been of the ordinary height of a boundary wall, and had it served no other purpose than that of a boundary wall, they could not have maintained their argument, because in that case ground could not be said to be "built-on ground" on account of a wall which the respondents were forced to erect, and which did not serve directly any part of their business. But they alleged that the result would be different in the case of a wall varying in height from 6 feet 6 inches to 20 feet. It appeared, however, that this argument depended again on the definition clause. No doubt a 20-feet wall might be held in certain cases to be a "building" when an ordinary low wall might not. But I am unable to see that the existence of a wall of any height on the margin of lands can ever render these lands "built on." The appellants further maintained that even if they were wrong as to the abnormal structure of the wall, they were entitled to succeed because the respondents voluntarily put the wall to a use in connection with their special business as the retaining wall of their railway embankment, which took it out of the category of a boundary wall, which they were compelled to construct. Here again they relied on cases dealing with the meaning of the word "buildings," such as *Lavy* v. *London County Council*, [1895] 1 Q.B. 915, *affd.* [1895] 2 Q.B. 577. In this case also I am unable to believe that ground part of which had been artificially heightened (or for the matter of that artificially lowered by a cutting with a wall on a road side continued down to the bottom of the cutting), and which had at the margin of the road a boundary wall, used as a retaining wall for the artificial heightening, would be considered either popularly or technically "built-on ground."

I therefore think the first question (with the words "unfeued" deleted) should be answered in the affirmative, and the third question in the negative. The second is not pressed.

LORD ORMIDALE concurred.

LORD HUNTER—I am of the same opinion. Section 141 of the Burgh Police (Scotland) Act 1892 imposes an obligation upon the owners of all lands or premises fronting or abutting on any street in a burgh, on being required by the magistrates, to cause footways to be made at their own expense on the side of the street bounding their property. There is a proviso, somewhat obscurely expressed, conferring exemptions in certain circumstances upon proprietors of lands abutting on a street for a continuous length exceeding one hundred yards. The clause and the proviso were made matter of construction in the case of the *Magistrates of Prestwick* v. *Kirkcaldy*, 1909 S.C. 5, where Lord M'Laren said—"I think that in view of the context and manifest intention of the statute, the true meaning of the clause when stated affirmatively is that the lands or premises which are liable to be fully assessed are either feued or built on, or are laid out or used as a garden or pleasure ground or pertinent of a house."

What we have to consider in the present case is whether or not on the facts stated by him the Sheriff was entitled to hold that the respondents' land for a distance of 153⅓ yards within the burgh of Dumbarton is unbuilt-on land. According to the findings the ground in question is occupied by the respondents' railway consisting of several lines of rails. The railway is on an embankment, and according to finding 10 has no building upon it other than a boundary wall which also serves as a retaining wall.

The statute contains no definition of "unbuilt-on" ground. "Building" is defined as including "any structure or erection of what kind and nature soever and every part thereof." I do not think, however, that it would be reasonable to hold that all land is to be treated as built on where a structure is found that complies with this definition. The words "built on" are, I think, used in a popular sense, and would not therefore be appropriately applied to a piece of ground separated from a street by a retaining wall or to ground on which a railway was laid. In my opinion the Sheriff was entitled to reach the conclusion which he did.

The LORD JUSTICE-CLERK, LORD DUNDAS, and LORD SALVESEN were absent.

The Court answered the first question of law in the affirmative, and the third in the negative.

Counsel for the Appellants—The Solicitor-General (Morison, K.C.)—R. M. Mitchell. Agents—Dove, Lockhart, & Smart, S.S.C.

Counsel for the Respondents — Cooper, K.C.—Gentles. James Watson, S.S.C.

Thursday, March 11.

FIRST DIVISION.

(SINGLE BILLS.)

FINLAY *v.* GLASGOW CORPORATION.

Process—Proof—Diligence for Recovery of Documents—Confidentiality—Reports of Employees of Tramway Company Made de recenti of Accident.

In an action of damages against a tramway company, originating out of an accident, a diligence for the recovery of "all reports, memoranda, or other written communications made at or about the time of the accident to the defenders or anyone on their behalf by any inspector, car driver, car conductor, pointsman, or other employee of the defenders present at the time of the accident relative to the matter mentioned on record," *granted* after consultation with the Second Division, subject, however, to the understanding that communications between the defenders and their employees were restricted to those prior to its becoming apparent that there was going to be a litigation.

The Admiralty v. *Aberdeen Steam Trawling and Fishing Company, Limited*, 1909 S.C. 335, 46 S.L.R. 254, *followed.*

Scott and Others v. *Portsoy Harbour Trustees*, (1900) 8 S.L.T. 38, *approved*.

Andrew Finlay, engineman, 156 Dumbarton Road, Partick, Glasgow, as tutor and administrator-in-law of his pupil child Louise Margaret Finlay, *pursuer*, brought an action against the Corporation of the City of Glasgow, *defenders*, for damages in respect of injuries sustained by the child through being struck and knocked down by a tramway car belonging to the defenders.

In Single Bills in the First Division the pursuer moved for a diligence for the recovery of certain documents, including, after amendment at the bar, those specified (*supra*) in the rubric.

Counsel for the pursuer argued that any document which helped to elucidate what was passing in the mind of the tramway driver or the general circumstances of the accident could be referred to, and quoted the following cases:—*Admiralty* v. *Aberdeen Steam Trawling and Fishing Company, Limited*, 1909 S.C. 335, Lord M'Laren at 341, Lord Kinnear at 342, 46 S.L.R. 254; *Muir* v. *Edinburgh and District Tramways Company, Limited*, 1909 S.C. 244, 46 S.L.R. 248; *Stuart* v. *Great North of Scotland Railway Company*, July 9, 1896, 23 R. 1005, 33 S.L.R. 730; *Tannett, Walker, & Company* v. *Hannay & Sons*, July 18, 1873, 11 Macph. 931, 10 S.L.R. 642; *Irvine* v. *Glasgow and South-Western Railway Company*, 1913, 2 S.L.T. 452.

Argued for the defenders—There was no instance of a diligence of this nature being granted except in shipping cases which were of an exceptional character. The diligence would break the rule that confidential documents were privileged. Moreover the present case was covered by authority—*Stuart* v. *Great North of Scotland Railway Company* (*cit. sup.*); *Muir* v. *Edinburgh and District Tramways Company, Limited* (*cit. sup.*).

LORD PRESIDENT — After consultation with the Judges of the Second Division we are prepared to grant this diligence as now limited. It is, however, to be distinctly understood that the call in the first article is confined to reports of the character referred to in Lord Low's judgment in *Scott and Others* v. *Portsoy Harbour Trustees*, (1900) 8 S.L.T. 38, and in the judgment of this Division of the Court in *The Admiralty* v. *Aberdeen Steam Trawling Company, Limited*, 1909 S.C. 335.

The Court (the LORD PRESIDENT, LORD SKERRINGTON, and LORD GUTHRIE; LORD JOHNSTON and LORD MACKENZIE having been absent at the hearing) granted the diligence as craved.

Counsel for the Pursuer — Macquisten — Reid. Agent—James Scott, S.S.C.

Counsel for the Defenders — Russell. Agents—St Clair Swanson & Manson, W.S.

Saturday, March 13.

SECOND DIVISION.

[Sheriff Court at Hamilton.

ARCHIBALD RUSSELL, LIMITED *v.* KEARY.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *sec.* 8 (1) (*i*) (*a*)—*Industrial Disease—Happening of Accident—Date of Disablemen — Certificate of Surgeon.*

The Workmen's Compensation Act 1906, sec. 8, enacts — "*Application of Act to Industrial Diseases.*—(1) Where (*i*) the certifying surgeon appointed under the Factory and Workshop Act 1901 for the district in which a workman is employed certifies that the workman is suffering from a disease mentioned in the Third Schedule to this Act, and is thereby disabled from earning full wages at the work at which he was employed . . . . . ; and the disease is due to the nature of any employment in which the workman was employed at any time within the twelve months previous to the date of the disablement . . ., whether under one or more employers, he or his dependants shall be entitled to compensation under this Act as if the disease . . . as aforesaid were a personal injury by accident arising out of and in the course of that employment, subject to the following modifications:—(*a*) The disablement . . . shall be treated as the happening of the accident. . . ."

A miner left his employment with a colliery company on 2nd September 1914 and joined the army, from which he was discharged on 29th September. On 8th October he obtained from a certifying surgeon a certificate that on 2nd October he had become disabled from work in respect of an industrial disease, viz., miners' nystagmus.

Held that in order to entitle the miner to compensation it was not necessary that at the date of disablement he should have been in the service of the company, and that the arbitrator was entitled to award compensation.

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), sec. 8 (1) (i) (*a*), enacts—[*quoted in rubric*].

Archibald Russell, Limited, coalmasters, Cambuslang, *appellants*, and James Keary, miner, Cambuslang, *respondent*, brought in the Sheriff Court at Hamilton an arbitration in which the Sheriff-Substitute (HAY SHENNAN) awarded compensation, and stated a Case for the opinion of the Court of Session.

The Case stated—"This is an arbitration under the Workmen's Compensation Act 1906 in an application presented by the respondent on 4th November 1914 to recover compensation in respect of miners' nystagmus, being one of the scheduled diseases to which the Act applies.

"Proof was led before me on 21st December 1914, when the following *facts* were