be put upon it, they were entitled to go before a jury—*Waddell* v. *Roxburgh*, June 9, 1894, 21 R. 883.

LORD JUSTICE-CLERK—I am very clearly of opinion that this is not a case in which an issue should be allowed. The case brings out very strongly that it is possible to be very intemperate indeed without drinking any alcohol. A more improper letter I never read than that issued by the defender, and it amazes me that any respectable journal in this country should have inserted such a discreditable production. One is glad to know from the proceedings in the case that the person who wrote it is still very young, and the hope may be cherished that by the time he comes to have a little more experience of life he will be ashamed of ever having written it at all. His general views may or may not be sound, and he may continue to hold that they are sound, but that any person holding such general views is entitled to make a gross and utterly unchristian attack on a large class of the community is what no sensible or right-thinking man will for a moment say.

But then we have to consider whether this is a case which ought to be sent to a jury in order that a jury may have before them an issue on the question whether particular individuals have been slandered or not. The letter is of the most general kind, and its allusions to persons are what the writer thought might be expected from the general class to which the letter relates. I think that the greatest triumph which the writer had as the result of his writing the letter was that it had induced more than one respectable man to take him seriously. These gentlemen would have acted with more common-sense and with greater regard for their own self-respect if they had taken no notice whatever of the letter. The letter certainly does allude to individuals, but it alludes to them only as belonging to a class, no member of which class is capable of acting properly. That is not the subject of an issue of this kind for the purpose of obtaining damages for injury inflicted. I should be very much astonished if any respectable jury ever came to the conclusion that any individuals had been injured by this silly letter. I therefore am of opinion that no issue should be allowed, If your Lordships agree with me in dismissing the action, I think we ought not to give expenses to the defender.

LORD YOUNG—I concur in thinking that the action is not maintainable. I agree with your Lordship that this is a very silly letter, but in saying that I am not to be understood as indicating any impression that it is not the view of a great many sensible people that the consumption of strong drink in this country is excessive, that it does a great deal of harm, and that it would be in the interests of the community if the demand for it, the consumption of it, and consequently the supply of it, were a great deal diminished. I am satisfied, and I think that most people are, that a great deal of harm is done, but a silly letter like this will not contribute in any way in reducing it. But then when such a letter has been written I sympathise with your Lordship's observations, and am surprised that any sensible man in the position of a magistrate, and in the position of a Dean of Guild, should have thought of bringing an action upon it. The action therefore, I think, ought to be dismissed. Your Lordship proposes that no expenses should be allowed to the defender. This is an exceptional course, but I do not differ from your Lordship in taking it in this case, for I think that the writer of the letter ought to suffer something for having put such a letter into the newspaper. If it were in my power, I should be disposed to subject the newspaper in expenses for having been so thoughtless as to put such a letter into print.

LORD TRAYNER—I agree in thinking that the letter was extremely foolish. The defender was foolish in writing it, and I cannot help thinking that the pursuers were just as foolish in taking the least notice of it.

LORD MONCREIFF was absent.

The Court pronounced the following interlocutor in both actions:—

"Recal the interlocutor appealed against: Dismiss the action and decern: Find no expenses due to or by either party."

Counsel for the Pursuer—The Solicitor-General—Glegg. Agent—James Purves, S.S.C.

Counsel for the Defenders — Guthrie, Q.C. — Sym. Agent — David Campbell, S.S.C.

Thursday, May 19.

FIRST DIVISION.

MACKELLAR *v.* MACKELLAR.

(*Ante*, p. 483.)

Expenses—Taxation—Power of Court to Modify after Remit to Auditor.

In support of a note of objections to the Auditor's report taxing a successful litigant's account, the party found liable in expenses took exception to a number of items allowed by the Auditor, and at the same time suggested that the Court, instead of reviewing the account in detail, should modify a lump sum as reasonably representing the amount of the successful party's expenses, The Court, holding that there was no precedent for the course suggested, *sustained* the note of objections *quoad* certain of the specific charges objected to.

Expenses—Taxation—Fees to Counsel.

A fee of eight guineas and four guineas to senior counsel for a debate in the summar roll on the relevancy of a summary petition—the debate

occupying a Saturday forenoon and an hour on the following Tuesday—*disallowed* as excessive.

The Court in this case remitted back to the Auditor to tax the petitioner's account as between party and party.

Upon the Auditor's report coming up of new for approval, the respondent presented a note of objections thereto, taking exception to certain items allowed by the Auditor as excessive or extrajudicial.

Objection was taken, *inter alia*, to fees of eight guineas and four guineas allowed to senior counsel, and of five guineas and three guineas allowed to junior counsel, for a debate in the summar roll on the relevancy of the petition on 5th and 8th November 1897; and charges amounting to £16 for copying certain correspondence relating to the subject of a previous action between the parties and certain other correspondence were also objected to.

The respondent argued that the fees allowed to counsel were grossly excessive. The discussion on relevancy had only occupied a Saturday forenoon and one hour on the following Tuesday morning. The correspondence, for copies of which a charge had been allowed, had nothing to do with the present action. The whole account was excessive, and the simplest method of dealing with it would be for the Court to fix a lump sum which would reasonably represent that portion of the expenses of the petition to which the petitioner had been found entitled. [LORD PRESIDENT—Can you give us any authority, Mr Hunter, in support of a proposal which *prima facie* seems not unreasonable? HUNTER, for the respondent, replied that he had been unable to find any authority for his suggestion.]

Counsel for the petitioner having been heard in answer to the note of objections,

LORD PRESIDENT—There are three things which strike one on considering this discussion. The first is that this is a very large account. The allowance of expenses excluded the proof, and accordingly this sum of £132 is the expense of a summary petition for the custody of children, there being no complication in the case except these, first, the recalcitrancy of the respondent in the matter of delivering up the children in terms of Lord Moncreiff's interlocutor, and secondly, the great fulness, to say the least of it, with which the written and oral pleadings disclosed the views, feelings, and opinions of the parties, present and past.

But the next point which I observe upon is that if, passing from the aggregate sum which I say is startling, you look at the items, it does not strike one as very like an account taxed as between party and party. There are a latitude and indulgence in dealing with the items which I confess rather startle me. There stand out two items on which I think the charges are excessive in one and inadmissible in another. I have no doubt that learned counsel frequently, or at least occasionally, receive twelve guineas from their own clients on a debate on the relevancy of a petition and answers. But it certainly strikes one as clearly over the line of what can be allowed as a legitimate charge between party and party, and I have no doubt Mr Hunter was right in saying that there was no precedent for it. The other item which I think is inadmissible is where there are copies allowed of some long and stale correspondence relating to a previous litigation.

The question is, how can we deal with this account? and I own that I think the taxation is scarcely in accordance with the spirit and terms of the interlocutor. But then the Auditor has authority to deal with those subjects, and it is extremely difficult as a practical matter for the Court to tax an account over again. It seems to me, therefore, that we must do the best we can for Mr Hunter's client by striking out and modifying those items which are clearly appreciable by ourselves. I think we should strike out the allowance of those copies of the correspondence which has been in dispute, and that we should reduce the fees allowed at the debate. Your Lordships will probably have your own views as to the proper amount.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court sustained the objections *quoad* the fees to counsel under dates 5th and 6th November 1897, and the fees for copying correspondence, amounting in all to £26, 7s. 6d., and decerned in favour of the petitioner for £106, 3s. 5d., being the taxed amount of the petitioner's account less the above sum.

Counsel for the Petitioner—C. K. Mackenzie. Agent — Alexander Campbell, S.S.C.

Counsel for the Respondent — Hunter. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Tuesday, May 24.

FIRST DIVISION.

[Sheriff of the Lothians and Peebles.

HALLPENNY *v.* DEWAR.

Mines and Minerals—Feu Contract—Reservation of Power to Superior to Sink Pits, &c., upon Payment of Surface Damages—Damage by Subsidence—Arbitration.

A feu-charter contained the following clause:—"Reserving always to me [viz., the superior] and my foresaids the whole mines, metals, minerals, fossils, coal, clay, limestone, ironstone, whinstone, freestone, and other stone, whether for ornamental or building purposes, within the piece of ground hereby disponed, and full power and liberty to me and my foresaids, or any person authorised by us, to search for,