did not in any way deliberate on the merits of the application as these stood in the absence of the information desired, and allowed the pursuer Mr Robertson no opportunity of being heard save in response to the demand for production. And I am unable so to affirm. The matter of production or non-production appears to have been the subject of considerable controversy. And the absence of the information which production would have afforded no doubt contributed to the refusal of the application. But I am unable to affirm that when the Bench came to say Yea or Nay to the application the sole ground on which they resolved to answer Nay was the non-production of the information. I think indeed that the fair import of the evidence is to show that circumstances relevant to the continuance of the licence, such as public opinion in the district, were overtly adverted to by the Bench in the presence and hearing of the pursuer Mr Robertson. And I think that Mr Robertson had full opportunity allowed to him of urging all considerations which he thought favourable to his application. If this is so it appears to me that what the pursuers make the essential basis of the declarators sought by them is not established, and that accordingly the defenders should be assoilzied.

The Court recalled the interlocutor of the Lord Ordinary and assoilzied the defenders.

Counsel for the Pursuers (Respondents)—Watson, K.C.—A. M. Mackay. Agent—George Scott, S.S.C.

Counsel for the Defenders (Reclaimers)—Wilson, K.C.—R. M. Mitchell. Agents—Douglas & Miller, W.S.

Friday, June 6.

SECOND DIVISION.

[Lord Anderson, Ordinary.

TAYLOR *v.* GLASGOW CORPORATION AND ANOTHER.

Expenses—Several Defenders—Liability of Unsuccessful Defender for Expenses of Pursuer—Liability of Pursuer for Inner House Expenses of Successful Defender.

In an action against two defenders "jointly and severally" for damages in respect of injuries sustained in a collision between two vehicles belonging to the two defenders, one of the defenders was found liable and the other assoilzied. The unsuccessful defender and also the pursuer reclaimed.

Held (*dis.* Lord Salvesen) in the circumstances of the case that, while the unsuccessful defender was liable in expenses to the pursuer, as the successful defender had been brought in to the Inner House owing to the pursuer reclaiming the pursuer was liable in his expenses there.

Donald Taylor, coal miner, 91 Dale Street, Bridgeton, Glasgow, *pursuer*, raised an action against the Corporation of the City of Glasgow and the Scottish Farmers' Dairy Company (Glasgow), Limited, *defenders*, jointly and severally, for damages in respect of personal injuries sustained by him in a collision between a corporation tram-car, on which he was a passenger, and a steam tractor belonging to the second-named defenders. The case was heard on 29th May 1918 by Lord Anderson, who on 13th June 1918 assoilzied the defenders The Corporation of the City of Glasgow and granted decree for the pursuer against the defenders the Scottish Farmers' Dairy Company, whom in the exercise of his discretion he found liable in expenses both to the pursuer and the successful defenders. Both the defenders the Scottish Farmers' Dairy Company and the pursuer reclaimed, the latter on the ground that both defenders were liable to him. On 6th June 1919 the Second Division adhered to the interlocutor of the Lord Ordinary.

On the question of the Inner House expenses, argued for the defenders the Corporation of Glasgow—Both the pursuer and the defenders the Scottish Farmers' Dairy Company ought to be found liable in expenses to the defenders the Glasgow Corporation—*Morrison* v. *Waters & Company and Another*, 1905, 8 F. 867, 43 S.L.R. 646. The pursuer ought to have rested content with his judgment and not reclaimed.

Argued for the pursuer—Wherever parties blamed each other, the pursuer, if successful, ought to get his expenses against the unsuccessful defender, and the successful defender ought to get them against the unsuccessful defender—*Craig* v. *Aberdeen Harbour Commissioners*, 1909 S.C. 736, 46 S.L.R. 508. As in the present case each defender blamed the other, the pursuer was not entitled to prejudge the case by withdrawing his claim for damages against either. If he failed to state his case against both defenders, then the defenders the Glasgow Corporation could not be called on to reply. Beyond that the pursuer had no interest in maintaining the reclaiming note; he was rather in the position of holding a watching brief.

LORD JUSTICE-CLERK—In this case I am of opinion that the reclaimers, the Dairy Company, must of course pay the pursuer's expenses of the reclaiming note. As to the expenses of the Corporation, senior and junior counsel for the pursuer—I am not reflecting in the least on the course they took—each concluded his argument by asking for decree conjointly against the Dairy Company and against the Corporation. The Dairy Company in their argument, while of course they required to argue that they were not liable and that the Lord Ordinary's interlocutor against them was wrong in respect that it found fault against them, were necessarily driven to say by the way the case was brought that the fault which caused the accident was the fault of the Corporation. They had no plea directed against the Corporation and no motion was made by anyone against the Corporation except by the pursuer.

The pursuer elected to bring a case against the defenders asking decree against them jointly and severally. The Lord Ordinary assoilzied one of these defenders, and exercising his discretion found the defenders whom he held to be in fault liable in expenses both to the pursuer and co-defender. When the case came here, not only did the Dairy Company reclaim, but the pursuer instead of resting content with his judgment and being prepared to defend his judgment against the Dairy Company, elected to take up the position of saying that both defenders were liable to him, and accordingly reclaimed against the Lord Ordinary's judgment.

I cannot see in these circumstances why the Dairy Company are to pay the pursuer for this trial to better his position in the Inner House from what it was in the Outer House by getting two defenders jointly and severally made liable instead of one, and I cannot see any ground in law why the Dairy Company should be found liable for any expenses except the expenses which they ought to pay to the pursuer. I am of opinion that the Corporation should be found entitled to their expenses in the Inner House against the pursuer.

LORD DUNDAS—I think this point is a difficult one, but I agree with what your Lordship has said. We are dealing here only with the Inner House expenses. Now I rather think that after the position had been cleared up and the facts expiscated in the Outer House, and after the Lord Ordinary had pronounced a decision, it was then the pursuer's business to make up his mind, and if he was satisfied with and had confidence in the Lord Ordinary's judgment, to take up the definite attitude that he did not reclaim. This he did not do. I am very far from saying he was ill advised, but he distinctly assumed the attitude "I do reclaim." That being so I do not see why the course your Lordship proposes should not follow.

LORD SALVESEN—I am sorry I am unable to agree with the judgment proposed. It seems to me that the pursuer's attitude in the Inner House was just exactly the attitude he took up in the Outer House where he said—"I am not really concerned as to who is to blame, but as each party blames the other I cannot prejudge the case by withdrawing my claim for damages against either." Now the position that Mr Maclaren took up in the case was that he was perfectly content with the judgment of the Lord Ordinary, that he had no interest whatever in maintaining the reclaiming note, that he would not have been there if the Scottish Farmers' Dairy Company had not reclaimed, but very reluctantly he was constrained to take up the position that he must state his case against both, because it was indicated by some of your Lordships that if he said that he was content with the Lord Ordinary's interlocutor then the Solicitor-General for the Corporation would not require to reply.

I do not think myself that that would have been in accordance with our practice or in accordance with the law. The true contradictor of the Scottish Farmers' Dairy Company was the Corporation, because the Scottish Farmers' Dairy Company could not exonerate themselves without at the same time imputing blame to the Corporation, and the same applied to the Corporation, that they could not exonerate themselves without imputing blame to the owners of the motor tractor. In these circumstances I should have thought that undoubtedly the pursuer might have stood aside, as indeed he wished to do, and not taken part in the discussion, and that in such circumstances we would only have given him the usual watching fee, but in view of the difference of opinion on the Bench in the matter of procedure he felt he could not incur the risk of that.

For my own part I think we should have been bound to decide whether he intervened in the case or not, whether either or both of these defenders were liable, and the mere fact that he reclaimed would not affect the rights or liabilities of either of the defenders. But I think Mr Wark's motion did not go so far as your Lordship suggests and proposes to give effect to it in this case. Mr Wark asked expenses against the two sets of reclaimers, and I cannot understand why, if there are two unsuccessful reclaimers, the one who has no interest in the matter should be held bound to pay the whole expenses of the person who ultimately is successful. That seems to me to be an untenable position, and if I had acceded to the motion at all it would have been on the footing that Mr Wark should get his expenses against both and not only against the pursuer.

LORD GUTHRIE—I have great sympathy with the position of the pursuer at the earlier stage of a case of this kind where there are two possible authors of the damage he has suffered. But once the facts have all been sifted he must make up his mind, in the event of one of the defenders being assoilzied, whether he is to reclaim against that judgment. If he reclaims, then as reclaimer he must incur the risk of the payment of the expenses of the successful respondent. The pursuer's proper course from the start would have been to have made an arrangement to stand aside and leave the defenders to fight out the case. He never even proposed to do so, and he must take the consequences.

The Court found the defenders the Scottish Farmers' Dairy Company liable in expenses to the pursuer, and the defenders the Glasgow Corporation entitled to their expenses in the Inner House against the pursuer.

Counsel for Defenders and Reclaimers—Sandeman, K.C.—W. Mitchell. Agents—Carmichael & Miller, W.S.

Counsel for Pursuer and Respondent—Watt, K.C.—Maclaren. Agents—Sturrock & Sturrock, S.S.C.

Counsel for the Defenders the Corporation of the City of Glasgow—The Solicitor-General (Morison, K.C.)—Wark. Agents—Simpson & Marwick, W.S.