EXTRA DIVISION, INNER HOUSE, COURT OF SESSION

[2018] CSIH 67
P1184/14

Lady Paton
Lord Brodie
Lord Drummond Young

OPINION OF THE COURT

delivered by LADY PATON

in the reclaiming motion by

MAN HEN LIU

Reclaimer

against

ANDERSONS LLP SOLICITORS and others

Respondents

Reclaimer: Dewar QC, Bell; Cannons Law Practice
Respondent: D M Thomson QC; DWF LLP, Glasgow

19 October 2018

Substantial award of expenses made a condition precedent of continuing with action: whether interim suspension preventing diligence should be recalled

[1] There are three actions in this case. First, an action raised in 2010 in Glasgow Sheriff Court (A2461/10) in which the reclaimer alleges professional negligence on the part of the respondents, leading to his sequestration with resultant loss and expense. Secondly, a petition for suspension and interdict in the Court of Session (P1184/14), raised in 2014 by the reclaimer, seeking to prevent diligence in respect of an award of expenses made against him in the action for negligence. Thirdly, an action of reduction in the Court of Session (A823/15),

raised in 2015, in which the reclaimer seeks to reduce sheriff court interlocutors relating to that award of expenses.

[2] The present reclaiming motion concerns the question of recall of an interim suspension granted in the petition procedure (P1184/14). On 19 November 2014, on the *ex parte* application of the reclaimer, Lord Kinclaven granted interim suspension in the following terms:

> "The Lord Ordinary, having heard counsel [for the petitioner], no *caveat* having been lodged, appoints the petition to be [intimated and served and answers to be lodged if so advised]; *ad interim* suspends the charge for payment served on the petitioner on 5 November 2014."

The charge specified a sum due of £148,202.66, comprising expenses of £148,100 together with sheriff officers' fees and outlays. The award of expenses was made in the sheriff court on 7 March 2014, in the action for alleged professional negligence. On that day, the reclaimer was unrepresented, as he had parted company with his solicitors. Acting on his own behalf, with the assistance of his son, he moved to discharge a five-day proof before answer involving expert evidence, fixed for 10 March 2014. He accepted that he would have to bear the costs occasioned by the discharge. However on the motion of the respondents (opposed by the reclaimer), the sheriff found the reclaimer liable for the whole expenses of the action to date, on an agent-client basis, and made payment of that award a condition precedent to further procedure. As the sheriff explained in a Note dated 26 May 2015:

> " … The case was now four years old, it had undergone a tortuous procedural history which had involved substantial amendment procedure as well as a debate and an appeal to the Court of Session which had resolved with further amendment procedure. When eventually the case came to proof, the court would be required to adjudicate on factual matters which, when the action was first raised, were already of some antiquity. Although perhaps not personally the fault of the pursuer, it appeared to me that the action had been conducted incompetently or unreasonably. I considered the situation to be precisely of the kind where it was appropriate for the court to impose a sanction."

[3] The reclaimer instructed another solicitor. That solicitor advised that the interlocutor of 7 March 2014 should be appealed. When the matter came to court on 1 April 2014 the solicitor was ill and in hospital. The motion for leave was refused "for want of insistence". However the sheriff indicated that he would entertain a motion for leave once the solicitor was available. On 16 April 2014 a motion for leave was heard. The sheriff *per incuriam* advised the solicitor that the reclaimer had in fact consented to the award of expenses in the terms made. Having been so advised, the solicitor brought his submissions to an end. The sheriff then refused leave to appeal. The sheriff gave an outline of the sequence of events in his Note dated 26 May 2015, as follows:

> " … When on 1 April 2014 I refused to continue the motion for leave to appeal, I indicated that I would be likely to entertain a late motion upon the principal solicitor's return to business. When on 16 April 2014 I allowed the motion to be argued late, I refused it principally because I was not presented with any clear indication of how it was said that I had erred in the exercise of my discretion. I do recall adding that in any event my recollection was that the pursuer had consented. Having reviewed my record of what took place on 7 March 2014, I can confirm that was not the case."

[4] On 23 September 2014, decree for payment of £148,100 was granted. On 24 October 2014 the decree was extracted. On 5 November 2014 the charge was served. On 19 November 2014 the reclaimer raised the petition for suspension and interdict (P1184/14) to prevent diligence being carried out. The interim suspension was granted.

[5] Details of subsequent procedure in the sheriff court and the Court of Session can be found in the opinion of Lord President Carloway in the action of reduction (A823/15) *Man Hen Liu* v *Andersons* [2017] CSIH 45, the reduction action having been raised after the refusal in September 2015 of an appeal to the Sheriff Principal. That opinion allowed the reclaimer a proof before answer in order to explore the circumstances in which the award of expenses was made. Of note are the observations of the Lord President at paragraph [21] of his opinion:

> "[21] The starting point for the pursuer [in the action of reduction] is that he avers that the sheriff misled his agent into thinking that the earlier interlocutor had been pronounced 'of consent'. The sheriff accepts that what he said about that was incorrect. That is an important feature where a party is attempting to establish a miscarriage of justice. It may be that, looked at with hindsight and objectively, a robust agent may have noted the terms of the interlocutor and attempted to refute the sheriff's assertion. However, where the agent was not present at the earlier hearing and, from the pursuer's side, only lay persons were, it might reasonably be said that it would take some degree of courage to contradict the sheriff who had pronounced the order at the hearing. The significant feature is that the pursuer has averred that his agent was misled by the sheriff. If he proves that, there is a potential for a finding that substantial justice has not been achieved."

The Inner House found that there were sufficient relevant averments of exceptional circumstances entitling the reclaimer to a proof before answer.

Joint minute and reduction of two sheriff court interlocutors

[6] Following that Inner House decision, the respondents accepted that the sheriff court interlocutors dated 1 and 16 April 2014 should be reduced. They entered into a joint minute with the reclaimer in the following terms:

> "1. the minute of amendment for the pursuer number of process should be received;
>
> 2. the record should be amended in terms thereof;
>
> 3. the first plea in law for the Pursuer, as amended, should be sustained to the extent of granting decree for reduction of the interlocutors of 1st and 16th April in terms of the first conclusion of the summons; and
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> 4. *quoad ultra*, the cause should be sisted to enable the pursuer to seek leave of the sheriff to appeal the interlocutor of 7th March 2014, on the understanding that (a) in the event of leave being granted followed by a successful appeal by the pursuer to the Sheriff Appeal Court, the pursuer will thereafter be entitled to decree for reduction in terms of the conclusions of the summons (in so far as not already granted); (b) in the event of leave being refused, or in the event of leave being granted but any appeal to the Sheriff Appeal Court being unsuccessful, the Defenders will be assoilzied from the remaining conclusions of the Summons; and (c) in either case, no expenses will be found due to or by either party.
>
> The parties therefore crave the Court:

(a) to interpone authority hereto;

(b) to pronounce decree as first concluded for (as amended) and as restricted in terms hereof; and

(c) to sist the cause pending the procedure which is to take place before the Sheriff (and potentially Sheriff Appeal Court), as aforesaid."

[7] In implement of the joint minute, the sheriff court interlocutors dated 1 and 16 April 2014 were reduced of consent by interlocutor of Lord Brailsford dated 30 January 2018. In further implement of the joint minute, the action of reduction (A823/15) was sisted to enable the reclaimer to seek leave of the sheriff (i.e. the same sheriff) to appeal against the interlocutor of 7 March 2014 awarding expenses.

Ensuing hearing for leave to appeal on 20 March 2018

[8] On 20 March 2018, senior and junior counsel for the reclaimer appeared before the sheriff and sought leave to appeal against the award of expenses made on 7 March 2014. Senior counsel for the respondents opposed the motion. The sheriff refused leave. It is not disputed that the refusal cannot be appealed (*Adair* v *Colville & Sons* 1926 SC (HL) 51; *Philp* v *Reid* 1927 SC 224; *Macphail, Sheriff Court Practice,* 3rd ed, paragraphs 18.48-18.49).

[9] To date, therefore, there has been no review by a differently constituted court of the award of expenses of £148,100 on an agent-client basis, payment being made a condition precedent of proceeding with the action.

Dismissal of the action for reduction and motion for recall of the interim suspension

[10] On 1 May 2018, in further implement of the joint minute, Lady Wise dismissed the action of reduction (A823/15) and found no expenses due to or by either party.

[11] The reclaimer enrolled a motion requesting the sheriff to fix a date or timetable for payment of the expenses of £148,100. The motion was enrolled partly in an endeavour to comply with the guidance given the Lord President in paragraph [24] of *Man Hen Liu* (see paragraph [24] below), but also with a view to achieving a final interlocutor (such as a decree by default in the event of non-payment) which could be appealed without leave, thus opening up all previous interlocutors including the contested interlocutor of 7 March 2014. The motion seeking a date/timetable was not heard in the sheriff court until after the hearing of the respondents' motion for recall of the interim suspension (see paragraph [13] below).

[12] On 17 May 2018, the respondents' motion for recall of the interim suspension came before Lord Brailsford. The Lord Ordinary heard submissions involving *inter alia* the history of the case, the terms of the Lord President's opinion [2017] CSIH 45, and the fact that the reclaimer's motion for a date/timetable had still to be heard in the sheriff court. The Lord Ordinary recalled the sist, recalled the interim suspension, and dismissed the petition. Subsequently, he provided a Note of Reasons dated 29 June 2018 and issued on 18 July 2018, stating at paragraph [10]:

> "[10] Whilst I appreciate that the present proceedings have a difficult, and I think I am entitled to say unfortunate, procedural history I consider that at the time I heard this motion a conclusion had been reached. The petitioner's attempts to appeal the interlocutor of 7 March 2014 had ultimately reached a final and conclusive determination in the interlocutor of 20 March 2018. The sheriff court proceedings were, effectively, at an end. In the circumstances I consider the respondents were correct in their submission that there was no continuing purpose in the sheriff court proceedings. The pursuer's submission in relation to seeking a timetable in relation to the payment of expenses was, in my view, an ancillary matter not relevant to or pertaining to the merits of the sheriff court action. Moreover any procedure which follows from those ancillary applications, whatever its effect may be, is at the stage of my determination entirely hypothetical. Having regard to these considerations, and also having regard to the clear terms of the parties' agreement as to the effect of a refusal by the Sheriff Principal of the motion for leave to appeal out of time, I considered that the motion required to be granted as enrolled."

[13] The reclaimer reclaimed, resulting in the hearing before us on 13 September 2018.

Prior to the reclaiming motion, the sheriff on 23 July 2018 heard the reclaimer's motion for a date/ timetable for payment of the expenses, and made *avizandum*. As at the date of the reclaiming motion, parties were awaiting the outcome of that motion.

Respondents' undertaking given at the reclaiming motion

[14] At the reclaiming motion on 13 September 2018, counsel for the respondents provided a written undertaking in the following terms:

> "The respondents undertake to the court that, within fourteen days of advising in respect of the present reclaiming motion, and on the assumption that the reclaimer (as pursuer in the sheriff court action) has not paid the taxed expenses of £148,100, they will either (a) move for decree by default in the sheriff court action; or (b) waive the condition precedent of payment of such expenses in order that the sheriff court action might proceed as accords."

[15] The undertaking reflected Lord President Carloway's guidance in paragraph [24] of *Man Hen Liu cit sup,* set out in paragraph [24] below.

Submissions for the reclaimer

[16] Senior counsel for the reclaimer submitted that the reclaiming motion should be allowed and the Lord Ordinary's interlocutor of 17 May 2018 recalled. Reduction of the interlocutor of 7 March 2014 was not competent (*Adair* v *Colville & Sons,* 1926 SC (HL) 51; *Philp* v *Reid,* 1927 SC 224). Appealing a future decree of dismissal in the event of non-payment of expenses was the only route now available to the reclaimer to seek review of the interlocutor of 7 March 2014, as such an appeal would open up all previous interlocutors. Suspension was competent in order to prevent the use of diligence until the parties' rights were determined (*Walker, Civil Remedies,* pages 193-194; *Mackay, Manual of Practice in the Court of Session,* page 420; *Stair, Encyclopaedia* Vol 13, paragraphs 15-16). It was erroneous to

suggest that all principles applying to interdict (for example, the need for a threatened wrong) must apply to suspension. Even although the action of reduction had been dealt with, the objective of a challenge to the award of expenses in 2014 remained, and interim suspension continued to be necessary.

[17] The sheriff had failed to take into account the fact that the nature of the award of expenses was likely to result in the termination of the original action for professional negligence (which had reasonable prospects of success). That likely outcome was due to the impecuniosity of the litigant (*Moyes* v *Burntisland Shipping Co,* 1952 SC 429; *Macfadyen, Court of Session Practice,* paragraphs L[503]-[504]). Even if it were necessary to identify some specific legal wrong in order to justify suspension, the wrong in the present case was the enforcement of an iniquitous decree. The respondents' motion was premature, and the Lord Ordinary erred in holding that the reclaimer's attempts to appeal the interlocutor of 7 March 2014 had reached a final and conclusive determination in the interlocutor of 20 March 2018. There were other errors in the Note dated 29 June 2018. For example, in paragraph [6] line 9 and paragraph [7] there were erroneous references to "the Sheriff Principal" when it was the sheriff who was involved at that stage. There was a statement in paragraph [10] line 3 that "a conclusion had been reached": that was not the case, as there was no authoritative conclusion other than the sheriff's own decisions. In paragraph [10] line 5 it was said that "The sheriff court proceedings were, effectively, at an end", but that was not so, as the action for negligence was in its initial stages. The recall of suspension had taken place on an incorrect basis.

[18] Furthermore, it was in the interests of justice for the charge to remain suspended pending a final determination of the sheriff court proceedings. The Lord Ordinary was plainly wrong to exercise his discretion in favour of recalling the interim suspension and

dismissing the petition, an approach which was likely to result not only in the petitioner's sequestration, but also the original action for professional negligence languishing indefinitely in the sheriff court (a course characterised by the Lord President at paragraph [24] of *Man Hen Liu cit sup* as "not satisfactory in the modern era".)

Submissions for the respondents

[19] Senior counsel for the respondents submitted that the reclaiming motion should be refused. The remedy of suspension depended upon proof of some supposed ground of invalidity arising out of the sheriff court decrees upon which the charge for payment was served (*Stair Encyclopaedia* Vol 13, paragraphs 15-16). Suspension was normally combined with interdict, to prevent the completion of an ongoing procedure (in the present case, diligence) on the ground that the procedure in question amounted to, or arose out of, a legal wrong. The averments in the petition referred to the sheriff's misapprehension of the facts on 7 March 2014, the injustice arising therefrom, and the imminent raising of an action of reduction. However it had subsequently been recognised that it was not open to the reclaimer to reduce the interlocutor of 7 March 2014, and the action of reduction was then restricted to the interlocutors of 1 and 16 April 2014, whereby the sheriff refused the reclaimer's motion for leave to appeal against the interlocutor of 7 March 2014. It followed from the reduction of those two decrees, the hearing before the sheriff on 20 March 2018 of the application for leave to appeal, and the subsequent dismissal of the action of reduction, that the entire basis upon which the reclaimer argued that some legal wrong was threatened or ongoing had been extinguished. The action for reduction had latterly been concerned only with the sheriff court interlocutors of 1 and 16 April 2014, and those interlocutors had been reduced. The reclaimer had had an opportunity, with legal representation, to seek the leave

of the sheriff to appeal against the award of expenses made on 7 March 2014, and leave had been refused. There was no appeal against such a refusal (*Macphail, Sheriff Court Practice,* 3rd ed, paragraphs 18.48-18.49). All that the reclaimer was left with was his intention to appeal against any final interlocutor pronounced by the sheriff. Even if it were assumed that such a path was open to the reclaimer, the contention that he was meantime entitled to restrain the enforcement of a valid and regularly pronounced interlocutor, against which no challenge could be made, was unsound. The reclaimer sought the protection of interim suspension in circumstances where he had no basis for asserting that any legal wrong was being, or was likely to be, committed by the respondents. In order to justify interim suspension, the reclaimer had to be in a position to prove the existence of, or the likely threat of, such a wrong (*Walker, Civil Remedies,* page 227, in a passage concerning interdict; *Burn-Murdoch, Interdict,* paragraph 101, again relating to interdict). The service of a charge proceeding upon interlocutors in respect of which there was presently no competent ground of challenge could not amount to a legal wrong. The reclaimer did not therefore have proper grounds for seeking suspension and interdict or interim suspension or interdict. The fact that a final decree might be granted against the reclaimer was not a legal wrong (*Burn-Murdoch, op cit*, paragraph 101). The Lord Ordinary had not erred in granting the respondents' motion, albeit his narration of the respondents' submissions and of his own *ex tempore* reasoning (recorded at paragraph [10] of his Note) was not accurate. The basis for the respondents' motion to recall the interim suspension was that the interim suspension had been granted for a purpose, namely to enable the reclaimer to raise an action of reduction; an action of reduction had been raised, and had been disposed of, with the sheriff's interlocutors of 1 and 16 April being reduced. The sheriff's remaining interlocutors (for example, those of 7 March 2014 and 23 September 2014, the latter putting the former into effect) were valid and

enforceable, and were not currently under challenge either by way of reduction or by appeal. Suspension and interdict, and related interim awards, were available only in respect of the commission of some legal wrong, and not *ex aquo et bono.* In the circumstances, the granting of the respondents' motion for recall was in the interests of justice.

Discussion

[20] In normal course in a litigation, awards of expenses are made in favour of one party or another, reflecting success or failure at different stages of the procedure. The final accounts of expenses, and the recovery of expenses, are usually matters dealt with at the end of the litigation (*Macfadyen, Court of Session Practice,* paragraph L[503]).

[21] In some cases, the court may make payment of an award of expenses by one litigant a condition precedent of that litigant being permitted to continue in the action (*Macfadyen, op cit*, paragraphs L[503]-[504]). But as is there noted:

> " … the court will be reluctant to use this type of order in circumstances where its effect would be to deny an impecunious party his right to seek or resist a remedy …"

In *Moyes* v *Burntisland Shipbuilding Co* 1952 SC 429, Lord Justice-Clerk Thomson observed at page 435:

> "As to the conditions [of allowing late amendment of the pursuer's case after a civil jury trial and refusing to apply the verdict of the jury] on which this is to be done, the first matter is as to expenses. It seems to me that the pursuer ought to pay the expenses of the procedure which has been rendered abortive. That covers the expenses of the trial and the expenses here before us on the motion for a new trial, and the expenses incidental to the minute of amendment. I gather that there was a procedure roll discussion, and that the defenders have already obtained an award of expenses so far as that is concerned. We were moved to make the award of expenses a condition precedent. I am averse to that course. The effect of such a course is often to deny to a party the very indulgence which the court is professing to dispense."

[22] In the present case, the reclaimer on 7 March 2014 sought discharge of a proof before answer fixed for 10 March 2014. Acting without legal representation but with the assistance

of his son, the reclaimer accepted liability for the costs occasioned by the discharge. However after hearing an opposed motion, the sheriff found the reclaimer liable for the whole expenses of the action to date, on an agent-client basis, and made payment of that award a condition precedent of proceeding with the action. (We were advised that the award of £148,100 is approximately three times that which would be made if the reclaimer were to be found liable for the whole expenses to date on a party-party basis.) At a subsequent hearing on 16 April 2016, the sheriff *per incuriam* advised the solicitor then representing the reclaimer that the reclaimer had in fact consented to the award of expenses in the terms made, which brought the solicitor's submissions seeking leave to appeal to an end. The sheriff then refused leave. The reclaimer sought reduction of the sheriff court interlocutors on the basis that the solicitor had been misled. It is the award of expenses amounting to £148,100 made on 7 March 2014 and made a condition precedent of the action proceeding which the reclaimer seeks to have reviewed.

[23] It seems to us that the reclaimer's challenge to the award of £148,100 is *prima facie* arguable, for the reasons set out at pages 26-27 of the reclaiming print in the petition for suspension (P1184/14), echoed in paragraph [11] of the Lord President's opinion in *Man Hen Liu* v *Andersons cit sup*, taken with the fact that the practical effect of the award may be to bring the negligence action to an end, thus denying the reclaimer "his right to seek … a remedy" (*Macfadyen op cit* paragraph L[504]) and denying him "the very indulgence which the court is professing to dispense" (*Moyes* v *Burntisland Shipping Co cit sup* at page 435). It is of note that the Lord President in paragraph [20] of his opinion observes that the terms of the record in the action for alleged professional negligence "appear to show at least a *prima facie* case". Against that background, we consider that the courts and sheriff officers must take a meticulous approach when enforcing the award of expenses.

[24] Taking such an approach, we note that the interlocutor of 7 March 2014, although making payment of £148,100 a condition precedent to further procedure, contains no date by which payment of the expenses must be made, nor any order for the respondents' enrolling of a motion for a decree by default. The consequences of the lack of such provisions are pointed out by the Lord President in paragraph [24] of his opinion in *Man Hen Liu* v *Andersons* [2017] CSIH 45:

> "**Postscript**
> [24] The problem which remains is that the action, in which the various orders have been made, is still languishing in Glasgow Sheriff Court. If the action for reduction ultimately fails, or if it succeeds but leave to appeal is again refused, or is granted but the appeal itself fails, then the case will remain in limbo. Unless and until the defenders enrol for decree by default, by reason of non-payment of the expenses, it will remain in that state. This is not satisfactory in the modern era. Where a court grants an order in the terms made here, the interlocutor should provide for a time limit within which the account of expenses should be agreed or lodged for taxation. It should state that failure to do so may result in the expenses being irrecoverable. The interlocutor should certify that failure to pay the taxed (or agreed) expenses within a particular period of time will result in decree of default passing against the paying party (see Macfadyen ed: *Court of Session Practice* para 503). The other party will require to lodge a motion accordingly, again within a specified period, to bring the proceedings to an end, which failing, the action should be allowed to proceed."

[25] The reclaimer has enrolled a motion in the action for alleged professional negligence, requesting the sheriff to set a date or timetable for payment of the award of expenses of £148,100. No date or timetable has, as yet, been fixed.

[26] In these particular circumstances, we are of opinion that any withdrawal of the interim suspension granted in the petition procedure P1184/14 would be premature. As already noted, we consider that courts and sheriff officers must take a meticulous approach when enforcing the award of expenses. It seems to us that any diligence effected prior to the actual date(s) for payment nominated by the sheriff would amount to wrongful diligence. An individual's financial circumstances may change from day to day. It is possible that a person

may be unable to make a certain payment at one time, but be able and willing to make payment at another time. In the present case, this court cannot exclude the possibility that the reclaimer's financial circumstances may change, and that he may be able and willing to pay the award of expenses on the date(s) fixed by the sheriff. If diligence such as inhibition of property, arrestment of accounts, attachment of moveables or sequestration were to be carried out against the reclaimer during the period prior to the date(s) nominated by the sheriff, considerable and possibly unnecessary damage could be done to the reclaimer's financial status and reputation, and significant disruption could be caused to his life and business activities – wrongly, as the date by which payment is to be made has yet to be fixed by the sheriff. In our view, it is a prerequisite that the sheriff issues a ruling on the relevant date or timetable for payment in accordance with the guidance given in paragraph [24] of the Lord President's opinion in *Man Hen Liu* v *Andersons* [2017] CSIH 45, quoted in paragraph [24] above, before there is any question of formal diligence being permitted to be effected. We are unable therefore to agree with the conclusion reached by the Lord Ordinary.

[27] We would add that interim suspension was a remedy properly resorted to in 2014. Thereafter it served a legitimate purpose for a period, preventing diligence until the matters raised in the related action of reduction were ultimately resolved by an agreement leading to two sheriff court decrees being reduced and an opportunity for the reclaimer to seek leave to appeal on 20 March 2018. At the present time, even after the refusal of leave on 20 March 2018, and the termination of the action of reduction by its dismissal on 1 May 2018, the interim suspension continues to provide justifiable protection for the reclaimer in that it is preventing diligence from being effected prematurely, in advance of the date(s) to be fixed by the sheriff (cf *Mackay, Manual of Practice in the Court of Session,* page 420).

[28] The respondents' undertaking quoted in paragraph [14] above does not alter our

conclusion. In respect of sub-paragraph (b) of the undertaking, it was the sheriff who made the award of expenses in the terms he did, in particular, making payment of the expenses a condition precedent of the action proceeding. It is not for a litigant to waive such a ruling: that is a matter for the court. As for sub-paragraph (a), the respondents could, if so advised, adopt the course there outlined, which might lead to the fixing of dates and payment by the reclaimer, or alternatively non-payment resulting in a decree by default. The respondents could of course simply await the ruling of the sheriff concerning the date or dates by which payment of the expenses should be made in terms of the guidance given by the Lord President in paragraph [24] of *Man Hen Liu* v *Andersons*, *cit sup*, and then, depending on the reclaimer's response to the timetable, adopt such further procedure as may seem appropriate.

Decision

[29] For the reasons given above, we allow the reclaiming motion and recall the Lord Ordinary's interlocutor of 17 May 2018. We continue any question of expenses.