is not a sufficiently relevant statement to support the conclusions of the summons, and had there existed such a custom, it must have been known to the Sheriff of the county, and would surely have been adduced as a defence in the process of sequestration itself. I am therefore for adhering to the Sheriff's interlocutor, and refusing this appeal.

The other Judges concurred.

Appeal refused.

Agent for Appellant—Wm. Officer, S.S.C.
Agent for Respondent—Stewart, S.S.C.

Tuesday, November 22.

MACBRAIR *v.* SMALL.

Agent and Client—Employment of Agent—Mandate. A party having granted a mandate to certain agents to act for him in an action of multiplepoinding, and "generally in relation to a succession" in which he was interested, *held* liable for the amount of the business account incurred in defending the multiplepoinding, and also an action of declarator raised subsequent to it.

This was an action at the instance of D. J. Macbrair, S.S.C., in Edinburgh, against Alexander Small, formerly farmer at Burnfoot, New Monkland, to recover the amount of a business account incurred by Small to the pursuer as his law-agent in two actions, one of multiplepoinding and the other of declarator, which actions were subsequently conjoined and taken out of Court on a compromise on 24th February 1870 (7 Scot. Law Rep., 332). The question was, whether the defender had employed the pursuer through Messrs Moody, M'Clures, & Hannay, writers in Glasgow, to act as his agent in these actions. After the actions had proceeded for some time, and claims and defences had been lodged in the conjoined processes by the pursuer, both for the defender and for James Scott, grain merchant, Glasgow, a creditor of the defender, to whom he had assigned his right in the succession which was the subject of the litigation, a minute was entered into, and signed by counsel for the parties, whereby the cases were compromised and settled. But on 14th January last the defender appeared by another counsel and agent, and disclaimed having authorised any proceedings to be taken in his name, and especially that there had been any authority to compromise the case. A minute and answers having been ordered, and a proof led before Lord Ardmillan, the case was again heard in February, when, at the suggestion of the Court, a new minute of compromise was entered into, under which the defender got £125, his wife a provision of £1000, under the Conjugal Rights Act, and Scott the balance of the fund *in medio*. When this present action was raised it was agreed by the parties to hold the above-mentioned proof in the question of disclamation as the proof in the case. In the course of said proof a mandate by the defender in favour of the Glasgow agents was produced, authorising them to act for him in the action of multiplepoinding, but not making mention of the action of declarator, being dated before that action was raised. The said mandate, however, also authorised the agents to act as law-agents for the defender "generally in relation to the succession," which was the subject of litigation.

On considering the record and proof, the Lord Ordinary (GIFFORD) found that the pursuer had sufficiently proved that the defender, through his Glasgow agents, employed the pursuer to act as his agent, and that upon this employment the account sued for was incurred. His Lordship proceeded upon the ground that a sufficient written mandate in favour of the Glasgow agents was produced, and that the employment was fully instructed by parole evidence also. Employment by Scott was not inconsistent with employment by the defender too—the interests of both being up to a certain point the same, and the radical interest in the whole litigation with the defender.

The defender reclaimed.

MILLAR, Q.C., and STRACHAN, for him, argued—That the mandate, in any view, only referred to the action of multiplepoinding; and that as the agents had sacrificed the defender's interest to that of their other client Scott, who was the real litigant, and had the sole interest to defend the actions, the mandate fell, not having been acted upon in the sense in which it was granted.

FRASER and GUTHRIE, for the pursuer, were not called upon.

At advising—

LORD PRESIDENT—My Lords, I think that the Lord Ordinary deserves very great credit for arriving so clearly at a conclusion in this case, although he was not conversant with the previous litigation which had taken place. But we know all about it, and have a perfect recollection of the circumstances. There is clear evidence of agency. I consider that the written mandate is quite enough, without any parole evidence, to establish the employment of the Glasgow agents by the defender. That being so, the case is at an end, because the only objection to paying the account is, that the agent was not employed. No doubt there are statements that the agent sacrificed his client, the defender's interest, attending in preference to Scott's interest. That, if true, might possibly give rise to a claim of damages, but if that claim arises the agent will have an opportunity of explaining, and, if necessary, defending, his conduct, which he certainly has not in the present process. I have no doubt that the joint-minute of compromise was prepared with a view to the best interests of all the parties. For these reasons, I am of opinion that the Lord Ordinary's interlocutor should be sustained.

LORD DEAS—I agree with your Lordship. There is here distinct written evidence of legal employment, strengthened by parole evidence. And not only is there unquestionably evidence of employment by the defender, but it is clear that the agents both in Glasgow and Edinburgh accepted this employment in good faith. As regards any claim of damages, I can see no grounds for it. We saw the whole case when it was before us, and the minute of compromise was prepared very much at the suggestion of the Court. The result of the case to the defender was that he practically got the whole fund—£1000 went to his wife, who was then making a claim of aliment against him, which was thereby discharged; £125 went to himself, and the balance went to his creditor Scott in payment of a debt for which he would otherwise have been liable. There seems to me, therefore, to be no grounds at all for resisting this action, and I agree with your Lordship that the Lord Ordinary's interlocutor should be adhered to.

LORD ARDMILLAN concurred.

LORD KINLOCH—I am of the same opinion. I think it clear that both the defender and Scott employed the agents in these actions; and it is not difficult to understand why. The defender evidently had an interest in the action of multiplepoinding; and, moreover, in that action, and by being a party to it, he actually got £125. I do not see the slightest evidence of mismangement on the part of the agents. And I think we cannot do otherwise than adhere to the Lord Ordinary's interlocutor.

Lord Ordinary's interlocutor adhered to.

Agent for Reclaimer and Defender—James Barclay, S.S.C.

Agent for Respondent and Pursuer—D. J. Macbrair, S.S.C.

Tuesday, November 22.

CHEYNE *v.* GRAY.

Procedure — Absence of Counsel — Professional instruction—Expenses. Reclaiming Note refused in respect of no appearance for reclaimer, whose counsel was alone in the case, it being no excuse that he was engaged in a proof before a Lord Ordinary, and was alone there too. The Court refused to hear a counsel instructed on the spot, remarking that that was not professional instruction. No expenses allowed, in respect that there was no appearance for the respondent either.

When this case was called no appearance was made for the reclaimer, and it was stated at the bar that, as the case was a small one, only a single counsel was instructed, and he was engaged in a proof before a Lord Ordinary, in which he was also employed alone. The Court, while observing that, in a case such as this, one counsel appeared to be sufficient, held that the excuse could not be accepted, and desired that the reclaimer's counsel be informed of this. In the meantime, the gentleman who had acted as counsel for the respondent (the pursuer) in the Outer House appeared at the bar, and stated, in reply to the Lord President, that he had not been instructed for the Inner House, though he had no doubt that he would be. After waiting for some time,—the reclaimer's counsel failing to appear,—the Court, in respect of no appearance for the reclaimer, refused the reclaiming note, but, in respect of no appearance for the respondent, without expenses.

Afterwards, a counsel appeared for the reclaimer, and in reply to the Court, stated that he had been instructed since the calling of the case, to support the reclaiming-note. The Lord President remarked that such instruction could not be held as professional instruction; and that the Court could not hear him. It was farther remarked, that as an interlocutor had already been pronounced, the Court could not listen to counsel's argument.

Reclaiming-note refused, but without expenses.

Agent for Reclaimer—James Buchanan, S.S.C.

Agent for Respondent—Thomas Sprot, W.S.

Wednesday, November 23.

FORBES *v.* INNES.

Process—Declarator — Reduction — Relevancy—Personal Exception — Glebe — Heritors. Circumstances in which it was held that the declaratory conclusions of an action could not be maintained so long as a certain decreet-arbitral remained unreduced.

Held that—where, after a regular motion of the presbytery for perambulation of the glebe, of which notice had been given to the heritors, the minister and one of the heritors of a parish had entered into a submission for the determination of the boundaries of the glebe, which submission was carried out through a long course of proceeding, and a final decreet-arbitral pronounced—it was not a relevant ground of reduction of the said submission and decreet arbitral, at the instance of the heritor, to say that the other heritors had not been made parties to the submission; and that he himself had become a party to it on the understanding that they should also do the same. *Held* that he was barred *personali exceptione*, no such understanding appearing on the face of the submissions, and no objection having been taken during the proceedings, and none of the other heritors having any interest to disturb the existing state of matters.

This was an action of declarator and reduction at the instance of Forbes of Haddo, against the other heritors of the parish of Inverkeithny, the Presbytery of Turriff, in which the said parish lay, the Rev. John Souter, the minister of the said parish, and George Cruickshank, farmer at Comisty, and John Ligertwood, advocate, Aberdeen, arbiter and clerk respectively, under a deed of submission which was therein sought to be reduced. The pursuer concluded (1) that it should be found and declared that the minister's glebe of the parish of Inverkeithny consisted "of the lands specified in the minutes of meeting of the Presbytery of Turriff, within which the said parish of Inverkeithny is situated, dated 15th August 1750, and which lands are therein described as follows:"—There was then inserted the description of the said glebe lands from the minutes of said meeting, which had been called for the express purpose of perambulating the same. There then followed a conclusion as to the pursuer's own property of Haddo adjoining the glebe, and one requiring the minister and presbytery to flit and remove from the same. "(2) That, if necessary, in order to give effect to the conclusions above written, decree of reduction should be pronounced, of, first, a pretended deed of submission, dated 1861, bearing to have been entered into between the defenders, the said Presbytery of Turriff and the said minister of Inverkeithny on the one part, and the pursuer on the other, whereby it was alleged that the said parties thereto submitted and referred to the defender, the said George Cruikshank, as sole arbiter, to ascertain, settle, and determine the boundaries of the said glebe of Inverkeithny. Second, a pretended decreet-arbitral, dated 22d February 1867, alleged to have been pronounced under the said submission.

In his condescendence the pursuer averred that, by the minutes of meeting of the Presbytery of Turriff in 1770, the limits of the glebe had been determined, and the boundaries accurately defined; that in consequence of the late minister, Mr Milne, having for many years been a tenant of the pursuer's authors in the farm of Dundore, on the estate of Haddo adjoining the glebe, the boundary of the glebe had been lost, and the pursuer's lands encroached upon; that for some years previous to 1860 a dispute had existed between the pursuer and the minister of the parish as to the