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 repone 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

been made for some improper or fraudulent purposes, or where injury can be qualified by the other creditors or any of them in respect thereof, it shall not be incumbent upon the sheriff or trustee to give such person an opportunity to rectify his oath and claim as aforesaid."

J. M. Crerar, law-clerk, residing at Park House, Crieff, was employed by David Thomas Clement, solicitor, Crieff, at a salary of £50 a-year. Clement's estate having been sequestrated, and William James Wood, accountant, Perth, appointed trustee thereon, Crerar on 10th December 1902 lodged an affidavit and claim for £25, being salary for six months, with the trustee, and by letter accompanying it stated —"I enclose affidavit and claim by me for salary. As this is a preferable claim I shall be glad to have it settled at once."

On 11th December 1902 the trustee wrote acknowledging receipt of Crerar's affidavit and claim, and stated—"You need not, however, expect to get payment in full, as in any case the preference is limited."

On 2nd June 1903 the trustee again wrote stating that he would not be in a position to pay any of the preferable claims until he knew what other obligations he might have to meet.

On 6th March 1905 Crerar had a meeting with the trustee in regard to his claim, when the trustee stated that in his view he (Crerar) could not obtain more than an ordinary ranking, as in his oath he had not claimed a preferential ranking. Thereafter, on 9th March 1905, Crerar wrote to the trustee as follows:—"*D. T. Clement's sequestration.* — Dear Sir,—With reference to our conversation on Monday last regarding my claim, I shall be glad to know if I am to receive payment of £15 which I offered to accept in full if my claim was settled immediately. If not I will adhere to my original claim, p. £25 for six months, out of which I am justly entitled (under the Bankruptcy Act 1875) to a preference for 4 months' wages, £16, 13s. 4d., and to rank as an ordinary creditor for the balance. Regarding your view that I am only entitled to an ordinary ranking by omitting to mention that I claimed a preference, I think that on the face of it my affidavit, which distinctly stated that the debt was wages, will uphold my claim as preferable. If, however, you desire it, I shall be glad to rectify my oath on this point and expressly state that I claim a preference.—Yours faithfully, JOHN M. CRERAR."

To this letter the trustee on 15th March replied that he could not entertain the proposal therein contained, and would leave the matter to be determined according to law.

On 16th March 1905 the trustee issued his deliverance, in which he admitted the claim lodged by Crerar to an ordinary ranking.

Against this deliverance Crerar appealed to the Sheriff, craving that it should be recalled, and that the trustee should be ordained to rank the appellant as a preferable creditor for the sum of £16, 13s. 4d., being four months' wages due to him by the bankrupt, and to rank him for the balance of his claim as an ordinary creditor.

In his appeal he averred—"(Cond. 8) It was the duty of the trustee (under section 51 of the Bankruptcy (Scotland) Act 1856), if he considered the appellant's oath was not framed as required by the Act, to call upon the appellant to rectify his oath and claim, and to point out to him wherein it was defective. This the trustee failed to do."

He pleaded—"(1) The appellant being justly entitled to a preference on the bankrupt's estates for four months' wages at £50 per annum, and to an ordinary ranking as claimed, should be ranked accordingly. (2) Alternatively, the appellant is entitled to amend his claim to the effect craved."

The respondent pleaded—"(1) The appeal is incompetent."

On 23rd May 1905 the Sheriff-Substitute (SYM) pronounced this interlocutor—"Recals *hoc statu* the deliverance appealed against: Allows the appellant to lodge with the trustee an amended affidavit and claim setting forth, if so advised, the nature and amount of the preference which he claims, and that within ten days from this date: Finds no expenses due to or by either party."

Note.—"The appellant seems to have sent in a claim as if he were claiming an ordinary ranking, but in the letter in which the claim was enclosed he mentioned that he considered it preferable. It is preferable *prima facie* though not for six months' salary. The Sheriff-Substitute does not think that section 51 of the Bankruptcy Act applies to the claim, and he agrees that as a creditor may not intend to claim preferably, it is not the necessary duty of the trustee to insist on making a claim preferable which the creditor does not. Here the parties both discussed the matter on the footing that it was a wages claim, and that the appellant had no idea of waiving any right to a preference. It is not yet too late, and he may put the claim in the shape he now wishes, namely, a claim to four months' wages as preferable and to the balance as an ordinary claim, without, it is thought, unfairness to the estate which is being administered."

The trustee appealed to the Court of Session, and argued — The trustee having adjudicated upon the claim was *functus*, and it was therefore incompetent to allow the claim to be amended. A claim might be amended until the trustee had pronounced his deliverance; thereafter the estate was bound, and there was a concluded contract —Goudy on Bankruptcy, p. 341; Bell's Com. (5th ed.) ii, p. 337; Bankruptcy (Scotland) Act 1856, secs. 51, 126; *Young* v. *Strathie*, 1896, 12 S.L. Rev. 366. The claim should have been withdrawn and a new claim lodged, for now the claimant was appealing against a deliverance pronounced on his own suggestion. That was incompetent — *Watson* v. *Russell*, January 30, 1894, 21 R. 433, 31 S.L.R. 352. The amendment here was allowed by the Sheriff at too late a stage—*Commercial Bank of Scotland* v. *Speedie's Trustee*, November 27, 1885, 13 R. 257, 23 S.L.R. 167.

Counsel for the respondent was not called upon.

LORD PRESIDENT—This is one of those cases where, if we had been forced to decide in favour of the appellant, we should have done so with regret, for it would have been a most inequitable result. But I have heard nothing in the argument that has been submitted to us to make me think that the Sheriff was not perfectly right in issuing the interlocutor that is here appealed against. The creditor in this case was a clerk in the employment of the bankrupt, and he put in a claim for wages due to him, enclosing it in a letter in these terms—"I enclose affidavit and claim by me for salary. As this is a preferable claim I shall be glad to have it settled at once." So far from disclaiming this as a preferential claim the trustee's answer shows that he accepts it as such, for he replies—"I am in receipt of affidavit and claim by you for wages, and requesting an immediate settlement. I have no funds in hand to pay any part of the claim meantime. You need not, however, expect to get payment in full, as in any case the preference is limited." So that under the trustee's own hand we have perfectly clear evidence that he knew that the creditor was claiming a preference, though it was not one he was prepared to satisfy at once or in full. Afterwards the trustee took up the very technical objection that this was not a good claim to a preference, as there was no demand for preferential payment stated *in gremio* of the affidavit and claim. When informed of this the creditor writes in reply—"Regarding your view that I am only entitled to an ordinary ranking by omitting to mention that I claimed a preference, I think that on the face of it my affidavit, which distinctly stated that the debt was wages, will uphold my claim as preferable. If, however, you desire it, I shall be glad to rectify my oath on this point, and expressly state that I claim a preference." Upon that the trustee does nothing but adjudicate on the claim as it stands, treating it as a claim to an ordinary ranking; and when the Sheriff says that the creditor is to be given an opportunity of putting his claim into an unambiguous form, the trustee takes this appeal here, and maintains that that cannot be allowed, as he has already adjudicated on the claim. It appears to me that this is very like an attempt to catch the creditor in a trap. Of course we might have had to hold that the trustee was right in his contention if there had been anything in the Bankruptcy Act to support it, but I can find nothing there to that effect. I agree that in order to obtain preferential payment creditors must claim a preference in a material if not a technical sense. But I see no objection to the course the Sheriff has taken in allowing the creditor to amend his affidavit so as to make a technical claim for a preference. I think this is a most unnecessary appeal, and that it ought to be dismissed, with expenses.

LORD M'LAREN—Where a preference is claimed on the ground that the debt is a privileged debt, there is nothing in the statute requiring that the demand for a preferential ranking must be set forth in the affidavit. If the creditor claims a preference over any particular property of the bankrupt, that must be stated in his affidavit in terms of section 22. But where it is only that the law has given a preference to certain debts, the trustee is supposed to know or to be able to find it out for himself. Then surely it is enough if the creditor intimates by letter, or in any other informal way, that the debt for which he is claiming is entitled to a preferential ranking. But even if it were true that under the statute a claim to preferential payment must be stated in the affidavit, we have here the creditor informing the trustee by letter that he is willing to rectify his claim, and if the creditor were in error in not stating it in his affidavit the trustee ought to have allowed an amendment under section 51. So whether we hold that this claim ought to have been in the affidavit or that it ought not, the trustee here was in a position to deal with the matter as a preferential claim. I think that the course proposed by the Sheriff is reasonable and equitable, and I agree that the appeal ought to be dismissed.

LORD KINNEAR—I agree that the course proposed by the Sheriff is perfectly reasonable and equitable, while what the appellant says he ought to have done would have been most inequitable. I would only add that the argument that the claim cannot be amended because the trustee has already adjudicated seems to me to be rather a bold one, because it comes to this, that the trustee may deprive a creditor of his right of appeal by not allowing him to state his case. I agree that where a creditor has made a claim to a preference on an explicit footing, and the claim has been rejected, it may be too late after the decision to seek to alter the basis of the claim. But that is no reason why he should not be allowed to amend his affidavit before a decision on the merits, when it has been pointed out to him that in form it fails to make the claim he means to bring forward. The creditor made it clear from the first that he meant to claim a preference. He lodged his claim, and intimated that he demanded a preferential ranking, and the trustee has acknowledged that intimation in two letters, though he stated that he was not in a position to give effect to it at the moment. Then when in a subsequent letter the trustee pointed out his technical objection to treating this as a claim to a preference, the creditor replied that he was willing to rectify his affidavit. The trustee could not entertain this suggestion, and proceeded to decide against the creditor without giving him an opportunity to rectify his claim, and has issued his deliverance accordingly. It is said that by so doing he has successfully deprived the creditor of his right of appeal to the Sheriff and to this Court. If that is so a creditor could have no right of appeal against the refusal of a trustee to allow him to amend his claim. I do not think

this is at all the sort of restriction of appeal that is dealt with in the cases that were cited to us, and I think the appellants' contention on this point is untenable.

LORD ADAM was absent.

The Court pronounced this interlocutor—

"Affirm the deliverance dated 23rd May 1905 appealed against: Refuse the appeal, and remit to the Sheriff-Substitute to proceed as may be just, and decern."

Counsel for the Appellant—Crabb Watt, K.C.—D. P. Fleming. Agent—William C. Morris, Solicitor.

Counsel for the Respondent—D. Anderson. Agents—A. M. Campbell & Son, S.S.C.

Thursday, July 13.

FIRST DIVISION.

[Sheriff Court at Lanark.

PATERSON *v.* LOCKHART.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7 (2)—"*Workman*"—*Contractor—Quarryman Engaged to Quarry Stone on Estate for Estate Requirements.*

A, a quarryman, was engaged to quarry stone blocks for wire fences and stones for farm buildings in such quantities as might be directed, at the rate of 5s. a-day for such days as he chose to work, the quarry being on the employer's estate, and the quarrying being done to meet estate requirements. A might, if he desired it, employ assistants to be paid for through him at the same rate, and for the first eight days he so employed his son (his name alone, however, appearing in the estate books), but for four weeks preceding the accident he worked alone. He was told where he was to work, but was entitled to exercise his own judgment as to where the excavation in the quarry should be made. Tools for the work were provided partly by himself and partly by the estate, and the estate forester visited the quarry and kept a note of the days on which he worked. A having been injured by an explosion while engaged in his work claimed compensation under the Workmen's Compensation Act 1897.

Held that A was a workman in the sense of the Act, and not a contractor, and that he was entitled to compensation.

Opinion reserved (*per* Lord President and Lord M'Laren) whether a man could or could not at the same time be a contractor and a workman in the sense of the Act.

Master and Servant—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7 (2)—"*Undertaker.*"

Question (*per* Lord M'Laren) whether a proprietor who has a quarry worked on his estate purely for estate purposes is an "undertaker" in the sense of the Workmen's Compensation Act 1897.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), sec. 7, enacts—"(2) In this Act" . . . 'Undertakers' in the case of a factory, quarry, or laundry means the occupier thereof within the meaning of the Factory and Workshops Acts 1878 to 1895. 'Workman' includes every person who is engaged in an employment to which this Act applies, whether by way of manual labour or otherwise, and whether his agreement is one of service or apprenticeship or otherwise, and is expressed or implied, is oral or in writing. . . ."

In an arbitration under the Workmen's Compensation Act 1897 in the Sheriff Court at Lanark between James Paterson, quarryman, residing at Roadmeetings, Carluke, claimant, and Sir Simon Macdonald Lockhart, Bart., Lee Castle, Lanarkshire, respondent, the claimant craved decree for 15s. a-week in respect of permanent disablement due to an accident which occurred to him on 9th May 1904 while working at a quarry on the respondent's estate.

The Sheriff-Substitute (SCOTT-MONCRIEFF) decided in favour of the respondent, finding in law (1) that the place in which the accident occurred was a quarry within the meaning of the Quarries Act 1894 and the Workmen's Compensation Act; but (2) that at the time of the accident the claimant was a contractor and not a servant or workman of the respondent in the sense of the Act.

A case for appeal was stated. The facts found proved were as follows:—"That the appellant has done work for the respondent on various occasions in both quarrying and draining operations, and it was admitted that he, at so much the chain or rood, did the draining work by contract, employing at times other men, but denied that he ever contracted for the quarrying work. That in February 1904 he was engaged by the respondent's factor to quarry a certain number of stone blocks for wire fences, and thereafter stones for farm buildings, in such quantities as the said factor should direct; that for this work he was to be paid at the rate of 5s. per day, and that the appellant was not paid daily. That, if he desired it, he might employ assistants to be paid for through him at that rate, and that he so employed his son on the first eight days at 5s. per day, appellant's name alone appearing in the estate books; that for this work he got a pick, shovel, barrow, and four boring irons from the estate, otherwise he provided his own tools and materials, but charged and was paid for the sharpening of the tools, and for blasting powder. That the respondent's forester visited the quarry and kept a note of the days on which the appellant worked. That the appellant was entitled to exercise his own judgment as to where the excavation in the quarry was to be made. That the usual way quarrying is contracted for is so much per stone, or so much per cubic yard. That the place at which appellant worked was on the respondent's estate, and that the quarrying was