detention arising before the vessel reaches her loading port owing to the failure of the charterers to give her her sailing orders within the six hours allowed for that purpose. Such detention is to be paid for at the stipulated rate of £25 per day, even although the charter-party is otherwise cancelled and no loading takes place. Again, in clause 13 there is a provision that "a strike of the receiver's men shall not exonerate him from any demurrage for which he may be liable under this charter if by the use of reasonable diligence he could have obtained other suitable labour." To my mind it appears plain that "demurrage" occurring in this clause must also cover damages for detention. I think, therefore, that we are not entitled to read the third part of the clause in the limited sense for which the pursuers contend so as to exclude from its operation a claim in respect of demurrage proper. It is according to the good sense, and, I think, also according to the strict language of the contract, that in the case of delay arising as a consequence of a strike which has terminated, but the effects of which on the rate of discharge still continue, that to the extent that that delay is attributable, not to want of reasonable diligence on the part of the receiver, but to the after-effects of a strike or lock-out, he shall not be answerable for any delay, whether it occurs during the running of the ten days or after the expiry of that period. Parties were agreed that if this be the true construction of the contract the Sheriff-Substitute was right in allowing a proof, as the case of *Leonis* to which he refers is a clear authority in favour of the relevancy of the defenders' averments. I am accordingly of opinion that we should affirm the interlocutor appealed from, and remit the case to the Sheriff Court for further procedure.

The LORD JUSTICE-CLERK, LORD DUNDAS, and LORD GUTHRIE concurred.

The Court dismissed the appeal.

Counsel for Pursuers (Appellants)—Sandeman, K.C.—C. H. Brown. Agents—J. & J. Ross, W.S.

Counsel for Defenders—Murray, K.C.—W. T. Watson. Agents—Boyd, Jameson, & Young, W.S.

Saturday, February 10.

FIRST DIVISION.

SMITH *v.* WATSON.

Expenses—Proof—Hearing on Evidence—Expenses of Copy of Notes of Evidence.

Where a litigant wishes the Lord Ordinary's notes of evidence, and proposes to charge their cost, if he is successful, against the opponent, he must intimate, in asking for them, that he so proposes, and get the Lord Ordinary's leave to that effect. If he simply asks for them without that intimation, then it will be held that he asks them simply for his own convenience, and he must pay for what he gets.

Coppack v. *Miller*, 1911, 2 S.L.T. 65, *commented on.*

Robert Bain Smith, Lochee, raised an action against Hugh Hayes Watson, accountant, Dundee, for the reduction of an agreement between them. Proof was allowed, and was led on 17th and 18th November, and 2nd December 1910. The hearing on evidence was taken on 8th December 1910. On 9th January 1911 the Lord Ordinary (ORMIDALE) assoilzied the defender from the conclusions of the action and found him entitled to expenses. The pursuer reclaimed to the First Division, who on 6th December 1911 adhered.

The defender objected to the Auditor's report on his account of expenses in respect that there had been taxed off the following item:—

Paid Lord Ordinary's clerk for notes of evidence . . .	£15 13 6
Agency settling same . .	0 3 4
	£15 16 10

At the hearing on the objections on 17th January 1912, argued for the defender—The Auditor would have allowed the charge had it not been for the case of *Coppack* v. *Miller*, 1911, 2 S.L.T. 65. They maintained that *Coppack* was wrongly decided, and that as the evidence here was of considerable length, and the hearing was taken after an interval, it was necessary to have the notes, and the charge therefor was reasonable and proper. They referred to *Gunn* v. *Muirhead*, October 19, 1899, 2 F. 10, 37 S.L.R. 9; *Birrell* v. *Beveridge*, February 15, 1868, 6 Macph. 421, 5 S.L.R. 252.

Counsel for the pursuer referred to *Coppack* (*cit. sup.*), and to *Girvin, Roper, & Company* v. *Monteith*, December 6, 1895, 3 S.L.T. 192.

The opinion of the Court (the LORD PRESIDENT, LORD KINNEAR, and LORD MACKENZIE) was delivered by

LORD PRESIDENT—In this case the Auditor had originally allowed—or rather was inclined to allow—this charge paid to the Lord Ordinary's clerk for notes of evidence, but felt himself bound to disallow it upon a judgment of Lord Ormidale in the case of *Coppack* v. *Miller* (1911, 2 S.L.T. 65) in the Outer House. That judgment seems to us to lay down a general rule which we cannot approve of. The question whether there should be an allowance for getting the notes of evidence must always be a question of circumstances. There is no doubt that if a case proceeds in the way in which it ought ideally always to proceed, the speech is taken immediately at the conclusion of the proof, and there is no opportunity and no right to get notes of evidence. Counsel ought to take such notes as they think necessary for themselves as they go along. But, then, ideal progress of a case is not always possible.

Cases have to be continued in quite unavoidable circumstances. The case may take longer than was expected, or the Lord Ordinary's other work may prevent him giving continuous sittings, and sometimes he may not have time for the hearing immediately at the conclusion of the evidence for the same reason. Now when a case is complicated and much depends on the facts, it would be putting more than it is possible to put upon the human memory to expect that counsel could in such circumstances properly debate the case without the notes of evidence.

It is, therefore, really a question of circumstances in each case, and I think it would be quite improper to lay down that a certain number of days must elapse before which it was impossible to get the notes and after which it was. We think that that can be judged of in each case, and as the Auditor was originally of opinion in this case that it ought to have been allowed, we propose to sustain the objection and allow the charge.

But we propose to say this as a general rule—the profession will take note of it, and we shall communicate it to the Lords Ordinary — in future where the litigant wishes the Lord Ordinary's notes of evidence, and proposes to charge their cost, if he is successful, against the opponent, he must get the Lord Ordinary's leave to that effect. Of course he could never get the notes of evidence at all without the Lord Ordinary's leave; but he must intimate, in asking for them, that he proposes to charge the cost of them against an opponent; and then, if the Lord Ordinary chooses to allow it upon that footing, well and good. If he simply asks for them without that intimation, then it will be held that he asks for them simply for his own convenience and must pay for what he gets.

That is the judgment of the Court.

LORD JOHNSTON was absent.

The Court sustained the objection.

Counsel for the Pursuer—Garson. Agent—William Douglas, S.S.C.

Counsel for the Defender—Paton. Agents—Gill & Pringle, W.S.

Saturday, February 10.

FIRST DIVISION.

(SINGLE BILLS.)

CALEDONIAN RAILWAY COMPANY *v.* GLENBOIG UNION FIRECLAY COMPANY, LIMITED.

(*Ante*, in the Court of Session, July 15, 1910, 47 S.L.R. 823, 1910 S.C. 951; and in the House of Lords, April 28, 1911, 48 S.L.R. 526.)

Expenses—Taxation—Fees to Counsel in Outer and Inner House—Fees to Skilled Witnesses.

In a difficult and complicated case as to whether fireclay was or was not a mineral in the sense of section 70 of the Railways Clauses Consolidation (Scotland) Act 1845 (8 and 9 Vict. cap. 33), and in which the successful party had been awarded expenses, the unsuccessful party objected to the Auditor's taxation of these expenses in respect that the fees allowed to senior and junior counsel in the Outer and in the Inner House, and to the skilled witnesses, were too high.

The Court *repelled* the objections and *approved* of the Auditor's report.

[The Case is reported *ante ut supra.*]

The Caledonian Railway Company brought an action of suspension and interdict against the Glenboig Union Fireclay Company, Limited, in which they craved the Court to interdict the respondents from working certain beds or seams of fireclay underneath the complainers' railway in the parish of Old Monkland, Lanarkshire, the question at issue being whether the fireclay worked by the respondents was or was not a mineral within the meaning of section 70 of the Railways Clauses Consolidation (Scotland) Act 1845.

On 28th November 1908 the Lord Ordinary (SKERRINGTON) *refused* the prayer of the note and found the complainers liable in expenses.

The complainers reclaimed to the First Division, who on 15th July 1910 *adhered* to his Lordship's interlocutor, and found the complainers liable in additional expenses.

The complainers appealed to the House of Lords, who on 28th April 1911 *dismissed* the appeal with costs.

The Auditor having lodged his report, the complainers objected thereto in so far as he had allowed the following fees to senior and junior counsel respectively for the second, third, and fourth days of the proof, viz., for the second and third days, twenty guineas and fifteen guineas; and for the fourth day (which was a short one) fifteen guineas and twelve guineas. In place thereof they submitted that the Auditor should have allowed, for the second and third day, fees of fifteen guineas and ten guineas to senior and junior counsel respectively, and for the fourth day ten guineas and seven guineas respectively.

They also objected to the fees allowed for the second day of the hearing on evidence, viz., to senior counsel a fee of fifteen guineas, and a fee of ten guineas to his junior. In place thereof they submitted that fees of ten and seven guineas respectively would have been appropriate.

The complainers further objected to the fees allowed for the hearing in the Inner House, viz., for the first day a fee of twenty-five guineas to senior counsel, and a fee of twenty guineas to his junior; and for the second day, fees of fifteen guineas and ten guineas respectively. They submitted that fees of fifteen guineas and ten guineas respectively for the first day, and ten guineas and seven guineas respectively for the second day, would have been suit-