his possession the 'books' in which the 'book debts' are recorded.

"Upon the whole matter I am clearly of opinion that the Sheriff-Substitute is right."

The pursuer appealed, and argued—The principal value of the business books was to instruct debts due to the pursuer; therefore his was the primary interest in them. The defender's interest in them for the purposes of the business would be served by his having access to them. The Sheriff and Sheriff-Substitute had considered the case from the view that the pursuer wanted the books to collect the debts, but the true view was that the books remained the property of the pursuer, there being nothing in the agreement to deprive him of it. The meaning of the agreement was that it reserved to the pursuer everything that was not expressly carried.

The defender was not called upon.

LORD PRESIDENT—Mr Morison has stated everything which could be urged against the judgments of the Sheriff-Substitute and Sheriff, but it appears to me that these judgments are entirely correct. The question to whom the business books and documents sued for belong depends on the terms of the agreement between the parties, and on that agreement the first question is, whether these books and documents are included in the sale of a "business of tailors and clothiers" such as was sold by the pursuer to the defender. In the absence of some express restriction or limitation it seems to me that things so essential to the successful prosecution of the business as the business books and documents would be included. One of the most important things in a business is its trade connection—not merely the connection with persons to whom the owner of the business sold, but with the wholesale houses and merchants from whom he bought. It would be very material to the buyer of a business to know not only the persons with whom but also the terms on which it had been conducted. That knowledge might greatly affect the value and success of the business; the buyer would see from the books not only the names of the customers, but also whom he could trust and whom he could not trust, as well as the terms on which wholesale houses dealt.

Mr Morison relied chiefly on the pursuer's wish to have the means of getting in his outstanding accounts; but looking to the enumeration of books and documents sued for, that consideration would apply only to a comparatively small part of them. On the other hand, all the books and documents sued for might be required by the person carrying on the business, because without them he would be very much in the position of a person starting a new business without any trade connection. Accordingly, I think that if there had been no stipulation relative to the books and business documents in the agreement, the Sheriffs would have been right in thinking that the sale carried them to the purchaser. But, further, it is stipulated in the agreement that the defender shall act in effect as the pursuer's agent to collect the book debts due to him, and that implies that he should have the books necessary to enable him to do so. Mr Morison would say, however, that although the defender was to act as agent for the pursuer in that matter, the pursuer could intervene at any time and say he no longer wished the defender to collect the debts, and demand the books to enable him to collect them himself. That would raise a wholly different question from that which is presented in this action.

It is needless to say what might have been the rights of the pursuer if he had alleged that the debts due to him were not being collected by the defender, and that he desired the books or access to them to enable him to collect them himself, as he makes no such allegations. His claim is based exclusively upon the contention that he has right to the property of the books, and it appears to me that so far from the right of property in the books under such a contract being reserved to the seller it must pass to the buyer. I therefore think that the judgments of the Sheriff-Substitute and Sheriff should be affirmed.

LORD M'LAREN and LORD KINNEAR concurred.

LORD ADAM was absent.

The Court refused the appeal and affirmed the interlocutors of the Sheriff-Substitute and the Sheriff.

Counsel for the Pursuer—Campbell, Q.C. —T. B. Morison. Agent—A. C. D. Vert, S.S.C.

Counsel for the Defender—Salvesen, Q.C. —Hunter. Agent—James Ayton, S.S.C.

Friday, January 12.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

CHRISTIE *v.* CRAIK.

Issue—Counter-Issue—Whether Counter-Issue Meets Issue.

In an action of damages for slander the question raised in the pursuer's issue was whether the defender stated that the pursuer had supplied hay and straw above the market price to the police commissioners of a burgh, of which body he was a member, "and had intimidated a public servant of the commissioners in order to induce him to purchase." The issue also contained an innuendo to the effect that the words used imputed corrupt dealing by the pursuer in his capacity as police commissioner. The innuendo contained no reference to the charge of intimidation. The counter-issue proposed by the defender was, "Whether the pursuer, while holding office as a police commissioner, did supply hay or

straw at a price higher than the current market price, . . . and did induce the servant of the commissioners to purchase." The pursuer contended that the words "by intimidation" should be inserted in the counter-issue before the word "induce." The Court *held* that the pursuer was not entitled to insist on the insertion of the words, on the ground that the innuendo, in which lay the sting of the issue, contained no reference to intimidation.

An action was raised by James Christie, Forfar, against Robert Craik, Forfar, concluding for payment of £1000 as damages for alleged slander.

After sundry procedure the Lord Ordinary (KINCAIRNEY), in an interlocutor dated 23rd June 1899, appointed two issues and counter-issues for the trial of the case, of which the first were in the following terms:—"(1) Whether, on or about the 29th October 1898, and within the West Burgh Schoolroom, Forfar, and in the presence and hearing of James Lowden, deputy procurator-fiscal, Forfar, John Macdonald, newspaper proprietor, there, Andrew Peffers, sheriff-officer, there, William Allardyce, beltmaker, there, Donald Macintosh, solicitor, there, David Davidson, farmer, Northampton, there, James P Rough, post-runner, there, John Cable, surgeon, there, Henry Tait, veterinary surgeon, there, John Laird junior, mason, Gowanbank, there, John Peffers, dyer, there, Andrew Easton, contractor, there, James Adamson, tacksman, there, Alexander Lyall, contractor, there, James Easson, joiner, there, or of one or more of them, the defender falsely and calumniously and maliciously stated that the pursuer had supplied hay and straw above the market price to the Police Commissioners of Forfar while he was a police commissioner, and had intimidated a public servant of said Commissioners named John Pearson, in order to induce him to purchase said hay and straw at said higher prices, or used words of similar import, thereby falsely, calumniously, and maliciously representing that the pursuer had been unfaithful to the public trust reposed in him as Town Councillor and Police Commissioner of Forfar, and had in his said official capacity acted corruptly for his personal benefit or pecuniary gain, to the loss, injury, and damage of the pursuer?"

"(1) Whether the pursuer, while holding office as a Police Commissioner of the royal burgh of Forfar, did on one or more occasions between 1st February 1897 and 31st October 1898 supply hay or straw at a price or prices higher than the current market price or prices to the said Police Commissioners, and did induce John Pearson, the servant of said Commissioners, to purchase said hay or straw on their behalf at a price above said market rate?"

The pursuer reclaimed against this interlocutor, and moved the Court to vary the terms of the first counter-issue by inserting after the word "did" and before the word "induce" the words "by intimidation."

He argued, that without these words the counter-issue did not meet his issue, and that if it were necessary to put intimidation into the issue it must also appear in the counter-issue.

Argued for respondent—The innuendo contained in the issue did not refer to intimidation, and as the sting of the issue was contained in the innuendo it was sufficiently met by the counter-issue.

LORD PRESIDENT—There is no doubt that a counter-issue must meet the substance of the principal issue—that is to say, it must put the question whether the pursuer did the thing which the language complained of in that issue charges him with having done. Now, the first issue puts the question whether the defender stated that the pursuer had supplied hay and straw above the market price to the Police Commissioners of Forfar while he was himself a Police Commissioner, and continues "and had intimidated a public servant of said Commissioners named John Pearson, in order to induce him to purchase said hay and straw at said higher prices." It may be that if the pursuer had taken a separate issue, putting the question whether the defender had charged him with having induced a public servant by intimidation to act contrary to his duty, or even if he had made that part of the innuendo with which the principal issue concludes, he would have been entitled to insist that the substance of that charge should be inserted in any counter issue proposed. But the pursuer has added an innuendo to the principal issue, explaining the meaning of the language of which he complains, and the innuendo does not contain a word about the charge of intimidating a public servant in order to induce him to act contrary to his duty. The whole innuendo, which contains the sting of the issue, is that the words used imputed corrupt dealing by a town councillor in transactions with the town council. I am therefore of opinion that the Lord Ordinary was right in holding that the pursuer is not entitled to insist on having the words "by intimidation" inserted in the first counter-issue.

LORD M'LAREN—The only criticism which it occurs to me to make on the first issue as adjusted is, that, as I think, the innuendo is superfluous. In the words which the defender is represented to have used he charges the pursuer in simple savage English with having committed a breach of trust by selling goods to the town at more than their market price—that is, with a breach of trust which might have been made the subject of an action for reducing the sale. The innuendo explains the charge to mean that the pursuer acted corruptly for his personal benefit, but I cannot see that it adds anything to the substance of the charge. However, as the pursuer has put an innuendo upon the words complained of, and no objection has been taken, it seems to me that the counter-issue should be substantially an echo of the charge in the principal issue as explained in the innuendo, and that the defender cannot be called upon to prove a fact which is not

charged in the principal issue.

LORD ADAM and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"The Lords having considered the reclaiming-note for the pursuer against the interlocutor of Lord Kincairney dated 23rd June 1899, together with the notice of motion for the pursuer to vary counter issue, and heard counsel for the parties upon the amended issues and counter-issues proposed by the pursuer and the defender respectively, adjusted and authenticated by the Lord Ordinary: Adhere to the Lord Ordinary's said interlocutor of 23rd June 1899: Refuse the reclaiming-note and the motion to vary counter-issue: . . . Find the defender entitled to expenses since the date of the interlocutor reclaimed against, and remit," &c.

Counsel for the Pursuer—Guthrie, Q.C.—Gunn. Agents—Mackay & Young, W.S.

Counsel for the Defender — Dean of Faculty (Asher, Q.C.)—Kennedy. Agents—Gordon, Falconer, & Fairweather, W.S.

Tuesday, January 16.

SECOND DIVISION.

[Sheriff of Lanarkshire.

LITTLE *v.* P. & W. MACLELLAN, LIMITED.

Reparation — Master and Servant — Personal Bar — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1 (1) *and* (2) (*b*)—*Election to Accept Provisions of Act.*

A workman who had sustained injuries received from his employer certain weekly payments extending over a period of six months from the date of the accident, and signed receipts therfor which bore to be granted "in full satisfaction of amount due to me as compensation under the Workmen's Compensation Act 1897 . . . based on my average weekly earnings in accordance with the said Act." Thereafter he brought an action in which he claimed damages at common law and under the Employers Liability Act 1880, subject to deduction of the sums already received by him. He alleged that he had accepted the payments made to him as payments to account of the compensation due to him by law, and that he did not understand he was thereby making an election of the provisions of the Workmen's Compensation Act 1897. *Held* that the pursuer had not stated any relevant ground for setting aside the receipts granted by him; that in granting these receipts he must be considered to have elected to accept the provisions of the Workmen's Compensation Act 1897; and that consequently in terms of section 1 (2) (*b*) of that Act he was barred from insisting in an action of damages for the same injuries.

Process — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *sec.* 1 (4)—*Reparation.*

An action of damages for personal injuries at common law and under the Employers Liability Act 1880 having been dismissed on the ground that the pursuer was barred from insisting in it by having elected to accept the provisions of the Workmen's Compensation Act 1897, the Court, in pursuance of section 1 (4) of that Act, *remitted* to the Sheriff to determine the amount of compensation due under the Act, and found the defenders entitled to expenses.

This was an action brought in the Sheriff Court at Glasgow by John Ryan or Little, blacksmith, Glasgow, against P. & W. MacLellan, Limited, 129 Trongate, Glasgow, and Clutha Works, Vermont Street, Kinning Park, in which the pursuer craved decree for the sum of £500, or otherwise for the sum of £280, 16s.; "subject alternative sums to deduction of the sum of £19, 10s. paid to account," as damages due to him at common law or under the Employers Liability Act respectively on account of personal injuries sustained by him while working in the defenders' employment, and due as he alleged to the fault of the defenders or of those for whom they were responsible.

The question in the case came to be, whether the pursuer was barred from insisting in this action by having received certain weekly payments from the defenders.

With regard to this the pursuer averred as follows:—"(Cond. 19) The defenders have since the accident paid to the pursuer to account the sum of £19, 10s. by weekly payments of 16s. 3d. from 29th August 1898 to 13th February 1899. The defenders' statement in so far as inconsistent herewith denied."

In answer the defenders averred as follows:—"Denied as stated, and explained that pursuer elected to take provisions of the Workmen's Compensation Act 1897, and has been paid regularly under said Act down to the date of raising this action."

The pursuer averred that the accident took place on 15th August 1898, that his average wages were 36s. per week, that he was still under treatment, and that as a result of the injuries received he had permanently lost the use of his right hand for work.

The defenders in addition to pleas upon the merits of the action pleaded as follows:—"(1.) The action is incompetent and irrelevant either at common law or under the Employers Liability Act 1880. (4) The pursuer having elected to take the benefit of the compensation allowed under the Workmen's Compensation Act 1897, and his one-half wages having been paid to him thereunder, he is barred in insisting on this action."