naturally called on the makers to do what was deemed necessary instead of putting the machine into other hands. I am not to be understood as implying that in the case supposed a buyer is entitled to reject a machine which he has used if the defect is capable of being supplied without detriment to the buyer's interests. In the very carefully considered case of *Pearce Brothers*, 7 Macph. 571, it was decided that in such a case the right of the purchaser was to have the defective part of the machine replaced at the seller's expense. Of course there may be cases where machinery is throughout defective, badly constructed, or made of bad material. But then that would not be a case of latent insufficiency, because every purchaser of a machine for personal use must be credited with such knowledge of the tools with which he works as will enable him immediately, or after a short trial, to find out that the thing is radically insufficient. But if the defect is not immediately discoverable, and the machine breaks down after use, then it is considered to be inequitable that the damaged article should be thrown on the maker's hands, and the right of the buyer is to have the machine put into proper repair by the seller or at his expense.

When the pump was sent to Glasgow it was found that the four valves on which its working depends were all affected by the same fault. The valve is a small cylinder with a spindle fixed in its axis of symmetry, on which a circular disk rises and falls alternately, admitting and excluding the water. The spindle ought, of course, to be rigidly attached to the upper and lower faces of the cylinder, and then the disk will move vertically, preserving its parallelism. In order that the valves may be cleaned, the valve cover or upper face of the cylinder is fixed only by screw bolts, and in its centre there is a small projection or "boss" with a hole in it, into which it is intended that the end of the spindle shall be inserted, and held fast when the cover of the cylinder is screwed down. It was found that part of the "boss" in each valve cover had been cut away, so that the spindle was not fixed at its upper extremity, and it was evident from marks of wear that the disks had not been working properly. There is some evidence to the effect that the "bosses" had been cut while the pump was in the pursuers' hands, it is supposed for the purpose of giving a greater range or amplitude to the movement of the disks. The Lord Ordinary has rejected this evidence as untrustworthy, and has fixed the responsibility for the defective structure of the valves on the maker. Now, the patterns from which the valve covers were cast are produced, and the founder (who is not connected in business with the pursuers) depones that he supplied the covers cast from these patterns. I find it hard to believe in the face of this evidence that the valve covers, when sent out by the makers, were minus the part cast on them for the reception of the ends of the spindles. Besides, I should imagine that with a loose spindle the valve would not work for a single day without breaking down. But I understand that your Lordships are all of opinion that on a pure question of evidence it would not be right to question the Lord Ordinary's opinion, and I only state the substance of the evidence on this point, especially the real evidence, because so much was made of it in the argument, and that it may not be supposed that the point was overlooked. Assuming the correctness of the Lord Ordinary's view, it by no means interferes with the ground of judgment which I propose, because if this was a makers' defect, and if, as the Lord Ordinary has held, it is the true *fors et origo mali*, then it is a defect which the most casual examination of the valves would have made evident to a skilled mechanic, and it is a defect which could have been put right by supplying new castings, the cost of which would be relatively small. The result of my opinion is that the interlocutor should be recalled and the action dismissed.

LORD ADAM, LORD KINNEAR, and the LORD PRESIDENT concurred.

The Court recalled the interlocutor of the Lord Ordinary and dismissed the action.

Counsel for the Pursuers—W. Campbell—Guy. Agents—Macandrew, Wright, & Murray, W.S.

Counsel for the Defenders—Salvesen—J. C. Watt. Agent—John Martin, L.A.

Tuesday, October 26, 1897.

OUTER HOUSE.

[Lord Stormonth Darling.

BROWN'S TRUSTEES *v.* INLAND REVENUE.

Proof—Confidentiality — Communications Addressed to Inland Revenue Authorities.

In an action of damages against a party for statements alleged to have been made by him to the Inland Revenue authorities respecting duties due by the pursuer, a diligence to recover documents was obtained by the pursuer. The Solicitor of Inland Revenue refused to produce letters addressed to his office by the defender, on the ground that to do so would be prejudicial to the public service. *Held* (*per* Lord Stormonth Darling, Ordinary), following *Arthur* v. *Lindsay* March 8, 1895, 22 R. 417, that the Solicitor was entitled to refuse production.

This was an action at the instance of the trustees of the late Mr William Brown, distiller, Elgin, against Mr Hay, auditor there, concluding, *inter alia*, for damages for statements made by him to the Inland Revenue authorities regarding the duty which ought to have been paid on the distillery business conducted by the late

Mr Brown, which he had been employed to audit.

Brown's trustees obtained a diligence for the recovery, *inter alia*, of all letters and other documents passing between Mr Hay and the Inland Revenue authorities. At the diet the Solicitor of Inland Revenue declined to produce letters received from Mr Hay, on the ground that to do so would be prejudicial to the public service. The question was debated before the Lord Ordinary (STORMONTH DARLING).

Argued for the pursuer—This was a case of special circumstances, and it was not sufficient for the Inland Revenue authorities to make a general statement that the production of the documents called for would be prejudicial to the public service. They must go further and say in what respect that prejudice would arise. The pursuers' case was that Hay acted as an informer on his own initiative—a circumstance which distinguished this case from that of *Earl* v. *Vass*, July 17, 1822, 1 Sh. App. 229, where the productions refused were documents made officially by a public officer. If the only prejudice the Inland Revenue would suffer by being compelled to produce these documents was the discouragement of private informers in future, that was not a reason entitled to much consideration. *Arthur* v. *Lindsay*, March 8, 1891, 22 R. 417, was a case where the administration of the criminal law was in question, and was therefore not an authority in the present case. In *Johnston* v. *Caledonian Railway Company*, December 22, 1892, 20 R. 222, the production of income tax returns—quite as confidential as the documents required here—had been ordered.

Argued for the Inland Revenue—The Inland Revenue had a general right to refuse production when they were able to state, through the Lord Advocate, that it would be prejudicial to the public service—Hume ii., p. 134; *Earl* v. *Vass, cit. supra; Donald* v. *Hart*, July 6, 1844, 6 D. 1255; *Little* v. *Smith*, February 17, 1847, 4 D. 937; *Henderson* v. *Robertson*, January 20, 1853, 15 D. 292; *Hughes* v. *Vargas*, May 17, 1893, 9 Times L.R. 471; *Arthur* v. *Lindsay, cit. supra; Tierney* v. *Ballingal & Sons*, February 19, 1896, 23 R. 512. The principle usually was not that the particular case would be prejudiced, but that future sources of information would be dried up. *Johnston* v. *Caledonian Railway Company, cit. supra*, was a special case, because the object of confidentiality did not apply to income-tax returns, which would always be obtained whether they were disclosed or not.

On 26th October 1897 the Lord Ordinary sustained the appeal of the haver, the Solicitor of Inland Revenue.

Opinion.—"I confess I cannot distinguish this from the case of *Arthur*, and also, so far as principle goes, from the case of *Vass*. It may be, and I am sorry if it is, that the non-production of these documents will embarrass the pursuer, although I think it will embarrass him less than his counsel fears at the present moment. But the broad question which I have to decide is whether a public department is to be compelled by a court of law to produce confidential documents in its possession coming from third parties, the reason against it being confessedly that so to compel them would be to discourage similar communication being made in future. In the case of *Arthur* the Court, if I may say so, paid very proper deference to the view expressed by the Lord Advocate as head of his department. No doubt that was a criminal matter; but that does not seem to me to be a difference in kind, only in degree. It is, no doubt, more important in the public interest that crime should be punished than that money should be recovered for revenue; but they are both things in the public interest, and if the Commissioners of Inland Revenue, speaking through the mouth of the Lord Advocate, represent to me that in their view it will embarrass them in the future collection of revenue to have documents of that kind recovered, I am afraid I must, at whatever hazard to private litigation, give effect to that objection. The proper order, I should think, would be to sustain the haver's appeal and allow the documents to be returned to him."

The Lord Ordinary pronounced the order indicated.

Counsel for the Pursuer — Salvesen. Agents—J. C. Brodie & Sons, W.S.

Counsel for the Inland Revenue—Lord Advocate Murray, Q.C.—Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Friday, January 14, 1898.

FIRST DIVISION.

[Lord Low, Ordinary.

BRENAN *v.* WATSON AND OTHERS (CAMPBELL'S TRUSTEES).

Master and Servant—Tacit Relocation—Warning—Engineer Employed as Factor.

A factor on an estate appointed for four years and paid by fixed salary as well as by fees for certain kinds of work, raised an action against his employer after the termination of his engagement for a sum of money in lieu of warning. The pursuer was factor on another property, and carried on the business of a civil engineer and architect in a neighbouring town, where he resided. His factory and commission bore expressly to be granted upon consideration of his fulfilling a certain obligation coincident in point of time with the period of his engagement. Several months before the termination thereof his employer's agent had shown him a letter from his constituent indicating that the pursuer's engagement was not to be renewed.

Held (*aff.* judgment of Lord Low) that the pursuer was not entitled to