Argued for the respondents—(1) So long as there was a continuing liability to pay a weekly payment, that liability could be reviewed though actual payments had ceased —*The Bowhill Coal Company* v. *Malcolm* (*cit. sup*). (2) Review of an unrecorded argument was competent — *Archibald Finnie & Sons* v. *Fulton*, 1909, S.C. 938 Lord President Dunedin at 942, 46 S.L.R. 665; *Jamieson* v. *Fife Coal Company, Limited*, June 20, 1903, 5 F. 958, opinions of Lord Adam and Lord M'Laren, 40 S.L.R. 704. *Dunlop* v. *Rankine & Blackmore* (*cit. sup.*) was no authority for the proposition that an unrecorded agreement could not be reviewed. Section 16 of the First Schedule, and similarly section 9 of the Second Schedule, referred to "any" weekly payment. The Act of Sederunt could not qualify the rights given under the statute. There must be read into section 9 thereof the words "if any" after the words recorded memorandum. Apart from the present question the employers had no interest to record a memorandum, and the interest of the workman to record was solely for purposes of diligence. Reference was also made to *Caledon Shipbuilding and Engineering Company, Limited* v. *Kennedy*, June 26, 1906, 8 F. 960, 43 S.L.R. 687; *Gourlay Brothers & Company* (*Dundee*) *Limited* v. *Sweeney*, June 26, 1906, 8 F. 965, 43 S.L.R. 690.

At advising—

LORD PRESIDENT—In this case the employers of a workman presented an application to have it declared that the present appellant's right to compensation under the Act in respect of an accident on 31st July 1908, arising out of and in course of his employment, ceased on or about 1st April 1909, or at such subsequent date as the Court might think fit; or alternatively, if the respondents were not entitled to have the appellant's said right to compensation terminated as aforesaid, then to grant such award of partial compensation as to the Court might seem just. They explained in their petition that the appellant was paid compensation in respect of the accident at the rate of 20s. per week from the date of said accident down to 1st April 1909, on which date payment was stopped, and they stated he had completely recovered at that date. The workman lodged a note in which he first pleaded that the application was incompetent, and second, denied that he had recovered. The Sheriff-Substitute repelled the first of these pleas, and allowed a proof of the second, and the question of law put to us is whether the respondent's application for arbitration was competent at a date when (1) no compensation was actually being paid to apellant, parties being in dispute as to the amount and duration of compensation, and (2) no memorandum of agreement had been recorded. There is a case decided in 1908 which decides the point in terms. That case was not quoted in the case of *Lochgelly*, and I am satisfied that the doubt I expressed in *Lochgelly* was not well founded. The case is *The Southhook Fireclay Company, Limited* v. *Laughland* (1908 S.C. 831), and is indistinguishable from the present, and I propose that we should follow that judgment and answer the question of law in the affirmative.

LORD KINNEAR and LORD JOHNSTON concurred.

LORD M'LAREN was absent.

The Court answered the question of law in the affirmative, affirmed the determination of the Sheriff-Substitute as arbitrator, remitted the cause to him to proceed as accorded, dismissed the appeal, and decerned.

Counsel for the Appellant—Constable, K.C.—Fenton. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—Horne—Strain. Agents—W. & J. Burness, W.S.

Saturday, February 26.

FIRST DIVISION.

(SINGLE BILLS.)

GRAY AND ANOTHER, PETITIONERS.

Company — Winding-up — Liquidator — Caution—Death of Liquidator in Voluntary Liquidation under Supervision — Requirement of Caution from his Successor—Companies (*Consolidation*) *Act* 1908 (8 *Edw. VII, c.* 69), *sec.* 149 (5).

The liquidator in a voluntary winding-up, which had afterwards been placed under the supervision of the Court, died, and the Court on the petition of certain contributories appointed a successor. Caution had not been required of the original liquidator.

Held that the liquidator so appointed must find caution.

The Companies Consolidation Act 1908 (8 Edw. VII, c. 79), sec. 149, (5), enacts—"In a winding-up in Scotland . . . the Court may determine whether any and what security is to be given by a liquidator on his appointment."

On 3rd February 1910 Andrew R. Gray, 9 Lonsdale Terrace, Edinburgh, and Lewis Bilton, W.S., 16 Hope Street, Edinburgh, contributories of the Scottish Amicable Heritable Securities Association, Limited (in liquidation), and acting members of the Committee of Advice thereof, with consents, presented a note to the First Division under sections 199 to 204 of the Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69), for the appointment of a new liquidator of the Association in room of the deceased J. A. Robertson Durham, the former liquidator thereof. The petition stated that the Association having resolved on a voluntary winding-up the late Mr Robertson Durham was duly appointed liquidator; that thereafter the liquidation was placed under the supervision of the Court; that during his tenure of office the

liquidator had called up all the capital of the company and realised nearly all its assets, but that at the date of his death, 2nd December 1909, there still remained certain properties unrealised; and that accordingly a new liquidator required to be appointed to realise and distribute the remaining assets. On 23rd February 1910 the Court appointed Mr J. Stuart Gowans, C.A., Edinburgh, liquidator in room of Mr Robertson Durham, "he always finding caution before extract."

On 26th February the petitioners presented a note to the Lord President craving his Lordship to move the Court to vary the interlocutor of 23rd February by omitting the words "he always finding caution before extract," and to allow the liquidator to extract his appointment without finding caution.

The note stated—"The liquidation to which this application relates is a voluntary winding-up subject to the supervision of the Court. The Companies (Consolidation) Act 1908 (8 Edw. VII, cap. 69) contains no enactment that a liquidator in a voluntary liquidation must find caution, and the question whether a liquidator shall be required to do so is expressly left, in terms of sec. 149, sub-sec. (5), to the determination of the Court. The late liquidator was not required to find caution.

"In these circumstances the petitioners humbly submit that it is not necessary under the statute for the liquidator to find caution before extracting his appointment."

Argued for petitioners—It was for the Court to say whether any and what security was to be given by a liquidator—Companies (Consolidation) Act 1908 (8 Edw. VII, c. 69), sec. 149 (5). *Esto* that in Scotland the practice was to ordain the finding of caution, there was no absolute rule, and in England the practice was not uniform. Where in a voluntary winding-up caution had not been required, the Court would not require it from a substituted liquidator after a supervision order had been pronounced—Buckley on Companies (9th ed.) p. 450.

The opinion of the Court (the LORD PRESIDENT, LORD KINNEAR and LORD JOHNSTON) was delivered by the LORD PRESIDENT—The view of the Court is that caution must be found. We shall make a remit to the Lord Ordinary to deal with the question of its amount.

The Court refused the note and remitted to the Lord Ordinary to fix the amount of caution.

Counsel for Petitioners—J. H. Millar. Agents—Carment, Wedderburn, & Watson, W.S.

Wednesday, March 2.

SECOND DIVISION.

[Sheriff Court at Glasgow.

NEW LINE STEAMSHIP COMPANY, LIMITED *v.* BRYSON & COMPANY.

Ship — Charter-Party — Freight — Contract to Pay Freight per Standard Intaken — Cargo not Measured at Port of Loading.

A charter-party of a steamer to carry a cargo of short props from Riga to Grangemouth Dock provided that freight should be payable "for short props 19s. *per* Gothenburg standard intaken." A cargo was loaded at Riga and the master granted a bill of lading which bore that the cargo shipped measured 642·093 standards. In an action for freight at the instance of the shipowner against the indorsee of the bill of lading, it was not proved that the cargo was measured at Riga. The cargo was measured at Grangemouth, and was found to measure 534·36 standards. It was not averred that any part of the cargo was lost on the voyage.

Held (1) that under the charter-party freight was payable on the cargo shipped, and in accordance with the measurement at the port of loading if the cargo were in fact measured there, but (2) that as it was not proved that the cargo was measured at Riga, freight was payable in accordance with the measurement at Grangemouth.

On 27th June 1906 the New Line Steamship Company, Limited, the owners of the steamship "Newport," with the consent of Richard Mackie & Company, Leith, managers of the said steamship, brought, in the Sheriff Court at Glasgow, against Bryson & Company, timber merchants, Glasgow, indorsees and holders of the bill of lading of the cargo thereof, an action in which they sued for £139, 4s. 9d. as the balance of freight due.

On 20th April 1906 a charter-party for "the Newport" had been entered into between Richard Mackie & Company, and H. von Westermann, merchant, Riga, which provided, *inter alia*—"That the said steamer . . . shall . . . load in the usual and customary manner, always afloat, from the said merchant, a full and complete cargo of peeled short props, which the said freighters bind themselves to ship, not exceeding what she can reasonably stow and carry over and above her tackle, apparel, provisions, and furniture; the ship to be provided with a full deck cargo, . . . and being so loaded shall therewith proceed to Grangemouth Dock, and deliver the same, always afloat, on being paid freight as follows, viz., for short props, 19s. *per* Gothenburg standard intaken. The freight to be paid on unloading and right delivery of the cargo, in cash, without discount."

The "Newport" loaded a cargo of short props at Riga. The master granted a bill