and it is no use ordering the trustee to sist himself, because in the meantime his management is superseded by the interlocutor of the Sheriff, and the management is in his hands as judicial factor. It would be too strict a proceeding to ordain the bankrupt to find caution at this stage, but at the same time I see that considerable hardship is imposed on the defenders in having this action hanging over them, and especially is this so where they have got into this position through no fault of their own, but solely through the faulty proceeding of the Sheriff-Substitute, which cannot be touched. What I propose, therefore, is that we should not make any order to-day, but there is no reason why Mr Gowans should not read the papers before him, though he is in a sisted condition, and I therefore give Mr Macmillan fair warning that at the end of the two months three days will be the utmost that will be allowed to the trustee to consider whether he will sist himself or not.

LORD KINNEAR and LORD CULLEN concurred.

LORD M'LAREN and LORD JOHNSTON were absent.

The Court pronounced no interlocutor.

Counsel for Petitioner — Macmillan. Agents—Graham, Johnston, & Fleming, W.S.

Counsel for Defenders—Chree. Agents—M'Ritchie, Bayley, & Henderson, W.S.

Wednesday, November 17.

FIRST DIVISION.

(SINGLE BILLS.)

BEDFORDSHIRE LOAN COMPANY *v.* RUSSELL.

Process—Reponing—Decree by Default.

The agents for the defender in an action in the Court of Session having written to the agents for the pursuers that they were not to appear in the procedure roll, the Lord Ordinary gave decree. The defender reclaimed, seeking to be reponed.

Circumstances in which the Court, having considered the expense incurred uselessly, *allowed* the defender (reclaimer) to be reponed on payment of fourteen guineas of expenses.

Agent and Client—Law Agent—Process—Duties of Country Agent towards (1) *the Client, and* (2) *the Edinburgh Correspondents, with regard to Action in Court of Session.*

Observations (*per* the Lord President) as to country agent's duties to (1) his client, and (2) the Edinburgh correspondents in the conduct of an action in the Court of Session.

On 8th April 1909 the Bedfordshire Loan Company, 9 Castle Lane, Bedford, brought an action against James S. J. Russell, steamship owner and broker, 105 West George Street, Glasgow, for payment of the sums of (1) £850 and (2) £39 odd in terms of a letter of guarantee granted by him on 24th December 1908.

On 7th October 1909 Messrs J. K. & W. P. Lindsay, W.S., Edinburgh, who were at that time acting for the defender, wrote to Mr Carmont, the defender's agent in Glasgow, stating that the pursuer's agents Messrs Cornillon, Craig, & Thomas, S.S.C., Edinburgh, having declined to grant delay, "the only course open for us is to intimate to the pursuer's agents at the commencement of the session that we are not to appear in the procedure roll." To that letter Messrs Lindsay got no reply.

Thereafter on 14th October 1909 Messrs Lindsay wrote to Messrs Cornillon, Craig, & Thomas, as follows:—

"*Bedfordshire Loan Co.* v. *Russell.*

"With reference to Mr Lindsay's conversation with you the other day, when you stated that your instructions would not allow of your negotiating upon any other footing than that of obtaining decree, we beg to inform you that we are not to appear in the procedure roll.—Yours faithfully, J. K. & W. P. LINDSAY."

On the same date they wrote Mr Carmont stating that they had written to the pursuer's agents that they were not to appear in the procedure roll.

On 19th October 1909 the Lord Ordinary (SKERRINGTON) in respect of the letter by the defender's agents, dated 14th October, granted decree as craved.

The defender, who had in the meantime changed his agents, reclaimed, craving to be reponed.

Counsel for the reclaimer read excerpts from a letter from Mr Carmont, the reclaimer's former agent in Glasgow, from which it appeared that Messrs Lindsay's letter of 7th October had not been brought to the reclaimer (Mr Russell's) notice.

The reclaimer argued—The reponing of a party against a decree by default was matter for the discretion of the Court—*Mather* v. *Smith*, November 23, 1858, 21 D. 24; *Arthur* v. *Bell*, June 16, 1866, 4 Macph. 841, 2 S.L.R. 88; *Anderson* v. *Garson*, December 16, 1875, 3 R. 254, 13 S.L.R. 166; *Halligan* v. *Scottish Legal Life Assurance Society*, June 14, 1883, 10 R. 972. *Esto* that Mr Carmont was to blame in not replying to Messrs Lindsay's letters, or communicating their contents to his client, the reclaimer would be prejudiced if he were not allowed to be heard on the merits.

Counsel for the respondents submitted that this was not a case in which the reclaimer should be reponed.

LORD PRESIDENT—The interlocutor here reclaimed against is an interlocutor of Lord Skerrington's, which says—"On the motion of counsel for the pursuers, and in respect of the letter by the defender's agents to the pursuer's agents, dated 14th inst., decerns against the defender." Now the letter that is there referred to is a letter

addressed by Messrs Lindsay, who were the agents at that time for the defender, to Messrs Cornillon, Craig, & Thomas, who were the agents for the pursuer, in these terms "... [*quotes supra*] ..." And accordingly no appearance was made in the procedure roll. It is quite certain that we should never allow procedure, either to gain time or not, which consisted in a litigant's staying away in the Outer House, allowing the Lord Ordinary to pronounce decree by default, and then taking a reclaiming note for the purpose of bringing up the case before us without any judgment of the Lord Ordinary upon it on the merits. But inasmuch as that letter might possibly be read in the sense that the agents would not appear in the procedure roll, your Lordships thought fit that we should have more light upon the matter. Accordingly we asked Messrs Lindsay to give us a copy of any letters that passed between them and their correspondents in regard to it. In obedience to that request Messrs Lindsay have furnished us with copies of two letters. The first of these was written on 7th October, that is to say, a week before the Court met, and was written to the Glasgow agent, Mr Carmont, that is to say, the country correspondent of the client. It is in these terms—"As arranged at our meeting on Tuesday, we have seen Messrs Cornillon, Craig, & Thomas, and endeavoured to get them to delay further steps in this action. They decline to do so, as they say their clients insist upon decree being got at the earliest moment. They will not negotiate on any other footing. When the decree is obtained they do not consider that their clients would press unduly. The only course open for us is to intimate to the pursuers' agents at the commencement of the session that we are not to appear in the procedure roll." To that letter they got no reply, and, accordingly, when they sent the letter of 14th October, which I have already read, to Messrs Cornillon, Craig, & Thomas they also at the same time sent another letter to Mr Carmont as follows—"With reference to our letter of 7th inst., we have to-day written the pursuers' agents that we are not to appear in the procedure roll."

The defender having now changed his agents, represents through his counsel that he knew nothing about this, and a letter was read by counsel from Mr Carmont. I am bound to say that that letter seems to me to be written under very grave misconceptions as to what his duty as a country agent was, because it seeks to put the blame on Messrs Lindsay, who, I think, behaved with absolute propriety throughout the whole matter. Messrs Lindsay having, as their letter shows, been told by the country correspondent to see if they could not get time, see the pursuers' agents, who refuse to give any time, then write a full week before the Court meets to say—"We cannot get time, and therefore our only course is to intimate that we do not propose to appear in the procedure roll." That, of course, is as much as to say that "We do not consider you have any case, and there is nothing more to be done." To say, as Mr Carmont says, he thought his general instructions to fight the case were sufficient to override that letter and absolve him as a correspondent from any reply seems to me to misunderstand entirely the position of the Edinburgh agent. It is quite true that the Edinburgh agent has to take his country client's instructions; but at the same time he has only got to take them subject to this, that he has to act for the real client, and if he thinks that the action is unfightable he is quite right to say so. When Mr Carmont received that letter, which showed perfectly plainly what Messrs Lindsay thought it their duty to do, his plain duty was, if he did not like it, either to say, "No, you must not stay away from the procedure roll, and you must send up a counsel to make what he can of the case," or, "If that is your view, we will have another agent." Instead of that he does nothing, and Messrs Lindsay were absolutely justified in writing as they did upon 14th October. So that, if this was a question where it was perfectly certain that Mr Carmont had brought their action to the notice of the client, there might be no doubt about it. But at the same time your Lordships are always very chary of allowing a client to be damnified by what may be a mistake of his agent; and it is, I am afraid, just possible that in this matter the client did not quite understand what the result of this procedure would be, although Mr Carmont must be held to have perfectly understood.

In these circumstances the question is, what is to be done? It is quite evident that this may be a mere device to gain time, and your Lordships are certainly not going to assist that class of procedure. I have discovered from the clerks an estimate of what is the expense of the procedure roll discussion, which, of course, is entirely thrown away, and of this reclaiming note, which is also entirely thrown away, and what I propose to do is, that if fourteen guineas are paid in hard cash before Friday morning, the case will be heard on the merits on Friday. If not, the interlocutor will be affirmed. There will be nothing written to-day, and the case will be put out for Friday.

LORD KINNEAR and LORD CULLEN concurred.

LORD M'LAREN and LORD JOHNSTON were absent.

The sum of fourteen guineas having been duly paid, the Court reponed the reclaimer. The case was thereafter heard on the merits, and decree granted as craved.

Counsel for Pursuers (Respondents) — Scott Brown. Agents—Cornillon, Craig, & Thomas, S.S.C.

Counsel for Defender (Reclaimer)—R. S. Horne. Agents—Campbell, Anderson, & Chisholm, Solicitors.