the proposed amendment, but moved the Court to dismiss the reclaiming note in respect of the failure of the reclaimers to print the evidence in the proof from which, in conjunction with documents in process, he maintained that he could show, even if the amendment were allowed, that he was still entitled to hold the decree.

Argued for the reclaimers—There was no necessity for printing the evidence, since the reclaiming note contained all that was required under the Judicature Act 1825 (6 Geo. IV, cap. 120), section 18. The Court looked with disfavour on the printing of unnecessary portions of process—*Cranston* v. *Mallow & Lien*, 1912 S.C. 112, 49 S.L.R. 186. The legality of the amendment was regulated by the Court of Session (Scotland) Act 1868 (31 and 32 Vict. cap. 100), sec. 29, which made the amendment of the record imperative when necessary for determining the real question in controversy—*Gelot* v. *Stewart*, March 4, 1870, 8 Macph. 649, Lord Neaves at 656, 7 S.L.R. 372; *Guinness, Mahon, & Company* v. *Coats Iron and Steel Company*, January 21, 1891, 18 R. 441, 28 S.L.R. 285. The amendment contained averments of *res noviter veniens ad notitiam* which could always be added to record—*Johnston* v. *Johnston*, March 14, 1903, 5 F. 659, 40 S.L.R. 499. When an amendment of record was allowed the proper course was to remit to the judge of first instance to take additional proof—*Muir & Son, Limited* v. *Edinburgh and Leith Corporations Gas Commissioners*, May 22, 1906, 8 F. 810, 43 S.L.R. 598.

Argued for the respondent—The reclaiming note should be dismissed in respect that the evidence led at the proof had not been printed, in the light of which alone the amendment would be intelligible—*Muir* v. *Mackenzie*, October 15, 1881, 9 R. 10, Lord President Inglis at 11, 19 S.L.R. 3; *Penney* v. *Sawers and Others*, July 3, 1890, 27 S.L.R. 988. Assuming the proposed amendment were made, it could be shown from the evidence and the documents that the respondent was entitled to the decree he held. It should therefore be disallowed.

The Court (LORD DUNDAS, LORD MACKENZIE, and LORD CULLEN) pronounced this interlocutor—

> "The Lords having heard counsel for the parties on the minute of proposed amendment . . . allow the same to be received on condition that the defenders pay to the pursuer within one month from this date the taxed amount of the expenses incurred by him since closing the record, and remit the account thereof to the Auditor to tax or to report, and on payment of such expenses allow the pursuer if so advised to answer the said amendment."

Counsel for the Reclaimers—Maclennan, K.C.—Christie. Agents—M'Kenzie & Fortune, S.S.C.

Counsel for the Respondent—M. P. Fraser. Agents—Erskine Dods & Rhind, S.S.C.

Friday, July 17.

FIRST DIVISION.

WILLIAM BAIRD & COMPANY, LIMITED *v.* ANCIENT ORDER OF FORESTERS.

Master and Servant—Workmen's Compensation Act 1906 (6 *Edw. VII, cap.* 58), *Sched. II* (9)—*Insurance—National Insurance Act* 1911 (1 *and* 2 *Geo. V, cap.* 55), *sec.* 11 (1) (c)—*C.A.S., L, xiii, sec.* 12—*Approved Society Intervening as to Agreement Dealing with Compensation—Procedure.*

An approved society under the National Insurance Act 1911 were of opinion, that the lump sum £100, proposed in an agreement under the Workmen's Compensation Act 1906 for the redemption of the compensation payable to an insured person, was inadequate, and lodged a minute with the sheriff-clerk objecting to the recording of the memorandum. The sheriff-clerk handed on the minute to the Sheriff, who proceeded to consider the matter. *Held* (1) that the procedure was incompetent, as it was for the sheriff-clerk to consider information tendered him, and then for him, if he were satisfied, to prepare and lodge a minute setting forth all his reasons, when the memorandum fell to be dealt with as an application for arbitration on the questions raised in the sheriff-clerk's minute, but (2) that the approved society was entitled to tender information to the sheriff-clerk, and might be heard by the arbitrator, if arbitration evolved, in considering what order he should pronounce.

Question if an approved society is a "party interested" in the sense of the Workmen's Compensation Act 1906, Schedule II (9).

Burns v. *William Baird & Company, Limited*, 1913 S.C. 358, 50 S.L.R. 280 *commented on.*

The Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Schedule II (9), enacts—"Where the amount of compensation under this Act has been ascertained, or any weekly payment varied, or any other matter decided under this Act . . . by agreement, a memorandum thereof shall be sent in manner prescribed by Act of Sederunt . . . by any party interested to the sheriff-clerk, who shall, subject to such Act of Sederunt, on being satisfied as to its genuineness record such memorandum in a special register without fee, and thereupon the memorandum shall for all purposes be enforceable as a recorded decree-arbitral: Provided that . . . (*d*) where it appears to the sheriff-clerk on any information which he considers sufficient that an agreement as to the redemption of a weekly payment by a lump sum, or an agreement as to the amount of compensation payable to a person under any legal disability or to dependants, ought not to be registered by reason of the inadequacy

of the sum or amount, or by reason of the agreement having been obtained by fraud or undue influence or other improper means, he may refuse to record the memorandum of the agreement sent to him for registration and refer the matter to the Sheriff, who shall, in accordance with Act of Sederunt, make such order (including an order as to any sum already paid under the agreement) as under the circumstances he may think just. . . ."

The National Insurance Act 1911 (1 and 2 Geo. V, cap. 55), sec. 11 (1), enacts—"Where an insured person has received or recovered, or is entitled to receive or recover, whether from his employer or any other person, any compensation or damages under the Workmen's Compensation Act 1906, or under the Employers' Liability Act 1880, or at common law, in respect of any injury or disease, the following provisions shall apply:— . . . (c) Where an agreement is made as to the amount of such compensation as aforesaid, and the amount so agreed is less than ten shillings a-week, or as to the redemption of a weekly payment by a lump sum under the Workmen's Compensation Act 1906, the employer shall within three days thereafter, or such longer time as may be prescribed, send to the Insurance Commissioners, or to the society or committee concerned, notice in writing of such agreement, giving the prescribed particulars thereof, and proviso (*d*) to paragraph (9) of the Second Schedule of the Workmen's Compensation Act 1906 (which relates to the powers of sheriff-clerks to refuse to record memoranda of agreements and to refer the matter to the Sheriff) shall, in cases where the workman is an insured person, apply to agreements as to the amount of compensation in like manner as to agreements as to the redemption of weekly payments by lump sums. . . ."

The Codifying Act of Sederunt 1913, L, xiii, sec. 12 (superseding Act of Sederunt of 26th June 1907, rule 12), enacts—"When the genuineness of a memorandum under paragraph 9 of the Second Schedule appended to the Act is disputed, or when an employer objects to the recording of such memorandum under sub-section (*b*) of said paragraph, or the sheriff-clerk refuses under sub-section (*d*) of said paragraph to record such memorandum, the person disputing the genuineness, or the employer, or the sheriff-clerk, as the case may be, shall lodge a minute stating clearly all the grounds for his action, and the memorandum shall thereupon be dealt with as if it were an application to the Sheriff for settlement by arbitration of the questions raised by the minute."

A Stated Case between William Baird & Company, Limited, *appellants*, and the Ancient Order of Foresters, *respondents*, under the Workmen's Compensation Act 1906, was brought appealing a decision by the Sheriff-Substitute (MACDIARMID) at Dumbarton.

The Case stated—"This is an arbitration under the Workmen's Compensation Act 1906 in which the questions stated for the opinion of the Court on appeal arise in the following circumstances:—

"On 28th June 1913 Andrew Rankine, repairer, Barrhill, Twechar, lodged a memorandum of agreement (signed by himself) with the Sheriff-Clerk of Dumbarton.

"The memorandum was in these terms:—

"'The claimant whilst in the employment of the respondents (appellants) sustained personal injury, consisting of fractured left arm, contused hand, and injury to back caused by accident at their No. 2 Pit, Gartshore Colliery, on 27th December 1912.

"'An agreement was made on 26th June 1913, and was as follows:—

"'That a lump sum payment amounting to one hundred pounds sterling, in addition to the weekly compensation already paid, was accepted by the claimant in full satisfaction and discharge of all claims past and future in respect of said accident.

"'It is requested that this memorandum be recorded in the Special Register of the Sheriff Court of Stirling, Dumbarton, and Clackmannan, at Dumbarton.

'(Signed) Andrew Rankine, claimant,

"'To the Sheriff-Clerk, 26/6/1913.

'Court House, Dumbarton.'

"On said 28th June 1913 the sheriff-clerk sent the usual notice to the appellants intimating that the agreement had been lodged, and inquiring if they consented to its being recorded, and on 4th July he received a letter from the Scottish Mine Owners' Defence and Mutual Assurance Association, Limited, consenting on behalf of the appellants to the recording thereof.

"On said 4th July a minute was lodged by the Ancient Order of Foresters in the following terms:—'The minuters, being an approved society under the National Insurance Act 1911, and the claimant being one of their members as an insured person under the said Act, object to the recording of the memorandum of agreement lodged with the sheriff-clerk at Dumbarton on 28th June 1913, and crave that the said memorandum of agreement be not recorded, in respect that the sum agreed upon, namely, £100, as a lump sum in redemption of the weekly payments by the respondents to the claimant is inadequate.'

"Prior to the lodging of said minute (after receipt of appellants' intimation of consent to the registration of said memorandum of agreement) the sheriff-clerk had no information upon which he could have objected to the registration of said memorandum of agreement on the ground of inadequacy of the amount or otherwise.

"The sheriff-clerk immediately put the documents before me, and intimated to the appellants and the respondents that they would be heard by me on them.

"At the hearing it was admitted that the said Ancient Order of Foresters was an approved society under the National Insurance Act 1911, and that the said Andrew Rankine was an insured person within the meaning of the said Act, and, as such, a member of the said approved society.

"Having heard parties' procurators for the appellants and respondents, by interlocutor dated 18th August 1913 I found in law (*a*) that the said approved society was a party interested for the purposes of para-

graph 9 of the Second Schedule of the Workmen's Compensation Act 1906; (*b*) that section 2 (1) (c) of the National Insurance Act 1911 extended the discretion of the sheriff-clerk under paragraph 9 (d) of the said Second Schedule to include the matter of weekly payments and lump sum payments in the case of insured persons within the meaning of the National Insurance Act; (*c*) that the said approved society was entitled to communicate to the sheriff-clerk information which might assist him in the exercise of his discretion under said paragraph of the said Second Schedule as extended by section 2 (1) (c) of the National Insurance Act 1911; (*d*) that the sheriff-clerk, having in effect, although not by formal minute as provided by Rule XII of the Act of Sederunt of 26th June 1907, referred the question in dispute to me, the case of *Burns* v. *William Baird & Company, Limited*, 1913 S.C. 358, applied, and the memorandum and minute fell to be dealt with as provided by said Rule XII; (*e*) that the said approved society was entitled to appear in the arbitration proceedings, and to lead evidence in support of its objection. I therefore appointed the case to be enrolled at the first convenient Court day for further procedure. Thereafter a Stated Case was asked by the appellants. The case was duly prepared by the sheriff-clerk and adjusted by the parties, but I was asked by them to delay stating the same pending the decision of the First Division of the Court of Session in the case of *Muir* v. *Flemington Coal Company, Limited, and Others.*"

The *questions* were—"1. Was I right in holding that the said approved society was a party interested for the purposes of paragraph 9 of the Second Schedule of the Workmen's Compensation Act 1906? 2. Was said society entitled to lodge said minute in said proceedings, and to appear in support of same? 3. In the circumstances stated was there any competent objection to the registration of said memorandum of agreement which fell to be dealt with by me?"

[As the member of the staff taking charge of this case was called out owing to the war, we are unable to supply a detailed argument, but the authorities referred to in addition to the Acts were—by the appellants —*Bonney* v. *Hoyle & Sons, Limited*, [1914] 2 K.B. 257; *Burns* v. *William Baird & Company, Limited*, 1913 S.C. 358, 50 S.L.R. 280; *Rushton* v. *George Skey & Company, Limited*, 1914 30 T.L.R. 601; and by the respondents—*M'Vie* v. *Taylor & Company*, 51 S.L.R. 435.]

At advising—

LORD PRESIDENT—This Stated Case raises an important and novel question under the Workmen's Compensation Act 1906 as viewed in relation to the National Insurance Act of 1911.

A workman in the employment of the appellants, Messrs Baird & Company, sustained personal injury in December 1912, in consequence of an accident which befell him, arising out of and in the course of his employment. Messrs Baird & Company admitted liability, and paid compensation for a time, and then on the 26th June 1913 they made an agreement with the workman that they should pay and that he should accept £100 sterling in full of his claim. A memorandum of agreement to that effect was prepared, was signed by the workman, and was lodged with the sheriff-clerk at Dumbarton to be recorded. Now, as it so chanced, this workman was an insured person under the National Insurance Act 1911, which provides, by section 11 (1) (*c*), that where an agreement is made as to the redemption (I am reading it short) of a weekly payment by a lump sum under the Workmen's Compensation Act 1906, the employer shall, within three days thereafter, give notice in writing of such agreement, giving the prescribed particulars therein to the society concerned, and proviso (*d*) to paragraph 9 of the Second Schedule of the Workmen's Compensation Act 1906, shall, in cases where the workman is an insured person, apply.

I presume that notice was given to the appellants in terms of the statutory provision which I have just read, because on the 4th July they intimated to the sheriff-clerk that they challenged the adequacy of the sum which the workman had agreed to accept. They did so by the medium of a minute which they handed to the sheriff-clerk, which he in turn handed to the arbitrator, who proceeded to consider the case, calling and hearing the approved society. Now I think that procedure was incorrect, because by paragraph 9 (*d*) of the Second Schedule appended to the Workmen's Compensation Act, the duty is thrown upon the sheriff-clerk in such circumstances to receive such information as is tendered to him relative to the adequacy of the sum which the workman has agreed to accept; and if he in his discretion thinks that information is sufficient, it is his duty to lay it before the arbitrator in order that the arbitrator may perform his statutory duty—that is, pronounce such order as in the circumstances he shall think just. And by Act of Sederunt, dated 26th June 1907, C.A.S. 1913, L, xiii, section 12, this Court has enjoined the sheriff-clerk where he thinks the information tendered to him is sufficient to lodge a minute stating clearly all the grounds for his action, and thereupon the memorandum of agreement which has been handed in to be recorded shall be dealt with as if it were an application to the Sheriff for settlement by arbitration of questions raised by the sheriff-clerk's minute. That is the procedure which is prescribed by the statute and by the Act of Sederunt. That procedure was disregarded in the present case.

I am of opinion, therefore, that the case must go back to the sheriff-clerk in order that he may receive and consider any information which is tendered to him by the approved society, the Ancient Order of Foresters. If he in his discretion thinks the information so tendered is sufficient, then he himself must prepare a minute setting forth the grounds of his action and lay that minute before the arbitrator, whose duty it will then be to proceed exactly as

if the memorandum of agreement were an arbitration, and consider the question raised in the sheriff-clerk's minute, and pronounce such order as in the circumstances he shall think just. And if the arbitrator thinks it necessary or desirable, in order to enable him to discharge his statutory duty, to hear the approved society, and to hear evidence tendered by the approved society, he is well entitled to do so, because he is master of the procedure before him, and it is his duty to receive any information which he thinks necessary or desirable to enable him to discharge the duty which is laid upon him—to pronounce such order as he thinks just. It will be for him, therefore, to determine whether or no it is expedient to hear the society and to hear the evidence which is tendered by the society.

Now, it was urged before us that, whilst the society was entitled to tender information to the sheriff-clerk challenging the adequacy of the award, they were powerless to take any further step; that having given the initial impetus to the procedure they were then denied the right to follow forth the procedure which they had initiated. The result might be to deprive the arbitrator of, it may be, the only means by which he could discharge his statutory duty. The approved society might be—and we can easily see in many cases would be—the only person interested to render aid to the arbitrator in the performance of his statutory duty. Nevertheless—so it was argued—the approved society, having given information, must then retire. It signifies nothing that the society is deeply interested in the result of the proceedings, that it may be the only party interested in the result of the proceedings, that it is entitled by statute to receive notice of the memorandum of agreement, and to initiate proceedings if the workman himself neglects to do so. And it is said that the arbitrator is not only entitled but bound not to avail himself of what may be the one and only means of enabling him to discharge his statutory duty. I cannot think so. No clause in the Act of Parliament, and no clause in the Act of Sederunt, was cited to us which would constrain us so to hold. In my view, therefore, the whole procedure here must be commenced anew.

It was argued very forcibly to us, on the authority of a recent decision in the Appeal Court in England in the case of *Bonney* v. *Hoyle & Sons, Limited*, that an approved society could not be considered as a party interested in the sense of paragraph 9 in the Second Schedule appended to the Workmen's Compensation Act. That may be so. It is unnecessary to consider and decide that question, because I do not find the phrase "party interested" either in paragraph 9 (*d*) of the schedule or in article 12 of the Act of Sederunt, which in my opinion combine to regulate the procedure which ought to be here adopted. I desire, for my own part, to reserve my opinion upon the question whether or no an approved society is a "party interested" in the sense of the paragraph 9 of the Second Schedule. My present view is that it is a party interested, is deeply interested, and may be the only party interested in these proceedings, because if the amount of compensation which is awarded to the workman is equal to or greater than the weekly benefit which he is to receive from the approved society, then he has no claim against the approved society under the National Insurance Act, and if the amount which is given to the workman under the Workmen's Compensation Act is less than the benefit which he is entitled to receive, then the approved society is bound by statute only to pay the difference.

Turning now to the points of law upon which the arbitrator has pronounced an opinion, with regard to the first—"(*a*) that the said approved society was a party interested for the purposes of paragraph 9 of the Second Schedule of the Workmen's Compensation Act 1906," I find it unnecessary to pronounce any opinion. As regards the second—"(*b*) that section II (I) (*c*) of the National Insurance Act 1911, extended the discretion of the sheriff-clerk under paragraph 9 (*d*) of the said Second Schedule to include the matter of weekly payments and lump sum payments in the case of insured persons within the meaning of the National Insurance Act"—again I find it unnecessary to express an opinion, because that is merely, I think, a repetition of the words of the Act. As regards the third—"(*c*) that the said approved society was entitled to communicate to the sheriff-clerk information which might assist him in the exercise of his discretion under said paragraph of the said Second Schedule as extended by section 2 (1) (*c*) of the National Insurance Act 1911"—I think the approved society was entitled to do so. As regards the fourth—"(*d*) that the sheriff-clerk having in effect, although not by formal minute as provided by rule 12 of the Act of Sederunt of 26th June 1907, referred the question in dispute to me, the case of *Burns* v. *William Baird & Company, Limited*, 1913 S.C. 358, applied, and the memorandum and minute fell to be dealt with as provided by said rule 12"—I dissent from that finding. I do not think that the minute given in by the approved society can be considered as equivalent to the minute of the sheriff-clerk. To regard it so would be to dispense with the duty which is thrown upon the sheriff-clerk both by the statute and by the Act of Sederunt, which affords, as I think, a legitimate protection to the parties to an agreement, when that agreement, to which they are still adhering, is challenged for some other and outside reason.

With regard to the case of *Burns* v. *Baird* all I have to say is this—If I may respectfully say so, I agree with the conclusion at which the learned Judges of the Second Division arrived; but I do not agree with the method of procedure followed and accepted by them by which that conclusion was reached. But I do not understand that the Second Division intended to lay down a general rule that the Act of Sederunt and the statute might in all cases be brushed aside, and that the procedure might be the shorthand and, as I think, the incorrect, procedure which was sanctioned in the case

of *Burns*, where the minute given in by the workman was treated as the minute of the sheriff-clerk. I do not regard the sheriff-clerk's intervention as a technicality. I think it is a reality, and that the procedure which is prescribed by paragraph 9, taken in conjunction with the Act of Sederunt of 26th June 1907, ought to be followed in every case similar to the present.

I should for my own part be quite ready to answer the second question put to us in the affirmative; but on the whole I think it would be safer to return no answer to any of the three questions submitted to us, and to remit the case *simpliciter* to the Sheriff Court in order that the sheriff-clerk may proceed to discharge his statutory duty by receiving any information which is tendered to him relative to the inadequacy of the sum in the memorandum of agreement, by considering the sufficiency of that information, and, if he considers it adequate, by framing a minute in terms of the Act of Sederunt and laying that minute before the arbitrator, who shall then, as I have said, be entitled to judge for himself whether he shall hear the approved society and receive from them any evidence which they may choose to tender. He must decide for himself. If he thinks it necessary or desirable to enable him to discharge his statutory duty, then I think he will not only be entitled but bound to hear the society and to hear the evidence which they think it right to tender.

LORD JOHNSTON—I agree with your Lordship, and I would not add anything, but that I take a rather different view from your Lordship upon one point, namely, whether or no the approved society is a party interested. That the approved society is a party having a pecuniary interest I fully appreciate, but I do not think the approved society is a "party interested" in the sense of the preamble to section 9 of the Second Schedule to the statute.

Of course approved societies are not expressly provided for in the statute, as it was passed before the project of the Insurance Act was disclosed or the approved societies created, but they may none the less come under the terms of the Act already passed and its incorporated schedule. Nevertheless I find nothing in the enactment which entitles them to claim the position of a party interested with an initiation as such, or gives them any initiation at all, except that which the schedule allows to anyone, namely, of laying information before the sheriff-clerk under section 9, sub-section (*d*), of the schedule. It seems to me that it is open to them, as it is open to anyone else, to lay such information; but that does not entitle them—as they have attempted and been allowed to do here—to initiate proceedings by lodging a minute as if they were parties, or even to make themselves parties to a proceeding already pending in the Court. In the present case there was no such proceeding pending, and it is only at a later stage, after the sheriff-clerk has done his duty in the way which your Lordship has explained and the Sheriff is called upon to act in his statutory position of arbitrator, that there can be said to be a proceeding. I think it is desirable to keep in mind that the Sheriff, as arbitrator under the statute, must not be regarded as a person to whom, under an ordinary submission, a reference is made by two parties. He is called "arbitrator," not "arbiter," in the statute. Not knowing whether arbitrator has any technical meaning in England, I do not know whether the use of the term indicates any distinction. But he is clearly not an arbiter in the sense of a "referee." He is a statutory official, and his functions arise from the statute and not from a deed of submission. He is called upon by paragraph 9 (*d*) of the schedule at a certain stage, in accordance with rules of Court, to deal with a matter which not parties to a reference but the sheriff-clerk may refer to him. When the sheriff-clerk makes that reference the sheriff has then to dispose of it, as he has to dispose of a great many other matters under the statute, and it is then in his power to call on such parties as he thinks necessary or desirable to hear before determining the matter so referred to him, and an approved society may be one of them. But he will do so in his own discretion, not because they are parties interested in the sense of the statute and entitled either to initiate or appear, but because he thinks that to enable him to perform his statutory duty it is desirable that he should hear what they have to say, or what information they have to give.

Accordingly, for my part I think that we should in this case refuse to answer any of the questions, and send the case back in order that it may be started again on the lines which the statute contemplated.

LORD SKERRINGTON—The principal question in regard to which we heard argument was the first question of law put in the Special Case, namely, whether the Sheriff-Substitute was right in holding that the approved society was a party interested for the purposes of paragraph 9 of the Second Schedule of the Workmen's Compensation Act 1906? When one turns to paragraph 9 of the Second Schedule one finds that this question has really no bearing one way or the other upon the only matter which we have to decide, because the phrase "interested party" as used in paragraph 9 has reference to the persons who are to receive intimation of an application to record a memorandum, presumably with the object that persons receiving such intimation may come forward and object to the genuineness of the memorandum. In the present case no question of genuineness arises. Both the workman and the employer state that the memorandum is a genuine record of the agreement, and they both wish it to be registered.

I express no opinion upon the question whether an approved society may not in certain circumstances be a "party interested" who is entitled to come forward and impugn the genuineness of a memorandum. I can figure one case at least in which it would be difficult to deny the title and interest of an approved society. I refer to the case

where they had initiated proceedings on behalf of the workman for getting compensation assessed, as they are entitled to do in certain exceptional cases by the National Insurance Act. If by way of defence an employer tabled a memorandum of agreement and then made application to have that memorandum recorded, it would be very strange if the approved society which had initiated the whole proceeding was not entitled to show that the memorandum was not a genuine record of an agreement between the employer and the workman.

However, as I said before, no question of that kind arises, because the approved society intervened in the present case for the purpose of stating that the lump sum of £100 which had been agreed upon in redemption of the weekly payments was inadequate. Now a very cursory examination of paragraph 9 shows that this procedure was entirely irregular, because paragraph 9 shows that nobody, not even the workman, is entitled to come forward and object to the recording of the memorandum on the ground that the redemption money was inadequate. No one can do that except the sheriff-clerk, and he must act upon information; and anyone, whether with an interest or without an interest, is entitled to lay information before the sheriff-clerk. On this point I beg respectfully to say that I should have been prepared to answer the second question in the negative, because I think it was utterly irregular for the sheriff-clerk to allow that minute by the approved society to be lodged in process. On the other hand, he was quite entitled when the minute was brought to him to say—"I will read your minute to see whether there is any useful information to be found in it." And I think the only reasonable comment one could make on this minute is that it contained no useful information at all. But I am far from dissenting from the practical course which your Lordship suggests, namely, that this approved society, presumably acting in good faith and having some information, should have an opportunity of laying that information before the sheriff-clerk. But I think that the sheriff-clerk ought to be extremely careful to see that the power of laying information is not abused by approved societies, and that they are not allowed to get a *locus standi* by giving vague general information such as they tendered in this particular case. I should expect that the sheriff-clerk as a reasonable man would say—"You must tell me why the £100 was too little. You must tell me what the true sum in your view ought to have been, and you must further give me the names and addresses of the witnesses whom you are prepared to adduce to prove your case." I merely express these views, but I have no right to say anything which would hamper the sheriff-clerk to whom Parliament has intrusted this discretion, and still less the Sheriff, who will have to exercise his discretion if and when the matter comes before him on information from the clerk.

The statute says nothing to guide or to hamper the Sheriff in regard to what he is to do except that he is to dispose of the matter as he thinks just. Obviously he must act judicially in the matter. He must not hear the informants behind the back either of the workman or of the employer, because both these parties are interested in the validity of the agreement. Whether as a matter of process the Sheriff ought to sist the approved society in order that they might be made liable for the expenses of a litigation which they had practically initiated in their own interest is a question which the Sheriff will have to consider in due time.

I understand that your Lordships propose to give no answers to these three questions, and I do not dissent from that course being taken.

LORD MACKENZIE was not present.

The Court recalled the determination of the Sheriff-Substitute as arbiter and remitted the cause to the Sheriff Court to begin *de novo*.

Counsel for the Appellants—Cooper, K.C.—Carmont. Agents—W. & J. Burness, W.S.

Counsel for the Respondents—Mackenzie, K.C.—C. H. Brown. Agents—W. & W. Finlay, W.S.

Wednesday, July 15.

FIRST DIVISION.

ANDERSON'S TRUSTEES *v.* LYON AND OTHERS.

(See *Thomson* v. *Anderson*, July 19, 1887, 14 R. 1026, 24 S.L.R. 731.)

Trust—Charitable and Educational Trust—Church—Fulfilment of Original Purpose—Lapse—Cy près.

Certain heritable property was acquired in 1871, and the disposition taken in the name of trustees "for the congregation of United Original Seceders presently worshipping in Adam Square under the pastoral charge of the Reverend Archibald Brown." Mr Brown had had fundamental differences with the Synod of the United Original Seceders, which led them to suspend but not depose him. In 1878 the congregational existence ceased. Mr Brown died in 1879. During the non-existence of a congregation the property was let and the rents accumulated. In 1912, on the death of the sole surviving trustee, the property was claimed by the Synod of the United Original Seceders, by several congregations of that body, and by the Lord Advocate as *bona vacantia*. *Held* (*rev.* judgment of Lord Ordinary Cullen) that, failing the establishing of a claim of right by one of the congregations, a scheme for administration of the trust ought to be prepared.

On October 8, 1912, James Anderson, Commercial Street, Kirkcaldy, and others, trustees and executors of the late Henry