an agent. The words of that section are—"Any person being neither a law-agent nor a notary-public, who either by himself or in conjunction with others wilfully and falsely pretends to be, or takes or uses any name, title, addition, or description implying that he is duly qualified to act either as a law-agent or as a notary-public, or that he is recognised by law as so qualified, shall be guilty of an offence." It is sufficiently plain that the Legislature there says, that if a man is deficient in professional qualifications he then shall not be entitled to call himself law-agent, solicitor, Writer to the Signet, and so on; but I am unable to see that it is a just inference that into the general terms of section 3 there is to be imported a limitation from section 2 which deals with a collateral matter. On that ground I think we are bound to give their full effect to the words "duly qualified' according to their natural sense—and, finding as I do that this gentleman is deficient in one of the statutory qualifications, I must conclude that no remuneration in respect of his services can be recovered by any person whatsoever. I am for recalling the interlocutor of the Lord Ordinary.

LORD M'LAREN—I agree. The question seems to depend upon the Law-Agents Act of 1891, and I do not think that it is a safe construction of that Act to argue from what is contained or implied in section 2 to analogous conditions in section 3. The abuses dealt with in the two sections are different, the punishment or penalty is different, and the scheme of the sections is different. It was never intended under section 2 to punish any lawyer who does not practice for merely using the title of Writer to the Signet or solicitor which belongs to him. The first section is plainly directed against practitioners falsely assuming the name without being entitled to do so. That is a case of fraud or misrepresentation which, whether it is due to vanity or to a desire to obtain employment, is a proper subject of penal legislation.

The object of section 3 is different. It is not directed against false representation, but is intended to protect honest practitioners in the practice of their profession against the competition of persons who have omitted to fulfil the whole or part of the obligations incumbent on them, which make up the necessary qualification. I see no ground for holding that a certificate, the object of which is the collection of stamp duty, is not a material part of the professional qualifications.

LORD ADAM and LORD KINNEAR concurred.

The Court recalled the interlocutor reclaimed against, decerned against the defender for payment of the sum of £17, 12s. 6d., and found the pursuer liable in the expenses of the reclaiming-note.

Counsel for the Pursuer — Baxter — Forsyth. Agent—William Spink, S.S.C.

Counsel for the Defender—W. Campbell, Q.C. — Findlay. Agents — Hossack & Hamilton, W.S.

Thursday, October 19.

FIRST DIVISION.

[Lord Pearson, Ordinary.

GUNN *v.* MUIRHEAD.

(*Ante*, June 30, 1899, 36 S.L.R. 798.)

Expenses — Auditor's Report — Print of Documents Used in Two Reclaiming-Notes.

In a case of great complexity in which there were two reclaiming-notes, a print of documents was prepared and used for the purposes of the first reclaiming-note. The reclaimer was successful, and was allowed "the expenses of the debate in the Inner House," under which the cost of the print did not fall. The print contained documents essential to the discussion of the second reclaiming-note, in which the same party was successful, and was found entitled to his expenses. The Auditor having disallowed the expenses of the print, the Court *sustained* an objection to this disallowance, *holding* that the fact that the print had originally been prepared for the purposes of the first reclaiming-note did not preclude it from being a proper item of the expenses of the second reclaiming-note.

Expenses—Proof—Witnesses Called but not Examined.

Held that a successful defender who had called certain witnesses whose evidence was originally necessary, but had not examined them owing to admissions made by the pursuer's witnesses which rendered their evidence unnecessary, was entitled to the expenses of these witnesses.

Expenses — Proof — Copy of Evidence for Debate before Lord Ordinary.

A proof was taken in a case of great difficulty turning upon very complicated facts, and the hearing upon the evidence did not take place till three weeks after it had been led. The Court, under the circumstances, *allowed* against the losing party the charge for one copy of the evidence for the use of counsel at the hearing.

Expenses—Fees to Counsel—Case Extending to Three Days.

The debate on a reclaiming-note extended into three days. The Auditor disallowed *in toto* the fees paid to counsel for the second day's hearing. An objection to the disallowance was *repelled* by the Court, who held that it was within the discretion of the Auditor to consider the aggregate amount of remuneration paid to counsel, and deal

with it in the manner which he had adopted.

Expenses—Fees to Counsel for Drawing Defences—Fees to Senior Counsel at Adjustment.

The Auditor allowed only three guineas out of five claimed as the fee to junior counsel for drawing defences in a case of great difficulty, and disallowed a fee paid to senior counsel for a consultation over the adjustment of pleadings. The Court *sustained* objections to both disallowances.

Messrs Aitchison & Sons, Limited, purchased the heritable and moveable property belonging to the West End Cafe Company, Limited, Edinburgh, for a certain sum payable at entry, on the understanding that such shareholders in that company as desired to reinvest their shares in the company of Aitchison & Sons should be offered an opportunity of doing so, and that for that purpose the amounts of their shares should be deducted from the price payable by the new company to the old company, and upon the winding-up of the old company the shareholders in question should grant discharges of their shares and receive shares in the new company for the amount thus discharged. Mr John Gunn, a shareholder in the West End Cafe Company, applied for shares in Aitchison & Sons, authorising the directors thereof to intimate to the liquidator of the former company that the amount to be realised from his shares therein would be reinvested in the shares in Aitchison & Sons applied for by him. Mr Gunn also entered into an agreement with Mr Muirhead, one of the promoters of Aitchison & Sons, by which, after setting forth the transactions between the selling and the buying company he agreed to accept shares in Aitchison & Sons in lieu of the shares held by him in the West End Cafe Company, while Muirhead agreed, if called upon, to relieve Gunn of the £1 shares allotted to him in Aitchison & Sons, paying therefor the sum of £1 each. Mr Gunn subsequently called upon Mr Muirhead to fulfil his part of the agreement, tendering the shares allotted to him in Aitchison & Sons in terms of his application. Mr Muirhead declined to do so on the ground that the shares tendered to him were not fully paid up, and Mr Gunn raised an action against him to have it declared that the latter was bound to implement the obligations undertaken by him in the agreement. There was also a conclusion to have the defender ordained to implement the said obligations by relieving the pursuer of the shares and paying £1 each therefor.

The Lord Ordinary (PEARSON), on 9th June 1897, found that the defender was bound to implement the obligations.

The defender reclaimed, and the First Division on 28th June 1898 recalled the Lord Ordinary's interlocutor, and found the defender entitled to "the expenses of the debate in the Inner House."

The Lord Ordinary on 14th July 1898 dismissed the action.

The pursuer reclaimed, and the First Division on June 30th 1899, while recalling certain findings of the Lord Ordinary, adhered to the dismissal of the action, and found the defender entitled to expenses (vol. 36, 798).

On the case being brought up for the approval of the Auditor's report the defender objected to the report in so far as the Auditor had disallowed, wholly or in part, the following items:—(1) "Fee to Junior Counsel to prepare defences." Fee allowed by the auditor £3, 3s,—disallowed £2, 2s. (2) "Fees paid to Senior Counsel for consultation over adjustment of pleadings,"—£3, 3s. disallowed. (3) "The defender's expenses in connection with reclaiming-note and print of document A." [The Auditor's reason for disallowing the cost of this document was that it had been prepared in connection with the previous reclaiming-note, and that its cost was not included in the allowance of expense in the interlocutor disposing of the first reclaiming-note.] The amount disallowed by the Auditor for the print was £26, 11s. 2d. (4) "The cost of" certain of "defender's witnesses who were cited but not examined," all of which to the amount of £21, 9s. 6d. was disallowed. (5) "Fees paid to counsel for third day's proof"—disallowed. (6) Cost of providing senior counsel with shorthand writer's notes of evidence for hearing three weeks after conclusion of proof, same copy used by counsel for pursuer"—disallowed. (7) "Counsel's fees for second day's hearing in the First Division, the case being finished on the third day"—disallowed.

Argued for defender—(1) As regards expenses of the print, it was true that this document had been prepared for and used in the discussion on the first reclaiming-note, and that it was not included in the expenses which had been allowed therefor. But the print contained documents which were absolutely essential for the discussion of the second reclaiming-note, in which the defender had been awarded expenses, and the mere fact that it had been previously used was no bar to his obtaining the expenses for it at this stage—*Campbell* v. *Paterson*, Dec. 23, 1848, 11 D. 325. (2) As regards the witnesses who had not been examined, the propriety of this charge was settled by the case of *Campbell, ut supra*, at 326. Their evidence contained the pith of the case, and they were only sent away in consequence of certain admissions by the pursuer's witnesses which rendered their evidence unnecessary. It had been done in order to save the losing party expense. (3) The shorthand notes of evidence were necessary because the hearing did not take place for three weeks after the proof. Only one copy was made, and it was also used by the pursuer's counsel—*Powrie* v. *Louis*, June 15, 1881, 8 R. 803; *Birrell* v. *Beveridge*, Feb. 15, 1868, 6 Macph. 421. (4) The Auditor had entirely disallowed counsel's fees for the second day's hearing. The total amount asked for the three days was 53 guineas, and the Auditor had in this rough and ready fashion struck off 19 guineas.—*Sivright* v.

Lightbourne, June 11, 1890, 17 R. 917; *Brady* v. *Watson*, March 19, 1881, 8 R. 694. (5) Three guineas only had been allowed for drawing defences. This was said to be a rule of the office, but in a case of so complicated a nature as this it was very unreasonable. (6) The fee to senior counsel for consultation at adjustment had always been held to be justifiable except in very exceptional circumstances. (7) The amount of fees allowed for the third day's proof was too small, the Auditor having given too little attention to the complicated nature of the case.

Argued for pursuer—The charges for the print were included in the account already submitted to the Auditor on the first reclaiming-note. He had disallowed them, and no objection had been lodged. It was a clear rule that if the expenses of a reclaiming-note were not allowed or expressly reserved they could not afterwards be claimed—Judicature Act 1825 (6 Geo. IV. c. 120), sec. 21; *Grant* v. *Ross*, June 30, 1835, 13 S. 1007. (2) If the defender had precognosced certain of the pursuer's witnesses it would have been unnecessary to call these witnesses. The application of the rule in the table of fees that "the expense of witnesses not examined shall not be allowed unless a good and valid reason shall be assigned for their non-examination" was a matter for the discretion of the Auditor. (3) The main question in the case turned upon the documents and not on the evidence. Moreover, the copy of evidence was chiefly needed owing to the non-attendance of senior counsel at the proof. (4) With regard to the fees for the discussion in the Inner House, it was the practice of the Auditor to mass the total amount of the fees and allow what was reasonable. The disallowance of the fees for the second day was only a method of making a deduction from the sum-total of the fees—*Baird & Stevenson* v. *Malloch*, July 20, 1892, 19 R. 1061. The other three items objected to were clearly within the discretion of the Auditor, relating as they did to what were pure questions of taxation.

LORD PRESIDENT — This statement of objections is by no means a frivolous one. The first point taken is that the Auditor has disallowed the expenses of preparing a certain print. Now, historically it is the case that this print was prepared and used for the purposes of the first reclaiming-note, the expenses of which we have already disposed of, but it contains documents which form the gist and substance of the case. It is quite true that by the interlocutor disposing of the first reclaiming-note, the reclaimer was allowed certain specified expenses, under which this print did not fall; so as regards the first reclaiming-note this item could not be claimed. But then the second reclaiming-note involved necessarily the minute and careful consideration of the documents contained in this print, and it would be a preposterous result if the winning party were not allowed the expenses of a print containing documents essential to the discussion of the second reclaiming-note, the expenses of which we have given. I can see no technical reason against his having them, in the mere circumstance that historically the print was prepared for the purpose of a former reclaiming-note. I am therefore for sustaining the objection.

The second point raised is that the Auditor has disallowed the expenses charged for certain witnesses, who were cited but were not examined. Mr M'Lennan has very properly referred us upon the subject to the code contained in the table of fees. I think the point is one of delicacy and importance. I wish to do nothing to discourage counsel from sending away witnesses, who, though necessary at the beginning of the case, turn out from something that occurs at the trial to be unnecessary. It seems clear that these witnesses stand within that class. They became unnecessary because the opposing party through his witnesses made admissions as to facts which did not appear on record. Counsel for the winning party, exercising great discretion, and I may say boldness, sent away these witnesses. It would, I think, be a bad example if we were to visit such successful and skilful conduct of the case with the penalty of disallowing the expenses of witnesses who in the contemplation of the trial when it had to be prepared for were undoubtedly necessary.

With regard to the next point, the copy of the shorthand notes, the cases cited by Mr Clyde prove, if that were necessary, that the Court are not bound blindly to disallow the expenses of a copy of the notes, because in normal cases the speeches follow directly upon the proof. I do not wish to neglect Mr M'Lennan's warning, and to encourage absentee seniors, but, on the other hand, I am desirous of doing nothing which would virtually preclude a senior from speaking if perchance he has not heard the whole of the evidence. The point in this case is that detail was everything, and yet there was an interval of three weeks between the hearing of the evidence and the speeches. To illustrate by the case of the very eminent counsel in question it is absurd to suppose that amid the various calls of his profession he could carry in his head the details of the evidence for this period of three weeks, even although (as I am very ready to believe) he had been continuously present throughout the evidence. I am therefore for allowing this item.

As regards the fees for the discussion in the Inner House, the objection stands in a somewhat peculiar condition. The Auditor thought the fees as a whole too large, but he has struck off the whole fee for the second day's debate. If this disallowance were treated as an isolated point I think we could not support it. But the substance of the thing is that the Auditor has treated the fees for the debate as a whole, which is substantially the line which your Lordships in recent decisions have desired to encourage, viz., to consider the aggregate remuneration, and at the same time take into account to what extent the work done has been split up over several days, and thus

encroached on the other engagements of counsel. I am not prepared to say that the sum of twenty-two guineas allowed by the Auditor is so inadequate as to justify our interference. I treat it as a pure question of taxation, and I do not think we should interfere with his decision.

The next point is in a sense a small one, because it only concerns an amount of two guineas, but it raises a point of principle. In the ordinary work-a-day business of the Outer House, a fee of three guineas is quite a fair one for drawing defences which, in a plain-sailing case, may be little more than a series of denials. But, on the other hand, I am far from saying that when a fee of five guineas has been sent in a case of such complexity and difficulty as the present, it is to be tested by this rigid rule and cut down in amount. We must take into consideration that much care and industry must have been expended in a case of such difficulty if a satisfactory pleading was to be prepared. It seems to me to be a case where the best attention of counsel was required, and I am therefore clearly against this disallowance.

The same reasoning applies to the case of the fee to senior counsel for adjustment. I think this was a very proper case for calling in senior counsel, and for their anxious supervision at a critical stage. If we were to come to any other conclusion it would lead to our being treated, more often than is at present the case, to defective records requiring to be remedied in the middle of the debate.

Now, the only remaining point is as to the fee for the third day's proof. That I regard as a mere matter of taxation, a question for the Auditor's discretion, and I am not prepared to say that I disagree with the manner in which he has exercised his discretion.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the parties on the note of objections for the defender to the Auditor's report on his account of expenses, Sustain items Nos. 1, 2, 4, and 6 of the said objections *in toto*, and item No. 3 thereof to the extent of £26, 11s. 2d: Disallow the said objections *quoad ultra:* Decern against the pursuer for payment to the defender of the sum of £497, 0s. 9d. sterling, being the taxed amount of the said account of expenses, including the amount falling to be added in respect of the said items of the said note of objections sustained as aforesaid: Find the defender entitled to the expenses of discussing the said objections, modify the same at £2, 2s. sterling, and decern for payment thereof by the pursuer to the defender."

Counsel for the Pursuer — M'Lennan. Agents—Auld, Stewart, & Anderson, W.S.

Counsel for the Defender—Clyde—Wilton. Agent—W. Marshall Henderson, S.S.C.

Thursday, October 19.

SECOND DIVISION.

[Sheriff of Lanarkshire.

GLASGOW DISTRICT OF ANCIENT ORDER OF FORESTERS *v.* STEVENSON.

Friendly Society—Exclusive Jurisdiction of Courts of Society—Decree Conform—Friendly Societies Act 1896 (59 *and* 60 *Vict. cap.* 25), *sec.* 68.

The appropriate Court of a Friendly Society found the secretary of a branch guilty of irregularities and expelled him from the Society, and called upon him to deliver up the books of the branch to the district secretary. The branch secretary, while acquiescing in the judgment as regards expulsion, refused to deliver up the books, on the ground that under the general laws of the Society the books were the property of the branch and not of the district. The district raised an action in the Sheriff-Court to enforce the decision in terms of section 68 of the Friendly Societies Act 1896.

Held that the Court of the Society had, incidentally to their jurisdiction in the matter of expulsion, jurisdiction to order delivery of the books, and that decree conform must be granted, it being incompetent to inquire into the question of property raised by the defender.

The Ancient Order of Foresters is a friendly society registered under the Friendly Societies Act. It has branches throughout the United Kingdom, and for the government of these branches it has a system of courts (1) the High Court of the Order, (2) the District Courts and (3) the Branch Courts.

Law 1a, section 3, of the General Laws of the Order provides that "the funds and property of each branch (court or district) of the Order, whether acquired before or after the same was registered as a branch, shall vest in the trustees for the time being of such branch for the sole use and benefit of the members of such branch, and persons claiming through such members according to the rules of the said branch; and the whole of the funds and property of each branch shall be under the exclusive control of the members and trustees thereof, subject only to the General Laws of the Order with respect to the investment of such funds and their application to the objects of the branch and the objects of the district Branch with which the Court may be connected, and also the objects of the Order." Law 88, section 2, provides that the functions of the District Arbitration Committee shall be to hear and decide *inter alia* any charge made by an officer of the district against any officer of a Court in the district for violation of the rules of the Court or District or General Laws, when such violation infers penalties of suspension, expulsion, or a fine exceeding £1, 1s.