failure to establish a claim to a glebe of 12 acres in extent.

Counsel for Pursuer—Pearson—M'Kechnie. Agent—H. W. Cornillon, S.S.C.

Counsel for Defender—Mackintosh—Guthrie—J. P. Grant. Agents—J. Clerk Brodie & Sons, W.S.

Tuesday, November 18.

OUTER HOUSE.

[Lord Fraser.

ROBERTS *v.* CRAWFORD.

Process—Citation—Citation by Registered Letter—Citation Amendment (Scotland) Act 1882 (45 *and* 46 *Vict. cap.* 77), *secs.* 3 *and* 4.

The summons in a process of maills and duties had been served by registered letter according to the provisions of the Citation Amendment (Scotland) Act 1882. The letter was returned marked "Refused." The Lord Ordinary not being satisfied that the letter had been tendered at the defender's proper address and refused by him, *refused* to give decree in the undefended roll, and *appointed* service to be made of new according to the former law and practice.

The Citation Amendment (Scotland) Act 1882 (45 and 46 Vict. cap. 77), provides:—Sec. 3—"From and after the commencement of this Act, in any civil action . . . any summons or warrant of citation of a person, whether as a party or witness, or warrant of service or judicial intimation, may be executed in Scotland by an enrolled law-agent, by sending to the known residence or place of business of the person upon whom such summons, warrant, or judicial intimation is to be served, or to his last known address, if it continues to be his legal domicile or proper place of citation, a registered letter by post, containing the copy of the summons or petition or other document required by law in the particular case to be served with the proper citation or notice subjoined thereto, or containing such other citation or notice as may be required in the circumstances, and such posting shall constitute a legal and valid citation, unless the person cited shall prove that such letter was not left or tendered at his known residence or place of business, or at his last known address if it continues to be his legal domicile or proper place of citation."

Section 4, sub-sec. 5—"If delivery of the letter be not made because the address cannot be found, or because the house or place of business at the address is shut up, or because the letter-carrier is informed at the address that the person to whom the letter is addressed is not known there, or because the letter was refused, the letter shall be immediately returned through the Post-Office to the clerk of court, with the reason for the failure to deliver marked thereon, and the clerk shall make intimation to the party at whose instance the summons, warrant, or intimation was issued or obtained, and shall, where the order for service was made by a judge or magistrate, present the letter to the judge or magistrate from which the summons, warrant, or intimation was issued, and he may, if he shall think fit, order service of new, either according to the present law and practice or in the manner hereinbefore provided, and if need be substitute a new diet of appearance. Where the judge or magistrate is satisfied that the letter has been tendered at the proper address of the party or witness and refused, he may, in the case of a witness, without waiting for the diet of appearance, issue second diligence to secure his attendance, and in the case of a party hold the tender equal to a good citation."

In this action of maills and duties the summons had been served under the provisions of the Citation Amendment (Scotland) Act by registered letter. The letter had been returned with the endorsement "Refused, A. G.," and decree was sought in the undefended roll.

The Lord Ordinary issued the following interlocutor:—"The Lord Ordinary not being satisfied that the registered letter was tendered at the proper address of the defender Thomas Crawford, appoints service of the summons of new, with a copy of this interlocutor, to be made upon the said defendant, according to the law and practice in existence at the date of the passing of the Act 45 and 46 Vict. cap. 77, and allows him to enter appearance within eight days after service."

"*Note.*—I cannot grant decree in absence in this case, because, in the words of sec. 4, sub-sec. 5, of the Act 45 and 46 Vict. cap. 77, I am not satisfied that the registered letter has been tendered at the proper address of the defender and refused by him. The evidence that has been produced to me is simply a marking on the back of the registered letter in these terms, "Refused, A. G." It does not appear from the registered letter itself who the person was that made this notandum, but one may conclude that it was the post-runner. Assuming this to be the case (which in such a matter as the execution of a summons is assuming a good deal) the question still remains who it was that refused to receive the letter. Was it the defender himself, or his wife, or a servant? And in the event of it having been any other person than the defender himself, the question would necessarily arise whether such a refusal must be taken as a refusal by the defender. It is quite true that by the statute of 1540, cap. 75, a messenger-at-arms is authorised, in the event of not finding the defender personally, to leave the copy of the summons with a servant, and if the servant refuse to take it, the messenger is then authorised to affix the copy of the summons to the gate or door of the defender's house—now in modern practice by sticking the copy summons into the lockhole. But this is entirely statutory, and there is no provision in the Act of 1882 to the effect that the delivery of a registered letter to a servant would be held delivery to the defender, or that the refusal to receive the summons made by a servant is to be taken as the act of the defender. It is obvious that further legislation is needed if so wide a construction is to be given to the recent statute. And besides providing for the act of the servant being held to be that of the master, in the case, but only in the case, where the master himself could not be found, it would be necessary also to enact that the post-runner shall certify (as a messenger is obliged to do) to whom he tendered the letter, and by whom it was refused, and

for what reason, if any. I must therefore order this summons to be of new served, and that in the old way by a messenger, and I will appoint a new diet of appearance; and I will do this in such a way as to render it unnecessary to send the case through the calling lists again."

Counsel for Pursuer—Lang. Agent—D. R. Grubb, Solicitor.

Tuesday, November 25.

OUTER HOUSE.

[Lord M'Laren.

BALLANTINE v. REDDIE.

Process—Remit—Reporter's Fee.

The accountant to whom a remit had been made in an action of accounting lodged his report without having received his fee. On his motion for payment—*held* that the parties to the action were jointly and severally liable for his fee.

This was an action of accounting. It was brought in May 1877 by William Wood, C.A., trustee upon the sequestrated estate of Andrew Fitzjames Cunningham Rollo Bowman Ballantine, Esq., against Charles Reddie, writer in Glasgow. The defender had been factor and law-agent for the bankrupt from June 1868 till his sequestration in December 1872. The pursuer alleged that a balance of at least £6000 in favour of the estate would be brought out on a just accounting. The defender denied this averment and stated he was willing to account. Accounts were lodged by him under an order from the Lord Ordinary.

On 20th November 1877 Mr Ballantine was discharged from the sequestration, and thereafter sisted as pursuer of the action. On 8th January 1878 Lord Curriehill remitted the accounts to Ebenezer Erskine Scott, C.A., Edinburgh, to examine and report upon them.

Mr Scott completed his report in 1883, and delivered it to the pursuer's agents. The case, which had fallen asleep, was wakened on 27th February 1884, and the report allowed to be seen. It was lodged on 29th February 1884, without Mr Scott having obtained payment of his fee as reporter. Objections were lodged by the defender, and the case stood in the roll for discussion.

Mr Scott thereafter, not having obtained from the parties payment of his fee, enrolled the case, and moved the Lord Ordinary for decree against the parties to the action for the amount of his fee.

The Lord Ordinary (M'Laren) issued the following interlocutor:—"The Lord Ordinary having heard counsel, decerns against the pursuer and defender jointly and severally for payment to Ebenezer Erskine Scott, C.A., Edinburgh, of the sum of two hundred and four pounds fifteen shillings sterling, being the amount of his fee for preparing the report under the remit to him of date 8th January 1878."

"*Opinion.*—My impression of the practice in cases of this kind is that decree is always given for the reporter's fee against the parties jointly and severally, leaving it to the reporter to recover one-half of the fee if he can from each party. In a recent case which went to the First Division I had found the parties liable jointly in payment of the reporter's fee, meaning in the special circumstances of that case that the liability was to be divided without relief; and the Lord President asked whether I meant the result to be as I have stated, or whether I meant only that the parties should be jointly responsible for the fee in the first instance. I understood from this that his Lordship considered that it was the ordinary practice to decern against the parties jointly and severally. With this recent case in view, I have no hesitation in finding the parties jointly and severally liable for the reporter's fee. With regard to the expenses of this application, I do not think that the reporter is entitled to them."

Counsel for Pursuer—Jameson. Agents—J. A. Campbell & Lamond, C.S.

Counsel for Defender—Nevay. Agents—J. & R. A. Robertson, S.S.C.

Counsel for Accountant—Pearson. Agents—Morton, Neilson, & Smart, W.S.

Tuesday, November 25.

FIRST DIVISION.

[Sheriff of Ayrshire.

BELL v. REID.

Aliment — "Maintenance Money" — Compensation.

A father-in-law, who had become indebted to his son-in-law, conveyed all his property to him by an agreement which stipulated, *inter alia*, that the son-in-law should allow him £100 a-year for "maintenance." Thereafter a litigation between them took place, in which the son-in-law was successful, and was found entitled to expenses. *Held* that he could not set-off these expenses against the claim for maintenance, that being as between them an alimentary fund.

Question—Whether it would have been held an alimentary fund in a question with the other creditors of the father-in-law?

Thomas Reid, farmer, was tenant of the farms of Monktonmiln, Fairfield Mains, and others, in the parish of Monkton and county of Ayr, and he resided on one of these farms. In 1878, Reid, who had had certain transactions and litigations with Finlay Bell his son-in-law and the defender of this action, entered into an agreement, dated 1st and 4th February of that year, with Bell, whom he was at the time debtor to the extent of £8384, 4s. 3d.

The substance of the agreement was that Reid was to assign his leases and other property to Bell, who in return was to make him an annual allowance of £100. The third article of the agreement, which is the only one of importance in the present question, provided that . . . "the first party" (Bell) "shall pay the second party" (Reid) . . . "after the signing of this agreement, and until Martinmas 1893, a sum of £100 sterling for maintenance, payable half-yearly. . . . and declaring that in the event of