the negligence of his agent, and it is obvious, and was not disputed, that the merits of the case have never been considered and determined *causa cognita.*

"In this state of matters, the Lord Ordinary would have been inclined to pass the note, especially as consignation has been made of the sums charged for, had it not been for the case of *Lumsdaine* v. *Australian Company*, December 18, 1834, 13 S. 215, which appears to him to be in all essential respects a precedent in point. Indeed, even supposing the complainer had timeously presented a reclaiming note in order to be reponed, it is by no means clear, looking to the authority of the case of *Arthur* v. *Bell*, June 16, 1866, 4 Macph. 841, that the Court would have reponed him. That a party's agent has neglected his duty may be a reason for subjecting that agent in the consequences, but it is not a ground upon which the rules of Court can be set aside or disregarded and the present note passed.

"The matter was very amply discussed in the case of *Lumsdaine*, and there two bills of suspension were successively refused—the first by Lord Medwyn, and the second by Lord Corehouse; while ultimately the Court, upon considering minutes of debate, refused a reclaiming note, holding that although the case was one of hardship, yet, keeping in view that the party had not reclaimed within the days allowed for that purpose, and the decreet being extracted, it could not be suspended. In that case also it was remarked—as the Lord Ordinary now remarks—that the complainer might possibly obtain the redress he desires under the Act 48 Geo. III. c. 151, sec. 16, which provides a remedy for the case of a Lord Ordinary's interlocutor becoming final through inadvertence."

The complainer reclaimed.

The Court adhered, holding that the case was ruled by that of *Lumsdaine.*

Counsel for Complainer (Reclaimer)—Balfour—Pearson. Agents—H. & A. Inglis, W.S.

Counsel for Respondent—Harper. Agent—Wm. Duncan, S.S.C.

Saturday, October 19.

SECOND DIVISION.

[Exchequer Court.

ANDERSON *v.* COMMISSIONERS OF INLAND REVENUE.

Revenue—Statute 33 *and* 34 *Vict. c.* 97 *(Stamp Act) sec.* 70—*Conveyance on Sale of Property*—Ad valorem *Stamp-Duty.*

A, a creditor and shareholder of a building association, had paid considerable sums of money towards the discharge and liquidation of claims due by it; he had also completed the erection of certain buildings belonging to it, and had acquired for onerous considerations the right, title, and interest of all its members in its estate. Various deeds had been granted to him, the result of all of which was that he was liable for all the debts and entitled to all the assets of the association.

The judicial factor who was vested in the estate of the association thereupon obtained authority from the Court to convey his whole vested interest in the subjects to A. *Held* that the disposition granted was not a "conveyance on sale" within the meaning of the 70th section of the Stamp Act (33 and 34 Vict. c. 97), but merely a conveyance for conformity, and that it was not subject to an *ad valorem* stamp-duty.

This was a Case stated by the Commissioners of Inland Revenue under the Act 33 and 34 Vict. cap. 97, sec. 19, on behalf of Thomas Anderson, builder in Leith, to enable him to appeal to the Court of Exchequer against the determination of the Commissioners as to the stamp duty chargeable on the instrument aftermentioned. An instrument titled "Disposition" was granted by Charles Prentice, chartered accountant in Edinburgh, judicial factor on the estates of the New Imperial Building Association, and as judicial factor vested in the subjects disponed to and in favour of Thomas Anderson, builder, Leith, with entry at Martinmas 1877. Anderson, a creditor and shareholder of the Association, had paid on behalf of the Association considerable sums of money towards the discharge and liquidation of claims due by it, and had at his own expense completed the erection of certain heritable property, afterwards valued at £5400 or thereby, in Prince Regent Street, Leith, belonging to the Association. He had made sundry other payments on account thereof, and had further acquired for onerous considerations the right, title, and interest of all the members or partners in the estate of the Association, or those representing them. The judicial factor on 1st November 1877 had presented a petition to the Lords of Council and Session setting forth, *inter alia*, these circumstances, and also that in respect Anderson had acquired the whole rights and interests of the members and partners, and in respect of the obligations undertaken by him, the judicial factor was desirous of obtaining authority to convey to Anderson his whole vested title in the subjects, and praying the Court to authorise him as factor to convey them accordingly under burden of the ground-annual and other burdens affecting the same, and the Court on 27th November 1877 authorised and empowered the petitioner as judicial factor to assign and dispone the subjects to Anderson.

By the schedule of the Act 33 and 34 Vict. cap. 97, there were charged the following stamp duties, viz. :—

"Conveyance or transfer on sale of any property (except such stock or debenture stock or funded debt as aforesaid).

"Where the amount or value of the consideration for the sale does not exceed £5 . . £0 0 6."

And so on.

"Conveyance or transfer of any kind not hereinbefore described . . £0 10 0."

Sections 70, 73, and 78 were referred to as interpreting the terms in the schedule.

On the instrument above described being presented to the Commissioners of Inland Revenue they were of opinion that the heritable property was by the conveyance legally transferred to or vested in Anderson, in consideration of debts due

to him, and which he undertook to pay, and subject to the payment of money constituting a charge or incumbrance upon the property, and that such debts and money were deemed by the statute the consideration in respect whereof the conveyance was chargeable with *ad valorem* conveyance on sale duty (33 and 34 Vict. cap. 97, sec. 73). The debts and money in question were as follows:—

The amount due under the bond and disposition in security over the heritable property, . . .	£3719	5	8
The gross liabilities of the Association (exclusive of the sum in the bond), for which Mr Anderson as a shareholder was personally liable, and of which he undertook to relieve the other members,	2500	0	0
The amount of debt due to himself for contract work executed by him on the property before the conveyance, . . .	606	16	8
	£6826	2	4

The Commissioners accordingly assessed the *ad valorem* conveyance on sale duty of £34, 5s. upon the conveyance in respect of the £6,826, 2s. 4d. That amount was paid, and the instrument stamped accordingly.

Anderson, however, declared himself dissatisfied with the determination of the Commissioners, on the ground that *ad valorem* conveyance on sale duty was not payable in the circumstances, and that the instrument was only liable to the duty of 10s. under the head of 'Conveyance or transfer of any kind not hereinbefore described' in the schedule to the Act 33 and 34 Vict. cap. 97.

He therefore required the Commissioners to state this Case for the opinion of the Court of Exchequer under the 19th section of the Act 33 and 34 Vict. cap. 97.

The question for the opinion of the Court was, Whether the instrument, in the circumstances above set forth, was liable to be assessed and charged with *ad valorem* conveyance on sale stamp-duty in terms of the Act 33 and 34 Vict. cap. 97, or, if not, with what other stamp-duty it was liable to be assessed and charged?

The following authorities were quoted—*Denn* v. *Diamond*, 4 Barn. and Cress. 243; *Christie* v. *Commissioners of Inland Revenue*, L.R. 2 Exchcq. 46.

At advising—

Lord Justice-Clerk—[*After stating the facts*]—It appears therefore, that Mr Anderson is liable for the whole debts and entitled to all the assets of the company, subject to its debts. All this has been done by deeds which we do not see here, and Anderson is now in the same position as if there never had been a company and never a proprietor but himself. He now calls on the judicial factor to make over to him the property to which he, the judicial factor, has no longer a right, and the question is, Is that a sale to him? It manifestly is not in the end a sale, but merely a transference to vest the title in the party having the radical and sole interest—the heritable and feudal title to this property.

I cannot doubt that this was not a sale. It was what the party without consideration was entitled to demand from the judicial factor without a penny being paid except the expense of conveyance, because the right had been vested already in him.

It is just the same as if there had been no company at all, but Mr Anderson had put his own estate under trust, and the judicial factor or trustee had offered it for sale, and Anderson having been put in funds had redeemed it himself and required the trustee to convey to him. This could in no case be held to be a sale, and it is just the same as what we have here. The conveyance to Mr Anderson was simply, in my opinion, a conveyance for conformity. I am therefore of opinion that an *ad valorem* duty was not exigible, and that all that was necessary was an ordinary 10s. stamp.

Lord Ormidale—There are two questions in this case, and at first I had considerable difficulty in apprehending what they were, but at last they have been sufficiently clear.

The Crown has conceded that this statute applies to a conveyance following on a sale, and that disposed of the first difficulty as to the application of the statute.

As to the next question, it was only by implication that we could discover that everything had been already vested in Mr Anderson, and that he acquired nothing additional by this transaction. When this was made plain to us I had no difficulty in holding that the transaction here was not a sale to the effect of making Mr Anderson liable to pay *ad valorem* duty. I therefore concur with your Lordship.

Lord Gifford—I concur with his Lordship in the chair, and I must say that I never saw any difficulty in the case.

The judicial factor is a trustee, and this is a demand on him that he should denude in favour of the beneficiary. Surely this is not a sale. Such a thing was never heard off. I think the deed is liable to a stamp duty of 10s.

The following interlocutor was pronounced:—

> "The Lords of the Second Division of the Court of Session, acting as Her Majesty's Court of Exchequer, having heard counsel on the appeal of Thomas Anderson, builder in Leith, as stated in the Case by the Commissioners of Inland Revenue, are of opinion and find—That the instrument referred to in the Case is liable to be assessed and charged with a stamp-duty of ten shillings, and therefore order the sum of £33, 15s., being the excess of duty paid by the appellant, to be repaid to him by the said Commissioners, together with the costs incurred by him in relation to the appeal: Remit to the Auditor to tax the said costs and to report, and decern."

Counsel for Anderson (Appellant)—Trayner—Thorburn. Agents—A. & G. V. Mann, S.S.C.

Counsel for Commissioners (Respondents)—Lord Advocate (Watson)—Solicitor-General (Macdonald)—Rutherfurd. Agent—D. Crole, Solicitor of Inland Revenue.