Friday, July 8.

FIRST DIVISION.

[Sheriff Court at Hamilton.

GILLIGAN *v.* ROBB.

Reparation—Remoteness and Uncertainty of Injury—Nervous Shock without Physical Impact.

A cow while being driven with several others along a public street in charge of a boy suddenly bolted into the kitchen of a house. A woman who was in the kitchen at the time, in an action of damages against the owner of the cow for negligence in employing an incompetent driver, averred that in consequence of the sudden appearance of the cow she had sustained a nervous shock, from the effects of which she had not recovered, and which she believed would be permanent. *Held* that the action was relevant, and issue *allowed.*

Mrs Hannah Joiner or Gilligan, wife of and residing with William Gilligan at Woddrop Street, Bridgeton, Glasgow, with her husband's consent and concurrence, brought an action in the Sheriff Court at Hamilton against William Robb, cattle-dealer, Flemington Farm, Newton, Cambuslang, to recover £250 as damages for nervous shock which she alleged she had sustained through the fault of the defender.

The pursuer, who stated that on the afternoon of 25th November 1909 she was in the kitchen of her mother's house at 89 Dalmarnock Road, Glasgow, averred —"(Cond. 3) Whilst the pursuer was in said kitchen she was suddenly confronted by a cow which had entered her mother's house and come into the kitchen. The pursuer was at once thrown into a state of nervous terror through the sudden and unexpected appearance of said cow, and through the fear of actual physical injury resulting from the presence of the animal in the confined space of a small kitchen. The pursuer, notwithstanding her terror, made some effort to turn said cow out of said kitchen, and ultimately it proceeded to another room in said house, and was after some time driven out of the house by the assistance of some neighbours. Thereafter the pursuer learned that the said cow belonged to the defender, and was being driven along with several others from the cattle market to defender's farm at Flemington in the charge of a young boy. The pursuer believes and avers that said boy was incapable, on account of his youth and inexperience, of driving cattle through the busy streets of Glasgow, and in particular she avers that the defender's said servant recklessly, negligently, and unnecessarily set a dog, which accompanied him and which belonged to defender, at said cow, with the result that the cow got frightened and made a rush for the close in which pursuer's mother resides, and entered the house. For the said negligence of his servant the defender is responsible. (Cond. 4) The pursuer sustained a very severe nervous shock as a result of said incident. She was hysterical for a considerable time, and had to be put to bed, her pulse being high, and her heart was slightly affected. She had to remain in bed for several weeks thereafter, being constantly attended by her medical man, and in point of fact she is still in her doctor's hands. She has not yet recovered from the effects of the fright, and it is believed and averred that the effects will be permanent. She has become thin and emaciated as a result, and suffers periodically from diarrhœa. She is easily frightened, and is unable to appear on the streets unaccompanied. She has been forced to stop feeding her baby and to bring it up on the bottle, and in the circumstances the sum sued for is fair and reasonable compensation."

The pursuer pleaded — "The pursuer having been injured through the fault of the defender or of those for whom he is responsible, decree should be granted as craved, with expenses."

The defender pleaded—"(1) The action is irrelevant. (3) Any injury sustained by the pursuer not having been caused by fault or negligence on the part of the defender or anyone for whom he is responsible, he is not liable to the pursuer in compensation."

The Sheriff-Substitute (THOMSON) having allowed a proof, the pursuer appealed to the Court of Session for jury trial. She proposed the following issue—"Whether, on or about the 25th day of November 1909 and in or about 89 Dalmarnock Road, Glasgow, the pursuer was injured in her person through thef ault of the defender, to the loss, injury, and damage of the pursuer? Damages laid at £250 sterling."

The defender objected to the relevancy, and on the case appearing in the Summar Roll, argued — "A cow was a domestic animal and there was no ground of action apart from negligence. But there was no sufficient averment of negligence. There was, in particular, no averment that defender did not exercise reasonable care in the selection of the boy, or that even if the boy was incompetent he was to blame for what took place. The injury, in any case, was too remote. There was no physical impact. All that was averred was that the pursuer was suffering from 'shock.' There was nothing to connect her alleged suffering with the defender's alleged negligence." *Glancy* v. *Glasgow and South-Western Railway Company*, February 18, 1898, 25 R. 581, 35 S.L.R. 462; *Dulieu* v. *White & Sons*, [1901] 2 K.B. 669.

The pursuer was not called on for a reply.

The Court (LORDS KINNEAR, JOHNSTON, and SALVESEN) allowed the issue.

Counsel for Pursuer and Appellant—Geo. Watt, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for Defender and Respondent—C. D. Murray, K.C.—Alex. Brown. Agents—Ross Smith & Dykes, S.S.C.

Thursday, July 7.

SECOND DIVISION.

[Lord Johnston, Ordinary.

THE WALKER TRUSTEES *v.* LORD ADVOCATE AND OTHERS.

Statute — Interpretation — Prescription — Contemporanea Expositio — Heritable Office—Usher of the White Rod—Treaty of Union 1707 (6 *Anne*, c. 11)—*Reservation to Owners of Heritable Offices "in Same Manner as now Enjoyed by the Laws of Scotland"—Fees after* 1707—*Usage—Payment of Fees from* 1766 *to* 1904.

By the Treaty of Union 1707, Article XX, it was enacted that "all heritable offices . . . be reserved to the owners thereof as rights of property in the same manner as they are now enjoyed by the laws of Scotland notwithstanding this Treaty." At that date the holder of the hereditary office of principal usher in Scotland (or Usher of the White Rod) was entitled, in virtue of a Crown charter of resignation confirmed by Act of Parliament in 1686, to certain specified fees "payable be dukes marqueses earles viscounts lords knights barronets and other knights created or to be created and receiveing honours tytles and dignities from His Majesty and his successors within the said Kingdom of Scotland."

In an action in 1909 at the instance of the holder of the office of principal usher, concluding for declarator that he was entitled to the specified fees on the creation of similar dignities of the United Kingdom, it was proved that from 1766 onwards fees were claimed by and paid to the usher on the creation of such dignities of the United Kingdom.

Held (1) that the usage from 1766 onwards might be founded on as *contemporanea expositio* in construing the Treaty of Union, and (2) that the pursuer was entitled to exact the specified fees on the creation of the said dignities of the United Kingdom.

The Walker Trustees, incorporated by Act of Parliament, raised an action against (1) the Lord Advocate as representing the Treasury, (2) Lord Armitstead and others, and (3) Lord Leith of Fyvie and others, concluding for (*a*) declarator (*first*) that the pursuers as holders of the heritable office of principal usher in Scotland were entitled to certain specified fees in respect of all creations of dukes, marquesses, earls, viscounts, lords, or barons, knights baronet, and knights of the United Kingdom; and (*second*) that said fees fell to be collected by the Treasury or the Lord Chamberlain and remitted to the pursuers, or alternatively that the pursuers were entitled to collect the fees themselves; and (*b*) payment to the pursuers by the defenders called in the second and third places of certain specified sums. The defenders called in the *second* place were Englishmen who had received titles or dignities of the United Kingdom since 31st March 1904. The defenders called in the *third* place were Scotsmen who had received such titles or dignities since said date.

The pursuers averred that the hereditary office of principal usher in Scotland, or Usher of the White Rod, had been in existence from time immemorial, and in virtue of various Crown charters and Acts of the Scots Parliament in favour of the pursuers' authors carried with it the right to certain fees on the creation by the Crown of certain dignities. In particular, by charter of resignation under the Great Seal, dated 21st January 1686, in favour of Archibald Cockburn, younger of Langton, the said office was granted of new with all the privileges and emoluments, and in particular certain specified fees payable by Scotsmen receiving dignities within any part of His Majesty's dominions, and by Englishmen receiving such dignities in Scotland. This charter was ratified by Act of Parliament 15th June 1686, c. 63, conferring on the said Archibald Campbell, *inter alia*, right to "all casualties fies and other rents under writen payable be dukes marqueses earles viscounts lords knights barronets and other knights created or to be created and receiveing honours tytles and dignities from His Majesty and his successors within the said Kingdom of Scotland." A specification of the amount of the fees followed.

The pursuers pleaded, *inter alia*—"(1) In respect of their titles to the office of usher condescended on, the pursuers are entitled to decree of declarator as concluded for. (2) In respect of their titles and of the possession had thereon for more than the prescriptive period, the pursuers are entitled to decree of declarator as concluded for."

The defenders pleaded, *inter alia*—"(2) The pursuers being a corporation are not entitled to decree of declarator and for payment as concluded for. (3) In respect of the Act of Union, the fees claimed are no longer exigible, and the defender ought to be assoilzied. . . . (5) In any event, the pursuers are only entitled, under the charter of 1686 founded on, to fees from the recipients of purely Scottish honours, or from Scotchmen who receive the honour of knight-bachelor, or Englishmen who receive that honour in Scotland."

By minute of admissions (No. 199 of process) the parties made the following admissions:—"1. That from a date prior to 1st January 1800 until the year 1904 the fees paid on the creation of peers, baronets, and knights by patent have been collected from the recipients of such dignities by the Home Office, and paid over by that Department, between 1800 and 1871, to the Crown Office in Chancery, and between 1871 and 1904 to the Treasury. Among the fees so collected were the fees claimed by the holder of the office of Heritable Usher for Scotland, and these fees were, under deduction of a commission of 2½ per cent., paid over to an officer of