a successful party, after judgment in his favour, increasing the amount or adding to the number of the fees actually paid by him during the course of the process, and although the exceptions from the rule are in terms limited to cases on the Poor's Roll and cases of gratuitous conduct of a cause 'on account of the poverty of the party,' the practice of the Auditor's office has been, where a case has been throughout conducted by counsel gratuitously on other grounds, to allow reasonable fees after decree has been pronounced. The fees stated in these accounts appear to the Auditor to be reasonable, and he has not disallowed them."

For the respondents it was stated that the practice was well known, and in such a case as the present was perfectly reasonable. Reference was made to the case of *Tough's Trustees* v. *Dumbarton Water Commissioners*, 1 Rettie 879.

At advising—

Lord President—What the Auditor proposes to do in this case, viz., to allow a reasonable fee, although it was not actually paid at the time, is consistent with a practice of long standing—a practice with which I was quite familiar while at the bar, and of which your Lordships are, I have no doubt, well aware. The practice is reasonable in itself, and it is not inconsistent with the provisions of the Act of Sederunt. The principle is that counsel and agent may feel that the circumstances of a case are such that the agent cannot consent to make charges or the counsel to receive fees from their client; but they cannot have the same feeling to the client's opponent, and when he is found liable this feeling will therefore disappear. Accordingly it is quite reasonable that, when the client's opponent has to pay, such a charge should be allowed by the Auditor.

Lord Deas—It is perfectly natural that a counsel should not wish to accept fees from a brother counsel, or an agent from a brother agent; but that is no reason why they should not be entitled to receive them from the opposite party if he is found liable. I concur with your Lordship.

Lord Mure—I also concur with your Lordship. The practice was well known to me when at the bar.

The Court pronounced this interlocutor:—

"The Lords having considered the Auditor's reports on the accounts of expenses incurred by the respondents, Nos. 490 and 491 of process, and heard counsel for the respondents thereon and on the questions reserved for the determination of the Court, no appearance being made for the appellant, Allow the fees mentioned in said reports to be charged, approve of the Auditor's report on the account of expenses incurred by the respondent George Handasyde Pattison, No. 491 of process, and decern against the appellant for payment to the said respondent George Handasyde Pattison of the sum of Thirty-three pounds three shillings and one penny sterling of taxed expenses: Farther, approve of the Auditor's report on the account of expenses incurred by the respondent Robert Johnston, No. 490 of process, and decern against the appellant for payment of the sum of Twenty-three pounds sterling of taxed expenses to David Reid Grubb, solicitor, the agent-disburser thereof."

Counsel and Agent for Pursuer (Appellant)—Party.

Counsel for Mackersy (Defender and Respondent)—Burnet. Agent—George Begg, S.S.C.

Counsel for Pattison (Defender and Respondent)—Dean of Faculty (Watson)—Black. Agent—William Saunders, S.S.C.

Tuesday, July 18.

FIRST DIVISION.

[Lord Young, Ordinary.

PETITION—ROBERTSON.

Process—Petition—Competency—Reclaiming Note—Statute 36 *and* 37 *Vict. cap.* 63*—Review by Inner House.*

Held that the following provision in the 7th section of the Law Agents Act 1873, viz.—"A single judge shall be entitled to act as the Court with reference to all petitions for admission as a law agent under this Act," does not render a reclaiming note against his judgment incompetent.

Observed by the Lord President that the power of review by the Inner House of all interlocutors pronounced by the Lord Ordinary cannot be taken away by implication.

This was a petition presented in terms of the 10th section of the Law Agents Act (36 and 37 Vict. cap. 63). The Lord Ordinary pronounced the usual interlocutor, quoted in the Lord President's opinion. The petitioner, believing that he was entitled to be admitted without examination, on the ground that at the date of the passing of the Act he was entitled to be admitted a procurator under the Procurators Act of 1865, asked leave to reclaim against this interlocutor, which the Lord Ordinary granted, reserving all questions of competency.

On the question of competency it was argued for him—The expression "Lord Ordinary" used in the 7th clause of the Act indicates the intention of the Act to allow the review of any interlocutors pronounced under the powers conferred by it. Under section 8th of the Judicature Act of 1825 review is declared competent unless expressly excluded—*Otis* v. *Kidston*, 24 Dunlop 419, Lord Justice Clerk's remarks, p. 426.

At advising—

Lord President—The first point to be disposed of in this petition regards the competency of the reclaiming note. It is a petition presented to the Court by John Robertson, writer, Edinburgh, to be admitted a law agent; and Lord Young, to whom the petition was presented, has pronounced an interlocutor by which he "remits to the examiners appointed by the Act of Sederunt of 6th November 1873, to inquire into the facts set forth in the petition,

to take trial of the petitioner's qualifications, fitness, and capacity to be admitted as a law agent, and to report." The petitioner is dissatisfied with that interlocutor, because he thinks he has a title to be admitted without examination. Now, the Lord Ordinary has himself suggested a difficulty which is worthy of consideration, viz., whether the statute intended the interlocutor of a Lord Ordinary to be subject to review. That depends on the 7th section of the Law Agents Act, which is—"Any person qualified as hereinbefore provided may present to the Court a petition praying to be admitted as a law agent, and the Court shall examine and inquire by such ways and means as they think proper touching the indenture and service and the fitness and capacity of such person to act as a law agent; and if the Court shall be satisfied by such examination, or by the certificate of examiners as hereinafter mentioned, that such person is duly qualified and fit and competent to act as a law agent, then and not otherwise the Court shall cause him to be admitted a law agent, and his name to be enrolled as such, which admission shall be in writing and signed by a Judge of the Court, and shall be stamped with the stamp required by law to be impressed on the admission of law agents." And then follows the portion which more immediately applies to this case—"The petition may be presented to any Judge of the Court officiating as a Lord Ordinary, and the proceedings under the same may take place and be conducted before the same or any other Judge, according to the judicial arrangements in the Court for the time being, and a single Judge shall be entitled to act as the Court with reference to all petitions for admission as a law agent under this Act." Now, the difficulty arises from the last member of that sentence—"a single Judge shall be entitled to act as the Court with reference to all petitions for admission as a law agent under this Act;" but notwithstanding the ambiguity raised by that form of expression, we are of opinion, and the Judges of the Second Division whom we consulted are of opinion also, that it is not incompetent to submit this interlocutor to review by the Inner House. Our view is, that the petition is in the first instance to be presented to a Lord Ordinary, and it may be presented to the Lord Ordinary who is officiating on the Bills in vacation, and the form of expression is probably due to the fact that it was intended to make it competent to present the petition to any Judge of the Court of Session who may be in that position. The power of review by the Inner House of all interlocutors pronounced by a Lord Ordinary cannot be taken away by implication, and there is nothing here like an express withdrawal of that power of review. It therefore becomes necessary to consider the merits of this application.

Lords Deas and Mure concurred.

Lord Ardmillan was absent.

The Court, after hearing further argument on the merits, pronounced the following interlocutor:—

"The Lords having heard counsel for the reclaimer on the reclaiming note for John Robertson, writer, Edinburgh, against Lord Young's interlocutor of 29th June 1876, Sustain the competency of the reclaiming note, but refuse the same on the merits, and adhere to the interlocutor reclaimed against."

Counsel for Petitioner—Begg. Agent—Party.

Tuesday, July 18.

SECOND DIVISION.

STARK *v.* DAVIE.

Lease—Condition—Rescission of Contract.

Missives of lease of a shop were entered into—the tenant stipulating that during his lease an adjoining shop should not be let to any person in his own trade. The landlord subsequently took possession of this adjoining shop himself, and carried on a business there under which he sold a number of articles similar to those dealt in by the tenant.—*Held* that a material condition of the contract had been violated, and (*dub.* Lord Ormidale) that the tenant was entitled to rescind the lease.

This was an appeal from the Sheriff Court of Edinburgh against a judgment of the Sheriff-Substitute. The action was at the instance of John Davie, boot and shoemaker in Edinburgh, against William C. Stark, clothier and outfitter there, and concluded for the sum of £50 sterling, being half-year's rent of shop and pertinents No. 92 High Street, Edinburgh, belonging to "the pursuer, due at Martinmas 1875 for the half-year immediately preceding, and which shop and pertinents were let to the defender on lease for seven years from Whitsunday 1872 to Whitsunday 1879, at the annual rent of One hundred pounds, payable at the usual half-yearly terms." The lease was negotiated in February 1872 by missive letters between the defender and Messrs M'Kellar & Swan, builders in Edinburgh, who were then proprietors of the subject. The offer made by the defender, dated 5th February, was as follows:—"I offer to take that new shop No. , lowmost shop, High Street, with cellarage below, for a period of seven years, at the yearly rental of One hundred pounds sterling, on conditions that it is fitted up with gas-fittings according to my instructions; that the two shops above, No. and High Street, are not let during the term of my lease to any person or persons in the drapery, clothing, or ready-made outfitting trade." On 6th February Mr Spalding, W.S., agent for Messrs M'Kellar & Swan, replied:—"Sir,—Messrs M'Kellar & Swan have handed me your letter of 5th current. They instruct me to state that they are willing to give you the lease you wish of their lowest shop in High Street on condition of your giving security to their satisfaction for the rents, and that as regards the gas-rods they are willing to bear half the expense—the rods becoming theirs at the end of the lease. They are willing to consent to the restriction you propose as to the shop next to the one you offer for, but they cannot consent to any restriction as to the uppermost of two shops above, to which you refer. Of course if you were to assign or