whether fault has been proved against the Railway Company. It appears to me that it is plain upon the evidence that the cause of the accident was the heedlessness and selfishness of the crowd of people, or of individuals composing that crowd, who made a rush for the three empty carriages which were in course of being added to the Bathgate train on the night in question. There was no necessity for such a rush at the time, nor was it to be expected, for some twenty minutes had to elapse before the train was timed to start, and as no complaint was made at the time it is impossible for the Railway Company to prove by their inspectors where they were at the particular moment of the accident. I agree with the Sheriff that it is proved that there was a sufficient staff for all ordinary purposes. Further, it is I think proved that the Railway Company did not allow an unreasonable number of people to get on to this platform. They had taken the very proper precaution of allowing nobody to go on to it except through the gates where persons were stationed to check the tickets and to prevent too many people getting on to the platform.

I accordingly hold that the pursuer has failed to prove that the accident complained of was due to the fault of the defenders.

LORD STORMONTH DARLING was absent.

The Court adhered.

Counsel for the Pursuer (Appellant)—Trotter. Agents—Bryson & Grant, S.S.C.

Counsel for the Defenders (Respondents)—Scott Dickson, K.C.—Grierson. Agent—James Watson, S.S.C.

Tuesday, January 14.

SECOND DIVISION.

LOGAN'S EXECUTORS *v.* M'LENNAN AND OTHERS.

Succession — Intestate Succession — Collation—More than One Heir—Heirs Portioners.

In intestate succession, whether there is only a single heir in heritage or whether there are heirs portioners, the rule applies that the heir or heirs can only share in the moveable estate of a deceased intestate on the condition of collation in every case where there is another person, or persons, possessing the character of next-of-kin.

A died intestate, predeceased by his father and mother, and by two sisters, B and C. He was survived by a nephew D, the child of B, and a nephew and niece, the children of C. D claimed half of the heritable and a third of the moveable estate of A.

Held that the ordinary rule as to collation applied, and that accordingly D could not share in the moveable estate without collating his share of the heritage.

Expenses — Special Case — Unsuccessful Party Liable to Successful.

The successful party in a special case found entitled to his expenses from the unsuccessful party.

Mr John Logan died on 24th June 1906, unmarried and intestate. Mr Logan was, at his death, possessed of both heritable and moveable estate, the heritable estate being worth about £4000, and the moveable about £10,000. He was predeceased by both his father and his mother. He never had a brother, but he had two sisters both older than he was, who predeceased him leaving issue, viz.—Andrew M'Lennan, the only child of the elder sister, and John Logan Smith and Margaret Hutcheson Smith, the only children of the younger sister.

Questions having arisen as to the division of the deceased's heritable and moveable estate, a special case was presented to the Court, to which the deceased's executors-dative were the *first parties*, Andrew M'Lennan the *second party*, and Margaret Hutcheson Smith the *third party*.

The second party *contended* that he was