weeks, and not for fifty-two weeks as she claims, and that she is not entitled to receive superannuation allowance.

The effect of section 4 of the Trade Union Act of 1871 is that what are called "benefits to members," conferred by the constitution of a trade union like the respondents, are rendered unenforceable at law. The dispute turns on whether the sick benefit and the superannuation allowance in question in this case, which are admittedly of the nature of benefits, are or are not benefits to members in the sense of the statute. Are they, one or both, primarily benefits to the members of the trade union themselves, and only secondarily, if at all, benefits to dependants like the appellant; or are they, one or both, primarily benefits to the dependants, and only secondarily, if at all, to the members themselves?

In my opinion, taking rules 20, 24, and 30 together, the two classes of allowances and benefits are sharply contrasted in the case of insane members like the appellant's husband, who have wife, family, or parent dependent on them—*first*, in the form of words by which they are conferred, *second*, in the persons to whom they are payable, and, *third*, in the purposes to which they are applicable. The sick benefit is payable directly to the dependant, and those alimenting the insane person can have no claim on it; while the superannuation allowance would be payable to the legal representative of the insane person, and the whole of it would be available for his support. An apparent difficulty is caused by the expression in rule 30, "they shall be eligible to receive sick benefit," but a consideration of the terms of rules 20, 24, and 30 leads me to the conclusion that the word "eligible" is equivalent in this clause to "entitled to if qualified."

The respondents founded strongly on the case of *Burke*, 1906, 2 K.B. 583, in support of their proposition that the appellant could have no *jus quæsitum* under an agreement between a member and the Society constituted by rules which are revocable by the Society. But this case in no way conflicts with the appellant's right to vindicate a right which had vested in her under the rules when she made her claim.

LORD JUSTICE-CLERK—I concur in the opinion of Lord Salvesen, which I have had an opportunity of reading.

LORD DUNDAS was absent.

The Court sustained the appeal, recalled the interlocutor of the Sheriff, found in fact and in law in terms of the findings in fact and in law in the interlocutor of the Sheriff-Substitute, dated 24th July 1911, and decerned against the defenders for payment to the pursuer of the sum of £7, 10s. sterling.

Counsel for the Pursuer and Appellant—Moncrieff, K.C.—Smith Clark. Agent—Charles Garrow, Solicitor.

Counsel for the Defenders and Respondents—Constable, K.C.—Keith. Agents—Simpson & Marwick, W.S.

Thursday, June 27.

FIRST DIVISION.

(COURT OF EXCHEQUER.)

SCOTTISH SHIRE LINE, LIMITED, GLASGOW *v.* INLAND REVENUE.

Revenue—Income Tax—Deductions—Wear and Tear—New Company Purchasing Business of Old Company — Deduction Allowable to Old Company, but not Given Effect to—Finance Act 1907 (7 *Edw. VII, cap.* 13), *sec.* 26, *sub-sec.* 3.

The Finance Act 1907, sec. 26, sub.-sec. 3, enacts—"Where as respects any trade, manufacture, adventure, or concern, full effect cannot be given to the deduction for wear and tear in any year owing to there being no profits or gains chargeable with income tax in that year, or owing to the profits or gains so chargeable being less than the deduction, the deduction or part of the deduction to which effect has not been given as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year and deemed to be part of that deduction, or if there is no such deduction for that year, be deemed to be the deduction for that year, and so on for succeeding years."

A new company succeeded to the business of an old company. During the preceding three years certain deductions for wear and tear were allowable to the old company from its assessable income, but were not given effect to in full, in respect that they exceeded in amount the taxable income of the old company during each of these years. The new company was assessed for income tax on the average profits of the old company during these three years, and the new company claimed the right, in terms of section 26 of the Finance Act 1907, to deduct from its taxable income the balance of the deductions which were allowable to the old company but had not been given effect to.

Held that the new company was entitled to the deductions.

The Income Tax Act 1842 (5 and 6 Vict. cap. 35), sec. 100, by the fourth rule applying to both the first and second cases of Schedule D, enacts — "If amongst any persons engaged in any trade, manufacture, adventure, or concern, or in any profession, in partnership together, any change shall take place in any such partnership, either by death, or dissolution of partnership as to all or any of the partners, or by admitting any other partner therein, before the time of making the assessment, or within the period for which the assessment ought to be made under this Act, or if any person shall have succeeded to any trade, manufacture, adventure, or concern, or any profession, within such respective periods

as aforesaid, the duty payable in respect of such partnership, or any of such partners, or any person succeeding to such profession, trade, manufacture, adventure, or concern, shall be computed and ascertained according to the profits and gains of such business derived during the respective periods herein mentioned, notwithstanding such change therein or succession to such business as aforesaid. . . ."

The Customs and Inland Revenue Act 1878 (41 and 42 Vict. cap. 15), sec. 12, enacts —"Notwithstanding any provision to the contrary contained in any Act relating to income tax, the Commissioners for general or special purposes shall, in assessing the profits or gains of any trade, manufacture, adventure, or concern, in the nature of trade, chargeable under Schedule (D), or the profits of any concern chargeable by reference to the rules of that schedule, allow such deduction as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern and belonging to the person or company by whom the concern is carried on. . . ."

The Finance Act 1907 (7 Edw. VII, cap. 13), sec. 26, enacts—Sub-section (1)—"For the purpose of enabling deductions for wear and tear to be allowed by the additional Commissioners, claims in respect of those deductions shall be included in the annual statement required to be delivered under the Income Tax Acts of the profits or gains of the concern for the purpose of which the machinery or plant is used, and the additional Commissioners in assessing those profits or gains shall make such allowances in respect of those claims as they think just and reasonable." Sub-section (2)—"No deduction for wear and tear or repayment on account of any such deduction shall be allowed in any year if the deduction when added to the deductions allowed on that account in any previous years to the person by whom the concern is carried on will make the aggregate amount of the deductions exceed the actual cost to that person of the machinery or plant, including in that actual cost any expenditure in the nature of capital expenditure on the machinery or plant by way of renewal, improvement, or reinstatement." Sub-section (3)—". . . [*Quoted in the rubric*] . . ." Sub-section (4)—"In this section the expression 'deduction for wear and tear' means the deduction allowed, or which would be allowed, under section 12 of the Customs and Inland Revenue Act 1878, as representing the diminished value by reason of wear and tear during the year of machinery or plant used for the purposes of any trade, manufacture, adventure, or concern."

The Scottish Shire Line, Limited, Glasgow, appealed to the Commissioners for the General Purposes of the Income Tax Acts for the City of Glasgow against an assessment under Schedule D of the Income Tax Acts, for the year ending 5th April 1911, on the sum of £31,737, less £23,885 allowed for wear and tear, for the year of assessment, and claimed that the balance of the assessment—viz., £7852—should be allowed as a further deduction for wear and tear under the provisions of the Finance Act 1907 (7 Edw. VII. cap. 13), sec. 26, sub-sec. 3.

The Commissioners refused the appeal and confirmed the assessment, and the Scottish Shire Line, Limited, Glasgow, appealed by way of stated case.

The Case stated—"I. The following *facts* were proved or admitted:—(1) The appellant company was incorporated on 7th January 1910, under the Companies Consolidation Act 1908, as a private company, limited by shares. (2) The objects of the appellant company as set forth in the third article of its memorandum of association are, *inter alia*, as follows:—'(*a*) To acquire by purchase, as a going concern, the business of the "Elderslie" Steamship Company, Limited, registered under the Companies Acts 1862 to 1880, and having its registered office in Glasgow, and the goodwill, and the whole heritable and rea and the whole moveable and personal property, assets and rights of the said company; to take over the current contracts of the said company, and to undertake all or some of the burdens and obligations of the business so acquired, and to carry on and develop the said business. (*b*) To carry on the business of shipowners in all its branches, together with any business or acts or transactions which are either incidental thereto, or which shipowners or shipping companies are wont to carry on or do in connection with, or as auxiliary to, the business of owning and working ships.' . . . . . The share capital of the appellant company is £225,000, divided into 18,500 ordinary shares of £10 each, and 4000 five per cent. cumulative preference shares of £10 each, of which 12,493 ordinary shares fully paid have been issued. (3) The Elderslie Steamship Company, Limited (hereinafter referred to as the old company), was incorporated on 27th August 1884, under the Companies Acts 1862 to 1880, with an authorised capital of £45,000, which was ultimately increased to £200,000, divided into 10,000 shares of £20 each, of which 9375 had been issued and had been paid up to the extent of £16 per share; and by special resolutions passed and confirmed at extraordinary general meetings of members of the old company, held respectively on 10th December 1909, and 4th January 1910, it was resolved that the old company be wound up voluntarily, and that the liquidator be authorised to sell the assets and undertaking of the old company to a new company. (4) By agreement, dated 21st January 1910, between the appellant company and the old company and the liquidator thereof, . . . the appellant company purchased as a going concern the whole of the business of the old company, including the fleet of steamships and all other assets. (5) The profits of the steamships of the old company have always been treated as a whole, and only one assessment has been made annually in respect of the whole fleet. (6) The prime cost of these steamships was £568,473; the deductions

for wear and tear up to 1910-11 (inclusive) amounted to £249,486, of which £25,715 could not be given effect to owing to the profits chargeable for 1907-8, 1908-9 and 1909-10 being less than the deductions. The written down value of the steamships for income tax purposes was £318,987, after deducting from the prime cost the full depreciation of £249,486, which includes the before-mentioned £25,715 of unexhausted depreciation. (7) The steamships were acquired by the appellant company at prices totalling £267,400, being the prices standing in the books of the old company. (8) The shareholders in the appellant company and the old company and their respective holdings are as follows:—

"Appellant Company.

Names of Shareholders.	No. of Shares.	Value. £
Turnbull, Martin & Co.	12,051	120,510
David Inglis, nominee of Turnbull, Martin & Co.	1	10
James Caird	296	2960
Henry H. Dawes	133	1330
Mrs H. A. Caird	12	120
	12,493	£124,930

"Old Company.

Names of Shareholders.	No. of Shares	Value, £
Turnbull, Martin & Co.	4510	72,160
Mrs Lang, on behalf of Turnbull, Martin & Co., in security for loan	1799	28,784
D. C. Leck and Others on behalf of Turnbull, Martin & Co., in security for loan	2855	45,680
James Caird	107	1712
Henry H. Dawes	74	1184
W. A. Moore	15	240
A. S. M'Lean	10	160
Mrs H. A. Caird	5	80
	9375	£150,000

"(9) The assessment was based on the average profits shown by the accounts of the Elderslie Steamship Company, Limited, for the three years ending 31st December 1909. (10) During the three years ending the 5th April 1910, the sums allowable to the old company in respect of the annual wear and tear of the fleet were respectively £25,007, £24,564, and £24,111, but in respect that the old company's taxable income during each of those years was less than the said sums allowable, the amounts actually allowed were respectively £17,123, £16,554, and £14,290. The balance over the said three years not allowed was thus £25,715, of which £7852 is now claimed by the appellant company as an additional allowance for the year ending 5th April 1911."

Argued for the appellants—The words "trade . . . or concern," which occured in sub-section 3 of section 26 of the Finance Act 1907 (7 Edw. VII, cap. 13) applied to the undertaking and not to the individuals who were carrying it on—*Ryhope Coal Company, Limited* v. *Foyer*, 1881, 7 Q.B.D. 485, *per* Grove, J., at p. 494, and a mere change of *persona* did not affect the applicability of the sub-section. The language of sub-section 3 was in marked contrast to the language of sub-section 2 of the same section and also to the language of section 12 of the Customs and Inland Revenue Act 1878 (41 and 42 Vict. cap. 15). Sub-section 2 referred to "deductions allowed . . . to the person." Similarly, section 12 referred to "wear and tear . . . of any machinery or plant used for the purposes of the concern and belonging to the person or company by whom the concern is carried on." It would be inequitable to assess the new company on the profits of the old company and not to allow the new company the deduction to which the old company was entitled.

Argued for the respondents—There had been a complete change of *persona* because the new company had paid in cash for the shares of the old company and the deduction for wear and tear was a purely personal allowance. This was clearly indicated by the words "and belonging to the person or company by whom the concern is carried on" which occurred in section 12 of the Customs and Inland Revenue Act 1878 (41 and 42 Vict. cap. 15). That section was incorporated by sub-section 4 of section 26 of the Finance Act 1907 (7 Edw. VII, cap. 13), which defined the expression "deduction for wear and tear." The appellants had already received a full allowance for the diminished value of the fleet because they had acquired it at its value at the date of purchase, and therefore they were not entitled to the benefit of a deduction for depreciation which they had never suffered. The following cases were referred to—*Wilson & Son* v. *Inland Revenue*, October 22, 1895, 23 R. 18, 33 S.L.R. 10; *Bell* v. *National Provincial Bank of England*, [1904] 1 K.B. 149; *Watson Brothers* v. *Inland Revenue*, May 13, 1902, 4 F. 795, 39 S.L.R. 604.

Lord Dundas—In this case the Scottish Shire Line, Limited, Glasgow, appeal against an assessment to income tax for the year 1910—being the year ending 5th April 1911—upon a sum of £7852. That sum is brought out as the difference between £31,737, which represents the average profits of the company (or rather of their predecessors in trade) in the years 1907, 1908, and 1909, and the amount allowed by the Commissioners (as increased by consent of parties) as a deduction for wear and tear in the year of assessment, viz., £23,885. The appellants claim that this difference of £7852 should be allowed as a further deduction for wear and tear, under the provisions of the Finance Act 1907, sec. 26 (3). The Commissioners have negatived the claim. Hence the present appeal.

The facts proved or admitted are fully set out in the case. The appellant company was incorporated in 1910 for the purpose of taking over as a going concern and carrying on the business of the Elderslie Steamship Company, Limited. It is not disputed that the appellants' business is the same business though the legal *persona* is different, that the shareholders are practically (though not identically) the same, and that the assessment for the year 1910 was based on the average profits shown by the accounts of the Elderslie Steamship Company for the three years ending 31st December 1909. It is common ground that if the present question had arisen between the Crown and the Elderslie Company the claim for deduction would be good.

The statutory enactments bearing on the matter are printed in the case. By section 12 of the Customs and Inland Revenue Act 1878 the Commissioners were directed to allow such deduction as they might think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern "and belonging to the person or company by whom the concern is carried on." The Finance Act 1907, sec. 26 (3), provides that "where as respects any trade . . . or concern, full effect cannot be given to the deduction for wear and tear in any year . . . owing to the profits or gains" chargeable with income tax "being less than the deduction, the deduction or part of the deduction to which effect has not been given, as the case may be, shall, for the purpose of making the assessment for the following year, be added to the amount of the deduction for wear and tear for that year and deemed to be part of that deduction . . . and so on for succeeding years." It is on the sub-section from which I have just quoted that the appellants found.

It was urged for the Crown that income tax is a personal tax, that the deduction for wear and tear is a personal allowance, and that the appellants are not entitled to an allowance in respect of the deductions for wear and tear to which full effect could not be given in preceding years while the plant and machinery were the property of their predecessors. I cannot accept this view. The language of the sub-section is conceived in broad and general terms and does not (I must assume intentionally) strike any personal note. The references in sub-section 2 to the "person" seem important rather by way of contrast than as supporting the Crown's contention. Again, sub-section 4, while it takes one back to section 12 of the 1878 Act, does not repeat, but omits, the words of personal limitation with which that section concludes. The Crown has treated the appellant company as the old company by taking that company's profits during the preceding years as the basis for assessing the appellant's profits for 1910. I think it would be anomalous if we were to permit the Crown to treat the appellants as a new and different concern when it comes to the matter of the wear and tear deduction. For the reasons now shortly summarised, I think the determination of the Commissioners was wrong and that the appellants are entitled to succeed.

LORD SALVESEN—The material facts in this case are within short compass. The appellants' company was formed in January 1910 for the purpose of acquiring by purchase as a going concern the business of the Elderslie Steamship Company, Limited, and the whole assets of that company, undertaking at the same time all its liabilities. The shareholders of the new company were substantially the same as those of the old company, but it is not disputed that it constituted a different *persona*.

During the three years ending 5th April 1910 the Elderslie Company were entitled to deduct from their taxable income the sums of £25,007, £24,564, and £24,111 in respect of the annual wear and tear of their fleet; but their taxable income was less than the depreciation by £27,715 over the three years.

It is common ground that the new company succeeded to the concern belonging to the Elderslie Company within the meaning of the fourth rule applying to cases 1 and 2 of Schedule D, Income Tax Act 1842, section 100; and accordingly fell to be assessed on the average profits and gains of the former company during the three years ending 5th April 1910. It is also common ground that if there had been no change of *persona* the Elderslie Company would, in returning their profits on this basis, have been entitled to deduct not merely depreciation for the year in which the duty fell to be paid, but also, under the Finance Act 1907, section 26, sub-section 3, the sum of £7852 as a further deduction for tear and wear. The question in this case is whether, owing to the change of *persona*, this deduction is inadmissible in favour of the appellants; or, in other words, whether, as counsel for the Inland Revenue argued, the additional deduction for wear and tear is an allowance personal to the particular company or copartnery with respect to the depreciation of whose property the claim has arisen. The Commissioners decided that the appellants succeeded to the business of the old company within the meaning of the fourth rule already referred to, "and that there was no authority for allowing the appellant company a deduction for wear and tear for the period during which their predecessors carried on the business."

The main argument in support of this decision was rested on the Customs and Inland Revenue Act 1878, section 12, which empowers the Commissioners to allow such deductions from the profits of any concern "as they may think just and reasonable as representing the diminished value by reason of wear and tear during the year of any machinery or plant used for the purposes of the concern and belonging to the person or company by whom the concern is carried on." If there were no further provision, I agree with the respondent that all that the appellants would be entitled to deduct would be depreciation in respect of wear and tear on plant of which they were the owners, and this would of course exclude the additional deduction which they are now claiming. But sub-section 3 of section 26 of the Finance Act of 1907 gives the taxpayer the right to carry forward against assessable income any deduction to which effect had not been given owing to the profits or gains being less than the deduction. That provision is absolutely general, and there is no proviso that it is not to apply in the case of a person who has succeeded to any concern, and is thus liable to be assessed according to the profits of his predecessor's business. This limitation is said to be implied by sub-section 4, which defines the expression "deduction for wear and tear" as "the deduction allowed

. . . under section 12 of the Customs and Inland Revenue Act 1878, as representing the diminished value by reason of wear-and-tear during the year of machinery or plant used for the purposes of any trade, adventure, or concern." It was argued that this reference to section 12 imported the last clause of the section, and excluded any claim for depreciation except in respect of property which belonged to the claimants.

I am unable to assent to this argument. Section 12 of the 1878 Act is only referred to in order to define the expression "deduction for wear and tear," and it is significant that the clause itself stops short just at the point where reference is made to the question of property in the other Act. Sub-section 2 of the same section was also appealed to, but the words there used are extremely precise, and are made applicable only to the person by whom the concern is carried on so as to exclude expressly from its operation a new concern which has acquired or succeeded to the machinery and plant of a previously existing trader. The new concern is apparently not affected for the purposes of the claim for depreciation by the aggregate amount of depreciation which has been previously allowed to its predecessors. Where a distinction of this kind is intended to be made it would therefore appear that those who framed the Act knew how to express it in clear and distinct terms. On a construction of the various sections, therefore, I have come to be of opinion that there is no ground for holding, as the Commissioners have in effect done, that the privilege introduced by sub-section 3 was personal to the old company and did not transmit to the appellants as their successors.

Even in a taxing statute it is legitimate to consider which of two possible constructions is most in accordance with the spirit and intention of the Act. Now the appellants admittedly fall to be assessed for income tax exactly on the same footing as the Elderslie Company, to whose concern they succeeded. If so, can any reason be suggested why they should not be entitled to the same deductions from those profits as their predecessors, had they remained in business, admittedly would have been? None was suggested except that they had acquired depreciated assets for which it was to be assumed that allowance had been made in fixing the purchase price. But the appellants are not liable to be taxed upon their capital, but only upon their profits, and these are not affected in any way for the purposes of income tax by the amount of capital which they possess. The particular mode of assessing the profits of what is in form a new concern is adopted because of the substantial identity of the new concern with the one that has previously carried on business. If the respondent's argument is good for anything it would result in this, that an entirely immaterial change in a partnership, either by the death of an existing partner, however small his interest, or by the assumption of a new partner who was entitled to a share of the profits, however fractional, would deprive the remaining partners of the benefit of a deduction to which they were otherwise entitled. I cannot imagine that the Legislature had this in view. On the contrary, it seems to me that the mode of assessing the new concern provided for by the 1842 Act proceeds on the assumption of the substantial identity between it and its predecessor, and that there is no indication of any intention that the new concern is to pay income tax upon a larger amount than would have been exigible from the old concern if it had continued unchanged in the persons of its owners. I have therefore come to the conclusion that we must reverse the determination of the Commissioners and allow the further deduction claimed by the appellants.

LORD GUTHRIE—I concur. It appears to me that the argument of the Surveyor of Taxes has neither probability nor equity in its favour, because he proposes to treat the appellant company as identical with or as the successors of the Elderslie Steamship Co. Ltd. (called the old company in the case) for one Revenue purpose, and neither as identical with nor as the successors of the old company for another and not remotely related Revenue purpose. The question would be entirely different if the parties had been at issue on the question of the appellant company's identity with or succession to the old company; but this question, as far as the Act of 1842 (fourth rule, applying to cases 1 and 2 of Schedule D) is concerned, is foreclosed by the action of the Surveyor, acquiesced in by the appellant company. But this consideration can only throw an *onus* on the surveyor, for many Revenue cases have been decided in favour of the Revenue contrary both to all the probabilities of the case and to equity.

In the sections of the statute of 1907 (including the reference in section 26, sub-section 4, to section 12 of the 1878 Act), founded on by the Surveyor, I do not find what he calls the "personal note," on which he relies. On the contrary, where, as in the latter part of section 12 of the 1878 Act, the personal note may be said to occur, the reference to that section, in section 26, sub-section 4, of the 1907 Act does not incorporate the whole of it, but only such part as contains no such note. I read the words "trade, manufacture, adventure, or concern" used in the 1907 Act, when providing for the mode of dealing with past-due deductions as co-extensive with the same words used in the 1842 Act when providing for the ascertainment of profits and gains. I therefore think the Commissioners were in error in refusing the appeal.

LORD JUSTICE-CLERK—When the debate in this case was closed I formed a very strong opinion in favour of the view which has been expressed by your Lordships. I have had an opportunity of perusing the opinions which have been written, and they so entirely express my views that I do not propose to add anything.

The Court reversed the determination of the Commissioners and allowed the deduction claimed by the appellants.

Counsel for the Appellants—Munro, K.C. —R. C. Henderson. Agent—James Gibson, S.S.C.

Counsel for the Inland Revenue—Solicitor-General (Anderson, K.C.)—J. A. T. Robertson. Agent—Sir Philip J. Hamilton Grierson, Solicitor of Inland Revenue.

HIGH COURT OF JUSTICIARY.

Tuesday, June 25.

(Before the Lord Justice-Clerk, Lord Salvesen, and Lord Guthrie.)

MASTERTON *v.* SOUTAR.

COLLIER *v.* SOUTAR.

Justiciary Cases — Statutory Offences — —Complaint — Relevancy — Weights and Measures—Sale of Article not of the Weight Demanded by Purchaser — Article Sold to Assistant Inspector of Weights and Measures — No Averment that Seller of the Article had also Weighed it—Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 430.

The Burgh Police (Scotland) Act 1892, sec. 430, enacts—"The chief-constable, or any other constable specially appointed to perform the duty by the chief-constable, or any inspector of weights and measures in the burgh, may at all reasonable hours enter any building or part of a building or other place within the burgh in which any article is sold, or is made up, or kept or exposed for sale by weight or measure, or in which articles are sold, or are set apart, or kept or exposed for sale in numbers, or in which any article is weighed or measured, or any articles are numbered, with a view to their being bought or sold, or he may stop any cart or carriage, or any person carrying or in charge of any basket from which such articles are sold, or kept or exposed for sale, on the street, public or private, and require such article or articles to be weighed, measured, or numbered in his presence; and if the weight, measure, or number thereof ascertained does not correspond with the weight, measure, or number thereof which has been represented by the person who has sold, or made up, or kept or exposed, the same for sale, or who weighed, measured, or numbered the same with a view to purchase or sale, such chief-constable or other constable or inspector may seize, impound, and convey such article or articles to the police office, or to an office provided for the purpose by the commissioners, and the magistrate may sentence the person who has sold or made up, or kept or exposed the same for sale, and who has incorrectly weighed, measured, or numbered the same with a view to purchase or sale, to a penalty . . . unless such person shall prove to his satisfaction that the deficiency in weight, measure, or number has arisen without any fraudulent intent."

A person was charged with a contravention of the above section, on a complaint which set forth that in response to a demand for a certain weight of tea, he did sell, to an assistant of an inspector of weights and measures, a certain package of tea which was deficient in the weight represented by him.

Held that the complaint was irrelevant, on the ground (1) that the procedure prescribed by the statute did not warrant the employment of an assistant by the inspector in order to effect a trap sale; and (2) that it was not stated in the complaint that the accused had weighed as well as sold the packet of tea.

Justiciary Cases — Weights and Measures—Representation as to Weight—Fraudulent Intent—Tea Sold in Packets—Intimation on Packet that Weight of Tea Included Paper Wrapper Containing it —Burgh Police (Scotland) Act 1892 (55 *and* 56 *Vict. cap.* 55), *sec.* 430.

The Burgh Police (Scotland) Act 1892, sec. 430, imposes a penalty for selling and incorrectly weighing articles sold by weight, unless the seller proves that the deficiency in weight has arisen without fraudulent intent.

Two persons were convicted of offences, who, in response to demands for half a pound of tea, delivered to the purchaser packets which were kept made up for sale, and which contained a deficiency of tea, although each weighed half a pound when the paper wrapper was included. In one case the packet bore the words "This packet is guaranteed gross weight," and in the other the words "Full weight of tea including wrapper."

Held, on appeal, that it had been sufficiently proved that there was no fraudulent intent on the part of the accused, and the conviction *quashed*.

Thomas Masterton, shop manager for Dick's Co-operative Institutions, Limited, and Margaret Collier, shop manager for the Buttercup Dairy Company, were on 2nd November 1911, in the Sheriff Court at Dunfermline, respectively charged on summary complaints at the instance of John Shaw Soutar, Procurator-Fiscal.

The complaint in Masterton's case was in the following terms—"Thomas Masterton, Simbur Place, Bowhill, as shop manager and the person locally in charge of their retail premises at Bowhill, Auchterderran Parish, Fife, of the affairs of the company known as Dick's Co-operative Institutions, Limited, and having its registered or head office at Bonnar Street, Dunfermline, you are charged at the instance of the com-