Circumstances in which *held* than an arbiter had power to deal with a question of extra work, and to pronounce a finding that a claim for unfinished work was counterbalanced by a claim for extras.

In 1858 the defender Connel was in course of building a house in Glasgow, and agreed to sell it to the pursuer at the price of £1250, conform to minute of agreement and sale. This minute provided that Connell should paint and paper the house to the satisfaction of Mr Bell, architect, who was named arbiter, and should finish the whole work according to plan, schedules of work, and list of additional work appended, any difference between the parties being referred to Mr Bell. Certain differences arose as to extra and also as to unfinished work, and the parties had recourse to the arbiter, who, after various procedure, found that Fraser's claim for unfinished work was counterbalanced by Connel's claim for extras, and on the whole matter held Fraser liable in payment of a balance of £80. Fraser now sought to reduce the award, on the ground that it was *ultra vires* of the arbiter to pronounce his finding of compensation, no claim for extra work having been referred to him. The Lord Ordinary (ORMIDALE) reduced the award.

The defenders reclaimed.

GORDON and SCOTT for reclaimers.

SHAND for respondent.

The Court unanimously reversed and assoilzied the defenders, holding that the extra work clearly fell within the submission, and was therefore competently included in the award; and that, if the parties had thought it did not, they should have so represented to the arbiter. They had not done so, although the arbiter had issued notes, in which he distinctly set forth that he proposed to put the one claim against the other, neither party interfered to remonstrate. The whole parties evidently proceeded on the footing that this matter was before the arbiter, and the decree-arbitral, pronounced seven weeks after the note was issued, rightly disposed of the whole matter. One of their Lordships was inclined to hold that, even if the parties had proposed to withdraw from consideration of the arbiter the matter of extra and unfinished work, he might justly have refused to allow that, and have gone on to dispose of the matter, so as to prevent more litigation between the parties,

Agents for Pursuer—J. & R. D. Ross, W.S.

Agents for Defenders—D. Crawford & J. Y. Guthrie, S.S.C.

Thursday, January 7.

KENNEDY *v.* NESS.

Physicians' Fees—Parochial Board—Remuneration. Amount of remuneration fixed by the Court as due to a physician by a parochial board for medical attendance on pauper patients.

This was an action raised by the executor of the late Dr Kennedy against the Parochial Board of the parish of East Wemyss, for a sum of £130, as the amount due to Dr Kennedy for professional attendance as medical officer of the Board.

It appeared that in the autumn of 1866 Dr Kennedy was employed by the Board to take charge of the district in which the village of Methil was situated, and to attend the pauper cholera patients there. He acted on this employment until his death on 11th November 1866; and, after an abortive attempt at arbitration, his executor now brought this action for £130 as the fair remuneration due to the deceased. The defenders alleged that they had offered £50 in full of the pursuer's claim, and in respect of that offer they claimed absolvitor. After a proof, the Lord Ordinary (JERVISWOODE) found that the employment was to be reckoned as extending over a period of forty-three days; that three guineas a day was a reasonable charge; and decerned for the sum concluded for, with expenses.

The Board reclaimed.

Lord Advocate (MONCREIFF) and GEBBIE for reclaimers.

SOLICITOR-GENERAL (YOUNG) and A. MONCRIEFF for respondent.

The LORD PRESIDENT was of opinion that the Lord Ordinary had fixed the remuneration at too high a rate, proceeding apparently on a mistaken idea as to the amount of labour which Dr Kennedy had had to undergo in preparing for the approach of the cholera. He thought £65 was a fair sum to allow in the circumstances, without entering into any minute calculation as to how that amount was made up.

LORD DEAS concurred, and thought it a pity that the matter had not been referred to some one who was neither a doctor nor a lawyer, and who might have settled the matter in a short time, and in a common-sense way, without any litigation.

LORD ARDMILLAN thought that as a physician must necessarily abandon other and more remunerative practice when he takes to attending cholera patients, the pursuer was entitled to a somewhat larger sum than their Lordships proposed to give, but at the same time he did not differ from the judgment.

LORD KINLOCH agreed with the majority.

The respondent asked expenses.

The defenders, while admitting their liability for expenses up to the date of the Lord Ordinary's interlocutor, objected to any further liability, as they had succeeded in reducing by one-half the sum awarded by the Lord Ordinary.

The Court adopted the defenders' view.

Agents for Pursuer—Murray, Beith & Murray, W.S.

Agents for Defender—Adamson & Gulland, W.S.

Friday, January 8.

GLOVER AND OTHERS *v.* CITY OF GLASGOW UNION RAILWAY COMPANY.

Railway Company—Lands Consolidation (Scotland) Act 1845—Superfluous Lands—Adjudication. Creditors of a Railway Company, before the works were completed, brought an adjudication of certain of their lands as "superfluous." *Held* that before completion of the works, and without experience in working the line, it was impossible to say that any land taken by the company for their undertaking was "superfluous."

This was a process of adjudication instituted by the trustees of the late Mr Glover as creditors of the defenders. The pursuers averred that the lands described in the summons "pertain and belong heritably to the defenders, and are superfluous lands and heritages, not necessary for the construction of their line of railway, or the carrying on of their undertaking. The Union Railway could be constructed and maintained in terms of the defen-