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.

Circumstances in which, in an action at an agent's instance against his client for judicial expenses incurred in a previous suit, a reclaiming note against a judgment decerning the latter to pay the amount of the account as taxed by the Auditor was refused, in respect that an order to lodge objections was not timeously obtempered.

This was a reclaiming note against a judgment of the Lord Ordinary (YOUNG) pronounced in these circumstances:—The pursuers, who had acted as agents for the defender in an action reported *ante*, vol. xiv, pp. 134, 570, and 590, raised an action for the amount of their account, viz., £716. The account was remitted to the Auditor for taxation, and when his report came before the Lord Ordinary the defender asked for time to lodge objections, as there had been a change of agency, and the defender's new agents were not yet in a position to lodge them. Five days were allowed, and on the case being again called, in respect that defender's counsel stated he had received no instructions to lodge objections, the Lord Ordinary approved of the account as taxed, and gave decree for the amount, viz., £701, 9s. 10d.

The defender, after allowing the full number of reclaiming days to elapse, reclaimed against this interlocutor. The pursuers' counsel, when the case appeared in the Single Bills, objected to its being sent to the roll on the ground that there was no matter that could be made the subject of a reclaiming note.

The Court called upon the counsel who appeared for the defender to explain the circumstances under which the interlocutor was pronounced. He stated he had not been counsel in the Outer House, and the Court thereupon directed the counsel who had appeared in the Outer House to be called. The latter then said that the facts were as narrated above. It was suggested that the defender should be allowed another day to lodge objections, and in the event of his failure to do so, that the reclaiming note should be refused.

At advising—

LORD PRESIDENT—I think this reclaiming note must be refused. The whole matter of objections to an Auditor's report is by Acts of Sederunt and the practice of this Court a very summary procedure; and in ordinary cases, as one of your Lordships has remarked, objections cannot be received more than forty-eight hours after the process has been returned from the Auditor. This party has had since 12th June to lodge objections and has not done so yet.

LORD DEAS—I think it should be made to appear that we have heard from counsel all that took place in the Outer House.

LORD MURE—The interlocutor reclaimed against bears that counsel for the defender was present at the bar, and he has stated to us that he had previously got delay from the Lord Ordinary, but was not instructed to lodge any objections. The rule, as Lord Shand observes, is that a party is allowed forty-eight hours to lodge objections. In spite of that, if parties had come here with their objections ready, I should have been for hearing them, but there are none here.

LORD SHAND—For my part, even if the party had appeared with his objections ready, I should have been for refusing to admit them. To do so would be to overturn the whole practice of the Court in matters of this kind.

The reclaiming note was therefore refused.

Counsel for Pursuers (Respondents)—Low. Agents—Davidson & Syme, W.S.

Counsel for Defender (Reclaimer)—Mair—Rhind. Agent—W. Officer, S.S.C.

Friday, July 5.

FIRST DIVISION.

[Bill Chamber, Lord Adam.

THE PHOSPHATE SEWAGE COMPANY (LIMITED) *v.* MOLLESON (PETER LAWSON & SON'S TRUSTEE).

Bankruptcy—Jurisdiction of a Foreign Court after Sequestration has been Awarded in Scotland.

An English company lodged a claim in a Scotch sequestration which the trustee rejected, and his deliverance was confirmed after proof by the Court of Session and the House of Lords. Shortly after lodging their claim the claimants instituted a suit in the English Court of Chancery in order that the same question, which was one of alleged fraud on the part of the bankrupts, might be determined. The Vice-Chancellor and the Court of Appeal "ordered that the plantiff company be at liberty to prove under the sequestrated estates." The plaintiff then lodged a new claim in the sequestration based on the Chancery decree. *Held*, irrespective of the plea of *res judicata*, which was founded on the earlier Scotch proceedings, that the Court of Chancery had no jurisdiction to pronounce such an order against the trustee in a Scotch sequestration, who was subject to the exclusive jurisdiction of the Courts in Scotland.

Statement (per Lord President) of the principles of international law which regulate questions of bankruptcy.

Res judicata—*Competent and Omitted—Case of a Claimant in a Sequestration making a Second Claim.*

Averments in two successive claims in a sequestration in consequence of which the plea of *res judicata* was *sustained*, the *medium concludendi* in the second being similar to that in the first, and the only distinction being that certain new allegations were made which tended to substantiate the fraud founded on.

Question (per Lord President) whether a claimant in a sequestration is not rather in the position of a defender than in that of a pursuer of an ordinary action, and whether in consequence the principle of the rule of competent and omitted is not applicable to him, obliging him in any claim he makes to put forward all he has to maintain at once.

This was the continuation of a litigation which had been going on for some years in the Courts both of Scotland and of England. It was pre-