divergence in that case there was a substantial compliance with it.

I agree as to the technical nature of this objection. There were three objections stated. Two of them have disappeared but the third remains, namely, that the notice does not describe any subjects from which the defender is to remove. I cannot support that objection in its terms. But I think we may fairly hold that objection to include the question whether there is not a separable part of the subjects which is not described. I think there is, and that in that particular the statute has not been complied with, and therefore that the case falls under the decision in *Blain* v. *Ferguson*. Apart from the cottage and garden the notice gives no description of the five-acre field. If it were a question of whether the cottage included the garden I should be disposed to hold that it was a reasonable description of the garden. But the field is entirely separable and is not described at all.

LORD SALVESEN was absent.

The Court dismissed the appeal and affirmed the interlocutors of the Sheriff-Substitute and the Sheriff appealed against.

Counsel for the Pursuer and Appellant—Leadbetter. Agents — Webster, Will, & Company, W.S.

Counsel for the Defenders and Respondents — Watt, K.C. — Mackenzie Stuart. Agents—Hagart & Burn Murdoch, W.S.

Saturday, October 19.

FIRST DIVISION.

[Scottish Land Court.

CAMPBELL *v.* SINCLAIR.

Landlord and Tenant — Process — Small Holdings — Marking of Special Case to Division—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 25 (2).

Held that a party who requested the Scottish Land Court to state a special case had the right to mark the case to whichever of the Divisions he chose.

The Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) enacts—Section 25 (2)—"For the purposes of the Landholders Acts the Land Court shall have full power and jurisdiction to hear and determine all matters whether of law or fact, and no other court shall review the orders or determinations of the Land Court: Provided that the Land Court may, if they think fit, and shall, on the request of any party, state a special case on any question of law arising in any proceedings pending before them for the opinion of either Division of the Court of Session, who are hereby authorised finally to determine the same."

The Rules of the Scottish Land Court, dated 15th November 1912, provide—Rule 102—"Any party to an application or other proceeding who intends to require that a special case shall be stated on any question or questions of law for the opinion of either Division of the Court of Session, shall, within fifteen days after the date of the receipt by the sheriff-clerk of the decision complained of, lodge with the Principal Clerk at the Edinburgh office of the Court a requisition to that effect, and also a draft statement of the case specifying (*a*) the facts out of which such question or questions of law are alleged to have arisen, (*b*) the decision complained of, (*c*) in what respect and to what extent such decision is maintained to be erroneous in point of law, and (*d*) the question or questions of law proposed to be submitted to the Court of Session." Rule 105—"On the said special case being authenticated . . . the Principal Clerk shall transmit the same with relative productions, if any, which have been made part of the case to the Clerk of the Division of the Court of Session to which it is stated, and shall notify such transmission to the parties thereto."

Sir Archibald Spencer Lindsey Campbell, Bart., *appellant*, being dissatisfied with an order of the Scottish Land Court in an application by Andrew Sinclair, *respondent*, craving the Court to find and declare that the respondent was and had been a landholder from 1st April 1912 as an existing crofter or otherwise as a yearly tenant in a holding of which the appellant was proprietor, requested the Land Court to state a Special Case.

The draft Case as prepared by the appellant and lodged with the Land Court was marked to the Second Division. The Land Court altered the marking to the First Division and issued the Case so marked to the parties.

The Case came out in the Single Bills, when counsel for the appellant moved that the Case should be transferred to the Second Division.

Argued for the appellant—The ordinary rule in appeals from the Sheriff Court was that the appellant had the right to mark the appeal to whichever Division he chose. A pursuer in the Outer House had the same right. There was nothing either in the Small Landholders (Scotland) Act 1911 (1 and 2 Geo. V, cap. 49) or in the Rules of the Land Court to show that the ordinary rule was not to apply to a special case. The appellant had marked the Case to the Second Division, to which it should now be transferred. The Act of 1911, section 25 (2), and the Rules of the Scottish Land Court, rule 102, were referred to.

Argued for the respondent—The obligation to state a case upon request by one of the parties was laid upon the Land Court—section 25 (2) of the Act of 1911—but the party's only right as to the preparation of the case was to submit a draft case by the Land Court containing certain particulars which did not include marking to a Division. The right to choose the Division was reserved to the Land Court—Rule 102. [The LORD PRESIDENT referred to Rule 105.]

The Court intimated that they would consult with the Judges of the Second Division.

At advising—

LORD PRESIDENT, delivering the opinion of the Court—We have considered this Case in consultation with the Judges of the Second Division, and the conclusion we have reached is that it is for the party at whose request the case is stated to select the Division of the Court to which it will be submitted. We consider that to be the plain meaning of section 25 (2) of the Small Landholders (Scotland) Act 1911. The case would of course be different if the Land Court *ex proprio motu* caused a case to be stated to this Court for its opinion.

Accordingly as we were informed by counsel that Sir Archibald Campbell, at whose instance this Case is stated, had selected the Second Division as the Court to which the Case should be submitted, we propose that it should be sent to the roll and thereafter transferred to the Second Division.

LORD SKERRINGTON was absent.

The Court transferred the Special Case to the Second Division.

Counsel for the Appellant—C. H. Brown. Agents—Tait & Crichton, W.S.

Counsel for the Respondent—J. A. Christie. Agents—Balfour & Manson, S.S.C.

Friday, July 19.

SECOND DIVISION.

[Lord Hunter, Ordinary.

MILLIKEN *v.* GLASGOW CORPORATION AND OTHERS.

Reparation — Negligence — Collision of Vehicles—Injuries Sustained by Passenger Travelling in One of Vehicles—Res ipsa loquitur.

A passenger in a tramway car sustained injuries as the result of a collision between the tramway car and a lorry. The rear of the lorry which was being passed by the tramway car smashed the last pane of glass but one of the car. The driver of the tramway car was not proved guilty of negligence by driving at excessive speed. *Held* that there was a presumption of fault on the part of the driver of the lorry, which the owners were called on to rebut and which had not been rebutted, and consequently that they were liable in damages.

Mrs Alice Diamond or Milliken, *pursuer*, wife of James Milliken, steelworker, Cambuslang, with the consent and concurrence of her husband, raised an action against the Corporation of the City of Glasgow, and also against Chalmers & Butchart, coal merchants and removal contractors, Rutherglen, *defenders*, whereby she sought to recover the sum of £250 from the defenders jointly and severally, or severally, as damages in respect of injuries sustained by her through a collision between a tramway car of the first defenders and a lorry of the second defenders.

Each of the defenders pleaded that the pursuer's injuries were not sustained through their fault.

The *facts* of the case will be found in the opinion (*infra*) of the Lord Ordinary (HUNTER), who, after a proof, decerned against the defenders Chalmers & Butchart, for payment of the sum of £75, and found the pursuer and the defenders the Corporation of Glasgow entitled to expenses against them.

Opinion.—"The pursuer in this action seeks to recover damages from the Corporation of Glasgow, and from Messrs Chalmers & Butchart, coal merchants and removal contractors, Rutherglen, or from one or other of them, in consequence of personal injuries sustained by her owing to a collision that occurred between a car belonging to the City of Glasgow and a lorry belonging to the other defenders and driven by one of their servants. The action is unusual in respect that the pursuer sustained no physical injury, in this sense that she was not knocked down and was not struck, but undoubtedly in consequence of the collision which caused a breakage of glass in the rear of the tramway car the pursuer sustained such a shock that upon the evidence it is clear that she is entitled to something in the shape of damages. On the medical evidence I think it may be taken that her premature confinement—she was pregnant at the time of the accident—is traceable to the shock which she then sustained. That at all events means that she has had impaired health since the accident, and for about ten months she has had to employ a charwoman to assist her, giving her 3s. a-week. The actual outlay is not much, but I should think a fair estimate of the damages to which she would be entitled would be the sum of £75.

"Neither of the two defenders in this case say that the accident was inevitable. That being so there must be liability on one or other or both of the two defenders, and all that I have got to do is to determine on which.

"The fault here I may say is of a very slight character, but I confess, upon the evidence, that my own view is quite clear. Against the Corporation it is said that the tramway car was being driven at a high speed down a slight decline of about 1 in 40 along the Farmeloan Road on the route from Rutherglen to Glasgow. It is averred that in consequence of the excessive speed at which the car was being driven the lorry was unable to get out of the way in time, and consequently the accident occurred. Now on the evidence as it has come out before me I am unable to affirm that fault against the tramway car in this case. The driver and also the conductor say that the car was going at an ordinary pace—it may have been anything up to eight, but not exceeding eight, miles an hour. At a distance of about a hundred yards the driver saw the lorry in front. He first whistled, and then he sounded his gong twice. The lorry did not seem to proceed to get out of