the Act in question did not apply to Scotland, and therefore had no bearing on the present case. I can only say that I would require a good deal more argument than I have yet heard before I could agree in this result. The statute bears to apply to the whole United Kingdom except Ireland, and the special exception of Ireland—Ireland only—carries the strongest implication that Scotland is included. Then the evil which the Act professes to remedy, and the circumstances in which it was to apply, arise in Scotland as much as in England, and although English phraseology is used to some extent, and reference made to English officials and English machinery—and this happens not unfrequently in Imperial statutes which are undoubtedly of application in all parts of the United Kingdom—my impression is, and I do not think it necessary to state it higher than an impression, that the statute is applicable to Scotland.

But whether applicable to Scotland or not, I do not think that the Act is conclusive of the present questions, and at all events it will not avail the defenders or be of any assistance to them in support of their pleas. If the Act does apply to Scotland, then the defenders have not availed themselves of its provisions, and cannot take any benefit by its enactments, and the presumption would be very strong against them that they had no other case. On the other hand, if the Act does not apply to Scotland, then the case must be decided at common law, and I have already explained that so viewing the case I am adverse to the defender's pleas. I am for adhering to the judgment of the Lord Ordinary.

The Court adhered.

Counsel for Pursuers (Respondents)—Dean of Faculty (Fraser)—J. P. B. Robertson. Agent—John Galletly, S.S.C.

Counsel for Defenders — (Reclaimers) Lord Advocate (Watson)—Trayner—Rhind. Agents—Begg & Murray, Solicitors.

Thursday, June 19.

SECOND DIVISION.

[Sheriff of Forfar.

CLERK *v.* PETRIE.

Reparation—Injury to Person—Duty of Drivers.

In an action of damages for injury to person by being knocked down by a dogcart, facts which *held* on a proof to infer no contributory negligence; and *observations per* the Lord Justice-Clerk (Moncreiff) and Lord Gifford on the duties of drivers.

The pursuer in this case, Mrs Clerk, was an old woman of about ninety-four years of age. On the afternoon of Tuesday, 30th April 1878, she was crossing the street in front of her house, and in the centre of it (it was about 30 feet wide) she was struck and knocked down by a dogcart driven by the defender Alexander Petrie, and seriously injured. It was broad daylight at the time of the occurrence, and there was nothing to intercept the defender's view of the pursuer. He averred that he did not see her till he was within 10 or 12 yards, that he cried out to her, but that she was too deaf to hear him, and that he pulled up as quickly as he could, but not quickly enough to prevent her being knocked down. He further averred that her own negligence in not keeping a sufficient look-out contributed to the cause of the accident. The Sheriff-Substitute (ROBERTSON) after a proof assoilzied the defender. On appeal the Sheriff (MAITLAND HERIOT) reversed, and gave decree for £25. He added the following note, which sufficiently gives the import of the proof:—

"*Note.* — This case is one of considerable difficulty, in consequence of the pursuer herself being to some extent to blame for what took place.

"The accident happened in a wide street in Arbroath in broad daylight, while no one else was in the street near the pursuer. The defender admittedly saw the pursuer moving slowly across the street when he was 10 or 12 yards off, and yet he allowed the shaft of his conveyance to knock her over. He might have observed that she had not heard his cry, and the Sheriff fails to see why he did not at once pull up his horse entirely, or at least turn it aside so as to have passed behind her. Without imputing any very great blame to the defender, his fault—and it is a common one with drivers generally—was in proceeding on the assumption that the pursuer was a person of ordinary hearing and intelligence, and able in a moment to jump aside out of his way. Unfortunately, not being quick either in hearing or in stepping, she was injured. Although there was no evil intention on the defender's part, still it appears to the Sheriff that he was culpable in not driving more carefully than he did. But the difficulty in the case arises on the point of contributory negligence. Was the pursuer not also to blame in respect that she failed to look down Keptie Street before proceeding to cross the street. She herself admits she forgot to do this. Had she done so, no doubt the accident might not have happened. Was her forgetfulness in this respect—arising perhaps from defect of memory—so 'recklessly imprudent' as to liberate the defender. Or suppose she had looked and seen him coming along at the rate of five or six miles an hour, was she very culpable in proceeding to cross when she knew that all drivers are bound to be careful and cautious, and that she could not have supposed that anyone would ever drive over an old woman walking at a snail's pace.

"No doubt the looking in all directions before crossing a street is always a wise precaution, but the Sheriff is very doubtful if all people are bound to look four ways before proceeding to cross a street. On the contrary, the Sheriff is of opinion that drivers must make way for foot-passengers. Were drivers not bound to do so, few people would be safe. Surely the old and the young, the lame, the deaf, and the blind, not to speak of philosophers and learned men lost in deep thought, are entitled to the free use of the streets, and drivers must be taught that they drive over any one at their peril. They are bound to have their horses always well in hand, and be able at once to pull up or turn aside when necessary. It

is too much the way for drivers to give a shout to the foot-passengers, as they drive on without ever slackening speed, leaving the unfortunate passengers to scramble out of the way if they can. On the whole, the Sheriff cannot regard the pursuer's forgetfulness as so culpable a thing as to liberate the defender. See Addison on Torts, 371.

"The decision on which the Sheriff-Substitute proceeds as ruling this case is that of *Grant*, 10th December 1870, 43 J. 115, when a child was killed at a private crossing on a railway. But that seems to the Sheriff to be a very different kind of case from the present. There it was impossible for the engine-driver to stop his engine so as to avoid the child crossing. Here it was not impossible for the defender to avoid driving against the pursuer. The Sheriff observes that the Lord President in giving his opinion in that case refers to this distinction when he says—'The train cannot pull up like carriages travelling at the rate of from five to eight miles an hour; the precautions taken must all be consistent with their still continuing their journey.' From this the Sheriff infers that his Lordship considered that a driver travelling at that rate was bound to pull up. The public know in the one case that the engine-driver can't stop or turn aside his engine so as to avoid a passenger, and in the other that the driver can."

The defender reclaimed.

At advising—

LORD JUSTICE-CLERK—I have no doubt here in affirming the interlocutor of the Sheriff. The Sheriff-Substitute has found that there was contributory negligence on the part of the respondent, because while she looked three ways to see if there was any danger, she did not look the fourth. I am entirely of a different opinion. When a driver of a machine in broad daylight drives down a person crossing where she had a perfect right to cross, the presumption in fact and in law is that he was in fault, and the sooner this is understood the better.

In these days of careless driving, where so many lives are lost by it, I wish to lay this down strongly, that when a person is driving along a public road, and seeing some one in front of him, thinks his duty is complete when he has called out, he is mistaken. You had here an old woman crossing when she was quite entitled to do so, and a driver who, on his own statement of the pace he was going, could have pulled up whenever he pleased, but does not do so till he has knocked down and seriously injured the woman. I think in these circumstances the Sheriff's judgment was quite right.

LORD ORMIDALE concurred.

LORD GIFFORD—I concur. When a person driving in broad daylight, and with nothing unusual to prevent him, does not see some one in front of him till he is within 10 or 12 yards, there is a presumption of carelessness. But when he did see her, even then he was in fault, for when he called out he was bound so to drive that in case she did not hear no accident should occur. I cannot think there was contributory negligence on the respondent's part.

Appeal dismissed with expenses.

Counsel for Pursuer (Respondent)—Guthrie Smith—Strachan. Agent—T. F. Weir, S.S.C.

Counsel for Defender (Appellant)—Mair. Agent—W. Officer, S.S.C.

Thursday, June 19.

FIRST DIVISION.

[Sheriff of Aberdeen and Kincardine.

THE HERITORS OF PITSLIGO *v.* GREGOR.

Church—Repair of Manse—"Free" Manse—Ecclesiastical Buildings Act (31 *and* 32 *Vict. cap.* 96), *sec.* 3—*Competency—Removing Petition dealing with Repairs on a Manse from Presbytery to Sheriff Court—Appeal from Sheriff Court.*

The manse of Pitsligo was in 1874 declared free by interlocutor of the Court of Session, but the minister refused to inhabit it, on the ground that it was unhealthy and generally out of repair. The heritors of the parish thereupon presented a petition to the presbytery praying them to order the minister to inhabit the manse, or alternatively for the appointment of some one to take care of it at his expense. The minister lodged answers to this petition, in which he alleged that the manse was in a very bad condition, and that he and his family could not inhabit it without suffering in health. Subsequently he put in a minute offering to occupy it so soon as it was put in a fit state, and craving the presbytery to take the necessary steps for ascertaining its actual condition and for providing a suitable residence for him and his successors. The presbytery remitted to an architect to report. Proceeding on his report the presbytery found that the manse needed repairs, and that notwithstanding the interlocutor pronouncing it "free" an obligation rested on the heritors to remedy the defects. They therefore dismissed that portion of the petition praying for an order on the minister to inhabit, and ordered the heritors to take the necessary steps to make the manse habitable, and further found the expenses in the proceedings a burden upon them. The heritors then removed the proceedings to the Sheriff Court by petition under the provisions of the Ecclesiastical Buildings Act (31 and 32 Vict. cap 96), sect. 3. The petition prayed the Sheriff to stay the proceedings before the presbytery and to dispose of it himself. This was conjoined with a previous petition presented by the heritors to the Sheriff, and in the conjoined actions an interlocutor was issued in which the first petition of the heritors complaining of the minister's desertion was dismissed; and in the second petition the order of the presbytery for repairs was found to be incompetent and all further proceedings thereon were stayed. The respondent, the minister of the parish,