assessment applicable to a harbour under No. III, rule 3, would thus be altered by adopting *quoad hoc* the different principle of proceeding on an average of years which figures under Schedule D. I am unable to read the 8th section of the Act of 1866 as authorising such an alteration.

While the appellants' proposed application of rule 3 of Schedule D is as above stated, it may be noticed that the rule deals with the topic of a deduction claimed on account of a "sum expended" for repairs, and provides that it is not any sum so expended, however large, that is to be allowed. A sum expended is not to be allowed in so far as it goes beyond the amount usually expended for repairs, as gauged by a three years' average. The sum expended by the appellants for repairs during the year to 31st August 1916 was £13, which has been allowed in the estimation of profits for that year under consideration.

Following the views above expressed, I am of opinion that the challenge which has been offered of the assessment in question is not well founded.

The Court refused the appeal.

Counsel for the Appellant—Watson, K.C. —A. M. Mackay. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Respondents—Solicitor-General (Morison, K.C.)—R. C. Henderson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

Tuesday, December 10.

FIRST DIVISION.

[Lord Anderson, Ordinary.

ROSS *v.* GLASGOW CORPORATION.

Reparation — Negligence — Remoteness of Injury—Shock Caused by Apprehension of Collision between Tramway Cars.

The driver of a tramway car failed to shift certain points before he started his car, with the result that his car proceeded along the rails, upon which there was another car bound in the opposite direction but at the moment stationary. The moving car proceeded about 30 feet and was ultimately drawn up within a yard of the stationary car. In an action by a lady seated at the front of the upper deck of the stationary car it was averred that owing to the negligence of the driver in starting his car before he had shifted the points, the pursuer, through reasonable apprehension of a collision, had received a serious mental and nervous shock, which had resulted in permanent injury to her health. There was no averment of excessive speed or want of control or that the driver was not keeping a proper look-out. *Held* (*rev.* judgment of Lord Anderson, Ordinary) that the averments were irrelevant in respect that the injury alleged was not a natural and probable consequence of the negligence founded upon.

Mrs Elizabeth Ross, with consent of her husband as her curator and administrator-in-law, *pursuer*, brought an action against the Corporation of Glasgow, *defenders*, concluding for decree for £500 damages for personal injuries.

The pursuer *averred, inter alia*—"(Cond. 2) On the afternoon of 14th February 1918, at about 4 o'clock, the pursuer was a passenger on a tramcar belonging to the defenders which was proceeding from Glasgow to Uddingston, and she occupied a seat at the front on the upper deck of the said car. (Cond. 3) The said tramcar came to a standstill near the Tollcross terminus. There cars which are coming from Glasgow in an easterly direction turn by means of points and proceed by a set of rails running to Glasgow in a westerly direction. When the said tramcar on which the pursuer was travelling came to a standstill the east-going rails were blocked by a Tollcross car which had not passed over the points on to the west-going rails. (Cond. 4) The driver of the said Tollcross car was leaning against the south side of his car smoking. On the approach of the Uddingston car on which the pursuer was a passenger the driver of the said Tollcross car jumped on the driving platform and set his car in motion. He proceeded with considerable speed towards the Uddingston car, but he had not, as was his duty, shifted the points so as to take his car on to the west-going set of rails, and he drove over the points towards the Uddingston car. The pursuer, who saw that he had not shifted the points and that the Tollcross car was coming at an increasing speed towards her car, was justifiably alarmed as to what would happen. She thought that a serious accident was inevitable, and she was greatly agitated and in terror of personal bodily injury from a collision of the cars. The action of the driver of the Tollcross car was such as to reasonably excite in her as it did the fear that a serious collision was about to take place, especially as the Tollcross car did not stop until it was about one yard from the Uddingston car in which she was travelling, although there was a distance of 30 feet between the points and the front of the Uddingston car. . . . Explained that even if the driver did shift the points, which is denied, he failed in his duty to drive slowly over them and to have his car under such control that he could draw it up almost immediately in the event of it not taking the points. As above averred, when he started the car he proceeded with it at considerable speed and did not draw it up till it was within about one yard of the car in which the pursuer was seated. The result was to put the pursuer in reasonable fear that a collision was about to take place. (Cond. 5) Through the careless and reckless action of the driver of the Tollcross car, for whom the defenders are responsible, the pursuer, owing to her apprehension of an accident, received a serious mental and nervous shock, which has resulted in permanent injury to her health. She had to go

to bed immediately and was confined to bed for six weeks. She was constantly attended by her medical adviser, and suffered from sleeplessness, serious pains in the head, prostration, general weakness, and vomiting. She also suffered from numbness of the limbs and giddiness. After she was able to get out of bed she continued to suffer from the effects of the shock. She has not yet fully recovered her health and suffers from loss of memory. It was necessary that she should go for a change of scene and air to an English watering place, where she resided for weeks, but the change did not completely cure her. The sum sued for is a reasonable estimate of the loss and damage which the pursuer has sustained through the shock to her nervous system. (Cond. 6) The pursuer's injuries are entirely due to the fault and negligence of the defenders' servant. The driver of the Tollcross car before starting his car should have altered the points so as to get on to the west-going set of rails. When he without altering the points or when the car did not take the points, and came at a considerable speed on to the set of rails on which the Uddingston car was standing and to within about a yard of it, he gave the pursuer reasonable cause to apprehend that a serious accident to herself was inevitable. Had he altered the points before proceeding to drive his tramcar, or had he driven slowly and carefully and stopped his car when it did not take the points, the pursuer would not have been put in any apprehension for her personal safety, and she would not have received the serious shock to her nervous system which was the consequence of the said driver's careless and reckless conduct in proceeding over the points and coming at a considerable speed very nearly up to the stationary car."

The defenders *pleaded, inter alia*—"1. The pursuer's averments being irrelevant and insufficient to support the conclusions of the summons the action should be dismissed."

On 12th November 1918 the Lord Ordinary (ANDERSON) approved of an issue.

The defenders reclaimed, and argued—The pursuer's averments were irrelevant. In stating that the defenders' servant had failed to shift the points she no doubt had relevantly averred negligence, but her alternative averments, which proceeded upon the assumption that the points were shifted but that the car failed to take them, were irrelevant, for negligence on the part of the driver could not be inferred from them, neither could any breach of duty towards the pursuer. But even if there was negligence on the part of the defenders' servant the injuries averred were too remotely connected with the negligence to entitle the pursuer to recover damages for them. The pursuer did not aver what put her into a state of terror. It was not enough to say in the circumstances of the case that she dreaded a collision. No doubt terror wrongfully induced and inducing physical mischief gave a cause of action—*Dulieu* v. *White & Sons*, [1901] 2 K.B. 669, *per* Phillimore, J., at p. 683, but the pursuer's alarm was not reasonable in the circumstances and could not be held to be the near and natural result of the negligence alleged, and if so she could not recover damages—*Brown* v. *John Watson, Limited*, 1914 S.C. (H.L.) 44, *per* Lord Shaw at p. 50, 51 S.L.R. 492, disapproving of *Victorian Railways Commissioners* v. *Coultas*, 1888, 13 A.C. 222; *Cooper* v. *Caledonian Railway Company*, 1902, 4 F. 880, *per* Lord Stormonth Darling, Ordinary, at p. 881, 39 S.L.R. 660; *Allan* v. *Barclay*, 1864, 2 Macph. 873; *Gilligan* v. *Robb*, 1910 S.C. 856, 47 S.L.R. 733; *Fowler* v. *North British Railway Company*, 1914 S.C. 866, 51 S.L.R. 745; Glegg on Reparation, p. 39; Pollock on Torts, p. 40; Salmond on Torts, p. 126. *The King* v. *Harvey*, 1823, 2 B. & C. 257, *per* Bayley, J., at p. 264, was also referred to.

Argued for the pursuer—The Lord Ordinary was right. The connection between the negligence averred and the injuries in question was not too remote—*Dulieu's* case (*cit.*), *per* Kennedy, J., at pp. 672, 675, and 679; *Bell* v. *Great Northern Railway Company*, 1890, 26 L.R. Ir. 428; Glegg on Reparation, pp. 39 and 40.

LORD PRESIDENT—In this case the pursuer claims damages from the defenders on account of injuries which she said she suffered in consequence of a nervous shock so serious that she had to take to bed for six weeks, caused entirely by terror induced she says by the negligent act of the defenders' servant.

Now I assume that the pursuer's injuries, if I may so call them, were the direct consequence of fright. I assume that that fright was the consequence of the negligent act of the defenders' servant, and I proceed to inquire whether his negligence was the natural and reasonable cause of the apprehension from which the pursuer suffered—whether, in short, her injuries were the natural and reasonable result of the car which was approaching from the east and going westward having missed the points.

I accept—as indeed did counsel on both sides of the Bar—the law laid down by the learned Judges of the King's Bench Division in the case of *Dulieu* v. *White & Sons*, [1901] 2 K.B. 669, and also as laid down by Palles, C.B., in the case of *Bell* v. *Great Northern Railway Company*, 1890, 26 L.R. Ir. 428, and also in the passages from the eminent text-writers which have been quoted to us. I accept also—I am bound to accept—the law as applied, although not developed, in the cases of *Cooper*, 1902, 4 F. 880, 39 S.L.R. 660, and *Fowler*, 1914 S.C. 866, 51 S.L.R. 745, and *Gilligan*, 1910 S.C. 856, 47 S.L.R. 733. But accepting the law as there laid down I cannot help thinking that the pursuer here has not made a relevant case.

Let us assume all the facts she avers established. Was it reasonable and natural that she should be terror-stricken, and consequently suffer from nervous shock in consequence of what she saw? She was seated on the front of a car which had been travelling from west to east, but was at the

moment stationary. The car, which was about to start on a westward journey, missed the points in front of her car, owing I assume at this moment to the negligent act of the defenders' servant, and proceeded on the eastward-going rail a distance of something like 27 feet, and then stopped within 3 feet of the car on which the pursuer was seated. She says that she was apprehensive that the cars would come into collision and that bodily injury would result to herself. But although we had a very lengthy and careful discussion of the averments on the record I do not yet clearly understand what was the bodily injury which she apprehended would befall her if the car did come on the course on which she saw it was coming. That is a total blank. I cannot at this moment conceive what kind of injury would have befallen her. But had she any reasonable ground for fear? I think not. A car, thoroughly equipped, driven by a competent driver (I assume), with a clear view ahead of him, at his post, keeping a good look-out, with his car under complete control, is approaching at no excessive rate of speed, but certainly at a slow rate of speed—we are entitled to assume that from the fact that there is no charge of excessive speed and that the car, in point of fact, was brought up in less than its own length. How in these circumstances any reasonable person with average nerves could be in any apprehension of bodily injury I am totally unable to understand. I assume that like other citizens of Glasgow the pursuer had travelled on the cars many times, and it is common knowledge that these cars are frequently brought up within a few feet, indeed a few inches, of one another every day on ordinary journeys. There was so far as I can see nothing unusual here except that the car had missed the points, and what followed seems to me to have been perfectly natural—the car was brought up easily within its own length.

In these circumstances I am unable to say that if a jury found the pursuer entitled to damages we could possibly sustain the verdict; it appears to me that such a verdict would be one that could be characterised as perverse and flagrantly against the evidence although every statement that is made by the pursuer was thoroughly established.

I cannot agree with the course the Lord Ordinary has taken. It is a question I agree of circumstances, but I think this case clearly falls outside the limits which have been laid down. None of the cases which have been cited to us is in point. They are very good illustrations, no doubt, of the doctrine to which we all assent, but they differ in material respects from the case before us. And we could not I think, without violating the test which we are all agreed ought to be applied here, allow this case to go to a jury.

I am therefore for recalling the Lord Ordinary's interlocutor and dismissing the action.

LORD MACKENZIE—I am of the same opinion. We are dealing here with a case which involves a question of degree, and like all other cases belonging to the same category, must be disposed of with reference to its own particular circumstances. I assume of course that the pursuer is in a position to prove every word that she sets out upon the record. But even if the proof came up to the averments, I think that a favourable verdict given by a jury could not be allowed to stand, because in no reasonable view of the evidence could it be reconciled with what the law requires in cases of this description.

I accept the law as involving this—that a fright which is wrongfully induced and induces physical injury gives a cause of action. In this case one must assume that the pursuer could prove that there was physical injury caused to her by the fright, and also that she would be able to prove that the fright was induced by the action of the defenders' servant. But the question arises whether it can by any possibility be said that the fright was a natural and probable consequence of what the defenders' driver did, because remoteness as a legal ground for the exclusion of damages is well recognised in this class of case. Remoteness means, as was pointed out by Kennedy, J., in the case of *Dulieu*, [1901] 2 K.B. 669, an absence of direct and natural causal sequence—the inability to trace in regard to the damages the *propter hoc* in a gradual and necessary descent from the wrongful act.

Another way of applying the test of whether the injury is a natural and probable consequence is to look at it from the point of view of the person charged with what occurred. And it can only be said that the injury is a natural and probable consequence of his act if it can be said that it was so likely to result from what he did that a reasonable man with his means of knowledge ought to have foreseen that the injury would result from what he did. I am quite unable to take the view that that can be said of what the defenders' servant did in the present case.

In the circumstances I think the pursuer has failed to state a relevant case.

LORD SKERRINGTON—This case does not involve any question of law in the proper sense. It raises a mere question of pleading, viz., whether the pursuer has relevantly averred that the extreme state of terror which injured her followed according to the natural and ordinary sequence of events as a consequence of the act of careless driving of which she complains. For my own part I am unable to understand how a person in the position in which the pursuer describes herself to have been, came to be thrown into a state of extreme alarm by the approach of a tramway car which was under the control of a driver who was aware that there was a car in front of him, and who, wishing to stop short of this car, succeeded in doing so when there was still a yard between the two cars. I could better have understood the pursuer's fears, if she had alleged that the driver of the approaching car was looking backwards at the moment, and that she feared that a violent collision would take

place before he became alive to the fact that there was a car in front of him; or again, if she had averred that when she caught sight of the approaching car she was lawfully changing her seat, and that she feared that if the two cars should collide the jerk might throw her down on to the street. I do not say that such averments would have made the case relevant, but at any rate they would not have left it a complete mystery how this poor lady came to be thrown into a state of terror. Whilst it is impossible not to sympathise with her, it would I think be unfair to the defenders to hold them responsible for an accident of an abnormal and unexplained character.

LORD CULLEN—I concur. I think that in cases of this kind, when the causal connection between the occurrence complained of and the degree of fright alleged is not plain, the pursuer should present such averments as to make the matter intelligible and to show that the degree of fright alleged was the natural and probable effect of the occurrence. This I think the pursuer here has failed to do.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action.

Counsel for the Pursuer (Respondent)—Morton, K.C.—R. M. Mitchell. Agents—Ross & Ross, S.S.C.

Counsel for the Defenders (Reclaimers)—Macmillan, K.C.—Gentles. Agents—Simpson & Marwick, W.S.

Friday, December 20.

SECOND DIVISION.

[Scottish Land Court.

CLARK *v.* FRASER.

MACKENZIE *v.* WALLACE'S TRUSTEES.

Landlord and Tenant—Small Holding—Burgh — Municipal Boundary — Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 26 (3) (*c*).

The Small Landholders (Scotland) Act 1911 enacts—Section 26 (3)—"A person shall not be held an existing yearly tenant or a qualified leaseholder under this Act in respect of . . . (*c*) any land within the parliamentary, police, or municipal boundary of any burgh or police burgh."

Held that subjects which were within the royalty of a royal burgh, but outwith the parliamentary and police boundaries thereof, were, in consequence of being within the royalty, within the municipal boundary, so as by virtue of the Small Landholders (Scotland) Act 1911, section 26 (3) (*c*), to be excluded from the operation of that Act.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) section 26 (3) (*c*) is quoted *supra* in rubric.

Donald Fraser, M.D., J.P., physician in Paisley and Glasgow, and Miss Kate Fraser, B.Sc., M.D., Deputy Commissioner, General Board of Control for Scotland, *appellants*, being dissatisfied with an order of the Scottish Land Court, pronounced in an application presented on 22nd November 1915 by Hugh Clark, Fortrose, *respondent*, to have it found and declared that he was a landholder or a statutory small tenant of the farm of Broomhill belonging to the appellants, appealed by Stated Case. In another Stated Case, in which the trustees of the late Colonel Charles Tennant Wallace, Nairn, sisted in his room and place, *appellants*, appealed against an order of the Scottish Land Court, pronounced in an application presented on 21st May 1914 by Miss Jane Mackenzie, Nairn, *respondent*, to have it declared that she was a landholder in and of a holding at Tradespark, Nairn, a similar question was raised. The question at issue was whether the subjects in each case, being admittedly within the royalty of a royal burgh but outwith the parliamentary and police boundary, could be also held to be within the municipal boundary so as by virtue of the Small Landholders (Scotland) Act 1911 to disentitle the applicants to the findings craved. In the case of *Mackenzie* v. *Wallace's Trustees* there was the additional element that the subjects in question formed part of the Common Good of the burgh.

Fraser's Case stated, *inter alia*—"3. The application was heard before Lord Kennedy and Mr Reid at Dingwall on 3rd May 1916, when proof was led. . . . 4. The facts held proved or admitted were as follows:—The deceased Hugh Clark senior originally entered on the tenancy of the farm of Broomhill, which is on the estate of Raddery, about forty-five years ago, under a lease for nineteen years. The lease expired prior to the commencement of the Act, and he thereafter held the farm from year to year down to the date of his death in March 1916, when he was succeeded by his son Hugh Clark junior, the present tenant. Broomhill extends to 35 acres arable with 44 acres of outrun, and the rent payable was £42. . . . The burgh of Fortrose is a royal burgh. It was admitted by the parties that the subjects in respect of which the application was made were situated within the royalty of the royal burgh of Fortrose. They are, however, situated outside the parliamentary boundary of the burgh, and also outside the municipal boundary, unless the expression 'municipal boundary' is to be construed as including the limits and boundaries of the royalty of a royal burgh. The said subjects are not within the burgh for rating and voting purposes, but are within the county area for such purposes. 5. Subsequent to the hearing the holding was inspected, and on 16th May 1916 the following final order was pronounced: -Find it not proved that any part of the holding described in the application is situated within the parliamentary or the municipal boundary of the burgh of Fortrose: . . . Repel the respondents' objections to the competency of the application: Find and declare that the