

the ground that the part of the parish thus proposed to be taken from Crawford and added to Leadhills would be very much inconvenienced by the change, and the people would have a much longer road to travel to church than they had at present.

A. R. CLARK and WATSON for petitioners.

The LORD PRESIDENT—The Court are not prepared to sanction the proposed boundary. The sole object of adding these fifteen square miles, containing these fourteen families, to Leadhills district, is to enable the petitioners to carry out their scheme of provision for stipend to the Leadhills minister, and it is plain that but for that purpose no one would have thought of including it in the proposed new parish. It will be for the petitioners to say whether they desire to amend their boundary.

The petitioners were accordingly allowed time for consideration.

Agents for Petitioners—Marshall & Stewart, W.S.

Agents for Objectors—Mackenzie & Kermack, W.S.

Wednesday, June 19.

MINISTER OF CERES v. THE HERITORS.

Teinds — Augmentation — Valuation — Declarator.

Procedure in an augmentation sisted to allow minister to bring a declarator to try the validity of a valuation which had been acted on for a long series of years; following precedents of *Kilbirnie* and *Stracathro*.

The Rev. J. C. C. Brown, minister of the parish of Ceres, in the county of Fife, with a present stipend of 16 chalders, modified in 1823, raised a summons of augmentation, modification, and locality, against the heritors.

DUNCAN, for the minister, asked the Court to grant an augmentation of 4 chalders, stating that, although the last augmentation had been fixed on the footing that it exhausted the free teind, and the minister had for years been accepting less than he was entitled to, on the footing that there were not sufficient teinds, it was now ascertained that the valuation led in 1631, on which, as a good valuation, parties had proceeded, was defective in various respects.

JOHN MARSHALL, for the Earl of Glasgow, opposed.

LORD PRESIDENT—This is in the position of a case which was before this Court not long ago, in the time of Lord Colonsay, when the Court came to the conclusion, after full argument and consideration, that when a decree of valuation had been acted on and recognised for a long series of years, and it was necessary for the minister to set it aside in order to show that there was free teind, the proper course was to sist procedure until an action of declarator was brought by the minister. The course here will be to pronounce an interlocutor in the same terms as that pronounced in the previous case.—(*Minister of Kilbirnie v. Earl of Glasgow*, 19th December 1866, 5 Macph., 195; and *Minister of Stracathro and Dunlappie v. The Heritors*, ante, vol. iv., p. 163.)

Agents for Minister—Adamson & Gulland, W.S.

Agents for Earl of Glasgow—Marshall & Stewart, W.S.

COURT OF SESSION.

OUTER HOUSE.

LORD KINLOCH.

MACKENZIE & SUTHERLAND v. HENDERSON.

Road—Road Trustees—Contractor—Repair. Petition by road trustees to have a road contractor ordained to repair certain alleged defects in the condition of the road at the termination of his contract dismissed, there being no proof of any specific fault on the part of the contractor.

In 1861 Donald Mackenzie, road contractor, entered into an agreement with the Commissioners of Highland Roads and Bridges, represented by Mr Joseph Mitchell, then general inspector, for repairing and keeping in repair the Dunbeath Road, in the county of Caithness, for the space of two years from 1st May 1861. The deed of agreement bore that Mackenzie was to keep and have in repair at all times during the two years the said road, and leave the same at the end of that time in repair, in terms of the annexed specification, and to execute in each year the whole works and repairs therein specified. George Sutherland, farmer, Mains of Thrumster, bound himself as cautioner for Mackenzie. Mitchell, on the other hand, on the part of the commissioners, was to pay to Mackenzie the sum of £970, 4s. in eight equal instalments of £121, 5s. 6d. each, the first instalment to be paid in August 1861, the second in September, the third in December, and the fourth in June 1862, provided certain specified repairs were duly executed at these several dates; and for the remaining year the four instalments were to be paid at the same periods, "provided, on examination and report by any one of the sub-inspectors of the said commissioners, the said work shall have been found to be duly executed; it being hereby expressly conditioned and declared that unless the specified quantities of work are found executed at the period above-named, the instalments then due shall lie over, in the hands of the said commissioners, until the said repairs shall be executed by the said second party, his cautioner, or their foresaids; and also, that unless at the period above-named, and at the expiration of the foresaid space of two years, the whole repairs are properly executed, the defects shall be valued by any one of the sub-inspectors whom the said general inspector shall appoint, and the amount deducted from the agreement price." The agreement declared the true meaning of the contract to be, that the said road and bridges, parapets, breast walls, retaining walls, drains, water-courses, and all other works, were to be put, kept, and left in perfect repair, and so that the commissioners should not have to pay more than the stipulated price for the work. If Mackenzie failed in performing the repairs, or in giving his due personal attention to them—"of all which circumstances the said general inspector shall be sole judge"—the contract might, in the option of the commissioners, terminate at the end of the first year.

The relative specification contained the details of the work to be done at the different periods of the year, and stipulated that "the whole of the foresaid works must be performed in a substantial and workmanlike manner, agreeably in all respects