Argued for respondents—*On Question* (2)—The appellants were in occupation of the quay at the time of the accident. The quay was occupied in connection with their ships, they had an office with clerks, &c., on the quay, and work was being carried on there by a contractor on their behalf. It was not material that the ship should be alongside the quay. Whether or not a particular ship happened to be alongside had nothing to do with the matter so long as the accident happened on the quay in connection with their business. The fact that this quay was sometimes used by others did not signify. A place might be in the occupation in terms of the Act of two different persons at the same time—*Bartell* v. *W. Gray & Co.* [1902], 1 K.B. 225. *On Question* (3)—Putting coal on board was necessary before a steam vessel could proceed. It was therefore part of the appellants' business—*M'Govern* v. *Cooper & Co.*, November 30, 1901, 4 F. 249, 39 S.L.R. 102.

LORD JUSTICE-CLERK—This case can be decided on two points—(1) Whether or not the appellants were in occupation of the quay, and (2) whether or not the work that was being done was ancillary or incidental to their business. Assuming that the quay was a factory I am satisfied that it was not in any true sense in the occupation of the appellants. At the time the accident happened there was no ship at the quay. The ship was expected and might or might not have arrived at the quay. It depended on the will of the harbourmaster whether when it arrived it should be allowed to get that particular berth or not. Assuming therefore that the quay was a factory, I am unable to hold that it was in the occupation of the appellants. But I also hold without any difficulty that the work at which the deceased was engaged was not a work which was part of the business of the appellants. Shipowners carry goods and passengers from one place to another, and in order to enable them to do so it is necessary that they should have certain supplies of coal, engine stores, food, tackle, and articles of various kinds. I cannot hold that the taking on board of any of these articles is part of the business of a shipowner. I am therefore of opinion that the appellants are not liable.

LORD YOUNG—I concur.

LORD TRAYNER—I am of the same opinion. As to whether in the circumstances here stated a quay is to be held a factory it is not necessary to give any opinion, and I give none. But assuming the quay to be a factory, I think the appellants were not the occupiers of it. I am also of opinion that the work in which the deceased was engaged was work under a contractor, which was not any part of the business of the appellants, but was only at the most incidental or ancillary to it.

LORD MONCREIFF—I am also of opinion that questions (2) and (3) should be answered in the negative.

As to whether the appellants were occupiers of the quay, if the Sheriff had found in point of fact that that particular berth had been set aside and reserved exclusively for the appellants' vessels, I should have been disposed to think that the appellants were the occupiers of the berth although the vessel had not arrived when the accident happened. But the finding of the Sheriff does not amount to that.

In regard to question (3), I have no doubt that the supplying of coal to a steam vessel is merely ancillary or incidental to the business of the shipowners. The view which I take of section 4 of the Act is that it is intended to apply to sub-contracts, under which the sub-contractor executes what is really part of or a process in the trade carried on by the principal contractor, and that it does not apply to furnishings such as coal or other things, which are required in order to enable the principal contractor to carry on his business.

The Court pronounced this interlocutor—

"Sustain the appeal, answer the second and third questions of law therein stated in the negative: Therefore recal the award of the arbitrator, and remit to him to dismiss the claim."

Counsel for the Appellants — Salvesen, K.C. — Spens. Agents — Boyd, Jameson, & Young, W.S.

Counsel for the Respondents — Watt, K.C.—Guy. Agent—William Fraser, S.S.C.

Tuesday, November 4.

SECOND DIVISION.

[Sheriff Court of Forfarshire, at Dundee.

FRASER *v.* CALEDONIAN RAILWAY COMPANY.

Reparation — Negligence — Safety of the Public—Railway—Injury to Passenger Owing to Crowd on Station Platform.

An intending passenger who had been injured at a railway station by being pushed off the edge of the platform on to the railroad, raised an action of damages against the railway company, in which she averred that she and others had been permitted to enter one of the defenders' stations at a time when the platform was much overcrowded; and that there was such a pressure behind her that she was carried along and hurled from the platform on to the railroad and severely injured. She further averred that the defenders or their servants were aware of the overcrowded condition of the platform prior to and at the time of the accident, but that they did nothing to prevent the additional influx of people and pressure, as they should have done, by closing the entrance door of the station until the platform had been cleared and made

safe; and that by their failure to prevent the overcrowding or to provide a sufficient staff of servants to cope with the crowd they had failed in their duty to the pursuer and had caused the accident to her. The defenders pleaded that the action was irrelevant. *Held* that the pursuer had stated a relevant case for inquiry, and issues *ordered*.

Margaret Isabella Fraser, 12 William Street, Forebank, Dundee, raised an action in the Sheriff Court at Dundee against the Caledonian Railway Company for damages for personal injuries sustained by her.

The pursuer averred—"(Cond. 2) On the 14th day of October 1901 the pursuer entered Buchanan Street Railway Station, Glasgow, with the intention of proceeding to Dundee by the 9·30 p.m. train. The platform of the station was much overcrowded, but notwithstanding the pursuer and others were permitted to enter, and there was such pressure behind her that the pursuer was carried along and hurled from the platform on to the railroad, in consequence of which she was severely injured, her side being much bruised and her clothes destroyed. The defenders or their servants were aware of the overcrowded condition of said platform prior to and at the time of said accident, but they did nothing to prevent the additional influx of persons and pressure above set forth which caused the accident to the pursuer, and they could have and ought to have done so by closing the entrance doors of the station until the platform thereof had been cleared and made safe; and this was a necessary and reasonable precaution in the circumstances, and which if adopted would have prevented said accident. By the failure of the defenders in this and other respects before and after mentioned they failed in their duty to the pursuer and caused said accident to her. (Cond. 4) At the time above stated the platform was unduly crowded, and it was owing to defenders' carelessness or neglect to prevent this overcrowding by the customary method of shutting the gates and refusing admission after the platform had been comfortably filled, or to provide a sufficient staff of servants to cope with such a crowd, that the accident occurred, the pursuer being hurled off the platform as before mentioned by the pressure of persons behind her, who had been admitted by the defenders as before mentioned, as the platform was already overcrowded and incapable of holding the passengers. The defenders created the cause of the accident, and the danger was caused through the failure of the defenders to take the precaution before mentioned. The precautions taken by the defenders on the occasion in question for the protection of the public using the said platform were wholly inadequate, the staff at said station being insufficient in number in view of the number of passengers and the limited accommodation at said station."

The pursuer pleaded—"(1) The said injuries to the pursuer having been occasioned by failure of the defenders or those for whom they are responsible to take proper precaution for the safety of the public having occasion to use their platform, they are bound in the circumstances to compensate the pursuer for the injuries so received by her."

The defenders pleaded—"(1) The pursuer's material averments are irrelevant and insufficient in specification."

On 18th March 1902 the Sheriff-Substitute (SMITH) dismissed the action as irrelevant.

Note.—"I assume it to be true that the defenders' station at Glasgow on the 14th October 1901, being the Dundee Autumn Holiday, was crowded to excess by a mixed mob belonging to Glasgow and to Dundee, and that the pursuer was pushed off the Buchanan Street platform and sustained injury to her clothes and person, but as I cannot conceive what a railway company can do to control or regulate a mixed mob in its movements, more especially to protect one who voluntarily became a member of said mob, I do not feel able to form an intelligible idea of the fault for which this Railway Company can justly be found liable in damages to the pursuer. A legal wrong must be intelligently stated before it can be remitted to probation."

The pursuer appealed for jury trial, and argued—The action was relevant. Railway companies had the regulation of traffic in their hands, and the defenders could have taken steps which would have prevented the accident to the pursuer. The danger was obvious to the defenders, and it was their duty to take precautions to regulate the movements of the crowd—*Macgregor* v. *Glasgow District Subway Company*, July 19, 1901, 3 F. 1131, 38 S.L.R. 480; *Hogan* v. *South-Eastern Railway Company* (1873), 28 L.T.R. 271.

Argued for the defenders—There were no circumstances averred from which negligence on the part of the defenders could be inferred. Without such circumstances the mere fact that an accident happened did not expose a railway company to an action of damages. In the present case the defenders had not created the conditions which made the crowd dangerous, and it did not appear from the pursuer's averments whether the accident happened because individuals in the crowd behaved badly or because the defenders admitted a crowd; in either case the action was irrelevant — *Cannon* v. *Midland and Great Western Railway (Ireland) Company* (1880), 6 L.R.I. 199; *Cornman* v. *Eastern Counties Railway Company* (1859), 29 L.J. Exch. 94.

At advising—

LORD JUSTICE-CLERK—In this case the pursuer alleges that when on the platform of Buchanan Street Station she was thrown off the platform by the crowd assembled there. She 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 ascer-

tained. I am therefore in favour of recalling the interlocutor of the Sheriff-Substitute and giving to the pursuer an opportunity of proving her case.

LORD YOUNG concurred.

LORD TRAYNER—I understand it to be the view of the Sheriff-Substitute that if the pursuer's injuries, of which she complains, were the consequence of intemperate or improper conduct on the part of the crowd assembled on the defenders' platform, the defenders could not be held liable therefor. I concur in that view, and had nothing further than this been averred by the pursuer I should have agreed with the Sheriff-Substitute in holding the averment irrelevant. But I think the pursuer avers more than that. She says that her injury was immediately caused by the pressure of the crowd, but she says also that the defenders were in fault in allowing such a crowd to be there, and in not providing a sufficient staff of servants "to cope with the crowd," which I suppose to mean a sufficient staff of servants to afford adequate protection to persons like the pursuer (entitled to be on the platform) against the probable consequences from the presence of a crowd which the defenders knew or had reason to anticipate would be present on the occasion libelled. 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 which cannot be made the subject of inquiry. I am therefore for recalling the interlocutor appealed against and allowing the pursuer's issue.

LORD MONCREIFF—I am of the same opinion. I will only say I think the pursuer has stated a case for inquiry.

The Court sustained the appeal and ordered issues.

Counsel for the Pursuer and Appellant—Gunn. Agents—Mackay & Young, W.S.

Counsel for the Defenders and Respondents—Dundas, K.C.—M'Clure. Agents—Hope, Todd, & Kirk, W.S.

Thursday, November 6.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

EARL OF CAMPERDOWN AND OTHERS *v.* PRESBYTERY OF AUCHTERARDER.

Process—Jurisdiction—Finality Clause—Reduction—Ecclesiastical Buildings and Glebes (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 96).

The Ecclesiastical Buildings and Glebes (Scotland) Act 1868 provides that the decision of the presbytery in matters falling under the Act shall be appealable to the Sheriff, and the judgment of the Sheriff appealable to the Lord Ordinary on Teinds. It also provides "that all orders, findings, interlocutors, judgments, or decrees pronounced by the Lord Ordinary shall be final and not subject to review." In a case where the Lord Ordinary on Teinds had affirmed a judgment of the Sheriff, by which he dismissed the appeal from the Presbytery as incompetent on the ground that the intimation thereof required by the statute had not been given timeously, *held* that the Court of Session had no jurisdiction to entertain an action of reduction of the interlocutors of the Lord Ordinary and the Sheriff.

The Ecclesiastical Buildings and Glebes (Scotland) Act 1868 enacts, *inter alia*:—

Section 3—"From and after the passing of this Act, if, in the course of any proceeding before any Presbytery of the Church of Scotland relating to the building, rebuilding, repairing, adding to, or other alteration of churches or manses . . . any heritor or the minister of the parish shall be dissatisfied with any order, finding, judgment, interlocutor, or decree pronounced by such presbytery, it shall be competent for such heritor or minister . . . to stay such proceedings by appealing the whole cause as hereinafter provided."

Section 4—"An appeal under this Act shall be taken by the appellant or his agent presenting a summary petition to the sheriff of the county in which the parish concerned is situated, praying him to stay the proceedings before the presbytery, and to dispose of the same himself."

Section 5—"All appeals under this Act shall within ten days of their presentation be intimated by circular transmitted by the appellant or his agent through the Post Office, addressed to each heritor or his known factor or agent . . . and to the clerk of the presbytery of the bounds."

Section 14—"All orders, findings, judgments, interlocutors, or decrees pronounced by any sheriff under the authority of this Act shall be final and conclusive, and not subject to review by any court whatsoever, unless an appeal shall be taken to the Lord Ordinary against the same in manner hereinafter mentioned."