which has led the Legislature to confer special powers on the complainers to keep up a constabulary of their own within certain limits, may be such as not, even in equity, to lead to the conclusion that they ought in consequence to be exempted from the more general county assessment.

The suspenders reclaimed; but the Court to-day, without calling for a reply, adhered.

DEWAR *v.* PEARSON AND JACKSON.

*Proof—Reference to Oath—Competency—*16 *Vict. c.* 20. Held that where defenders were examined by a pursuer as witnesses on one branch of a case, another branch of it was afterwards competently referred to their oath, notwithstanding the terms of section 5 of 16 Vict., cap. 20.

Counsel for Advocator—Mr Gordon and Mr Scott. Agent—Mr David Crawford, S.S.C.

Counsel for Respondent—Mr Patton and Mr Thoms. Agent— Mr W. Officer, S.S.C.

This was an action by a clerk for payment of a sum of £445, 5s. 8d. in name of salary or wages due to him from 1852 to 1860. The defenders pleaded prescription. The Sheriff sustained this plea in so far as regarded the period anterior to June 1858, and found that this part of the claim could only be proved by writ or oath. In regard to the other portion the pursuer was allowed a proof *pro ut de jure*. In the course of the proof *pro ut de jure* the defenders were examined as witnesses. The pursuer thereafter referred the constitution and resting-owing of the claim sued for prior to June 1858 to the oath of the defenders. Under this reference the defenders were examined, and the Sheriff held the oaths affirmative.

Mr Pearson advocated and pleaded that the reference to oath was incompetent. He founded on 16 Vict., cap. 20, sec. 5, which provides that "it shall not be competent to any party who has called and examined the opposite party as a witness, thereafter to refer the cause, or any part of it, to his oath:" and founded on the case of Renny *v.* Will, July 18, 1863 (not reported, but mentioned in Dickson on Evidence, second edition, note to section 1711).

The Court refused to give effect to this plea, and remitted to the Sheriff *simpliciter.*

The LORD PRESIDENT thought the object of the statute was to prevent a person being subjected to a re-examination in regard to the same matter; and that it provides that one cannot refer to a person's oath what he has been previously examined about as a witness in the case. The prohibition may even extend to anything which he might competently have been examined about when he was in the witness-box. But what was referred here was a matter as to which the defenders were not and could not be examined as witnesses.

Lord CURRIEHILL thought the words of the statute were certainly in favour of the advocator, but the construction he put on them was so unreasonable that it could not be adopted. It was, however, with the greatest difficulty that he concurred.

Lord DEAS thought the words of the statute might be literally in the advocator's favour, but that they were not so according to any reasonable construction. A cause may embrace half-a-dozen different things, and it never could be meant to exclude reference on a part of the cause on which a party had not been examined.

Lord ARDMILLAN concurred.

SECOND DIVISION.

TAYLOR *v.* MITCHELL.

Bill—Suspension—Partner. Suspension of a charge on a bill on the grounds—(1) that it was granted for the charger's accommodation; (2) that it was granted by one partner to another, for the purpose of raising money for the business of the copartnery; and (3) that the charger had agreed not to use diligence on the bill—*refused,*

Counsel for Suspender—Mr J. C. Smith. Agent—Mr W. Spink, S.S.C.

Counsel for Respondent—The Solicitor-General and Mr Millar. Agent—Mr John Henry, S.S.C.

This is a suspension of a charge upon a bill. In the year 1862 the suspender became a partner with the respondent in an iron foundry business, but having nothing to put into the capital of the business, and it being necessary to raise money for the company's concerns, he accepted a bill for £717, 10s., which was drawn upon him by the respondent, as the share of the stock which he contributed to the company. Part of the bill was paid by the suspender, and the charge was made for payment of the unpaid balance. The grounds of suspension maintained were—(1) That, assuming the suspender to be due a balance on the bill, he was not liable to diligence therefor, in respect that the bill was an accommodation one, which was truly accepted for the benefit of the respondent; (2) that a member of a joint adventure or partnership concern is not entitled to use summary diligence against a copartner for any balance of copartnery funds while the state of the affairs of the concern is not ascertained, according to the rights of parties; and (3) that the diligence was contrary to the agreement of parties, by which the complainer was to liquidate his obligation only as he was able. The Lord Ordinary on the Bills passed the note, and liberated the suspender from prison, giving effect to his plea, that the understanding between him and the respondent was that he was only to be called upon to pay as he got up his money to do so, and also to the plea founded on the yet unascertained rights of parties. To-day the Court recalled this interlocutor, and remitted to the Lord Ordinary to refuse the note. The Court were of opinion that the first defence, which could only be proved by the writ or oath of the respondents was not only not so proved, but was disproved by the writ of the suspender himself. The second defence was inapplicable to the facts of the case, the charge being for a remainder of debt, for the one-third of the property acquired by the suspender in 1862 for the company concern; and as to the third defence, there was no evidence of any such agreement as was alleged by the suspender.

Wednesday, Feb. 28.

COURT OF TEINDS.

COWAN *v.* COOK AND OTHERS.

Teinds—Valuation—Approbation—Dereliction. Circumstances in which held that an heritor's right to obtain approbation of a sub-valuation of teinds made in 1862 had not been lost by dereliction.

Counsel for Pursuer—Mr Clark and Mr Shand. Agent—Mr James Dalgleish, W.S.

Counsel for Defender—Mr Cook. Agents—Messrs W. & J. Cooke, W.S.

This is an action of approbation of a sub-valuation of the teinds of the lands of Boghall at the instance of William Cowan, Esq., of Linburn, against Mr Cook, the minister, and Lord Hopetoun, the patron and the titular of the teinds of the parish of Bathgate. The sub-valuation was made in the year 1629, when the teinds were valued at 440 merks, or £24, 8s. 10d., being one-fifth part of 2200 merks, or £122, 4s. 5d. The action was opposed by the minister, who pleaded that Mr Cowan was not now entitled to obtain the approbation of the valuation by reason of dereliction of the right so conferred on him. The Court to-day repelled this plea and pronounced decree of approbation as concluded for. The judgment of the Court was delivered by

The LORD PRESIDENT, who said—The length of time which has elapsed since 1629 is clearly no objection to the approval of this valuation. There is no prescription in regard to such a matter. It is