

LORD KINNEAR—I am very clearly of the same opinion for the reasons your Lordship has given.

The Court answered the question stated in the negative, and decerned.

Counsel for the First Parties—Younger, K.C.—Hon. W. Watson. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Second Parties—Guthrie, K.C.—Orr Deas. Agents—Hope, Todd, & Kirk, W.S.

*Tuesday, July 11.*

FIRST DIVISION.

C D v. INCORPORATED SOCIETY OF LAW-AGENTS.

(See *ante* October 18, 1901, 39 S.L.R. 4, 4 F. 4.)

*Administration of Justice—Law-Agent—Forgery—Restoration to Roll—Efflux of Time since Offence.*

In 1901 a law-agent who, having been convicted in 1894 of forging and uttering a pretended interlocutor of Court, and having therefor been sentenced to fifteen months' imprisonment, had had on his own application his name removed from the Register of Enrolled Law-Agents, presented a petition for re-admission, which was supported by letters and certificates testifying to his good conduct since his liberation, and opposed by the Incorporated Society of Law-Agents in Scotland. The Court refused the petition.

In July 1905 the petitioner again, without there being any change of circumstances, presented a petition for re-admission, which was again opposed by the Incorporated Society. The Court refused the petition.

*Opinion (per Lord President)* [differing from Manisty (J.) in *re William Unwin* 1882, 72 L.T. 388] that the crime of forgery by a solicitor is not an unpardonable offence.

C D, an enrolled law-agent, who had pleaded guilty to a charge of forging and uttering a pretended interlocutor of Lord Low on 20th July 1894, and on whom, in consequence, sentence of fifteen months' imprisonment had been pronounced, had his name removed from the Register of Law-Agents on his own application in 1896, and in 1897 from the rolls of law-agents practising in the Court of Session and the local Sheriff Court. In 1901 he presented a petition to the Court for an order restoring his name to the said register and rolls, supporting his application by numerous letters and certificates as to character since his liberation. It was opposed by the Incorporated Society of Law-Agents in Scotland, and was refused by the Court (see *ante* October 18, 1901, 39 S.L.R. 4).

On 8th July 1905 C D renewed his application to the Court by presenting the pre-

sent petition, which however set forth no new circumstance save that eleven years had now elapsed since the date of his offence, and that the petitioner had left the employment of Mr Andrews, solicitor, Edinburgh, in May 1904 after being with him a period of eight years. No letters or certificates of character were annexed to this petition, but reference was made to the previous one and the documents connected with it, and the Court was reminded of the certificates which were then produced.

The petition was ordered to be served upon the Incorporated Society of Law-Agents in Scotland, and the Society appeared to oppose, and lodged answers. In the answers it was averred that no change of circumstances had taken place to warrant the renewed application, and it was stated that the Society had received from the President of the Society of Procurators of Midlothian an excerpt of a minute of a meeting of the Council of that Society held on 2nd June 1905 stating that the Council was, after careful consideration, unanimously of opinion that it would not be in the interests of the profession that the petitioner's application be granted and therefore disapproved thereof.

The petitioner stated at the bar that in the previous application the Lord President had apparently thought the petitioner wished admission to the Society of Law-Agents. The petitioner did not wish admission to any society, but merely to be again on the register of enrolled law-agents. That, in the circumstances, the Court might allow, and the prayer of the petition should therefore be granted—*A B v. Incorporated Society of Law-Agents*, July 9, 1895, 22 R. 877, 32 S.L.R. 660; *re William Unwin*, 1882, 72 L.T. 388; *in re Robins*, 1865, 34 L.J. Q.B. 121; *Anonymous*, 1853, 17 Beavan, 475.

Counsel for the respondents argued that the petition should be refused. There were few cases of a solicitor getting his name restored to the register, and that only in exceptional circumstances which did not exist here. There was no case where forgery was the offence—*Garbett*, 1856, 18 C.B. 403.

At advising—

LORD PRESIDENT—In this petition for re-admission as a law-agent we are called upon to discharge what is always a delicate and sometimes a painful duty. The application is not the first made by the petitioner, because a similar application made by him was refused in 1901. I think I am stating no more than the fact when I say that since the date of that judgment there has been no change of circumstances even alleged except the change operated by the efflux of a certain portion of time. It is a fair consideration for your Lordships whether what may have been considered premature at that time is now any longer premature. Upon the general principles which should guide us I do not think there can be much room for doubt. On the one hand we have to guard very carefully the purity of the roll of law-agents who are admitted to practise before the Courts of this country.

On the other no reason exists for the doctrine that persons once struck off that roll for having been convicted of crime cannot ever under any circumstances be readmitted. Obviously each case must be taken on its own merits, and there must be a distinction drawn between classes of crime. But I rather take the circumstances of the crime than the mere name into consideration, and I am not prepared to adhere to the dictum of Mr Justice Manisty which has been quoted to us that the crime of forgery by a solicitor is an unpardonable offence. At the same time it is a crime which is a very serious one for the public interest quite apart from whatever may be one's personal view of the particular circumstances in which it is committed. I do not think the Court would ever repon a solicitor who had been convicted of that crime, unless it was shown affirmatively that by his subsequent conduct he had so far earned the respect of his professional brethren that he was in a position to come to the Court asking to be restored with a substantial amount of support from those with whom he would thereafter be qualified to practise. I rest this view upon general grounds, and not upon the technical view of the petitioner being a member of a certain society. There is no doubt a trifling error in the opinion delivered on the occasion of the previous application as to that gentleman having been a member of that society, but my judgment in this matter does not depend on any such technicality; it depends upon the general proposition of the necessary vigilance the Court must use in safeguarding the purity of the whole body of law-agents practising before it. I am not to be understood by that to say that it is a necessity that we should have on such an application the imprimatur of the Incorporated Society of Law-Agents who on this occasion have lodged answers opposing the prayer of this petition. That would be putting in their hands a duty which has been already committed to the Court. They are a perfectly proper body to consult as your Lordships have done by ordering intimation of the petition to them, but they do not and could not represent the whole body of law-agents, and in any case, quite apart from that, it is for the Court to exercise its discretion and not for them. At the same time their opinion is one which I think we shall always respectfully consider, and when, as in the present case, we find them opposing the prayer of the petition, and when there is, to put it no higher, a dearth of affirmative support on the other side, I come reluctantly to the conclusion that it would not be proper in the circumstances to grant the prayer of the petition.

LORD KINNEAR—I have come with regret to the same conclusion for the reasons your Lordship has given.

LORD M'LAREN concurred.

LORD ADAM was not present.

The Court refused the petition.

Counsel and Agent for the Petitioner—Party.

Counsel for the Respondents—Hunter, Agents—Carment, Wedderburn, & Watson, W.S.

Tuesday, July 11.

## FIRST DIVISION.

[Sheriff Court of Perthshire  
at Perth.]

### CRERAR v. WOOD (CLEMENT'S TRUSTEE).

*Bankruptcy—Sequestration—Ranking—Preference for Wages—Affidavit and Claim—Preference not Claimed in gremio of Affidavit and Claim, but Claimed in Letter Enclosing Affidavit and Claim—Right of Claimant to Amend Affidavit and Claim—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 51.*

A law-clerk lodged with the trustee on the sequestrated estate of his employer an affidavit and claim for six months' wages, and in a letter accompanying it stated, "As this is a preferential claim I shall be glad to have it settled at once." When acknowledging receipt the trustee stated—"You need not, however, expect to get payment in full, as in any case the preference is limited." The trustee having subsequently informed the claimant that in his opinion an ordinary ranking only could be given, inasmuch as a preferential ranking was not claimed in the affidavit and claim, the claimant wrote to the trustee expressing his desire to rectify his oath. The trustee, however, declined to allow any ratification admitting the claim to an ordinary ranking only, and on an appeal being taken pleaded that such appeal was incompetent, it being too late to amend the claim after adjudication.

*Held (aff. the judgment of the Sheriff-Substitute) that the claimant was entitled to lodge an amended affidavit and claim setting forth the nature and amount of the preference claimed.*

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79) enacts—section 51—"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 on 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 . . . shall thereupon make such alteration upon his oath or 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, provided always that when the failure to comply with the provisions of this Act shall appear to have