*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

which he sets forth. It is not said that there was an invitation to alight, and on the pursuer's statement he was not in the act of alighting; he had only risen from his seat in order to take his travelling bag from the rack, as he might have done at any other place in the course of the journey.

In the ordinary case of an accident resulting from a supposed invitation to alight, the passenger is led to believe that the train has come to rest, and if it is started when he is in the act of alighting he is liable to be thrown down and injured by the relative movement of train and platform for which he is not prepared. But a prudent passenger is supposed to be able to take care of himself when within the carriage in which he is travelling, and if he is unable to do so I can see no other solution of the difficulty except that he may stay at home, because if a train is stopped whether in transit or at the arrival terminus it must sometimes be necessary that it should be started again, and then all the passengers are more or less exposed to be jostled or shaken by the start and the reaction of the carriages against the springs by which they are coupled together.

In these circumstances I have looked carefully into the pursuer's averment of fault to discover, if possible, what is the wrong of which he complains. But the only fault alleged is that the engine-driver was in fault in starting the train without any warning having been given after the train had come to a stop at the arrival platform. I do not think that the action of the engine-driver thus described was necessarily, or even probably, faulty. It is quite consistent with the pursuer's statement that the train had stopped short of the place where it was intended that passengers should alight, and that a further movement of the train was necessary to bring it to its proper position alongside of the platform. The pursuer's statement does not negative that supposition, and therefore it is quite consistent with the case as stated that the engine-driver in starting the train was only performing his accustomed duty of bringing the train up to its place of discharge.

It is, no doubt, a very great misfortune to the pursuer that he should sustain this serious injury, but I cannot find in the record any averments of fact leading to the conclusion that the Railway Company had failed in its obligation to use reasonable care and skill in carrying the pursuer to his destination.

LORD KINNEAR—I am of the same opinion. I am reluctant to criticise a record which has been made up in the Sheriff Court, or even in this Court, in actions of this kind too rigorously, if the averments disclose a substantial ground of action although the averments may not be very skilfully framed. But there is nothing to suggest that the deficiencies of the present record are due to any want of skill on the part of the framer, or to anything but the unsubstantial character of the case itself. The averment of what actually happened seems to me to come to nothing more than this—that the train stopped and went on again. There is no averment that anything was said or done by officers of the company to induce the pursuer to believe that he was in safety to alight, or that he did in fact believe it. All that is said is that when the train stopped the pursuer stood up to take his bag off the rack. There is nothing in that to show that he had any reason to suppose that the train had come to a final stoppage, or that he had even adverted to the contingency of its being set in motion. He may or may not have been prudent in his action, but for all that appears from his statement the moving of the train may have been perfectly right, and may also have been just such an event as a prudent passenger taking care for his own safety would have anticipated. I therefore agree that there is no issuable matter in this record.

LORD PEARSON—I think it important to keep in view that there is no question here as to the stoppage of a train at a platform regarded as an invitation to alight. The case has to do with a passenger still within his compartment and engaged in taking down his hand-luggage from the rack. It is said that he was justified in assuming without anything more that when the train stopped it had stopped finally. I observe that there is no specific averment as to duty on the part of the driver, but the averment of fault on the part of the defenders is that the driver was culpably negligent in starting the train suddenly and unexpectedly after it had stopped at the terminal platform. I cannot hold that in the circumstances averred that is a sufficient averment of fault to infer liability against the defenders.

The LORD PRESIDENT was absent.

The Court recalled the Lord Ordinary's interlocutor and dismissed the action.

Counsel for Pursuer (Respondent)—Orr, K.C.—A. M. Anderson. Agent—C. Strang Watson, Solicitor.

Counsel for Defenders (Reclaimers)—Dean of Faculty (Campbell, K.C.)—Macmillan. Agents—John C. Brodie & Sons, W.S.

*Tuesday, June* 18.

## SECOND DIVISION.

[Lord Dundas, Ordinary.

## DRYDEN AND OTHERS *v.* M'GIBBON. M'GIBBON *v.* DRYDEN.

*Husband and Wife—Wife's Separate Estate — Earnings — Wages — Hotel Business Managed Solely by Wife.*

The Married Women's Property Act 1877, by section 3, excludes the *jus mariti* and right of administration of the husband "from the wages and