

compliance with the precise terms of the bill of lading, which must necessarily be allowed to prevail with reference to the means and accommodation for landing goods at different places, the time of the arrival and departure of the vessel, the state of the tide and wind, interruptions from accidental causes, and all the other circumstances which belong to each particular port or place of delivery.”

On the other parts of the case I agree in the opinion of Lord Salvesen, and I have nothing to add.

LORD DUNDAS, who was present at the advising and who gave no opinion, not having heard the case, intimated that the LORD JUSTICE-CLERK concurred.

The Court pronounced this interlocutor—

“Recal the said interlocutor: Find that the pursuers have established their claims against the defenders under the summons as follows—(1) to the sum of £289, 18s. 7d. in respect of balance of freight unpaid; (2) to the sum of £140 3s. in respect of demurrage; and (3) to the sum of £40 in respect of extra expenses of discharge, said three sums amounting together to £470, 1s. 7d.: Find that defenders have established their counter claims put forward in the defences as follows, viz., to the sum of £56, 5s. in respect of depreciation of the value of cut sacks, and (2) to the sum of £26, 6s. 7d. in respect of barley damaged through mixing, said two sums amounting together to £82, 11s. 7d.: Therefore decern against the defenders for payment to the pursuers of the sum of £387, 10s. in full of the conclusions of the summons, with interest as concluded for: Find the pursuers entitled to expenses against the defenders, but subject to a disallowance of one-fifth of the expenses of and in connection with the proof, and remit the account,” &c.

Counsel for the Pursuers and Reclaimers—Macmillan, K.C.—Watson, K.C.—Gilchrist. Agents—Beveridge, Sutherland, & Smith, W.S.

Counsel for Defenders and Respondents—Horne, K.C.—Lippe. Agents—Boyd, Jameson, & Young, W.S.

Wednesday, June 30.

FIRST DIVISION.

[Sheriff Court at Glasgow.]

MACPHEE v. GLASGOW CORPORATION.

Process—Proof—Diligence for Recovery of Documents—Facilities for Precognition of Witnesses—Confidentiality—Report of Employee of Tramway Company Made de recenti of Accident, and Containing List of Witnesses of Accident.

In an action of damages against a tramway company arising out of an

accident, a diligence for the recovery of reports made at the time of the accident to the defenders by employees present at the time of the accident and relating thereto, was granted. The defenders produced a report by the conductor of the car involved in the accident, containing a list of witnesses who were present, but on the defenders pleading that this list was confidential, the commissioner sealed up that part of the report which contained the list, to await the orders of the Court. The Court granted a motion by the pursuer for access to the report.

Christina Macphee, domestic servant, 3 Kinnoull Place, Dowanhill, Glasgow, pursuer, brought an action in the Sheriff Court at Glasgow against the Corporation of the City of Glasgow, defenders, for damages in respect of injuries sustained through being thrown, by a sudden jerk of the car, from a tramway car belonging to the defenders. The action was remitted to the Court of Session for jury trial, and after sundry procedure was sent for trial to the Vacation Sittings.

A diligence for the recovery of documents was obtained by the pursuer in the terms granted in *Finlay v. Glasgow Corporation*, 52 S.L.R., 446, and under it a report by the conductor of the car was recovered. The report contained a list of witnesses of the accident, including a number of passengers on the car. The defenders pleaded to the Commissioner that this part of the report was confidential, and it was sealed up by him. In Single Bills the pursuer moved for access to the report.

Argued for pursuer—The Court had allowed the report to be recovered, and the list of witnesses was part of the report. The list was a mere statement of fact, giving names and addresses of persons who were present when the accident occurred. It was not of the nature of precognition, and could not be confidential. Pursuer was entitled to the list—*Admiralty v. Aberdeen Steam Trawling and Fishing Company, Limited*, 1908 S.C. 335, per Lord President at p. 339, 46 S.L.R. 254, at p. 256; *Finlay v. Glasgow Corporation (cit.)*. The Lord President in *Henderson v. Patrick Thomson, Limited*, 1911 S.C. 246, at p. 249, 48 S.L.R. 200, at p. 203, did not lay down a general rule. That case, however, was distinguishable from the present.

Argued for the defenders—The motion was equivalent to a demand for a list of defenders' witnesses, and ought to be refused. The pursuer had recovered the report and was entitled to that part of it which gave a statement of what took place at the time of the accident, and to the names of the driver and conductor of the car, but the list of other persons present was confidential—*Henderson v. Patrick Thomson, Limited (cit.)*, per Lord President (*cit.*).

LORD PRESIDENT—It was laid down by Lord President Dunedin in the case of *Henderson v. Patrick Thomson, Limited*, 1911 S.C. 246, at p. 250, 48 S.L.R. 200, at p. 203, that a demand to get the names of those

who were mere bystanders is illegitimate, even although these bystanders might happen to be among the ranks of the employees. And if the solicitor for the pursuer had written to the solicitors for the defenders asking that the names of the bystanders should be communicated to them in order that they might be precognosed, and that demand had been refused, I think this Court would not have given its aid to enforce it. But the case before us is entirely different in my opinion.

Following the authority of *Henderson v. Patrick Thomson*, we granted a commission and diligence for the recovery of this report—a report made of the accident *de recenti* by the official of the Corporation whose duty it was to report to his employers. When that motion was granted we were invited to order the commissioner to seal up the production on the ground of confidentiality, and we refused. Of course, in a sense, the report is confidential from beginning to end, but the settled practice of the Court is that reports of this kind are allowed to be recovered.

If the report contains, among the circumstances attending the accident, the names of the bystanders at the time of the accident, that is no more confidential than the remainder of the report. Accordingly I think that we ought not to refuse the application now made to us. I am therefore for granting the motion.

LORD JOHNSTON—I agree. I think that if we were to refuse this motion we should be placing the Corporation here, and other defenders *in pari casu*, in a position of advantage which they are not entitled to occupy.

It is well known that the conductor of every car is instructed and educated, as soon as an accident occurs, to secure the names of parties present. The doing so gives an advantage to the Corporation in defending any action that arises out of the accident, since they are thus in possession of the names, not necessarily of witnesses ultimately to be examined, but of witnesses who may be examined and whom the Corporation will take good care to select or reject according as it suits their interest.

Under these circumstances is there not an absolute distinction between what is asked here and what is attempted to be likened to it, viz., a demand in general in the course of preparation of a case for the names of the opposite parties' witnesses. Even in this case no one would suggest that if the preparation for the case had proceeded and the Corporation had precognosed witnesses the Corporation should be ordered to surrender the list of their witnesses. That is not what is being asked here. What is being asked here is, I think, only information as to one of the *res gestæ* surrounding the accident reported by an official of the Corporation to his superiors at the time of the accident. The pursuer has not asked for what these parties say or said; she has not asked for any information got from them or any precognition taken from them. She simply asks to be

given the names and addresses of those persons who were reported to the Corporation to have been present when the accident happened and who are therefore possible witnesses.

I can conceive that injustice might be done if in a case like this defenders were to be allowed to secure the monopoly of obtaining the names of persons present and therefore witnesses of the accident—names which in many cases—*e.g.*, in the present, where the pursuer was rendered insensible—their opponent could not get unless the persons themselves came forward, possibly at some interval, and said they had been present.

I think that, distinguishing entirely this case from the ordinary case, Mr MacRobert's motion is one which must be granted.

LORD MACKENZIE—I am entirely of the same opinion. It has been laid down by a series of decisions of this Court that diligence should be granted for recovering reports of this character, and it is the duty of the Commissioner to seal up anything in the report that is of a confidential character. Otherwise he is bound to see that the report is made forthcoming.

Now I have been unable to find any ground whatever for holding that that part of the report here which merely contains the names and addresses of the witnesses can be regarded as confidential. It is, of course, the duty of the Commissioner to see that the opposite party gets nothing of the nature of precognitions, but the communication of the names and addresses of witnesses only is not of the nature of a precognition.

Therefore I think that Mr MacRobert's motion should be granted.

LORD SKERRINGTON—I concur.

The Court granted the motion and authorised the sealed packet to be opened by the Clerk of Court.

Counsel for the Pursuer—MacRobert.
Agents—Cowan & Stewart, W.S.

Counsel for the Defenders—M. P. Fraser.
Agents—Simpson & Marwick, W.S.

Saturday, July 10.

FIRST DIVISION.

DODDS v. COSMOPOLITAN INSURANCE CORPORATION, LIMITED.

Company—Winding-up—Contributory—Rectification of Register of Company—Petition for Removal of Name from Register and from List of Contributories—Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), sec. 32 (1).

A shareholder in a limited company transferred his shares on 29th January 1915, and sent the transfer to the company on 30th January. On 30th January notices were sent to all the shareholders of the company that by order of the