ander Watson objected to the said names being inserted "in respect that they are not qualified to become electors."

At the Registration Court a law-agent, on behalf of Alexander Watson, wrote out at the bar and tendered a note of specific objections to the claimant's claim.

Counsel for the claimant objected that no specific objection had been timeously stated to the Court or notified to the claimant.

The Sheriff-Substitute held that, the claim being in itself *ex facie* regular, and no specific objection having been timeously stated to it, the claim must be admitted, and therefore admitted the claim.

The agent for the objector obtained a stated case.

In the stated case the Sheriff-Substitute, after stating the foregoing facts, stated as follows:—"I held that the claim being itself *ex facie* regular, and no specific objection having been timeously stated to it, the claim must be admitted. I therefore enrolled the said claimant as a voter."

The question of law for the opinion of the Court was—"Must an objection be specifically notified to the claimant as well as to the Court before the meeting of the Court, or is it sufficient that at the bar immediately before the calling of the case a note of objections be handed to the Clerk of Court?"

Argued for the appellant—The Sheriff was clearly in error in holding that no specific objection had been timeously stated to the claim. All that section 22 of the Burgh Registration Act required was that the person intending to oppose a claim should in the Court, and before the hearing of the claim, give notice to the Sheriff, and he was thereupon to be admitted to oppose the claim "without any previous or other notice." It was expressly provided that what the Sheriff had required in this case should not be necessary.

Argued for the respondent—The declaration annexed to the notice of claim of a person claiming to vote as a lodger was declared by section 14 of the Registration Act of 1885 to be *prima facie* evidence of his qualification. Accordingly he was entitled to know before coming into Court what were the specific objections to be taken to his claim. The present practice on the part of objectors was to put the claimants in the box and endeavour to discover by examination some specific objection to the claims. This practice was contrary to the intention of the Legislature as expressed in the Reform Acts, and in particular the effect of the practice was to render nugatory the provision of section 14 of the Registration Act of 1885, under which a lodger's declaration annexed to his notice of claim was *prima facie* evidence of his qualification.

At advising—

LORD KINNEAR—The question is whether the objection was timeously stated, and the learned Sheriff has held it not to be so, because although a petition had been presented to him on the 27th of September objecting to 238 names, including that of the respondent, the only objection applicable to the respondent individually was not previously intimated to him but was written out at the Bar and tendered in Court on the 2nd of October, when the Registration Court was held. But the rule laid down by the statute is that an elector justified to object shall "in the Court to be holden for revision of the list, and before the hearing of such claim, give notice in writing to the Sheriff of his intention to oppose the said claim, and shall thereupon be admitted to oppose the same by evidence or otherwise without any previous or other notice." Now, it is not disputed that the objector gave notice to the Court holden for revision of the list. But it is said that he ought to have given a previous intimation—to wit a more specific notice. That seems to me to be exactly what the statute says shall not be necessary.

I therefore am of opinion that the first alternative of the question should be answered in the negative.

LORD TRAYNER and LORD KINCAIRNEY concurred.

The Court pronounced this interlocutor:—

"Answer the first alternative branch of the question in the negative, and remit to the Sheriff to hear the objector, and to amend the case by adding whatever facts he may find to be proven or admitted having a bearing upon the objection to the claimant's admission to the roll."

Counsel for the Appellant — Dewar — Wark. Agents—Clark & Macdonald, S.S.C.

Counsel for the Respondent — C. N. Johnston, K.C. — M. P. Fraser. Agents—Russell & Dunlop, W.S.

COURT OF SESSION.

Tuesday, January 20.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

WALKER *v.* WALKER.

Expenses—Dominus litis—Person Instructing Action by Pupils against their Father—Expenses of Curator ad litem.

In an action at the instance of pupil children against their father, as their mother's executor, for reduction of the will under which he acted, and for payment of legitim, the pursuers averred that the action was raised in their names upon the authority and instructions of their aunt Mrs M, who was specially charged with their interests by her sister, their mother; that Mrs M had no personal interest in vindicating their rights, and that she

desired that a *curator ad litem* should be appointed to them. A *curator ad litem* was appointed, who restricted the conclusions of the summons to a demand for legitim. The defender was successful. *Held* (*rev.* judgment of Lord Stormonth Darling) that Mrs M, and not the father as tutor at law, was liable in the expenses of the *curator ad litem*.

The question in this case was whether, in an action at the instance of pupil pursuers against their father, the successful defender or a party alleged to have been *dominus litis*, and who admittedly had instructed the action, was liable in the expenses of a *curator ad litem* appointed to the pursuers.

The action was at the instance of Christian Margaret Knox Walker and George Stewart Walker junior, the pupil children and next-of-kin of the deceased Mrs Alice Knox or Walker, against their father George Stewart Walker, residing at 62 High Street, Dunbar, as alleged executor of his deceased wife, and Mrs Susan Forsyth Kerr Knox or Murray, widow, for any interest she might have.

The summons concluded for reduction of a pretended will of the deceased Mrs Walker dated 13th October 1900, under which her husband was executor, on the ground, *inter alia*, of facility and circumvention on his part, and for count and reckoning and payment of legitim.

The pursuers averred that Mrs Murray, who was their aunt, was called for her interest as executrix of the deceased under a deed dated 22nd October 1892, and for her interest under a deed of gift dated 17th October 1900, and they also averred as follows:—"This action is raised in the names of the pursuers upon Mrs Murray's authority and instructions. She was specially charged both verbally and by the said deeds with their interests by her sister before she died. She has no personal interest of her own in seeking to vindicate the rights of the pursuers, and she desires that a *curator ad litem* should be appointed to the pursuers" as the interests of their father and tutor-in-law "are antagonistic to their interests."

The defenders answered — "(Ans. 16) Denied that the defender has interests antagonistic to those of his children, or such as to warrant the appointment of a *curator ad litem*."

A *curator ad litem* was appointed, and he restricted the conclusions of the summons to a demand for payment of legitim.

On 2nd July 1902 the Lord Ordinary (STORMONTH DARLING) assoilzied the defender upon the ground that there was no free moveable estate available for payment of legitim, and found him liable in expenses to the *curator ad litem* from the date of his appointment.

Opinion.—[*After dealing with the merits of the cause his Lordship proceeded*]—"This is one of those exceptional cases in which success, instead of being followed by a finding for expenses in favour of the successful party, must entail a finding for expenses against him. The result arises from the circumstance that the party with whom the defender has been litigating is a *curator ad litem* appointed by the Court, and entitled to the protection of the Court. The question at issue was a perfectly proper one to litigate, and the curator who was appointed to consider it decided, in the exercise of his discretion, to test it in the Outer House. In the event his contentions have proved unsuccessful, but he is none the less entitled to recover his expenses, and I must give decree for the amount of them when ascertained against the only other person who is in the process, and can be made liable for them. That person is the administrator-in-law of the curator's wards. He also happens to be the successful party, but that is an accident which I cannot help.

"It may be, and from certain statements on record it appears very probable, that an aunt of the pupil pursuers is the true *domina litis*. But that question, if contested, must be raised in a separate process, for there are no materials for an operative decree against her in the present action. The *dicta* of Lord Adam in *Kerr's* case were certainly *obiter*, but I have no wish to call them in question, for they seem to figure a case where the *dominus litis* either appears in the process originally or is brought into it in some way, while here Mrs Murray is in no sense a party to the process, however much she may have inspired it. I shall accordingly find the *curator ad litem* entitled to his expenses from 28th June 1901 against the defender."

The defender Walker reclaimed, and argued—The *curator ad litem* had been appointed at the instance of Mrs Murray, and the defender was under no obligation to pay his expenses—*Studd* v. *Cook*, May 8, 1883, 10 R. (H.L.) 53, 20 S.L.R. 566; *Johnstone* January 9, 1885, 12 R. 468, 22 S.L.R. 291. Mrs Murray was *domina litis*, and even if she had not been named in the summons she might have been held liable in expenses—*Mitchell* v. *Baird*, May 21, 1902, 4 F. 809, Lord Kinnear, p. 811, 39 S.L.R. 682; The pursuers had sued as her agents—*Kerr* v. *Employers' Liability Assurance Corporation*, October 20, 1899, 2 F. 17, 37 S.L.R. 21.

Argued for Mrs Murray—Though charged with the interests of the pursuers by the deceased, Mrs Murray had been superseded by the *curator ad litem*, who was the real *dominus litis* and controlled the action. There was no case in which a party had been held liable in expenses as *dominus litis* unless he not only inspired the action but also controlled it and had a personal interest in it—*Kerr* v. *Employers' Liability Assurance Corporation*, *cit. sup.*

Counsel for the *curator ad litem* stated that he had no objection to decree being pronounced against Mrs Murray for his expenses.

At advising—

LORD JUSTICE-CLERK—In this case the defender, who is the executor of his deceased wife's will, has been successful in an action at the instance of his children,

to whom a *curator ad litem* was appointed, for reduction of their mother's will and for payment of legitim. The question is whether the defender, having been successful, is liable in the expenses of the *curator ad litem*, or whether the children's aunt, Mrs Murray, who is said to have been the true *domina litis*, should be found liable in these expenses. She it was who instructed the action, on the footing that she was charged with the children's interests by her deceased sister their mother, and she applied for the appointment of the *curator ad litem*. The curator at once gave up many of the pleas which this lady had been maintaining, but he thought the question which was left was one which should be investigated and tried, as it was, by the Lord Ordinary.

Mrs Murray having started the litigation and the action having been unsuccessful, I do not think the expenses in question can be put upon the successful party, and I am of opinion that Mrs Murray must pay them.

LORD YOUNG—I cannot say that I should have been able without further consideration to decide that this lady was liable in expenses other than those of the *curator ad litem*. I do not suggest that she had other than worthy motives in starting the action and obtaining the appointment of a *curator ad litem* to attend to the interests of these children, but I agree that it is reasonable that she should be held liable for the curator's expenses.

LORD TRAYNER—I concur in the proposed judgment, but not without hesitation.

LORD MONCREIFF—I am of the same opinion. It is admitted that this lady inspired the action. The object of the action was not confined to the limited question decided by the Lord Ordinary, but included a conclusion for reduction of the deceased's settlement on the ground that the defender had used undue influence and taken advantage of his wife's weakness and facility. That was a serious charge against the defender, and it was made by Mrs Murray. After the action was raised the next step which she took was that she got the *curator ad litem* appointed to the pursuers. The curator, when he had considered the case, immediately, and I think properly, restricted the summons to the extent of leaving nothing in it except the one question which the Lord Ordinary has decided.

The present question is whether the successful defender is to pay the expenses of this *curator ad litem*. I am clearly of opinion that the defender is not liable in these expenses, and that Mrs Murray is.

The Court pronounced this interlocutor:—

"Recal the said interlocutor reclaimed against: Assoilzie the said defender from the conclusions of the action, and decern: Find the *curator ad litem* entitled to expenses in the Outer House from the defender Mrs Susan Forsyth Kerr Knox or Murray: Remit to the Auditor to tax the same, and to report: Find the said Mrs Murray liable to the reclaimer in the expenses of discussing the reclaiming-note, which modify to the sum of £4, 4s., for which decern."

Counsel for the *Curator ad litem* to the Pursuers and Respondents—Wilton. Agent—Alexander Bowie, S.S.C.

Counsel for the Defender and Reclaimer—Graham Stewart—A. Moncrieff. Agent—John W. Deas, S.S.C.

Counsel for Mrs Murray — Hunter. Agents—Mackay & Young, W.S.

HIGH COURT OF JUSTICIARY.

Wednesday, December 10.

(Before the Lord Justice-General, Lord Adam, and Lord M'Laren.)

RANDALL *v.* RENTON.

Justiciary Cases—Statutory Offence—Compulsory Pilotage — Coasting Passenger Ship—Leith Pilotage District—Master of Ship Acting as his own Pilot—Trinity House of Leith Act (1 *Geo. IV. c. xxxvii.*), *sec.* 35 — *Merchant Shipping Act* 1894 (57 *and* 58 *Vict. c.* 60), *sec.* 604 (1).

An Act for the Regulation of the Corporation of the Masters and Assistants of the Trinity House of Leith, June 23, 1820 (1 Geo. IV. c. xxxvii.), sec. 35, enacts as follows:—"Nothing herein contained shall oblige the captain or other person in command of any ship or vessel belonging to His Majesty, his heirs and successors, to take a pilot on board within the said limits unless he shall see proper so to do; nor shall the captain or master of any other ship or vessel be prevented from piloting and conducting his own vessel within the limits aforesaid if so inclined."

The Merchant Shipping Act 1894 (57 and 58 c. 60), sec. 604 (1), enacts—"The master of every ship carrying passengers between any place in the British Islands and any other place so situate shall, while navigating within the limits of any district for which pilots are licensed under this or any other Act, employ a qualified pilot, unless he or the mate of his ship holds a pilotage certificate, or a certificate granted under this section applying to the district."

Held (1) that the provisions of section 604 (1) of the Merchant Shipping Act 1894 made pilotage compulsory within the limits of the Leith pilotage district in the case of a ship carrying passengers between Granton and London; and (2) that the express or implied exception in section 35 of the Act 1 Geo. IV. c. xxxvii., in favour of a master piloting his own ship, was inconsistent with the absolute and universal terms