not been taken away by the Act of 1868. And then, summarising the existing law and practice relating to the control of the register, Lord Low's report proceeds—"The general powers of control of the Court of Session and the Deputy Clerk Register should be expressly recognised, and express power should be given to the Deputy Clerk Register at his own instance, or at that of others having interest in the efficiency of the register, to apply to the Court for direction in any circumstances of doubt or difficulty as to the working of the Lands Rights Registration system." From all this I conclude that in future if any controversy arises with regard to the propriety of the action of the Keeper of the Register of Sasines in refusing or rejecting any deed transmitted to him for registration, that controversy ought in the first instance to be referred to the Deputy Clerk Register, and that reference may be made at the instance either of the Keeper of the Register of Sasines himself or of the agent of the party whose deed has been refused. If the Deputy Clerk Register finds himself in any doubt or difficulty, then it is his duty to refer to this Court for direction and guidance, because the Deputy Clerk Register now, as in the place of the Lord Clerk Register, is subject to the control and supervision of this Court in the performance of his statutory duties under the Lands Registration Act of 1868.

That I consider is the correct course to follow in the future in the event of any controversy arising. But I observe from a passage at the close of the report before us that this course has not been followed in recent years, because it appears that where the Keeper has had any difficulty in deciding what action he should take in any particular case his practice is to refer it to the Secretary for Scotland with a request that Crown counsel may be consulted, and that cases of this kind have recently occurred. Now I have no doubt whatever that that is an incorrect procedure which has been adopted in recent times, and as I chanced to be one of the law officers of the Crown who was consulted on these recent occasions I think it right to say that the attention neither of the Secretary for Scotland nor of the law officers of the Crown was directed to the conclusions of Lord Low's report, or indeed to the duties imposed by statute upon the Deputy Clerk Register. The opinion was asked and was given in the ordinary routine of the office, just as any public department refers—and rightly refers—to the law officers of the Crown for aid where legal difficulty arises. I see no objection whatever to the Deputy Clerk Register, if he so pleases, consulting the law officers of the Crown upon any question of doubt or difficulty, but the reference to the law officers ought to be made at the instance of the Deputy Clerk Register and not of the Secretary for Scotland, and in all cases the ultimate decision must rest with this Court. That, it appears to me, is the course of procedure which ought to be followed in future where any dispute of this kind arises.

In the present instance I am for refusing the prayer of the petition.

LORD MACKENZIE—I concur.

LORD ORMIDALE—I also concur.

LORD JOHNSTON and LORD SKERRINGTON were absent.

The Court approved of the report, refused the prayer of the petition, and decerned.

Counsel for Petitioner—Anderson, K.C. — M'Kenzie Stuart. Agents — Cairns & Robertson, S.S.C.

Counsel for the Keeper of the General Register of Sasines (Respondent)—Chree, K.C. — Mitchell. Agent — Sir William Haldane, W.S.

Counsel for Donald Gow (Respondent)—Skinner. Agent—John Nicol, Solicitor.

Saturday, June 27.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

FOWLER v. THE NORTH BRITISH RAILWAY COMPANY.

Reparation — Negligence — Railway — Injuries Due to Shock—Averments—Relevancy.

Process—Proof—Jury Trial—Injury to Passenger on Railway by Nervous Shock.

In an action of damages against a railway company the pursuer averred that, travelling on the defenders' line, he was leaning across to deposit the ash from his cigarette in an ash-holder on the side of the door opposite to him when the door suddenly flew open, and he with great difficulty saved himself from being thrown out of the carriage; that the train was travelling at a high rate of speed, causing the door to swing backwards and forwards violently; that he tried to close the door and failed; that the glass of the window of the door was broken into fragments and the door itself damaged; that the shock arising from the danger in which he was placed caused serious injury to his nervous system and to his health; that the occurrence was due to the fault of the defenders' servants in not seeing that the door was properly fastened. *Held* that the pursuer's averments were relevant.

Held further that proof and not jury trial was the proper method of inquiry.

On 21st February 1914 T. B. Fowler, furniture dealer, Edinburgh, *pursuer*, brought an action against the North British Railway Company, *defenders*, for £100 damages in respect of physical injuries which he alleged he had sustained while travelling in one of the defenders' trains from Berwick-on-Tweed to Edinburgh.

The pursuer averred—"(Cond. 2) The said train came from Newcastle-on-Tyne, and at Berwick Station the pursuer entered a

North-Eastern Railway carriage (No. 2633) and took his seat in the right-hand corner with his face towards the engine. The pursuer was alone in the carriage. He sat quietly reading a newspaper and smoking. (Cond. 3) Shortly after leaving Dunbar the pursuer leaned across in order to deposit the ash from the cigarette which he was smoking in the ash-holder provided on the side of the door opposite to him. The train was at that time travelling at a high rate of speed. While the pursuer was in the act of leaning across for this purpose the carriage door suddenly flew open without any warning, and the pursuer with great difficulty saved himself from being thrown or blown out of the carriage. The pursuer had in no way touched or come against the lock of the said door. The speed at which the train was travelling caused the open door to swing backwards and forwards violently. The glass in the window of the door was broken into fragments, and the door itself was damaged. The pursuer endeavoured to shut the door, but was unable to do so. The train was stopped by railway signals at Drem, and the door was closed by the railway company's officials. (Cond. 4) By the occurrence the pursuer was greatly alarmed. He narrowly escaped being thrown out of the train, and the shock arising from the danger in which he was placed has caused severe injury to his nervous system. On his arrival in Edinburgh the pursuer was suffering from sickness and faintness, and was obliged to consult a doctor. Ever since the occurrence he has suffered in his health. The alarm of the occurrence preyed on his mind, and he has had to receive frequent attention from his medical advisers. In particular, the pursuer has suffered from sleeplessness, nausea, faintness, and giddiness. He has not yet fully recovered his health. . . . (Cond. 6) The occurrence by which the pursuer was injured as aforesaid was due to the fault or negligence of the defenders' servants. The door swung open while the train was in motion through not being securely fastened. The absence of proper fastening would have been detected had any reasonable inspection been made before the train left on its journey, but such inspection was either not made at all or was conducted in a careless and inefficient way."

The defenders pleaded, *inter alia*—"(1) The pursuer's averments are irrelevant and insufficient to support the conclusions of the summons."

On 22nd May 1914 the Lord Ordinary (ORMIDALE) approved of the following issue —"Whether on 16th December 1913 the pursuer, while travelling as a passenger on the defenders' railway from Berwick-on-Tweed to Edinburgh, was injured in his person through the fault of the defenders, to his loss, injury, and damage? Damages laid at £100 sterling."

The defenders reclaimed, and argued—The action was irrelevant. *Esto* that the door did fly open, that would not have alarmed a passenger of ordinary strength of mind. There was no actual danger, and the fright if sustained was quite unreasonable. The case of *Cooper* v. *Caledonian Railway Company*, June 14, 1902, 4 F. 880, 39 S.L.R. 660, on which the pursuer relied, was distinguished, for the injuries there averred were the natural result of the defenders' negligence. Here the pursuer had himself caused the injuries by attempting to close the door, and they could not therefore be said to be the natural or necessary result of the company's negligence—*Adams* v. *Lancashire and Yorkshire Railway Company*, (1869) L.R., 4 C.P. 739. *Esto*, however, that the pursuer's averments were relevant, the case was one for proof and not for jury trial.

Argued for respondent—The pursuer's case disclosed not merely apprehension of danger but actual danger, of which the physical injuries averred were a natural result. *Esto* that fear might not be a good ground of action, the pursuer had averred physical injuries due to shock, and he was entitled to prove them—*Cooper* (*cit.*); *Dulieu* v. *White & Sons*, [1901] 2 K.B. 669, *per* Kennedy, J., at pp. 673 and 679; *Bell* v. *Great Northern Railway Company*, (1890) 26 L.R. (Ir.) 428; *Gilligan* v. *Robb*, 1910 S.C. 856, 47 S.L.R. 733; *A* v. *B's Trustees*, January 17, 1906, 13 S.L.T. 830; *Wallace* v. *Kennedy*, November, 1908, 16 S.L.T. 485.

LORD PRESIDENT—Speaking for myself, if it were not for the authority of the case of *Cooper* v. *Caledonian Railway Company*, (1902) 4 F. 880, which I find myself unable to distinguish substantially from this case, I should have considered the averments of the pursuer to be irrelevant. In respect of that decision I am disposed to allow inquiry here, but I am clear that that inquiry ought not to be before a jury. This is a case totally unsuited for investigation before a jury, for questions of great delicacy both of fact and law will obviously arise. I propose, therefore, that we should recal the interlocutor of the Lord Ordinary and remit to him to allow a proof in common form.

LORD MACKENZIE—I am of the same opinion.

LORD SKERRINGTON—I concur.

LORD JOHNSTON was absent.

The Court recalled the Lord Ordinary's interlocutor, disallowed the issue, and remitted to his Lordship to allow the parties a proof of their averments on record, and to proceed as accords.

Counsel for Pursuer—Macphail, K.C.—Fisher. Agent—James Scott, S.S.C.

Counsel for Defenders—Cooper, K.C.—J. R. Dickson. Agent—James Watson, S.S.C.