petent in a process of approbation to have the lands identified to which the sub-valuation applies. The Crown and the minister of the parish found liable in expenses caused by their opposition.

In 1635 the Sub-Commissioners of the Presbytery of Perth valued the stock and teind of the whole lands within the parish of Cambusmichael and the parish of St Martins. Among the said lands were the "town and lands of Byris," which, in the report of the Sub-Commissioners (dated August 25, 1635), were valued under the generic name of "Byres," as follows, viz., "The town and lands of Byres, with the pertinents lyand in the said parochine, pertaining heritably to Patrick Inglis of Byres, occupiet by himself, has payit of before, is worth presentlie, and may pay in time coming of constant zeirly rent in stock and teind, fyve chalderis victual, twa pint meal, thrid part bear, and thrie punds vicarage."

These lands were acquired in 1802 by an ancestor of the present Earl of Mansfield, who now brought in the Teind Court a process of approbation of the sub-valuation. It appeared that at a very early period, and long before the date of the sub-valuation, part of the lands of Byres were known as Dirragemuir," and that a pendicle of the land was known as "Ranniewhistle," but neither of these subjects was mentioned by name in the sub-valuation; and it was not until a comparatively recent period that they were introduced into the title-deeds of the estate of Byres. In the summons it was sought to have the report approved by the Court in so far as concerned the pursuer's "land of Byres and Dirragemuir, comprehending Ranniewhistle with the manor place of Byres, with the teind sheaves and pertinents of the said lands."

The fact that the lands of Dirragemuir and Ranniewhistle was at first disputed by the Crown and the minister, both of whom were called as defenders to the action; but the identity was ultimately admitted. The defenders stated several other objections to the approbation—one being founded on alleged dereliction of the sub-valuation, but the objections were all repelled. The only objection requiring to be noticed here is one to the effect that it was not competent in a process of approbation to declare that the sub-valuation applied to lands not specified by name in the report of the sub-commissioners, and that "the pursuer is not entitled to any decree in this process beyond a simple approbation of the report of the Sub-Commissioners, in the terms of the report."

MARSHALL for the Earl of Mansfield.

KINNEAR for the Crown.

WATSON for the Minister.

At advising, the Court unanimously repelled the objection, holding it to be both competent and reasonable to explain in a decree of approbation what the precise lands are in regard to which the subvaluation is being approved of.

LORD BENHOLME observed that a process of approbation is a proper proceeding in which to ascertain the precise lands to which the sub-valuation applies.

LORD ARDMILLAN observed that an old sub-valuation may be unintelligible without some such explanation as is here sought.

The Court decerned in terms of the conclusion of the summons, and found the Crown and the minister liable in the expenses caused by their opposition.

Agents for the Earl of Mansfield—Tods, Murray & Jamieson, W.S.

Agent for the Crown—Warren H. Sands, W.S.

Agents for the Minister—W. & J. Sands, W.S.

Tuesday, July 19.

FIRST DIVISION.

NEILSON AND OTHERS *v.* BARCLAY.

(*Ante*, pp. 181 and 547.)

Auditor's Report—Agent's Expenses—Counsels' Fees—Precognitions—Scientific Witnesses. Agent's charge for precognoscing scientific witnesses as to the validity of a patent disallowed. Witness allowed eight days' preparation for case. Counsels' fees fixed above usual rate, as case more difficult than usual.

The questions in this case were, whether a patent was for a new invention, and if so, whether it had been infringed? The auditor, in taxing the pursuers' account, (1) disallowed charges made by their agent for going to Bolton, Manchester, and London, and precognoscing certain scientific witnesses in regard to the novelty of the invention. He, however, allowed a considerable sum for instructions to, and correspondence with, London solicitors, and drawing precognitions, in addition to the witnesses' own reports. The auditor (2) disallowed charges to the extent of £245, 3s. for expenses to a scientific witness, but allowed £5, 5s. *per diem* for four days for perusal of the proceedings and specifications, &c., and preparing report; £5, 5s. *per diem* for four days' travelling to Scotland and examining works; and £2, 2s. *per diem* for four days for attendance at trial and returning to London. The auditor (3) allowed to senior counsel for the first day of the trial £21, for the second day £15, 15s., and for the following days £10, 10s.; and to each of two junior counsel for first day £15, 15s., for second day £10, 10s., and for following days £7, 7s.

SHAND, for the pursuers, objected to the disallowing of the sums under the first and second heads, and to the small fees allowed under the third head, considering the difficulty and importance of the case.

WATSON in answer.

The Court approved of the auditor's report on the first two heads. The first charge was for an agent travelling about to precognosce scientific witnesses as to the validity of a patent, not as to its infringement. But the precognoscing these scientific witnesses for this purpose required only that the papers and proceedings should be laid before them; and the reports they made thereon came in the place of precognitions, and were the precognitions of these witnesses. No agent was necessary for this, and no questioning. In regard to the second point, the auditor had dealt liberally in the number of days he had allowed. Professor Rankine, who was examined on the whole matter, and had in fact been the pursuers' principal witness, had prepared in two days. As to the third point, it might have been expected that the cases of *Cooper* and *Wood*, and of *Hubbard*, had definitively settled this point; but peculiar cases could not but arise. Fees twice as large had been allowed in the Esk Pollution case, but it was one of the longest and hardest cases in recent years. The present case, though not so hard, was harder and more difficult than

ordinary jury trials; and therefore it might be proper to allow fees one-half larger than those the auditor allowed. Where this would make the fee so many guineas and a half, a half guinea more to be given.

Agents for Pursuers—Hamilton, Kinnear, & Beatson, W.S.

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

Tuesday, July 19.

FIRST DIVISION.

CATTONS *v.* MACKENZIE.

(*Ante*, pp. 250, 410.)

General Disposition—Entailed Estate—Evidence—Intention—Special Conveyance. The disponee under a general conveyance, which included a special conveyance of certain lands, claimed not only the latter but also an entailed estate of great value, on the ground that the disponer was not bound by the fetters of the entail, and intended to convey the entailed estate. *Held*—(1) it was advisable to decide the latter point first; (2) other deeds executed by the disponer were competent evidence of his intention; and (3) they negatived the idea that he intended to deal with the entailed estate.

The late Hugh Mackenzie, Esquire, died on 30th July 1869, possessed of the entailed estate of Dundonnell, valued at about £150,000, and of various other heritable subjects. He held Dundonnell as institute under an entail executed by his father in 1838; and on the death of the latter, in 1845, he completed a feudal title to the lands, and continued in possession till his death. In 1848 he purchased the estate of Mungusdale, otherwise called Monkcastle, adjacent to the entailed estate of Dundonnell, at the price of £7000, and he continued to possess that estate on a fee-simple title until his death. He executed considerable improvements on this property, and it rose rapidly in value, till in the year 1854 it was worth about £15,000. Mr Mackenzie never married. He left, however, a natural daughter, Miss Mary Mackenzie, who was married in November 1868 to Mr Alfred Catton.

By trust-disposition and settlement in 1854 Mr Mackenzie disponed to trustees the estate of Mungusdale or Monkcastle, adding to his special conveyance a conveyance in these terms, viz.: "as also all and sundry lands and heritages, goods and gear, debts and sums of money, and in general the whole estate and effects, heritable and moveable, real and personal, of what kind or nature soever, or wheresoever situated, presently belonging or which shall pertain and belong to me at the time of my decease, and the whole vouchers and instructions, writs, titles, and securities of and concerning my said estate and effects, and all that has followed or may be competent to follow thereon," and by the deed he nominated his trustees to be his executors. At the date of this deed, besides the estate of Mungusdale or Monkcastle, Mr Mackenzie was possessed of personal property of the value of about £6000, and was in the enjoyment of the entailed estates, with a large and increasing rental. He was also possessed of a small fee-simple heritable property, consisting of a superiority in Dingwall, which he sold in 1869, a few months before his death, for £50. By the second purpose of the trust, the trustees were directed to "hold the residue and remainder of my said whole heritable and moveable means and estate, particularly and generally before disponed, or the prices or produce thereof," in trust for his daughter, and to make payment to her of the free rents, interest, or annual produce "of said residue," half-yearly, at Whitsunday and Martinmas, until she should attain the age of twenty-five years or be married. By the third purpose the trustees were directed upon his daughter's marriage, or the completion of her twenty-fifth year, to dispone to her, exclusive of the *jus mariti* and right of administration of her husband, "the said residue of my said whole heritable and moveable means and estate, including my said estate of Mungusdale. It being my intention that my trustees shall have full power and discretion to retain the said estate of Mungusdale, and farm-stocking thereof, or stocking of my other farms, during the subsistence of this trust." The deed also contained power to the trustees "to sell and dispose of my said estate of Mungusdale, and other heritages hereby conveyed, or such part thereof as they shall think proper." By codicil of 22d February 1864, annexed to this trust-deed, Mr Mackenzie, adverting to the circumstance that by the third purpose of the trust-deed the conveyance of the residue was directed to be made to Miss Mackenzie, without reference to her heirs, assignees, or disponees, explained and directed that the disposition and conveyance of the residue of his means and estate directed to be executed by the foregoing trust-disposition and settlement should be in favour of his daughter, and her heirs, assignees, and disponees whomsoever, "it being my wish and intention that she and her heirs shall succeed to everything I may leave, and that she shall have unlimited power to dispose thereof as she pleases."

By tack, dated 4th December 1855 and 5th February 1856, "it is contracted and agreed upon between Hugh Mackenzie, Esquire of Ardross and Dundonnell, heritable proprietor of the lands and others after mentioned, being part of the entailed estate of Dundonnell, on the one part, and Miss Mary Mackenzie, his daughter, presently residing with him at Dundonnell House, on the other part; that is to say, the said Hugh Mackenzie has set, and in consideration of the yearly rent after mentioned, for himself and the heirs of entail succeeding to him in the entailed estate of Dundonnell, hereby lets to the said Mary Mackenzie, and her heirs and assignees whomsoever," for twenty-one years, certain parts of the farm lands of Dundonnell; "which tack the said Hugh Mackenzie binds and obliges himself, and the heirs of entail succeeding to him in the said lands, to warrant to the said Mary Mackenzie and her foresaids at all hands and against all mortals: For which causes, and on the other part, the said Mary Mackenzie binds and obliges herself, and her heirs and successors whomsoever, to make payment to the said Hugh Mackenzie and his foresaids of the sum of £530 sterling yearly in name of tack-duty: And the said Mary Mackenzie binds and obliges herself and her foresaids to flit and remove herself, family, and servants, goods and gear, forth and from the said possession at the expiry of this tack, and to leave the same void and redd, to the effect the said Hugh Mackenzie and his foresaids, or others in their name, &c." By another tack of the