

that it could be held that in 1899 Mrs Crawford Leslie had in any true sense "granted" provisions to her younger children. Her deed of 1885 was, as already explained, of a testamentary character, and also defeasible in the event of the children's predecease. The argument against the deduction in question being allowed seems to necessitate a reading of the proviso by which the words "which have been granted" are deprived of all meaning, unless indeed they must be taken as equivalent to "which shall be granted"—neither of which contentions appears to me to be tenable. Upon the question under discussion I am therefore in favour of the petitioner, and against the younger children.

The deductions claimed by the petitioner in computing the free rental were allowed.

Counsel for the Petitioner—Hon. W. Watson. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Respondents—Cullen. Agents—Tods, Murray, & Jamieson, W.S.

Friday, March 17.

OUTER HOUSE.

[Lord Ardwall.

NEWLANDS v. GILLANDERS.

Expenses—Process—Fees to Counsel—Agent's Account of Expenses—Court of Session Act 1868 (31 and 32 Vict. cap. 100), secs. 22 and 23—A.S., February 6th, 1806.

An action for the sum contained in a law-agent's business account was undefended, and decree in absence was pronounced. The account along with the account of expenses in obtaining the decree in absence was, in terms of the Act of Sederunt, 6th February 1806, remitted to the Auditor to tax and report. *Held* that counsel was entitled to receive a fee for moving the approval of the report, and the agent to charge for instructing counsel to that effect and attending the motion.

The Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 22, enacts that "Where a defender shall not enter appearance on or before the second day after the summons has been called in Court, the cause may immediately be enrolled in the Lord Ordinary's motion roll as an undefended cause for decree in absence"; and section 23 enacts "when any cause is enrolled as an undefended cause before the Lord Ordinary, the Lord Ordinary shall without any attendance of counsel or agent grant decree in absence in common form in terms of the conclusions of the summons, or subject to such restrictions as may be set forth in a minute written on the summons by the agent for the pursuer."

It is enacted by the Act of Sederunt, 6th February 1806, in regard to actions by

law agents for payment of a business account, "The Lord Ordinary before whom the process may come shall remit the account to the Auditor of Court, and no decree shall be pronounced, either in absence or after having heard parties, without a report having been made by the Auditor."

Andrew Newlands, S.S.C., in Edinburgh, brought an action against Dr Ian L. G. Gillanders and Euphemia S. Barclay or Gillanders, his wife, residing at Wynberg, South Africa, but formerly of London, to recover payment of a business account due him by them. The action was undefended, and decree in absence was pronounced. On the pursuer's motion the account sued for was remitted to the Auditor to tax, along with the account of expenses of obtaining decree in absence. In this latter account there were charged a fee to counsel for moving the Court to approve of the Auditor's report, and also a fee of 6s. 8d. to the agent for instructing counsel and attending the motion. The former fee the Auditor disallowed; the latter fee he reduced to 5s.

The pursuer lodged a note of objections to the Auditor's report, and argued—The present case was governed by that of *Hunters v. Alexander*, May 20, 1882, 19 S.L.R. 619. He also cited Begg on Law-Agents, p. 170; Smith on Expenses, p. 301; Coldstream's Procedure, p. 35.

LORD ARDWALL sustained the note of objections for the pursuer to the Auditor's report.

Counsel for the Pursuer—Cullen. Agent—Andrew Newlands, S.S.C.

Friday, June 2.

SECOND DIVISION.

[Lord Stormonth Darling,
Ordinary.

HETHERINGTON v. GALT.

Property—Feu-Charter—Boundary—Error in Measurements in Titles—Effect of Words "or thereby"—Adjustment of Boundary by Agreement between Proprietors—Boundary Adjusted and Followed by Possession Binding on Singular Successors.

A portion of ground supposed to be rectangular and measuring, according to a plan annexed to the charter, 200 feet at front and back, was in 1883 feued out in two rectangular and contiguous plots. The feu-charter set forth the area of each plot and the boundary lines and their measurements. The measurement of the one plot at front and back bore to be 120 feet "or thereby"; the measurement of the other plot at front and back bore to be 80 feet "or thereby." When the respective proprietors proceeded to mark