count thereof to be given in, and remit the same, when lodged, to the Auditor to tax and report."

Counsel for Black and Others—Solicitor-General (Clark) and M'Laren. Agents—Millar, Allardice, & Robson, W.S.

Counsel for Tramways Company—Lord Advocate (Young) and Mansfield. Agents—Lindsay, Paterson, & Hall, W.S.

Wednesday, February 26.

FIRST DIVISION.

STEUART *v.* PADWICK.

(*Ante*, p. 197.)

Expenses—Consultation—Skilled Witnesses.

In a case which involved difficult and voluminous evidence, fees for consultation before hearing in the Inner House *allowed.*

Remuneration for skilled medical witnesses fixed at ten guineas a-day.

Circumstances in which medical witnesses who were called to speak to facts, but were also examined upon matters of scientific opinion, were allowed ten guineas a-day.

When the Auditor's report upon the account of expenses came before the Court in this case, certain objections were taken thereto. In the first place, the Auditor had disallowed the charge of fees to counsel for consultation before hearing in the Inner House. It was argued for the defender that this charge should be allowed on account (1) of the length of time (more than six months) between the hearing before the Lord Ordinary and before the Inner House; and (2) because on account of the unusual difficulty and delicacy of the evidence. It was argued for the pursuer that it was unusual to allow a fee for consultation before hearing in the Inner House.

Lord President—I think that we should allow the fee for consultation before hearing in the Inner House. Sometimes we have inconsistent arguments by counsel on the same side, which would have been avoided had there been a consultation. Of course there are many cases in which a consultation before hearing in the Inner House is not necessary; but in a case like this it is of the greatest consequence that counsel should arrange in what way they are to present the case to the Court, and for that purpose a consultation is necessary,

The other Judges concurred.

Another point which came up was in reference to the remuneration of the medical witnesses. Drs Grainger Stewart and Watson had been called as experts, and gave their opinions on the whole evidence led. The fees charged in account were £126 to each of these gentlemen. The Auditor disallowed this charge, and allowed a fee of ten guineas a-day for five days to each. The defenders maintained that such an allowance was quite insufficient remuneration for medical skilled witnesses.

Professor Spence and Dr Gillespie had also been examined. They had been examined as to their observations in a *post mortem* examination of the body of Sir W. D. Steuart, but their examination was not limited to matter of fact, but extended to scientific questions and matters of opinion. The Auditor treated these gentlemen as merely witnesses of fact, and limited their fee to the usual rate of two guineas per day. Objections to this finding were also submitted to the Court.

Lord President—Mr Grainger Stewart and Mr Watson were called merely as experts, and I do not think it safe to exceed the allowance fixed by the Auditor. There is no doubt that the highest class of evidence cannot be got at this rate, and in a case of such importance as this is, parties will have the best evidence; and it is desirable that it should be so. But is the winning party entitled to charge the whole of his expenses against the loser? It is against the spirit and practice of the Court that he should. If we exceed the sum paid by the Auditor, I do not see where we are to find a limit to such charges. The only safe course is to adhere to the rule of the Auditor.

As to Drs Spence and Gillespie, theirs is a very exceptional case. I do not remember a similar case. For they were called to speak to a matter of fact, but a matter entirely of medical fact, observed by themselves, and valuable chiefly on account of their skill as observers of such facts. They were also examined as experts. Now it is difficult to see any good ground for making a difference between the remuneration of these gentlemen and that allowed to Drs Grainger Stewart and Watson. No doubt they might have been compelled to attend as witnesses to fact; but the facts to which they were called to speak were their observations in the *post mortem* examination; and they went voluntarily to conduct this examination, and were sent to conduct it as being highly skilled men. So I am of opinion that they should be allowed the same remuneration as Drs Grainger Stewart and Watson—that is, ten guineas a-day.

The other Judges concurred.

Counsel for Pursuer—Mackay. Agents—Dundas & Wilson, C.S.

Counsel for Defender—Watson. Agents—Tods Murray, & Jamieson, W.S.

Wednesday, February 26.

SECOND DIVISION.

[Lord Jerviswoode, Ordinary.

EARL OF ZETLAND *v.* TENNENT'S TRUSTEES.

Salmon-fishing—Prescription—Medium filum.

Upon a title to "the salmon-fishings pertaining to lands" which were washed by a river: Exclusive possession for the prescriptive period exercised at stations or banks *ex adverso* of said lands, and beyond the *medium filum* of the stream, *held* to give right to the salmon-fishings at these stations.

The summons in this suit, at the instance of the Earl of Zetland against the trustees of the late Hugh Tennent, Esquire, of Errol, concludes that "it ought and should be found and declared that the pursuer has good and undoubted right to the salmon-fishings in the river Tay between Corbieden, on the east, and the Pow of Lindores, on the west, and that from the south shore as far as the middle line of the said river, and including the