referred to *ibid*, at p. 441; *Dulieu* v. *White & Sons* (1901) 2 K.B. 669. The fact that the pursuer had sustained no injuries apart from nervous shock did not take away her right to have her case sent to trial—*North British Railway Company* v. *Wood*, July 2, 1891, 18 R. (H.L.) 27, 28 S.L.R. 921.

Argued for the respondents—It was not averred that any glass or splintered wood came into the carriage, or that the pursuer was ever in actual danger. The responsibilities of a railway company were to be tested as in a question with a person of ordinary nerve. The question whether the alleged occurrence led naturally to the consequences complained of was a question for the Court.

LORD JUSTICE-CLERK—I think this is a very narrow case. At first I was inclined to think that the Lord Ordinary was right, but the case appears to me to be one in which the pursuer is entitled to have the facts ascertained. I am unable to say that there may not be such evidence—assuming fault to be proved—of a case of shock from reasonable fear as may entitle the pursuer to damages, and I do not think it would be safe to decide it without having the facts in detail.

LORD YOUNG—That is my opinion also, and I have nothing to add.

LORD TRAYNER—I concur. The Lord Ordinary says—"I think it is impossible to say that the terror which this lady says she felt, and which made her take to bed for 3 weeks, was the natural result on a mind of ordinary strength of a carriage door swinging open and having its glass broken." The pursuer's averments may present an improbable case, and one which it may be difficult to believe, but I cannot say it is impossible. She offers to prove her case, and I think she is entitled to an opportunity of doing so if she can. But we can scarcely throw out the pursuer's case as irrelevant on the view that *a priori* it is impossible for her to prove it.

LORD MONCREIFF was absent.

The Court recalled the interlocutor reclaimed against and approved of the issue proposed by the pursuer.

Counsel for the Pursuer and Reclaimer—Watt, K.C.—J. R. Christie. Agents—Simpson & Marwick, W.S.

Counsel for the Defenders and Respondents—Guthrie, K.C.—King. Agents—Hope, Todd, & Kirk, W.S.

Wednesday, June 18.

SECOND DIVISION.

[Sheriff-Substitute of Stirlingshire.

MEALLY *v.* M'GOWAN.

Reparation—Master and Servant—Workmen's Compensation Act 1900 (63 *and* 64 *Vict. c.* 22), *sec.* (1), *sub-sec.* (3)—*Agriculture—Forestry—Felling and Removing Timber in Employment of Sawmiller and Wood Merchant.*

A workman while engaged in felling and removing timber was killed in the course of his employment by being crushed between a standing tree and a log which was being removed on a cart. The workman was at the time in the employment of a wood merchant and sawmiller, part of whose business it was to buy growing wood, cut it down, and remove it to his sawmill, where it was converted into flooring or planks. *Held* that the workman was not engaged in "forestry" within the meaning of section 1, sub-section (3), of the Workmen's Compensation Act 1900, and that his representatives were consequently not entitled to compensation under the Workmen's Compensation Acts 1897 and 1900.

This was an appeal from the decision of the Sheriff-Substitute at Stirling in an arbitration under the Workmen's Compensation Acts 1897 and 1900 (60 and 61 Vict. c. 37, and 63 and 64 Vict. c. 22).

The facts which were found by the Sheriff-Substitute to be admitted or proved were as follows—"That the late John Meally, son of Mrs Bridget Philliban or Meally, the applicant, was in the employment of John M'Gowan, the respondent. That the respondent is a wood merchant and sawmiller. That for the purpose of his business he is in the custom of buying growing wood, cutting it down and removing it to his sawmill, where it is converted into flooring or planks or battens. That the respondent has a small farm of 30 acres which he cultivates. That he carries on his wood merchant and sawmiller business separately from his farm, and such business is away from the farm and not on the farm ground. That the deceased was one of several men whom the respondent habitually employed. He was engaged to cut down and fell trees, to cart them to the mill or to the railway station, to assist in the cultivation of the farm or in the mill when required, and to make himself generally useful. The work of cutting down and felling trees and carting them to the mill or railway station was directly connected with the wood merchant and sawmiller business, and was the work in which the deceased was mainly employed. He lived in the mill, and was available for farm work when required during four months of the year, but he did not do more than a fortnight's agricultural work during the whole year. He had been in the respondent's employment for about eleven years.

His wages for the greater part of the year were 24s. a-week, he finding his own bed and board, and for the remainder of the year 14s. a-week, his bed and board being found for him. That the respondent had purchased a number of growing trees in a wood near Blanefield belonging to Mr John Coubrough, and the deceased and another workman had been for some days before 4th December 1901 engaged in cutting down these trees and removing them to the sawmill of the respondent. That on 4th December 1901 the deceased was killed by being crushed to death between a standing tree and the trunk of a tree which he was removing on a cart through the wood. That George Ellis, a gardener in the regular employment of Mr Coubrough, and who had charge of his woods, had previously marked the trees which were sold to the respondent."

On these facts the Sheriff-Substitute found that the deceased was killed while in the employment of the respondent, that the deceased was a "workman in agriculture," in respect that he was at the time of his accident engaged in forestry, and that the respondent, his employer, "habitually employed" such workmen in forestry in the sense of the Workmen's Compensation Act 1900, sec. 1; and consequently, that the respondent (the employer) was liable in compensation to the applicant under the Workmen's Compensation Act 1897.

Both the employer and the applicant appealed.

The questions of law stated for the opinion of the Court at the instance of the employer (respondent) were as follows—"(1) Is the employment of the respondent at which deceased met with the accident which caused his death an employment to which the Workmen's Compensation Act 1900 applies? and (2) Is the respondent an undertaker within the meaning of the Workmen's Compensation Acts 1897 and 1900, and as such liable in compensation to the applicant?"

In the view ultimately taken by the Court it was unnecessary to consider the questions stated at the instance of the applicant.

The Workmen's Compensation Act 1900 (63 and 64 Vict. c. 22), sec. 1, sub-sec. (1), enacts as follows:—"From and after the commencement of this Act the Workmen's Compensation Act 1897 shall apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen in such employment." Sub-section (3) . . . "The expression 'agriculture' includes horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live-stock, poultry, or bees, and the growth of fruit and vegetables." Section 2—"This Act may be cited as the Workmen's Compensation Act 1900, and shall be read as one with the Workmen's Compensation Act 1897, and that Act and this Act may be cited together as the Workmen's Compensation Acts 1897 and 1900."

Argued for the appellant—The definition of "agriculture" in section 1, sub-section (3), of the Act of 1900 (63 and 64 Vict. c. 22), included forestry. Forestry meant planting and cultivation of trees and management of growing timber. The appellant was not the owner of a forest or a cultivator of timber, but merely a buyer of wood. The fact that he had to cut down the wood was merely an accident of his contract. In any case he was not an "undertaker," being neither the owner nor occupier of a forest.

Argued for the respondent — Cutting down wood was "forestry," and the appellant was liable as an "undertaker" to pay compensation.

At advising—

LORD JUSTICE-CLERK — The first question is, whether the operation which was being carried on was one of forestry. The operation was cutting down trees which the employer had purchased, putting the wood upon carts, and carting it away. As I am of opinion that the operation in which the deceased was employed was not forestry it is unnecessary to consider the other questions in the case.

LORD YOUNG and LORD TRAYNER concurred.

The Court pronounced this interlocutor:—

Sustain the appeal. Find in answer to the questions of law therein stated that the employment in which the deceased met with the accident which caused his death was an employment to which the Workmen's Compensation Acts 1897 and 1900 do not apply. Therefore recal the award of the arbitrator, and remit to him to dismiss the claim.

Counsel for the Appellants—Watt, K.C. —Guy. Agents—Macpherson & Mackay, S.S.C.

Counsel for the Respondent—D. Anderson—Munro. Agents—Simpson & Marwick, W.S.

Thursday, June 19.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire at Airdrie.

PARKER *v.* WILLIAM DIXON, LIMITED.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *First Schedule, secs.* 1 (*b*), *and* 2—*Partial Incapacity—Amount of Compensation.*

Where a workman had been injured, and as the result of his injuries was able to earn only £1 per week instead of 39s. 6d., the amount of his earnings previous to the accident, the Sheriff-Substitute, as arbitrator under the Workmen's Compensation Act 1897, awarded him compensation at the rate of 19s. 6d. per week. *Held* that this award was