a liberal manner, and the provision in section 1 (4) was wide enough to entitle the Court to determine that the employer was liable to pay compensation under the Act, even after the action had been dismissed on the ground of irrelevancy.

Argued for the defenders S. Higginbotham & Company—The provisions of section 1 (4) did not apply to the present case, because (1) the Act plainly contemplated that prior to the action being dismissed the Court must determine that the injury was one for which the employer was liable to pay compensation under its provisions; and (2) they were inapplicable to any case in which the Court was not able at once to assess the compensation. The defenders further argued that the pursuers had no good claim under the Act, but as the decision of the Court did not proceed on this part of the argument it need not be stated.

LORD JUSTICE-CLERK—I am sorry to say that I have no hesitation in holding that the Court, having already pronounced a decree dismissing the action, is not now entitled under section 1 sub-section 4 of the Workmen's Compensation Act 1897 to assent to this demand for an inquiry as to whether the pursuer is entitled to compensation under the provisions of the Act.

LORD YOUNG—This note was presented on 14th February 1901 in connection with a Sheriff Court action which had been dismissed by the Sheriff on 16th June 1900, and by this Court on appeal from the Sheriff's decision on 29th November last. By this note the pursuer attempts to put forward in this action a claim alleged to be competent under section 1 (4) of the Workmen's Compensation Act. I do not think that is possible. There can be no further procedure in the action. It is too late in the month of February 1901 to propose that a claim under the Workmen's Compensation Act should be inquired into in an action which has been dismissed by the Sheriff in June 1900 and on appeal by this Court in November last. That is sufficient to dispose of this motion.

LORD TRAYNER and LORD MONCREIFF concurred.

The Court refused the prayer of the note.

Counsel for the Pursuer and Appellant Mrs Baird—Guy. Agent—Henry Robertson, S.S.C.

Counsel for the Defenders and Respondents S. Higginbotham & Company, Limited—Salvesen, K.C.—Hunter. Agents—Macpherson & Mackay, S.S.C.

Tuesday, March 19.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

MACGREGOR *v.* GLASGOW DISTRICT SUBWAY COMPANY.

Reparation—Negligence—Safety of Public—Railway Company—Injury to Passenger Caused by Crowd on Station Platform.

A passenger while waiting for a train on the platform of a station belonging to the Glasgow Subway Company was pushed against a train which was entering the station by a number of other passengers who were crowding towards the point of entrance to the train, and was injured by having his leg caught between the cars and the platform. He brought an action for damages against the Company, and averred that the accident was due to the fault of the defenders in admitting a larger number of passengers to the platform than it could safely accommodate, and also in failing to provide for the proper regulation and protection against accident of passengers when congregated upon the platform.

Held that the pursuer was entitled to an issue.

Malcolm Macgregor, coal merchant, Glasgow, brought an action in the Sheriff Court at Glasgow against the Glasgow District Subway Company for damages on account of personal injuries sustained by him. The defenders were proprietors of the Glasgow District Subway, carrying passengers by cars which are hauled by an endless cable or wire rope on a circular subway route extending from St Enoch Square on the east to Partick on the west.

The pursuer averred—"(Cond. 2) The defenders in carrying on this undertaking run trains consisting of two cars coupled together, each of which has at its outer extremity an exit door, and at its inner extremity an entry door. The carrying capacity of such trains is about 75 passengers. The said trains are run into the stations at a speed of ten or twelve miles an hour, and are suddenly pulled up for egress and ingress of passengers, and immediately restarted with such rapidity as to cause intending passengers to crowd opposite the entry doors. Owing to the construction of the said cars, it is difficult, if not impossible, for an intending passenger while standing on a platform at said stations to ascertain whether there is vacant accommodation or not. The said trains are run in charge of a driver, a guard or conductor, and a boy, who are the servants of the company. The said platform is about 12 feet wide and can only with safety accommodate from 40 to 50 persons opposite where the cars stop. (Cond. 3) On Monday, 22nd January 1900, in accordance with his usual practice, the pursuer arrived at the defenders' Kelvin-

bridge booking office about a quarter to nine a.m. for the purpose of travelling by the defenders' subway car eastwards to St Enoch Subway Station, and after having passed the turnstile and paid his fare, for which he received a ticket, he was admitted to the station platform upon which a number of intending passengers had then assembled. In terms of the defenders' regulations only intending passengers holding tickets are admitted to said platform. (Cond. 4) Defenders' trains are timed by public advertisement and otherwise to run at intervals of three to four minutes. On the morning in question, owing to a breakdown of defenders' system or other cause, the traffic had become disarranged, and their trains going eastwards had for some time been running at intervals of fifteen minutes or longer, a fact which was well known to the defenders and their servants. From the time of pursuer's arrival on the said platform no eastward bound train arrived for a period of from twelve to fifteen minutes, while during said period three westward bound trains passed. During this period, which is at one of the busiest hours for traffic of the day, a large number of additional passengers had arrived at the Kelvinbridge station and had been passed through the said turnstile and been given access to the said platform by the ticket clerk or servant of the defenders, and that without any inquiry as to the number of passengers already thereon. The passengers accumulated on said platform amounted in number to 200 or thereby, with the result that the same was greatly overcrowded, particularly at the point in centre of platform opposite where the trains stop. The only official of the defenders in charge of said station was the station-master, and notwithstanding that he was aware of the irregularity with which the trains were running, and that owing to the long intervals between trains larger numbers of passengers assembled than was usual, he took no step to regulate the number of passengers to be admitted to the platform at one time, or otherwise to provide for their safety. (Cond. 5) At the expiry of said period a train for pursuer's destination entered the station. The cars thereof were much overcrowded and passengers were standing on the entrance and exit platforms in contravention of defenders' bye-laws. Notwithstanding this the conductor of said train, as it was passing the point where the pursuer was standing, and while the train was still in motion, opened the entrance door thereof. The crowd on the platform thereupon concentrated at the point opposite where the entry door would come to a stop, with the result that pursuer was pressed against the moving train, and in endeavouring to save himself from injury his left leg was caught between the moving cars and the edge of the platform, and he was dragged for several yards until the train was brought to a standstill. The pursuer remained in this position for about five or six minutes, there being no appliances available for his extrication until the car was emptied and raised by the passengers sufficiently to enable his leg to be withdrawn. (Cond. 6) By said accident pursuer was caused very severe pain and injury. . . . (Cond. 7) The injuries to the pursuer were caused by culpable negligence of the defenders, or those for whom they are responsible, in failing to have any proper regulations or to take any proper steps in the conduct of their said undertaking for the protection of their passengers when congregated upon said platform. In particular, the servants of the defenders, the said stationmaster and ticket clerk at said Kelvinbridge Station, were in fault in allowing upon the platform thereof a larger number of passengers than it could safely accommodate."

The defenders pleaded, *inter alia*, "(1) The action is irrelevant."

On 29th June 1900 the Sheriff-Substitute (STRACHAN) allowed a proof before answer.

The pursuer appealed for jury trial and lodged an issue for the trial of the cause.

The defenders objected to the relevancy of the action, and argued—The pursuer's averments did not disclose a relevant case of negligence on the part of the defenders. His allegations amounted in substance to this, that his injuries were caused not by the overcrowding of the platform but by the action of the passengers in concentrating towards a particular point. The defenders were entitled to admit the public to their platform, and were not bound to foresee that they would act inconsiderately, and were not liable if they did so—*Cannon* v. *Midland Great Western Railway Company* (1880), 6 L.R., Ir. 199; *Hogan* v. *South-Eastern Railway Company* (1873), 28 L.T. 271. Moreover, the pursuer had been on the platform for fifteen minutes and should himself have foreseen the risk.

Argued for the pursuer—The pursuer was entitled to an issue. He averred that the defenders had not taken reasonable precautions to regulate the conduct of the passengers on the platform, and also that they had admitted more than it could safely accommodate. Whether that amounted to negligence was essentially a question for a jury and not for the Court—*Hogan, supra.* In *Cannon, supra*, the crowd had entered the premises lawlessly and the company were held not liable. But in the present case, as in *Hogan*, the crowd was assembled by permission of the company, who had power to regulate the number to be allowed on the platform. The owner of a place where the public were invited or allowed to assemble was bound to foresee the risk of such an occurrence—*Scott's Trustees* v. *Moss*, November 6, 1889, 17 R. 32.

At advising—

The Court, without delivering any opinions, approved of the proposed issue as the issue for the trial of the cause.

Counsel for the Pursuer and Appellant—Baxter—Cullen. Agent—W. Kinniburgh Morton, S.S.C.

Counsel for the Defenders and Respondents—Salvesen, K.C.—Younger. Agents—Webster, Will, & Company, S.S.C.

Wednesday, March 20.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

KENT *v.* PORTER.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7, *sub-sec.* (1)—*Employment "on or in or about a Factory"—Carter injured through Horse bolting* 800 *yards from Factory.*

A carter, in the employment of a grain merchant whose premises were a factory within the meaning of the Workmen's Compensation Act 1897, was driving a horse and cart belonging to his employer, when at a distance of 800 yards from the employer's premises the horse bolted, with the result that the carter was injured.

Held that the accident did not occur in the course of employment "about" a factory within the meaning of the Workmen's Compensation Act 1897, and that the employer was not liable in compensation.

This was an appeal in an arbitration under the Workmen's Compensation Act 1897 before the Sheriff-Substitute (BOYD) at Glasgow, between John Kent, grain merchant, Glasgow, appellant, and David Porter, carter, Parkhead, claimant and respondent.

The facts stated by the Sheriff-Substitute were as follows:—"That the respondent, who is twenty years old, was a carter with the appellant, a grain merchant in Glasgow. That the appellant's premises were a factory in terms of the Workmen's Compensation Act 1897: . . . That on Monday morning, 13th February, the appellant's brother and foreman harnessed a horse which the appellant had got on trial, and ordered Forsyth, a carter with the appellant, to help the respondent to yoke the horse to a lorry to fetch a load of coal, and thus to try the horse. The horse was fresh and restive, but showed no signs of vice. By the orders of the foreman Forsyth accompanied the respondent for some part of the way, and for about 800 yards the horse went quietly, but when passing under a railway bridge in Great Eastern Road, Parkhead, Glasgow, over which a train was passing, the horse reared and bolted, shaking off Forsyth. The respondent remained on the lorry, and as he was constantly threatened with a collision he with much effort guided the galloping horse into Croft Street on his right, but as the force of the turn was violent, and the ground slippery with frost, the lorry skidded towards the left, jamming the respondent between the lorry and the adjacent houses: That the respondent was so injured by this accident that it was found necessary to amputate his right leg above the knee."

In these circumstances, the Sheriff-Substitute awarded the respondent compensation.

The question of law for the opinion of the Court was, "Whether the appellant was rightly held liable to make compensation under the Workmen's Compensation Act 1897?"

The Workmen's Compensation Act 1897, sec. 7, sub-sec. (1), enacts—"This Act shall apply only to employment by the undertakers . . . on or in or about (*inter alia*) a factory."

LORD JUSTICE-CLERK—In this case I think the Sheriff-Substitute is wrong. The respondent is a lorryman in the employment of the appellant, who is a grain merchant in Glasgow, and whose premises the Sheriff-Substitute has found to be a factory in terms of the Workmen's Compensation Act 1897. When the respondent with his lorry was about 800 yards from the premises the horse bolted, with the result that the respondent was so injured as to make it necessary to amputate his right leg. The question is, whether the accident took place on in or about the factory. I am very clearly of opinion that it did not.

LORD TRAYNER—I think this case is very badly stated. It would have been better if the Sheriff-Substitute had given some reason for his finding in fact that the premises in question are a factory within the meaning of the Act; for it does not occur to me how the premises of a grain merchant in Glasgow can be a factory. But I take the fact as the Sheriff-Substitute has stated it. Nor is the question which has been argued to us specifically stated in the case. But if the question which we have to determine is whether an accident which took place on the public street 800 yards from the factory took place on or in or about the factory, I have no hesitation in answering that question in the negative.

LORD MONCREIFF concurred.

LORD YOUNG was absent.

The Court answered the question of law in the negative and remitted to the Sheriff-Substitute to dismiss the application.

Counsel for the Appellant — Salvesen, K.C. — Glegg. Agents — Macpherson & Mackay, S.S.C.

Counsel for the Claimant and Respondent —A. S. D. Thomson. Agent—John Veitch, Solicitor.
