nesses compiled by the defenders in order to have an opportunity of precognoscing 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; *Macphee* 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

the countries from which our supplies are drawn becoming engaged in war." Then the letter proceeds—"Dear Sirs, We hereby offer to undertake to supply all your requirements in pit props in accordance with your Schedule Class No. 12, from No. 41 to 61 inclusive, for 12 months from 1st July 1914 to 30th June 1915, at the annexed prices, and hope to be favoured with your acceptance." That was accepted by a letter of the same date signed by the managing director of the pursuers—"I beg to inform you that your offer for the various articles specified, as per enclosed schedule, has been accepted." Your Lordships have been referred to a facsimile of the letter from which it appears that the head-note is in red ink and is printed in a reasonably conspicuous position upon the form of the letter. The question is whether that red ink note is to be regarded as forming part of the contract or not. It seems to me clear that it must be so regarded. It is a letter, no doubt, but the parties were in the habit of writing letters upon business, and for convenience they appear to have had this head-note relating to the case of strikes and the case of war. The case of strikes is unfortunately so common that everyone would expect to find a provision made for what was to happen in case an occurrence of that kind took place. The case of war is also provided for by this note. It is said that the pursuers did not nor did any of the directors or officials read this clause, that their own attention was not directed to it, and that the attention of none of the higher officers of the company was called to it. That, to my mind, is utterly immaterial. The question is whether the red ink note was put in such a position in such type that it must be regarded reasonably as forming part of the terms which were offered by those who wrote the letter. It seems to me quite clear that this red ink note did form part of these terms. Many cases have been put. The case might be suggested of a postscript which had not been added at the end of the letter but was written in at the top of the page on which the letter begins with "Dear Sirs," so that there you would have—"P.S. It will of course be remembered that this is subject to the strike clause in the form with which you are familiar," or something of that kind. But here, for convenience, they had this printed clause in red ink, and it seems to me that it is quite impossible to divorce the letter, which is said to begin with the words "Dear Sirs" and end with the words "Yours truly," from the clause which is printed in such a way as to call attention to it and which purports to qualify the terms of the letter. 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. If that red ink note forms part of the contract, then the decision of the majority of the Inner House was right. They reversed the decision of the Lord Ordinary, and in my opinion they were right.

The appeal therefore fails.

LORD DUNEDIN—I concur. The judgment of Lord Mackenzie is entirely satisfactory to my mind, and I have really nothing to add to what he said.

LORD ATKINSON—I concur.

LORD SHAW—I am of the same opinion. Had I desired to write upon this case a separate judgment I fear that I should have made but an imperfect paraphrase of the judgment of Lord Mackenzie, with every word of whose opinion I agree.

LORD BUCKMASTER—I agree, and I have nothing to add.

Their Lordships dismissed the appeal with expenses.

Counsel for the Pursuers (Appellants)—Moncrieff, K.C.—C. H. Brown. Agents—Moncrieff, Warren, Paterson, & Company, Glasgow—Drummond & Reid, W.S., Edinburgh — Grahames & Company, Westminster.

Counsel for the Defenders (Respondents) —Lord Advocate and Dean of Faculty (Clyde, K.C.)—A. M. Mackay. Agents—Borland, King, Shaw, & Company, Glasgow —Dove, Lockhart, & Smart, S.S.C., Edinburgh—Ince, Colt, Ince, & Roscoe, London.

Thursday, January 24.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lord Dunedin, and Lord Atkinson.)

GLENDINNING *v.* BOARD OF AGRICULTURE FOR SCOTLAND.

(In the Court of Session, January 30, 1917, 54 S.L.R. 234, and 1917 S.C. 264.)

Process—Appeal to House of Lords—Jurisdiction — Question of Competency not Pleaded nor Fully Argued.

In the absence of full argument on the question of the competency of an action, no plea being tabled, the House of Lords, in a doubtful case, did not decline jurisdiction but entertained the action, holding the point open for future argument and decision.

Landlord and Tenant—Small Holdings—Arbitration—Alternative Award—Competency—Small Landholders (Scotland) Act 1911 (1 *and* 2 *Geo. V, cap.* 49), *sec.* 7 (1) *—Agricultural Holdings (Scotland) Act* 1908 (8 *Edw. VII, cap.* 64), *Sched. II, para.* 9.

In an arbitration under the Small Landholders (Scotland) Act 1911 to fix the compensation payable to the tenant of a farm on its acquisition for small holdings, the arbiter found that there was a question of law involved as to the date to which the tenant's tenancy extended, and with the concurrence of parties gave alternative findings. The tenant brought an action of declarator to establish one of the alternatives. No plea to the competency of alternative