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 precognosced, 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 precognosced 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

directors a meeting would be held on 9th February to consider a resolution that the company be wound up on the ground of its inability to carry on owing to its liabilities. The transfer was received by the company, and the notice of meeting by the transferor, on 1st February. On 9th February it was resolved that the company be wound up, and a liquidator was appointed. The transfer was not registered, and the liquidator included the transferor's name in the A list of contributories as the holder of the shares. Petition to have the liquidator ordained to register the transfer and remove the transferor's name from the list of contributories *refused* on the ground that the directors were not guilty of default or of unnecessary delay.

Statement of the law in Buckley on Company Law (9th ed.), pp. 111-112—"A shareholder is not entitled on the eve of liquidation to insist on registration; the directors ought to refuse registration if the facts are such that the rights of creditors have intervened although a winding-up has not commenced"—*approved per* Lord Mackenzie.

The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) enacts—Section 32—"*Power of Court to Rectify Register*—(1) If (*a*) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company, or (*b*) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member, the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register."

On 15th April 1915 John Dodds, brickmaker, 470 Garngad Road, Glasgow, *petitioner*, presented to the Court a petition in which he craved the Court, *inter alia*, "to order that the register of shareholders of the Cosmopolitan Insurance Corporation, Limited, be rectified by removing therefrom the name of the petitioner as a shareholder in respect of the 300 deferred shares described in the schedule annexed hereto, and placing thereon the name of H James Martin, Doctor of Medicine, 376 Argyle Street, Glasgow, as the holder of the said shares, and to direct the liquidator forthwith to rectify the said register of shareholders accordingly, and to give due notice of such rectification to the Registrar of Companies; and further, to order that the 'A' list of contributories of the said corporation and the liquidator's certificate finally settling the same be varied by excluding therefrom the name of the petitioner as a shareholder in respect of the said deferred shares, and inserting in place thereof the name of the said H James Martin, and to direct the liquidator to vary the said list accordingly. . . ."

On 24th April 1915 answers were lodged on behalf of the Cosmopolitan Insurance Corporation, Limited, and the liquidator thereof, William M'Lintock, chartered accountant, Glasgow.

The petitioner was the holder of 300 deferred shares of the said Cosmopolitan Insurance Corporation, Limited, and transferred them to Dr H. J. Martin, 376 Argyle Street, Glasgow, on the 29th January 1915. On 30th January his law agent sent the transfer to the secretary of the company, who received it on 1st February. Ordinary meetings of the board of directors were held fortnightly, and in the ordinary practice of the company transfers were dealt with only at ordinary meetings of the board. The last ordinary meeting of the board prior to the company going into liquidation was held on 29th January. At the said meeting the directors resolved to convene a general meeting of the company on 9th February to consider, and, if so resolved, to pass, an extraordinary resolution to the effect that it was proved to the satisfaction of the meeting that the company could not by reason of its liabilities continue its business, and that it was advisable to wind up the company. The directors at the said meeting appointed the respondent William M'Lintock to supervise the affairs of the company until the meeting of shareholders was held on 9th February. Notices calling the meeting of shareholders were posted to all the shareholders on 30th January. The notice was received by the petitioner on 1st February. At the meeting on 9th February it was resolved to wind up the company, and the respondent William M'Lintock was appointed liquidator. The liquidator included the petitioner's name in the "A" list of contributories of the company as the holder of the said shares.

The liquidator averred that the said transfer was not *bona fide*, and that the petitioner still retained the interest in and control of the said shares, and that the transfer was executed after the said resolution of the directors on 29th January had been passed, and in the knowledge that the directors had passed the said resolution.

On 15th June 1915 the Court (LORDS MACKENZIE, SKERRINGTON, and ORMIDALE) ordered service of the petition on the said Dr H. J. Martin. No answers were lodged by him.

The petitioner argued—The sale of the shares was arranged some time before the date of the transfer, and when the sale took place there was no resolution of the company, or even of the directors, that the company should be wound up. The transfer accordingly should have been registered—*Stenhouse* v. *City of Glasgow Bank*, October 31, 1879, 7 R. 102, 17 S.L.R. 31. The company might have been insolvent, but it was not in liquidation when the transfer was received by the secretary. Liquidation began at the meeting of shareholders, and until that date the directors were bound to register the transfer—*Furness & Company* v. *Liquidators of "Cynthiana" Steamship Company, Limited*, December 8, 1893, 21 R. 239, *per* Lord President (Robertson) at p. 245, 31 S.L.R. 189, at 193. *In re The Ottoman Company, Limited* (*Admiral Hornby's* case), 1868, 16 W.R. 1164. Proof should be allowed.

The respondent argued—The prayer of

the petition should be refused. The Court would remove names from the register only in the two cases dealt with in section 32 (1) of the Act. Here section 32 (1) (*b*) alone could apply, and the petitioner must show fault or unnecessary delay in registering the transfer. Neither fault nor unnecessary delay was averred. But the company had stopped business, and the directors had published insolvency before they received the transfer. Not only were the directors and liquidator not at fault or in delay, but they were prevented from altering the register—*Nelson Mitchell* v. *City of Glasgow Bank*, December 21, 1878, 6 R. 420, *per* Lord President (Inglis) at p.429, and Lord Shand at p. 437, 16 S.L.R. 155, at pp. 159 and 164, *aff.* May 20, 1879, 6 R. (H.L.) 66, 16 S.L.R. 511; *Alexander Mitchell* v. *City of Glasgow Bank*, December 21, 1878, 6 R. 439, 16 S.L.R. 165, *aff.* May 20, 1879, 6 R. (H.L.) 60, *per* Lord Selborne at p. 65, 16 S.L.R. 503, at p. 506; Buckley on Company Law (9th ed.), p. 111.

LORD PRESIDENT—I think we have in the petition and answers facts adequate to enable us now to dispose of this application. The petitioner is the holder of 300 deferred shares in the Cosmopolitan Insurance Corporation. He alleges that he transferred these shares on the 29th January last to a certain person named Martin, and that on the 30th January his solicitor dispatched a letter to the company enclosing the transfer and requesting that it should be registered. That letter reached the company's office on the 1st February 1915. The petitioner alleges that the company went into voluntary liquidation on the 9th February 1915. And accordingly he now complains that the directors were guilty either of fault or of unnecessary delay in the matter of removing his name from the register, and he asks that his name be removed from the A list of contributories.

It now appears that on 30th January, the same day on which his solicitor's letter was dispatched to the company, the company dispatched a letter to the petitioner intimating that a meeting would be held on the 9th February to consider and, if so resolved, to pass a resolution that the company be wound up on the ground that in respect of its liabilities it was wholly unable to go on with its business.

In these circumstances I am clearly of opinion that not only were the directors not in default and not guilty of unnecessary delay, but that they would have been committing a grave breach of duty if they had removed the petitioner's name from the register and inserted the name of Martin, the transferee; and accordingly that, as this petition is exclusively rested upon the 32nd section of the Companies Act (8 Edw. VII, cap. 69), and as it seems to me plain from the petitioner's own statement that the directors were not guilty of either default or unnecessary delay, I think we ought to refuse the prayer of the petition.

LORD MACKENZIE—I am entirely of the same opinion. The law on this subject is stated thus in the 9th edition of Buckley on Company Law, pages 111-12—"A shareholder is not entitled on the eve of liquidation to insist on registration; the directors ought to refuse registration if the facts are such that the rights of creditors have intervened although a winding up has not commenced." On the facts disclosed in the papers before us it appears to me that this is a case to which that clearly applies, and that the petition should be refused.

LORD SKERRINGTON—I agree.

LORD JOHNSTON was absent.

The Court refused the prayer of the petition.

Counsel for Petitioner—Crabb Watt, K.C.—King Murray. Agents—W. B. Rankin & Nimmo, W.S.

Counsel for Respondents — Macmillan, K.C.—Wark. Agents—J. & J. Galletly, S.S.C.

Wednesday, July 14.

FIRST DIVISION.

[Lord Dewar, Ordinary.

IRVINE AND OTHERS *v.* POWRIE'S TRUSTEES.

Process—Reduction—Proof—Succession—Motion to Examine Chemically a Will the Authenticity of which was in Dispute.

An action having been brought for the reduction of a holograph will on the ground of forgery, it was averred by the pursuers that the will was not a genuine writing but had been transcribed by a chemical process, but that it could not be averred, until the will had been chemically examined, what were the precise methods which had been employed.

A motion, made by written minute, for such an examination of the will *granted*, subject to the conditions—(1) that the examination should be at the sight of the Professor of Chemistry in Edinburgh University, who should be satisfied that it would not affect the continued legibility of the document or its value as an item of evidence in the cause; (2) that similar facilities should be given to the defenders.

George Irvine, 1 Glengyle Terrace, Edinburgh, and others, the next-of-kin and representatives of the next-of-kin of Elizabeth Powrie, Newton Bank, Blairgowrie, deceased, *pursuers*, brought an action in the Court of Session against George Powrie Mitchell, agent of the Union Bank of Scotland Limited, Edzell, and others, trustees under an alleged holograph will of the said Elizabeth Powrie, dated the 30th day of April 1909, and as individuals, and against Mrs Annie Maria Mitchell or Laidlaw, 103 Minard Road, Crossmyloof, Glasgow, and others, trustees for certain of the beneficiaries under the said will, *defenders*, for reduction of the said will.