defenders. That involves proceedings by the agents in Montreal quite different from the simple case of a commission contract, because it involved a considerable amount of personal trouble and risk on the part of those who acted nominally as commission agents; and, accordingly, the case was left to the jury on that footing, to say whether the agents were justified in the circumstances, in each of these charges, or whether each was unreasonable and not in fulfilment of the order. In the end the discussion came to turn on two items, and it is not necessary to go beyond these. From the examination of Sidey it appears that there were two lots of 100 packages each, represented by two separate invoices, and I take the first of these as a specimen. He says that the items composing the actual value of the first invoice were (1) first cost of the butter $2023·74, (2) Landon's commission, $99·94, (3) interest, discount, and bank commission, $13·07, and other small charges; and then come two items on which the discussion mainly turns, (1) "loss on inferior qualities retained and resold, $47·90. This is a charge incurred from the necessity buyers are under of taking the whole make of dairymen at once, as the dairymen will usually only sell in that way, by which means there are always some inferior kegs in large invoices purchased." While the defenders objected generally to any such charge being made against them, they objected particularly that on the evidence it was shown that in fact there was not that amount of inferior kegs of butter to justify such a charge. As to the first objection, that no such charge ought to be made at all, it seems to me that, if once you concede that the order was to be implemented by searching for the butter in the country, nothing is more natural than that, in purchasing the produce of a dairy, you must take the whole produce, and must, in that, have some inferior kegs. The other objection is more serious. It seems there were two parcels of butter out of which the butter shipped to the defenders was selected, one of 205, the other of 140 packages, and, as the defenders contend, it is shown on the evidence that in these two parcels of butter there was nothing like proportion of inferior kegs that would justify the charge made, which is one of 33 out of 100 packages. That appears plausible enough, and if there were no answer to it, it must receive some effect from the jury. But there is an answer to it which the jury were fully entitled to take. The pursuers say, we had more orders for butter from Glasgow at the same time, and we were collecting for all these orders at once, and, therefore, we thought it only fair to our customers to put it all together, and to average the inferior kegs over the whole, and to see what amount there was in the whole, and we found in the 850 packages bought for Glasgow a proportion of 143 of inferior quality, not fit to be shipped. Having ascertained that, we charged a proportion against each customer, and 33 fell to be charged against the defenders. No doubt the butter shipped to the defenders happened to be selected out of the first two parcels; but it would have been unjust to our other customers to give the full advantage to the defenders, and throw the full loss upon others.

Now I am not called on to determine that. It was a pure jury question. It seems to me that it was just for the jury to say which was the fair way of dealing with the question. And they have come to the conclusion, as men of the world and men of business, that the pursuers acted fairly and reasonably in the course which they took. I think it would be highly presumptuous in any Court to interfere with the conclusion of the jury in such a question.

(2) There remains another charge made by the pursuers, for fire risks, a charge of $67·30. This is not a very happy name; but, again, I think the jury were entitled to disregard the misnomer, and consider whether it was a fair and reasonable charge. It comes to this, that in collecting the butter, and in bringing it to Montreal, there is a risk of destruction in the transit, the risk of which is of course on the pursuers; because, until the butter is brought to Montreal and sent home, there can be no risk on the buyer, and the risk upon the pursuers must be very considerable. Whether it is accurately represented at $67·30 I do not pretend to say. That is a matter for the jury. The jury have determined it in favour of the pursuers, and we should be invading the province of the jury if we disturbed their conclusion.

That view of the evidence leaves no doubt as to the soundness of the direction given by the presiding judge. He said [quotes direction]. No doubt it is said that reference is made in this direction to usage of trade, and that there was no evidence on that led so as to justify this part of the charge. But that is not the meaning I attach to these words. I understand them to mean that the jury must consider in the circumstances whether the charge was fair and reasonable, looking to the usage of trade, that the agent at Montreal has not to go into the market there, but has to go into the country to collect butter from various dairies, and bring it down to Montreal to ship home. There does not appear to have been any miscarriage either on the part of the judge or jury. We must discharge the rule, and disallow the exceptions.

The other Judges concurred.

Rule discharged and exceptions disallowed.

Agent for Pursuers—Lockhart Thomson, S.S.C.

Agents for Defenders—J. W. & J. Mackenzie, W.S.

COURT OF TEINDS.

Wednesday, June 19.

SMITH AND OTHERS, PETITIONERS.

Church—Parish—Disjunction and Erection—Boundary. Circumstances in which the Court refused to sanction the proposed boundary of a new parish. Petitioners allowed time to amend.

This was a petition at the instance of the Endowment Scheme Committee of the Church of Scotland, and others, for disjunction and erection of Leadhills. It appeared that the parish of Crawford, in which Leadhills is situated, contains about 1500 inhabitants. About 900 of these are miners, and reside at the village of Leadhills. It was proposed to erect Leadhills into a parish; and in order to include in the new parish a sufficient portion of land, belonging to Lord Hopetoun, who is the principal heritor, to give a stipend of £68 at 3 per cent. on the rental, it was proposed to cut off from Crawford parish, and make part of the new parish, a large but thinly populated district to the south of Leadhills, containing a population variously estimated at from 50 to 100 persons.

SHAND, for parishioners and others, objected, on

the ground that the part of the parish thus proposed to be taken from Crawford and added to Leadhills would be very much inconvenienced by the change, and the people would have a much longer road to travel to church than they had at present.

A. R. Clark and Watson for petitioners.

The Lord President—The Court are not prepared to sanction the proposed boundary. The sole object of adding these fifteen square miles, containing these fourteen families, to Leadhills district, is to enable the petitioners to carry out their scheme of provision for stipend to the Leadhills minister, and it is plain that but for that purpose no one would have thought of including it in the proposed new parish. It will be for the petitioners to say whether they desire to amend their boundary.

The petitioners were accordingly allowed time for consideration.

Agents for Petitioners—Marshall & Stewart, W.S.

Agents for Objectors—Mackenzie & Kermack, W.S.

Wednesday, June 19.

MINISTER OF CERES *v.* THE HERITORS.

Teinds — Augmentation — Valuation — Declarator. Procedure in an augmentation sisted to allow minister to bring a declarator to try the validity of a valuation which had been acted on for a long series of years; following precedents of *Kilbirnie* and *Stracathro.*

The Rev. J. C. C. Brown, minister of the parish of Ceres, in the county of Fife, with a present stipend of 16 chalders, modified in 1823, raised a summons of augmentation, modification, and locality, against the heritors.

Duncan, for the minister, asked the Court to grant an augmentation of 4 chalders, stating that, although the last augmentation had been fixed on the footing that it exhausted the free teind, and the minister had for years been accepting less than he was entitled to, on the footing that there were not sufficient teinds, it was now ascertained that the valuation led in 1631, on which, as a good valuation, parties had proceeded, was defective in various respects.

John Marshall, for the Earl of Glasgow, opposed.

Lord President—This is in the position of a case which was before this Court not long ago, in the time of Lord Colonsay, when the Court came to the conclusion, after full argument and consideration, that when a decree of valuation had been acted on and recognised for a long series of years, and it was necessary for the minister to set it aside in order to show that there was free teind, the proper course was to sist procedure until an action of declarator was brought by the minister. The course here will be to pronounce an interlocutor in the same terms as that pronounced in the previous case.—(*Minister of Kilbirnie* v. *Earl of Glasgow*, 19th December 1866, 5 Macph., 195; and *Minister of Stracathro and Dunlappie* v. *The Heritors, ante*, vol. iv., p. 163.)

Agents for Minister—Adamson & Gulland, W.S.

Agents for Earl of Glasgow—Marshall & Stewart, W.S.

COURT OF SESSION.

OUTER HOUSE.

Lord Kinloch.

MACKENZIE & SUTHERLAND *v.* HENDERSON.

Road—Road Trustees—Contractor—Repair. Petition by road trustees to have a road contractor ordained to repair certain alleged defects in the condition of the road at the termination of his contract dismissed, there being no proof of any specific fault on the part of the contractor.

In 1861 Donald Mackenzie, road contractor, entered into an agreement with the Commissioners of Highland Roads and Bridges, represented by Mr Joseph Mitchell, then general inspector, for repairing and keeping in repair the Dunbeath Road, in the county of Caithness, for the space of two years from 1st May 1861. The deed of agreement bore that Mackenzie was to keep and have in repair at all times during the two years the said road, and leave the same at the end of that time in repair, in terms of the annexed specification, and to execute in each year the whole works and repairs therein specified. George Sutherland, farmer, Mains of Thrumster, bound himself as cautioner for Mackenzie. Mitchell, on the other hand, on the part of the commissioners, was to pay to Mackenzie the sum of £970, 4s. in eight equal instalments of £121, 5s. 6d. each, the first instalment to be paid in August 1861, the second in September, the third in December, and the fourth in June 1862, provided certain specified repairs were duly executed at these several dates; and for the remaining year the four instalments were to be paid at the same periods, "provided, on examination and report by any one of the sub-inspectors of the said commissioners, the said work shall have been found to be duly executed; it being hereby expressly conditioned and declared that unless the specified quantities of work are found executed at the period above-named, the instalments then due shall lie over, in the hands of the said commissioners, until the said repairs shall be executed by the said second party, his cautioner, or their foresaids; and also, that unless at the period above-named, and at the expiration of the foresaid space of two years, the whole repairs are properly executed, the defects shall be valued by any one of the sub-inspectors whom the said general inspector shall appoint, and the amount deducted from the agreement price." The agreement declared the true meaning of the contract to be, that the said road and bridges, parapets, breast walls, retaining walls, drains, water-courses, and all other works, were to be put, kept, and left in perfect repair, and so that the commissioners should not have to pay more than the stipulated price for the work. If Mackenzie failed in performing the repairs, or in giving his due personal attention to them—"of all which circumstances the said general inspector shall be sole judge"—the contract might, in the option of the commissioners, terminate at the end of the first year.

The relative specification contained the details of the work to be done at the different periods of the year, and stipulated that "the whole of the foresaid works must be performed in a substantial and workmanlike manner, agreeably in all respects