Wednesday, November 8.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

ROBERTSON *v.* ROBERTSON'S EXECUTORS.

Process — Expenses — Withdrawal of Reclaiming-Note.

A reclaiming-note in a case involving the printing of a large number of documents was boxed on April 6th. Notice of its withdrawal was given to the respondent in November, before the case had appeared on the roll for discussion, and before counsel had been instructed. *Held* that the respondent was not entitled to an award of expenses exceeding £2, 2s.

The Rev. J. J. Robertson, minister of the Presbyterian Church, Adelaide, South Australia, brought an action against the executors of the late Mrs Isabella Milne or Robertson. On 16th December 1898 the Lord Ordinary (KYLLACHY) dismissed the action, and on 10th March 1899 found the pursuer liable in expenses as taxed. On April 6th 1899 the pursuer reclaimed. On November 8th 1889, before the case appeared on the roll for discussion, he presented a note of withdrawal of the reclaiming-note, and prayed the Court to find the respondents entitled to two guineas of modified expenses. The respondents moved that the expenses be increased to £4, 4s., in respect of the long interval which had elapsed since the date of reclaiming, and the expense incurred by them in considering whether it was necessary for them to print any of the documents in the proof, which were very numerous—*Little Orme's Head Limestone Company, Limited* v. *Hendry & Co.*, November 25, 1897, 25 R. 124. They admitted that they had received intimation of the withdrawal before they had instructed counsel or actually printed anything.

The reclaimer argued that it was his duty and not that of the respondents to print the documents, and that there was therefore nothing to take the case out of the general rule of awarding £2, 2s.—*Davidson* v. *Allen*, March 14, 1878, 5 R. 763.

LORD ADAM — The motion is that the ordinary sum of £2, 2s. of expenses, which is awarded when a reclaiming-note is withdrawn after being sent to the roll, but before being put out for hearing, should be increased to £4, 4s., and the sum at stake is therefore not very large. I am of opinion, however, that no cause has been shown for increasing the usual award. It is the duty of a reclaimer to print the necessary documents, and I do not see why the respondent should not wait until the reclaimer's print is issued and see what he wants to print in addition. I think therefore that in the circumstances I am not prepared to grant more than the usual amount of expenses.

LORD M'LAREN—*Prima facie* it is the duty of the reclaimer or appellant to print all the documents which were before the Court whose decision is under review. The documents put in evidence are just as much a part of the proof as the parole proof itself, and it is the duty of the reclaimer to print them. No doubt, if he fails to do so, the respondent is entitled for his own benefit to put in a supplementary print, but he is not entitled to assume that the reclaimer will fail in his duty. I do not think there is any reason here for departing from the usual practice.

LORD KINNEAR concurred.

The LORD PRESIDENT was absent.

The Court awarded £2, 2s. of modified expenses.

Counsel for the Pursuer—Cullen. Agent —F. J. Martin, W.S.

Counsel for the Defender — Grainger Stewart. Agents — Boyd, Jameson, & Kelly, W.S.

Wednesday, November 8.

SECOND DIVISION.

JACOBS *v.* M'MILLAN.

Agent and Client—Action for Business Account—Averment of Special Agreement as to Remuneration—Proof—Parole or Writ or Oath.

In an action by a law-agent for his business account his client averred a special agreement as to remuneration in lieu of the ordinary professional charges. *Held* (by the Lord Ordinary) that such agreement might be proved by parole evidence, and was not restricted to proof by writ or oath, but that the onus of proving the special agreement was on the defender, and on the facts that the agreement had not been proved. On a reclaiming-note the objection to parole proof was withdrawn, and the Court *adhered* to the interlocutor of the Lord Ordinary.

This was an action at the instance of Thomas R. Jacobs, Solicitor in Greenock, against James M'Millan, a carriage hirer in Rothesay, for payment of his business account incurred, as he averred, on the employment of the defender. The pursuer stated that he had on several specified occasions attended the Burgh Court at Rothesay, on the instructions of the defender, for the purpose of defending drivers in the latter's employment. These instructions were admitted by the defender subject to the following explanation, viz.—"(Ans. 2) Explained and averred that the defender agreed to pay, and the pursuer to accept, in full of all his charges for the preparation and conduct of said cases, the sum of 10s. for each day's attendance in Court, and these sums were on each occasion paid to the pursuer