in support of the conviction as were urged by Mr Fraser; but in the present case I think they do not come within our cognisance, for they were not stated in the Court below; and in considering whether the judgment of the learned Sheriff was right or wrong, we must only look to the particular subject-matter of this complaint. Now, look to the evidence adduced in the Court below for the appellant. He appears to have taken every precaution, and to have gone about the business of procuring a permission in a careful and business-like way. We are told that one of the certifying justices was not qualified. I think we are precluded from looking at that objection. Again, it is said he ought to have confined his sale of liquor to a booth or tent. But that is not made matter of complaint. It is not even said that he had not a booth or tent. But all that is not within our consideration in the present case. We must take it that the only charge against the appellant was the selling spirits without a certificate. Now, I think the constabulary were wrong in refusing to furnish the appellant with a certified copy of the permission, to which he was by statute entitled. The appellant, notwithstanding this refusal on the part of the constabulary, went to Errol Park on the occasion in question. I think he was entitled to do so; for he had done all that was incumbent on him by the 6th section of the Act. But a complaint was made against him that he ought to have had a certificate for the sale of liquors in the county of Perth, and on that complaint he was convicted. I am clearly of opinion that the interpretation of the statute upon which this conviction proceeded was an erroneous interpretation. It was stated in argument that the Act was intended to promote morality, and that in the interests of morality it was expedient to place restrictions upon the granting of such permissions. That argument is inadmissible; for the character of the applicant for permission has been already fixed by his obtaining his certificate. He is already possessed of a certificate in a burgh or county, and the magistrates from whom he obtained it must have been satisfied with his character. Perhaps the interposition of two magistrates in the case of special permissions may be intended to prevent too many such permissions being granted on any particular occasion. The practice of Perthshire may hitherto have been, as appears from this complaint, to refuse such permissions to publicans not possessed of premises in the county; but if so, that practice must now be altered in accordance with our judgment in the present case.

LORDS NEAVES and JERVISWOODE concurred.

Conviction quashed, with expenses.

Agents for Appellant—Ferguson & Junner, W.S.

Agents for Respondent—M'Gregor & Barclay, S.S.C.

# COURT OF SESSION.

*Friday, October* 30.

## FIRST DIVISION.

### CUNNINGHAM *v.* PATTON.

*Teinds—Valuation. Held*, on a proof, that certain lands were included in a valuation.

This was a question between the Minister of Crieff and Mr Patton of Glenalmond, as to whether certain lands of Corriemuckloch were included in a valuation of the lands of Glenalmond dated 22d July 1636.

The Lord Ordinary (BARCAPLE) held it proved on the evidence that the lands were included, adding this note:—

"The Lord Ordinary is of opinion that giving full effect to the burden of proof which the law imposes upon an heritor in that matter, Mr Patton has shown that Corriemuckloch was included in the valuation of the Earl of Tullibardine's lands of Glenalmond in 1636. The valuation was brought before the High Commissioner by the minister of the parish of Crieff, against the titulars and whole heritors of the parish, in respect that the teinds of that parish were not valued, and to the intent that the King's annuity might be cleared, and the church provided to a competent augmentation. There is a strong presumption in a valuation so led that the whole lands belonging to each heritor in the parish were valued. Such is the *prima facie* import of the decree now in question, as regards the Earl of Tullibardine's lands. The Earl compeared by William Murray, his chamberlain, whose oath was taken upon the worth of the lands. The Commissioners, in respect of his oath, found, that 'the lands of Glenalmond pertaining heritable to the said Patrick Earl of Tullibardine, by and within the said parochine of Crieff, are worth and may pay yearlie of constant rent in stock and teinds, parsonage and vicarage, the soume of fyve hundrett pundis money foresaid.' From the production of titles which has now been made, it appears clearly that there were no lands described in the titles as the lands of Glenalmond or Barony of Glenalmond. The name only occurs as the Kyle of Glenalmond lying on both sides of the water of Almond. This was clearly a separate subject distinct from the other parcels of lands which, it is admitted, were included in the valuation under the general denomination of the lands of Glenalmond.

"It thus appears that the name by which the Earl's lands in the parish were valued was not derived from the titles, but was a popular and general appellation descriptive of some portion of his estates. The strong presumption is that it included all his lands in the parish. The titles show that he was then proprietor of Corriemuckloch in the parish, and in the immediate vicinity of his other lands there and of the river Almond. It has now for a long time been occupied as one farm with other lands, also part of the Earl of Tullibardine's estate, extending to the north bank of the Almond. In these circumstances it may well have been included under the general designation of the Earl's lands of Glenalmond lying within the parish of Crieff. In the patent creating the Dukedom of Athole in 1703, the Duke was made Viscount Balquludar, Glenalmond and Glenyon. Though this was at a long interval after the date of the valuation, it rather indicates that Glenalmond was in popular use as the name of a district, or at least of an important portion of the Athole estates. This is also shown by extracts from the Athole Minute Books, relating to the management of the estates in the early part of the last century. A factory granted by the Duke in 1725, includes his lands and estate of Glenalmond, with no mention of any of the subjects in the parish of Crieff mentioned in the titles. There can be no doubt it was intended to comprehend Corriemuckloch. The Lord Ordinary sees no

reason to suppose that this designation was less extensive in 1636.

"The argument for the respondent is chiefly rested upon an instrument of sasine on a bond of annualrent in 1667. The description of the subjects in the bond, as it is recited in the sasine, contains, *inter alia*, 'the haill lands of Glenalmond comprehending the thrie fendoches, twa downies, lying within the parochine of Crieff, and sycreff-dome of Peirth.' It is maintained that this description implies that the lands of Glenalmond consisted exclusively of easter, wester, and middle Fendoch, and meikle and little Downie. The objection at once occurs that this construction excludes the Kyle of Glenalmond, which was then, and for a long time after, retained in the titles, and also Dallick, both of which belonged to the Athole family, and must have been comprehended in the description of the lands of Glenalmond. The probable explanation of the description comprehending the three Fendochs and two Downies is, that it was inserted to make it clear that the appellation of Glenalmond included these subjects which lie further down the river, and more towards the open country than the other lands of Glenalmond. That the description was not accurate in any other sense is shown by the fact that the notary in giving sasine describes the lands as comprehending Dallick as well as the Fendocks and Downies, though Dallick was not named in the bond or precept of sasine. The Lord Ordinary does not think that this document can be received as evidence that the lands of Glenalmond valued in 1636 did not comprehend all the Earl of Tullibardine's lands in the parish. The respondent also founds on the cess roll for 1650, which contains the entry 'Earl of Tullibardine for Glenalmond and haill lands in this perish and feu-duties £786, 13s. 4d.' The Lord Ordinary does not think that the addition of 'haill lands in this parish' shows that the designation of Glenalmond as used in the valuation was not intended to include the Earl's whole lands. The name is confessedly not to be found in the titles, and it may have had no very precise and ascertained meaning; and it is not surprising that the Commissioners for making up the Valuation Roll should have distinctly indicated that they were dealing with the Earl's whole lands in the parish, whether they were strictly included in that name or not. The respondent founds upon the discrepancy between the Earl's rental in the cess book and the amount of the valuation of his stock and teind. The former included feu-duties, though probably of small amount. But, independently of that circumstance, it is not improbable that the two valuations would be made upon different principles, leading to results materially different.

"On a consideration of the whole evidence, the Lord Ordinary thinks it sufficiently proved that the Earl of Tullibardine's whole lands in the parish were valued under the general appellation of his lands of Glenalmond."

The minister reclaimed.

COOK and HALL for reclaimer.

GLOAG for respondent.

The Court adhered.

Agents for Minister—Macgregor & Barclay, S.S.C.

Agents for Heritor—Wilson, Burn, & Gloag, W.S.

## *Friday, October* 30.

### DYCE, PETITIONER.

*Sheriff—Remit—Expenses.* Inferior Court Judges are bound to execute remits made to them by the Court without claim to remuneration.

In February last the Court remitted to Mr Dyce, Sheriff-substitute at Lanark, to inquire into the facts connected with a petition by John M'Lay for the custody of four grandchildren, and to report to the Court. Evidence was led under the remit, and a report given in. The reporter now claimed a fee of fifteen guineas, alleging that he had made his report, not in the exercise of his functions as Sheriff-substitute, but under the special remit.

LEE for petitioner.

BALFOUR for respondent.

The Court unanimously refused the claim, holding it to be clear that a Sheriff or Sheriff-substitute to whom such a remit was made could neither decline to undertake it, as had been argued, nor demand a fee for doing what it was only a matter of duty on his part to do. The remit in this instance was made to the Sheriff-substitute instead of to the Sheriff, owing to the large amount of business devolving upon the latter, and to the distance of the place where the inquiries had to be made. But the Court had a clear right in such matters to require the assistance of any inferior judge, and the claim in the present instance was alike without precedent and without foundation.

Agents for Petitioner—Macrae & Flett, W.S.

Agents for Respondent—Macnaughton & Finlay, W.S.

## *Saturday, October* 31.

### COBBAN *v.* LAWSON.

*Master and servant—Farm-manager—Grieve—Disobedience to orders—Dismissal.* Claim by a grieve for a term's wages, on the ground of wrongous dismissal after a few days' service, *repelled*, it being proved that he left the service, or was dismissed, in consequence of his unjustifiable refusal to work at the order of the farmer.

George Cobban brought this action in the Sheriff-court of Sutherlandshire, against George Lawson, farmer and distiller, Clynelish, for recovery of a sum of £49 odds of wages and house-rent, alleging that he was engaged by the defender as grieve or farm-manager at Whitsunday 1868 for the ensuing year, and that he entered the defender's employment in that capacity on 27th May 1868, and was unjustifiably dismissed on 10th of June thereafter.

The defender pleaded (1) That the pursuer was not dismissed, but, having refused to obey orders, he left the defender's service of his own accord; and (2), alternatively, that if the pursuer was dismissed, such dismissal was justifiable.

A proof was taken. The Sherifi-substitute (MACKENZIE) held that the pursuer had been unjustifiably dismissed, and decerned against the defender. The Sheriff (FORDYCE) recalled the interlocutor of his substitute, and pronounced the following interlocutor, in which the facts of the case sufficiently appear:—"Finds (1) that the pursuer has brought this action against the defender, concluding for payment of £49, 10s. 10d. as a year's wages, &c., &c., on the ground that, on 10th June last, he was dismissed by the defender without any