SHERIFFDOM OF CENTRAL, TAYSIDE AND FIFE AT FALKIRK

[2022] SC FAL 9

FAL-SG392-21

JUDGMENT OF SUMMARY SHERIFF DEREK DAVID LIVINGSTON

in the cause

CABOT FINANCIAL (UK) LTD

Claimant

against

RYAN BELL

Respondent

Claimant: Mustafa
Respondent: Absent

Falkirk, 8 March 2022

The sheriff, having resumed consideration of the cause, determines that a Royal Mail Track and Trace receipt or other evidence of receipt is necessary and required with any execution of postal service in simple procedure actions; assigns March 2022 to determine further procedure.

Introduction

[1] This case and a number of other cases are similar in that the claimant's solicitors have objected to the practice in some courts, including this one, of the court requiring what are known as Track and Trace receipts from the post office in addition to evidence of service. These are essentially confirmation that receipt has been effected, or otherwise, of letters sent

by Recorded Delivery. This is in addition to the execution and the Recorded Delivery postal slip.

[2] The court has had sight of the decisions made in the case of *Cabot Financial (UK) Ltd* v *John Finnegan* 2021 SLT (Sh Ct) 237 at Dundee Sheriff court (referred to as "*Finnegan*") and in *Cabot Financial (UK) Ltd* v *Kevin Donnelly* 6 WLUK 142 at Livingston Sheriff Court (referred to as "*Donnelly*") and the submissions and reasoning contained in these cases.

Submissions

[3] A number of statutory provisions were referred to and for ease of reference these are produced here.

> "Citation Amendment (Scotland) Act 1882 S3
>
> In any civil action or proceeding in any court or before any person or body of persons having by law power to cite parties or witnesses, any summons or warrant of citation of a person, whether as a party or witness, or warrant of service or judicial intimation, may be executed in Scotland by an officer of the court from which such summons, warrant, or judicial intimation was issued, or other officer who, according to the present law and practice might lawfully execute the same, or by an enrolled law agent, by sending to the known residence or place of business of the person upon whom such summons, warrant, or judicial intimation is to be served, or to his last known address, if it continues to be his legal domicile or proper place of citation, or to the office of the keeper of edictal citations, where the summons, warrant, or judicial intimation is required to be sent to that office, a registered letter by post containing the copy of the summons or petition or other document required by law in the particular case to be served, with the proper citation or notice subjoined thereto, or containing such other citation or notice as may be required in the circumstances, and such posting shall constitute a legal and valid citation, unless the person cited shall prove that such letter was not left or tendered at his known residence or place of business, or at his last known address if it continues to be his legal domicile or proper place of citation.
>
> **Simple Procedure Rules 2016 Part 18**
>
> 18.1 What is this Part about?
>
> (1) This Part is about how to formally serve a document on someone living in Scotland.

18.2 How can you formally serve a document on someone who lives in Scotland?

(1) When these Rules require a document to be formally served, the first attempt must be by a next-day postal service which records delivery.

(2) That may only be done by one of three persons: (a) the party's solicitor, (b) a sheriff officer instructed by the party, (c) the sheriff clerk (where provided for by rule 6.11(2)).

(3) The envelope which contains the document must have the following label written or printed on it: THIS ENVELOPE CONTAINS A [NAME OF DOCUMENT] FROM [NAME OF SHERIFF COURT] IF DELIVERY CANNOT BE MADE, THE LETTER MUST BE RETURNED TO THE SHERIFF CLERK AT [FULL ADDRESS OF SHERIFF COURT]

(4) After formally serving a document, a Confirmation of Formal Service must be completed and any evidence of delivery attached to it.

(5) Where a solicitor or sheriff officer has formally served the document, then the Confirmation of Formal Service must be sent to the sheriff court within one week of service taking place.

18.3 What if service by post does not work?

(1) If service by post has not worked, a sheriff officer may formally serve a document in one of three ways: (a) delivering it personally, (b) leaving it in the hands of a resident at the person's home, (c) leaving it in the hands of an employee at the person's place of business.

(2) If none of those ways has worked, the sheriff officer must make diligent inquiries about the person's whereabouts and current residence, and may then formally serve the document in one of two ways: (a) depositing it in the person's home or place of business by means of a letter box or other lawful way of doing so, or (b) leaving it at the person's home or place of business in such a way that it is likely to come to the attention of that person.

(3) If formal service is done in either of those ways, the sheriff officer must also do two more things: (a) send a copy of the document to the person by post to the address at which the sheriff officer thinks the person is most likely to be found, and (b) write or print on the envelope containing the document the following label: THIS ENVELOPE CONTAINS A [NAME OF DOCUMENT] FROM [NAME OF SHERIFF COURT]

Ordinary Cause Rules Chapter 5.3

Postal service or intimation

5.3.(1) In any cause in which service or intimation of any document or citation of any person may be by recorded delivery, such service, intimation or citation shall be by the first class recorded delivery service.

(2) Notwithstanding the terms of section 4(2) of the Citation Amendment (Scotland) Act 1882 (time from which period of notice reckoned), where service or intimation is by post, the period of notice shall run from the beginning of the day after the date of posting.

(3) On the face of the envelope used for postal service or intimation under this rule there shall be written or printed the following notice

> 'This envelope contains a citation to or intimation from (specify the court). If delivery cannot be made at the address shown it is to be returned immediately to: The Sheriff Clerk (insert address of sheriff clerk's office).'

(4) The certificate of citation or intimation in the case of postal service shall have attached to it any relevant postal receipts.

The Interpretation and Legislative Reform (Scotland) Act Section 26 Service of documents

(1) This section applies where an Act of the Scottish Parliament or a Scottish instrument authorises or requires a document to be served on a person (whether the expression 'serve', 'give', 'send' or any other expression is used).

(2) The document may be served on the person—

(a) by being delivered personally to the person,

(b) by being sent to the proper address of the person—

(i) by a registered post service (as defined in section 125(1) of the Postal Services Act 2000 (c.26)), or

(ii) by a postal service which provides for the delivery of the document to be recorded, or

(c) where subsection (3) applies, by being sent to the person using electronic communications.

(3) This subsection applies where, before the document is served, the person authorised or required to serve the document and the person on whom it is to be

served agree in writing that the document may be sent to the person by being transmitted to an electronic address and in an electronic form specified by the person for the purpose.

(4) For the purposes of subsection (2)(b), the proper address of a person is —

(a) in the case of a body corporate, the address of the registered or principal office of the body,

(b) in the case of a partnership, the address of the principal office of the partnership,

(c) in any other case, the last known address of the person.

(5) Where a document is served as mentioned in subsection (2)(b) on an address in the United Kingdom it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

(6) Where a document is served as mentioned in subsection (2)(c) it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

Court Reform (Scotland Act 2014

104 Power to regulate procedure etc. in the sheriff court and the Sheriff Appeal Court

(1) The Court of Session may by act of sederunt make provision for or about—

(a) the procedure and practice to be followed in civil proceedings in the sheriff court or in the Sheriff Appeal Court,

(b) any matter incidental or ancillary to such proceedings.

(2) Without limiting that generality, the power in subsection (1) includes power to make provision for or about—

(a) execution or diligence following on such proceedings,

(b) avoiding the need for, or mitigating the length and complexity of, such proceedings, including—

(i) encouraging settlement of disputes and the use of alternative dispute resolution procedures,

(ii) action to be taken before such proceedings are brought by persons who will be party to the proceedings,

(c) other aspects of the conduct and management of such proceedings, including the use of technology,

(d) simplifying the language used in connection with such proceedings or matters incidental or ancillary to them,

(e) the form of any document to be used in connection with such proceedings, matters incidental or ancillary to them or matters specified in this subsection,

(f) appeals against a decision of a sheriff or the Sheriff Appeal Court,

(g) applications that may be made to a sheriff or the Sheriff Appeal Court,

(h) time limits in relation to proceedings mentioned in subsection (1), matters incidental or ancillary to them or matters specified in this subsection,

(i) the steps that a sheriff or the Sheriff Appeal Court may take where there has been an abuse of process by a party to such proceedings,

(j) expenses that may be awarded to parties to such proceedings,

(k) other payments such parties may be required to make in respect of their conduct relating to such proceedings,

(l) the payment, investment or application of any sum of money awarded in such proceedings to or in respect of a person under a legal disability,

(m) the representation of parties to such proceedings, and others, including representation by persons who —

(i) are neither solicitors nor advocates, or

(ii) do not have the right to conduct litigation, or a right of audience, by virtue of section 27 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990,

(n) the functions and rights of persons appointed by a sheriff or the Sheriff Appeal Court in connection with such proceedings,

(o) witnesses and evidence, including modifying the rules of evidence as they apply to such proceedings,

(p) the quorum for sittings of the Sheriff Appeal Court,

(q) determining which Appeal Sheriff is to preside at such sittings where the Court is constituted by more than one Appeal Sheriff,

(r) such other matters as the Court of Session thinks necessary or appropriate for the purposes of carrying out or giving effect to the provisions of any enactment (including this Act) relating to such proceedings or matters incidental or ancillary to them.

(3) Nothing in an act of sederunt under subsection (1) is to derogate from the provisions of sections 72 to 82 (simple procedure).

(4) An act of sederunt under subsection (1) may make—

(a) incidental, supplemental, consequential, transitional, transitory or saving provision,

(b) provision amending, repealing or revoking any enactment (including any provision of this Act) relating to matters with respect to which an act of sederunt under subsection (1) may be made,

(c) different provision for different purposes.

(5) Before making an act of sederunt under subsection (1) with respect to any matter, the Court of Session must—

(a) consult the Scottish Civil Justice Council, and

(b) take into consideration any views expressed by the Council with respect to that matter.

(6) Subsection (5) does not apply in relation to an act of sederunt that embodies, with or without modifications, draft rules submitted by the Scottish Civil Justice Council to the Court of Session.

(7) This section is without prejudice to—

(a) any enactment that enables the Court of Session to make rules (by act of sederunt or otherwise) regulating the practice and procedure to be followed in proceedings to which this section applies, or

(b) the inherent powers of a sheriff or the Sheriff Appeal Court."

[4] I do not intend to repeat the submissions in *Finnegan* and *Donnelly* in full but instead will attempt to summarise them. The claimant in these two cases accepted that where postal service has apparently been successful in that there has been no returned citation

envelope, re-service will still be required where the Track and Trace system confirms that postal service was not in fact successful (see paragraph 13 in *Donnelly*). Indeed the claimant accepted in that case that it may be appropriate for the sheriff clerk's office to carry out its own check of the Track and Trace system if this has not been supplied to the court to check whether service has been successful as this might sometimes reveal that apparently good service has not been successful. Reference was made to the Rules and in particular rule 18.2(4) of the Simple Procedure Rules 2016 ("the Rules")which provide as follows: "After formally serving a document, a Confirmation of Formal Service must be completed and any evidence of delivery attached to it. "

[5] The claimant's position was that whilst evidence of delivery has to be attached if it is available there is no need to do so as an essential part of confirmation of service. It was submitted on behalf of the claimant that Track and Trace was operated by a private company and was not subject to any proper court regulation or scrutiny. It was further submitted that the Rules did not rely on Track and Trace for proof of service but relied primarily upon returned citations and on a presumption of delivery.

[6] It was further submitted that this followed from a longstanding presumption in Scots Law that the "Recorded Delivery certificate" and solicitor's execution of service amounted to proper evidence of delivery.

[7] Additionally it was stated that Track and Trace was not referred to at all in the Rules and that this was a deliberate omission and it has also stated that the claimant's solicitors had themselves found the Track and Trace system to be "useful" but "very unreliable".

[8] The claimant's solicitors also stated that they had recently carried out a check on approximately 700-1,000 cases to try and ascertain the accuracy of the Track and Trace system and that in 18% of the cases where it was stated that service was unsuccessful they

had found out from other sources that they had in fact been successfully served. The requirement to re-serve based upon Track and Trace would be expensive. It was further stated that the agents for the claimants were aware that in approximately 20% of cases where Track and Trace recorded that service was successful, service was actually unsuccessful. In these cases the envelope had been returned to court.

[9] It was also stated that the right to recall gave respondents protections against any material prejudice.

[10] The agents also referred to longstanding presumptions in relation to letter which is posted as having been received although it was accepted that this presumption is rebuttable.

[11] It was also stated that there could be issues about who should pay the expenses of the service by sheriff officer were it to be ascertained that in fact service had been properly effected in the first place.

[12] The sheriff in *Donnelly* referred to *McPhail in Sheriff Court Practice* at 6.20 where it is stated:

> "Where the letter is posted and not returned, the posting constitutes a legal and valid citation, unless the defender proves that the letter was not left or tendered at his known residence or place of business, or at his last known address if it continues to be his legal domicile or proper place of citation."

He observed that this would mean that simple procedure actions had stricter requirements to service than ordinary cause actions.

[13] Similar although briefer submissions were made in the case of *Finnegan*.

Submissions For Claimant

[14] The claimant's agent adopted the submissions made in these cases and the decisions.

[15] He also pointed out that in a number of cases in which actions by these agents had been dismissed by this court, an application for recall had been granted by the court without the court insisting upon a Track and Trace receipt.

[16] Supplementary written submissions were also lodged on behalf of the claimant stating that Stranraer, Dunoon and Edinburgh Sheriff Court have accepted the claimant's agents' position and reference was made to a sheriff clerk who had referred to Track and Trace being unreliable.

The decisions in *Donnelly* and *Finnegan*

[17] The decisions in these cases constitute part of the claimant's submissions and I will turn to the reasoning contained in these two cases.

[18] In *Donnelly* the sheriff pointed out that the scheme for service of the claim form involves the use of Recorded Delivery in an envelope which is designed to ensure that it is returned to the sheriff clerk if it has not been delivered. Where the claim form has been successfully delivered the person who has served the form has to lodge a form confirming that they have posted the claim form and in addition they are asked to attach "any evidence of delivery". He suggests that the evidence of delivery provided by the signed for postal service would be a copy of the Track and Trace entry showing that the envelope was delivered and signed for.

[19] The sheriff continued by pointing out that where a citation envelope has not been delivered the Royal Mail usually returns the envelope to the sheriff clerk with reasons for non-delivery marked on it eg "addressee gone away" or "not known at this address" or "not called for". I would incidentally point out at this stage that "not called for" is itself a breach of what appears on the envelope which is to the effect that if delivery cannot be made it is to

be returned immediately. "Not called for" means that the Royal Mail has taken it back to the sorting office, put a card through the door and waited for the occupant to come and uplift the envelope. If delivery is unsuccessful then depending upon the reason for this a second attempt at postal service can usually be made.

[20] In *Donnelly* the sheriff stated:

> "It is possible to read the Rules as requiring confirmation by modern technology of the fact that delivery has been made, namely confirmation by means of the online Track and Trace service."

[21] The sheriff indicated that he found the submissions made on behalf of the claimants to be "persuasive" but in addition these were strengthened by the fact that to require postal service by Track and Trace in every case would turn postal service into a more stringent service than other forms of service eg sheriff officers can leave something in the hands of a resident or indeed if that is unsuccessful delivering to a residential address by depositing it at the person's home. He was also of the view that insisting on proof of delivery by Track and Trace would mean that the requirements in simple procedure would be more stringent than in relation to ordinary cause actions where proof of posting is sufficient.

[22] The sheriff considered that the matter was put beyond doubt by section 3 of the Citation Amendment (Scotland) Act 1882.

> "In any civil action … any summons or warrant of citation of a person … or warrant of service or judicial intimation, may be executed in Scotland by an officer of the court … or by an enrolled law agent, by sending to the known residents or place of business of the person upon whom such summons, warrant or judicial intimation is to be served, or to his last known address … a registered letter by post containing the copy of the summons, warrant or judicial intimation … and such posting shall constitute a legal and valid citation, unless the person cited shall prove that such letter was not left or tendered at his known residence or place of business …".

[23] The sheriff clearly explained why Recorded Delivery could come within the definition of posting by "a registered letter".

[24] He was of the view that the Rules could not directly contradict the 1882 Act but instead provide a scheme for service of the claim form and suggested that even if the Rules were to be read as contradicting the Act it would surely be the case that the Act of Parliament would prevail.

[25] The sheriff also referred to the *Interpretation and Legislative Reform (Scotland) Act 2010* and to *section 26* which in essence provides for a presumption that where a document is sent to the proper address of the person it is to be taken to have been received 48 hours after it is sent unless the contrary is shown.

[26] He was of the view that the *2010 Act* did not repeal the *1882 Act* and has to be read in conjunction with it.

[27] He opined that for the various reasons he had set out that the drafters of the Rules did not intend to alter the longstanding rule that the posting of a judicial citation in a registered letter, or its modern equivalent constitutes a legal and valid citation. He stated that "The conduct of business in the courts would be seriously hampered if proof of delivery had to be provided in every undefended case".

[28] In *Finnegan* the sheriff referred to the principles of simple procedure at rule 1.2 requiring cases to be resolved as quickly as possible with the least expense to parties and the courts and that the procedure was to be as informal as possible and that parties should only have to come to court when it is necessary to progress or resolve their dispute.

[29] She referred to part 18 of the Rules as setting out "simple and straightforward rules" for service.

[30] Her view was that although a delivery receipt "may" be lodged in process as evidence of delivery there was no requirement to do so. She referred to rule 18.2(4) making

no reference to a particular form of evidence of delivery and whilst a party holding a delivery receipt should lodge that the absence of a delivery receipt is not fatal.

[31] She referred to there being a rebuttable presumption in Scots law that a letter which was posted was received based on common law and statute.

[32] The sheriff in that case was therefore of the view that completion of the form 6C (the confirmation of service form) together with proof of Recorded Delivery posting creates a rebuttable presumption that formal service has been effective without the need for a delivery receipt.

[33] She concluded matters by pointing out that the Rules provide that if service by post "has not worked" then service by sheriff officer is appropriate. She stated that the court will be informed by the return of the document to the sheriff clerk and that an interpretation of the Rules as requiring service by sheriff officer whenever a delivery receipt has not been lodged would create "unnecessary delay, expense and administrative burden."

Discussion and decision

[34] One of the difficulties I have with this case, and I consider it would also have been something of a problem for my colleagues who gave judgments in the earlier cases, is that no contrary argument was provided. That said I do have some doubts about a number of the points put forward in the submissions by the claimant's agent and respectfully disagree with certain points made in the earlier cases I have referred to.

[35] Turning to a number of the submissions made, I found the claimant's position on Track and Trace and its efficacy to be somewhat contradictory at times, e.g. accepting that Track and Trace may confirm no service when there has been no returned envelope and suggesting it might be appropriate for the sheriff clerk's office to carry out its own check

whilst criticising it both for accuracy and for being run by a private company. Apart from the implication that Track and Trace can clearly be useful despite the criticisms made, how does that reconcile with the assertion that service without a returned citation is sufficient? The position that Track and Trace is operated by a private company seems to be irrelevant not least since it is the same private company which is responsible for delivering the mail. I accept that Track and Trace is not specifically mentioned in the Rules but they do contain the additional clause about evidence of delivery.

[36] I also accept there has been a longstanding presumption of delivery in Scots Law where something is proved to have been sent, but presumptions are rebuttable and, as I mention later, postal deliveries are not what they once were. In any event I suspect part of that presumption was pragmatic since as far as I am aware, until Track and Trace and the internet there was no speedy way to prove delivery.

[37] I am not really able to comment on the anecdotal evidence of the claimants regarding the reliability of Track and Trace other than to say my experience is completely different and I have used the service over the years. The claimants also referred to a sheriff clerk who had referred to the service as being unreliable. The clerk in question informed me that the only issue was that occasionally when returned citations are sent to the court the court employee in question who signs for them is shown as having signed for the document in question. However in that situation there should invariably be a record of the returned citation with the Court.

[38] I should also mention that in a recent application for recall in a case by the claimant, in which there had been no returned citation of the service copy claim form, the respondent was clear that she had never received the claim form. She was completely credible and indeed made a payment proposal once she became aware of the proceedings. Few do

actually respond to claims from these claimants and it is therefore unclear how widespread the problem is.

[39] I do not accept that respondents are protected from any defect in service by recall procedure. Firstly that leaves the sheriff with a discretion and perhaps more materially since only one application is permitted for recall by a party the party in that scenario has little or no protection against say an error resulting in decree passing for a second time.

[40] The issue was also raised about who was to pay expenses were it to be found service had been effected properly in the first place. I do not consider that is a major issue. As was mentioned in *Donnelly*, presumably based upon the claimants' submissions, postal service will be attempted twice. It would only be after two apparently unsuccessful services that this would come into play. In any event things like this are a consequence of litigation.

[41] The submission that applications for recall have been granted in this court without a Track and Trace receipt appears to me to be irrelevant and presumably based upon a misunderstanding of the Rules. Essentially a service copy simple procedure action has to be served. In contrast an application for recall has to be sent. The former involves recorded delivery post or sheriff officer service by solicitor, sheriff clerk or sheriff officer whilst the latter can be by the above groups but also the party and can be inter alia by 1st Class post, email, placed on the portal on the Scottish Courts and Tribunals website or delivered to a document exchange. See Part 6 and 13.6 of the Rules.

[42] Turning to some of the points made by the sheriffs in *Donnelly* and *Finnegan* I do not accept the point that requiring a Track and Trace receipt would be more stringent than service by sheriff officer. In the latter case a visit has to be paid to the house and personal service attempted, which failing upon a resident and then if unsuccessful by leaving it. In that last scenario the sheriff officer has to send a copy of the writ to the defender. It may or

may not be the case that requiring Track and Trace is more stringent than ordinary cause procedure but there are numerous rules in both which are quite different.

[43] I respectfully take issue with the suggestion that the Citation Amendment (Scotland) Act 1882 cannot be amended by court rules. Provisions of that Act have been repealed over a number of years by such eg SI 1948/1691 Rule 174b and SI 1965/321 but I do not have to look far for statutory authority for the Rules to be capable of modifying that Act in that the terms of Section 104 of the Courts Reform (Scotland) Act specifically provide for the making of these rules and for "amending, repealing or revoking any enactment." In these circumstances I do consider the Rules can and have modified the 1882 Act by providing for evidence of delivery to be lodged whatever view is taken of the meaning of rule 18.2(4) to which I will turn. Before I do so I should say I fully accept the position taken that recorded delivery post can be substituted for registered post as explained clearly in *Donnelly*.

[44] Rule 18.2(4) provides that: "After formally serving a document, a Confirmation of Formal Service must be completed and any evidence of delivery attached to it." I note that in the both *Donnelly* and *Finnegan* the view was that this provision should be treated as only applying where the evidence is physically in the sender's hands as opposed to easily obtainable. I have considered the interpretation but the term is "any evidence" and not "any evidence physically in the sender's possession." It is difficult to imagine that there will normally be any evidence of delivery which will be available other than what appears on the Track and Trace website. Indeed that seems to have been conceded by the agents. It is easily available. The mechanics are simply going onto the Track and Trace website and inserting the number contained on the postal slip. Accordingly it appears to me that this is evidence which is accessible, can be obtained in seconds and costs nothing. Further the provision would be strange were it to be left entirely to the discretion of a sender as to

whether that sender obtained the evidence. Evidence of delivery is of course different from evidence of service and this rule in my view is clear in its terms. It is not simply something he has possession of but includes whatever is reasonably accessible to him. I do not accept a gloss can be implied in relation to 18.2(4) whereby only evidence in the sender's possession is required.

[45] I also accept that there is a rebuttable presumption in Scots law that a letter which is posted is received as enacted by *section 26 of the Interpretation and Legislative Reform (Scotland) Act.* However my opinion and experience is that over the years that presumption has unfortunately become weaker. Conversations with a senior sheriff clerk from the civil department here lead to the unfortunate conclusion that it is by no means uncommon for citations sent by Recorded Delivery, which have not been delivered, to take six weeks or longer before being returned. However lest this be an experience which is exclusive to this court it is also noted that service updates in respect of the Royal Mail have shown that at one point during the week of 21 January almost 80 postcodes across the country were experiencing long delays in receiving their post. (See The Times 21 January 2022) resulting in a possible investigation of Ofcom. In 2020 Ofcom fined Royal Mail £1.5 million after it failed to meet certain delivery targets. Accordingly it seems to me that however much the presumption exists in reality it is regularly rebutted. That said the presumption is of no consequence unless or until a party has lodged what is required by the Rules .

[46] I respectfully disagree that the conduct of business in the courts would be seriously hampered if proof of delivery had to be provided in every undefended case. As I have said earlier the process is a simple, cheap and quick one. In my view it gives a degree of protection to litigants on both sides meaning a claimant does not find out months later that the decree taken was in respect of an undelivered action and for a respondent that he does

not have the stress and loss of opportunity re recall in dealing with a decree in a case about which he has had no notice. Further use of the Track and Trace system can actually assist claimants in that they may find out much more quickly that a claim form has not been delivered rather than awaiting the Royal Mail returning it to the Court and the Court then notifying the claimant's agent. I equally do not accept that service by sheriff officer is required (as suggested in *Finnegan*) whenever a delivery receipt has not been lodged. A party, within reason, can make numerous attempts at postal service before using a sheriff officer depending upon how urgent the matter is considered to be.

[47] I would also diffidently suggest that a sheriff, is entitled to be satisfied regarding service and receipt whatever presumptions may exist and is not simply to grant a decree if he/she has concerns. A sheriff should not simply be a rubber stamp granting decree in all cases whatever doubts there may be regarding receipt or error by a defender/respondent even if everything is ex facie in order. Support for that view is to be found in *Wallace* v *Keltbray Plant Ltd* 2006 SLT 428 in which despite the fact there was evidence of service and delivery the Lord Ordinary refused to grant decree without further steps being taken. She was concerned about an error having been made by the defenders.

[48] In my view much of the claimant's arguments come down to policy arguing matters such as expense and inconvenience. I do not accept these are particularly good arguments even if the only issue were to be one of pragmatism. A fraction of a minute completing the numbering to go on a box on a free website and then printing the result is not something I consider will lead to delay but in my view it will lead to greater certainty for all and less potential injustice.

[49] It is my opinion however that ultimately the issue is whether any evidence of receipt must be lodged standing 18.2(4) of the Rules and I consider that it is required. It is

not optional nor is it qualified by a gloss such as "in the claimant's possession". The word "must" is used as opposed to "may". The sheriff is further entitled at very least to order the claimant to produce evidence of receipt which is of course what is occurring when the Court requires a Track and Trace receipt. As indicated I do not consider the 1882 Act renders this rule ultra vires even with my interpretation.

[50] In the circumstances the clerks at this Court will continue to look for Trace and Trace documentation as evidence of receipt, or indeed any other such evidence as claimants may be able to provide (eg a letter acknowledging receipt of the claim form) in Simple Procedure cases.

[51] An inconsistency I have noted, although I do not consider it has a bearing on this case but is strange is that in the Ordinary Cause Rules (5.3) the prescribed information on the envelope containing the service copy is "This envelope contains a citation to or intimation from (specify the court). If delivery cannot be made at the address shown it is to be returned **immediately** (my bold) to: The Sheriff Clerk (insert address of sheriff clerk's office)." The simple procedure prescribed labelling is slightly different being:

> "THIS ENVELOPE CONTAINS A [NAME OF DOCUMENT] FROM [NAME OF SHERIFF COURT] IF DELIVERY CANNOT BE MADE, THE LETTER MUST BE RETURNED TO THE SHERIFF CLERK AT [FULL ADDRESS OF SHERIFF COURT]"

There is not a great deal of difference between them in meaning except that for some reason the "immediately" is not contained in the Simple Procedure template. I assume the drafters of the Rules did not intend a more relaxed view to be taken about undelivered citations in Simple Procedure and that may be something which should be looked at.

[52] I have assigned a hearing in this case to deal with further procedure and also a way ahead in any similar cases of the claimant which are awaiting the outcome of this matter.