Court with clean hands, and more than one witness said that he thought the pursuer was bound to take some steps to vindicate his character.

The LORD PRESIDENT, LORD ADAM, and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"Recal the interlocutor of the Sheriff dated 11th November 1898 under appeal: Find in fact that on 13th August 1897, at a waygoing sale at Bogindollo Farm, the defender uttered in presence of the persons enumerated in condescendence 3 the words set forth in that condescendence or words to the same effect of and concerning the pursuer: Find in fact that the said words were not used in a defamatory sense, and were not so understood by the persons in whose hearing they were uttered: Therefore assoilzie the defender from the conclusions of the action: Find no expenses due to or by either party in the Sheriff Court or in this Court, and decern."

Counsel for the Pursuer — Salvesen — Gunn. Agents—Mackay & Young, S.S.C.

Counsel for the Defender—N. J. Kennedy —Adamson. Agents—Archibald & Menzies, S.S.C.

Wednesday, June 28.

FIRST DIVISION.

STOCKS *v.* INLAND REVENUE.

Revenue—Income-Tax—Occupancy of Real Property—Value—Income-Tax Act 1842 (5 *and* 6 *Vict. c.* 35), *secs.* 60 *and* 63, *Sched.* (*A*) *and* (*B*), *Rule X* (5), *and sec.* 66.

A public-house was assessed to income-tax under Schedule (A) at £40 by the Surveyor of Taxes, who was not the assessor under the Lands Valuation Act. The owner of the premises appealed to the Commissioners, and produced a lease dated more than seven years prior to the year for which he was assessed, the rent stipulated in which was £19, 10s. The *bona fides* of the lease was not disputed. The appellant led no other evidence, and did not require a valuation of the premises to be made by a man of skill.

The Commissioners decided that they were not bound to accept the lease as conclusive, and that "from their own local knowledge and experience, and according to the best of their judgment," £40 was a fair and moderate valuation.

In an appeal against the decision of the Commissioners, *held* that their valuation must be sustained, in respect that the lease, though a piece of evidence, was not *per se* conclusive, and (2) that the appellant having failed to produce any other evidence or to require a valuation, the Commissioners were entitled to make the assessment according to the best of their judgment.

This was an appeal by Archibald Stocks, vintner, Burntisland, against a decision of the Income-Tax Commissioners assessing the annual value of certain public-house premises in Burntisland of which he was the tenant and occupier.

The following facts were stated in the case as admitted:— "1. That Mrs Jane Stocks, Craigholm Crescent, Burntisland, the appellant's mother, is the liferentrix of said premises, and that the fee of the property belongs to her seven children, of whom the said Archibald Stocks is one. 2. That the said Archibald Stocks is tenant and occupant of said premises in virtue of a lease between him and his mother for seven years from Whitsunday 1898 at a yearly rent of £19, 10s.; that said lease contains the whole contract between the parties to it, and that no *grassum* or other consideration for goodwill or otherwise was paid in respect of said lease or of the appellant's tenancy thereunder, and that the rent therein stated was *bona fide* paid for the premises. The lease is dated 2nd May 1898, and was produced at the hearing of the appeal. 3. That some time prior to 1888 the premises were let at an annual rent of £18, and were afterwards divided into two subjects, one let as a licensed grocer's shop at a rent of £12, and the other as a dwelling-house at £8 per annum. This continued till 1887, when the premises became vacant. The appellant then became tenant of the premises at an annual rent of £19, 10s., and applied for and obtained a public-house licence for the premises in his own name and for his own behoof. He thereafter entered into a lease of the premises with the liferentrix dated 15th and 27th July 1889 for ten years from Whitsunday 1888 at said annual rent of £19, 10s. On the expiry of this lease, the present lease, being that referred to in statement No. 2, was entered into. Both leases are docqueted by the Commissioners in reference hereto and made part of this case. 4. That the Surveyor of Taxes for Fifeshire is not the Assessor for the burgh of Burntisland under the Lands Valuation Act. That at the Lands Valuation Appeal Court held at Burntisland in September 1898 the present appellant appealed against an assessment of £40, which had been placed on said premises by the Burgh Assessor, and the appeal was unanimously sustained, and the valuation reduced to £19, 10s., and the premises are entered in the burgh valuation roll at that figure."

The decision of the Commissioners was to the effect "(1) That under the said 60th and 66th sections of the said Act they were not bound to accept either lease in the circumstances stated as conclusive evidence of the annual value of the premises for income-tax purposes; and (2) that from their own local knowledge and experience, and according to the best of their judgment, the rent of £19, 10s. stated in the lease did not represent the full value of the premises if let in the open market, and that £40 was a fair and moderate valuation. They therefore refused the appeal."

At the hearing of the appeal before the

Commissioners the appellant did not require the Commissioners to name a person of skill to value the premises.

The Income-Tax Act 1842 (5 and 6 Vict. c. 35), sec. 60, enacts that the duties granted in Schedule (A) shall be assessed and charged under the following rules:—"No. I. The annual value of lands, tenements, hereditaments, or heritages charged under Schedule (A) shall be understood to be the rent by the year at which the same are let at rack-rent, if the amount of such rent shall have been fixed by agreement commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment, but if the same are not so let at rack-rent, then at the rack-rent at which the same are worth to be let by the year."

Section 63, Schedule (A) and (B), Rule X. (5), enacts that every estimate of such property in Scotland shall be made without reference to the cess or tax roll or valued rents heretofore used in Scotland, . . . and shall be made according to the general rule in Schedule (A) to the best of the belief and judgment of the Commissioners, assessors, and others employed in charging the several duties.

Section 66—"In case any tenant at rack-rent shall produce to the assessor the lease or agreement in writing under which he immediately holds any premises to be charged as aforesaid according to the general rule, . . . and in case it shall appear by such lease or agreement that the same premises shall have been let within the period of seven preceding years, and no other consideration in money than the rent reserved shall be contained in such lease or agreement, it shall be lawful for such assessor to make his assessment according to such rent, anything before contained to the contrary notwithstanding, but such assessment shall not be binding in case it shall appear to the Commissioners that the said lease or agreement doth not express the full consideration, whether in money or value, for the demise of the rent *bona fide* paid for the same."

Section 79 enacts that the Commissioners shall allow and sign assessments not objected to, and made to their satisfaction, provided that in case the surveyor or inspector object to any such assessment, "it shall be lawful for the said Commissioners to the best of their judgment to rectify such assessment."

Section 81 authorises the Commissioners, in the event of any dispute arising touching the value of lands, to direct a valuation of the said subjects to be made by a man of skill appointed by them.

The Income-Tax Act 1853 (16 and 17 Vict. c. 34) sec. 47, enacts that it shall be lawful for the appellant as well as for the Commissioners to require that a valuation of the lands in question shall be made.

The Lands Valuation (Scotland) Act 1857 (20 and 21 Vict. c. 58), sec. 3, provides that no valuation made under the Lands Valuation Act 1854 by an assessor other than the officers of Inland Revenue shall be conclusive against or for the purpose of reducing on appeal or otherwise, any assessment, rate, or charge under any Act of Parliament relating to . . . income-tax."

The Taxes Management Act 1880 (43 and 44 Vict. c. 19), sec. 57 (6), enacts that "the said Commissioners shall not, upon the hearing of any such appeal, make an abatement or reduction in the charge made upon any such person by assessment or surcharge by any assessor or surveyor, but the charge or surcharge shall stand good and remain part of the annual assessment, unless it shall, upon the hearing of such appeal, appear to the Commissioners then present, . . . by examination of the appellant upon oath or affirmation, or by other lawful evidence to be produced by him, that such person is overcharged in or by such assessment or surcharge."

The question for the opinion of the Court of Exchequer was:—Whether the Commissioners were in the circumstances stated entitled (1) to disregard the leases dated respectively 15th and 27th July 1889 and 2nd May 1898 in determining the annual value of the premises subject to the assessment appealed against; and (2) to make the assessment according to the best of their judgment?

Argued for the appellants—The Commissioners were wrong and had not proceeded in the right way. They should have been guided by the leases, which it was not disputed were genuine. When the appellant produced the leases the burden of proof shifted, and it was for the Surveyor or the Commissioners to bring evidence to rebut the presumption established by the leases. This they had altogether failed to do; nor had they followed the course open to them under sec. 81 of the principal Act, of appointing a man of skill to make a valuation. They had confessedly relied on "their own local knowledge and experience," and it was incompetent for them to do so—*M'Lachlan* v. *Assessor for Ayr*, March 17, 1897, 24 R. 734, referred to.

The argument of the respondents (who referred to *Menzies* v. *Solicitor of Inland Revenue*, January 18, 1878, 5 R. 531) sufficiently appears from the opinions of the Judges.

Lord President—It must be allowed that the lease held by the appellant from his mother was not conclusive of the question of value, and that it would have been wrong for the Assessor to hold himself bound by it and give effect to it without inquiry. For the same reason, when the matter was appealed before the Commissioners, it is plain that the Commissioners were not concluded by the production of that lease, and that they were entitled to rely upon other competent sources of information in order to form the best judgment they could. Now, I do not think that it can be disputed that the Commissioners were quite entitled to look at the lease as an item of evidence although its date precluded it from the conclusive authority and effect which it would have had if it had been within the period. It is an item of evidence, and

entitled to such weight as might appear, balancing against it other considerations, assignable to it. Then the second point, which I think is clear enough, is that if the Commissioners are not offered any evidence they are entitled to avail themselves of their own personal knowledge of the circumstances, both of the value of property generally in the district, and of the nature and history of the property in question. Now, in the present case they were not offered any evidence beyond the lease, and that seems to have been the deliberate policy of this appellant, because he seems to have been under the the erroneous impression that the lease was conclusive, at all events he did not offer evidence in support of the value set out in the lease. Again, it was competent for him to have demanded a valuation by a man of skill under section 47 of the Act of 1853, and he did not do so. Accordingly the Commissioners, I think, were not only well entitled but were forced by his own proceedings to avail themselves of their own knowledge, and the conclusion they came to was that the rent did not represent the true value of the property, the item of evidence contained in the old leases being overborne, as I read their decision, by the information they had at their own hands; and in so acting I think they were perfectly right, and accordingly I think this appeal cannot be sustained. The question is framed in such a way that it is difficult to answer categorically the first branch in the affirmative. I do not think the Commissioners were entitled to disregard the leases in the sense of not looking at them for what they were worth. I think we should answer the first question in the negative that they were not entitled to disregard the leases, but that they were entitled to make the assessment according to the best of their judgment, and therefore the appeal should be dismissed.

Lord Adam—I am of the same opinion. As I understand the case, the appellant was charged on a rent of the amount of £40, which was charged by the Assessor, who fixes the amount on that matter, and whose duty is pointed out by the 5th rule of No. X., sec. 63, of the Income Tax Act 1842, and he was told to make it according to the general rule contained in Schedule A to the best of his belief. Well, to the best of his belief, he fixed the rent at £40, and then in terms of the statute the appellant appealed to the Commissioners against that, and the duty of the Commissioners when the case comes before them is stated in sub-section 6 of section 57 of the Taxes Management Act 1880, which points out—[*reads sub-section* 6]. Well, then, the appellant had to satisfy the Commissioners there was an overcharge. Now, in order to do that he produced two leases, one lease dated ten years before 5th April 1898, and he also pointed to the lease of 1898, whereby the mother granted a lease to the son of the same premises at the same rent, and that was the only evidence tendered to convince the Commissioners that there was an overcharge. Now, the Commissioners in considering that, as his Lordship has pointed out, although the question is so put, did not disregard it, but they did not treat it as conclusive, and they were entitled, in terms of the 63rd section I have already pointed out, to fix the assessment according to their own belief and judgment. And that is exactly what they did. These are men of great experience, and necessarily they are guided by their assessors, and they were perfectly entitled to say "We are to the best of our ability entitled to exercise our discretion and support the valuation of the Assessor," and that is what they did.

Lord M'Laren—We have been told that in the ensuing year there will be a lease dated within the period of seven years, and to which it is supposed the appellant may refer as a test of valuation. I should not wish it to be supposed that in my view such a lease would in any way be binding upon the Commissioners. It is only in case it is a lease for a rack rent that it is to be accepted as conclusive if within the seven years. I do not know how the facts stand, but it is maintained that this is not a lease for rack rent, and that of course would have to be considered when occasion arose. But as regards the present year it cannot be maintained that the lease or leases offered for examination to the Commissioners were leases of the description to which the statute applies, and they were not even supposed to be for a rack rent so as to be in any way conclusive or binding.

There are two modes by which a person dissatisfied with the valuation may have it corrected. He may appeal to the judgment of the Commissioners, who may give effect to the appeal upon sufficient evidence. That may either be by the appellant producing by oral or written evidence whatever he thinks a sufficient case to lay before them upon value; or it may be under the 47th section of the Act of 1853 by demanding a reference to a person of skill. And it is important to notice that the Commissioners have no discretion; they are bound, on being required by the appellant, to name a person of skill. And then the statute provides:—"And upon such valuation being verified upon the oath of the person making the same, the assessment shall be made according thereto." So that anyone who is dissatisfied with the valuation appearing in the valuation roll, or proposed by the surveyor, may, if he choose, have an independent valuation made by a person appointed by the Commissioners, and that is to be conclusive of the whole subject. Neither of those courses was taken; and while it cannot be said that no evidence was laid before the Commissioners yet the evidence was not of a character which in their judgment ought to disturb the valuation, and they were quite within their powers in adhering to the valuation put before them.

Lord Kinnear—I am of the same opinion. I quite agree with Lord M'Laren that we are not to consider the taxation of any

future year as to which we at present know nothing, but only the question which has actually arisen with reference to the taxation of this year. Now, upon that question what appears to have happened is this, that the appellant produced a lease to the Assessor which the Assessor did not think conclusive, and which he did not adopt as the basis of the assessment. That the Assessor was perfectly right in that view of his duty I think is hardly disputed; but taking the lease as not being conclusive he fixed the assessment at £40 and the appellant appeals to the Commissioners. Now, what seems to me material to keep in view is, that this was an appeal by a person complaining that he was overcharged. In support of the appeal he produces no evidence except the leases; and the argument set forth as that which was maintained by him shows quite clearly what he maintained to the Commissioners was that the lease was conclusive because it says the lease was produced, and that he maintained that it represented the money actually paid—that no other payment in value or money was made—that the lease by its terms imposed no other than ordinary obligations upon the tenant, and that no consideration was paid upon goodwill; and upon these facts he contended that the Commissioners were bound to fix the value upon the amount in the lease. Now, I agree with your Lordships that that was not tenable. The lease was not conclusive, and there being nothing else before them they added —"According to our own local knowledge and experience that is a fair and moderate valuation." I think the Commissioners were quite entitled to proceed upon that view, and indeed the statute prohibited them from giving effect to the appeal, inasmuch as no evidence had been produced to them that the decision appealed against was wrong.

Upon the manner in which the questions in law are framed I agree with your Lordship's observation. But I think when we read the terms of the first branch of the question with reference to the Commissioners' own statement on what they had decided, it does not appear that they meant they would not look at the lease at all, but what they did say was that they could not accept it in the circumstances; and that is, that they could not accept either of the leases in the circumstances as conclusive evidence of the annual value; therefore, although I think that question is put in terms which are somewhat misleading, and which it is better we should not answer in the affirmative, I do not think that in substance they have done more than was perfectly right.

The Court found "in answer to the first branch of the question, that the Commissioners were not bound or entitled to regard the leases as conclusive of the value of the premises, although they were admissible as evidence *quantum valerent;*" answered the second branch in the affirmative; and affirmed the determination of the Commissioners.

Counsel for the Appellant—Campbell, Q.C.—Cook. Agents—Wishart & Sanderson, W.S.

Counsel for the Respondent—Sol.-Gen. Dickson, Q.C.—A. J. Young. Agent—P. Hamilton Grierson, Solicitor Inland Revenue.

HIGH COURT OF JUSTICIARY.

Thursday, July 13.

(Before the Lord Justice-Clerk, Lord Adam, and Lord Moncreiff.)

DUNN *v.* MUSTARD.

Justiciary Cases—Jurisdiction—Civil or Criminal Procedure—Prevention of Cruelty to Children Act 1894 (57 *and* 58 *Vict. cap.* 41), *sec.* 6.

An order for the removal of a child from the custody of its parents under section 6 of the Prevention of Cruelty to Children Act 1894, may be competently brought under review by a suspension in the Court of Justiciary.

Justiciary Cases—Procedure—Warrant—Statute Wrongly Stated.

A warrant for the removal of a child from the custody of his parents bore to be in pursuance of power vested by section 6 of 58 and 59 Victoria, cap. 41. The statute so referred to had no bearing on the subject, and the reference was a mistake for 57 and 58 Vict. cap. 41 (Prevention of Cruelty to Children Act 1894). *Held* that the reference to the wrong statute was a fundamental nullity, which vitiated the whole proceedings, and the order accordingly *suspended.*

By section 6 of the Prevention of Cruelty to Children Act 1894 it is provided as follows—"Where a person having the custody, charge, or care of a child under the age of sixteen years has been (*a*) convicted of committing in respect of such child an offence of cruelty within the meaning of the Act, or any of the offences mentioned in the schedule to this Act; or (*b*) committed for trial for any such offence; or (*c*) bound over to keep the peace towards such child by any court, that court, either at the time when the person is so convicted, committed for trial, or bound over, and without requiring any new proceedings to be instituted for the purpose, or at any other time, and also any petty sessional court before whom any person may bring the case, may, if satisfied on inquiry that it is expedient so to deal with the child, order that the child be taken out of the custody of the person so convicted, committed for trial, or bound over, and be committed to the custody of a relation of the child, or some other fit person named by the Court (such relation or other person being willing to undertake such custody) until it attains the age of sixteen years,