On these grounds I am for affirming the Dean of Guild's judgment.

LORD YOUNG—The part of Glasgow in question is a residential part, not a business part. It appears from the deeds which have been laid before us that in 1860, when this ground began to be feued out for building, care was taken to insure that only dwelling-houses of a certain class should be erected upon a certain piece of ground belonging to the person who was feuing out the lands. He desired that the dwelling-houses to be erected upon his ground should be of a certain style and class. The feuars on the other hand were desirous and were interested in having those who might also feu from the proprietor prohibited from using the ground for certain purposes to which objection might be taken. While the conveyancing is not good I think this restriction is sufficiently made in the clause which your Lordship read. It follows upon an obligation imposed upon the disponees to erect dwelling-houses of a certain class and according to certain plans. It is as follows—"It is hereby further declared that the said first parties shall not feu or sell any part of the said remaining ground of which the subjects hereinbefore disponed form part as aforesaid for the erection of public works or for the erection of buildings of a style or class inferior to those to be erected on this steading hereinbefore disponed." Now I cannot read that as meaning anything other than this—"you are not to feu out the rest of the ground for other purposes than these to which you have obliged us." And then come the two exceptions—[*His Lordship read the remainder of the clause*]. Now, I think that it is impossible to read in a third exception to the effect that the appellant is also to be at liberty to employ a piece of the ground in erecting a dairy—even an inefficiently conducted dairy. He is not to go into trading with the land and carry on what is called in ordinary language a public dairy.

I suggested to the Dean of Faculty during the argument the question whether if such a thing had been proposed to the feuars when they took these feus they would have been willing to take them. The only answer which I obtained was that no such proposal was made, and that it is impossible to say that any feuar would have objected to the use of the ground which is now proposed if he had known of the proposed use when he took his feu. But the same answer might have been made if what was proposed had been the erection of a public slaughter-house. We must take a reasonable view of the restriction, and that leads to the result that people who have stipulated that the ground shall be occupied by dwelling-houses of a certain class did not mean and intend that the subjects should be used for purposes of trade.

I therefore agree that the judgment of the Dean of Guild should be affirmed.

I may add that I do think that there is any case here for looking upon the appellant as a subject of compassion. This triangular piece of ground is unfitted for the erection of dwelling-houses of a specified class. But when the appellant's authors divided out their ground the arrangement of it which they made was their own arrangement, and it is no hardship if they are held to it. That being sufficient for the case, I need give no opinion upon the clause declaring that the appellant's author "shall not be entitled to erect or carry on in or upon the foresaid subjects above disponed, any steam engine, foundry, sugar, candle, soap, smelting, indigo dyeing, glue or nail works, or any other works or occupation which shall be considered nauseous or injurious by the said first parties and their foresaids or the adjoining proprietors, although the same shall not be legally declared a nuisance." I am not prepared to say that that clause might not be sufficient for the respondent's purpose. The proposed buildings are not indeed of the nature of some of the things which the conveyance has superfluously named. It is that superfluity which leads to difficulty and trouble. But I think it is a legitimate and reasonable construction that such trade buildings as are proposed might reasonably be held injurious to the adjoining proprietors within the meaning of this clause. It is to be noticed that that is the opinion of the Dean of Guild, a practical man. But it is unnecessary to decide this point.

LORD RUTHERFURD CLARK—I am of the same opinion. There is sufficient for the judgment in the clause relating to the class of building. As to the other point it is not necessary to decide upon it. But my impression at present is that the respondent's argument on this question also is sound.

LORD TRAYNER concurred.

The Court refused the appeal.

Counsel for the Appellant—D.-F. Sir C. Pearson, Q.C.—Dean Leslie. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Respondent—Salvesen. Agents—Simpson & Marwick, W.S.

Friday, December 16.

FIRST DIVISION.

HALCROW *v.* SHEARER.

Process—Diligence—Report by Procurator-Fiscal.

The pursuer in an action of damages for slander alleged that he had been dismissed from the police force of a county in consequence of false statements regarding his conduct made by the defender. The defender in answer averred, *inter alia*, that the pursuer had not been dismissed in consequence of any statements made by him, but in consequence of a report made by the procurator-fiscal of the county, to whom the police committee had remitted to inquire and report. The case having been set down for trial at the winter sittings, the defender applied for a diligence to recover this report. He submitted that as the report had been made to a committee of the county council, and not in the regular course of the procurator-fiscal's public duties, the objection of injury to the public service did not arise.

He further submitted that where, as here, it was essential to justice being done that a document should be recovered, the Court would be slow to refuse a diligence on the ground of possible injury to the public service, and referred to the following cases—*Stiven* v. *Dunbar*, 1727, M. 7905; *Henderson* v. *Robertson*, January 30, 1853, 15 D. 292. Counsel for the Lord Advocate admitted that the report had not been made to the Crown Office, and explained that the Crown officials had not had time to ascertain the particular circumstances in which it had been made, but objected to the diligence being granted on the ground that the production of the report might be prejudicial to the public service.

The Court *granted* the diligence, but directed the commissioner to seal up the Procurator-Fiscal's report and to transmit the same to the clerk to the process to lie *in retentis* and await the orders of Court.

Counsel for the Pursuer—Abel. Agents Gill & Pringle, W.S.

Counsel for the Defender — N. J. D. Kennedy. Agents—Macpherson & Mackay, W.S.

Counsel for the Lord Advocate—Strachan.

Thursday, December 22.

FIRST DIVISION.

JOHNSTON *v.* CALEDONIAN RAILWAY COMPANY.

Proof—Diligence—Action of Damages for Personal Injuries—Defenders' Right to Recover Pursuer's Business Books and Income-Tax Receipts.

In an action of damages raised in October 1890 for personal injuries alleged to have been sustained on 8th June 1890 through the defenders' fault, in which the pursuer averred that his business had suffered owing to his inability to attend to it in consequence of these injuries, the defenders moved for a diligence to recover the pursuer's business books and income-tax receipts from 1st January 1890 onwards. The Court *granted* the diligence.

Case of *Craig* v. *North British Railway Company*, July 3rd 1888, 15 R. 808, commented upon.

James Johnston, horse and cattle dealer, Lochburn, Maryhill, brought an action in the Sheriff Court at Glasgow against the Caledonian Railway Company for £3000, as damages for personal injuries sustained by him upon 8th June 1892 owing, as alleged, to their fault.

He averred that he was carried home and during seven weeks was unable to move in bed, and for weeks thereafter was only able to go about the house. . . . "(Cond. 6) Whilst he was confined to bed, the pursuer was unable to take any supervision of his business, which fell into great confusion, and he suffered much pecuniary loss in consequence; and since he got up, the weakened state of his health and constitution has debarred him from giving that careful and energetic attention to his business which it requires, and which he was formerly able to render. In particular, he has sustained great loss through being unable to go on with the sale of a large stud of horses which he had when the accident happened, and which he was then about to expose to public sale, the beginning of the summer being the proper season for such a sale, and he has had to keep the horses until now. He has also lost much profit which he would have earned on certain valuable entire horses which he had at the time of the accident."

The case was removed to the Court of Session for jury trial. Before the trial the defenders asked for a diligence to recover "(1) the business books of the pursuer, including his cash books, ledgers, bank books, memorandum and day books, stock books and stock sale books, for the period from 1st January 1890 to the present date, that excerpts may be taken therefrom showing or tending to show the profits of the pursuer's business during that period. . . . (3) The receipts for income-tax paid by the pursuer for the years 1890-91, 1891-92, and 1892-93, and the notice of assessment for the year 1892-93."

On the ground that some difference in practice existed as to granting such a diligence, the Lord Ordinary (KINCAIRNEY) reported the case to the First Division.

It was argued for the applicants—The pursuer had put his business affairs in issue, and the defenders must be put in a position to ascertain his real loss, if any, by comparing one year with another. The books for the time the pursuer was confined to the house were quite insufficient. There was no answer to this motion based upon principle. The only authority against it was the case of *Craig* v. *North British Railway Company*, July 3rd 1888, 15 R. 808. But that case was unsatisfactory, was a surprise to the profession, and after all only decided that the time there specified—viz., four years, was too long. The motion here made to recover the books and income-tax receipts for three years was fair and reasonable.

Argued for pursuer — No general rule could be laid down but to ask to see the books for three years was in the words of Lord Young in *Craig's* case "an altogether unreasonable demand." In that case only Lord Rutherfurd Clark referred particularly to the income-tax receipts, and he expressed