ment . . . in the hands of the said Keeper, for the purpose of allowing the witnesses to the said trust-disposition and settlement adding their names as witnesses at the sight of the said Keeper, and to appoint a copy of said deliverance to be added to every extract of the said trust-disposition and settlement that shall be issued by the said Keeper, and to be authenticated by the said Keeper as part of the said extracts.

No answers were lodged.

Argued for the petitioners—The trust-disposition had been merely lodged for registration and had not been in fact recorded. *Caldwell* v. *The Lord Clerk Register*, November 17, 1871, 10 Macph. 99, 9 S.L.R. 89, furnished a precedent for asking authority to make a correction on a deed after the death of the granter and after it had become part of the public records. A deed might competently be signed by the attesting witnesses after the death of the granter of the deed—*Tener's Trustees* v. *Tickle and Others*, June 28, 1879, 6 R. 1111, 16 S.L.R. 672. An appointment by the Court, as craved in the petition, that a copy of the interlocutor of the Court should be added to every extract of the will issued by the Keeper as part of the extract, would prevent the possibility of prejudice to anyone arising from granting the prayer of the petition.

The Court granted the prayer of the petition, and pronounced an interlocutor in the following terms—

> "Grant warrant to and authorise and appoint the Keeper of the Register of Deeds, Probative Writs, and Protests, on production of a certified copy of this interlocutor, and on his receiving back from the petitioners the extract of the deed after mentioned already issued to them, to give the petitioners or their agent access to the trust-disposition and settlement mentioned in the petition, viz., a trust-disposition and settlement executed by the deceased Mrs Jane Hunter or Macdonald, otherwise Mrs Janie Hunter or Macdonald, who resided at No. 41 Bath Street, Portobello, widow of the late John Duncan Macdonald, M.D., on 20th February 1904, in the hands of the said Keeper, for the purpose of allowing the witnesses to the said trust-disposition and settlement adding their names as witnesses at the sight of the said Keeper: Appoint a copy of this interlocutor to be added to every extract of the said trust-disposition and settlement that shall be issued by the said Keeper, and to be authenticated by the said Keeper as part of the said extract and decree."

Counsel for the Petitioners—D. Anderson. Agent—John Forgan, S.S.C.

Saturday, June 25.

SECOND DIVISION.

[Sheriff Court at Edinburgh.

RITCHIE'S TRUSTEES *v.* M'CALL'S TRUSTEE.

Bankruptcy — Valuation and Deduction of Securities — Rectification of Claim — Claimant Holding Security which bona fide Believed to be Valueless, Deponing that no Security Held — Admission of Claim to Ranking by Trustee in Knowledge of Security without Requiring Oath and Claim to be Rectified—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. cap.* 79), *secs.* 51 *and* 65.

Certain creditors of a bankrupt debtor lodged a claim in their debtor's sequestration, deponing that no security was held by them for their debt. While the debtor was solvent he had assigned a policy of insurance over his life in security of the debt referred to, but before he became bankrupt the insurance company whose policy he had assigned intimated to the assignees that the policy had lapsed owing to their debtor's failure to pay a premium, and that the policy had no surrender value. The claim lodged by these creditors was admitted by the trustee on the debtor's sequestrated estate, who, immediately after issuing his deliverance on their claim, called upon the creditors to convey to him the life policy referred to, of the existence of which he had been aware all along. The creditors, on further inquiry, were then informed by the insurance company that the policy might be revived on certain conditions, and that if revived they would allow a surrender value on it. In an appeal by the creditors against the trustee's deliverance on their claim, *held* that they were entitled to rectify their oath and claim by specifying, valuing, and deducting the security held by them.

In 1901 James M'Call assigned to the late William Ritchie a policy on his life for £600 with the Alliance Assurance Company, in security of certain debts due by him to Ritchie.

In June 1903 Ritchie's trustees received notice from the Alliance Assurance Company that M'Call had failed to pay the premium due in January of that year on the life policy referred to; and in reply to inquiries they were informed that on account of the failure to pay the premium the policy had lapsed and had no surrender value.

In September 1903 M'Call's estates were sequestrated and a trustee appointed thereon. Ritchie's trustees lodged an affidavit and claim on the sequestrated estate, claiming £274, and deponed that no security was held by them. M'Call's trustee admitted this claim, the dividend being 2½d. per £, and thereupon requested

Ritchie's trustees to convey the policy to him.

Against this deliverance Ritchie's trustees appealed to the Sheriff, craving that the deliverance should be recalled, and that they should be given an opportunity of rectifying their claim by specifying, valuing, and deducting their security over the said policy of assurance.

The appellants averred—"(Cond. 5) On 20th February 1904 the respondent issued to the appellants his deliverance on their claim, in which he admitted the claim, the dividend being 2½d. per pound. On 22nd February 1904 the respondent wrote to the appellants calling upon them to convey to him the above-mentioned policy. The trustee assigned no reason for this pretended intimation and has no grounds or warrant for making any such call. (Cond. 6) The receipt of this intimation, however, aroused the appellants' suspicions, and on fresh inquiry at the Assurance Company the appellants learned for the first time that according to and under the regulations of the company, the said policy, although it had *de facto* lapsed, and although the appellants were not entitled to claim from the company any surrender value, the said policy might upon certain terms and conditions be revived. On 25th February 1904 the appellants received from the Assurance Company in answer to further inquiries, an intimation that if the appellants made payment to the company of £49, 3s., being two renewal premiums in arrear with interest thereon the policy would be revived, and that the company would then allow a surrender value on the policy of £123, 17s. (Cond. 9) The respondent, the trustee foresaid, was all along aware of the appellants' right to revive said policy, and in particular he was aware thereof, and of the appellants' security over said policy at the time he issued his alleged deliverance pretending to admit the appellants' claim to an ordinary ranking. Notwithstanding this, he did not, as it was his duty to do, call upon the appellants to rectify their claim in terms of the statute. The alleged deliverance is therefore premature, and not in accordance with the Bankruptcy Statute, and the pretended admission of the appellants' claim is part of an illegal attempt or device to deprive them of their just security."

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79) enacts (section 65)—"To entitle any creditor who holds a security over any part of the estate of the bankrupt to be ranked in order to draw a dividend, he shall on oath put a specified value on such security and deduct such value from his debt, and specify the balance."

Section 51 of that Act provides as follows—"When it shall appear to the sheriff or to the trustee that the oath or claim of any person produced with a view to voting or ranking and drawing a dividend in the sequestration is not framed in the manner required by this Act, the sheriff or trustee, as the case may be, shall call upon such person or his agent or mandatory to rectify his oath and claim, pointing out to him wherein it is defective, and unless such person or his agent or mandatory shall thereupon make such alteration upon his oath and claim as may be necessary in order to rectify the same, the sheriff or trustee, as the case may be, shall disallow or reject such oath and claim."

On 21st May 1904 the Sheriff-Substitute (ORPHOOT) pronounced an interlocutor in the following terms—"Recals the deliverance appealed against: Allows the appellants, within fourteen days from this date, to rectify their oath and claim by specifying, valuing, and deducting a security held by them over policy No. 26,113, with the Alliance Assurance Company, for the sum of £600 belonging to and on the life of the bankrupt James M'Call, and that either by making the necessary additions to their existing oath and claim or by lodging a new one: And on such rectified oath and claim being lodged, remits to the trustee to forthwith consider and adjudicate on the same in terms of the statute, in order that the appellants may participate in the first dividend, and decerns."

Note.—"The appellants are the trustees of the late William Ritchie, a creditor of the bankrupt James M'Call, and the respondent is the trustee upon M'Call's sequestrated estate. The appellants hold a policy of insurance on the life of the bankrupt which he had assigned to the late William Ritchie in security of certain debts due to Ritchie by the bankrupt. The bankrupt failed to pay one of the premiums due on the policy, and the insurance company informed the law-agent of the appellants that, in consequence of the failure to pay the premium, the policy had lapsed and had no surrender value. Upon this information the oath and claim of the appellants which was lodged in the sequestration did not refer to or place any value upon the policy of insurance. Upon the oath and claim so lodged the appellants were ranked by the deliverance appealed against. After this deliverance was issued, however, the appellants ascertained that the policy of insurance had a surrender value of £123, 17s., and the respondent has called upon them to convey to him the said policy. In these circumstances the appellants bring the present appeal. In answer the respondent pleads that the appeal is incompetent, and that the averments upon which it is rested are irrelevant. The grounds upon which the respondent rests these pleas are:—

"(1) That the appellants have got all they asked for. This is a technical ground of objection and in the circumstances of this case not one entitled to favourable consideration. The appellants having in error failed to frame their oath and claim in the manner required by the Bankruptcy Act by putting a special value upon their security, the trustee, in the knowledge of the existence and value of that security, ranks the appellants upon an exaggerated claim to an exaggerated dividend. I think that the trustee is barred from pleading such a course of conduct. I do not assert

that a trustee is bound to seek for securities which creditors may possess, but when the existence of such securities comes to his knowledge, it then, in terms of the Bankruptcy Act 1856, section 51, 'appears to . . . the trustee that the oath . . . is not framed in the manner required' by that Act, and 'the trustee *shall* call upon' the creditor 'to rectify his oath.' I think that such was the duty of the trustee in this case, and that he cannot by the deliverance appealed against rank an illegal claim. In the case of *Cleland Trustees* v. *Dalrymple*, December 18, 1903, 41 S.L.R. 159, the Lord President states that the trustee should consider claims in an impartial and judicial spirit. But that course is not adopted when the result of what is done is to sustain an illegal claim.

"(2) The next ground upon which the objection to the competency is rested is, that the motion to amend is too late, in respect it has been adjudicated upon. This is met by the answer that any deliverance of the trustee is appealable under the Bankruptcy Act, section 169. But in addition to this consideration the very peculiar kind of adjudication pronounced here cannot, for the reasons already stated, be founded upon in bar to an appeal or amendment. The case of *Latta* v. *Dall*, November 28, 1865, 4 Macph. 100, establishes that an amendment such as is proposed here is within the scope of the 51st section of the Bankruptcy Act.

"I repel the objections to the competency of the appeal and allow the proposed amendment to be made."

M'Call's trustee appealed to the Court of Session.

The argument presented for the appellant is disclosed in the Sheriff-Substitute's note, *supra*. The case of *Young* v. *Strathie*, August 5, 1896, 12 Sheriff Court Review, was cited.

The repondents were not called upon.

LORD TRAYNER—I do not wish to use any language implying censure of the conduct of the appellant, but I cannot approve of the course he has followed. When the defendants' claim was lodged in the sequestration, the appellant knew (as he admits) that the defendants held the security of a life policy belonging to the bankrupt, which they had not valued in terms of the statute. I think he should have called on the defendants to amend their claim by valuing their security, in order, *inter alia*, that he and the creditors might consider whether they would take over the security at the value put upon it. Or he should have rejected the claim as made because an existing security held by the claimants had not been valued. He took neither course, but admitted the claim as made, with the effect (if not with the view) of depriving the respondents of the value of their security. Of that, as I have said, I cannot approve. The appellant says that the respondents were all along aware of the value of this security. They say they were not, and the Sheriff-Substitute has adopted their statement. I think it unlikely that they did, in point of fact, although they might perhaps by a little more diligence have ascertained it. But to allow the amended claim now to be lodged is only justice to the respondents, and does no injustice to the other creditors. Accordingly I think this appeal should be dismissed.

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

LORD MONCREIFF was absent.

The Court dismissed the appeal.

Counsel for the Appellant, M'Call's Trustee—Cooper—D. P. Fleming. Agents—Clark & Macdonald S.S.C.

Counsel for the Respondents—Salvesen, K.C.—Hunter. Agent—A. C. D. Vert, S.S.C.

Thursday, June 30.

FIRST DIVISION.

[Sheriff Court of Dumfries and Galloway at Dumfries.

JOHNSTONE *v.* COCHRAN & COMPANY, ANNAN, LIMITED.

Master and Servant—Review of Weekly Payment—Refusal of Arbitrator to Allow Proof—Medical Examination of Workman—Power of Arbitrator—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *Sched. I* (12), *Sched. II* (13)—*Statutory Rule and Orders*, 1898, *No.* 407, *sec.* 2.

In an application by employers under Schedule I (12) of the Workmen's Compensation Act, to review a weekly payment to a workman under an agreement recorded in terms of the Act, the employers produced in the arbitration a certificate from a medical practitioner provided by them, to the effect that the workman had recovered from the injuries sustained by him. When the application came before the Sheriff-Substitute, the workman moved for a proof at large. The Sheriff-Substitute refused this motion, remitted the case to one of the medical practitioners appointed for the purposes of the Act, and subsequently, after consideration of the report of this medical practitioner, pronounced judgment ending the weekly payment.

The workman appealed.

The Court, holding that the Sheriff-Substitute was wrong in refusing to allow the proof asked by the workman, *sustained* the appeal and remitted to the Sheriff-Substitute to allow a proof.

The Workmen's Compensation Act 1897 (60 and 61 Vict. c. 37), First Schedule, enacts, sec. 12:—"Any weekly payment may be reviewed at the request either of the employer or of the workman, and on such review may be ended, diminished, or increased . . . and the amount of payment