

with the legal gentlemen may not have been known to him; their lordships do not proceed upon the supposition that they were, or that any objection founded upon them was waived; but their lordships are of opinion that there was nothing substantially wrong in those communications, though there may have been an error in judgment in holding them to any extent whatever in Mr. Cassidy's presence when the appellant was not present.

With regard to the opinions which have been given by the learned judges, their lordships think that perhaps it may be expedient to make one or two observations. The opinion given at the time by Mr. Justice Cross, in which, as their lordships understand, all the members of the Court, except Mr. Justice Monk, then concurred, appears to their lordships to be altogether right, and to put the case substantially upon its proper grounds. It is not quite a satisfactory thing that at a later stage other judgments should be written by those who at the time concurred without delivering separate opinions, which may appear to suggest different grounds, especially when those opinions were not sent over with those upon the record. The judgment of Mr. Justice Monk appears to their lordships to proceed upon erroneous views of the effect of the evidence, both as to the conduct and *bona fides* of the arbitrators, and also as to the manner in which the first opinion of Mr. Lacoste was obtained; and it appears to them that those errors deprive that judgment of the weight which otherwise might have been due to it.

On the whole case their lordships will have no difficulty in advising Her Majesty that the appeal ought to be dismissed, and the judgment appealed from affirmed with costs.

Judgment affirmed.

IS NEGLIGENCE CAUSING NERVOUS SHOCK ACTIONABLE?

The most important of the judgments in the Privy Council in the July number of the *Law Journal Reports* is undoubtedly *The Victorian Railway Commissioners v. Coultas and Wife*, 57 Law J. Rep. P. C. 69. The fact

that the report of so crucial a case occupies so small a space is due to the sparseness of authority on the point, its unfitness for argument at length, the practice of the Privy Council to deliver only one judgment, and the admirable brevity with which Sir Richard Couch states the considerations moving the Committee to advise Her Majesty to reverse the judgment of the Victorian Supreme Court. The decision at which the Committee arrived may be briefly stated to be that damages cannot be recovered for negligence, the consequence of which is solely injury to the nerves. The point turns partly on the law as to causes of action, and partly on the law as to measure of damages, and to separate the two or give each its due weight makes the difficulty of its decision. Nervous shock is, of course, a head of damage, given the cause of action. For example, if a steam engine were used so as to be a nuisance to the neighbours by noise, smoke, and vibration, they could recover damages for injury to health. If a man were to advance towards a delicate woman, pointing a gun or brandishing a weapon, the damage to her nerves might be compensated for, as although she was not touched the act amounts to an assault. If a man negligently lets off fireworks close to a woman's ear, and she rushes away and breaks a limb, he must pay damages; but if she stands her ground she cannot, according to the decision of the Privy Council, recover for the wear and tear to her nerves, even if she is made ill by it.

The former of these two last cases is governed by the celebrated case of *Sneesby v. The Lancashire and Yorkshire Railway*, 45 Law J. Rep. Q. B. 1, in which Lord Cairns delivered the judgment of Lord Coleridge, Baron Bramwell, and Mr. Justice Brett with a conciseness which Sir Richard Couch happily imitates. Sneesby's beasts were being driven to market at night on their way from a railway station across one of the railway company's level crossings. A train of trucks was, through carelessness, let slip in shunting. The beasts took fright, and several of them rushed down the road, charged a fence, and ran violently on to the line, where they were found next morning dead. Lord Cairns says "the result of the defendants' act was two-