

## COURT OF SESSION.

Saturday, December 15.

## SECOND DIVISION.

[Lord Anderson, Ordinary.]

## M'CULLOCH v. GLASGOW CORPORATION.

*Process—Proof—Diligence for Recovery of Documents—Confidentiality—List of Witnesses of Accident Attached to Body of Report de recenti of Accident.*

In an action of damages against a corporation originating out of a collision between a tramway car and a lorry, a specification for the recovery of documents included a report from one of the corporation's servants in charge of the tramway car. The report was divided into two portions separated by a perforated line, one half containing a list of the witnesses of the accident, whilst the other half contained the report proper. The pursuer claimed that as the list of witnesses, although separated by the perforated line, appeared on the same document as the report proper, he was entitled to obtain access to the names as well as to the report. *Held*, after consulting First Division, that the pursuer must have both portions of the report.

*Macphee v. Glasgow Corporation*, 52 S.L.R. 772, followed.

Bernard M'Culloch, carter, 50 Anderson Street, Partick, Glasgow, *pursuer*, brought an action against the Corporation of the City of Glasgow, *defenders*, for damages in respect of injuries sustained in a collision between a tramway car belonging to the defenders and a lorry which the pursuer was driving.

The Lord Ordinary (ANDERSON), on the motion of the pursuer, ordained the defenders to lodge in process that part of the report made to them by their official at the time of the accident, which contained the names and addresses of the bystanders who might eventually give evidence in the ensuing action. The facts are given in his

*Opinion*.—"If this question had been open my impression is that, finding myself as I do in sympathy with what the Lord Advocate has said, I should have given effect to his contention to the effect of refusing to ordain the Corporation of the City of Glasgow to disclose to the pursuer the names of their witnesses, because that is in effect what is asked by counsel for the pursuer. But it seems to me that so far as I am concerned the matter is concluded by authority.

"The circumstances are these—A specification for the recovery of documents was granted in certain terms, and under one of the articles of the specification the pursuer craved recovery of a report which the Corporation had received from one of the servants in charge of the tramway car. The report as furnished by that servant consists

of a document divided into two portions, and separated one from the other by a perforation. On one portion of the document there is what I may call the report proper, and the Lord Advocate concedes that the pursuer must get that under the call. But he says that is all the pursuer ought to get, because that constitutes a report, complete in itself, of the circumstances, and whatever else the document contains cannot fairly be described as a report of what happened.

"The other portion of the document consists merely of the names of those who witnessed the occurrence, and who presumably had been interviewed by the defenders' servants, and interviewed to the effect of furnishing these officials with a statement of the facts favourable to the views of the Corporation. But Mr Christie, for the pursuer, maintains that because those names of possible witnesses appear on the same document, *unico contextu* with the report proper, he is entitled to get those names, and it seems to me that on the case of *Macphee* that that is a contention which I cannot resist.

"The Lord Advocate pointed out that the call in the present case was merely for a report of the accident relative to the matter mentioned on record, and he contended that the names of witnesses do not fall under the language of that call. I observe, however, that that is exactly the language of the call which was under the consideration of the Court in the case of *Macphee*, and the Court decided in that case that the pursuer was entitled to get the names of the bystanders noted on the report, and that it was incompetent, as suggested by the defenders in that case, to exclude or excise that portion of the report from the rest of it. Now it seems to me that that is just the situation I have here, and accordingly I consider that I am bound to follow the authority of the case of *Macphee*, where the question at issue has been in effect decided.

"I shall therefore ordain the defenders to lodge in process that portion of the report which contains the names of the bystanders, and I shall grant leave to reclaim.

"I shall also ordain the defenders to lodge in process the corresponding list of names in the case of *Walton v. Corporation of Glasgow*."

The defenders reclaimed, and argued—The pursuer was entitled to that part of the report which contained a description of the events that took place at the time of the accident, but with the exception of the names of the driver and the conductor of the tramway car in question he was not justified in claiming access to the list of persons present. That list was confidential and assuch was privileged. Counsel referred to *Finlay v Glasgow Corporation*, 1915 S.C. 615, 52 S.L.R. 446; *Macphee v. Glasgow Corporation*, 1915 S.C. 990, 52 S.L.R. 772; *Whitehill v. Glasgow Corporation*, 1915 S.C. 1015, 52 S.L.R. 782.

Argued for the pursuer—The pursuer merely desired access to the names of wit-

nesses compiled by the defenders in order to have an opportunity of precognosing them. In the event of their evidence being particularly unfavourable to the pursuer, he might even abandon his action. Thus this procedure, which was by no means new, would possibly benefit both parties. The defenders were not entitled to excise part of the report. The fact that the list of witnesses was separated by a perforated line across the paper did not prevent it from forming part of the report. The perforation did not take the report out of the ordinary rule. There could be no kind of confidentiality about a mere list of witnesses. The following cases were cited—*Jones v. Great Central Railway Company*, 1910 A.C. 4, per the Lord Chancellor; *Macphie v. Glasgow Corporation (cit.)*; *Whitehill v. Glasgow Corporation (cit.)*; *Tannett, Walker & Company v. Hannay*, (1873) 11 Macph. 931, 10 S.L.R. 642.

At advising after consultation with the First Division:—

**LORD SALVESEN**—This is a matter of such importance that I should have preferred if your Lordships had seen your way to have had the practice settled by a decision of the whole Court. This question does not affect only this particular corporation; it must affect all defenders who are corporations; and I cannot help feeling that there is an element of unfairness in compelling a corporation who happen to be defenders to disclose the names of the witnesses of an accident, out of which litigation may arise, when there is no corresponding obligation on the part of the pursuer to furnish similar information in respect that he has not made a written note of it at the time. But as the First Division have intimated to your Lordship in the chair that they do not think it desirable that the matter should be reopened, it follows that we must take the same course as the First Division have done. We are not here to overrule their decisions, and taking their decision as binding I feel that there is no sufficient distinction in the facts that were laid before us from the facts that were presented to the First Division to warrant a different decision.

**LORD JUSTICE-CLERK**—In my opinion the changes which have been made in the form of the reports in question have no effect on the application of the law. These changes are merely what I may call mechanical, and leave the legal question which we have to consider and dispose of unaltered.

We have consulted with the First Division, and I concur with them in thinking that there is no room for differing from the result at which the Lord Ordinary has arrived, and that the point of procedure has been finally settled so far as this Court is concerned.

**LORD DUNDAS**—I agree with your Lordship on both points. The present case cannot, I think, be successfully distinguished from its predecessors, and the matter must, so far as this Court is concerned, rest where it is.

**LORD GUTHRIE** was not present.

The Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Pursuer—J. A. Christie—Macquisten. Agents—Manson & Turner Macfarlane, W.S.

Counsel for Defenders—Lord Advocate (Clyde, K.C.)—M. P. Fraser. Agents—Simpson & Marwick, W.S.

## HOUSE OF LORDS.

Tuesday, January 22, 1918.

(Before the Lord Chancellor (Finlay), Lord Dunedin, Lord Atkinson, Lord Shaw, and Lord Buckmaster.)

**OAKBANK OIL COMPANY, LIMITED**  
*v.* **LOVE & STEWART, LIMITED.**

(In the Court of Session, June 29, 1917,  
54 S.L.R. 519.)

*Contract—Sale of Goods—Conditions—Red Ink Note at Head of Seller's Notepaper Importing Condition into Contract of Sale.*

A firm of timber merchants had printed in red ink at the head of their notepaper—"All offers over a period are subject to stoppages through strikes, lock-outs, &c., and the right to cancel is reserved in the event of any of the countries from which our supplies are drawn becoming engaged in war." In reply to a specification of the requirements of a shale oil company for a year they tendered and adjusted the contract by correspondence on this notepaper. The red ink note was quite clear and distinct, but was not referred to. *Held (sus. judgment of the First Division)* that it was a condition of the contract.

*Per the Lord Chancellor*—"It appears to me that the cases with regard to tickets on railways, which are merely vouchers for payment of a fare, have no application, and it is impossible to read the contract here apart from the red ink note."

This case is reported *ante ut supra*.

The pursuers, the Oakbank Oil Company, Limited, appealed to the House of Lords.

At the conclusion of the argument on behalf of the appellants—

**LORD CHANCELLOR**—We have not thought it necessary to call upon learned counsel for the respondents, as the case has been fully argued on the part of the appellants, and every argument that could be presented is fully present to your Lordships' minds.

The question is a very short one, and it turns substantially upon the document which is printed in the appendix headed "Letter by defenders to pursuers," dated 29th July 1914. At the top of the letter is printed in red ink this—"All offers over a period are subject to stoppages through strikes, lock-outs, &c., and the right to cancel is reserved in the event of any of