charge laid upon the parish of Portree. The charge cannot, of course, be carried farther back than a year prior to the date of the statutory notice. This notice can have no effect whatever in regard to legal rights and obligations. But when once these are settled, it limits the pecuniary amount.

The different parishes assoilzied moved for their expenses against Portree, the parish ultimately found liable. It was objected, on the part of Portree, that the parish of Stirling must be held liable, if not for the expenses of Bracadale, which it was mistaken in calling, then at least for the expense of Dunoon and Lochbroom, which it was not justified in calling.

LORD PRESIDENT—There is no doubt that Bracadale has been entirely successful in maintaining its defence. Therefore the pursuer is liable to Bracadale. But then the pursuer must be relieved by Portree, the parish ultimately found liable, because the real question was between Portree and the other parishes. Therefore Portree must bear the expenses of the pursuer and Bracadale. But with regard to the other two parishes, Dunoon and Lochbroom, I think the pursuer was perhaps justified in bringing them into Court. But he must always take his chance of being found liable in expenses, as I think he should be here. But then, though the parishes were entitled to appear and defend themselves, I do not think that, after the Lord Ordinary's judgment, they were entitled to come into the Inner-House without first inquiring whether anything was going to be insisted in against them there. I think therefore they should only have their expenses in the Outer-House.

Agents for the Pursuers the Parish of Stirling—Traquair & Dickson, W.S.

Agents for the Reclaimers the Parish of Bracadale—T. & R. B. Ranken, W.S.

Agents for the Parish of Dunoon—W. & J. Burness, W.S.

Agents for the Parishes of Lochbroom and Portree—Adam & Sang, W.S.

Friday, December 1.

SECOND DIVISION.

M'DOWALL *v.* STEWART.

Process—Extrajudicial Expenses. *Held* that a party who had been successful in an action in the Court of Session, and found entitled to the expenses of process, was not entitled to recover in another action the extrajudicial expenses incurred in the former suit.

M'Dowall obtained decree in the Court of Session against Stewart for £45, as the price of a horse, with interest from the date of the alleged sale, and expenses. The price, interest, and taxed expenses were paid by Stewart. M'Dowall thereafter raised the present action against Stewart for £25, being damages sustained by the pursuer, and law expenses incurred by him to his law agent, in consequence of Stewart having wilfully failed to implement his bargain by paying the price of the horse at the date agreed on. The expenses sued for were extrajudicial expenses which had been disallowed by the Auditor in the taxation in the Court of Session action. The amount of these extrajudicial expenses had been subsequently, at the request of the pursuer's agent, taxed by the Auditor as between agent and client. The grounds of damage set forth were loss of time and personal expenses. The Sheriff-Substitute (RHIND) decerned for the amount of the account of expenses, and *quoad ultra* found no damages due. The Sheriff (HECTOR) recalled, and assoilzied the defender.

M'Dowall appealed.

ROBERTSON for him.

J. C. SMITH and M'KECHNIE in answer.

The Court dismissed the appeal, holding that the extrajudicial expenses could not be recovered, and that the other grounds of damage were not relevant.

Agent for Appellant—W. R. Garson, S.S.C.

Agent for Respondent—William Milne, S.S.C.

Friday, December 1.

BRADY *v.* GRIMONDS.

Reparation—Accident—Fault. Circumstances in which *held* that the employers of a little girl, ten years of age, who had fallen down the shaft of an elevator and been severely injured, were not in fault, and consequently not liable in damages for reparation.

This was an appeal from a decision of Sheriff HERIOT in a case at the instance of Mary Brady, daughter of William Brady, Rose Lane, Dundee, against Messrs J. & A. D. Grimond, Bowbridge Works, for £250 damages for injury by an accident which pursuer sustained in the defenders' mill on 3d November 1870, by falling down the hatchway of an elevator. The pursuer's statement was, that on the day in question, being the third day of her employment in the mill, and while she was leaving her work on the third floor at the meal hour, she observed a boy enter the door that leads to the elevator passage on that floor, and supposing that to be the way out she passed through that door and fell through the elevator passage the depth of three storeys. In consequence of that she was severely bruised and injured, and had her legs broken. The defenders alleged that the girl, when she met with the accident, was in violation of her duty and of the rules of the work, about to swing herself down the ropes of the elevator, but that in attempting to do so she had missed her hold of the ropes, and had fallen down the passage of the elevator the distance of one flat, being from the third to the second floor. Evidence was led on the various points at issue between the parties, and on the 1st July Sheriff CHEYNE issued an interlocutor finding that in the circumstances, and having special regard to the pursuer's age (which was ten years in February 1871), the accident was not attributable to fault on her part, but that the defenders were liable to compensate her for the injuries she had received, and therefore found her entitled to £20 of damages. The defenders appealed the case to the Sheriff-Principal (HERIOT), who recalled the Sheriff-Substitute's interlocutor, and found for the defenders, as the elevator down which the pursuer fell was securely fenced, and therefore they were not in any way responsible for the accident.

BRADY appealed.

SCOTT and STRACHAN for her.

SOLICITOR-GENERAL and SHAND in answer.

At advising—

The Lord Justice-Clerk said he had no hesitation in adhering to the judgment of the Sheriff-Principal, and finding that the defenders were not responsible for the unfortunate accident which had happened to this girl. The door of the elevator passage which she had opened was not the proper means of egress from that flat, and that was a fact which she knew quite well, as she had gone down by the proper staircase before. He could not conceive it as an account of this accident that was at all probable that the girl believed she was going out by the usual door; and there were one or two things in her evidence which impressed him with the belief that it was not altogether reliable. For instance, she had said that the mill was stopped; but there was clear evidence that when the mill was stopped there was an instant rush to the staircase door, and if at that time she had gone to this door she could not have done so without knowing that it was not the proper way for going out. His Lordship noticed several other contradictions in the evidence, and said these things led him to think that they could not rely implicitly on the statements which the pursuer had made in her examination. The real story he believed to be this —that the day before Brady had been near the other elevator at the other end of the flat, when a boy named Macnamara was there, and that something had taken place which led one of the workers to give her a warning, and to tell her that if she went near that place she would meet with some injury. He did not think it was a strained inference to suppose that Macnamara and Brady had been talking about going down the ropes; and it was that, probably, which led to the observation that if she did not take care she would meet with an accident. Then the next day she saw the boy Macnamara going down the ropes, and she thought she would follow him. She went to the door. Very probably when she flung it open she did not know very well what she was to meet with, and in the excitement she tumbled instead of catching hold of the rope. He did not think there was anything improbable in that explanation of the matter. A spirited girl sees a boy doing this daring thing, and she is seized with a sudden impulse to do the same thing which the boy had done. On the whole matter, he thought it was unquestionable that the pursuer had failed to prove that it was the carelessness or negligence of the employers that had led to this accident, but that it had resulted entirely from the fault of the girl herself.

Lord Cowan, while concurring entirely in the result at which his Lordship had arrived, did not think that he was going against the principle that there was an obligation, and in the case of the employers of young children a peculiar obligation, to take the most efficient means for protection against accident. But while admitting that to be the obligation of the employers of this little girl, he was quite satisfied that there was no charge against them of either fault or negligence in duly protecting their premises against such accidents. He believed that it occurred from the thoughtlessness of the girl herself, who having seen the boy go in at that door, had felt a desire to follow his example, and that was a reckless and a wrong thing for her to do.

Lord Benholme also took the same view. His opinion was that when the girl opened the door, which she could not do without some exertion, and without for the time stepping back, she must have seen the hole that was before her, and that she would certainly have sprung back if she had not thought she would catch the ropes. His idea was that she had intended to catch the ropes, but did not do it, and that she would not have fallen down if she had not intended that.

Lord Neaves said he was of the same opinion. He did not wish in the least degree to diminish the responsibility and duty which was imposed upon those managing such works to take care that children should not be unduly exposed to risks by reckless and careless arrangements; but, on the other hand, he could not overlook the fact that in such cases they must pre-suppose that there was a certain decree of intelligence and docility in the children who were there employed. It was a pity that such an accident as this should have happened, and one could not help feeling sorry for it; but whatever sympathy they might feel for the poor girl who had been injured, they could not blame the employers for saying that they must encourage some degree of care on the part of their work-people.

Appeal dismissed.

Agent for Pursuer—D. Milne, S.S.C.
Agent for Defenders—L. Macara, W.S.

Tuesday, December 5.

WICK ELECTION PETITION — RETURNING OFFICER *v.* LOCH AND LOCKYER.

Corrupt Practices Act 1868, *sect.* 41—*Petition to Unseat — Expenses. Held* that the Returning Officer of a burgh, where there had been an unsuccessful petition to unseat the member returned, could recover the expenses which he had incurred from the unsuccessful party alone.

This was an application to the Court by the returning officer for the Wick district of burghs against the sitting member (Mr Loch, M.P.) and Mr E. B. Lockyer. It was to the following effect:—

"In terms of the 7th section of the Parliamentary Elections Act 1868, 31 and 32 Vict. c. 125, and of the 15th General Rule of Procedure in reference to election petitions in Scotland, made by your Lordships, dated 27th November 1868, the said George Dingwall Fordyce, as returning officer foresaid, gave notice in said Northern District of Burghs that the said Edmund Beatty Lockyer had presented to your Lordships, and had lodged on the 19th December 1868, in the office in Edinburgh of Harry Maxwell Inglis, Principal Clerk of Session, No. 16 New Register House, Edinburgh, the foresaid petition. He also gave notice, in terms of the 15th of said General Rules, of the agents appointed by the said Edmund Beatty Lockyer and George Loch respectively. The said notice was so published in the various burghs in terms of the Act.