deceased expended at least £700 on the house in question, and makes claim for one-half of that amount. His case is rested solely on the document. There is no averment setting forth what were the sums he alleges he advanced to his father from time to time, and when the advances were made.

I am of opinion that the document upon which the pursuer founds cannot be held to be a document of debt as admitting an unqualified loan and a present indebtedness. It in no way acknowledges the existence of outstanding debt, either of the amount claimed by the pursuer or of any other amount. The purpose of referring to the fact that the pursuer had made advances to his father seems to be simply to lead up to his leaving to his son the one-half of the property for the building of which he had given assistance. But it in no view can be held as acknowledging a present debt, and certainly could not be read as indicating a debt of any fixed amount.

I would therefore move your Lordships to affirm the judgment of the Sheriff-Substitute.

LORD YOUNG concurred.

LORD TRAYNER—This is an action in which the pursuer seeks to recover from his deceased father's trustees a sum of money which the pursuer avers he gave to his father in loan, and which has never been repaid. The Sheriff-Substitute has dismissed the action as irrelevant.

It may be observed, in the first place, that the pursuer does not aver that he lent his father the sum of £350 for which he seeks decree, but merely that he lent him "a considerable sum of money," which I regard as an irrelevant statement, and one which could not be remitted to probation, as being too vague—that is, wanting in specification. Accordingly, as the record stands I think the Sheriff was right in sustaining the defenders' first plea-in-law. If that was the only, or indeed the real point in the case, an amendment of the record could easily obviate the objection. But the question argued before us was whether the letter of the deceased Mr Patrick was sufficient evidence of the alleged loan, and as I suppose the pursuer has no further or other writ of his deceased father to produce in support of his loan, the determination of that question will settle whether the pursuer can succeed in his claims. If that writ is insufficient to establish loan, then the defenders will be entitled to absolvitor.

The pursuer maintains that the letter he founds upon contains an unqualified admission of loan, and that being so, the only answer which can be made to his demand is that the admitted loan has been repaid or discharged. I agree in the law of this proposition if the fact is as stated. But in judging whether the letter in question contains an unqualified admission of loan, we must look not only to the words said to contain the admission but their context. As the Lord President said in the case of *Muirhead* (8 Macph. 461, 7 S.L.R. 273), "a holograph writing, so far as regards its import and effect, may be much influenced by the company in which it is found." Now, it appears to me that the letter founded on does not amount to an unqualified admission of loan. It may certainly be taken as an admission that at some time previous to its date the pursuer "lent" some money to his father, but it is not an admission of loan which necessarily or reasonably implies an admission of present indebtedness. I think the writ to prove a loan must be so expressed as to imply existing indebtedness. To illustrate what I mean, take the case of an I O U; the mere language (or the letters used in place of words) implies that the granter of it *owes* to the grantee the sum therein named. But in contrast, take the case of one friend writing to another, or a son to his father, "I never can forget, or cease to be grateful to you, for the money you lent me ten years ago when I was so hard pressed." From such an acknowledgment, *per se*, I would not infer a continuing and present indebtedness. The letter now founded on seems to me to belong to this latter class. The purpose of the writer was not to acknowledge any debt, but to indicate a certain action which he thought called for, or might call for, some explanation. I agree in the view expressed by the Sheriff-Substitute as to the meaning and effect of the letter in question, and would therefore grant the defenders absolvitor.

LORD MONCREIFF was absent.

The Court recalled the interlocutor appealed against, and assoilzied the defenders.

Counsel for the Pursuer and Appellant—M'Lennan. Agents—Wallace & Guthrie, W.S.

Counsel for the Defenders and Respondents—M'Clure. Agents—Macpherson & Mackay, S.S.C.

Thursday, June 23.

FIRST DIVISION.

MURRAY AND OTHERS, PETITIONERS.

Public Records—Probative Writ—Registration—Deed Lodged for Registration per incuriam without Witnesses having Adhibited their Names—Act 1685, *c.* 38—*Writs Registration (Scotland) Act* 1868 (31 *and* 32 *Vict. c.* 34), *sec.* 1.

A trust-disposition and settlement, which had been prepared by the law-agents of the testatrix in accordance with her instructions, was signed by the testatrix in presence of the law-agent and his clerk, and delivered by her to the law-agent. Subsequently the testing clause was filled in, bearing that the testatrix subscribed in presence of the law-agent and clerk as

witnesses. After the death of the testatrix the trust-disposition was lodged for registration with the Keeper of the Register of Deeds *per incuriam* without the witnesses having adhibited their signatures thereto. Thereafter a petition was presented by the sole trustee under the trust-disposition and by the law-agent and his clerk, before the trust-disposition had been recorded in the Books of the Register, and after the issue of only one extract thereof to the petitioners, craving the Court to grant warrant to and authorise the Keeper of the Register of Deeds, on receiving back from the petitioners the extract issued to them, to give the petitioners or their agent access to the trust-disposition in his hands for the purpose of allowing the witnesses thereto to add their names as witnesses at the sight of the Keeper, and to appoint a copy of the interlocutor to be added to every extract of the trust-disposition that should be issued by the Keeper and to be authenticated by the Keeper as part of the extract.

The Court *granted* the prayer of the petition.

The Writs Registration (Scotland) Act 1868 (31 and 32 Vict. cap. 34), sec. 1, enacts as follows:—"From and after the passing of this Act no writ that shall have been given in to be registered in the Books of Council and Session shall be taken out by the party or anyone employed by him, nor shall any such writ be given up by the Keepers of the Register for any purpose at any time, either before or after the same has been booked, excepting only when authority of the Lords of Council and Session has been expressly given thereto, and then only under such conditions and limitations as may be expressed in such authority, anything in the said recited Act" (an Act of the first Parliament of His Majesty King James the Seventh, held at Edinburgh in the year 1685, intituled 'Act concerning the Registration of Writs in the Books of Session') or in any other Act, or any law or custom to the contrary notwithstanding."

On February 20, 1904, Mrs Jane Hunter or Macdonald, 41 Bath Street, Portobello, widow of the late John Duncan Macdonald, M.D., executed a trust-disposition and settlement, whereby she conveyed her whole estate to Robert Murray, Calside Villa, Paisley, as trustee and sole executor. The trustee was directed to pay certain legacies and pay the residue of the estate to the grand-daughter of the testatrix.

The trust-disposition was framed by the law-agent of the testatrix in accordance with instructions given to him by the testatrix personally, and was extended by a clerk in his employment. The will was read over to the testatrix by the law-agent, who fully explained its effect to her, and was signed by her in presence of the said law-agent and clerk. In view of the weak state of the testatrix's health, the law-agent thought it inadvisable that he and the clerk should remain longer in her room than he could help, and they accordingly left the room after the testatrix had signed, before either had adhibited their names as witnesses. The testing clause of the will was subsequently duly filled in by the clerk—the law-agent and clerk being named therein as witnesses. The will was thereafter placed in a safe in the office of the law-agent without its being noticed that the witnesses had not adhibited their signatures.

On April 20th 1904 the testatrix died.

On April 22nd 1904 the will was lodged by the clerk of the law-agent with the Keeper of the Register of Deeds, Probative Writs, and Protests for the purpose of being registered in the Books of the Lords of Council and Session, without its being noticed that the witnesses had not adhibited their signatures thereto.

In these circumstances this petition was presented on 14th January 1904 by the said Robert Murray, sole trustee and executor under the will, and by the said law-agent and clerk, setting forth the facts above narrated, and stating further that the said will had been lodged with the Keeper of the Register of Deeds, Probative Writs, and Protests *per incuriam* without its being noticed that the witnesses had not yet adhibited their signatures thereto; that although lodged with said Keeper the said will had not been recorded in the Books of the said Register; that only one extract of said will had been issued, and that to the petitioners; that after receipt of the said extract the omission aforesaid was observed; and that the said extract had not yet been produced or founded on in any Court, and, save as set forth in the petition, no procedure of any kind had followed on said will.

The petitioners referred to the Writs Registration (Scotland) Act 1868 (31 and 32 Vict. cap. 34), sec. 1, quoted *supra*, and stated that they were willing to return to the Keeper of the said Register the extract which they had received, and that they desired access to the principal will in order that the said law-agent and clerk, the witnesses present at the execution thereof, might add their signatures as such witnesses.

The prayer of the petition craved the Court "to grant warrant for serving the same on the Deputy Clerk Register and on the Keeper of the Register of Deeds, Probative Writs, and Protests, General Register House, Edinburgh; to allow them to lodge answers thereto, if so advised, within eight days after service; and thereafter, on resuming consideration hereof, with or without answers, to grant warrant to and authorise and appoint the said Keeper of the said Register of Deeds, Probative Writs, and Protests, on production to him of a certified copy of the deliverance to follow hereon, 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 settle-

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