trustees should be deprived of their right to claim retention as compensation. We are not deciding as to whether the lady herself may not have a good defence against this claim.

I may add that the case of *Munro* v. *Bothwell*, September 16, 1846, Arkley's Justiciary Reports, is in conflict with the other decisions, and cannot be looked on as an authority. That judgment, though by a judge of great eminence, was given on circuit, when there is naturally less time for deliberation than in cases determined by a Division of the Court. In view of other decisions I think that that case is not law.

LORD M'LAREN—I concur not only in the result but in all the grounds of your Lordship's decision.

LORD KINNEAR and LORD PEARSON concurred.

The Court refused the motion.

Counsel for the Pursuers and Respondents (John Grieve's Trustees) — Chree. Agents—E. A. & F. Hunter, W.S.

Counsel for the Petitioners, Claimants and Appellants (James Grieve's Trustees)—Macmillan. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Counsel for the Claimant and Respondent (Mrs Grieve)—Grainger Stewart. Agents—Morton, Smart, Macdonald & Prosser, W.S.

Counsel for the Claimant and Respondent (Mrs Fraser)—MacRobert. Agents—Kirk, Mackie, & Elliot, S.S.C.

Tuesday, June 11.

SECOND DIVISION.

(SINGLE BILLS.)

GRAHAM (LIQUIDATOR OF JAMES DONALDSON & COMPANY, LIMITED).

Company—Liquidator—Caution—Bond of "Approved Guarantee Company" Authorised—Premium on Bond Charged as Expenses in the Liquidation, but this to be Considered in Fixing Liquidator's Remuneration — Act of Sederunt 15th July 1904.

In a note presented by the liquidator in a liquidation under supervision the Court *authorised* the acceptance of a bond of caution by an "approved guarantee company," *i.e.*, a company approved for the purposes of judicial factories under the Act of Sederunt of 15th July 1904, the premium on such bond to be charged against the liquidation, but such charge to be considered in fixing the liquidator's remuneration.

Company—Liquidator—Caution—Amount.

Where the assets of a company in liquidation amounted to about £9000, the Court fixed the amount of caution to be found by the liquidator at £6000.

The Act of Sederunt of 15th July 1904, as to the finding of caution in judicial factories and the procedure therein, and as to the remuneration of factors, provides—Sec. 2 (*d*)—"The Accountant shall in January yearly prepare and submit a list of approved guarantee companies for the consideration and approval of the Court." Sec. 3—"The Accountant of Court shall allow as a charge against the factory estate (1) the premium paid by the factor where a company bond of caution has been accepted, or such part thereof as he deems proper, and (2) the expense of the necessary procedure in obtaining the approval of a bond of caution or the limitation of the amount, but the fact of such charge shall be taken into account by the Accountant of Court in fixing the factor's remuneration." Sec. 5—"This Act shall not affect the procedure as to bonds of caution in bankruptcy and in the liquidation of public companies."

On 11th June 1907 James Maxtone Graham, the liquidator of James Donaldson & Company, Limited, presented a note to the Lord Justice-Clerk stating, *inter alia*, that the assets of the company amounted to £9000 or thereby, and praying his Lordship "to move the Court to restrict the caution to be found by the liquidator and to authorise a bond of caution by the Law Guarantee and Trust Society, Limited, to be accepted, and further to authorise the premium on the said bond of caution to be paid by the liquidator out of the estate of the said James Donaldson & Company, Limited, and further to direct that the expenses of this note should be expenses in the liquidation."

The Law Guarantee and Trust Society, Limited, was one of the companies approved of for the year 1907 in terms of sec. 2 (*d*) of the Act of Sederunt.

Counsel for the liquidator referred to *M'Leod (Liquidator of Alexander Forrester, Limited)*, February 21, 1907, 44 S.L.R. 393.

The Court without giving opinions pronounced this interlocutor:—

"The Lords having considered the note for James Maxtone Graham, C.A., the liquidator appointed on the estates of James Donaldson & Company, Limited, and having heard counsel, fix £6000 as the amount for which caution shall be found by him, and authorise the Clerk to accept a bond for that amount by the Law Guarantee and Trust Society, Limited: Further authorise the liquidator to charge the premiums payable in respect of such bond against the liquidation, but declaring that such charge shall be taken into account at the fixing of his remuneration as liquidator: Also authorise the expenses of said note to be charged against the liquidation."

Counsel for the Liquidator—Constable. Agents—Davidson & Syme, W.S.

Thursday, June 13.

FIRST DIVISION.

[Lord Dundas, Ordinary.

GOLDBERG *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Reparation—Railway—Personal Injuries—Accident to Passenger Preparing to Alight after Stopping of Train at a Platform of a Terminus—Sudden Movement of Train—Relevancy.

In an action of damages for personal injuries by a passenger against a railway company, the pursuer averred that the train in which he was travelling stopped at the arrival platform of a terminus station; that he rose to leave the train; that, while he was in the act of taking down his bag from the rack, without any warning the train gave a sudden and violent jerk; that he was thrown to the ground and severely injured; and that his injuries were caused by the fault of the engine-driver in starting the train suddenly, unexpectedly, and without any warning, thereby causing the carriage to jerk violently, while the passengers were leaving or preparing to leave.

Held that no fault on the part of the defenders had been relevantly averred, and action *dismissed.*

On 27th February 1907 Hyman Goldberg, 202 Howard Street, Glasgow, raised an action against the Glasgow and South-Western Railway Company, in which he sued for £1000 as damages for alleged personal injury received while travelling in one of defenders' trains.

He averred—"(Cond. 3) The pursuer travelled in a third-class compartment, with his back to the engine, and he had a travelling bag in the rack overhead. When the said train came into St Enoch Station at the arrival platform, it stopped, and the pursuer and another traveller who was in the same compartment rose from their seats to leave the train. While the pursuer was in the act of taking down his said travelling bag from the rack, the train, without any warning having been given, gave a sudden and violent jerk. In consequence of this unexpected and violent movement of the train, the said travelling bag fell from pursuer's hand on the seat, and the pursuer was thrown down on the floor of the compartment, sustaining the injuries after mentioned." [The pursuer alleged that his right leg was broken by the fall.] "(Cond 5) The pursuer's said injuries were caused by the fault of the defenders, or of their servants in charge of said train, for whom defenders are responsible. The driver of the engine attached to said train was in fault in starting it or otherwise causing it to move suddenly and unexpectedly and without any warning having been given after the train had come to a stop at the arrival platform, and thereby causing the carriages to jerk violently at the moment when the passengers were in the act of leaving or were preparing to leave the said carriages. In consequence of this culpable and negligent act the pursuer was injured as before mentioned."

The Lord Ordinary (DUNDAS) having allowed an issue, the defenders reclaimed.

Argued for reclaimers—The action was irrelevant. No fault on the part of the reclaimers was averred, at least none was specifically stated. There was no averment of any invitation, express or implied, to alight. The mere fact of starting a train was not fault. The pursuer should have waited till the train had finally stopped. What had happened was one of the ordinary incidents of travelling which passengers must be assumed to know and against which they take their risk.

Argued for respondent—The Lord Ordinary was right. The maxim *res ipsa loquitur* applied. This was a terminus station, and the mere fact of the train stopping at such a station was an implied invitation to alight. At such stations it was not usual or necessary to call out the name or to open the doors. Besides, in the case of corridor carriages the doors of compartments were not usually opened. The case was clearly one for inquiry.

At advising—

LORD M'LAREN—This is a claim by a passenger in a train of the defendant company for injuries said to have been sustained while he was travelling in one of the company's carriages. The circumstances under which the injury was sustained are thus set forth—[*reads* Cond. 3, *ut supra*]. It is then stated that the pursuer was rendered unconscious by his fall, and that on being removed to the Glasgow Royal Infirmary it was found that the pursuer's leg was broken. The averment of fault is thus stated—[*reads* Cond. 5, *ut supra*].

Now it is matter of common and familiar experience that if a railway traveller rises from his seat when the train stops at a station, whether for the purpose of changing his seat or for getting hold of any of the small articles which he is allowed to take into the carriage with him, he is liable to be incommoded by the unexpected starting of the train, or it may be by a movement of the train for some other purpose, such as the shifting of the place of the train in the station, the detachment of a carriage, or the putting on of additional carriages. Fortunately for the travelling public these unexpected movements do not in general result in injury to anyone. They may be said to be ordinary incidents of railway travelling, and I suppose that people who rise from their seats are to some extent on their guard against a sudden starting of the train by which the passenger might be thrown off his balance.

I have not been able to find anything in the pursuer's narrative which distinguishes the occurrence he describes from the ordinary case of a traveller who is jolted or shaken by the starting of the train, except the serious nature of the consequent injury