fact of separation. In these circumstances, I am quite satisfied that the law settled as applicable to the case of a deserted wife must be applied here, and that the parish of her birth settlement is liable.

LORD ARDMILLAN—The real question here is, was there desertion? There is some difficulty in deciding that point, as the case is peculiar. But in consideration of the combined facts of separation, concealment by the husband of his residence, and failure to supply the necessaries of existence, I am disposed to hold that there was desertion, and therefore, though probably with less clearness than your Lordships, I am bound to concur in your Lordships' judgment.

LORD JERVISWOODE concurred.

The Court pronounced the following interlocutor:—

"Find that Andrew Carson, the husband of the pauper and the father of her two children, is a native of Ireland, without any settlement in Scotland; find that on the 29th August 1868 the pauper and her two children became proper objects of parochial relief, and received and continued to receive such relief from the parish of Campsie till the 24th of September 1868, when she was sent by the parish of Govan to a Lunatic Asylum as a pauper lunatic; find that on and after the said 29th of August, and on the said 24th of September, the said pauper and her children were deserted by her husband and their father; therefore refuse the appeal, and decern; find the appellant liable in expenses; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Pursuer — Fraser and Burnet. Agents—Mitchell & Baxter, W.S.

Counsel for Defender—Solicitor-General and W. A. Brown. Agents—J. & R. D. Ross, W.S.

M., Clerk.

Tuesday, June 17.

SECOND DIVISION.

REID *v.* CALEDONIAN RAILWAY CO.

Jury Trial—Motion to set aside Verdict—Excessive Damages.

A traveller in a railway accident received a severe nervous shock, although without external signs of injury.—*Held* that damages at a rate of from two to three years' earnings were not "excessive" in terms of the statute, and rule to set aside verdict *discharged.*

This case, arising out of the Kirtlebridge accident on 2d October 1872, was tried before Lord Neaves and a jury on 21st March 1873. The jury returned a verdict for the pursuer, and awarded him £2000 damages. On Saturday, June 14, the defenders moved the Court to have the verdict set aside, on the ground of the damages being "excessive" in the sense of the statute. The Second Division granted a rule, and the case now came up for parties to show cause why the rule should not be made absolute.

For the defenders, it was argued that the damages awarded were "excessive" when viewed along with the circumstances. The pursuer had not received any visible bodily injury; the medical evidence only brought it up to a nervous shock. The scene in the station alone might have produced a severe shock on the system of a nervous person, even though not actually in the train. Surely this would not have grounded a claim against the Company for damages. The pursuer's injuries being of this nervous character, it would not be easy to say how great or small they were Certainly he did not make the least of them, and though at the jury trial he was unable to bear a journey from Stirling, yet within ten days thereafter he proceeded to Glasgow, whence he went to the Continent, where he now remains.

For the pursuer, it was argued that the damages given must be extravagant—"outrageous," to use a term applied by the Judges in several such cases. Here is a man with an income of £700 to £800 a-year, an income which, by the books produced, was rapidly increasing. Yet further, the progress and success of the pursuer's business depended in great measure on his own personal skill and exertions. This was proved by the evidence alike of his own partner and of those persons who employed his firm. The firm, since this accident to Mr Reid, has failed to secure as large a share of its clients' business as formerly. The sum granted, £2000, is on the lowest scale less than three years' income, and on a higher one only that made in two and a-half years.

As to the extent of injury, the medical evidence, with one exception, is very much against the Company, and the doctor who first saw the pursuer, together with his family attendant, are both of opinion that the shock was, and still is, a very serious one. Since the accident he has been quite unable to attend to business.

Authorities—*Landale* v. *Landale*, 3 D. 818; *Houlden* v. *Cooper*, 20th Dec. 1871, 9 Scot. Law Rep. 169 (not elsewhere reported); *Stewart* v. *Caledonian Railway Co.*, Feb. 4, 1870, 7 Scot. Law Rep. 277 (the only report bearing on this point).

At advising—

LORD NEAVES—In this case I think it probable that had I been on the jury the damages I should have awarded would have been less than the sum which was actually given. I do not, however, think the sum from even my point of view could have been less than £1500. When the jury take a more gloomy view of the evidence adduced, and, in place of £1500, which the presiding Judge would have been disposed to regard as proper compensation, give £2000, such a difference can scarcely be held outrageous or "excessive" in terms of the statute.

LORD JUSTICE-CLERK—The impression which has been made upon my mind also by the evidence is, that the point was one on which a jury might fairly be left to judge. It must be observed further that the defenders perilled their case upon an allegation against the pursuer's honesty, and that the attempt to impeach it having failed, such a course, with such a result, could scarcely tend to diminish the damages a jury might be likely to award.

LORD COWAN—I do not think that the mere exhibition of a harrowing spectacle such as this was, and the injury to the nervous system there-

from, would be a ground, or at least a sufficient ground, for an award such as this. Thus, if a passenger had been quite unhurt, and merely was affected by what he saw around him, the question before us would have been in a different position. That this was not so here the medical evidence has amply demonstrated. The sum, in my opinion, is rather a large one, but this is certainly not a case of "excessive" preposterous damages.

Lord Benholme—I concur, and only add that I cannot, in respect of the amount awarded, throw out that award.

The Court pronounced the following interlocutor:—

"Apply the verdict, and decern against the defenders for payment to the pursuer of £2000: Find the pursuer entitled to expenses, and remit to the Auditor to tax and report."

Counsel for Pursuer—Solicitor-General (Clark), Q.C., and Balfour. Agents—J. W. & J. Mackenzie, W.S.

Counsel for Defenders—Lord Advocate and R. Johnstone. Agents—Hope, Mackay, & Mann, W.S.

S. Clerk.

HOUSE OF LORDS.

Tuesday June 17.

FORBES *v.* TREFUSIS.

(Ante vol. v. p. 593; vol. ix. p. 593.*)*

Appeal—Competency—6 *Geo. IV.*, 120, § 25.

The appellant having sued by a mandatory, as being absent from the United Kingdom; *Held* that the fact of his mandatory's presence and action for him did not exclude his right to appeal any time within 5 years under § 25 of the statute.

Entail—Destination.

A deed of strict entail contained a destination to A, and the heirs-male of the marriage between A and the entailer's daughter, and the heirs-male of their bodies respectively; whom failing, to the heirs-female of the marriage, &c. *Held* (sustaining judgment of the First Division of Court of Session) that on the succession opening by the death of the eldest son of the marriage without male issue, his only daughter, as heir whatsoever of his body, was entitled to take in preference to the next heir-male of the marriage.

Sir John Stuart of Fettercairn executed in 1811 a procuratory of resignation and deed of entail, whereby he bound and obliged himself, his heirs and successors whatsoever, to make due and lawful resignation of the lands and barony of Fettercairn, and others therein specified, "in favour of, and for new heritable infeftment of the same to be given and granted to myself, and failing me, to the heirs-male of my body; whom failing, to Sir William Forbes, Baronet, of Pitsligo, and the heirs-male procreated of the marriage between him and the deceased Dame Williamina Stuart or Forbes, my daughter, his spouse, and the heirs-male of their bodies respectively; whom failing, to the heirs whatsoever of the bodies of such heirs-male respectively; whom failing, to the heirs-female procreated of the said marriage, and the heirs whatsoever of their bodies respectively; whom failing, to John Hepburn Belsches, Esq. of Invermay, and the heirs-male of his body; whom failing, to the heirs-male of the body of the said Sir William Forbes, Bart., in any subsequent marriage; whom failing, to Sir George Abercromby, Bart., of Birkenbog, and the heirs-male of his body; whom failing, to the heirs whatsoever of the body of the said John Hepburn Belsches; whom all failing, to my own nearest heirs or assignees whatsoever, the eldest heir-female and the descendants of her body, always excluding heirs-portioners, and succeeding without division throughout the whole course of succession foresaid, as often as the same shall descend to females, and the daughter of the heir who shall happen to be last in possession of the lands and heritages before mentioned (whether such heir was served heir of tailzie or not) succeeding always preferably to the daughter of any former heir, so often as the succession through the whole course thereof shall devolve upon daughters, and which I hereby declare to be my true meaning, notwithstanding of the aforesaid general destination of heirs whatsoever."

The deed contained the usual prohibitory, irritant, and resolutive clauses of a strict entail.

Sir John Stuart died in 1821 without male issue. He was survived by his son-in-law, Sir William Forbes, who died in 1828 without having completed a title to the entailed estate, and who left three sons born of the marriage between him and the entailer's daughter—viz. (1) Sir John Hepburn Stuart Forbes; (2) Charles Hay Forbes; (3) James David Forbes.

On the death of Sir William, his son, Sir John H. Stuart Forbes, in accordance with the destination in his grandfather's deed of 1811, succeeded to the entailed estates, and completed a title thereto.

Sir John died in 1866, leaving an only child. Lady Clinton, who, as heir of tailzie and provision to her father, completed a title to the estate, which was now challenged in an action of reduction and declarator at the instance of her cousin, the eldest son of Charles Hay Forbes, who was next brother to Lady Clinton's father.

The pursuer pleaded—"(1) The pursuer being one of the heirs-substitute under the deed of entail of 11th October 1811, has a good and undoubted title to insist for reduction of the writs called for, which were granted to his hurt and prejudice. (2.) The writs called for are null and void, and liable to be reduced and set aside, in respect of vitiations, informalities, and defects in the execution or registration thereof, or otherwise. (3.) The deed of entail executed by Sir John Stuart Forbes (afterwards Sir John Hepburn Stuart Forbes) on 30th September 1829, and the deeds following thereon, and Crown charter of 1829–30, and infeftment following thereon, are invalid and reducible at the instance of the pursuer as an heir-substitute under the deed of 1811, in respect the deed of 1811 contained an effectual prohibition against altering the order of succession, while Sir John Hepburn Stuart Forbes did, by the deed of 1829, gratuitously alter the order of succession in violation of the said prohibition, as regards one portion of his estate, and by obtaining a destination in the Crown charter of 1829–30 as regards the other portion, disconform to and not warranted by the entail of 1811, on which it professes to proceed. (4.) By the entail