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

payment of the sum sued for, on the ground (1) that the nature of his employment was not truly that of a "servant," and (2) that in any event the obligation undertaken by him as a condition of his appointment excluded the engagement from the class in which, failing notice, tacit relocation takes place.

Lennox v. *Allan & Son*, October 26, 1880, 8 R. 38, *followed*.

George Woulfe Brenan, civil engineer and architect, Oban, raised an action against Richard Watson and others, trustees under a trust-disposition granted by Mr Campbell of Lochnell, concluding, *inter alia*, for payment of the sum of £225 payable to him at Martinmas 1894 in lieu of warning.

The pursuer averred that in 1882 Mr Campbell employed him as factor on his estate at a salary of £250, afterwards raised to £350, *plus* engineer's and architect's fees for work done on the estate; that in 1884 Mr Campbell granted a trust-disposition in favour of certain persons which was recalled in 1888; and that these trustees had re-appointed him factor for five years down to Whitsunday 1890 at the same salary as before.

The pursuer further averred that in 1888 Mr Campbell executed a trust conveyance in favour of the defender Watson, and that in virtue of the powers therein contained Mr Watson executed a factory and commission in the pursuer's favour for four years from Martinmas 1890. "It was originally stipulated, and was from time to time referred to between the parties, that the pursuer should be entitled to six months' notice or warning before his factory could be terminated. The defender Mr Watson also repeatedly assured the pursuer that he would continue to be factor as long as the trust should subsist, and the pursuer relied upon that assurance being given effect to." The pursuer proceeded to aver that subsequently Mr Campbell's Edinburgh agents in the course of renewing the loans over the Lochnell estate, stipulated that Mr Sutherland, banker, Oban, should be assumed as a trustee, and should be appointed factor, and that the pursuer's factory was consequently terminated at Martinmas 1894 without any warning or prior notice. "The pursuer, by the arrangement under which he originally accepted the factory, and from time to time had it renewed, was entitled to six months' notice. Besides, he was repeatedly informed by the defender Mr Watson that his employment would continue as long as the trust existed. Moreover, it is usual and customary in such agreements that reasonable notice should be given, and a period of six months' notice was reasonable in the present case.

The defenders denied that any such stipulation as that averred as to six months' notice being given had ever been made.

The defenders pleaded, *inter alia*—"(1) The pursuer's statements are irrelevant. (4) The defenders are not due any sum to the pursuer in lieu of warning, in respect (1st) that the pursuer was not entitled to warning apart from the stipulated term of his engagement in his factory and commission; and (2nd) that, in any event, due warning was given to him."

A proof was allowed, of which the import was as follows:—The agreement by which in 1890 the pursuer's factory was continued for four years proceeded upon the narrative that Mr Campbell had resolved "to continue the factory of the said George Woulfe Brenan for a period of four years from the term of Martinmas 1890, upon the express condition that the said George Woulfe Brenan should enter into an indenture with Mr Richard M'Clement, step-son of the said Archibald Argyll Lochnell Campbell, for a period of four years from the said term of Martinmas 1890, and also pay the said Mr Richard M'Clement a yearly salary of £50 sterling from and after the said term of Martinmas 1890." It contained no stipulation as to notice or warning. The pursuer, who was a member of the Institute of Civil Engineers, resided at Oban, was factor for another property besides Lochnell, and "did whatever architect's work he could get" in and about Oban.

On 29th March 1894 Mr Campbell's Edinburgh agents wrote to Mr Macgregor, Oban, the agent for the trustees, requesting him not to enter into an arrangement for the renewal of the pursuer's engagement when it expired. This letter was shown to the pursuer by Mr Macgregor shortly after he received it. The pursuer said nothing to Mr Macgregor either then or at any other time as to six months' notice, and though he lodged claims for money due to him for various work on the Lochnell estate, he lodged none for a sum of money in lieu of notice until the raising of the present action in February 1896.

On 14th May 1897 the Lord Ordinary (Low) sustained the defences and assoilzied the defender.

Opinion.—"The pursuer claims the first sum, for which the summons concludes, on the ground that he did not receive reasonable notice that his employment as factor upon the Lochnell estate would not be continued after Martinmas 1894.

"The pursuer, besides being factor upon the Lochnell estate, carried on business at Oban as an engineer and architect, and so long as he duly performed the duties of factor he was free to engage in any other business he chose. At the time of his dismissal he was engaged under an agreement for a specified period of four years, and it was on the expiry of the four years that his employment was terminated. Further, for more than six months prior to the termination of his employment he was aware that Mr Campbell of Lochnell was trying to have the trust set aside, and that if that attempt was successful he would not be continued as factor. He was also made aware that Mr Campbell's agent had written to the trustee asking him not to make any arrangement with the pursuer for the continuation of his employment after Martinmas 1894.

"In these circumstances I am of opinion that the pursuer is not entitled to a money

payment in lieu of notice of the termination of his employment. There is no case in the books in which the rule as to reasonable notice has been applied to the case of a person employed under agreement for a definite period, or of a person who did not give his whole time to his employer, but who also carried on other business. The principle upon which the rule is founded appears to me not to apply to such a case, that principle being that a servant ought not to be unexpectedly deprived of his sole means of support, but should receive reasonable warning that his employment is to be terminated, so that he may have an opportunity of obtaining other employment. Further, the pursuer cannot say that the non-renewal of his employment was altogether unexpected, because he knew that his continuance as factor depended upon what was the result of Mr Campbell's attempt to set aside the trust."

The pursuer reclaimed, and argued—The Lord Ordinary was wrong. It was a settled rule with regard to all servants that at the termination of an engagement tacit relocation took place unless previous warning had been given—*Baird* v. *Don*, M. 9182; *Maclean* v. *Fyfe*, February 4, 1813, F.C.; *Morrison* v. *Allardyce*, June 27, 1823, 2 S. 387. The rule applied equally to professional men with ordinary servants. It had been given effect to in the case of a newspaper editor—*Campbell* v. *Fyfe*, June 5, 1851, 13 D. 1041, and of a schoolmaster—*Morrison* v. *Abernethy School Board*, July 3, 1876, 3 R. 945. The pursuer here received a fixed salary, and that circumstance brought him into the class of servants to whom the ordinary rule applied. The nature of the employment, moreover, involved "an intimacy of relationship and a mutual confidence which would make it very inconvenient that the connection should be terminated without reasonable warning"—*Forsyth* v. *Heathery Knowe Coal Company*, June 9, 1880, 7 R. 887.

The defenders argued that the nature of the pursuer's employment put the present case outside the class in which tacit relocation took place, and cited *Lennox* v. *Allan & Son*, October 26, 1880, 8 R. 38.

LORD PRESIDENT — I think the Lord Ordinary is right. The pursuer's claim depends on his making out that he was entitled to notice on the expiry of his contract of employment, if that employment was to be brought to a termination. Now, I think it is more than doubtful whether the doctrine of tacit relocation applies to a gentleman circumstanced as he was in relation to the estate of Lochnell. I do not think that Mr Brenan can be described as the servant of the Lochnell trustees, even in the wider sense in which that term is used in legal phraseology. He was in truth a professional man, qualified by his training for the management of estates, and the evidence shows that he resided in Oban and held himself out as open to employment by landlords for the work of factoring and rent collecting. He had employment as a factor not only from the Lochnell trustees, but from another proprietor, and the circumstance that his professional business was not large does not alter his true relation to those whose employment he accepted. To adapt a popular expression used in another connection, he went out factoring and was not the factor of the Lochnell trustees. I think that is an important distinction, because if the other view were adopted, all professional men who are employed to factor estates, or for that matter houses, would fall within the class entitled to notice on termination of their employment. But, as was pointed out in the case of *Lennox*, the rule is really founded upon a custom with reference to certain well-known instances of employment, which has arisen in the development of our social life. I think the facts of this case show that Mr Brenan was not the servant of the trustees of Lochnell estate in the true sense of the term, but that they were only one of the clients who employed him in his business of factor.

Then another point which I think is even more decisive against the pursuer's claim, is that he was employed under a very special contract. The agreement with which we are concerned seems to me expressly to ascribe the duration of the factorship for four years to the condition that Mr Brenan should take Mr M'Clement, a relation of Mr Campbell of Lochnell, as apprentice for the same period, because the words are that it was "resolved to continue the factory of the said George Wolfe Brenan for a period of four years from the term of Martinmas 1890, upon the express condition that the said George Wolfe Brenan should enter into an indenture with Mr Richard M'Clement, stepson of the said Archibald Argyll Lochnell Campbell, for a period of four years from the said term of Martinmas 1890." The two things are therefore identical in duration, the one being the inducing cause of the other, and this seems to me to make this a special agreement affording no foundation for engrafting upon it the customary requirement which was the subject of discussion in the case of *Lennox*. I think, therefore, that when the contract came to an end Mr Brenan was entitled to no notice, and it is satisfactory to see from the evidence that at that time he so regarded the matter himself.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuer — Salvesen — Cook. Agents—Gill and Pringle, W.S.

Counsel for the Defenders—W. Campbell —Cullen. Agents—Macandrew, Wright, & Murray, W.S.