which he says he is entitled to get from the Sheriff, and which would, as I call it, found a *prima facie* argument.

When I speak of findings I mean findings in the Stated Case. Here in the original interlocutor the Sheriff seems to have put in findings. I am not saying he was in any degree wrong in that, but findings in the interlocutor in an arbitration are quite unnecessary. All that the arbitrator need say is whether the claimant is entitled to compensation or is not.

I would further observe that I think it is absolutely necessary for Mr Gillon to put in some finding to which he says he is entitled which discloses "an accident arising out of and in the course of the employment." He does not seem to me to state a relevant case if he merely says that something has happened while the employment is going on—that is to say, during the duration of the employment—without in some way asserting that there was something of the nature of an accident. In other words, it is not enough for him to say, "Before such and such a period of my employment commenced I was in a state of complete health; at the end of this period I was not in a state of complete health; something had happened to me; *ergo* there must have been an accident." That is not a complete *sequitur*. There may have been something which for want of a better word I will call disease, although that is not a term which accurately describes every form of impaired health.

Of course it does not follow that although Mr Gillon puts in those findings which he says he is entitled to, he will necessarily get them from the Sheriff; that is a matter for his consideration.

LORD KINNEAR, LORD JOHNSTON, and LORD MACKENZIE concurred.

The Court before answer allowed the appellant to lodge a minute of amendment of the note specifying the findings in fact which he desired should be inserted in the Stated Case.

Counsel for the Claimant and Appellant—Gillon. Agent—James D. Melrose, W.S.

Counsel for the Respondents—Moncrieff. Agents—Fraser, Stodart, & Ballingall, W.S.

Thursday, March 9.

FIRST DIVISION.

[Lord Ormidale, Ordinary.

ROBERTSON *v.* M'CAW.

Expenses — Caution — Defender, who had Left Scotland, Ordained to Find Caution.

A wife who had obtained decree of divorce against her husband brought an action against him for payment of her legal rights. The defender having subsequently left Scotland, the Court, in view of the fact that he had no estate therein, and that he was disposing of his estate in Ireland to the pursuer's prejudice, *ordained* him to find caution for expenses.

Mrs Margaret G. Robertson, formerly M'Caw, Maxwell Terrace, Glasgow, brought an action against her divorced husband Daniel M'Caw, printer, then residing at Dunallan, Bearsden, in which she sought decree (1) that she was entitled to her legal rights in his estate as at 20th July 1907 (the date of the decree of divorce), and (2) that the defender should be ordained to produce an account of his whole moveable estate in order that the pursuer's *jus relictæ* might be ascertained; or otherwise to make payment to her of the sum of £2000 as the amount thereof.

The defender pleaded, *inter alia* — "(3) The defender having had at the date of said decree no moveable estate available for payment to the pursuer of her *jus relictæ*, is entitled to be assoilzied from the conclusions for accounting and payment."

On 8th December 1910 the Lord Ordinary (ORMIDALE), after hearing counsel in the procedure roll, made a remit before answer to Mr Samuel Smyth, chartered accountant, Belfast, to report to him as to the value of certain shares in M'Caw, Stevenson, & Orr, Limited, printers and lithographers, Belfast, belonging to the defender as at 20th July 1907.

On 24th December 1910 the Lord Ordinary, on the statement of the pursuer's counsel that the defender had left Scotland and was disposing of his estate to the pursuer's prejudice, ordained him to find caution for expenses within fourteen days. The defender having failed to do so, his Lordship decerned against him for the sum of £551 odd—the amount to which the petitory conclusion had been restricted by minute.

The defender reclaimed, and argued—A defender was not bound to find caution unless (1) he were practically pursuer, or (2) had been divested of his estate. The reclaimer was in neither of these categories, and therefore was not bound to find caution. He cited *Taylor* v. *Fairlie's Trustees* (1833), 6 W. & S. 301, at p. 316, and *Johnstone* v. *Henderson*, March 15, 1906, 8 F. 689, 43 S.L.R. 486.

Counsel for the pursuer stated the following facts—That since the action was raised the defender had left Scotland; that his only assets so far as known to the pursuer were the shares above referred to; that said company was registered in Ireland; that meantime it was not competent for the pursuer to attach these shares by arrestment on the dependence of the action or by any analogous process in Ireland; that 200 of the shares had been transferred by the defender to his present wife (in respect of adultery with whom the pursuer had obtained divorce), and that the said shares had been charged with the sum of £200 against all dividends accrued or to accrue. In support of his statement he produced letters from the defender's agent in London to the secretary of the company relative to the transfer of the shares. He argued—*Esto* that in general a defender

was not bound to find caution, the circumstances showed that the Lord Ordinary had exercised a proper discretion in ordaining him to do so. The Court might in its discretion ordain either party to find caution —*per* Lord Young in *Thom* v. *Andrew*, June 26, 1888, 15 R. 780, 25 S.L.R. 595; and *per* Lord M'Laren in *Ferguson, Lamont, & Company's Trustee* v. *Lamont*, December 21, 1889, 17 R. 282, 27 S.L.R. 227.

The Court (the LORD PRESIDENT, LORD JOHNSTON, and LORD MACKENZIE) continued the case for a week in order that the defender might have a further opportunity of finding caution, and on his failure to do so, adhered, refused the reclaiming note, and decerned. No opinions were delivered.

Counsel for Pursuer (Respondent)—J. R. Christie. Agents — Cumming & Duff, S.S.C.

Counsel for Defender (Reclaimer) — Sandeman, K.C.—Guild. Agents—M. J. Brown, Son, & Company, S.S.C.

Thursday, March 9.

FIRST DIVISION.

[Lord Skerrington, Ordinary.

CHRYSTAL (SMITH'S TRUSTEE) *v.* SMITH.

Proof—Right in Security—Loan—Writ or Oath.

A builder acquired certain subjects in feu, the title to which he took in his son's name. The builder became bankrupt, and his trustee raised an action against the son to have him ordained to convey to him these subjects. The pursuer averred that the bankrupt was insolvent at the time of the conveyance, that he, the trustee, represented a prior creditor, and that the conveyance was without price or other consideration. The defender averred that the conveyance was in security of certain advances for buildings to be erected and since erected on the ground, and further, that he had undertaken the personal obligation in a bond and disposition in security over the subjects, the money being advanced to his father by the lender. The defender accordingly maintained that he was entitled to retain the subjects until these advances were repaid, and he was relieved of the obligation under the bond. The pursuer maintained that the alleged loans could only be proved by writ.

The Court before answer allowed the parties a proof *habili modo* of their averments.

Opinion per the Lord President—"It seems to me that while it is perfectly well settled by the law of Scotland that when a loan is put forward as an isolated transaction it can only be proved by writ or oath, yet that when you have a going series of transactions between parties, then there are many cases in which the proof is not necessarily so limited as it is in the case of an isolated transaction. I do not think we can say more, because I am far from saying that the moment you get into a series of such transactions the door is thrown open, and everything may be proved by parole. I think it all becomes a question of circumstances, and it becomes, I am glad to say for the credit of one's own law, a question, not of absolute rule, but almost of common sense—that is to say, whether the proof is such as would be the natural proof under the circumstances of the transaction alleged."

Res judicata—Bankruptcy—Right to Retain Property of Bankrupt as Security for Advances after Claim for Advances has been Rejected as Unvouched.

A trustee in bankruptcy rejected a claim by the son of the bankrupt for advances made to the father, and on appeal the deliverance was sustained by the Sheriff-Substitute on the ground that the alleged advances were not proved by the vouchers produced. Thereafter the trustee raised an action against the son to have him ordained to convey certain heritable subjects to him, the title to which the bankrupt had taken in his son's name. The son averred that he held these subjects in security for the advances, and maintained that he was not bound to convey to the trustee except on payment of the advances.

Held that the matter was not *res judicata*.

William Gair Chrystal, Chartered Accountant, Glasgow, trustee upon the sequestrated estate of William Smith, builder, Cathcart, raised an action against Henry Gibb Smith, draper, Cowdenbeath, in which he sought declarator that the defender was bound and obliged to dispone to him, as trustee foresaid, certain heritable subjects, so as to enable him to make up in his own name, as trustee foresaid, a valid heritable title thereto, subject to payment by the pursuer of the necessary and proper expenses of the disposition, and to have the defender so decerned and ordained.

The pursuer pleaded, *inter alia*—"(1) The title to the said subjects, which were acquired by the bankrupt William Smith, being presently in the name of the defender, and he being possessed of no good and valid right thereto, whether in absolute ownership or in security, decree of declarator and *ad factum præstandum* should be pronounced as craved. . . . (3) The defender's right and title to the subjects libelled, in so far as proceeding from his father, the bankrupt, being void and null as fraudulent alienations in bankruptcy both at common law and under the Act 1621, cap. 18, he is personally barred from setting them up in answer to the demand of the pursuer. . . . (5) The defender's averments, if and so far as relevant to found a defence to the present action, can only be proved