Thursday, July 10.

MRS CAMPBELL PATERSON *v.* REV. DR M'LEOD.

Teinds—Valuation—Prescription.

Held (affirming judgment of Court of Session) that it had not been proved that the teinds of certain lands were valued, and *observed* that no plea of precription could apply unless the identity of the lands were made clear.

The question to be determined under this appeal was whether the teinds of the lands of Knock and Gualachaolis or Gualachelish, in the parish of Morvern, and county of Argyll, belonging to the appellant, Mrs Campbell Paterson, were or were not valued.

The proceedings commenced with a summons of augmentation, modification, and locality in the Court of Teinds, at the instance of the respondent, the Rev. Dr John M'Leod, minister of the parish of Morvern, against the appellant and the other heritors of that parish, concluding for an augmentation of his stipend.

After certain preliminary procedure, the Court of Teinds, on 22d November 1865, modified a stipend of eighteen chalders of victual, half meal half barley, for Dr M'Leod, with £8, 6s. 8d. for furnishing communion elements, and remitted to the Lord Ordinary to prepare a locality, "but declaring that this modification and the settlement of any locality shall depend upon its being shown to the Lord Ordinary that there exists a fund for the purpose."

The Lord Ordinary (BARCAPLE), on Ist December 1865, appointed the heritors to produce their rights to teinds and valuations thereof, and thereafter allowed the minister to lodge, on 16th March 1866, a condescendence "regarding the teinds of the parish."

Answers were lodged for the appellant, Mrs Campbell Paterson.

The Lord Ordinary on 22d January 1868 pronounced the following interlocutor:—

"The Lord Ordinary having heard counsel for the parties in the question between the minister, condescender, and Octavius Henry Smith, Esq., and others, heritors in the parish, respondents, and having considered the closed record, productions, and whole process—Finds that the objections stated by the minister to the decree of approbation and division in 1786 are excluded by the negative prescription: Finds that the teinds of the lands belonging to the several respondents, which are condescended upon by the minister as being unvalued, must be held to have been included in the valuation by the sub-commissioners in 1629, approved of by the Teind Court in 1785 and 1786; and appoints the cause to be enrolled, that parties may be heard upon the effect of this judgment, and on the question of expenses.

"*Note.*—The sub-valuation of the teinds in the old parishes of Kilcomkeill and Killentak, composing the united parish of Morvern, was carried through by the sub-commissioners for the presbytery of Argyll, at their own instance in 1629. From the terms of their report, which applies to all the parishes in the presbytery, the Lord Ordinary is of opinion that they must be held to have intended to value the whole teinds in each parish, and that they made and reported the valuation on that understanding. Processes of approbation of the valuations of the united parishes were brought by the Duke of Argyll in 1785, and by the whole other heritors in 1786. The last of these processes comprehended also a division of the valuation among the pursuers. It seems to be clear that the whole teinds of the parish have ever since been held to be valued until the present proceedings were taken by the minister. In particular, it appears that in the last locality, in 1804, the former minister stated that the whole teinds of the parish were valued, and on that ground got a judgment of the Court altering the original modification of his stipend, and modifying it to the whole teinds of the parish, except £80 Scots, then paid to the minister of Inverary. The present minister now undertakes to show that there are unvalued teinds on which his augmented stipend may be localled. For this purpose he condescends on the names of certain subjects as belonging to the several respondents, and appearing in the titles to their lands, some at an earlier, some at a later, date, which he maintains are not comprehended in the valuation. None of these names occur in the report of the sub-valuation, as it is set forth in the decrees of approbation, or in two documents in the Teind Office, each purporting to be a copy of it. But the respondents maintain that the subjects which may at any time have been so designated were valued along with the whole lands belonging to their predecessors, under the names in the sub-report.

"The respondent, Mr Smith, in regard to three of these subjects—Acharn, Correspein, and Mucherach, the names of which occur in his titles, and do not appear in the sub-valuation, maintains that the minister's contention is excluded by the terms of that part of the decree in the process of approbation and division in 1786 which divides the *cumulo* valuation among the heritors, who were pursuers of that process. And the respondent, Mrs Campbell Paterson, maintains the same plea in regard to the lands of Knock, which are not named in the sub-valuation. The decree, after approving of the report of the sub-commissioners in ordinary form, proceeds—'and in terms thereof, and of the scheme of division of the *cumulo* valuation after insert, have found and declared, and hereby find and declare, the just worth and constant yearly avail of the teinds, parsonage and vicarage, of the respective pursuer's lands libelled, to be now and in all time coming the particular quantities of victual and sums of money following, viz.:—The parsonage teinds of the lands of Auchagallin,' &c. . . . . '*Item*, the parsonage teinds of the lands of Auchnaha, Arneis, and Auchabeig, and Cowlchyllis, *now called Knock*, with the pertinents belonging to John Campbell of Ardsliganish,' &c. . . . . '*Item*, the parsonage teinds of the lands of Augorie, Darinamant, Anchengawin, Unibeg, Dariness, commonly called Airich Innes, *comprehending the pendicles called Correspein and Mucherach and Achiharn*, with the pertinents belonging to John Maclean of Inverscadale.' Cowlchyllis and Dariness are both contained by name in the report of the sub-commissioners, and the respondents maintain that the terms of the decree of the High Court above set forth conclusively determine that the subjects in dispute were valued under these names. The Lord Ordinary is of opinion that this is a well-founded contention, and that it is impos-

sible in the present proceedings to disregard the clear words of the decerniture of this Court, attaching the valuation to the lands in dispute. He thinks the cases of *M'Intyre* v. *M'Lean*, 8th March 1828, F.C., and the *Earl of Fyfe's Trustees* v. *Commissioners of Woods and Forests*, 11 D. 889, are distinct authorities on the point. In the latter case the Lord Ordinary, whose judgment was altered, had held that the decree in the approbation, in so far as it deviated from or extended the operation of the sub-report, was irregular and without authority. But that view was entirely set aside by the judgment of the Court. In the present case, it does not appear that the summons of approbation concluded to have it in any way determined that the subjects named in the sub-report comprehended those others not named there which are now in question; and the minister did not appear though called as a defender. But the Lord Ordinary does not think these circumstances afford any sufficient ground for treating as inoperative a decree which it is not sought to reduce, pronounced in a matter in which the Court had undoubtedly jurisdiction. Even if a reduction had been brought, the case *M'Intyre* is a direct authority for holding that the objection is cut off by prescription.

"The more general question in the case relates to all the other subjects condescended on by the minister, and also to Acharn, Correspein, Mucharach, and Knock, if it is not excluded as to them by the special terms of the decree of approbation and division. Including these last, the minister condescends upon the names of twelve separate subjects, which are not mentioned in the sub-report, but appear in the titles at same period. Camusallech, one of these subjects, is said to belong to Mr Johnston, an heritor, who has not appeared in this discussion.

"The Lord Ordinary had the benefit of a very elaborate and able argument on the evidence relating to each separate subject, and he has examined the numerous titles and other documents in process, but he does not think that it would serve any useful purpose to enter here upon the details of the evidence, or the separate case in regard to each of the subjects in dispute. The view on which his judgment proceeds applies generally to the case of the whole of the subjects in dispute.

"In this, and every such case, the burden lies upon the heritors to make out that their teinds are valued, and for this purpose to show that the disputed lands are comprehended in the description of the subjects in the valuation. But they may discharge themselves of this *onus*, in the first instance, by satisfying the Court that, on a sound construction of the document, it is to be presumed that it does truly comprehend these lands. In considering this question, the whole character and terms of the sub-report, and the nature of the proceeding which it sets forth, are to be taken into view. The foundation of the minister's case is, that the valuation mentions the names of the lands of the several heritors which were valued. This is undoubtedly a circumstance of great importance, where it can be shown that there were other subjects which went by separate names at the date of the valuation; but it does not absolutely exclude a construction of the document by which it shall be held that subjects with separate names were comprehended under the names appearing in the valuation.

"In the opinion of the Lord Ordinary, the terms of the sub-report in the present case clearly show that the sub-commissioners intended the valuation to comprehend the whole lands in the two old parishes composing the parish of Morvern, and that they understood it to do so, and reported it as a valuation of the whole parishes. They set forth the commission to them to try 'the worth of all lands of each paroche,' and that they 'have faithfullie, trewlie, and diligentlie procedit in tryeing and cleiring of the sds. valuation of the parochynes underwryted, lyand within the said presbitrie of Argyle;' and they make a report of their proceedings and diligence in the execution of their commission, 'ilk parochyne being devideit and contained be itself.' The *prima facie* presumption is that a valuation reported in these terms included the whole lands in each parish. If it did not do so, there must have been a miscarriage in the proceedings of the sub-commissioners, and an error in their report, which is not to be presumed, but the reverse. In the case of *Scott* v. *Kerr* (Sh. Teind Cases, 233, and 2 Sh. and M'L. 968), it was held in this Court and by the House of Lords, though with great difficulty, that a valuation of the Mains of Inchgall, though occurring in what was apparently intended to be a valuation of the whole parish, could not, in the circumstances of that case, be held to include certain other lands which were not named in the report. But the Lord Ordinary does not understand that any dissent was then, or has since been expressed, from the observations of Lord Moncreiff as Lord Ordinary in that case, as to the presumption arising from the circumstance that a valuation bears to have been of the whole parish. On this point reference may be made to the opinion of the Lord Justice-Clerk in the case of *Lord Fife's Trustees*, 11 D. 900.

"At the date of the valuation there were six heritors in two parishes, and the valuation proceeds upon the principle of valuing successively the lands belonging to each of them in each parish. These lands are mentioned by name, pertinents being added in every instance except that of Angus M'Lean, parson of Morvern, whose lands of Ulling are valued without the mention of pertinents. The names of lands in the report are numerous, and it is not disputed that some of them are not to be found in any of the titles which have been recovered. The Lord Ordinary thinks it is clear that the valuation was held by the sub-commissioners themselves to comprehend the whole of each parish, and that it was so reported by them. It was also so treated by the heritors who brought the process of approbation in 1786—that is, all the heritors in the parish except the Duke of Argyll. The summons in that process set forth that the other lands in the united parishes belonged to the Duke, and were valued at the same time with those of the pursuers; and it concluded for a division of the *cumulo* valuation, upon the footing that their lands, along with those of the Duke of Argyll, constituted the whole lands in both parishes. The Court also dealt with the valuation as embracing the whole parish by giving the division concluded for upon that footing. The Officers of State, the Duke of Argyll, the minister of Morvern, and the moderator of the Synod of Argyll, were all called as defenders, and were therefore made aware that the action proceeded upon the footing that the whole lands in the parish were included in the valuation. Again, as already noticed, in the locality of 1804 the minister himself founded

upon the fact that the whole teinds of the parish were valued. Upon that ground he got a modification of stipend, giving him (with the exception of £80 Scots paid to the minister of Inverary), the whole amount of the money and victual teind in the valuation, as the whole teinds of the parish. And no question as to the correctness of this understanding in regard to the nature of the valuation has ever been raised until the minister brought the present process of augmentation.

"The Lord Ordinary cannot suppose a case in which, apart from the manner in which the lands are described, there would be a stronger presumption that the whole teinds of the parish were valued. To set aside a presumption so strongly supported, he is of opinion that, in the language of Lord Moncreiff in the case of *Scott*, it must be 'clearly shown that the particular lands in question were not valued.' He has fully in view the undoubted principle that it is incumbent on the heritors to show that the teinds of their lands are valued. But he thinks that in the present case they have amply discharged that burden in the first instance by adducing the terms of the sub-report, the proceedings in the process of approbation and division, and the way in which the valuation has all along been understood and acted upon, especially by the minister in the last locality, so long ago as 1804.

"As regards the manner in which the lands are described in the valuation in the present case, it does not appear to the Lord Ordinary to exclude the presumption that the whole parish was valued, arising from the terms of the report in other respects, and the whole circumstances of the case. It is easy to conceive a case where the subjects valued should be set forth in such a way as at once to suggest, on the face of the report itself, that they were not the whole lands of the parish. But in the present case, so far as can be gathered from the report itself, the understanding of the sub-commissioners was, that in the case of each of the six heritors, the lands valued as pertaining to him constituted his whole property in the parish. Thus, in the case of M'Lean of Morvern, the first heritor named, there are set forth eleven names of lands, 'with the parts, pendicles, and pertinents yrof' 'pertaining to the said Lauchlane M'Leane of Morwarne, lyand within the parochyne of Kill-colmkeill.' Sixteen names of lands are set forth as pertaining to the same heritor in the parish of Killintak. The Lord Ordinary thinks that the *prima facie* import of the report, looking to its whole terms, is, that the lands thus described included the whole property of M'Lean of Morvern, and that he and the other five heritors named were, which is not disputed, the whole heritors in the united parishes. Of course another mode of describing the subjects might have been adopted which would have excluded all question, but the natural import of the report is, that when the sub-commissioners proceeded to ascertain the value of the teinds of the heritors' lands in the parish, he gave them up under these names, probably with reference to the then existing state of possession by tenants holding under him. If in 'upgiving' his teinds he excluded any portion of his property in the parish, he must have concealed the fact from the sub-commissioners, which is certainly not to be presumed, and is made more improbable by the circumstance that Angus M'Lean, the parson of Morvern, and in that capacity titular and possessor of the teinds of the parish, deponed to the value of the teinds of each heritor's lands. There is no reason to suppose that in giving up the value of the teinds any reference was made to the names of the lands as appearing in the heritors' titles. That was a matter of no importance in the valuation, and none of the parties present may have had any information in regard to it, and accordingly names of lands appear in the valuation which are not to be found in the titles.

"The present minister now suggests for the first time, so far as appears, since 1629, that numerous and very important omissions were made in valuing the teinds of the united parishes. It is not unimportant that the lands which are thus alleged not to have been valued, belonged, according to the statement for the minister, not to one heritor only, but to four out of the six heritors in the parish. The ground of this allegation is, that names of lands are found in the title-deeds of the heritors which do not appear in the valuation. An excerpt from a valuation of the county of Argyll is produced, supposed to have been made up about 1680, more than fifty years after the valuation. It does not generally contain the names of the proprietors' lands; and the only one of the subjects in dispute which it does contain is Knock, which is specially named in the decree of approbation and division. There is also produced a rental of the estate of Morvern for 1671, which contains the names of Auchacharn (also mentioned in the decree of division), Killentein (which the minister holds to be the same as Killundin), and Barr. The last of these appears in the rental as Barr and Mungastill possessed as one tenancy, and it is not disputed that Mungastill is valued, though apparently under the name of Gastill. The Lord Ordinary does not think that material aid is to be got from these two documents for excluding any of the lands in dispute from the valuation. Still less importance can be attached to rentals made up in the course of last century, or to a valuation of the parish in 1813. It is not disputed that the names condescended on by the minister are or were names of places in the parish. That is clearly shown by the titles. But it is apparent from the cess rolls and rentals produced that the names by which the existing tenancies or possessions have been from time to time described, have varied exceedingly in consequence of changes in the occupation, or for other reasons which it is impossible now to trace. There are material variations in this respect between the valuation of the parish in 1813 and the county valuation roll of 1860. In the former there are five of the disputed names, and in the latter three; only two of them occurring in both rolls. Only four of the whole names condescended on appear in the titles ›roduced of a date prior to the valuation. Bu. if they could all be traced in the titles to a period before the date of the valuation, that would not, in the opinion of the Lord Ordinary, warrant the conclusion that lands bearing these names were not included in the valuation. He thinks it is to be inferred from the whole evidence in the case, that in describing the property of the several heritors for practical purposes at any particular date, these names were liable to be used or not, according to circumstances which it is now impossible to ascertain. In regard to some of them, there is no trace of their ever having been used except for the purpose of feudal conveyance. In these circumstances, the Lord Ordinary does not think that their appearance in the titles. either before or after

the date of the valuation, is a sufficient ground for setting aside the presumption which otherwise exists, that the whole lands in the parish were valued. The case appears to be very different from that of *Scott* v. *Kerr*, formerly referred to. What was there said to have been valued was the Mains of Inchgall—a qualified and restrictive description, which was held to exclude the view that the whole lands and barony of that name were valued, including specific subjects appearing separately on the titles. Even in that case it was with much difficulty that the presumption arising from the terms of the sub-report was got over.

"The respondents suggest, in regard to certain of the subjects in dispute, that they were possessed as pertinents of or in connection with other lands specified by them, the names of which appear in the valuation. But the Lord Ordinary does not proceed upon these statements, which are necessarily conjectural. In the view which he takes of the case, the respondents are not called upon to explain the state of possession of their predecessors' lands in the parish in 1629, and they have not the means of doing so.

"Of course the present judgment does not apply to the lands of Camusalloch, belonging to Mr Johnston, who is not a party to this discussion."

Against this interlocutor the heritors in question presented a reclaiming note, and the Second Division pronounced the following interlocutor:—

"The Lords having considered the process and heard counsel, recal the interlocutor reclaimed against in so far as regards the lands of Knock and Gualochaolis acquired from Allan Maclean of Knock: Find that the said lands are unvalued: Adhere to the interlocutor, in so far as regards the lands of Correspein, Muckerach, and Acharn, specially mentioned in the decree of approbation and division in 1786: Also as regards the lands of Dhugarry; *Quoad ultra*, supersede consideration of the case, reserving all questions of expenses, and decern."

An appeal was taken to the House of Lords, and the appellant sought for a reversal of the judgment of the Court of Session for the following reasons:—(1) Because it is *res judicata* that the teinds of the lands of Knock and Gualachaolis or Gualachelish are valued. (2) Because, independently of the decreee of approbation and valuation in 1786 being in itself well founded at the time it was pronounced, it is not now competent to impugn or call in question its validity or efficacy. (3) Because it was incompetent for the Court of Teinds to review, alter, or refuse to give effect to the findings and decernitures contained in the decree of approbation and valuation obtained by the proprietors of the lands in 1786, or to cut down or nullify these by referring to alleged titles of the lands, or any other extraneous evidence. (4) Because, if the interlocutors appealed against were carried into effect, there would not only be a double allocation of stipend on the teinds of the lands belonging to the appellant, but an encroachment on the stock. (5) Because, though it were held to be competent to impugn the decree of approbation and valuation without a reduction being raised by the respondent, there are no grounds for holding that the teinds of the lands of Knock were not valued by the Sub-commissioners in 1629, or that their report was not duly approved of, and the teinds of these lands effectually valued, by the Lords Commissioners in 1786.

The respondent answered, giving as reasons the following:—(1) Because it is proved that the lands in question were not valued by the Sub-commissioners in 1629. (2) Because the decree of 1786 did no more than ratify and approve of the subvaluation so far as it concerned the pursuer's lands libelled. (3) Because the plea of positive prescription ought to be repelled—(a) In respect that a valuation of teinds is not a title of property or possession of a heritable subject. (b) In respect that the appellant and her predecessors had no possession of the teinds as owners and adverse to others, such as is required by the Act 1617, cap. 12. (4) Because the plea of negative prescription ought to be repelled—(a) In respect that the decree of 1786 does not purport to value the lands in question. (b) In respect that, if it can be read as a valuation of these lands, that is an intrinsic nullity, appearing *ex facie* of the decree, and not protected by the negative prescription.

Authorities cited:—

1. As to positive prescription—Erskine, 3, 7, 3; *Minister of N. Leith* v. *Merchants of Edinburgh*, M. 10,890; *Mure* v. *Heritors of Dunlop*, M. 10,820; *Gordon* v. *Kennedy*, M. 10,825; *Irvine* v. *Burnet*, M. 10,830; *Solicitor of Teinds* v. *Budge*, Hume 455; *Duncombe* v. *Carruthers*, 19 May, 1802; *L. Lynedoch* v. *Liston*, 14 S. 374.

2 As to negative prescription—Stair, 2, 12, 19; Erskine, 3, 7, 8; *Macintyre* v. *Maclean*, 7 March 1835; *Earl of Fife's Trustees*, 11 D. 889; *Magistrates of Dundee*, 11 D. 6; 1 Macq. 317; *Kinloch* v. *Bell*, 5 Macph. 360; *Lord Advocate* v. *Johnstone*, 5 Macph. 414, 1 L. R. 426.

3. As to citation of the minister in sub-valuations—*Thomson*, 20 July 1763; *M'Neill*, 3 June 1801, aff. 20 Feb. 1809; *Smythe*, 5 Feb. 1833.

In delivering judgment:—

LORD COLONSAY—[His Lordship at great length proceeded to trace the history and titles of the lands of Knock and of the other lands included in the valuation of 1629]. The question then comes to be, Whether the appellant has with any reasonable degree of certainty made out that her lands have been already valued under this valuation of 1629. I have come to the conclusion that these lands were not so valued. The appellant has failed to show that they were included either by express mention or under any other name in the valuation of 1629. The respondent has not only proved this, but has with considerable minuteness traced the ownership of the lands in question. The proceedings in 1786, when examined, do not carry the matter further, and those in 1804, though indicating at first sight a belief then existing with parties interested that the previous sub-valuation of 1629 was a complete valuation, cannot prevail against the clear evidence deducible from the progress of titles and descriptions in the successive deeds. I may also point out that the scheme of division was unopposed, and that no parties present have any interest to oppose it. The process of augmentation in 1804 proceeded on the view that all the teinds were valued. The contention that Knock was included is disproved, and there is nothing in the suggestion that Lochbay may have held the lands between 1626 and a later date. As regards the plea of positive prescription, I aggree with the Court below. Indeed, the plea of prescription could not apply, except the identity of the lands had been made out, which was the point not here made out

On the whole case, therefore, his Lordship moved that the judgment of the Court of Session should be affirmed, with costs.

LORD CAIRNS—When this case was argued it appeared to me that the real question was not so much one as to the positive or negative prescription, as of fact, whether these lands had been included in the valuation of 1629 or not. The presumption is that all teinds were included in that valuation, and it appears that the commissioners considered that they were valuing the whole teinds; again, the process of augmentation raised by the respondents further stated that all the teinds were valued, and all the proceedings in 1786 and 1804 would go far to show that the presumption was in favour of the appellant. But the case is not left to the mere question of presumption. There is a series of titles and documents which serve fully to show that the lands of Knock were not the lands of Knock so called at a former period. The delay which has occurred in your Lordships giving judgment in this case has arisen from the reluctance I felt in sacrificing my impressions as to the presumptions of the case to the evidence derived from these titles, and now that my noble and learned friend (Lord Colonsay) has gone through all the details of those titles, I feel that I am driven out of the conclusion I was at first disposed to come to. I regret such conclusion, and though a former minister of the parish had submitted to the erroneous impression against himself, the present minister's case could not be re-resisted. The judgment of the Court of Session ought therefore to be affirmed.

LORD HATHERLEY—I also, like my noble and learned friend, in the outset felt that the presumptions were in favour of the appellant, but afte rcarefully considering the details of titles which my noble and learned friend has so fully reviewed, I am satisfied that the lands of Knock have never been included in any valuation, and that the contention of the minister is right.

LORD CHELMSFORD—(who presided in the absence of the Lord Chancellor) put the question that the judgment of the Court of Session be affirmed with costs, which was decided accordingly.

Affirmed with costs.

Counsel for Appellants—Dean of Faculty (Gordon) Q.C., and G. Webster. Agents—A. Webster, S.S.C., and Connell & Hope, Westminster.

Counsel for Respondents—Lord Advocate (Young) Q.C. and D. Crawford. Agents—J. Martin, W.S., and Willoughby & Fox, Clifford's Inn.

VALUATION APPEAL COURT.

1873.

(Before Lords Ormidale and Mure.)
(*Ante*, vol. ix, pp. 443-6, 497.)

No. 90.—(LANARK.)

24th March 1873.

THE GLASGOW IRON COMPANY.

Goodwill or Prestige of a Shop or Store—Rent.

The Glasgow Iron Company let to Samuel H Campbell, store and dwelling-house in connection with their works. In the missive offer by Campbell, £90 is offered as the rent of the subjects, and £60 for goodwill of the business. The total sum of £150 is entered in the roll. The Company and Campbell contended that only £90 should be entered, the £60 paid for goodwill not being of the nature of rent. The Company had formed and carried on a successful business for some years in this store, and established connection with their works; and the Assessor maintained that locality and connection were important elements in obtaining rent and fixing annual value.

The Commissioners refused the appeal.

Held that the Commissioners were right.

No. 91.—(PERTH.)

29th March 1873.

WEEM EPISCOPAL CHURCH.

Church — (Episcopal) — whether "Lands and Heritages."

The Episcopal Church at Weem, Perthshire, is entered in roll at a valuation of £10—proprietor, trustees, p. Sir Robert Menzies, Bart. It is erected within the policies of Castle Menzies, and is the private property of Sir Robert. He stated that it was about to be consecrated to divine uses in perpetuity, and no revenue was derived from it. Sir Robert maintained that churches were *extra commercium*, and were not liable to assessments; and as by the Act the roll is to be the basis of assessment, churches should not be entered.

The Commissioners dismissed the appeal.

Held that the Commissioners were right.

No. 92.—(ROSS.)

29th March 1873.

JOHN GRANT.

Tenant—Purchaser—(Tenant became purchaser before expiry of lease)—Rent or value.

Appellant was tenant of park and house, at rent of £12, on lease of 21 years from Whitsunday 1865. He *purchased* the subjects, and made considerable improvements, and they were then entered at £20, which was admitted to be a fair value; but appellant contended that the rent under the lease should remain in the roll until such time as the lease would have expired.

The Commissioners unanimously refused the appeal.

Held that the Commissioners were right.