tramway car conductor is a workman—how far the Sheriff's power to rescind a contract entitles him to intermeddle with arbitration clauses or awards under the contracts which he is entitled to rescind—I would rather not absolutely say. These are all difficult questions of law, but they are parts of the legal merits of the case between the parties which the Sheriff has dealt with and decided, and his decision in law, even upon the construction of a difficult statute, is not subject to review. It has been said that the Sheriffs in Small Debt Courts have often to decide without appeal questions of law which might be the subject of different and alternating decisions through all the Courts of the kingdom. It is just to avoid such a result that the Sheriff's judgment is made final.

To the same category I refer other questions raised in argument. For example, How far could the Sheriff modify the penal forfeiture of wages and restrict it to any loss which the Tramway Company actually sustained? How far could he correct an obvious error in the award by which the secretary forfeited only 1s. 9d. of wages, which, being the current wages, he thought was all that was due, whereas the conductor had deposited or left in the company's hands nearly £10 of wages, of which it is said the alleged arbitrator did not know at all, and so on. All these were questions for the Sheriff, and not for me. These questions are all nice and difficult, and very possibly the Sheriff may have erred, but his decision is final, and all review is excluded; and, being of opinion that the Sheriff acted competently and within his jurisdiction, I think the appeal should be dismissed. Strong cases were put of Sheriffs obstinately refusing to give effect to decrees of this Court or of the House of Lords. Or it was figured that the Sheriff on views of his own might refuse to sustain prescription at all as an unjust plea, and contrary to justice, and so other extreme cases were urged in argument. I think all such cases if they could be substantiated would fall under the head of oppression or perhaps of legal corruption, but nothing of that kind—not even a shadow of it—arises in the case before us.

The Court therefore refused the appeal.

Counsel for Pursuer (Respondent)—Brand—Martin. Agents—Wright & Johnston, Solicitors.

Counsel for Defenders (Appellants)—Mackintosh. Agent—John Gill, S.S.C.

Friday, June 28.

SECOND DIVISION.

M'DOUGALL *v.* CALEDONIAN RAILWAY COMPANY.

Jury Trial—Expenses—Fees of Skilled Witnesses and to Counsel to Consider Tender where Case Settled.

In an action of damages for personal injury, where a tender of £200 and expenses was made and accepted, the Court *allowed* the pursuer (1) the expense of consulting a surgeon before the raising of the action, with the view of his ultimately giving evidence, on the ground that that was a necessary preliminary for the purpose of getting up the case previously to the stage at which it was settled, and (2) fees to counsel to consider the tenders, more than one of which had been made.

Observations (*per* the Lord Justice-Clerk and Lord Ormidale) upon the extent to which the practice of obtaining skilled medical testimony in cases of damages for personal injury is carried.

This action was at the instance of the Rev. J. R. M'Dougall against the Caledonian Railway Company, for damages for personal injury sustained through the upsetting of a coach on Lochawe-side on 27th August 1877, while travelling in virtue of a ticket issued by the defenders.

The pursuer after the accident proceeded to Bridge of Allan, where he was seen by several surgeons both from Bridge of Allan and from Edinburgh and Glasgow, including Mr Annandale from Edinburgh.

The action was raised in the end of September 1877, and issues were adjusted on 22d November.

The next day the pursuer received notice of a tender of £150, which, after a consultation with counsel, he agreed not to accept. On 28th November the defenders lodged a tender of £200 and expenses, which at the time was not accepted.

Notice of trial was given by the defenders for the Christmas sittings, but the trial was postponed on the motion of the pursuer. The defenders in February 1878 gave notice of trial for Inveraray Circuit (8th May), but on 18th April the pursuer accepted the tender lodged on 28th November before. The Court then gave decree for that amount, with expenses to the date of the tender, and expenses to the defenders after that date.

The Auditor allowed the pursuer the expense of consulting Mr Annandale, £15, 15s., and also fees to counsel for considering the first and second tenders, to both of which findings the defenders lodged objections.

Argued for them—The fee to Mr Annandale ought not to be allowed, because if the trial had taken place he would have been examined as a skilled witness, and the Judge would have required to certify before the fee would have been allowed. The fee could not be certified, because the trial never took place; a tender was accepted, and the expense of consulting surgeons should be included in the amount of damages—A. of S. 10th July, 1844, secs. 4 and 6.

At advising—

Lord Justice-Clerk—In regard to the more serious matter—the question whether the fee of £15, 15s. to Mr Annandale is to be allowed—I must say I sympathise with a good deal of what was said by Mr Trayner, especially in regard to the amount. It is a great misfortune that in cases of this sort the expense of medical testimony should be run to the extent it is, because the parties must have the most famous doctors.

I should have been very glad of an opportunity of revising the whole of this practice, but I am not disposed to do so in this case. This is an action of damages for personal injury, where we find that a tender has been made and accepted; the advice, therefore, of surgeons of eminence was absolutely necessary. The Railway Company had the pur-

suer examined by eminent surgeons, and no doubt it was necessary for him likewise to have good advice. Several surgeons were consulted, and the Auditor has allowed the expenses of the fee to one of them, and in these circumstances I am not disposed to differ.

In regard to the next question—that of the fee to counsel for consulting in regard to the tender—I think that is a fair charge. Counsel was consulted, and in consequence the tender of £150 was rejected, and the result was that the tender was revised. I think that this was quite a fair charge.

Lord Ormidale—The objections to the doctor's fee have been founded entirely on the Act of Sederunt of 10th July 1844. Now I do not think that applies to this case at all. It only applies to cases where the trial has actually taken place, and where the Judge has certified as to the necessity of skilled witnesses. The trial in this case has not taken place, and therefore the rule does not apply.

My difficulty has already been hinted at by your Lordship, but I have greater doubts than have been expressed, although I do not intend to differ from the result your Lordship has arrived at.

I must say that the giving of these large fees to eminent men in Edinburgh seems to me most reprehensible. The example may have been set by the Railway Company; but there is no reason why we should not check this practice in the case of railway companies when they come before us, and also with private parties. I cannot say that I have heard anything which indicates to me that it was necessary in the present case to come to Edinburgh for advice. The pursuer was taken to Bridge of Allan, and consulted doctors there, and I see no reason why they should not have been examined, or, if there was any objection to them, it was not far to Stirling, where the pursuer might have got advice, and therefore I am not at all satisfied that this charge should have been allowed to a greater amount than a surgeon from one of these places would have received. But that is a matter of opinion, and no doubt it is a point that the Railway Company do retain the most eminent men, and therefore it might be hard if private parties were not to be allowed to have them too. But I have already stated my opinion, and if I had any support from your Lordships I should have been disposed to cut down the fee to the amount I have indicated.

On the other point I agree with your Lordship.

Lord Gifford—I concur.

The Court repelled the objections to the Auditor's report.

Counsel for Pursuer—M'Kechnie. Agents—M'Caskie & Brown, S.S.C.

Counsel for Defenders—Trayner. Agent—John Gill, S.S.C.

Saturday, June 29.

FIRST DIVISION.

[Lord Adam, Ordinary.

ROSS *v.* ROSS.

Jurisdiction—Arrestment jurisdictionis fundandæ causa.

An arrestment of 9s. 3d. standing at the credit of a defender in the books of a bank, and due to him in name of interest on an account which he formerly kept there, but which he believed to be closed, *sustained* as an effectual arrestment *jurisdictionis fundandæ causa* in a petitory action raised against him, on the authority of *Shaw* v. *Dow & Dobie*, Feb. 2, 1869, 7 Macph. 449.

Counsel for Pursuer—Darling. Agent—W. B. Dewar, S.S.C.

Counsel for Defender—Black. Agent—David Forsyth, S.S.C.

Tuesday, July 2.

FIRST DIVISION

[Lord Adam, Ordinary.

FERGUSON *v.* M'DUFF.

Process—Reponing—Where Action Dismissed owing to Non-Attendance of Counsel—Act of Sederunt, November 2, 1872, sec. 1.

Where, under the first section of the Act of Sederunt of November 2, 1872, an action had been dismissed in respect that no counsel attended on either side when the case was called in the Lord Ordinary's Procedure Roll, the Court, upon a reclaiming note, recalled the interlocutor in respect that there were on the Lord Ordinary's Roll of that day a proof, a Bill Chamber cause, and several debates, so that counsel might not have been able to ascertain when the case would be called, but intimated that it was not to be taken for granted that such a course would be followed in future.

Counsel for the Pursuer (Reclaimer)—Kennedy. Agents—W. Adam & Winchester, S.S.C.

Counsel for the Defender (Respondent)—Mair. Agent—Charles B. Hogg, Solicitor.

Thursday, July 4.

FIRST DIVISION.

[Lord Young, Ordinary.

ADAMSON & GULLAND *v.* GARDNER.

Expenses—Between Agent and Client—Reclaiming Note against an Auditor's Report in Action at Agent's Instance for Payment by Client.

Objections to the Auditor's report upon an agent's account of expenses incurred by previous litigation under his charge, in a petitory action at his instance against his client for payment, will be dealt with by a very summary procedure.