case, when rightly applied, will support the extreme assertion of common law rights which is put forward in the present case. It seems to me that if we were to grant interdict, we should in effect be putting the pursuers in the same position and giving them the same rights as if Parliament had authorised the use of a descriptive name as a registrable trademark; because their argument really amounts to this, that by the mere use of such a trade-name on an extensive scale the person using it acquires an exclusive right to that name, and that no other person is able to use it even for the purpose of describing his own goods so as to distinguish them from other goods of a different pattern or fabric.

For these reasons I am of opinion that the Lord Ordinary has come to a right conclusion, and that the reclaiming-note should be refused.

The LORD PRESIDENT and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court adhered.

Counsel for Pursuers — Lord Advocate (Graham Murray, Q.C.)—J. C. Watt—King. Agents—Clark & Macdonald, S.S.C.

Counsel for Defenders — Shaw, Q.C.—T. B. Morison. Agent—P. Morison, S.S.C.

Tuesday, July 12.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

BROWN AND OTHERS (BROWN'S TRUSTEES) *v.* HAY.

Property—Property in Documents of Commercial Value—Unauthorised Publication of Contents of Private Documents—Duty of Giving Information to Inland Revenue.

A clerk employed to audit the books of a firm of law-agents communicated to the Inland Revenue the contents of a document which belonged to a client of the firm, and which had come into his possession solely in the capacity of auditor. The document was a statement of the client's annual profits considerably in excess of the returns actually made by him to the Inland Revenue.

In an action raised by the client against the clerk, *held* that by divulging the contents of the paper in question to a third party the defender had infringed the pursuer's right of property in the document, and therefore that the pursuer was entitled to interdict and damages.

Per Lord M'Laren—"I have never heard or read that the duty of assisting the Treasury in the collection of the public revenue was of such a paramount nature that it must be carried out by private individuals at the cost of the betrayal of confidence and the invasion of the proprietary rights of other people."

On 9th February 1897 Mrs Alice Catherine Brown and others, testamentary trustees of the late William Brown, of the Linkwood Distillery, Elgin, raised an action against James Hay, accountant in Elgin, concluding, *inter alia*, for (1) decree that the defender should forthwith deliver to the pursuers all documents or copies of documents having reference to the business of distillers sometime carried on by the said William Brown, and now by the pursuers at Linkwood; (2) interdict against communicating any information in regard to the said distillery to third parties without the pursuers' consent or to their prejudice; and (3) damages to the amount of £500.

The material facts in the case as averred on record and disclosed by the proof are thus summarised in the Lord Ordinary's note:—"The defender occupied for many years the position of cashier to the now dissolved firm of Cameron & Allan, solicitors, Elgin, and was employed in 1895 to wind up the affairs of that firm. In the course of his employment as liquidator he came upon a bundle of documents showing, *inter alia*, the profits for the years from 1872 to 1891 of the Linkwood Distillery, for which the dissolved firm had acted as law-agents. He made a copy of these documents so far as they showed the profits of the distillery, and on 5th November 1896 he sent this paper to the Inland Revenue authorities, adding that he had reason to believe that the profits in the income-tax returns had been considerably understated. At first he only suggested that inquiries should be made, but in the correspondence which followed he pointed the charge by claiming credit for 'exposing the fraud of the late Mr Brown in giving the Commissioners false returns.' Thereupon the authorities put themselves in communication with Messrs Cameron & Jameson, who had succeeded the dissolved firm as law-agents for the distillery. The accuracy of the figures communicated by the defender was not disputed by these gentlemen, but they maintained that certain deductions were claimable in respect of depreciation in the value of plant and machinery, and that when these were made it would be found that the profits had not been understated. As a result of the negotiations which followed, a test year was selected, and the question of deductions was referred to the local Commissioners of Inland Revenue. An inquiry was held, and the Commissioners fixed the amount of the deductions claimable. When their decision was applied to the years from 1884 to 1891, which formed the subject of controversy, it appeared that there had been a slight under-statement of profit. But the agents of the distillery claimed that against this there should be set an over-statement of profit for some years subsequent to 1891, and the Revenue autho-

rities thinking this plea reasonable, and finding that the one thing as nearly as possible balanced the other, withdrew all claims against the pursuers."

The pursuers pleaded—"(1) The defender having obtained the documents or copies mentioned in the first conclusion of the summons confidentially while acting in the service of the pursuers' author, or as liquidator of the firm which acted as their law-agents, the pursuers are entitled to decree for delivery of same in terms thereof. (2) The defender having wrongfully disclosed information of a private and confidential nature which he obtained while acting as auditor for said distillery, the pursuers are entitled to decree of interdict in terms of the second conclusion. (3) The pursuers having suffered loss, injury, and damage to the extent of the sum third concluded for, through the defender's wrongful actings as condescended on, are entitled to decree therefor as craved."

The defender pleaded—"(3) The pursuers' averments are irrelevant. (4) In communicating to the Inland Revenue authorities the information required by them in conection with the estate of the said deceased William Brown, the defender having acted in good faith and in accordance with the duty incumbent on him as liquidator of the firm of Cameron & Allen, is entitled to absolvitor. . . . (7) The pursuers having suffered no loss and damage, or at least having suffered no loss or damage for which the defender is responsible, he ought to be assoilzied *quoad* the conclusion for damages."

On 5th November 1897 the Lord Ordinary (STORMONTH DARLING) ordained the defender to deliver to the pursuers the draft balance-sheet and certain other documents in his possession; and *quoad ultra* assoilzied the defender.

Opinion.—[*After narrating the facts as above set forth, his Lordship proceeded*]—"In these circumstances the pursuers claim damages against the defender in respect of his having communicated to the Revenue officials information which he acquired confidentially. I have from the beginning been at a loss to know to what legal category such a claim can be referred. One is familiar with cases in which a pursuer seeks damages for having been slandered by false information communicated to public authorities. In such cases the defender is held to be privileged, and his privilege can only be displaced by evidence that he acted maliciously and without probable cause. But this is not a case of defamation, and it could not have been made so, because the only persons who might have been said to be defamed are dead. The wrong complained of is not the language used in communicating the information, but the act of communicating the information itself. Certain English cases were quoted, which say that a servant is not entitled to use for his own benefit and his master's injury information which he has confidentially acquired in the course of his service. But these are cases of breach of contract, and here there was no contract of any kind between the pursuers and the defender. The papers containing the information came into the defender's possession while he was liquidating the affairs of the pursuers' late law-agents, and he seems to me to have been in no different position from that of any member of the public who lawfully comes to know about the private affairs of another. To blab about such things may be open to stricture from many points of view, but I am not aware that the law provides any penalties for such conduct apart from the penalties of libel.

"These considerations would, I think, hold good even if the communications complained of were made to the man on the street. But the difficulties of such a claim are increased when information is given to a public authority, because although an informer is not always a popular character, public policy requires that his action, so long as he keeps within certain limits, should not be condemned in a court of law. I am not much concerned here with the motives of the defender. I do not believe that he was actuated solely, or even chiefly, by a desire to see the Revenue get its due, or by a feeling of compunction at having been the medium of misleading the Inspector of Taxes in 1893. Nay, more, I think it due to the memory of a dead man to say that if the defender did make the misrepresentation which he says he did on that occasion, I cannot believe that he did so by direction of the late Mr Cameron, who was quite entitled to refuse voluntarily to produce the documents asked for without assigning any reason. But whatever the motives of the defender may have been, his action consisted merely in sending to the Revenue perfectly accurate and incontrovertible figures. No doubt it turned out after discussion and inquiry that, by making certain deductions, and by spreading these over a period of years which considerably overlapped the time to which the defender's figures referred, there remained nothing due by the pursuers to the Revenue. But the defender had not merely probable cause for the information which he communicated; it was absolutely correct. Even the inference which he drew from it, though I am far from commending his use of the word 'fraud,' was justified to some extent by the result of the inquiry, when regard is had exclusively to the period embraced in the information.

"I cannot, therefore, come to the conclusion that the pursuers suffered any actionable wrong at the hands of the defender. His conduct was no doubt disagreeable to them, and led to a good deal of trouble and expense. The whole or the greater part of that expense must have been useful to the pursuers in determining for the future what deductions they might lawfully make. But even if that had not been so, I could not say that the defender was liable in damages for acting as he did.

"There are two other conclusions in the summons, one for delivery of all documents belonging to the pursuers, and the other

for interdict against his communicating any information relating to the affairs of the distillery obtained by him while acting as auditor of its books. With regard to the first of these, it appears that the defender is in possession of the bundle of documents marked No 7 of process to which I have referred. These are undoubtedly the property of the pursuers, and it is not said either that the documents are necessary to the liquidation of the affairs of Cameron & Allan, or that they are claimed by either of the partners of that dissolved firm. Accordingly, I think the defender must give them up, subject, of course, to their retention in the hands of the Clerk until this process is concluded. With regard to the interdict, I think it must be refused. Interdict is never granted unless either a wrong has been done or threatened to be done, but if I am right on the main question, neither of these things can be said of the defender."

The pursuers reclaimed, and argued—The Lord Ordinary was wrong in not pronouncing decree for delivery of documents in general terms as concluded for, in refusing interdict, and in holding the pursuers not entitled to damages. It would scarcely be disputed that the dissolved firm of Cameron & Allan owed the duty of secrecy to their client's Brown's trustees. The defender, as a clerk appointed to wind-up the affairs of that firm, could be in no better position as regards those clients than the firm itself, even though no express contract subsisted between him and the clients. There was always an implied contract arising from the confidence which existed between a clerk and his employer—*Merryweather* v. *Moore* [1892], 2 Ch. 518. The contract need not be explicit—*Lamb* v. *Evans* (1893), 1 Ch. 218; *Robb* v. *Green* [1895], 2 Q.B. 315; *Kerr* v. *Duke of Roxburgh*, July 18, 1822, 3 Murray 126. [LORD KINNEAR—Might not the pursuers here have a *jus quæsitum tertio?*] That was precisely the pursuers' contention. But whether there was a *jus quæsitum* or not, the document which the defender had communicated to the Inland Revenue was undoubtedly the pursuers' property, and he had violated their copyright. Such an act was even criminal (Macdonald, p. 23), and was unquestionably a civil wrong. It was argued on the other side that disclosure of such a secret to the Inland Revenue did not constitute a wrong. But the Crown in this matter did not occupy a more favoured position than any ordinary third party. A limitation of two years was imposed upon proceedings for recovering fines and penalties incurred under Inland Revenue Statutes by 53 and 54 Vict. cap. 21, sec. 22 (2)—See *Lord Advocate* v. *Sawers*, December 3, 1897, *supra*, p. 190, 25 R. 242. The right of the Crown to arrears of income-tax was precisely in the position of an ordinary civil claim of debt. There was no provision in the statutes for imprisonment. Poinding was the only method for enforcing a claim. This in itself showed by what motives the defender had been animated by acting as he did, and entirely displaced the contention that there was any special obligation on the citizen to give information when the Crown was in question. If the pursuers' contention was sound they were entitled to protection by way of interdict against a similar wrong in the future. As regards damages, the pursuers had been put to considerable expense in satisfying the Inland Revenue that their claim was not well founded, and were entitled to indemnification for that amount at all events.

Argued for the defender — The Lord Ordinary was right. As regards the conclusion for interdict, even assuming that a wrong had been committed, there was absolutely no ground to apprehend its repetition. See *Hay's Trustees* v. *Young*, January 31, 1877, 4 R. 398. But no wrong had been committed—at least it was impossible to specify in what category the wrong was to be put. It was not breach of contract, at all events, for there was no contract between the pursuers and the defender, and thus the cases relied on by the pursuers had no application. Nor was there an implied contract nor a *jus quæsitum tertio*—Stair, i. 10, 5; *Peddie* v. *Brown, Gordon, & Co.*, June 11, 1857, 3 Macq. 704; *Finnie* v. *Glasgow and South-Western Railway Co.*, August 13, 1857, 3 Macq. 177; *Robertson* v. *Fleming*, June 25, 1861, 4 Macq. 167; *Blumer & Co.* v. *Scott & Sons*, January 16, 1874, 1 R. 379; *Raes* v. *Meek*, August 8, 1889, 16 R. (H.L.) 31; *Tully* v. *Ingram*, November 10, 1891, 19 R. 65; *Campbell* v. *Morrison*, December 10, 1891, 19 R. 282; *Henderson* v. *Stubbs, Limited*, November 13, 1894, 22 R. 51. [LORD PRESIDENT—Is it not the case in the employment of every clerk by a solicitor that it is only third parties and not the solicitor himself who are affected by breaches of confidence on the part of the clerk?] That was so; but it was doubtful if the same obligation to secrecy rested upon a solicitor's clerk as upon his employer—*Cholmondeley* v. *Clinton* (1815), 19 Vesey, 261, 13 R.R. 183; *Bricheno* v. *Thorp* (1821), Jacob, 300, 23 R.R., 69. See also Chitty, 13th ed., p. 507. But even assuming that the defender owed a duty to the pursuers, he owed a more imperative duty to the Inland Revenue. Section 32 of 53 and 54 Vict. cap. 21, empowered the Inland Revenue to induce people to make such disclosures as were here made, and it was the duty of every citizen to give information, no matter how it came into his possession, to the Inland Revenue authorities—*Green* v. *Chalmers*, December 12, 1878, 6 R. 318. There was no doubt that the statements made by the defender to the Inland Revenue were true. In an action for slander founded upon them, malice and want of probable cause must go into the issue. See *Rogers* v. *Dick*, February 19, 1863, 1 Macph. 411; *Croucher* v. *Inglis*, June 14, 1889, 16 R. 774; *Jack* v. *Fleming*, October 15, 1891, 19 R. 1; *Milne* v. *Smiths*, November 23, 1892, 20 R. 95.

At advising—

LORD M'LAREN—The facts are thus stated by the Lord Ordinary — [*His Lordship quoted the Lord Ordinary's narrative of*

the facts, and proceeded]—On the facts, Brown's trustees in February 1897 instituted this action against Mr Hay, claiming (1) delivery of all documents in his possession relating to their constituents' business of distiller; (2) interdict against the communication of information relating to the affairs of the distillery to third parties to their prejudice; and (3) a pecuniary claim of £500 in name of damages, explained in the condescendence to mean "reasonable compensation for the loss which they have suffered, and may yet suffer, through the defender's said wrongous and unwarrantable actings."

I am of opinion that the defender was not within his rights in making the communication complained of. It is true that there was no relation of contract between the defender and the pursuers, and therefore it cannot be said that the defenders in making this communication committed a breach of professional confidence. The papers of the distillery, however, came into his possession in connection with the audit of his employer's books, and for the purposes of that audit only, and the law is not so powerless as to be unable to give protection to the owners of private papers against their unauthorised publication by anyone who may happen to have access to them. Two points are clear—first, that the ownership of manuscript papers, which have either a literary or commercial value, gives their author, or the person for whose benefit they were compiled, a right of property in their contents so long as the owner chooses to keep their contents private; and secondly, that the person to whom the papers are entrusted for a special purpose has only a qualified possession for that purpose, so that any ultroneous use of the papers by him is an infringement of the proprietary rights of their owner.

On the first point I should hardly think it necessary to cite authority. The publication of an author's manuscript without his permission, or that of his executors, is a proceeding which may be restrained by interdict; the cases of Burns' letters (*Cadell and Davies* v. *Stewart*, Mor. App., Literary Property, No. 4) and *Caird* v. *Sime*, 14 R. (H. of L.) 37, being well-known instances. In the first of these cases the argument was not rested so much on literary property as on the right of the author of the letters to protection against possible injury to reputation through the publication of what was not intended for the public eye. Mr Bell in his commentary on the case (Com. i. 112) upholds the decision upon that ground. But the injury to a trader resulting from publicity being given to the contents of his ledger or his bank-book, lists of customers, and the like, if not identical, is at least not less real than the injury to feelings or reputation which may result from the indiscreet publication of private correspondence. Nor is there any particular of business as to which a mercantile man would be more justly sensitive than the statement of profit and loss account. As to the second point, it appears to me that Messrs Cameron & Allan, having only a qualified right to the use of their client's business papers, could give no higher right to these papers than they themselves possessed, and they did not in fact profess to give any right to them except the right of making such use of them as might be necessary for the purposes of the audit. Accordingly I cannot doubt that on a properly supported statement to the effect that Mr Hay was going to communicate the contents of these papers to outside persons, interdict would have been granted against the publication of their contents, and this on the ground of reasonable and necessary protection of private property. There may be limitations to this right, as in the case of literary matter of an unusual tendency, or which on other grounds is not a proper subject of legal protection, but I am unable to see that the defender's action in this case entitles him to any exceptional privilege or immunity. It is not necessary to consider what the defender's position would be if he had confined himself to informing the Inland Revenue officials that he had reason to believe that the income-tax returns of a certain firm were understated, leaving to the Board to call for such returns as they might have the power to demand. What the defender did was to disclose the contents of the papers that were in his possession by furnishing a comparative statement of the actual returns of profits, and what he put forward as the true state of the profit and loss accounts of the distillery. This act was defended as being done in the discharge of a public duty, but I have never read or heard that the duty of assisting the Treasury in the collection of the public revenue was of such a paramount nature that it must be carried out by private individuals at the cost of the betrayal of confidence and the invasion of the proprietary rights of other people.

For these reasons it appears to me that the pursuers are entitled to decree for delivery of such trust papers as the defender may have in his possession, and to interdict as concluded for. The question of damages is one of more difficulty, but the result of my consideration of the point is that I am unable to agree with the Lord Ordinary in his rejection of this claim. If the pursuers were entitled to prevent the misuse of the information which the defender was possessed of by interdict, this must be because the publication of such information to anyone would be a wrongful act. But the wrongful act has been accomplished, the obligation of secrecy is no longer prestable, and reparation in the shape of damages is therefore due. No special damage is proved, and I am not prepared to affirm that the necessary and sufficient measure of damages is the cost to which the pursuers have been put in satisfying the Inland Revenue that the claim is ill-founded. I propose to your Lordships that we should award £20 in name of damages under the third conclusion of the summons.

Lord Adam, Lord Kinnear, and the Lord President concurred.

The Court pronounced the following interlocutor:—

"Adhere to the said interlocutor so far as it ordains the defender to deliver to the pursuers the draft balance-sheet and other documents: *Quoad ultra* recal the interlocutor: Interdict, prohibit, and discharge the defender in terms of the conclusions of the summons: Ordain the defender to make payment to the pursuers, the trustees of the late William Brown of Dunkinty, of £20 in name of damages in terms of the third conclusion of the summons," &c.

Counsel for the Pursuers — Salvesen — Hunter. Agents—John C. Brodie & Sons, W.S.

Counsel for the Defender—J. Wilson—Deas. Agent—Robert Stewart, S.S.C.

Wednesday, July 13.

SECOND DIVISION.

LINDSAY *v.* BETT.

Superior and Vassal—Feu-Charter—Obligation to Pay Public Burdens—Poor Rates and Property Tax.

By feu-charter dated in 1803 a superior undertook an obligation to his vassal and his successors in the feu "to pay the teind-duties, ministers' stipends, schoolmasters' salaries, cess, or land tax, and all other burthens, duties, services, and casualties whatsoever, public and parochial, as well as all others of every description now due and payable, and that shall hereafter become due and payable, or be imposed by any authority whatever for or furth of the said portion of lands or teinds thereof for ever, it having been pactioned betwixt us that he was to pay no more than the said feu-duty and duplication when it shall occur."

Held (1) that the clause only covered those burdens and assessments which affected the land at the date of the grant, and did not impose on the superior an obligation to relieve the vassal of any assessments or burdens laid upon the land by subsequent legislation; and (2) that while the poor rates payable by the owner fell within the clause the property tax did not, the latter being a personal tax on the income derived from the land rather than a tax payable "for or furth of the land" itself —*diss.* Lord Moncreiff, who was of opinion that both poor rates and property tax fell within the clause, because while both were personal taxes in the sense that they were not *debita fundi*, they were payable by the proprietor in respect of his right of property in the land.

By feu-charter dated 29th December 1803, and recorded 5th April 1809, the Honourable Robert Lindsay of Leuchars, then proprietor of the said lands and barony of Leuchars, "in consideration of the feu-duty after mentioned, and of certain other onerous causes and good considerations," disponed in feu-farm to John Young, W.S., and his heirs and assignees whomsoever, heritably and irredeemably, a portion of the estate of Leuchars amounting to 52 acres Scots measure or thereby.

The feu-duty stipulated to be paid by the vassal to the superior was £26 per annum, with a duplication of said feu-duty upon the entry of each heir and singular successor, whether legal or conventional. By the feu-charter the Honourable Robert Lindsay undertook an obligation to the vassal and his successors in the feu in the following terms:—"And I bind and oblige myself and my foresaids" [=heirs and successors] "to pay the teind-duties, ministers' stipends, schoolmasters' salaries, cess or land tax, and all other burthens, duties, services, and casualties whatsoever, public and parochial, as well as all others of every description now due and payable, and that shall hereafter become due and payable, or be imposed by any authority whatever for or furth of the said portion of land or teinds thereof for ever, it having been pactioned betwixt us that he was to pay no more than the said feu-duty and duplication when it shall occur."

Mr Young was infeft upon said feu-charter by instrument of sasine in his favour, dated 8th October, and recorded 16th November 1805. He died in the year 1828, and was succeeded in the said property by his nephew John Learmonth, merchant in Edinburgh, afterwards of Dean, and he, dying in 1859, was succeeded in said property by his son, the now deceased Colonel Alexander Learmonth of Dean. In 1862 the said property was sold by Colonel Learmonth to the now deceased Robert Hawkes Isdale, merchant, Dundee. In 1889 the said property was purchased by James Bett from the trustee on Mr Isdale's sequestrated estate.

The minister's stipend for the estate of Leuchars, and also the old schoolmaster's salary, cess or land tax, and all other burdens imposed upon the valued rent of the estate were paid in full by the superiors of Leuchars Lodge since 1803, no part of these burdens or the valued rent itself having been allocated or laid upon that property. With regard to the other burdens and assessments affecting the feu, these were from time to time the subject of compromises and temporary arrangements between the superior and vassal, but it was admitted by both parties that these did not bar either party from insisting on his full legal rights.

In these circumstances in 1898 questions arose between the superior Sir Coutts Lindsay of Leuchars, Baronet, and the vassal James Bett as to the burdens embraced in the clause of relief. Sir Coutts Lindsay contended that the clause of relief embraced only burdens imposed or which might have been imposed by virtue of laws in existence at the time when the obligation was granted. Mr