the mid-wall, trap-doors, roads, shaft, cube, coal-faces, and other works, and also as to the state of ventilation and the machinery; he shall cause remedies to be provided where needed, and every workman in the colliery shall be at his command in effecting such repairs, or applying such remedies as shall be urgent and important for the safety of the men and works.' The Act imposes no penalty on owners should these special rules be neglected or violated by the parties selected and employed to enforce them; and it would evidently have been unjust to make owners penally liable, whatever the civil consequences might be, for the faults of others who were specially appointed and paid to perform duties which it was impossible the owners themselves could perform. In the case of *M'Donald*, Jan. 20. 1862, where the owner of a coal pit was convicted in this court of a contravention of the same general rule as is here libelled, the *species facti* was altogether different. The complaint bore, that the owner had incurred the penalty provided by the 22nd section of the Act, 'In so far as, on 22nd June 1861, or about that time, the Bargeddie coal pit or mine being then worked, the said John Young senior, as one of the owners thereof, did neglect, or wilfully fail and omit, to constantly produce an adequate amount of ventilation in the main coal workings thereof, and, in particular, in or near the working place there of David Kelly, a collier, to dilute and render harmless noxious gases therein to such an extent that the working places of said coal pit or mine, and the travelling roads to and from said working places, would, *under ordinary circumstances*, be in a fit state for working and passing therein.' All this was found proved, so that there was a direct contravention of the rule. But the very reverse is the case here. There was no neglect of a general and adequate system of ventilation, 'under ordinary circumstances' the noxious gases were sufficiently diluted and rendered harmless, and the travelling roads to and from the working places were in a fit state for passing therein. It is not pretended that because hitches are sometimes met with in the workings the roads should therefore be always bratticed. The extraordinary circumstances which a hitch occasions are to be dealt with by the fireman and underground managers when they arise. The proper officers for doing so, and the necessary means and appliances, were provided by the owners, and where, therefore, was their 'neglect' or 'wilful violation' of the general rule? It appears to the sheriff that none such, in the meaning of the Act, has been brought home to the defenders."

The complainer appealed.

The SOLICITOR-GENERAL and DEAS for him.

SHAND and MACLEAN in answer.

The competency of the appeal was objected to, on the ground that the penalties were exigible from the respondents severally, and that the cause must be dealt with as if it had been one complaint against the owners for a penalty of £20, and another against the manager for a like sum, and that in these circumstances the cause was not of the value of £25.

The Court sustained the competency; and parties having been heard on the procedure which had taken place, the Court held that by the course which had been followed in regard to the notes of evidence the cause had been taken out of the ordinary course of judicial procedure; that the notes were not a judicial document which they were entitled to look at; and that the Sheriff-Principal had practically been dealt with by the parties as an arbiter in the cause, whose judgment must be final. Opinions were intimated to the effect that the Sheriff should have taken evidence for himself *de novo*. Lords Benholme and Neaves also expressed an opinion to the effect that, under the 10th and 22d sections of the Mines Inspection Act, the Legislature contemplated that there must be fault on the part of the persons from whom the penalties were to be exacted. The Court dismissed the appeal.

Agent for Appellant—Charles Morton, W.S.

Agents for Respondents—J. & R. D. Ross, W.S.

Friday, March 5.

THE MINISTER OF MORVEN *v.* THE HERITORS.

(Before Seven Judges.)

Teinds — Sub-Valuation — Approbation — Positive Prescription. Held (Lord Benholme dissenting) that the positive prescription does not protect a valuation of teinds, supported by a decree of approbation, against a claim for augmentation of stipend by the minister, the allegation of the minister being that certain lands were not included in the decree of valuation and others were unwarrantably included.

This was a question between the minister of Morven and the heritors. The heritors maintained that there was no free teind for an augmentation, because all the teinds of the parish had been valued by a sub-valuation in 1629, on which approbation followed in 1785-86. The minister condescended on certain lands, some of which were not included either in the Sub-Commissioners' report or the approbation, and others which, the minister argued, were unwarrantably included in the latter. The Lord Ordinary held that the minister's claims were cut off by the negative prescription. In the Inner-House the positive prescription was also pleaded by the heritors, and a hearing ordered before the Second Division, with three judges of the First, on the question whether that plea applied to the case.

CLARK and CRAUFORD for minister.

GORDON, Q.C., MILLAR, Q.C., WEBSTER, BALFOUR, and SELLAR for heritors.

At advising—

LORD NEAVES—The question which we have now to determine is one of much interest and importance. Though not unfrequently raised, it has never, I think, been deliberately considered or substantially decided.

This question is, whether a valuation of teinds, which *ex hypothesi* may be liable to latent objections not excluded by the negative prescription, can be validated by the positive prescription? The nature of the question may be well illustrated by stating a case similar to one sought to be made in this process.

A valuation of teinds is produced bearing to refer to the lands of A, and is founded on as protecting the whole lands of the heritor producing it. The minister objects that the valuation, when obtained, did not refer to the whole lands now held by the heritor, but had reference only to a certain portion of those lands, and that the heritor's other lands, to which he seeks to extend it, did not then belong to him, but can be shown by the titles to have belonged to another party. This objection, it is clear,

is not excluded by the negative prescription which can never influence any question of identity as to the lands to which the valuation applies. That prescription cuts off latent objections to the valuation in itself, but cannot solve the question as to the actual lands covered by the valuation. But the heritor here replies that for the last forty years he has possessed the whole lands under and with the benefit of this valuation, and pleads that he is entitled to retain that benefit as having acquired it by the positive prescription, whether the lands in dispute were originally covered by the valuation or not. To state the case more pointedly, it may be supposed that an heritor has the teinds of his lands valued by a subvaluation in the 17th century. He gets that subvaluation approved of in the 18th century, and then, in the 19th century, he acquires other lands, of which the teinds are unvalued, and then for forty years possesses these new lands in connection with his old ones, and without any payment of separate or additional tithe. Has he in this way acquired a right to hold his whole teinds as valued by a valuation which was originally only a partial one?

This is certainly a very important question, and one which might often afford an easy solution of difficult questions of fact. But however convenient it might be, particularly to heritors, the plea can only be successful if founded on sound legal principles.

The Act establishing the long prescription (1617, c. 12) creates a positive prescription as to heritages generally; and, although its language has a more peculiar reference to feudal subjects, it is certain that it extends also to classes of rights that are unfeudalised, and even that are incapable of feudalisation. Not only lands, therefore, but teinds not established by infeftment, are affected by the long prescription, *i.e.*, the property of teinds as a separate estate; and not only rights of property in lands and teinds, but tacks of these estates, are the subject of prescription. This, however, can only be in the case of long tacks, with a sufficient duration to admit of a lapse of forty years during their currency.

But whatever be the subject, two things are necessary to the positive prescription—(1) a title; and (2) appropriate possession.

The sort of title required by the statute is either a charter and sasine, or sasines upon services, or precepts of *clare constat;* and in subjects where these are not possible something analogous must exist.

A title in this sense implies, I conceive, something equivalent to a disposition, conveyance, or grant of the right in question. A tack has been held to be a title of this kind, and it is easy to see how this view should have been adopted; for a long tack, which alone can be in question, has a strong resemblance to a feu, and a feu is property. A long tack, in truth, is in law an alienation, and is held to be such to various effects.

In the present case, what is the title? It is said to be the report of the Sub-Commissioners of 1629, afterwards approved of by the High Court in 1786. But certainly in itself a valuation or subvaluation does not look like a title. It is not an alienation of the estate like a disposition or a long tack. It is a mere ascertainment of the value of an estate. The estate of teinds is not thereby transferred from one party to another. The titular remains titular as before. A conversion of the estate from kind into money is not an alienation. But then it is said that the Act 1633, c. 17, makes the valuation a title, because it gives the heritors a right in all time coming to draw the teinds of the lands (the same being first truly and lawfully valued). This is no doubt a privilege. But it does not make the valuation a title. The title or right to draw the teind is conferred by the statute—by the law; but it is conditional, and the decree of valuation is the evidence of the condition being fulfilled. Evidence of the fulfilment of a condition like this is not a proper subject of prescription. Supposing any such evidence to have been held good for forty years, does that prevent the truth from being afterwards ascertained? It may raise a strong presumption that may often be difficult to overcome, but this is not the use or object of the positive prescription. If the question now were with a titular whether the heritor was entitled to draw his own teind, *i.e.*, the teind of his lands, the heritor, I conceive, would need to prove that his lands were truly valued, and a proof on both sides would be allowed as to the true *res gestæ* under the subvaluation and approbation, not the mere state of possession during the last forty years.

In like manner, if these were purchasable teinds, and the heritor were asking the titular to sell them to him at the statutory number of years' purchase, it seems to me that the question would still be whether the valuations *when made* were applicable to these lands—and that no lapse of time could exclude that inquiry—however it might raise presumptions on one side or other.

It is of importance to remember that no amount or length of time for which there has been a non-payment of tithes will extinguish the right or create an exemption from that which is a burden by the public law. It is specially necessary, therefore, before any prescription can operate, that there should be a clear and specific title; and the argument is that the valuation is the title. But I conceive that the right does not depend on the valuation as on a title. The privilege of drawing one's own teinds results from several concurring circumstances—(1) The right to the lands as a heritor; (2) The Act of Parliament conferring the privilege on heritors under a condition; and (3) The actual valuation as a compliance with the condition. It is not the holding a decree of valuation real or nominal; it is the actual valuation that is required, the teinds being truly and lawfully valued.

The valuation therefore is not a writ but a fact of which the writ is evidence; and, indeed, I think the valuation has been correctly described by Mr Erskine as establishing no right or claim of tithes in the obtainer of it against another, and such as can be used in no other way than as a defence against the claim of the titular. It is an answer, in fact, to an action of spuilzie, or a demand for the actual value of teinds, and nothing more.

To assimilate a valuation to a tack for ever seems a very fanciful argument, not such as could justify such conclusions as are here deduced from it.

The insufficiency of a valuation to constitute a title is apparent from another consideration. Although a main object of valuation was to lighten and equalise the burden on a heritor who has no right to his teinds; yet it is not limited to that case. One who has a heritable right to his teinds may have them valued so as to protect them against allocation beyond the valued amount. But it is scarcely contended that such a right would form the foundation of the positive prescription so as to validate a bad valuation. And if the valuation is not a title, in that case it shows that it is not a title in its own nature.

I have noticed that the privilege (for such it is) by which an heritor after valuation draws his teind is rested necessarily in a great degree on the title which he holds to the lands. But I may observe that the heritors here pleading prescription have been very chary of founding on the terms of their titles, which, for ought we know, might not be very consistent with their plea of valuation.

This consideration leads me to say that, in some points of view, the positive prescription may have an effect in regard to valuation, and I shall consider this subject in connection with the case of *M'Intyre* v. *M'Lean*, the main authority that has been relied on in support of the plea of prescription.

The lands and estate of Ardgower were valued in 1629 by the Sub-Commissioners. In 1783 M'Lean sought for and obtained an approbation in the High Court as relative to the lands and barony of Ardgower, and in 1826 this valuation was sought to be reduced.

Now, if it was incompetent to introduce into a summons of approbation a different description of the lands in question from what was contained in the sub-valuation, then the approbation was plainly bad, because that defect was visible on the decree.

But there was no good objection on that head. It is clearly competent in an approbation to ask to have a sub-valuation approved of by reference to any new names that the lands may have acquired since the sub-valuation. It is a question on the merits whether the new name is synonymous with the old. But if it is so, there is no objection to have that declared, and if the decree duly declares it, and the decree is binding either by being *in foro* or by the lapse of the negative prescription, then the old valuation will extend to all the lands bearing the new name. For if the decree, being thus binding, is to be interpreted as to its application, then it may be held that the new name will cover whatever lands have come to be possessed as part and pertinent by the long prescription, as at the date of the approbation, without going back to the date of the sub-valuation. Thus, in M'Lean's case, it might be held that the approbation covered whatever, in 1783, formed prescriptively a part or pertinent of the barony, and in this way I explain some of the rather vague dicta said to have been there delivered. But the great point in M'Lean's case was that he denied that he acquired any new lands, and my impression is that the minister would have been allowed, if he had chosen, to show any such new acquisition. But no such offer was made, and thus the valuation was supported.

I humbly think that, in this way, the effect of the valuation stood upon the force of the approbation as forming a *res judicata*. I entirely demur to the doctrine, that if after the approbation the heritor had acquired new lands, he could have extended the benefit of the valuation and approbation to these by the force of prescription. If the titular or minister would undertake to prove, which might be done by the titles, the posterior acquisition of other lands, even though these had been possessed for forty years since their acquisition, I think the allegation would be relevant, and the proof competent.

The way in which a feudal title conveying certain lands comes to extend to other lands is by the fact of their being possessed as *part and pertinent* for forty years. This is not a very natural mode of acquisition as to teinds; for it would be necessary on analogy, to make out that the additional teinds were possessed as part and pertinent of the first quantity of teinds, a process not very appropriate to this sort of estate, for it must be remembered that the title to teinds and to lands may not be identical.

I am here led to make a few observations on the kind of possession that we should need to require before prescription in such a case could follow, and I think it must be obvious that such a possession would be a very vague and unsatisfactory basis for the right claimed in this class of cases.

An heritor has the lands of A, of which he gets the teinds valued. He afterwards acquires the additional lands of B, and for forty years he pays no teind for these. That is, he continues to pay the valued teind of A as before, but pays no more teind, or, in other words, pays no teind at all for B. Will this prescribe a right to extend the valuation of A so as to include B? or will it (for that is the effect) acquire for B a total exemption from payment? That is certainly a strong and startling proposition, and yet this will, in general, be the only possession that takes place. One easily understands the prescription of teinds belonging to another man, for there the possession would consist in getting the teind or valued teind of that man's lands. But the drawing of the teind of your own lands is scarcely a positive possession. There is so much negligence in this matter. So few titulars draw their teinds, whether valued or unvalued, that an heritor being allowed to do so is rather a non exaction of payment than a positive possession of a right. So often, too, lands are let to the tenant with stock and teind together that the teind is never likely to be drawn, and if there is no valuation there may sometimes be no teind to draw. The production, again, of a valuation in a locality would be only an occasional and partial sort of possession, and would merely at the best amount to an exemption or not payment which can never constitute the positive prescripion.

When, in addition to this, I remember that the minister's right is one that rests on public law—that, unless he requires the whole teind for his augmentation, he cannot complain, and that he can only seek an augmentation at long intervals—I am the more unwilling to recognise this kind of prescription.

The minister is entitled—not as titular, but as a public officer—to get his stipend from every class of persons possessed of teinds, and the amount, I conceive, can only be limited by a true valuation correctly deduced as to the teinds in question as matter of fact. Prescription ought not to make a valuation any more than it creates an exemption. A prescriptive title *cum decimis inclusis* will not defend against a claim for teind or stipend. The Court will look beyond prescription, and see if the exemption can be traced to such an ancient and peculiar source as alone can be recognised as conferring that privilege. And in the same way, I think that a valuation cannot protect lands which can be shown not to have been truly valued. The lapse of time and long possession will raise strong presumptions and may increase the weight of the onus, but if it can be proved that the lands were not truly valued the proof ought to be allowed, and is, I humbly think, competent in law. Such a view is inconsistent with the plea of the positive prescription, which therefore, I conceive, must be here repelled.

The LORD PRESIDENT, The LORD JUSTICE-CLERK,

LORD COWAN, LORD ARDMILLAN and LORD KINLOCH, concurred in the opinion of LORD NEAVES.

LORD BENHOLME—Aware as I am of the great weight of authority which there is against my humble opinion, I do not think that I would have done more than merely dissent, did I not think that the judgment now to be pronounced is directly at variance with the decision in the case of *M'Intyre*. I will have to remark on that judgment more particularly before I conclude, but permit me at present to state the grounds of the general judgment on which I think the positive prescription may and ought to be introduced into the present case.

I totally differ from my brother who has spoken as to the nature of an heritor's possession of teinds. Here I speak of tithes—a tenth part of the produce of lands—which belonged originally to churchmen, but afterwards very frequently to laymen, and which is an heritable estate by the law of Scotland.

Now, when teinds have been valued under the Act 1633, that estate passes from the titular. He no longer has a right to one sheaf or one particle of the produce of the heritor's lands. Instead of the heritable estate of one-tenth part of the produce of the lands he gets an annual payment, which has nothing to do with tithes except that it was the consideration for parting with them. Where, then, is the estate of teinds after a valuation? It is entirely in the heritor. If he does not own it, no human being can, for it is merged in and consolidated with the stock which belongs to him, and he has the absolute right to draw and spend it. And here let me remark on what seems to me a fallacy, that the titular remains proprietor of his teinds. He does no such thing. The full right is in the heritor. The titular has been utterly deprived of it, and by the valuation it has passed to the heritor, and never can return to the titular. It is in this way, I conceive, that an heritor who has a valuation is *dominus* of his tithes. He pays no doubt an annual value, but that is not identified with the tithes, and he has not even a right of hypothec over them. In former times he sometimes obtained an heritable security for the payment of the valued teinds. Suppose he did, that right was totally different from the estate which he had previously. The heritable estate of tithes is gone for ever, and is now vested in the heritor by his titles to his lands confirmed and enriched by the valuation. I cannot conceive a more complete possession of tithes than a heritor has after a valuation. It is, therefore, a fallacy to think that the titular remains the proprietor of the tithes. He has passed from his property in them, and has accepted, or been obliged to accept, a payment—it may be secured heritably—in lieu of it. Now, I think that any heritable estate in Scotland is capable of having the positive prescription applied to it, and there is no doubt that in some cases teinds have been the subject of the positive prescription. Lord Neaves admits that an heritable right to and even a tack of teinds may form a basis of prescription. In short, any written document which will enable an heritor to possess his heritable estate of tithes must found it. What is a title? There is nothing magical in the word. It is that written document which indicates a right of possession in a tack—perpetual possession in an heritable right. Now, observe that it is only the owner of the stock who has the privilege of acquiring the teinds, or the one-tenth, which he did not formerly possess; and after the valuation he holds the ten-tenths by his heritable right to the lands and the valuation. Now, then, if an heritor is in the lawful possession, and if he is to be for ever in the lawful possession, of this estate of tithes, I wish to know why his title of possession is not to have the benefit of the positive prescription. Why not? We know that under the statute which speaks af infeftments, titles of a much more extended character have been admitted as a basis. The positive prescription has been a great favourite of our law. The heritor has a title which gives him the full possession of these teinds. Is anything wanting to found the positive prescription?

M'Intyre v. *M'Lean* is a very instructive case, and bears much on the present. There were in it two several questions. The one an impeachment of the decree of valuation as disconform to its warrant. That was held to be covered by the negative prescription. The other, a question of identity, which Lord Neaves admits cannot be cured or defended by the negative prescription. The last article of the defender's condescendence was, "That the subjects called Drunferme, Altvaig, and Geradh have been possessed by the defender and his predecessors from time immemorial as parts and pertinents of Calpe, or of some one or other of the lands named in the titles as composing the said barony, and included in the decreet of valuation." The pursuer answered "The pursuer does not admit, as he has no access to know the truth of this article. The lands of Drunferme, Altvaig, and Geradh, belonging to the defender, and situated within the parish of Kilmalie, are neither named in his titles in the alleged sub-report of 1629, nor in the alleged decreet of approbation and valuation in 1783." The plea in law was "as the lands of Drimfern, Altvaig, and Geradh, have uniformly been possessed as parts and pertinents of the lands valued, and by no other titles, they must of course be held included in that valuation." The pursuer argued in reply, "There are no grounds in law for presuming that the lands of Drunferme, Altvaig, and Geradh, were included in the sub-valuation of 1629, or in the decreet of approbation of 1783, and as no valuation of these lands has been produced by the heritor, they are now liable to be valued with a view to ascertain the teind payable out of them." Lord Balgray's answer was—"with regard to the different lands said not to be in the decree or sub-report, this is sufficiently explained. The lands described in the Valuation Roll may, in the course of a few years, have changed all their names, and be divided among different proprietors. All this comes to be a mere question of identity. The object of the forty years' prescription was to shut the door against objections like the present." What prescription was there alluded to? The negative prescription? How could that settle a question of identity? No! It was the positive prescription; and you will find that the other Judges concurred, from the notes of the late Lord Justice-Clerk Hope. He repeatedly refers to the positive prescription.

In the present case there are two questions—the one a question as to the regularity of the valuation, but the other, and more important, as to no less than eleven tenements which the minister alleges are not to be found within the valuation. Now, that is exactly the case of Ardgour. There were four tenements there said not to have been included in the valuation, but as they had been possessed as valued for forty years, that was said to be a sufficient title. The discrepancy of name

naturally throws the onus on the party averring that the places are the same, but he is to get the benefit of the prescription. Lord Balgray says there is no objection after the forty years that these tenements are not named in the valuation.

And now permit me one remark on the positive prescription. It is a clear effect of it that it ascertains the extent of a title. *Tanquam prescriptum quantum possessum.* It is a mistake to think that this is extending a title. That is not so. It is that *in dubio*, when the onus would have been on the party averring that certain lands are within the title, the onus is relieved if there has been forty years' possession, and the lands will be held to fall within it. The prescription does not extend, but it fixes the extent when there is a doubt. You must not suppose a case of distinct intention. You must suppose a case of doubt, and in such a case the positive prescription is valuable, not only to cure defects but to ascertain the extent of the title. Now, as in the case of *Ardgour*, certain tenements are not found expressly named in the valuation, but the teinds have been possessed as valued since the valuation. There is no doubt about that. The titular has never drawn one farthing beyond the valued teind, and until the present attempt, the minister never attempted to show that these tenements were unvalued.

I am very anxious to make myself fully understood, there being such a great weight of authority against me, and I would like to state just one point more. It is said that the minister of this parish had no interest to state this plea. I do not think that. When, in the end of the last century, he raised an action of augmentation, and said that he was entitled to the whole valued teind, the court were inclined to give it to him, but an obstacle intervened by the Duke of Argyle putting forward a claim on the part of the minister of Inverary for £80 out of that valued teind. The Court ordered that claim to be argued, and the question was whether the minister of this parish was to be entitled to the whole teind or to that *minus* £80? Now, in that competition the minister failed. Was not that a time for him to put his finger on unvalued teind? Had the minister of that day alleged what the pursuer alleges, viz., that there was unvalued teind, he would have got from that unvalued teind the £80 which the minister of Inverary took away from him. But he did not do so, and for sixty long years, when an augmentation might have been asked, he never asked for it. How can it be said that he had no interest? For much longer than forty years he has had a most palpable interest; and how can it be said that the positive prescription shall not run against him on the ground that he had no interest? I have great doubt whether such a plea can be urged against the positive prescription under the Act 1617. It is rather a plea against the negative prescription which is founded on negligence. If a man cannot object, or has no interest to do so, he may be pardoned; but if he has an interest, and fails to object, then he will be unquestionably barred.

Agent for the Minister—John Martin, W.S.

Agents for Heritors—James Finlay, S.S.C., A. Webster, S.S.C., Gibson-Craig, Dalziel, & Brodies, W.S., and Alexander Howe, W.S.

Saturday, March 6.

FIRST DIVISION.

LAURENT *v.* LORD ADVOCATE.

Reparation—Repairs on Urban Tenement—Burgh—Bill of Exceptions—Jury Trial—Landlord and Tenant. A proprietor within burgh carrying on lawful operations on his property, is not liable for injury caused thereby to his neighbours, unless he be chargeable with *culpa.*

Opinion (by Lord President and Lord Kinloch) that the fact that the parties stand in the relation of landlord and tenant does not affect the principle. *Opinion* (by Lord Deas) *contra.*

The pursuer was a restaurant-keeper in Waterloo Place, Edinburgh, occupying premises there under a seven year's lease from and after Whitsunday 1865, from Wood, the then proprietor. In May 1867 the Board of Inland Revenue became proprietors of the tenement in which the pursuer's shop is situated, including not only the premises occupied by the pursuer, but also the flats immediately above and below the same, and other adjoining premises. They also acquired right to the lease.

In June 1867 the Board of Inland Revenue commenced to make alterations on these premises, except the portion occupied by the pursuer. Portions of the building were taken down and re-erected, a mason's shed being erected on the street, near the pursuer's shop. Some damage was done, in the course of these operations, to the ceiling and walls of the pursuer's shop, but it appeared that the actual damage so occasioned was repaired at the expense of the Board of Inland Revenue. The pursuer alleged that the effect of these operations was to give the whole place an uncomfortable, dilapidated, dirty, and eminently unattractive appearance, and consequently to cause a serious diminution in the number of customers who frequented the pursuer's establishment.

The dust and noise caused by the operations was, he alleged, so intolerable that he had suffered a serious loss through diminution of his business, which loss he estimated at £100. These operations, he alleged, were executed by the said Board wrongfully, and in violation of the pursuer's rights under his lease.

The case was tried before Lord Ormidale and a Jury on 22d January 1869, on the following issue:—"It being admitted that from and since Whitsunday 1865 to the present time the pursuer has occupied certain premises in 18 Waterloo Place, Edinburgh, under a lease from George Wood, music-seller in London; and it being further admitted that, at or about Whitsunday 1867, the Board of Inland Revenue became proprietors of the tenement in which the pursuer's said premises are situated, and acquired right to the said lease;

"Whether, between the 1st of June 1867 and the 31st of May 1868, or during part of said period, the said Board of Inland Revenue wrongfully executed certain alterations or repairs upon part of the said tenement, whereby the premises occupied as aforesaid by the pursuer were injured, to his loss and damage.

"Damages laid at £100."

In the course of trial, the pursuer adduced evidence "for the purpose of showing that he had sustained loss and damage in his trade, caused by the injurious effect upon the premises let to him, of the alterations or repairs referred to in the issue;