is contrary to the rules of evidence and the practice of the Court.

The only other point on which the Lord Ordinary thinks it necessary to make any observation is the tender of documents during the course of the proof which were in the possession or within the power of the party before closing the record. The rule in regard to the production of such documents before closing the record, and the competency of such production thereafter, is quite settled. The provisions of the Judicature Act and the Act of Sederunt have been held to apply to commissary causes, and the rule has been repeatedly enforced. Ross *v.* M'Leahy's Trustees, 22nd May, 1834, 12 S. & D. 631; Wright *v.* Bell 10th December, 1836, 15 S. & D. 242; Earl of Fife *v.* Pirie, 16th January, 1852, 14 D., 331; Anderson *v.* Gill, House of Lords, 16th April, 1859, 3 M'Q. A. p. 180, 189.

We observe it stated that the Appeal in the Irish case has been postponed till the October session, in expectation of a decision of the Scottish case before that time. This, we presume, must be a mistake, as there is no probability of the Scottish case reaching the discussion of the *merits* before next year, the proof on Major Yelverton's side not being yet taken.

The *Scotsman* says:—"There is no probability of the Scottish case reaching the discussion of the merits before next year, the proof on Major Yelverton's side not being yet taken."

FERMOY QUARTER SESSIONS—MONDAY.

[Before Mr. Thomas De Moleyns, Q.C., Chairman, and the following Magistrates:—Colonel Roche, Captain Callis, Captain Mansergh, Messrs. Neal Browne, R.M., Litchfield, Wilkinson, Grant, Durden, Hendley, Austin, Edward O'Brien, Arundel Hill, Abraham Devonshire, Geran, Moriarty, Mansergh, and Nason.]

INCREASED TITHE-RENT CHARGE.

Of these, such as were not opposed were first entertained, beginning with the parish of Ballyaughtra or Castlemartyr.

Mr. Chatterton, Q.C., instructed by Mr. W. V. Gregg, solicitor, supported the application.

The Chairman, previous to the hearing of these cases, recommended any magistrate or magistrates on the bench who pay tithe-rent charge, not to take part in the proceedings, as it might lead to some unpleasant observations being made. The course was approved by counsel and magistrates, and the first application was then taken up. John R. Mills proved the service of the notice for the present application for increased tithe-rent charge. It was posted, as required by the Act, two successive days, 26th May and 2nd June, on the parish church of Castlemartyr. Rev. William Halloran is incumbent of the parish.

The notice read thus:—

"All persons concerned are to take notice that I, the undersigned, being the person entitled to the tithe-rent charge in lieu of tithe composition in the parish of Ballyaughtra or Castlemartyr, in the Barony of Imokilly and East Riding of the county of Cork, intend to apply, and that accordingly an application will be made by me to the Justices of the Quarter Sessions for the division of Midleton in the East Riding, in said county, to be held at Fermoy, on the 17th day of June, 1861, for an order, that the average price of wheat as advertised in the *Dublin Gazette* during the seven years immediately preceding may be ascertained, in order that the composition for tithes in said parish, and the rent-charge in lieu of such composition, may be varied and increased in proportion to such average price, pursuant to the statute in such case made and provided.

"Signed 24th day of May, 1861.

"WM. HALLORAN."

Mr. Chatterton handed in the attested copy of the certificate of composition signed by Thomas Armstrong, Commissioner, on the 23rd September, 1833; and also the order of the justices assembled at Youghal, on 30th June, 1854, which reduced the average price of wheat from £1 12s. 0½d. to £1 6s. 11d., and the composition for tithes correspondingly or by 25 per cent.

Mr. James R. Bull, deputy Clerk of the Peace for the West Riding, was next called to prove the averages. He stated that in 1854, he was employed as arbitrator to take the averages, which he got from Thom's *Dublin Gazette*, and which he kept up ever since. The average was then £1 12s. 0½d.; it was reduced to £1 6s. 11d., and is at present £1 13s. 1d. The manner of calculating them was this,—he took them from the number of years, and divided by the number of weeks.

The Chairman said he found himself in a difficulty, and wished to know if counsel expected an order in this case before hearing the others. The difficulty arose from the fact that he, discharging a public duty, had to decide between the incumbent and the parishioners, who were not represented in court. There was a legal point arising out of the 43d sec. of the Act, which equally applied to all cases, and would have to be argued in those that were defended.

Mr. Chatterton—Don't you think if people will not attend here to protect their own interests, an order should be given against them?

Chairman—Remember I am not throwing out any opinion at all on the matter, but where there is an undefended case of this nature, I feel some difficulty in disposing of it.

Mr. Wilkinson, J.P.—Won't the same objection apply to all the cases? Can't you argue the legal point now, Mr. Chatterton?

Mr. Chatterton—I don't intend to make a point against myself.

Mr. C. P. Wallis, solicitor—In other words, give the parishioners of Castlemartyr the benefit of our points without any expense to them.

Chairman—You don't appear in the case at all, Mr. Wallis.

Mr. Wallis—No, I don't; but it is for my profession I am speaking.

It was then decided to defer the discussion on the legal points until the opposed applications were before the court.

The next application was from Rev. Wm. Cotter Williamson, incumbent of Churchtown or Ballintemple.

John Taylor having proved the posting of the required notices on the parish chapel and the old ruins of the parish church of Ballycotton, on the same Sundays as in the last case,

Mr. Chatterton said the certificate of composition was dated 12th December, 1833; the composition itself was £500 15s.; the price of wheat and the order of justices as before.

The third application was from the incumbent of Castrancora or Midleton, Rev. John Quarry.

William Harrington proved the posting of the notice on the parish church of Midleton the same days.

Mr. Chatterton said the certificate was dated 5th October, 1833; the composition was £897 16s. 7d.; the price of wheat and order of justices the same as in the other cases.

Parish of Clonpriest—Charles Phillips proved the posting of the notices on the parish church of Clonpriest, of which Rev. Maurice Hewson is Rector.

Mr. Chatterton—The certificate is dated 2nd August, 1833; the composition is £869 2s. 4d. and, the price of wheat is before. The order of the Justices assembled at Fermoy is dated Oct. 16, 1854, and reduces the price to £1 7s. 11½d., which is different from that in the former cases on account of the difference between the places in which the sessions were held.

Parish of Cloyne—Mr. Chatterton said the tithe rent charge arising out of this parish was divided between the Ecclesiastical Commissioners and the Dean and Chapter of the diocese. The notice on the part of the Commissioners, was signed by their secretary, Mr. Bush; and the other by Rev. Wm. Rogers, economist of the Chapter of Cloyne.

Mr. Charles Cocte Higginbotham, head of the agency for the Commissioners, proved their claim to a portion of the rent

Rev. Mr. Rogers did same for the chapter.

The service of the notices having been deposed to by Richard Burke,

Mr. Chatterton said the certificate was dated 29th Oct., 1853; the composition, £1,317 0s. 6½d.; the price of wheat and order of justices the same as in the first cases.

Parish of Kilmahor—George Dibbs proved the posting of the notice on the 19th and 26th May, on the parish church of Kilmahor, of which Rev. Wm. Rogers is rector.

Mr. Chatterton—The certificate is dated 28th September, 1833; the composition is £506 18s. 6d.; the price of wheat £1 12s. 0½d.; the reduced price £1 7s. 1½d., for the reason given above; and the date of the order of justices 16th Oct., 1854.

Parish of Kilmacdonagh—The rent charge of this parish is divided between the commissioners and its rector, Rev. Mr. Esgar.

The posting of the notices having been proved by John Linehan,

Mr. Chatterton said the certificate is dated 15th January, 1834; the composition is £1,012 15s., two-thirds of which is given to the commissioners and the remainder to the rector. The price of wheat the same as in the last case.

Parish of Mogeesha—Daniel Buckly deposed to the posting of the notices on the parish church of Mogeesha, of which Rev. Wm. Gifford is rector.

Mr. Chatterton—The certificate is dated 29th October, 1833; the composition is £809 3s. 10d.; the price of wheat and order of justices the same as in last case.

Parish of Ballyhooly—The posting of the notices on 25th May and 1st June was proved by Owen Callaghan.

Mr. W. Johnson, counsel, said the certificate was dated 20th September, 1833; the composition £468; the price of wheat and order of justices as in last case.

Mr. Daniel Connellan, deputy clerk of the peace for the East Riding, stated that he prepared the average in this case, in which there was one week wanting, that Mr. Bull supplied.

Parish of Carrigtwohill—The application in this case was opposed by Mr. Justin M'Cartie, counsel, with Mr. C. P. Wallis, solicitor; and was supported by Mr. Chatterton, with Mr. Gregg.

Rev. Wm. Herbert Saunders, rector, having stated that he received rent charge from his parishioners for over 20 years, and that the notices for this application were duly deposted by Samuel Reilly,

Mr. Chatterton said the certificate was dated 28th Oct. 1833; the composition £1,035 4s., of which two-thirds goes to Eliza Lukey, senior and junior, and Michael Gaggin, and one-third to the vicar. The price of wheat and order of justices as in last case.

Mr. Bull proved the averages. In reply to Mr. M'Cartie

Chatterton contended that the words of the act cited, as well as those of 5 Geo. IV., cap. 63, sec. 23, 2 and 3 Wm. IV., cap. 119, sec. 6, distinctly pointed out that the application was to be made every seventh, fourteenth, &c. year from the date of the first composition of the tithes.

Mr. Johnson said he fully agreed with the view taken by Mr. Chatterton.

After some consultation the Bench considered this was the proper time for the application.

Mr. M'Cartie said his next objection was to the manner of calculating the averages. The act required that these be computed from the price of wheat for the seven years preceding, and if there be an increase of more than 1-10th the composition of the tithes is to be accordingly increased; if otherwise, then there is to be a corresponding decrease in the composition. He contended that the question was not whether wheat was 1-10th dearer for the last seven years as compared with the seven previous ones, but whether it was dearer than at the period when the original certificate of composition was made out.

Mr. Mansergh, B.L.—Then you maintain, Mr. M'Cartie, that the original certificate is to be the standard for ever in computing the averages?

Mr. M'Cartie said it was so. And if the increase be not more than 1-10th the applicants have no *locus standi* here. The section of the Acts above referred to, likewise the Tithe Rent Charge Act (1 & 2 Vic., cap. 109, Sec. 32) confirmed him in this opinion. He did not see, therefore, what reply the other side could give to him, nor how in his opinion they could get out of what he considered the plain meaning of the acts provided in these cases.

Mr. Chatterton in reply remarked he was greatly surprised at the construction put on the Acts by Mr. M'Cartie. He then reviewed at some length the intention of the legislature in passing the several statutes referred to, and after referring to the manner in which the tithes were originally paid, viz., in kind, and not in money, concluded an able address by stating that the averages were calculated properly in the manner described.

The case had not concluded at the rising of the Court.—*Examiner.*

Mr. Chatterton having concluded, Mr. William M. Johnson followed on the same side, and in a very able argument endeavoured to shew from the grammatical construction of the section of the Act of Parliament that the comparison of the average price of corn should be with reference to the average fixed at the previous reduction, and not with that in the original certificate of composition.

Mr. M'Cartie replied to the arguments of both gentlemen.

The Court stated that judgment would be given in the several cases on the next morning.

TUESDAY.

The Court gave judgment at 12 o'clock that the Petitions should be dismissed, ruling that the averages should be taken as having regard to the original certificate of composition, and not to the last order of the magistrates. He was happy to say that his brother magistrates, two of whom had the benefit of a legal education, fully agreed with him in that decision. The matter was a most important one as affecting a large amount of property in this country, and fully deserved the lengthened investigation it had received, assisted by the able and ingenious arguments of the counsel engaged on both sides. The whole argument turned on the construction of the 43d section of the Act of Parliament which, on the one side, it was contended, should be construed strictly according to the actual words of the section, while, on the other hand, Mr. Chatterton wished to give the words a more free and literal meaning. On referring to the words of the section there did not appear to be the slightest ambiguity in them. The words used are "the original certificate of composition," and the more he considered the matter the more difficult was it to get over those words. In England the original composition was the standard of comparison, and the difficulty that now arose seemed to occur from the legislature never having contemplated that what he would call the standard of variation would become different from the standard of comparison, but this court being a court of limited jurisdiction could not enter into any such question. It could only deal with the law as it found it, and could not find anything

A stated that there are a few weeks in each year in which he averages were not entered in the *Gazette*. This occurs n April every year. In that case they are not calculated or counted. The usual method of finding the average is to divide the number of years by the number of weeks.

Chairman—I don't see how else it could be done.

Mr. Chatterton—It is the way the Act points out.

Evidence having closed,

Mr. M'Cartie said the first question on which he would rest, though not so extensive as others he would refer to after, will apply to all the cases to be heard. Assuming for a moment that the calculation of the averages was right, all the proofs given correct, and the parties claiming the increase to be entitled to the rent charge—still the application has not been made at the proper Sessions as contemplated by the 43d sec. Geo. IV., cap. 99, which provides for the time when the first and every succeeding application should be made. There are by this act some matters common to all the applications; for instance, the notices must be given at the same period, but there is a distinction made between the first and each subsequent application as to the time they should be made. The act requires that these be made not every seventh year, but at the Sessions next held after the expiration of seven years. The last application having been made in June, 1854, the period for making the next should be at the November sessions and not now.