is exactly delineated on the parliamentary plan, and is distinguished by a number corresponding to the appropriate entry in the book of reference, and the limit of deviation is indicated as running through that numbered enclosure, the company are not restricted to the ground within the limits of deviation of the railway, but may take the whole enclosure if required for the purposes of their undertaking. On the other hand, when the plan shows nothing whatever outside the limits of deviation, it is difficult for a company to establish a right to go beyond these limits, and to claim land which lies outside and is not delineated. Here the case is even clearer, for it seems to be an attempt to extend the power of the purchaser not by way of lateral deviation, but by lineal extension. Now, if there were no transverse line indicated on the plan, I should still have thought that no proprietor could consider that he had received notice that the company might claim to take land for the purpose of the longitudinal extension of their railway beyond the termination of the loop line. But as if to prevent any misapprehension on this point a dotted line has been marked off to show the limit beyond which the company did not propose to exercise powers of compulsory purchase.

I agree, therefore, that, as the whole of the land which is now proposed to be taken is outside the limits of deviation, and as there is no delineation of any kind to indicate its extent or precise position, the Lord Ordinary's findings are right.

LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"The Lords having considered the reclaiming-note for the respondents, the West Highland Railway Company, against the interlocutor of Lord Low dated 22nd November 1894, and heard counsel for the parties, Adhere to said interlocutor with this variation, that in place of the word 'limit' there be inserted the words 'the dotted transverse line connecting the terminations of the limits:' *Quoad ultra* refuse the reclaiming-note, and decern: Find the complainer entitled to expenses since the date of the interlocutor reclaimed against: Remit the account thereof to the Auditor to tax and to report to the Lord Ordinary, and remit to his Lordship to proceed, with power to decern for the taxed amount of said expenses," &c.

Counsel for the Complainer—Graham Murray, Q.C.—Salvesen. Agents—Gill & Pringle, W.S.

Counsel for the Respondents—D.-F. Sir Charles Pearson, Q.C.—N. J. Kennedy. Agents—Macrae, Flett, & Rennie, W.S.

Thursday, December 13.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

A B *v.* C D.

(*Ante*, vol. xxxi. p. 848.)

Expenses — Fees to Skilled Witnesses — Special Expense Caused by Conduct of Party.

A wife brought an action of declarator of nullity of marriage against her husband which she was allowed to abandon two days before the diet fixed for proof upon payment of expenses. She had submitted to a medical examination by professional men employed by her husband, but had declined to come to Scotland, and had stipulated that the examination should be in London, and conducted by medical men of standing in their profession. Accordingly, with the view of their subsequently giving evidence at the trial, two eminent medical men had been sent from Scotland to London, to whom fees of £315 and £323, 8s. respectively were paid. These fees the Auditor taxed at £15, 15s. and £10, 10s. Objection having been taken to the Auditor's report, the Lord Ordinary fixed £131, 5s. and £105 as the fees chargeable against the pursuer.

Held that in the special circumstances of the case these fees were reasonable, and such as the pursuer was bound to pay as part of the expenses of the action.

A B brought an action of declarator of nullity of marriage against her husband C D, which she was afterwards allowed to abandon two days before the diet fixed for the proof upon payment of expenses.

In the course of the proceedings preparatory to proof the defender had agreed to submit to medical examination, but had stipulated that it should be in London and conducted by gentlemen of standing in their profession. She declined to accede to the suggestion that she should come to Scotland, and accordingly Dr Heron Watson, Edinburgh, and Dr Renton, Glasgow, were sent to London so that they might be able to give evidence in Edinburgh subsequently if required. These medical men charged £315 and £323, 8s. respectively for their professional services.

The Auditor taxed the fees payable by the pursuer at £15, 15s. and £10, 10s. respectively. Objection having been taken to the Auditor's report, the Lord Ordinary (WELLWOOD) fixed the fees chargeable against the pursuer at £131, 5s. and £105 respectively.

"*Opinion.*—At the previous hearing on 14th July I heard a full argument, not only on the competency, but also on the merits of the objections. The competency of the objections having now been sustained, I am of opinion, on the merits, that the Auditor has not allowed sufficiently large

sums in respect of the fees paid to Dr Heron Watson and Dr Renton. The sums allowed by the Auditor, viz., £15, 15s. and £10, 10s., were fixed on the footing of what would have been paid to medical men resident in London. The examination of the pursuer in London was rendered necessary by her declining to come to Scotland for this purpose, and I think that in the circumstances the defender was entitled to employ medical men resident in Scotland, who would be available as witnesses when the trial took place. If the defender had employed London doctors of equal eminence, he would have required to pay them on the same scale if he had asked them to attend the trial. I therefore think that the fees allowed by the Auditor are inadequate, but I am not prepared to allow as against the pursuer the whole of the fees paid to Dr Heron Watson and Dr Renton. I shall allow in all a fee of 125 guineas for Dr Heron Watson, and a fee of 100 guineas for Dr Renton."

The pursuer reclaimed, and argued—The Auditor was right. As between party and party only £10, 10s. a day was to be allowed for medical expert evidence—*Stewart* v. *Padwick*, February 26, 1873, 11 Macph. 467. The defender should have employed medical men in London, and not sent doctors from Scotland. It was not certain that they would be required in the witness-box, and as a fact they had not been. Cases as to the fees payable to English counsel, *e.g.*, *Whitehaven and Furness Junction Railway Company* v. *Bain*, March 11, 1851, 13 D. 944, and *Parnell* v. *Walter*, March 5, 1890, 17 R. 552, were not in point. Counsel were not included among the experts referred to in the Acts of Sederunt of 1844 and 1876.

Argued for respondent—The Auditor had allowed quite inadequate fees. The pursuer had herself rendered the incurring of these fees necessary by refusing to come to Scotland. Had London doctors been employed they would have had to be brought to Edinburgh for the trial. The defender was entitled to contemplate that when making the preliminary inquiries. In this case the doctors would have been feed to come down from London, because the case was only abandoned on the eve of the trial.

At advising—

LORD PRESIDENT—I do not think that this case raises any general question as to the proper scale of remuneration for medical experts employed in a preliminary inquiry of this kind. I am prepared to decide the case upon the conduct of the reclaimer, who compelled exceptional measures to be adopted in the way of expenditure. She could have raised the general question of the scale of charges by coming down to Edinburgh and being examined there, but instead she prescribes by letter of 15th March 1894 the terms on which she will submit to be examined, and these are that the examination shall be in London, and conducted by two medical practitioners who must be men of standing in their profession.

Upon 27th April the opposite side wrote suggesting that Mrs Smith should come to Edinburgh for examination, but this suggestion was not acceded to. In consequence it became necessary to consider what a litigant, having due regard to economy in expenditure, was entitled to do, and I think the course adopted was quite reasonable. In coming to a conclusion, the defender was entitled to consider the whole aggregate expenses he would have to incur, including that of ultimately bringing the witnesses to the witness-box. It was necessary for the defender to incur extra expense, and I agree with the Lord Ordinary when he says "the defender was entitled to medical men resident in Scotland, who would be available as witnesses when the trial took place. If the defender had employed London doctors of equal eminence he would have required to pay them on the same scale if he had asked them to attend the trial." I think the Lord Ordinary has allowed a reasonable amount, taking all the circumstances into account, and I am of opinion that his judgment should be affirmed.

LORD ADAM—I concur, and I also think that we are not deciding anything contrary to the rule laid down in *Stewart* v. *Padwick*, with the principles of which I thoroughly agree.

LORD M'LAREN concurred.

LORD KINNEAR—I agree that in affirming the Lord Ordinary's judgment we are saying nothing against the case of *Stewart*, the rules there laid down, or the practice which has in consequence since been followed in the Auditor's office. I think this case quite exceptional.

The Court adhered.

Counsel for the Pursuer — Jameson — Clyde. Agent—Lockhart Thomson, S.S.C.

Counsel for the Defender—C. S. Dickson—M'Clure. Agents — Webster, Will, & Ritchie, S.S.C.

REGISTRATION APPEAL COURT.

Monday, November 26.

(Before Lord Kinnear, Lord Trayner, and Lord Kincairney.)

M'KENZIE *v.* WILSON.

Election Law—County Occupation Franchise—Occupation as Yearly Tenants—Joint-Tenants—Representation of the People Act 1884 (48 *Vict. c.* 3), *sec.* 4, *sub-sec.* 2.

The Representation of the People Act 1884, sec. 4, sub-sec. 2, provides that "where two or more men are owners either as joint-tenants or tenants in common" of an estate in any land or tenement, not more than one