article complained of that if he succeeds in proving his innuendo he must succeed in his action.

LORD YOUNG—I am of the same opinion. The pursuer here does not allege anything against the newspaper in which the articles appeared which were said to be offensive. On the contrary, he says there was nothing to be ashamed of in it. But he says that in another newspaper it was said that discreditable and offensive articles appeared in a newspaper which was alleged to be run in his interest, and that he himself wrote the most offensive of these articles, although he denied all connection with the newspaper in which they appeared. The pursuer says this is false and calumnious.

I never heard before that it is not actionable to say of a man that he was the editor and financier of a newspaper in which discreditable and offensive articles appeared, the most offensive of which were written by himself, although he denied all connection with the newspaper, if all this is false. I never heard that it was not. Suppose such a thing was said of a minister—suppose it was said of a minister who was just about to be chosen as Moderator of the General Assembly. To say that such a statement is not slanderous and actionable is a proposition to which I cannot accede.

I have already said that I think the parties would we well advised to settle the differences between them without affording the public, and particularly the public of the town in which they live, the entertainment of having them discussed at a jury trial. But that is not their view, and taking the case as it stands I think the issue should be allowed.

LORD TRAYNER — I am of the same opinion. On the matter of the counter-issue I think the defender has averred matter which is sufficient to entitle him to it.

With regard to the issue allowed to the pursuer, I can see no reason why it should not be allowed.

The Court refused the reclaiming-note, adhered to the interlocutor reclaimed against, and remitted the cause to the Lord Ordinary to proceed therein as accords, finding no expenses due to or by either party.

Counsel for the Pursuer—Salvesen—A. S. D. Thomson. Agents—Morton, Smart, & Macdonald, W.S.

Counsel for the Defender—F. T. Cooper. Agent—James G. Bryson, Solicitor.

Thursday, March 9.

SECOND DIVISION.

[Sheriff of Lanarkshire.

SOMERVILLE *v.* JOHNSTON.

Process—Maills and Duties—Competency of Action of Maills and Duties by Holder of Ground-Annual.

An action of maills and duties was raised by the holder of a ground-annual constituted by a contract in which the lands themselves were conveyed and the rents assigned in security of the the ground-annual.

Held that the action was competent.

By contract of ground annual dated 11th and recorded 15th November 1875, Andrew Crawford, with consent of John Somerville, for his own right and interest, assigned and disponed in favour of Mathew Gemmell and his heirs and assignees whomsoever, heritably and irredeemably, two steadings of ground in Hutchesontown, Glasgow. The subjects were disponed under, *inter alia*, the real lien and burden of a yearly ground-annual or ground rent of £35, payable half-yearly, together with a duplication thereof every nineteenth year to be paid to and taken and uplifted by the said John Somerville and his heirs or assignees or disponees whomsoever, furth of and from the subjects disponed, and the buildings to be erected thereon, and readiest rents, maills, and duties of the same. By the contract Mathew Gemmell bound and obliged himself and his successors in the said subjects to pay to John Somerville and his foresaids the yearly ground-annual and duplication thereof, and disponed to John Somerville and his foresaids, not only the ground-annual and the duplication foresaid, but also the subjects themselves and the buildings to be erected thereon, in security of payment of the ground-annual. The contract also contained an assignation of the rents in favour of John Somerville.

By disposition dated 24th October and recorded 9th November 1876 Mathew Gemmell disponed the two steadings of ground to Alexander Johnston under burden of the ground-annual.

The ground-annual was not paid from Whitsunday 1881 to Martinmas 1897, and in April 1898 John Somerville raised, in the Sheriff Court at Glasgow, an action of maills and duties against Alexander Johnston and the tenants of the subjects for payment of (1) £612, 10s., being the arrears due; (2) £236, 5s., being interest on the arrears; (3) the yearly ground-annual of £35 and duplication thereof thereafter to become due.

Alexander Johnston defended and pleaded —(1) The action is irrelevant and incompetent.

On 27th July 1898 the Sheriff-Substitute (BALFOUR) repelled the defences and decerned in the maills and duties as craved in the petition.

"*Note.*— . . . With reference to the first

plea, the defender maintains that the holder of a ground-annual cannot raise an action of maills and duties, and reference was made to the cases of *The Prudential Assurance Company* v. *Cheyne*, 11 R. 871, and *Nelson's Trustees* v. *Todd*, 23 R. 1000. By these cases it was decided that neither a superior nor the creditor in a bond and disposition in security of a superiority can pursue an action of maills and duties for recovery of feu-duty. The ground of the judgments is that a superior is not owner of the feu, and has no title on which he can oust the vassal and enter into possession, but he may poind the ground, which one in possession cannot do. The holder of a ground-annual, however, is in a different position, and he can raise an action of maills and duties and enter into possession in the same way that the creditor in an annuity secured by bond of annuity and disposition in security can. This is distinctly laid down in Bell's Lectures on Conveyancing, pages 1147-8, and the same proposition is stated in the last edition of Bell's Principles, section 887a." . . .

The defender appealed to the Sheriff (BERRY), who on 24th November 1898 adhered.

"*Note.*—The pursuer of this action is the holder of a ground-annual under a contract which contains, as is usual, in security of its payment, a conveyance of the subjects and an assignation to the rents in his favour. The question is raised whether he has the remedy of an action of maills and duties for its recovery. I am not aware of any decision bearing directly on the point, but I think that the principle recognised in more than one case, as governing the right to bring such an action, applies to the case of the holder of a ground-annual who stands in right of a disposition to the land and an assignation to the rents. He is in a different position from the superior of the property, who, as having no right to enter into possession, cannot sue in an action of maills and duties. That a superior is excluded from this remedy was decided in the *Prudential Assurance Company* v. *Cheyne*, 11 R. 871. The ground of his exclusion is well stated in the judgment of Lord Rutherfurd Clark in that case. He states that the superior by the very terms of his grant guarantees to his vassal the right to possess the feu. To dispossess the vassal from his position would be a violation of the feu-charter. No such difficulty lies in the way of the holder of a ground-annual, who stands in the right of an assignation to the rents. I think that a disposition to the lands, coupled with an assignation to the rents, places the pursuer in the same position as a heritable creditor in regard to the remedy of an action of maills and duties."

The defender appealed, and argued—The holder of a ground-annual was not a heritably secured creditor. There was no precedent for a holder of a ground-annual suing an action of maills and duties. There was no instance of such in the books of style.

Counsel for the pursuer were not called on.

LORD JUSTICE-CLERK—I think that there is no doubt that this action is competent.

LORD YOUNG—I agree with the judgment appealed against.

LORD TRAYNER—I think that it is quite clear that the Sheriffs were right, and I see no possible ground of objection to their decision.

LORD MONCREIFF concurred.

The Court adhered.

Counsel for the Pursuer — Salvesen — Sanderson. Agents—P. Morison & Son, S.S.C.

Counsel for the Defender—Crabb Watt. Agent—L. M'Intosh, S.S.C.

Friday, March 10.

FIRST DIVISION.

DISTILLERS' COMPANY, LIMITED, *v.* INLAND REVENUE.

Revenue—Stamp—"Warrant for Goods"—Stamp Act 1891 (54 *and* 55 *Vict. cap.* 39), *sec.* 111 (1), *and First Schedule.*

A firm of distillers wrote to Messrs A B as follows:—"We beg to acknowledge receipt of delivery-order dated 31st October 1898, granted by Messrs Y Z in your favour, and we have to intimate that rent on the casks therein specified will be charged to you from 31st October 1898, the goods having been transferred to your name as at that date. *Note.*—This acknowledgment is given subject to the company's statutory right of lien, and to their stipulated right of lien, and other conditions specified on the back hereof."

Held that this instrument was a "warrant for goods," and therefore liable to a stamp-duty of threepence under the Stamp Act of 1891, sec. 111, sub-sec. (1), and First Schedule.

This was a case stated on appeal by the Distillers' Company, Limited, against a determination of the Inland Revenue Commissioners that the following instrument was chargeable as a warrant for goods with a duty of threepence, under the Stamp Act 1891, sec. 111 (1):—

"*Caledonian Distillery,*
"*Edinburgh, 3rd Nov.* 1898.

"Messrs D. & J. Robertson, Edinburgh.

"Dear Sirs,—We beg to acknowledge receipt of delivery-order dated 31st October 1898, granted by Messrs Stodart & Wilson, Leith, in your favour, and we have to intimate that rent on the casks therein specified will be charged to you from 31st October '98, the goods having been transferred to your name as at that date.—We are, dear Sirs, yours obediently, THE DISTILLERS' COY. (LTD.), *per* T. T. SUTHERLAND. *Note.*—This acknowledgment is