£1, 10s., Professor Glaister, £1, 10s., and Dr Knox £1, 4s.; (3) Paid witnesses, Professor Glaister £15, 15s., Dr Knox £21, and Dr Nicoll £21.

The defenders lodged a note of objections to the Auditor's report in so far as he had allowed the charges referred to, and argued with regard to Dr Grant and Dr Nicoll that the charges for a report in December and precognitions in March should not both be allowed, and further, with regard to the charge for drawing precognitions, that a doctor's report was his precognition; that if the case had gone to trial certificates could only have been obtained for two doctors as skilled witnesses; and that at least a large reduction should be made on the charge for payments to witnesses.

Argued for the pursuer—The obtaining of a report in December from Dr Nicoll and Dr Grant was a necessary step in taking instructions for raising the action, and it was equally necessary to take precognitions in March, by which time the pursuer's condition might have so changed as to alter the opinions expressed in the report obtained in December. With regard to the payments to witnesses, the doctors had prepared for examination, and they had not been paid at all for their visits to the pursuer.

The Court allowed a fee of one guinea each to Dr Nicoll and Dr Grant for their first visit to the pursuer and the report thereon in December, and one guinea to each of them as for a second report in March. The Court also allowed a fee of two guineas to professor Glaister and a fee of two guineas to Dr Knox, and sustained the objections to the charges for drawing precognitions of, and for sums paid to, medical witnesses.

Counsel for the Pursuer—Shaw, K.C.—R. S. Horne. Agents—Campbell & Smith, S.S.C.

Counsel for the Defenders — Clyde. Agents—Hope, Todd, & Kirk, W.S.

Saturday, June 22.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

CLARK *v.* GLASGOW, DUBLIN, AND LONDONDERRY STEAM PACKET COMPANY, LIMITED.

Reparation — Negligence — Contributory Negligence — Safety of Public — Public Place—Pier—Person Injured on Steamboat Quay by Rope attaching Steamer to Quay.

In an action of damages for personal injuries the pursuer averred that while he was standing on the steamboat quay at Greenock he was injured by a rope, which had been thrown from a steamer belonging to the defenders, and attached by the loop at the end of it to one of the posts upon the quay, and which thereafter, owing to the continued movement of the steamer, swung violently across the quay against the pursuer and knocked him down and broke his leg, and that this happened owing to the negligence in certain respects specified of those for whom the defenders were responsible.

The defenders maintained that the action ought to be dismissed in respect (1) that the defender had not averred that he had business to take him to the quay; and (2) that on his own averments he must have been standing between the edge of the quay and the row of posts to which steamers' ropes were intended to be attached; that this was obviously a place in which there was danger of being struck by the ropes which were necessarily stretched across it between the posts and the steamers, and that consequently on his own admission he had been guilty of contributory negligence.

Held (*rev.* judgment of Lord Kyllachy, *dub.* Lord Moncreiff) that the action could not be disposed of without inquiry, and that the pursuer was entitled to an issue.

Smith v. *Highland Railway Company*, November 1, 1888, 16 R. 57, *distinguished.*

Joseph Clark, ropemaker, Greenock, raised an action for £200 damages against the Glasgow, Dublin, and Londonderry Steam-Packet Company, Limited, having an office and carrying on business at 52 Robertson Street, Glasgow, the registered owners of the steamship "Olive."

The pursuer averred—"(Cond. 2) In or about the month of September 1899, the defenders advertised that the steamer 'Olive' would leave Glasgow for Dublin on Saturday 16th September 1899, and would call at the Steamboat Quay, Greenock. The steamer arrived opposite the said quay about six o'clock afternoon of the advertised date, and one of the deck hands or employees on board the boat threw a line or rope from the steamer to the quay in order that the boat might be made fast to the quay. When this line or rope was thrown the steamer was going at too great a speed. (Cond. 3) There are two rows of pillars or pawls on the said quay to which ships can be made fast. The first row is at or near the edge of the quay, and each pawl or pillar in it curves away from the sea, and is provided at the tip of the curve with two iron horns. The second row is several yards back from the edge of the quay, and each pawl or pillar in it has an iron 'bonnet' or head. The iron horns and 'bonnets' are for the purpose of preventing the loop at the end of ships' ropes from slipping off the pawls or pillars. When the line or rope was thrown from the 'Olive,' one of the employees on board directed the man to whom it was thrown to place the loop at the end over one of the iron pawls or pillars in the second row, that is, one with a 'bonnet' or head, and this was done in accordance with said directions. Owing to the light weight of the steamer and the

height of the tide, the deck was at a considerable height above the top of the iron pillars on the quay. The second row of pillars, over one of which the rope was cast, is higher than the first, and the defenders, or those for whom they are responsible, carelessly and negligently placed the loop of the rope over one of the pillars in the second row instead of one in the first row, and having so done they carelessly and negligently allowed the rope to lie on the quay at the side of a pillar in the first row. . . . The vessel was not moored in a proper manner. The ordinary and only safe practice at the steamboat quay when vessels are drawing little water, and at high tide, is to place the loop of the rope over a pawl in the first row. (Cond. 4) On the said 16th day of September, and at the said time, the pursuer was standing on the Steamboat Quay, considerably to the west of the pillar to which the stern rope was attached. The steamer had so much way on that she carried past the position of the pursuer. The strain put upon the foresaid rope by the rate of the steamer and the distance she carried on caused the rope to spring over the pillar in the first row beside which it should not have rested in the exercise of due care and diligence on the part of the defenders. It swung violently across the quay against the pursuer and knocked him down, thereby breaking one of his legs. Had the ordinary and only safe practice of mooring in the circumstances been followed by the defenders the pursuer would not have been injured. In any event the defenders, or those for whom they are responsible, ought to have checked the speed of the steamer by reversing her engines, and also to have put the rope right round a pawl in the first row before or immediately after placing the loop of the rope over a pawl of the second row, and further, they culpably failed to warn the pursuer of the danger attending the method of mooring which they adopted, which danger was well known to them."

The pursuer pleaded—"The pursuer having suffered loss, injury, and damage through the fault of the defenders, is entitled to reparation thereof; and the sum sued for in name of reparation being reasonable in amount the pursuer is entitled to decree as concluded for, with expenses."

The defenders explained that the vessel was moored in a proper manner and in accordance with the ordinary practice, that the position was an obviously dangerous one for the pursuer to be in, as several ropes were being thrown from the steamer for the purpose of mooring her to the quay, all round him, and that he should have got out of their way and into a place of safety, and that the pursuer was cautioned to stand clear but did not do so.

The defenders pleaded, *inter alia*—(1) "The pursuer's averments are irrelevant."

On 12th January 1901 the Lord Ordinary (KYLLACHY) sustained the first plea-in-law for the defenders, and in respect thereof dismissed the action, and decerned.

The pursuer reclaimed, and maintained that he was entitled to an issue.

Argued for the defenders and respondents—(1) The pursuer had not averred that he had any business occupation to take him to the harbour. It must consequently be assumed that he had no right to be where he was. He had therefore no ground of action, and the action should be dismissed as irrelevant—*Smith* v. *Highland Railway Company*, November 1, 1888, 16 R. 57, opinion of Lord President Inglis, p. 59. (2) Even if the pursuer had a right to be upon the quay, he had no right to be standing so near the front of the pier as to be in the way of steamers' ropes. Such a position was so obviously a dangerous one that on his own statement of the facts he had been guilty of contributory negligence. On this ground also the action was irrelevant.

At advising—

LORD JUSTICE-CLERK—I think this case must go to trial. The pursuer's averments are—[*his Lordship quoted from the condescendence*]. The pursuer may utterly fail to prove all that, but he by averring it has undertaken to prove it, and I think that he is entitled to have an opportunity of proving it. The defenders say that he had no business to be where he was on the pier; that depends on the facts, and is a matter of defence. If the pursuer is proved to have been guilty of contributory negligence he will not win. Mr Spens quoted the case of *Smith*, which he said was on all fours with the present. But in the present case the man was in a public place where, *prima facie*, he had a right to be, while in the case of *Smith* the pursuer was injured in a place where no one had any right to be except on business. It was, further, a case of a person going between waggon rails and being crushed. Now, a person going into such a dangerous situation must look out for himself so as to prevent accident.

On the whole matter, I think there should be in this case an inquiry into the facts.

LORD YOUNG — In this case the Lord Ordinary has found the action irrelevant, and he has thought the matter so clear that he has not thought it necessary to write an opinion. I assume, therefore, that there were grounds worthy of serious consideration which satisfied him that the case was irrelevant, and Lord Moncreiff having intimated doubts as to the relevancy I think it right that I should state in a few words the view that I take of the case. We have so much experience of speculative actions in cases of this kind that the averments of the pursuer should be carefully looked at. Now, there is no doubt of the fact that this pursuer had his leg broken on the spot and suffered serious injury. The defenders say that he should not have been where he was. But I must proceed on the assumption that he may establish that he had a perfect right to be where he was. I think, *prima facie*, that all piers where steamers arrive and depart are places open to the public. Members of the public while there must avoid putting themselves into dangerous positions, as steamers cannot

arrive and depart without causing some danger. But I must assume that the pursuer was where he had a right to be, and that he was taking ordinary care of his own safety.

LORD TRAYNER—I am unable to see any good ground for dismissing this action as irrelevant. The pursuer alleges certain faults on the part of the defenders, which he says resulted in an injury to him for which he claims compensation. The defenders say that the pursuer contributed by his own fault to the cause of his injuries. But that is a defence, not a plea against relevancy.

I agree with what your Lordship has said as to the case cited for the defenders. I think that case has no application. There the boy had no right to be where he was. Here the pursuer had, *prima facie*, a perfect right to be on the pier, and the defenders do not aver on record that he had no right to be there.

LORD MONCREIFF—As all your Lordships are of opinion that the case should go to trial, I do not think that it would serve any good purpose for me to say more than that I greatly doubt the relevancy of the pursuer's averments.

The Court recalled the interlocutor reclaimed against, approved of an issue for the trial of the cause, and remitted to the Lord Ordinary to proceed.

Counsel for the Pursuer and Reclaimer—A. S. D. Thomson. Agents — Emslie & Guthrie, S.S.C.

Counsel for the Defenders and Respondents—W. Campbell, K.C.—Spens. Agents —Boyd, Jameson, & Kelly, W.S.

Tuesday, June 25.

FIRST DIVISION.

[Sheriff Court at Glasgow.

REID *v.* P. R. FLEMING & COMPANY.

Reparation — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 7—*Engineering Work — Construction of Work—Mechanical Power Employed in Testing Hay-Cutter.*

A firm of engineers undertook to supply a hay-cutting machine and to fit it up in their customer's premises. The erection of the machine was done solely by manual labour, but in testing it mechanical power was used. A workman employed in fitting up the machine met with an accident while engaged in testing it, and made a claim against the engineers under the Workmen's Compensation Act 1897.

Held that the engineers were liable, in respect that the workman was when he met with the accident engaged in an "engineering work" of which they were the "undertakers" within the meaning of those terms as defined by section 7 of the Act.

The Workmen's Compensation Act 1897 enacts, section 7 (1)—"This Act shall apply only to employment by the undertakers as hereinafter defined on or in or about a railway, factory, mine, quarry, or engineering work. (2) In this Act . . . 'engineering work' means any work of construction or alteration or repair of a railroad, harbour, dock, canal, or sewer, and includes any other work for the construction, alteration, or repair of which machinery driven by steam, water, or other mechanical power is used. 'Undertakers' . . . in the case of an engineering work means the person undertaking the construction, alteration, or repair." . . .

This was an appeal on a case stated by the Sheriff-Substitute of Lanarkshire (BOYD) in an application under the Workmen's Compensation Act 1897 at the instance of Andrew Reid, engineer, Bellgrove Street, Glasgow, claimant and appellant, against Messrs P. R. Fleming & Company, engineers, Argyll Street, Glasgow, respondents.

The case set forth that the following facts were admitted or proved—"(1) That the appellant is an engineer and was in the service of the respondents, and for three months prior to 5th October 1900 he earned wages at the rate of 38s. per week. (2) That the respondents' business includes the making of machines in their own premises and fitting them up in the premises of their customers, where the machines must be shown to work satisfactorily before delivery is accepted. (3) That the respondents sold certain machines, including a hay-cutter, to the St George's Co-operative Society, Port Dundas, Glasgow, and undertook to fit these machines and leave them in working order in their customers' premises at Port Dundas. (4) That the appellant was engaged on 5th October 1900 in fitting up the hay-cutter in the premises of the respondents' customers. (5) That in erecting the machine the appellant only used manual labour assisted by blocks and tackle for raising the heavier parts to their position. (6) That from time to time as the appellant built the machine it was necessary for him to test it by applying mechanical power in order to ascertain whether the machine was so far properly fitted and ran smoothly. (7) That the machine was partially constructed, and the appellant was engaged in so testing it with mechanical power derived from a shaft which ran in the apartment in which the machine was being erected, and which was driven by electrical power belonging to the said St George's Co-operative Society, when his left hand was caught in the hay-cutting machine, and so injured that he lost two and a-half fingers of that hand. When the machine was ultimately completed it was driven by motive power derived from the shaft mentioned above."

On these facts the Sheriff found in law "that at the time of the accident the hay-cutting machine was still the property of the respondents; that the said premises of the St George's Co-operative Society were at that time a factory within the