

not have undertaken to destroy the photographs and finger-print impressions, looking to the petty nature of the offence and the youth of the pursuer at the time. That course not having been adopted, and it being necessary to decide the question, I am of opinion that the photographs and finger-print impressions were taken against both the spirit and the letter of the law. It is evident that at one time the defender's advisers thought that they could maintain the right of the police without a warrant to take such photographs and finger-print impressions in the case of an untried prisoner not in custody. Otherwise the appeal on record to the Under Secretary's letter of 1st September 1904 and the averment in answer 9 as to the custom of the police are unintelligible. In the defender's pleas, however, these Regulations are not founded on, and in the argument before us they were ignored. The defender maintained in regard to both photographs and finger-prints that he had not exceeded his common law rights, and in addition in regard to the photographs that the pursuer's averments showed that what was done took place with the pursuer's consent. It is not necessary to impugn the right of anyone to photograph an individual in a public place, whether that individual is conscious or unconscious, willing or unwilling. It is sufficient that the circumstances of this case, as disclosed by the averments of both parties, preclude any such question arising. Looking to the age of the pursuer and the refusal of the defender to allow his mother's presence, I look upon the case as one of compulsion within police premises. The police seem to me to have acted exactly as they would have done had the pursuer been in custody and had they obtained a warrant in terms of the Regulations of 20th August 1904. The pursuer not having been in custody, and the police not having obtained a warrant, the photographs and finger-prints were unwarrantably obtained. The case could not have been met by an interdict against the police making any use of the photographs and finger-print impressions. The pursuer was justified in taking the present proceedings, and I agree with your Lordships in thinking that the proper course is to order the destruction of the articles in question.

The second conclusion is in an entirely different position. It is admitted that the whole acts complained of which are said to warrant the pursuer's demand were committed by two sergeants of the Perthshire County Constabulary without the defender's knowledge. It is not said that the defender can be made liable for the acts of these officers under the law of master and servant, for under the Statute of 1857 they were not his servants. Nor is it alleged that he had given them any special instructions in relation to this case, or in relation to any identical or similar case. The pursuer perilled his case on the bald averment, which can be extracted from condescendence 6, namely, that the sergeants "were acting in obedience to Sheriff's instructions." I agree with the Sheriff in thinking

that this averment of general instructions without any specification is not sufficient in a case of this kind. The pursuer was asked in the course of the debate whether he wished to make his averment more specific, as, for instance, by averring, in reference to the defender's answer which he merely denies, that with the defender's knowledge and authority photographs and finger-print impressions were in practice taken of persons not in custody and without obtaining a warrant. But he declined to make his averment more specific. Therefore in my judgment, so far as the defender is concerned, the pursuer's action based on the alleged slander must be dismissed as irrelevant.

The Court pronounced this interlocutor—

"Recal the interlocutors of the Sheriff and the Sheriff-Substitute appealed against, dated respectively 29th March 1915 and 8th February 1915: Find that the taking of the photographs and finger-print impressions complained of and admitted on record was contrary to law, and that the pursuer is entitled to have the same destroyed: Therefore ordain the defender to destroy within ten days from this date all photographs, both negatives and copies, of the pursuer, and also the original impressions of his fingers and all prints thereof taken on or about 15th May 1914 in the County Police Office, Perth, and that in the presence of agents for the parties and at the sight of the Sheriff-Clerk of the county of Perth: *Quoad ultra* dismiss the action, and decern."

Counsel for the Pursuer and Appellant—Chisholm, K.C.—Macgregor Mitchell. Agents—J. Miller Thomson & Co., W.S.

Counsel for the Defender and Respondent—Sandeman, K.C.—MacRobert. Agents—Carmichael & Miller, W.S.

Tuesday, January 4.

SECOND DIVISION.

[Lord Hunter, Ordinary.]

ABBOT v. NORTH BRITISH RAILWAY COMPANY.

Reparation—Railway—Negligence—Passenger Alighting when Train not at Platform—Invitation to Alight—Relevancy.

A female passenger brought an action of damages for personal injury against a railway company, in which she averred that on her arrival at her destination, which was a terminus, the carriage in which she was seated was not able owing to the length of the train to be brought up opposite the platform, that she and other passengers in the carriage waited a quarter of an hour or thereby, and that as no one appeared to assist them to alight they proceeded to do so themselves, in the course of which the pursuer fell and was injured. She

averred, further, that the stationmaster was on the platform and saw the passengers alighting but gave no instructions. Held (diss. Lord Salvesen) that the action was irrelevant.

Mrs Sarah Ferrol or Abbot, wife of and residing with William Abbot, calender worker, Dundee, with her husband's consent and concurrence as her curator and administrator-in-law, *pursuer*, brought an action against the North British Railway Company, *defenders*, in which she claimed £100 damages for personal injuries.

The pursuer *averred*—“(Cond. 1) On Saturday, the 25th July 1914, the pursuer travelled as a passenger on the defenders' railway from Dundee Tay Bridge Station to Methil. The train in which the pursuer travelled from Dundee was due to leave Dundee at 4:10 p.m., but did not leave until about 5 p.m., and arrived at Thornton Junction about 7:30 p.m. The pursuer left the said train at Thornton Junction, and after waiting about half-an-hour for a connection to Methil entered another train to complete her journey to Methil, and she arrived by said last-mentioned train at Methil about 8:25 p.m. With reference to the statements in answer it is admitted that the date in question was the beginning of the annual trade holidays in Dundee. *Quoad ultra* denied. (Cond. 2) The said train from Thornton to Methil was a long train, and the pursuer travelled in the rear part thereof. On arrival at Methil the train stopped in the station, but the platform was not long enough to accommodate the whole of the carriages, and the carriage, of an old type, in which the pursuer was travelling was brought to a final standstill outside the platform. (Cond. 3) The pursuer, along with several other passengers who were travelling in the same compartment, remained seated for several minutes after the train had stopped. The passengers in the fore part of the train alighted. No warning or instruction was given by any of the defenders' servants to the passengers in the rear part of the train to keep their seats. After waiting a quarter of an hour or thereby, and as no one appeared to assist them to alight, or to inform them that any arrangements were to be made to bring them to the platform, the passengers in the pursuer's compartment proceeded to alight. The defenders' stationmaster, who was standing on the platform, saw the passengers alighting from the rear carriages, and gave no warning or instructions to them to remain in the carriages. Admitted that Methil is a terminal station. (Cond. 4) The pursuer accordingly, following the example of the other passengers, stepped down from the carriage on to the upper footboard, but in trying to get down thence to the lower footboard, *which owing to the darkness she was unable to see*, she missed her footing, and fell heavily on to the permanent way. In consequence of her fall she was severely bruised and shaken, and one of her left ribs was fractured. She was removed to the house of her daughter in Methil, and was there confined to bed until 21st August 1914 under medical treatment, when she was

removed home, and where she was confined to bed for a month thereafter. Besides these injuries the pursuer sustained a severe general shock to her nervous system. . . . (Cond. 5) The said accident to the pursuer was due to the fault or negligence of the defenders or of their servants, for whom they are responsible, in failing to provide reasonable and proper means whereby the passengers in the rear portion of the said train might safely alight therefrom. It was the duty of the defenders' servants in charge of the said train and station to make arrangements whereby the carriage in which the pursuer was travelling might be brought to the platform, and to inform the passengers within a reasonable time of the arrival of the train that this would be done, and to warn them not to alight until it was done. Further, it was the duty of the defenders' said servants if the said carriage was not brought to the platform to assist passengers so that they might alight in safety. All these they failed to do, and the pursuer had thus no alternative except to descend unassisted from the carriage where it was. . . .” [The words printed in italics were deleted at the debate in the Inner House.]

The defenders pleaded, *inter alia* —“(1) The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons, the action should be dismissed.”

The pursuer proposed an issue in the ordinary form.

On 25th May 1915 the Lord Ordinary (HUNTER) sustained the first plea-in-law for the defenders, disallowed the issue proposed, and dismissed the action.

Opinion.—“[After a narrative of the pursuer's averments]—The pursuer alleges that the defenders were in fault in failing to provide reasonable and proper means whereby the passengers in the rear portion of the train might safely alight therefrom. It is not said that the pursuer was not aware that the train was not at the platform, or that there was special danger in alighting from the train at the place where she did.

“In the case of *Siner v. Great Western Railway Company*, (1869) 4 Ex. 117, it was held that where a lady was injured in descending from a carriage which overshot a platform she had no claim against the railway company, and a verdict returned in her favour by a jury was set aside on the ground that there was no evidence of negligence to go to the jury. In that case Mr Justice Hannen said railway companies ‘have done so much for the comfort and convenience of travellers that it is now made the subject of complaint if the highest degree of luxurious care is not attained in all their arrangements. Platforms are now made so that passengers may step from the carriage to the ground with as great ease as they can pass from one room of their house to another. And this is so usual that I do not doubt that it would be negligence to bring a train to a stop in such circumstances as would lead a person to expect that there was a platform. But if it is daylight, and the passenger can see that there is no platform, then he must inquire whether there

are not other means of alighting.' Other cases, English and Irish, were cited where the Court held that it was a question for the jury to say whether in the absence of a platform at the place of an accident the railway company had provided reasonable means to enable the passengers to alight—*e.g.*, *Robson v. North-Eastern Railway Company*, (1876) 2 Q.B.D. 85; *Rose v. North-Eastern Railway Company*, (1876), L.R., 2 Ex. D. 248; *Thomson v. Belfast, Holywood, and Bangor Railway Company*, (1871), I.R., 5 C.L. 517.

"In *Muirheads v. North British Railway Company*, (1884), 11 R. 1043, 21 S.L.R. 706, the Court assuozied a railway company from an action in which the pursuer had injured herself in descending from the carriage of a train that had overshot the platform. In the recent case of *Neilson v. North British Railway Company*, 1907 S.C. 272, 44 S.L.R. 235, an issue was allowed upon the ground that the pursuer had averred that she was unaware that the train was past the platform, and alighted under the impression that the train was opposite it. The Lord President stated that he considered that to be the only relevant averment. As no such averment is made in this case I think that case is an authority for dismissing the present action as irrelevant."

The pursuer reclaimed, and argued—The defenders were liable. A railway company was bound to provide proper means for the passengers alighting, and they did not do so here. The steps on railway carriages were suitable for descent on a platform but not on the line. The present was a suitable question for a jury—*Robson v. North-Eastern Railway Company*, (1875) 10 Q.B. 271, (1876) 2 Q.B.D. 85; *Rose v. North-Eastern Railway Company*, (1872) L.R., 2 Ex. D. 248; *Thomson v. Belfast, Holywood, and Bangor Railway Company*, (1871) I.R., 5 C.L. 517; *Metropolitan Railway Company v. Jackson*, (1877) 3 A.C. 193, *per* Lord O'Hagan at p. 204, and Cairns, L.C., at p. 197; *Bridges v. Directors of North London Railway Company*, 1873-4, L.R., 7 H.L. 213, *per* Denman, J., at p. 225, and Brett, J., at pp. 234 and 235; *Wharton v. Lancashire and Yorkshire Railway Company*, (1888) 5 T.L.R. 142; *Potter v. North British Railway Company*, (1873) 11 Macph. 664, 10 S.L.R. 446; *Aitken v. North British Railway Company*, 1891, 18 R. 836, *per* Lord Adam at p. 839, 28 S.L.R. 638; *Neilson v. North British Railway Company*, 1907 S.C. 272, 44 S.L.R. 235; *Bevan on Negligence* (3rd ed.), pp. 973, 985. The cases cited by the Lord Ordinary were all cases where the train overshot the platform and the passenger immediately proceeded to get out. In the present case there was not only an invitation to alight, but reasonable care by the passenger in acceding to the invitation. It was thus distinguishable from the cases cited *contra*.

Argued for the defenders and respondents—No negligence could be inferred from the pursuer's averments. The pursuer did not aver that she thought she was at the platform, that she called for assistance or called

in vain for help. In cases where negligence had been found against a railway company in similar circumstances there had been (1) a disappointed expectation in the passenger induced by the company, (2) an averment of actual danger at the place of alighting, (3) assistance called for and not rendered. There was here an absence of all these positive elements. Absence of a platform did not *per se* infer negligence, but only a less degree of convenience than usual. Further, there were steps provided on the carriages, which were designed for use when the train was not at a platform—*Siner v. Great Western Railway Company*, (1869) 4 Ex. 117; *Muirhead v. North British Railway Company*, (1884) 11 R. 1043, 21 S.L.R. 706.

At advising—

LORD JUSTICE-CLERK—The pursuer sues for damages in consequence of injuries sustained by her, as she alleges, through the fault of the defenders. The pursuer was a passenger by one of the defenders' trains to Methil. The train was a long one, and when it came to a final standstill at Methil, which is a terminus, the carriage in which the pursuer was had not reached the platform. After waiting for about a quarter of an hour the pursuer, "following the example of the other passengers, stepped down from the carriage on to the upper footboard, but in trying to get down thence to the lower footboard she missed her footing and fell heavily on to the permanent way." The pursuer originally averred that owing to the darkness she was unable to see the lower footboard, but at the debate before us we were informed that this was incorrect, and the averment was deleted. Condescendence 5 contains the only averment of fault or negligence, and while there are three heads of fault there set forth, they are all failures of duty and do not actually assert any material defect or unseen danger.

The Lord Ordinary dismissed the action as irrelevant, and in my opinion he was right in so doing.

There have been several cases somewhat similar to the present in England and Ireland and in Scotland, and while efforts have been made to reconcile all the cases I do not think the result has been very successful. While the English and Irish cases, except of course those in the House of Lords, are not strictly speaking binding on us, we are in the habit of accepting them as of practically equal value to those in our own Courts. There is, however, one important difference in point of practice and pleading between the laws of England and Ireland and our law which must be kept in view. In England and Ireland, as I understand, the plaintiff is rarely if ever nonsuited until the evidence has been led, and even then, if the presiding Judge is only doubtful as to whether there is evidence to warrant a verdict for the plaintiff, the verdict of the jury is taken, the point of law being reserved for after-consideration. In Scotland the defender's plea of irrelevancy is generally disposed of before the issue is adjusted, and where as in the present case the distinctions between previously decided

cases are narrow the demands upon the pursuer for precision and specification in his averments are more insistent.

In my opinion the pursuer's averment in condescendence 4 above quoted discloses merely a case of misadventure not inferring fault on either side. The pursuer understood, as was the fact, that the train had been brought to a final standstill; she knew Methil was a terminus, she knew the train was not at the station, and that there were two steps or footboards on the carriage: she saw other passengers getting out and believed she could safely alight without asking for assistance. She was a mill-worker, and no averment is made that she was incapacitated or infirm by age or otherwise; she missed her footing in trying to get down from the upper to the lower footboard, fell, and was hurt. There is no averment that there was any danger or difficulty in alighting as the pursuer tried to do. It appears to me that, as the case was presented to us, the sole question comes in the end to be, Were the defenders in fault because assistance to alight, which the pursuer did not ask, was not tendered to her? In my opinion they were not. It is said that the stationmaster saw the passengers alighting from the rear carriages, and that all did so safely except the pursuer.

In condescendence 5 there are, as I have said, truly three averments of fault. The first is failure to provide reasonable and proper means of alighting. There were admittedly two footboards provided, and it is not said that they were in any way defective or insufficient, and indeed this ground of fault was not argued before us.

Nor indeed was the second. It was conceded by the defenders that there was no intention on their part to shunt and remarshal the train, so as to bring the carriage in which the pursuer was opposite the platform, and that it was intended that she should alight where the carriage was originally brought to a standstill. In my opinion it does not infer fault that the train is too long to allow of every carriage being brought to a standstill opposite the platform, nor that in daylight, when the pursuer could see the two footboards, and know that the train was not opposite the platform, such an accident as she alleges took place.

The third ground of fault, however—failure on the part of the servants of the defenders to tender assistance—was urgently insisted in. In consequence of this failure the pursuer says she had no alternative except to descend unassisted. There was, I think, the obvious alternative of asking for assistance. In my opinion the law does not impose on railway companies such a duty as is here alleged: and if authority can be appealed to in such a matter the weight of authority such as there is appears to me to support the defenders' contention that if assistance is desired it should be asked for. I am therefore of opinion that there is no relevant averment of fault.

As to the cases, I specially refer to the

opinion of the Court delivered by Cockburn, C.J., in *Cockle*, L.R., 7 C.P. 321, at p. 324, et seq.; to the opinions in *Siner*, L.R., 3 Ex. 150, and 4 Ex. 117; and to the Scottish cases cited by the Lord Ordinary. Some of the cases cited by the pursuer must, I think, be regarded as affected by a misunderstanding as to what was decided in *Bridges*, L.R. 7 (H.L.) 213, as was explained in *Metropolitan Railway Company*, 3 A.C. 193. In others the station was not a terminal one, and the Court proceeded on the view that the plaintiff was hurried by the fear of being carried past the proper destination. Two cases were specially founded on by the pursuer—*Wharton*, 5 T.L.R. 142, and *Thomson*, I.R., 5 C.L. 517, cited by the Lord Ordinary. In *Wharton's* case the second footboard was "left out of consideration because it was concealed," and *Siner's* case was not overruled or dissented from but distinguished. In *Thomson's* case the place where the plaintiff was asked to alight was expressly found to be "dangerous."

LORD DUNDAS—I also think the interlocutor reclaimed against is right. The case is perhaps rather near the line which separates relevancy from irrelevancy, but I am unable to hold that the pursuer's record, particularly article 5 of the condescendence, discloses any sufficient case of fault or negligence on the part of the Railway Company. The pursuer's counsel frankly withdrew her averment that the accident occurred owing to darkness, and we must view matters on the footing that it happened in broad daylight. It appears that the train which brought the pursuer to the terminal station of Methil was longer than the platform, so that the rearward part of the train in which she was seated was not when it came to a final standstill opposite to the platform. It was not, and scarcely could be, contended that this fact, of which the pursuer was aware, in itself constituted fault on the defenders' part. But the pursuer's counsel alleged that it is the duty of railway companies in such circumstances to assist passengers to alight from carriages which are not opposite to the platform. This proposition is I think too broadly stated. There may, no doubt, be a duty to assist such passengers as require or ask for help in descending. In a case like the present most able-bodied passengers—men at least—would not require or ask for help; they would find no difficulty, still less danger, in descending from the carriage to the ground. The pursuer avers that she had "no alternative except to descend unassisted." She might surely have indicated by voice or gesture a desire for assistance if she wanted it. She does not say that she did so. She does not aver a total absence of porters or other officials: nor that she attempted to attract the attention of anyone, though the stationmaster it is said was on the platform; nor that any official refused or delayed to assist her when asked to do so, or, seeing her in difficulty abstained from aiding her. The pursuer says that she and the other passengers in her compartment sat and waited for "a quar-

ter of an hour or thereby," and then "proceeded to alight." The others, I gather, descended in safety, but the pursuer unfortunately "missed her footing and fell heavily." This sounds very like a pure accident. I am unable to hold that any case of fault is averred. The pursuer's counsel admitted that they were not in a position to strengthen their averments in any way by amendment.

We were referred to a number of cases, Scots, English, and Irish, none of which appeared to me to afford any material aid to the pursuer. In all the cases where the pursuer's record was held relevant, or (as more frequently occurred) the Court refused to interfere with the verdict of a jury, there was, I think, present some material feature which is here absent, *e.g.*, that the pursuer (or plaintiff), generally a woman, thought her carriage was opposite the platform; or that the place of alighting was actually a dangerous one; or that the light was deficient; or that she was in reasonable apprehension of being carried past her station if she did not hurry; or that she called in vain for assistance; or that some official of the company saw that she was in difficulty and failed to help her. Two cases were especially relied on by the pursuer's counsel—an Irish case, *Thompson v. Belfast, &c., Railway Company*, (1871) I.R. 5 C.L. 517, and an English case, *Wharton v. Lancashire and Yorkshire Railway Company*, (1888) 5 T.L.R. 142. The ground of judgment in the Irish case, and its manifest distinction from that now before us, sufficiently appear from the concluding portion of the opinion of the Court of Exchequer, delivered by Fitzgerald, B., who says "There was also evidence that the stationmaster saw her" (the plaintiff) "about to alight from the carriage and yet did not warn her against doing so, though the place of descent was dangerous. This evidence of negligence may have been slight, but we cannot hold that the Judge was bound to withdraw it from the jury." In the English case it appeared that the platform was so constructed as to be about 3 feet below the level of the floor of the railway carriage; steps were kept at the station which were sometimes used to assist passengers to ascend or alight; on the occasion in question Mrs Wharton was apprehensive of being carried on in the train, and after looking (as she deponed) for a porter but seeing none proceeded to alight, fell, and was injured. The jury awarded damages, and the Court of Appeal refused to interfere with the verdict. They considered that the jury were entitled to hold that the company had not afforded reasonable facilities for alighting, and rejected the argument mainly pressed for the railway company, *viz.*, that the plaintiff was guilty of contributory negligence. There is no such argument here. The question is whether or not the pursuer has relevantly averred fault on the part of the defenders in respect that no official of the company in fact offered to assist her to alight—she not having made any attempt to attract the attention of a porter or other official—and that in proceeding to get down

unassisted she missed her footing and fell. I think we must answer this question in the negative.

LORD SALVESEN—Decisions on relevancy are seldom of much interest except to the parties, but the present case is an exception, because the facts averred raise a distinct question of law, and our decision upon it will be of wide application. The pursuer travelled on 25th July 1914 as a passenger on the defenders' railway from Dundee to Methil, which is the terminus of the defenders' line of railway. The train by which she travelled was too long to be accommodated opposite the platform, and the rear carriages were brought up just outside it. The passengers in the carriages which were opposite the platform at once left the train, but the pursuer, who was travelling in one of the rear carriages, remained seated. After waiting a quarter of an hour or thereby, as no one appeared to assist them to alight, or to inform them that any arrangements were being made to bring them to the platform, the passengers in the pursuer's compartment proceeded to alight. The defenders' stationmaster was on the platform (at what distance away is not said) and saw the passengers alighting, but gave no instructions.

The fault alleged against the defenders is, in the first place, the general one of "failing to provide reasonable and proper means whereby the passengers in the rear portion of the said train might safely alight therefrom." The duty of the defenders' servants is averred to have been either to bring the carriage opposite the platform, and to give due notice that they were intending to do so, or, if the carriage was not to be brought to the platform, to assist passengers who might desire assistance to alight. It was admitted by the defenders that they had no intention of bringing the carriages, in one of which the pursuer was seated, up to the platform, as this would have involved shunting operations occupying some considerable time, and I cannot affirm that there was an absolute duty upon them to do so in the circumstances. It remains, however, to consider whether it was the duty of their servants to offer assistance to any passenger who desired it, so as to obviate as far as possible such an accident as happened to the pursuer. The defenders maintained that they had no duty, statutory or otherwise, to provide a platform at Methil Station which should be long enough to accommodate all such trains as they found it necessary to run, and I do not think that this was ultimately disputed. They further contended that in the circumstances they had no duty at all towards passengers who might happen to find themselves beyond the platform, and that these passengers must descend from the part of the train in which they were seated the best way they could. They suggest that if the pursuer had requested the defenders' servants to assist her and they had failed to do so, there might have been responsibility, but they say that it is plain on the pursuer's own averments that no such request was made,

and that she therefore must be held as having descended from the carriage at her own risk.

There are a good many cases in the books of females meeting with similar accidents in descending from a carriage on to the permanent way, owing either to the engine having overshot the platform or to the platform not being long enough to accommodate the whole train. Some of these cases relate to persons who had arrived in the dark and proceeded to alight in the belief that the carriage in which they were seated was opposite the platform. These cases have no application to the circumstances of the present, for the accident took place in daylight. There are, however, two which appear to me to be absolutely in point. The first is the case of *Thompson, L.R., 5 C.L. 517*. There the plaintiff had arrived at the end of her journey, and the carriage in which she was was so situated with relation to the platform that she had to descend on to the permanent way. She waited some time and looked out of the window of the carriage and saw the stationmaster assisting some passengers out of another compartment of the same carriage. As no one came to her assistance she descended from the carriage by herself, putting her foot on the small iron step opposite the carriage door and then attempting to put it on the long wooden step below. Counsel for the railway called upon the Judge to direct a verdict for the defendants on the ground that there was no evidence of negligence to go to the jury, but the Judge declined to do so, being of opinion "that there was evidence to be submitted to the jury of the absence of proper requirements and assistance to enable passengers to alight securely from the carriages which were outside the platform." This direction was unanimously approved by the Court of Exchequer consisting of three Judges. The second case is the case of *Wharton, 5 T.L.R. 142*. The circumstances were very much the same except that the train was opposite the platform, which, however, was unusually low. There were (as in the present case) two continuous footboards on the carriage, with a space of 17½ inches between them, and from the second footboard to the platform there was a distance of 7 inches. In trying to put her foot on the second footboard the plaintiff fell and was injured. The alleged negligence was that the platform was too far below the first step of the carriage, and that therefore the defendants did not afford reasonable facilities for passengers alighting from the carriages. The platform, however, had been in the same condition for many years. The jury found for the plaintiff, but the Divisional Court entered judgment for the defendants. The Court of Appeal, consisting of the Master of the Rolls and Lords Justices Fry and Lopes, were unanimous in allowing the appeal. The Master of the Rolls' opinion is reported in the third person—"He was unable to say that the jury might not find that there were no reasonable facilities. What, however, was mainly relied upon by the defendants was that though that might be so the plaintiff

should have called out for assistance and not have attempted to alight without it, seeing as she did the danger she ran. He could not see that a jury was bound to come to the conclusion that that neutralised the want of reasonable facilities to alight. A jury might well say that the railway company should at any rate have given notice that passengers could get assistance to alight if they wished." Lord Justice Fry said—"It was also said that she ought to have called out for assistance. His Lordship could not see how the railway company could be said to afford reasonable facilities for passengers to alight when it was necessary for the passengers before alighting to call out for assistance. In his opinion there was evidence of negligence in the defendants leading to the accident. The carriage was drawn up at the platform, and there was an invitation to passengers to alight, and he was unable to think that reasonable facilities for alighting were provided when passengers had to call out for assistance." Lord Justice Lopes concurred on substantially the same grounds. This decision, from the constitution of the Court, appears to me one of high authority, although, of course, it is not binding upon us, and the facts are stronger here, inasmuch as the distance between the upper footboard and the permanent way must have been greater in the present case by the height of the platform that actually existed at the station where Mrs Wharton met her accident.

Although the above two cases are those which are most directly in point, there are other decisions which support the general proposition that it constitutes negligence on the part of a railway company not to provide reasonable means for passengers to alight where through the exigencies of railway traffic a train either overshoots the platform or the platform is not sufficiently long to accommodate the whole train. The case of *Robson, L.R., 10 Q.B. 271*, and 2 Q.B.D. 85, deals with an accident of the former class. The only point of difference between the facts of that case and those of the present is that the plaintiff there alighted because unless she had done so the train would have been put in motion again and would have carried her to the next station. She did not call for assistance before doing so, but was nevertheless found entitled to damages. Mr Justice Field, who gave the opinion of the Court of Queen's Bench, said—"The plaintiff therefore, having been invited to alight at a spot at which the ordinary and usual means of descent were absent, we think that the duty of the defendants not to expose the passenger to undue danger required them to provide some reasonably fit and safe substitute." Mellish, L.J., in the Court of Queen's Bench Division, put the matter thus—"It is clearly the law that railway companies are bound to find reasonable means for passengers to alight at every station at which they choose to stop. The plaintiff here was invited to alight, and the fact of the carriage being beyond the platform affords some evidence that she could not get out without assist-

ance and exposing herself to some danger." In the present case we have a similar situation, viz., an invitation to alight where owing to there being no platform opposite the carriage in which the pursuer was she could not alight without assistance so as not to expose herself to some danger. A jury, in my opinion, might well conclude that the failure to provide such assistance after a reasonable interval of waiting constituted negligence on the part of the defenders.

The defenders relied upon two Scottish authorities — *Muirheads*, 11 R. 1043, 21 S.L.R. 706, and *Neilson*, 1907 S.C. 272, 44 S.L.R. 235. The facts in *Muirheads'* case, however, were entirely different. The train had overshot the platform, and the pursuer immediately got out without giving the servants of the railway company any opportunity to offer assistance. The case was, moreover, decided after a proof, from which it appeared that the train would have been put back so as to enable the passengers to alight on the platform if they had kept their seats. *Neilson's* case is really an authority in favour of allowing this action to go to trial. The only averment that was considered relevant was one to the effect that the pursuer when she proceeded to alight did not know the train was past the platform. As the accident occurred in daylight I should have had great difficulty in taking such a statement off the pursuer's hands, as it is certain that if she prepared to alight with care she was bound to see as soon as she opened the door of the carriage that there was no platform opposite it. It was thus a case of a passenger getting out immediately and proceeding to descend on to the permanent way without giving the railway company's servants an opportunity of providing some substitute for a platform. On the other hand, the dicta of Lord President Inglis in *Potter v. The North British Railway Company*, 11 Macph. 667, 10 S.L.R. 446, are a strong authority in the pursuer's favour. He says—"It seems to me that the company's servants ought to see that the passengers who have occasion to get out at a place where there is not a platform ought to be warned in some way to take care of themselves, or helped in some way, if necessary, in descending from the carriages." The first alternative applies primarily where the accident occurs in the dark, and the second whether there is or is not daylight at the time. In these circumstances I have come to be of opinion, differing from the rest of your Lordships, that this case ought to be remitted in the ordinary way for inquiry before a jury.

LORD GUTHRIE—I concur with your Lordship in the chair and with Lord Dundas.

The defenders admit that they are bound to provide reasonable means for their passengers' safe ingress into and egress from their trains, and that this obligation applies to a portion of a train which projects beyond a platform and involves ascent from or descent to the level of the railway line. They do not question the statement in cond. 5 that they are bound "to provide reason-

able and proper means whereby the passengers in the rear portion of the said train" (the train in which the pursuer arrived at Methil, where the accident happened) "might safely alight therefrom."

After this statement the pursuer sets out four duties which she alleges (and the defenders admit it) were not fulfilled by them. The first three are thus stated—"It was the duty of the defenders' servants in charge of the said train and station to make arrangements whereby the carriage in which the pursuer was travelling might be brought to the platform, and to inform the passengers within a reasonable time of the arrival of the train that this would be done, and to warn them not to alight until it was done." The pursuer's counsel scarcely attempted to maintain before us an absolute duty on the defenders to do any of these three things. His case turns on the relevancy, in the circumstances disclosed by his averments, of the fourth instance alleged by him of failure of duty on the part of the defenders. It is thus expressed—"Further, it was the duty of the defenders' said servants, if the said carriage was not brought to the platform, to assist passengers so that they might alight in safety." This sentence is capable of two readings. If it only means that the defenders were bound to have servants ready to assist passengers who required assistance, or thought they required assistance, on such assistance being asked, then there is no question between the parties, for the pursuer does not allege the absence of such servants, or their being stationed too far away from her carriage to hear or attend to any request for assistance which might be made. Indeed, in cond. 3 she says that "the stationmaster, who was standing on the platform, saw the passengers alighting from the rear carriages." But what the pursuer obviously means is to allege a duty on the defenders to have servants alongside the carriage not opposite the platform, who should tender assistance to every passenger proposing to alight, which in this case meant all the passengers in her carriage. I agree with your Lordship in the chair and Lord Dundas that the cases relied on by the pursuer do not justify her demand, because in every one of these cases there were special elements which are not present in this case. For instance, in the case of *Wharton*, 5 T.L.R. 142, the place in which to alight was in itself dangerous; and in *Thomson's* case, I.R., 5 C.L. 517, the Irish case, the company's servants saw a person manifestly needing help and gave none. The pursuer does not allege that what she demands is an ordinary precaution or facility in railway working, and it does not commend itself to me as a reasonable precaution or facility. The ordinary railway passenger requires no assistance in the circumstances alleged by the pursuer, and would resent, or at least refuse without thanks, any offer of help. But there are or may be passengers who would require assistance, either human or, it might even be, mechanical. The need for such assistance is not necessarily evidenced by the mere appearance of the passenger, and it is not said that there

was anything in the age or appearance or conduct of this pursuer, a millworker, to make it evident that she required, or thought that she required, assistance. I cannot hold that the defenders were bound to do more than they admittedly did, namely, to provide for all the passengers means of egress from their train which are admittedly sufficient in case of the ordinary passenger, and to have in immediate and convenient readiness, if needed, additional assistance for those passengers who signified their need of such and their desire to have it. It seems to me that the sentence at the end of cond. 5, in which the pursuer sums up her case, is shown by her own averments to be a manifest *non sequitur*. It runs thus—"All these they failed to do, and the pursuer had thus no alternative except to descend unassisted from the carriage where it was." But her own averments show that she had an obvious alternative, namely, to ask for assistance from the defenders' servants, which it is not suggested they would have refused to give. It is not necessary to go further, but the case as presented by the pursuer strongly suggests that she did not ask for the assistance of the defenders' servants, because she did not think she needed any assistance from anybody. Other passengers descended from her carriage without any request for help from her, and it seems not improbable that if assistance had been proffered by the defenders' servants it would not have been accepted by her.

I therefore think that the Lord Ordinary has come to a right conclusion. But I think he stretches the case of *Neilson*, 1907, S.C. 272, 44 S.L.R. 235, too far, when, after referring to the speciality in that case, namely, that the pursuer averred that she was unaware that the train was past the platform and alighted under the impression that the train was opposite it, he adds—"As no such averment is made in this case, I think that case is an authority for dismissing the present action as irrelevant." But it is clear there may be other cases without that speciality where a relevant case could be made. Suppose, for instance, it had been said that the defenders had no servants within hail or signal of the pursuer, or that on asking the defenders' servants for assistance they refused to give it—in either of these cases I think there would have been a relevant averment of fault for inquiry.

The Court adhered.

Counsel for the Pursuer and Reclaimer—Chree, K.C. — Wark. Agents—J. & J. Galletly, S.S.C.

Counsel for the Defenders and Respondents—Macmillan, K.C. — E. O. Inglis. Agent—James Watson, S.S.C.

HOUSE OF LORDS.

Thursday, February 10.

(Before Lord Atkinson, Lord Shaw, Lord Parker, and Lord Sumner.)

CALDWELL & COMPANY, LIMITED v. CALDWELL.

(In the Court of Session, February 25, 1915, 52 S.L.R. 450, and 1915 S.C. 527.)

Company—Reduction of Capital—Confirmation by Court—Discretion of Court—Inquiry into Reasons—Loss of Capital—Companies Consolidation Act 1908 (8 Edw. VII, cap. 69), secs. 46 and 50.

The House of Lords dismissed an appeal from an interlocutor which confirmed a resolution for reduction of the capital of a company proceeding on a statement that capital had been lost, although a reporter to whom the matter had been remitted thought no capital had in fact been lost and no evidence had been taken by the Court, the company having meanwhile again passed a resolution to reduce the capital, and having as required by the Court altered its articles of association to the satisfaction of the reporter with a view to protecting the interests of the dissentient shareholder.

This Case is reported *ante ut supra*.

The respondent William Hay Caldwell appealed to the House of Lords.

At delivering judgment—

LORD PARKER—[*Read by Lord Sumner*]—It was decided by this House in *Poole v. National Bank of China, Limited*, 1907 A.C. 229, that whenever a company having the necessary powers in that behalf has passed a special resolution for the reduction of capital the Court has jurisdiction to confirm such reduction. In cases where the rights of creditors are not affected—that is to say, when the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital—the only relevant considerations are—(1) whether the Court ought to refuse its sanction out of regard to those members of the public who might subsequently become shareholders in the company, and (2) whether the reduction is fair and equitable as between the different classes of existing shareholders.

No alteration in this respect has been made by the Companies Consolidation Act 1908, the provisions of which are indeed open to less doubt than those of the Acts which it superseded.

It often happens that the special resolution for the reduction of a company's capital refers to the amount by which the capital is to be reduced as lost or unrepresented by available assets. In such cases I understand that since the decision of the case above referred to the practice of the courts in Scotland has been to dispense with proof of the facts referred to in the resolution,