business in other premises from the reputation he had acquired in 'The Waverley Hotel' in Buchanan Street can be effectually transferred to another person. The assignation to the respondent is gratuitous, and therefore affords no evidence that the cedent still possessed rights of any marketable value in the business he had discontinued. But the material question is—Whether any tangible right in Mr Cranston's business has been transferred to the complainer, so as to enable her to say that she has acquired a goodwill represented by the name to which she claims exclusive right? And it does not appear from the evidence that anything which can properly be described as a continuing business has been transferred. No subsisting contracts or debts or claims of any kind have been made over to the complainer. When the supposed goodwill which she claims comes to be analysed it appears to represent nothing except—what is no doubt a valuable advantage—Mr Cranston's recommendation to his former customers, in so far as that can be inferred from the complainer's right to represent herself as his successor in business. But it does not appear to me that this advantage, whatever be its value, carries with it any right, or at least any exclusive right, to the use of a name which is not the name of a firm or of an individual, but of a place where a business was carried on. The respondent, therefore, by continuing to call his hotel by its old name does not in my opinion make any representation to the injury of the complainer, or which is not consistent with fact, and with his legal rights.

"It is very possible that some inconvenience may have arisen to the complainer, and perhaps also to the respondent, by reason of their hotels being called by the same name. But that is no sufficient reason for compelling the respondent to discontinue his use of the name, if he has not invaded the legal right of the complainer.

"It is said, however, that the respondent derives an advantage from the use of the name to which he is not entitled, because he obtains in this way the benefit of Mr Cranston's reputation in connection with his hotels in London and Edinburgh. Even if this were so, the complainer would have no title to interfere. But I think there is no evidence that the respondent has taken any unfair advantage in this way either of the complainer or of Mr Cranston. He is certainly not entitled to represent that he has any connection whatever with the Waverley Hotels in Edinburgh and London. But he does not do so by calling his hotel also 'The Waverley.' I do not think it proved that by his use of that name he interferes to any material degree with the benefit which the complainer may be supposed to draw from her relationship with Mr Cranston. But at all events he does not do so by the invasion of any legal right in the complainer, for which she is entitled to protection by the interdict craved."

Counsel for Complainer—D.-F. Balfour, Q.C. —Young. Agents—J. & R. A. Robertson, S.S.C.

Counsel for Respondent—R. V. Campbell—Boyd. Agents—Millar, Robson, & Innes, S.S.C.

Friday, May 28.

FIRST DIVISION.

[Sheriff of Renfrew and Bute.

MAXTON *v.* BONE.

Process—Sheriff—Appeal—Competency—Sheriff Court Act 1853 (16 *and* 17 *Vict. cap.* 80), *sec.* 24.

Held that an interlocutor in a Sheriff Court which ordered the consignation of money in the hands of the Clerk of Court was not capable of being appealed.

This was an action in the Sheriff Court of Renfrew and Bute at Greenock, at the instance of John Maxton, part owner of the s.s. "Rebecca," against James Bone, as managing owner or ship's husband of that ship, for an accounting and payment of £212, or such other sum as might be found to be due. An account having been lodged by the defender showing the pursuer's share of profits to amount to a certain sum (apart from other questions between them), the Sheriff-Substitute (NICHOLSON) on 26th February 1886 pronounced this interlocutor—"Ordains the defender within seven days from this date to consign in the hands of the Clerk of Court the sum of £63, 17s. 9d., under certification: Further, having heard parties, before answer allows them a proof of their respective averments, and to the pursuer a conjunct probation."

On appeal the Sheriff adhered.

The defender appealed to the Court of Session.

When the case appeared in the Single Bills the pursuer objected to the competency of the appeal on the ground that the interlocutor appealed against was not an *interim* decree for payment of money, but merely an order for consignation—Sheriff Court Act 1853 (16 and 17 Vict. cap. 80), sec. 24; *Sinclair* v. *Baikie*, Jan. 11, 1884, 11 R. 413; *Mackenzie* v. *Balerno Paper Mill Company*, July 12, 1883, 10 R. 1147.

The appellant contended that this was an interlocutor which so far as its practical effect went was an order on the defender to make payment. Section 24 was not to be rigorously construed—*Bain* v. *Glendinning*, Oct. 16, 1874, 2 R. 25.

Section 24 of the Sheriff Court Act 1853 provides that it shall not be competent to take to review any interlocutor "not being an interlocutor sisting process or giving interim decree for payment of money or disposing of the whole merits of the cause."

At advising—

LORD PRESIDENT—The competency of this appeal depends on the question whether the interlocutor of the Sheriff-Substitute is an interim decree for payment of money. It is, on the face of it, an order for consignation, and as a decree for consignation is not a decree for the payment of money, I therefore think that the appeal is incompetent.

LORD MURE concurred.

LORD SHAND—I concur. I think that payment means payment out of the pocket of one man into the pocket of another.

LORD ADAM—I think that the principle of the

24th section is that payment means not merely that money should be taken out of one man's pocket, but also that it should be put into another's. For in that case the money might be spent and never seen again, and it is in order to prevent this that appeals are competent against *interim* decrees for payment.

The Court refused the appeal as incompetent.

Counsel for Pursuer (Respondent)—H. Johnston. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Defender (Appellant) — Shaw. Agent—George Andrew, S.S.C.

Tuesday, June 1.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

EDMONSTONE AND ANOTHER *v.* JEFFRAY AND OTHERS.

Superior and Vassal—Declarator and Removing—Possession without Title.

Held that a mere right of superiority was sufficient foundation for obtaining decree of declarator and removing against persons who, although they had possessed the subjects in dispute for the prescriptive period, could exhibit no title from a vassal.

Sir William Edmonstone, Bart., was admittedly superior of, and as such infeft in the estate and barony of Kilsyth, including the lands of Barrwood.

These lands of Barrwood, were, when the ground on which the Old Town of Kilsyth was built was feued out in 1679 and subsequent years by Viscount Kilsyth, given out in proportional parts to the feuars, each along with his steading of ground. The feuars were duly infeft in the proportions of the lands conveyed to them, and they were for long enjoyed in common property.

By redeemable disposition, dated May 1748, Daniel Campbell of Shawfield, in consideration of the sum of £57, 3s., sold and disponed to James Marshall, his heirs, successors, and assignees, a tenement in Kilsyth, "together with a privilege or servitude in the Barrwood," redeemable on the 11th November 1827. Marshall took infeftment, and after sundry transmissions part of the subjects and the corresponding right in Barrwood came to be held by Mr William Corbett.

In 1750 the proprietors of the lands of Barrwood agreed to divide the arable portion of the lands of Barrwood, and in December 1808 a process of division was raised in the Court of Session by them for the purpose of carrying through a division. No decree was pronounced, but it was admitted in this action that the lands were in fact divided according to a scheme of which a plan was extant and was produced. After that agreement the lots were held as the exclusive property of the feuars to whom they were allotted. Most of the holdings were for the last thirty or forty years or longer, prior to this action, held on titles containing a particular description of the lot, or portion of a lot, to which they belonged, but in some cases the proprietors possessed on their former *pro indiviso* title as defined by the possession of a divided portion. Lot 39 in the division was allocated—"To Mason's Lodge, No. 29 in Kilsyth, one-third, Henry Corbet, farmer, Donovan Hill, one-half, and Widow Millar, *alias* Jean Welsh, in Kilsyth, one-sixth." Henry Corbet, with consent of the person who had sold the redeemable right to William Corbet but had not granted a conveyance in consideration of a sum paid him by Sir Archibald Edmonstone, renounced, acquitted, and over gave to him part of the foresaid tenement in Kilsyth together with the privilege and servitude of Barrwood corresponding.

On 9th November 1871 a Mrs Agnes Donald or Russell, who alleged that she and her father William Donald, overseer on the Kilsyth estate, had possessed the ground in lot 39 for over fifty years though not on a written title, granted a disposition of it to Robert Hamilton, who subsequently conveyed the ground to James Jeffray and others as trustees. These latter conveyed the minerals on the ground to William Weir and others as trustees for behoof of William Baird & Co.

In these circumstances Sir William raised this action to have it declared that he was proprietor of the whole ground contained in lot 39, together with whole minerals underneath the same, and to have decree of removing therefrom against the defenders, and further, so far as necessary, to reduce (1) the disposition of the subjects by Mrs Agnes Donald Russell in favour of Robert Hamilton; (2) the trust-disposition conveying the subjects from Hamilton to James Jeffray and others, his trustees; and (3) the conveyance of the minerals under the ground by these trustees to William Baird & Co.

He relied (1) upon his superiority title, and (2) upon the singular title above set forth, whereby he contended that he had re-acquired the *dominium utile* of the plot of ground in question.

Jeffray and others defended the action and pleaded—"(1) No title to sue. (2) The pursuers' statements are irrelevant and insufficient to support the conclusions of the summons."

A proof was led upon the latter point, in which the pursuers succeeded in establishing by reference to estate books an identity between the disputed subjects and a lot allocated in the division of the commonty to Henry Corbett, whose *pro indiviso* right was acquired in 1828 by Sir Archibald Edmonstone.

The Lord Ordinary (KINNEAR) found and declared, decerned and ordained, and reduced in terms of the whole conclusions of the summons.

"*Opinion.*—The pursuer is admittedly superior of the lands of Barrwood, which include the piece of ground in dispute, and the defenders claim to hold under him by virtue of a feu-right derived from one of his predecessors. They have no title earlier than the disposition of 1871, which the pursuer seeks to reduce, and the granter of which had admittedly no title.

"But the lands of Barrwood, of which the piece of ground in dispute is a portion, were held in common by feuars in the town of Kilsyth, under rights derived from Lord Kilsyth, the pursuers' predecessor. In 1808 a process of division of the commonty was instituted in the Court of Session; and although no decree was pronounced, the parties are agreed that the land was in fact divided, according to a scheme of division and allotment which is shewn upon a plan produced