fold—firstly, the cattle became separated from their drivers; and, secondly, became frightened and infuriated, and were thus driven to do that which under ordinary circumstances they would not have done; what subsequently happened was a continuous act." Unless men are, in the eye of the law, of less account than beasts, this law would apply to anyone who lost his or her head near a railway through the negligence of the company's servants, ran on the line, and was injured by a passing train. If the present decision be right, and the beasts had only been frightened and not injured themselves physically, but had gone off condition, so that they did not find buyers, their owner could not recover. Probably he could recover if the beasts in their fright had gored one another, which shows at all events that the line of distinction is very fine. The facts of the case from Victoria, to which these principles had to be applied, were of a kind very likely to recur in these days of crowded life. The plaintiff and his wife were driving in a buggy from Melbourne to Hawthorne on an evening in May after nine o'clock. At a level crossing over the defendants' line they found the gates shut. The gatekeeper opened them, saying, "All right," and crossed the line to open the gates on the other side. The buggy followed over the first lines and partly the second, when the gatekeeper suddenly turned round with his lamp and shouted, "For heaven's sake, go back, the train is coming." The plaintiff saw the train bearing down on the buggy and said, "Open the gate quick." The gatekeeper tried to open the half of the gate in front, turned to the other half of the gate and opened it, the plaintiff moved round the end of the closed half and got across the line, but not through the gate, just as the train passed. It was no wonder that the lady who was sitting passive in the buggy, seeing the train come down and the gatekeeper fumbling at the gate, suffered a severe nervous shock. The jury gave damages, and the full Victorian Court, consisting of Mr. Justice Williams and two other judges, upheld the verdict. There was no doubt of the negligence of the gatekeeper, and the company failed to make any point in regard to contributory negligence, probably for the good reason that the plaintiff did the best thing that could have been done under the circumstances, and if he had turned back he and his wife would have met with their death. There was no doubt of the injury to the plaintiff's wife, and that the damages would not be too remote if she had been physically injured, and the sole point was whether physical injury was essential.

Sir Richard Couch, after fairly and carefully stating the facts, and pointing out that the injury was caused solely by the fright of the plaintiff's wife seeing the train approaching, and thinking they were going to be killed, says: "Damages arising from mere sudden terror, unaccompanied by any actual physical injury, but occasioning a nervous or mental shock, cannot under such circumstances, their lordships think, be considered a consequence which, in the ordinary course of things, would flow from the negligence of the gatekeeper. If it were held that they can, it appears to their lordships that it would be extending the liability for negligence much beyond what the liability has hitherto been held to be." Sir Richard Couch fortifies this position by stating that no case had been cited of this kind. This reasoning, however, seems to go rather too far. The liability for negligence no doubt was framed in days when there were no railway trains, and the nerves of our ancestors were stouter than ours. "Is not the liability capable of development to meet modern requirements?" Sir Richard Couch says: "No; because the difficulty which now often exists in the case of alleged physical injuries of determining whether they were caused by the negligent act would be greatly increased, and a wide field opened for imaginary claims." But the imaginary claim may be made to enhance the damages when there is physical injury, and it is hardly a good reason for denying a cause of action, that resort to it may be abused. We cannot help thinking that the last word has not been said on the subject. The law of Victoria is the law of England, but the decision of the Privy Council does not bind the English Courts, and it may be hoped that when the point comes before them they will take a little less material view of the injuries, which may