subsisted between the parties. These are detailed in article 6 of the condescendence in these terms. [Reads it and the answer to it.]

The letter referred to proves the statement of the pursuer to be true; and, although notice was given that the decreet-arbitral was to be brought under reduction, such notice was no reason for the arbiter's fee not being paid. It is not alleged, and is not the fact, that on receiving the letter of 3d June 1864, the defender or his agent repudiated liability in the matter of the arbiter's fee, or warned the pursuer not to make payment so far as the defender was concerned. Then, when the action of constitution was brought into Court, there is no defence or plea stated to the effect that remuneration to the arbiter was not legally due, and that no claim for relief and payment could be maintained by the pursuer of the money so paid by him to any extent. The ground taken in the defences and record by the defender was that the whole claims advanced under the decreet-arbitral were untenable because of the various objections taken to it on the grounds afterwards made the subject of the reductive process—viz., corruption on the part of the arbiter, *ultra fines compromissi*, and non-exhaustion of the matter submitted. Supposing all these repelled, as they have been, and the decreet-arbitral to be valid, it is not pleaded that no part of the fee paid to the arbiter could in any view be the subject of legal claim. On the contrary, observe the term of the prayer of the reclaiming note against the first interlocutor pronounced by the Lord Ordinary in decerning for the whole £31, 10s. It is for an alteration only as to one-half of that sum — the general ground of defence being repelled.

Altogether, it appears to me that the circumstances of the case, and the principles recognised by the Court in the cases referred to, and founded on at the debate, support the conclusion at which the Lord Ordinary has arrived.

The other Judges concurred. and the Lord Ordinary's interlocutor was therefore adhered to.

Agents for Pursuer—J. & A. Peddie, W.S.
Agent for Defenders—Thomson Paul, W.S.

SECOND DIVISION.

NOTE—RONALD JOHNSTONE.

Expenses. A trustee whose name had been used as a party to an action after he had resigned, allowed the expenses of getting his name withdrawn, and these taxed as betwixt agent and client.

One of certain trustees, hearing that his co-trustees had resolved to raise an action, intimated to them that he resigned office. His name was thereafter used as a pursuer in the action without his knowledge. Upon an application to the Court his name was allowed to be withdrawn from the process. He was appointed to lodge an account of expenses connected with the withdrawal which the Auditor taxed as between agent and client. Upon objection, the Court sustained the principle of taxation, and of consent pronounced decree for the expenses against the other trustees in the process in which the application was incidentally made.

Counsel for Petitioner—Mr MacLean. Agents—M'Lachlan, Ivory, & Rodger, W.S.

Counsel for Trustees—Mr Arthur. Agent—W. Officer, S.S.C.

Tuesday, March 19.

FIRST DIVISION.

NEILLS *v.* LESLIE.

Stamp Duty—Mutual Deed. Held (alt. Lord Mure) that unstamped missives of sale betwixt the pursuer and defender of an action which were founded on by the pursuer alone, fell, in the first place, to be stamped at the expense of the pursuer.

This was an action for implement of a missive of sale and purchase. After a record had been made up and evidence led in the cause, the Lord Ordinary (Mure) *ex proprio motu* took the objection that the document founded on was not stamped, and appointed the stamping to be done "at the joint expense of parties."

The defender reclaimed.

JOHN M'LAREN, for defender, argued—The interlocutor appoints the stamping to be done at the joint expense of parties *now*. The defender does not found on the document, and is willing that the case be decided irrespective of it. In such circumstances, the pursuers as alone founding on the document, ought, in the first instance, to have the document stamped at their individual expense, leaving the question of ultimate liability to be determined at the end of the case.

W. N. M'LAREN, for pursuers—The interlocutor may be read in either of two ways—(1) as disposing finally of the question of expense of stamping; or (2) as determining only *ad interim* upon it. In either view it is correct. The penalty and expenses of stamping are fiscal matters, and not, properly speaking, expenses in a cause. The document is of the nature of a mutual contract, and should be stamped at the joint expense of the parties.

The following authorities were referred to:—Smaill *v.* Potts, 16th July 1847, 9 D. 1502; Flowers *v.* Graydon, 18th Dec. 1847, 10 D. 306; Law *v.* M'Laren, 20th July 1849, 11 D. 489; Logan *v.* Ellice, 6th March 1850, 12 D. 841; Wylie & Lochhead *v.* Times Assurance Co., 15th March 1861, 23 D. 727; Grant *v.* Walker, Grant, & Co., 16th Dec. 1837, 16 S. 246.

At advising,

The LORD PRESIDENT—The interlocutor of the Lord Ordinary in this case was, during the argument, subjected to various interpretations, and therefore the first thing we require to do is to ascertain its meaning. What he does is this, "sists process for ten days in order that the minute of sale No. 10 of process may be stamped, and appoints the same to be done at the joint expense of parties." The minute of sale is the pursuer's ground of action, and what I understand his Lordship by this interlocutor to intend is that, in order to make that minute of sale evidence, the parties are to get it stamped at their joint expense. So construing the interlocutor, I think it is ill-founded, and I think, moreover, it is unprecedented. Among the various authorities that were cited in support of the interlocutor, I find none that does support it. The stamp laws provide that when a document is offered in evidence which ought to be stamped and is not, no court of law shall look at it to any effect. The natural inference is, that when a party tenders the document in evidence it is stamped, but, if it is not, some delay may be allowed, and generally is as a matter of indulgence to him, to enable him to get it stamped. Now, if there had been a practice to