

Wednesday, February 19.

FIRST DIVISION.

[Sheriff of Forfarshire.

TIERNEY v. BALLINGALL & SON
(INLAND REVENUE COMPEARING).

Proof—Diligence for Recovery of Documents—Public Department—Instruction to Servants of Department—Reparation.

An Excise officer raised an action of damages against a firm of brewers for injuries caused to him by falling down a hatchway used for the purpose of hoisting yeast in their brewery, while he was engaged in drawing and tasting samples from the liquor in the fermenting vessels. The defenders pleaded contributory negligence, and averred that the pursuer was bound to make, and had in fact made, himself well acquainted with the system of working employed in the defenders' brewery, and in particular with the times at which the yeast was hoisted; further, that he had sent two of the defenders' servants to draw the samples instead of drawing them himself, it being part of these servants' duty to attend to the hatchway when it was open, and that in so doing the pursuer had contravened a rule of the Excise Department.

The defenders having applied for a diligence to recover "the instructions issued by the Inland Revenue to their officers as to their duties (a) with respect to drawing samples from fermenting vessels in breweries, and (b) with reference to making themselves acquainted with the system of working adopted in breweries, and in particular with the time at which yeast is placed in the tuns therein," the Board of Inland Revenue compeared and opposed the application, on the ground that the disclosure sought was contrary to public policy, and would be prejudicial to the public service.

The diligence refused.

Leven v. Young & Company, March 17, 1818, 1 Murray 356, referred to by the defenders. *Earl v. Vass*, July 17, 1822, 1 S. App. 229, and *Arthur v. Lindsay*, March 8, 1895, 22 R. 417, referred to by the Inland Revenue.

Counsel for the Defenders—Jameson—Constable. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for the Inland Revenue—A. J. Young. Agent—The Solicitor to the Board of Inland Revenue.

Friday, February 21.

TEIND COURT.

ROBERTSON, PETITIONER.

Church—Glebe—Application for Authority to Feu Glebe—Improvements—Permanent Burden on Glebe—Avenue to Manse—Glebe Lands (Scotland) Act 1866 (29 and 30 Vict. cap. 71), sections 14 and 18.

By sections 14 and 18 of the Glebe Lands (Scotland) Act 1866, it is provided that in an application for authority to feu a glebe the Court may declare the expenses of the application, and of making any streets, roads, drains, &c., which should be found "reasonable or expedient with the view of the more advantageous feuing or leasing thereof," a permanent burden on the glebe. *Held* that these provisions did not include the expense of a new gateway and approach to the manse which added to its convenience and amenity, but were not rendered necessary as part of the feuing arrangements.

The Rev. John M. Robertson, minister of the parish of St Ninians, Stirlingshire, presented a petition on 8th December 1891, praying for authority to feu the glebe of St Ninians, and, *inter alia*, for decree that the amounts of the costs, charges, and expenses incurred in making and constructing roads, passages, sewers, and drains in or through the said glebe, as the same should be ascertained in the course of the procedure to follow thereon, should form a permanent burden on said glebe in terms of the Glebe Lands (Scotland) Act 1866 (29 and 30 Vict. cap. 71). By section 14 of that Act it is provided—"The Court may also, on such application, authorise the minister to make and construct such streets, roads, passages, drains, or sewers in and through the glebe or any part thereof as the Court on inquiry may find reasonable or expedient, with the view of the more advantageous feuing or leasing thereof." By section 18 it is provided—"The Court on the granting of any such order or interlocutor, on the summary application of the minister" "shall inquire into and ascertain the sums which shall have been paid as the costs, charges, and expenses of applying for and obtaining such order or interlocutor and incidental thereto, and of making and constructing streets, roads, passages, sewers, and drains in or through the glebe or any part thereof, and shall decree the amount thereof a permanent burden upon the glebe."

The application to feu was granted, and after further procedure the Rev. J. M. Robertson lodged an account of the expenses of the application and of making the necessary streets, drains, &c., which he desired to form a permanent burden upon the glebe in terms of section 18, quoted *supra*. In this account he included certain items connected with the expense of making a new gateway and approach to the