

asking from the Sheriff-Substitute. And as regards head (c), the finding is entirely conform to the terms of the joint minute. This being so, I do not think that the pursuer, assuming that he authorised the joint minute, is entitled to complain of this decree and have it reduced.

The Court adhered.

Counsel for the Pursuer—Sandeman, K.C.
—Maclaren. Agent—Lindsay C. Steele,
Solicitor.

Counsel for the Defenders—D. Jamieson.
Agents—Dove, Lockhart & Smart, S.S.C.

Thursday, July 3.

FIRST DIVISION.

LYDE MALCOLM AND OTHERS, PETITIONERS.

Process—Petition—Minor and Pupil—Dispensing with Citation of Next-of-Kin—Form of Prayer—Act 1672, cap. 2.

In a petition craving the Court to dispense with the citation of the next-of-kin of a pupil on the father's side and on the mother's side in an action for the purpose of making up a tutorial inventory of the pupil's estates, the petitioners, who were the widowed mother of the pupil and certain tutors nominated by the father, averred that there were no next-of-kin either on the father's or mother's side major and within Scotland, and craved the Court "to find that the inventory to be made up in the . . . process, with concurrence of a delegate to be named by the Court in the course of the said process, shall be as valid and sufficient" as if the next-of-kin had been cited. The Court granted the prayer of the petition upon the petitioners amending and substituting the words "the Lord Ordinary" for the words "the Court."

Mrs Alice Maud Davis or Lyde Malcolm, widow of the late Sackville Malcolm Berkeley Lyde Malcolm, mother and as such tutrix-at-law of her pupil daughter Ethel Maud Sackville Lyde Malcolm, and Mrs Ethel Sackville Lyde and another, tutors to Ethel Maud Sackville Lyde Malcolm, acting under a nomination of tutors and curators to her by her father, *petitioners*, brought a petition to dispense with the citation of the next-of-kin in an action brought by the petitioners for the purpose of making up a tutorial inventory of their ward's estate.

The petitioners *averred, inter alia*—"That there are no next-of-kin on either the father or the mother's side major and within Scotland. The petitioners are accordingly unable to comply with the forms of citation required by the Act 1672, cap. 2, and the present application is therefore made to your Lordships to have such citation dispensed with."

The *prayer* of the petition was—"May it therefore please your Lordships to appoint this petition to be intimated on the walls

and in the minute-book in usual form, and upon resuming consideration thereof, in respect of the circumstances of this case, to dispense with the citation of the next-of-kin of the said Ethel Maud Sackville Lyde Malcolm, both on the father's side and on the mother's side, and to find that the inventory to be made up in the said process, with concurrence of a delegate to be named by the Court in the course of the said process, shall be as valid and sufficient, and shall have the same force, strength, and effect, as if the next-of-kin on the father's and mother's side had been cited and had concurred in making up the same, or after being so cited had failed to appear; or to do further or otherwise in the premises as to your Lordships may seem proper."

On 26th June 1919 counsel for the petitioners moved in the Single Bills that the prayer of the petition be granted, and referred to the Juridical Styles, vol. iii, p. 778, and the Scots Styles, vol. iii, p. 137.

Thereafter the prayer of the petition was amended by substituting for the words "the Court" the words "the Lord Ordinary."

The Court granted the prayer of the petition as amended.

Counsel for the Petitioner—Pitman.
Agents—Tait & Crichton, W.S.

Friday, July 4.

SECOND DIVISION.

[Sheriff Court at Glasgow.]

PACIFIC STEAM NAVIGATION COMPANY v. THOMSON, AIKMAN, & COMPANY, LIMITED.

Ship—Bill of Lading—Freight—Freight Payable, "Ship and/or Cargo Lost or not Lost"—Loss of Part of Cargo.

The bill of lading of a cargo of nitrate provided—"Freight is to be paid as per margin and to be collected on the gross weights, measurements or number taken at port of discharge . . . it being expressly agreed that freight is to be considered as earned and must be paid, ship and/or cargo lost or not lost." In the course of her voyage the vessel was damaged by collision and a small part of the cargo was in consequence dissolved by sea water and was thus lost. The owners of the vessel claimed freight in terms of the bill of lading not only on the part of the cargo delivered but also on the part lost. *Held (dub.* Lord Dundas) that freight was only due on the part delivered—*per* the Lord Justice-Clerk and Lord Salvesen on the ground that the bill of lading did not apply to partial loss of cargo, and *per* Lord Guthrie on the ground that there was no standard by which the weight of the lost cargo could be ascertained, and that therefore the clause was incapable of execution.