asked to explain why they show a different result from the books, if they are not in harmony. The pursuer may say that, either through mistake or otherwise, he has returned his income too low, but I can see no difference in principle between an action of damages for loss of business through personal injury and an action for loss of business in consequence of slander.

LORD ADAM—I am of the same opinion. If a man's books were conclusive evidence of his profits in business it might be irrelevant to ask for diligence to recover other evidence in order to contradict them. But the books are not conclusive evidence, and they may or may not be the best evidence according to circumstances. They may be kept in such a way as not to be entitled to any credit. I think that the statement which a man gives to the Income-Tax Commissioners as to his income is relevant evidence of his profits, and may be better evidence than his books. That shows that these receipts may be of importance with regard to the cardinal fact in question, *i.e.*, what was the amount of the pursuer's profits. I agree that if a man chooses to make a statement of his profits less than he actually earned on his income-tax returns, though it may hurt his feelings to be examined upon them, that is no reason why these receipts should not be used as evidence.

LORD M'LAREN—It must be kept in view that while one man may understate his profits for the purpose of paying income-tax on a less income, another may overstate his profits; in the case, for instance, where he proposes to take in a capitalist partner, or to turn his business into a company. Neither the books nor the income-tax receipts are evidence until proved, but if the books are proved by the testimony of the pursuer that they are correctly kept, that would not prevent the other party from leading evidence to contradict them. It seems to me that the reasons for granting a diligence of this kind in accident cases apply, though not perhaps in the same degree, to other cases in which the amount of the pursuer's income is an element in the case.

LORD KINNEAR—I do not see any distinction between one case in which the pursuer complains of loss of business and another. I think the rule must be the same whether the cause of loss be personal injury or slander. I do not at all proceed on the assumption that the income-tax receipts will contradict the pursuer's books, but it appears to me, as your Lordships have explained, that though the income-tax receipts are not evidence, they may be made evidence by putting them to the pursuer and asking him whether these are the sums he paid, because the fact that he paid at a certain rate is an item of evidence tending to show what the amount of his profit really was. In that respect they stand on the same footing as the pursuer's books; they are neither of them conclusive evidence, but they may be made evidence if the pursuer is properly examined upon them.

The Court granted the diligence.

Counsel for the Pursuer—Clyde. Agent—W. C. B. Christie, W.S.

Counsel for the Defenders — Cooper. Agents—Millar, Robson, & M'Lean, W.S.

Saturday, March 16.

FIRST DIVISION.

(Without the Lord President.)

MACDONALD *v.* HEDDERWICK & SONS.

Proof—Diligence—Slander in Newspaper—Recovery of Defender's Business Books to show Circulation of Newspaper and Localities in which Sold.

In an action of damages against the proprietors of a newspaper for slander alleged to be contained in an article which had appeared in the paper, *held* that the pursuer was entitled to a diligence to recover the defenders' business-books in order to show the circulation of the newspaper at the date on which the alleged slander was published, but was not entitled to have excerpts from the books in order to show the localities in which the newspaper was sold.

The circumstances of this case are reported in the preceding report, p. 455.

The pursuer asked for a diligence for the recovery of, *inter alia*, "the business-books of the defenders relating to the business carried on by them as proprietors and publishers of the *Glasgow Evening Citizen* newspaper, including their cash-books, ledgers, day-books, sales-books, balance-sheets, and generally all books and memoranda showing or tending to show the number of copies of the *Glasgow Evening Citizen* sold or circulated, and the places in which such copies were sold or circulated in the years 1899 and 1900."

The defenders opposed the granting of the diligence on the ground that the circulation of the *Evening Citizen*, and the localities in which it was sold, were matters which ought to be proved at the trial by the evidence of their manager and agents.

LORD ADAM—My view of this case is that the pursuer is entitled to know the average circulation of the newspaper at the time of the alleged slander. He is not bound to take as sufficient the statement of the officials of the defenders by putting them into the witness-box. To restrict him to that would be against all principle—I mean that it would not do to refuse the diligence merely on the ground that the pursuer is able to get the evidence he requires by putting the defender into the witness-box. Accordingly, I think that the pursuer is entitled to some information from the books, but I dissent to granting an order in

the terms of the specification, viz.—[*His Lordship read the part of the specification which is quoted supra*]. That call is a great deal too wide, and would open up an inquiry into the whole business of the company. If, however, there is a book, or if there are books, in the business which would show the number of copies printed and issued, then I think the pursuer is entitled to the information that he can get from them. That is a matter probably that can easily be adjusted by the parties.

As to the call for excerpts of entries showing the particular places where the newspaper was disposed of, I do not think that that is a matter to be granted. That is a question of fact which ought to be ascertained and proved in the usual way, and not by means of entries from the defenders' books. I am for refusing that part of the specification.

LORD M'LAREN—I think that it is the right of the pursuer to obtain a return of the approximate circulation of the newspaper in question at the time of the alleged libel. The expense of a diligence in a case like the present is often obviated by the defender voluntarily giving the information which is sought. As that has not been done here I think the pursuer is entitled to a diligence. As regards the distribution of the circulation throughout the West of Scotland, I think that that is a fact which is capable of being proved by oral evidence within such limits of accuracy as are required for the purposes of the case, and I agree that this part of the specification ought not to be granted.

LORD KINNEAR concurred.

The specification was accordingly amended at the bar so as to read as follows:—"The books . . . containing records of the number of copies printed, issued, sold, or returned, that excerpts may be taken therefrom by the commissioner showing the average circulation of the paper for the month of September 1900."

The Court granted the diligence on the specification as amended at the bar.

Counsel for the Pursuer — Clyde. Agent —W. C. B. Christie, W.S.

Counsel for the Defender — Cooper. Agents—Millar, Robson, & M'Lean, W.S.

Tuesday, March 19.

FIRST DIVISION.

(Lord Kyllachy, Ordinary.

DISTRICT COMMITTEE OF LOWER WARD OF LANARKSHIRE *v.* MAGISTRATES OF RUTHERGLEN.

Local Government—Burgh—County—Royal Burgh—Public Health—Local Authority —Area Within Ancient Royalty but Outside Parliamentary and Municipal Boundaries—Limits of Burgh and County —Statute—Construction—Public Health (Scotland) Act 1897 (60 *and* 61 *Vict. cap.* 38), *secs.* 3 *and* 12.

Section 12 of the Public Health (Scotland) Act 1897 provides that the local authority to execute the Act shall be in burghs the town council, and in counties the district committee of the county council. The word "burgh" is defined as including (section 3) "not only royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, but also any police burgh within the meaning of the Burgh Police (Scotland) Act 1892." The word "county" is defined as meaning "a county exclusive of any burgh." *Held* that for purposes of public health administration under the Public Health (Scotland) Act 1897 the area of a royal burgh includes the whole royalty of the burgh, and is not limited either to the police and municipal area or to the area of the burgh as defined for parliamentary purposes.

This was an action at the instance of the District Committee of the Lower Ward of the County Council of the County of Lanark against the Provost, Magistrates, and Town Council of the Royal Burgh of Rutherglen, and also against William Ferguson, C.A., trustee on the sequestrated estates of Smith & Riddell, builders, Rutherglen, who were the builders of certain houses situated upon property which was within the royalty of the said burgh, but outside the limits of that burgh as defined by the Representation of the People (Scotland) Act 1832 (2 and 3 Will. IV. cap. 65), Sched. M, for the purpose of the parliamentary franchise, and adopted by the Royal Burghs (Scotland) Act 1833 (3 and 4 Will. IV. cap. 76), for the purpose of the municipal franchise.

The pursuers concluded, *inter alia*, for declarator that "the pursuers, the District Committee of the Lower Ward of the County of Lanark, are the local authority for executing the Public Health (Scotland) Act 1897 in the district of the Lower Ward of Lanarkshire; that by virtue of the powers conferred upon them by section 181 of the said Public Health (Scotland) Act 1897 the said pursuers made byelaws for the whole of their district for regulating the building or re-building of houses or buildings, which byelaws were made and enacted on 10th January and 7th February