summons necessarily imported a decree for expenses. No decree of this Court was ever construed in this way. In fact it was not competent to decern in terms of the conclusions, and to find the party in whose favour the decree was given liable in expenses.

LORD BELHAVEN *v.* HARVIE, ETC.

Process—Proving the Tenor—Relevancy—Amendment. Held that an averment of the *casus ammissionis* in a proving of the tenor was insufficient, but amendment allowed.

Counsel for Pursuer—Mr Deas. Agents—Messrs Duncan & Dewar, W.S.

This was an unopposed action of proving the tenor of a charter dated in 1605. The only *casus amissionis* averred was, that in the course of the long time that has elapsed since its date, the deed had been lost in passing through the hands of the successive proprietors and their agents, or had gone amissing *casu fortuito.* The Court holding this averment insufficient, allowed the case to stand over that the summons might be amended.

Thursday, Nov. 30.

In this action the court to-day sustained an amendment of the libel to the effect that neither the pursuer nor his agents had ever seen the deed, the tenor of which was sought to be proved, and so far as they could learn, no person now alive had ever seen it; that it must have gone amissing at a period beyond memory; and that the pursuer was consequently unable to specify either the time or the manner of its disappearance. The pursuer was thereupon allowed a proof of the *casus amissionis* and adminicles alleged.

Tuesday, Nov. 28.

YOUNG *v.* ANDERSON.

Submission — Decree-Arbitral — Reduction — Ultra fines submissi—Corruption. (1) Averments that an arbiter had exceeded his powers, which held irrelevant; and (2) proof allowed before answer of averments that he had acted corruptly.

Counsel for Pursuer—The Solicitor-General and Mr Gifford. Agents—Messrs Baxter & Mitchell, W.S.

Counsel for Defender—Mr Gordon and Mr Mackenzie. Agents—Messrs Ellis, W.S.

These were conjoined actions of suspension of a charge on, and reduction of, a decree arbitral. The parties were partners in the working of the Bartonshill Colliery. They dissolved partnership on 28th February 1863, and appointed Mr William Moore, C.E., in Glasgow, as sole arbiter, with full power to dispose of "all disputes and differences that have arisen or may arise betwixt them." Mr Moore pronounced decree against the pursuer for considerable sums, whereupon this litigation commenced. The grounds of reduction were that the arbiter had exceeded his powers (1) in decerning for a debt claimed by the firm from the pursuer as a third party, while the submission was limited to questions arising betwixt the parties as partners of the firm; (2) in setting aside and disregarding an agreement and docqueted account betwixt the parties; and (3) in disregarding certain invoices rendered by the defender to the pursuer, and debiting the pursuer with much larger quantities of coal than these invoices warranted. The pursuer also alleged that the arbiter had acted corruptly in delegating his duties to the clerk to the submission, in pronouncing judgment without sufficient evidence and otherwise.

LORD BARCAPLE held that the pursuer's averments as to excess of duty on the part of the arbiter were irrelevant; but as to the averments of corruption he thought the pursuer was entitled to lead proof.

Both parties reclaimed, and to-day the Court adhered, and remitted to the Lord Ordinary to allow a proof before answer of such of the statements on record as he should think proper.

SECOND DIVISION.

LATTA *v.* DALL.

Bankruptcy — Trusteeship — Competition — Oath of Creditor—Power of Sheriff to amend. Held that a Sheriff, if not present at the meeting for the election of trustee, may allow a creditor to amend an affidavit not framed in terms of the Bankrupt Statute, when considering the report made to him of the minutes of the meeting.

Counsel for the Appellant—The Lord Advocate and Mr Pattison. Agent—Mr Somerville, S.S.C.

Counsel for the Respondent—The Solicitor-General and Mr J. C. Thomson. Agents—Messrs Millar & Robson, S.S.C.

This is an appeal from a deliverance of the Sheriff-Substitute of Edinburgh, by which he allowed the Rev. John Ewen, a creditor in the process of sequestration of the estates of Henderson & Chisholm, wool merchants, Leith, who voted for the respondent in a competition with the appellant for the office of trustee, to amend the claim upon which his vote had been given at the meeting of creditors for election of a trustee. The appeal is brought under the following circumstances:—At the meeting in question two affidavits for Mr Ewen were produced, setting forth that he was a creditor in two sums of £310, 7s. 9d., and £601, 7s. 11d. The affidavits were not framed in terms of the 60th section of the Bankrupt Act, inasmuch as the deponent did not therein value the obligation of co-obligants, and deduct such value from the debts and specify the balance. The meeting was not attended by the Sheriff, and the preses was chosen by the creditors. There was an apparent majority in favour of the respondent as trustee; but the Sheriff, who is bound by the Act to make declaration of the state of the votes, was not present. The preses reported to the Sheriff the minutes of the meeting. When the case came up before the Sheriff the same objection as before was taken to Mr Ewen's affidavits; but the Sheriff allowed him to rectify them in terms of the 51st section of the Bankrupt Act.

The question raised in this process is, whether or not the Sheriff's authority to give such a direction could competently be exercised after the vote of Mr Ewen had been given and recorded at the meeting. The Lord Ordinary on the Bills (Curriehill) adhered to the deliverance of the Sheriff, and dismissed Mr Latta's appeal.

The Court, after reviewing the course of legislation in reference to the question raised in the appeal, adhered to the interlocutor of the Lord Ordinary, holding that the 51st section of the Bankrupt Act was a remedial clause, having for its object to prevent the votes of *bona fide* creditors being rejected by reason of informalities in the form of their affidavits; and that in order to work out the 51st section, it was necessary that the Sheriff, when he had not been present at the meeting for the election of a trustee, when the proceedings came before him, should then have the power to comply with the provisions of the section. If this were not so, the intention of the 51st section would be defeated. It was important to observe that the 51st section did not leave it in the discretion of, but made it imperative upon, the Sheriff to call upon a creditor to rectify an oath. Had he been present at the meeting, he would have done so then. It is only after he has called upon the creditor to amend the affidavit, and he has failed to do so, that the Sheriff is entitled to reject or disallow his oath.