be held to be the property of the complainer, for it has been let or otherwise dealt with for many years as part of the Cadboll estate, and although the titles founded on do not mention it by name, the Lord Ordinary is disposed to think that the description in those titles, when taken in connection with the proof of possession, is sufficient, in the absence of all evidence or even specific averment to the contrary, to warrant him in holding, even apart from the interpretation clause of the statute, that this piece of ground is the property of the complainer. But, having regard to the interpretation clause, it cannot, it is thought, admit of doubt that the complainer Mr M'Leod is an 'owner' of that property in the sense of the statute, who has withheld his permission to the respondents' proposed operations. So standing the fact as to the ownership of the ground, it further appears to the Lord Ordinary that, as the respondents the Police Commissioners declined, notwithstanding the objection of the complainer, to recal the authority given to the other respondents, and never applied to the Sheriff in terms of the 75th section of the statute, they have been and are acting illegally, and without the statute, more especially in keeping up the warrant of the 12th of March 1869, and that the complainer was entitled, when this suspension was presented, to apply to the Court for redress. And the Lord Ordinary does not think that there is in these circumstances anything in the provisions of the statute to exclude the jurisdiction of the Court to deal with the question.

"The case of *Smeaton*, May 17, 1865, relied on by the respondents, is in several essential respects different from the present. The Commissioners were there proceeding strictly in terms of the statute. They had given notice of their intention to hold the statutory meeting, with a view to hear parties who might have any objection to make to their proposed operations, and from the decision which might then be come to a power of appeal to the Sheriff was open to any party aggrieved, while the decision of the Sheriff in the matter was declared to be final. But instead of attending the statutory meeting with a view to obtain an alteration of the order, the complainer in that case made an application directly to the Court of Session to stop the proceedings by interdict, when it was held that this Court had not jurisdiction to entertain the case, as the Commissioners were proceeding in strict conformity with the statute, and that it was the duty of the complainer in such circumstances to have recourse to the statutory remedy. But in the present case the respondents, the Commissioners of Police, have, in the opinion of the Lord Ordinary, exceeded their powers, by authorising the other respondent to enter upon the property of the complainer without first complying with the regulations of the statute in that respect. The proceedings of the respondents do not therefore come within the provisions of sect. 108 of the statute, which excludes review in those cases only where the matters complained of are done 'in execution of the Act.'

"II. The Lord Ordinary has dealt with the case on the assumption that it is proved as matter of fact that the ground through which the connecting drain is authorised to be made is the property of the complainer, which is, in his opinion, sufficient for its decision. But there is another ground on which he is disposed to think that the proceedings are open to objection under the statute, viz., that the ditch into which the drain was led is the private property of the complainer, and not therefore a sewer which can be held to have been, by force of the statute, vested in the respondents. It is a ditch along a road, the property on both sides of which belongs to the complainer. That road, which was once a public highway, appears to have been shut up in 1837 by order of the Road Trustees, after a new public road had been made, and it has ever since been kept in repair, not by the trustees, but by the complainer, as an access to his farm. But even if this had not taken place, the property of the *solum* of the ditch, and even of the road itself, must, it is thought, be held to belong to the complainer; *Galbraith*, 11th July 1845, 4 S., Bell, p. 374. There is accordingly no evidence to show that the ditch has ever been considered to be a sewer under the charge of the respondents.

"It is stated on the record that there have been Police Commissioners in Tain since 1854, and it is in evidence that up to the date of the present dispute no steps were ever taken by the respondents or their predecessors in office to clean the ditch or ascertain that it was kept in a fit state to carry off any sewage that might be run into it. There is abundance of evidence, on the other hand, to show that during all that time it was dealt with by the complainer and his tenant as any ordinary ditch upon the property, and that they were allowed without objection to deepen or widen or contract it at their convenience. The mere fact, therefore, that the sewage from certain houses in the town has for some years run into this ditch, cannot, as the Lord Ordinary conceives, be held to constitute it a public sewer in the sense of the statute. It may be that the parties who have so used it, if they have done so for forty years, may be able, under the authority of *Ewart* v. *Cochran*, March 22, 1861 (4 Macqueen, p. 117), to establish a right to continue that use. But that will not, in the opinion of the Lord Ordinary, deprive the complainer of his right of property in the ditch; and if the Lord Ordinary is right in this view, the respondents appear to him to have exceeded their powers in this respect also, by authorising the respondent Mr Cameron to connect his drain with a ditch or run of water which is the private property of the complainer."

The respondents reclaimed.

FRASER and WATSON for them.

SOLICITOR-GENERAL and MACKINTOSH in answer.

The Court adhered in substance, interdicting the operations until judicial authority should be obtained. The Lord Justice-Clerk and Lord Cowan were further of opinion that the complainer had made it his case in regard to the character and ownership of the ditch. Lord Neaves and Lord Benholme expressed no opinion on that point. The complainer was found entitled to expenses.

Agents for Complainer—Mackenzie & Black, W.S.

Agents for Respondents—Murray, Beath & Murray, W.S.

Monday, July 18.

TEIND COURT.

THE EARL OF MANSFIELD *v.* THE OFFICERS OF STATE AND THE REV. W. S. HAMILTON.

Teinds—Sub-Valuation — Approbation — Identification of Lands—Process—Expenses. It is com-

petent in a process of approbation to have the lands identified to which the sub-valuation applies. The Crown and the minister of the parish found liable in expenses caused by their opposition.

In 1635 the Sub-Commissioners of the Presbytery of Perth valued the stock and teind of the whole lands within the parish of Cambusmichael and the parish of St Martins. Among the said lands were the "town and lands of Byris," which, in the report of the Sub-Commissioners (dated August 25, 1635), were valued under the generic name of "Byres," as follows, viz., "The town and lands of Byres, with the pertinents lyand in the said parochine, pertaining heritably to Patrick Inglis of Byres, occupiet by himself, has payit of before, is worth presentlie, and may pay in time coming of constant zeirly rent in stock and teind, fyve chalderis victual, twa pint meal, thrid part bear, and thrie punds vicarage."

These lands were acquired in 1802 by an ancestor of the present Earl of Mansfield, who now brought in the Teind Court a process of approbation of the sub-valuation. It appeared that at a very early period, and long before the date of the sub-valuation, part of the lands of Byres were known as Dirragemuir," and that a pendicle of the land was known as "Ranniewhistle," but neither of these subjects was mentioned by name in the sub-valuation; and it was not until a comparatively recent period that they were introduced into the title-deeds of the estate of Byres. In the summons it was sought to have the report approved by the Court in so far as concerned the pursuer's "land of Byres and Dirragemuir, comprehending Ranniewhistle with the manor place of Byres, with the teind sheaves and pertinents of the said lands."

The fact that the lands of Dirragemuir and Ranniewhistle was at first disputed by the Crown and the minister, both of whom were called as defenders to the action; but the identity was ultimately admitted. The defenders stated several other objections to the approbation—one being founded on alleged dereliction of the sub-valuation, but the objections were all repelled. The only objection requiring to be noticed here is one to the effect that it was not competent in a process of approbation to declare that the sub-valuation applied to lands not specified by name in the report of the sub-commissioners, and that "the pursuer is not entitled to any decree in this process beyond a simple approbation of the report of the Sub-Commissioners, in the terms of the report."

MARSHALL for the Earl of Mansfield.

KINNEAR for the Crown.

WATSON for the Minister.

At advising, the Court unanimously repelled the objection, holding it to be both competent and reasonable to explain in a decree of approbation what the precise lands are in regard to which the subvaluation is being approved of.

LORD BENHOLME observed that a process of approbation is a proper proceeding in which to ascertain the precise lands to which the sub-valuation applies.

LORD ARDMILLAN observed that an old sub-valuation may be unintelligible without some such explanation as is here sought.

The Court decerned in terms of the conclusion of the summons, and found the Crown and the minister liable in the expenses caused by their opposition.

Agents for the Earl of Mansfield—Tods, Murray & Jamieson, W.S.

Agent for the Crown—Warren H. Sands, W.S.

Agents for the Minister—W. & J. Sands, W.S.

Tuesday, July 19.

FIRST DIVISION.

NEILSON AND OTHERS *v.* BARCLAY.

(*Ante*, pp. 181 and 547.)

Auditor's Report—Agent's Expenses—Counsels' Fees—Precognitions—Scientific Witnesses. Agent's charge for precognoscing scientific witnesses as to the validity of a patent disallowed. Witness allowed eight days' preparation for case. Counsels' fees fixed above usual rate, as case more difficult than usual.

The questions in this case were, whether a patent was for a new invention, and if so, whether it had been infringed? The auditor, in taxing the pursuers' account, (1) disallowed charges made by their agent for going to Bolton, Manchester, and London, and precognoscing certain scientific witnesses in regard to the novelty of the invention. He, however, allowed a considerable sum for instructions to, and correspondence with, London solicitors, and drawing precognitions, in addition to the witnesses' own reports. The auditor (2) disallowed charges to the extent of £245, 3s. for expenses to a scientific witness, but allowed £5, 5s. *per diem* for four days for perusal of the proceedings and specifications, &c., and preparing report; £5, 5s. *per diem* for four days' travelling to Scotland and examining works; and £2, 2s. *per diem* for four days for attendance at trial and returning to London. The auditor (3) allowed to senior counsel for the first day of the trial £21, for the second day £15, 15s., and for the following days £10, 10s.; and to each of two junior counsel for first day £15, 15s., for second day £10, 10s., and for following days £7, 7s.

SHAND, for the pursuers, objected to the disallowing of the sums under the first and second heads, and to the small fees allowed under the third head, considering the difficulty and importance of the case.

WATSON in answer.

The Court approved of the auditor's report on the first two heads. The first charge was for an agent travelling about to precognosce scientific witnesses as to the validity of a patent, not as to its infringement. But the precognoscing these scientific witnesses for this purpose required only that the papers and proceedings should be laid before them; and the reports they made thereon came in the place of precognitions, and were the precognitions of these witnesses. No agent was necessary for this, and no questioning. In regard to the second point, the auditor had dealt liberally in the number of days he had allowed. Professor Rankine, who was examined on the whole matter, and had in fact been the pursuers' principal witness, had prepared in two days. As to the third point, it might have been expected that the cases of *Cooper* and *Wood*, and of *Hubbard*, had definitively settled this point; but peculiar cases could not but arise. Fees twice as large had been allowed in the Esk Pollution case, but it was one of the longest and hardest cases in recent years. The present case, though not so hard, was harder and more difficult than