which does not appear to me seriously to affect the question, although I may state my own conviction that the jewellery, &c., was given over before the date of the second meeting of creditors. I have accordingly come to the conclusion that the petitioners have proved this illegal act and are entitled to prevail.

LORD YOUNG—The only question is one of fact, whether the petitioners have proved their case, and I am of opinion that they have, and that the judgment of the Lord Ordinary to the contrary ought to be recalled.

LORD TRAYNER—I agree. I think the evidence of Mr Barr and his son and the cashier, accepted by the Lord Ordinary, is quite trustworthy and reliable, and I agree in thinking it to be conclusive of the pursuers' case. The evidence which has raised some doubt in the mind of the Lord Ordinary would not have raised much doubt in mine. I have not the same high opinion of the value of the evidence of the Hunters, but even if I thought more of their evidence than I do, and more of the genuineness of these letters than I do, I should still agree in thinking that it was not material to the issue, because the question is not at what time the bribe was given; the question is whether or not Gillon behaved so as to bring himself within the provisions of sec. 151 of the Bankruptcy Act. I think it proved that he did, that he gave Mr Barr the jewellery in question for the purpose of inducing Mr Barr to accept the composition which at that time Mr Barr was declining to take.

LORD MONCREIFF—I am of the same opinion. I think it is proved in point of fact that the jewellery and other articles were handed over to Barr before the second meeting of creditors on 5th February. The Lord Ordinary believes the evidence for the petitioners, and I think the weight of that evidence is sufficient to overcome that of the Hunters to the contrary.

The Court pronounced the following interlocutor:—

> "Recal the interlocutor reclaimed against, and grant decree in terms of the prayer of the petition, and decern: Find the petitioners entitled to expenses in both Courts," &c.

Counsel for the Petitioners—Jameson—Cook. Agents—W. & F. C. M'Ivor, S.S.C.

Counsel for the Respondent—Kennedy—Abel. Agents—W. & J. L. Officer, W.S.

Counsel for Barr, minuter — Galloway. Agents—W. & F. C. M'Ivor, S.S.C.

Thursday, July 1.

SECOND DIVISION.

[Sheriff of Lanarkshire.

RUSSELL *v.* BANKNOCK COAL COMPANY, LIMITED.

Bill of Exchange — Blank Acceptance — Authority to Fill in Name of Third Party as Drawer—Accommodation Bill—Bills of Exchange Act 1882 (45 *and* 46 *Vict. cap.* 61), *sec.* 20.

A, for the accommodation of B, handed to him a blank acceptance without specially stipulating either that he should or should not be at liberty to procure the name of a third party as drawer of the bill. B thereafter, for facility of discount, procured the bill to be drawn by a company, of which he was managing director, by whom the bill was discounted with a bank, the proceeds being credited to B in account with them. Before the bill fell due B became bankrupt and A had to retire it. *Held* that he had no right of recourse against the drawers.

This was an action brought in the Sheriff Court of Lanarkshire at Glasgow by Alexander Russell, iron and machinery merchant, Coatbridge, against the Banknock Coal Company, Limited, in which the pursuer sought decree for the sum of £189, 17s., being the amount paid by him to retire a bill which he had accepted under the circumstances hereinafter narrated.

On 23rd June 1896 the pursuer and John Knox, coal merchant in Glasgow, agreed to grant each other accommodation by way of cross bills to the extent of £189, 13s., payable at four months' date. In pursuance of this arrangement the pursuer wrote across a paper bearing a bill stamp which would cover the sum of £189, 13s., his acceptance payable at the Bank of Scotland Hope Street Branch, Glasgow, and handed it to John Knox. Though it was in the contemplation of the parties that each should become drawer of the bill to be accepted by the other, there was no agreement between them precluding Mr Knox from getting the pursuer's acceptance filled up with another name as drawer than Knox's own. He was neither specially forbidden nor specially authorised to do so by the arrangement between the parties.

Mr Knox, in addition to carrying on business on his own account, was also managing director of the Banknock Coal Company. As his own personal credit was not very good at the time, he, in order to facilitate the discounting of the bill, procured the paper handed to him by the pursuer with his acceptance thereon to be filled in with the agreed-on sum payable at four months' date, but with the Banknock Coal Company, Limited, as drawers, their subscription beingadhibited by himself as a director, and by Jonathan Howell, the secretary of the company. The bill so completed and

endorsed, was discounted by the company with the Clydesdale Bank, and the proceeds, less discount, were applied to the uses of Mr Knox by being put to his credit in account with the defenders. The whole of the amount realised by the discounting of the bill was ultimately received by the Banknock Coal Company in discharge of sums due by Knox to them.

Mr Knox, having meanwhile become bankrupt, failed to retire the bill when it fell due, and called a meeting of his creditors for 28th October 1896, on which day the pursuer retired the bill. The sum sued for was the sum paid by him as due under the bill, 4s. being added as expenses of noting.

The Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61) enacts as follows:—Section 20 (1) "Where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and in like manner, when a bill is wanting in any material particular, the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit. (2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact. Provided that if any such instrument after completion is negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given."

Section 29 (1)—"A holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:—(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact. (*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it."

Section 64 (1)—"Where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorised, or assented to the alteration, and subsequent indorsers." . . .

The pursuer averred that the blank stamp was filled in with the defenders' name as drawers in direct contravention of the arrangement between Knox and him, and without his knowledge or authority.

The pursuer pleaded—"(1) The said bill having been accepted by the pursuer for the accommodation of the drawers, the defenders, as drawers thereof, are bound to relieve the pursuer of all liability thereunder. (2) The defenders having without the authority of the pursuer, filled up and signed the said bill as drawers, and having thereafter negotiated the same, are liable to relieve the pursuer of liability therefor. (3) The pursuer having paid the said bill to the Clydesdale Bank, Limited, the holders thereof, is entitled to reimbursement from the defenders. (4) The defenders not being endorsers of said bill are subject to all objections pleadable against the same in a question with Knox."

The defenders pleaded, *inter alia*—"(1) The action is irrelevant. (4) Defenders being in the position as regards pursuer of holders for value, are not bound to relieve pursuer of liability for said bill, and should be assoilzied with expenses. (5) Pursuer not having accepted said bill for the accommodation of defenders, they should be assoilzied with expenses."

A proof before answer was allowed, the facts established by which, so far as important, are stated in the foregoing narrative.

Thereafter, on 26th March 1897, the Sheriff-Substitute (ERSKINE MURRAY), issued an interlocutor, whereby, *inter alia*, he found in fact "that it was understood between them (*i.e.*, Knox and the pursuer), if not expressed, that each was to fill in his own name as drawer in the bill which the other accepted;" and found on the whole case and in law, (1) that in the circumstances defenders, before they could resist the pursuer's demand, would have to prove that in inserting their names as drawers they did so under authority from him; (2) that they had failed to prove that they had such authority; and (3) that the action was relevant; and repelled the pleas-in-law stated for the defenders, and found them liable to pursuer in the sum of £189, 17s. as craved with interest and expenses.

Opinion.—"The points of law at issue in this case are very nice and somewhat doubtful, although there is little variance between parties as to the facts. The law applying to the subject may first be dealt with.

"Before the passing of the Bills of Exchange Act 1882, the leading authority on the point at issue appears to have been the English case of *Schultz* v. *Astley*, 1836, 2 Bingham's New Cases, 544. In that case, which came up in the Court of Common Pleas before Lord Chief-Justice Tindal and the other Judges, it was stated in the judgment—'Nor can we see any distinction in principle, when the bill has passed into the hands of third parties, between holding the acceptor liable to a given amount, when the bill is afterwards drawn in the name of the party who has obtained the acceptance, and when it is drawn by a stranger who becomes the drawer at the instance of the party to whom the acceptance was given. The blank acceptance of the bill is an acceptance of the bill which is afterwards put upon it; and it seems to follow from the doctrine of Lord Mansfield in *Russell* and *Langstaffe* that it does not lie in the mouth of the acceptor to say that the drawing or endorsing of the bill is irregular. As all that he (the accep-

tor) desired was to raise the money, it could make no differencc to him, either as to the extent of his liability or in any other respect whether the bill was drawn in the name of one person or another.' If therefore the present case fell to be decided by the broad rule laid down in *Schultz*, it is obvious that the pursuer must fail in his action. It must be noted, however, in view of subsequent law that the pursuer *Schultz* was not the drawer but an endorsee, who would, in the terms of the recent Bills of Exchange Act, have been held to be a 'holder in due course,' and would therefore, had the case occurred even under the recent Act, have been entitled to succeed.

"The pursuer has called attention to two cases that occurred before the Act. The first, *Awde* v. *Dixon*, 6 Exch. 869, was the case of a bill delivered over when incomplete in the sum, and on the condition that a third party, Robinson, was to be a joint surety along with the acceptor, and Robinson refused to join. Baron Parke laid down that a party who took such an incomplete instrument could not recover on it unless the person from whom he received it had a real authority to deal with it, or the party granting the note conducted himself in such a manner as to lead the plaintiff to believe that there was authority.

"In the case of *Hogarth* v. *Latham*, 1878, L.R., 3 Q.B.D. 643, the pursuer Hogarth received from his partner Cotton two bills with the drawer's name blank accepted in the partnership name of the defenders Latham & Company, of which the partners were Forster & Latham. It afterwards appeared that Forster had accepted them without Latham's authority, which he was not entitled to do. When the plaintiff got the bills he believed that they had been lawfully accepted, but after his suspicions were aroused that there was something wrong, he yet filled in the name of his firm as drawers. The Court assoilzied. Lord Bramwell held that even 'supposing the plaintiff was entitled to assume that value had passed as between Cotton and defender's firm, yet as the acceptance was in the handwriting of one partner only, the pursuer had not, as against the other partner, and as a mattar of right, the power of putting in his name as the drawer, he not being the creditor, and as he did so, he must show that the partner whose name was not on the bill authorised the other partner to put the document in circulation, and gave authority to any holder to put in his name as drawer. It is one thing to authorise a creditor to put his name to a bill, and another thing to authorise him to insert the name of a third person.'

"Brett, L.J., held that 'the person who takes an acceptance with the drawer's name blank has no right to say that acceptance entitles any holder to put on any name he may think fit.' As in *Hogarth* the drawer 'knew in effect that the defendant had given no authority to draw' at the time when he inserted his name as drawer, his action failed.

"Before the Act of 1882, therefore, it appears, taking the authorities together, that while in the case of a person who would now be termed a 'holder in due course,' a bill in which the drawer's name had thus been subsequently filled up, with or without authority, must prevail—on the other hand, in the hands of one who himself fills in his name as drawer, the document not being a negotiable instrument when he got it, he can only prevail if he can show that the acceptor, in the words of Lord Bramwell, must be taken to have given authority to anyone into whose hands it might come to fill up the blank. Brett, L.J., says he cannot assume this.

"What, then, is done in this matter by the Bills of Exchange Act of 1882? The 20th section gives power to the possessor of a signature on a bill stamp as a bill, to fill it up as a bill, but that it may be enforceable against a prior party by him, it must be filled up 'strictly in accordance with the authority given,' while, if such an instrument after completion is negotiated to a holder in due course, he may enforce it as if it had been filled up strictly in accordance with the authority given. Practically the Act recognises the doctrine of both *Schultz* and *Hogarth*. It gives effect to the right of such a holder as Schultz, whom it denominates a 'holder in due course,' but it imposes on a party who has inserted his own name as drawer in an incomplete instrument the *onus* of proving authority as in the case of *Hogarth*.

"Now, in the present case the Clydesdale Bank, who cashed the bill when complete, were holders in due course, and therefore could enforce payment from the pursuer as acceptor. But the defenders, to whom the Clydesdale Bank cashed it, and who had filled in their own name as drawers, must prove authority to do so. This they have failed to do. Neither Knox nor pursuer say that there was any agreement that a third party's name might be inserted as drawer. Each was to draw the bill of which the other was acceptor.

"The defenders contend that the pursuer has lost nothing by the substitution of their name as drawers, that Knox got the money as pursuer intended him to get it, and that in subsequently paying it to them he did no more than he was entitled to do. But then it must be remembered that the Clydesdale Bank paid the money to defenders, not to Knox; it only got to Knox by being handed by them to him, which they did for the purpose of enabling him to pay them a debt which he owed them. They therefore are in the position of the drawers of an inchoate bill, which they themselves completed for their own purposes, and as to which they have failed to prove authority to do so. It is clear therefore that they would not have been able to establish liability against the pursuer as acceptor had the question arisen in that form. As it is the acceptor has paid to a holder in due course, but as the bill was admittedly an accommodation bill, he can recover the amount from the party who got the money from that holder,

"It may seem that it is hard on defenders that they should be found liable when, had

Knox filled in his own name, or that of John Knox & Company as drawer, and endorsed it to defenders they would have been safe. This is true. But unfortunately for them the wording of the Bills of Exchange Act is too definite.

"The Sheriff-Substitute does not think that in the circumstances of the case there is any sufficient personal bar against the pursuer."

The defenders appealed to the Court of Session, and argued—(1) In the Court below the case had been decided on a consideration of the Bills of Exchange Act 1882, section 20, but that section was not really here in question. This was not an action on a bill. The bill had been retired. There was no rule that the person whose name appeared as drawer on a bill, which such person knew to be an accommodation bill granted for the accommodation of someone else, should reimburse the acceptor if he had to retire it. The obligations of the parties to an accommodation bill *inter se*, not being holders in due course, were determined by the real nature of the transaction. In that view the pursuer had no claim upon the defenders, for the accommodation upon which he founded was given not to them but to Knox, and Knox got the accommodation intended. There was no reason why the defenders should incur liability to the pursuer for giving Knox the benefit of their name to assist him in getting the money from the bank. The pursuer had suffered no prejudice in consequence, for he would have been in exactly the same position if Knox had drawn the bill and indorsed it to the defenders. (2) The defenders were not bound to prove that they had authority from the pursuer to insert their own name as drawers, as found in law by the Sheriff-Substitute. Any *bona fide* holder for value was entitled to fill up and complete such an acceptance for any amount covered by the stamp—Bills of Exchange Act 1882, section 20—unless it was proved that there was an express agreement between the acceptor and the person to whom he originally handed the bill stamp that such person and no other should be the drawer of the bill, No such agreement was proved here. This case was ruled by *Disher* v. *Kidd*, November 16, 1810, Hume's Decisions 64, *followed* in *Grassick* v. *Farquharson*, July 8, 1846, 8 D. 1073. Indeed, this case was stronger than these, because the drawer was there enforcing the acceptor's obligation on the bill. With regard to the English authorities cited by the Sheriff-Substitute, *Schultz* v. *Astley* (1836), 2 Bing. N.C. 544, was in the defenders' favour. *See per* Tindal, C.-J., at pp. 552-3. In *Awde* v. *Dixon* (1851), 6 Exch. 869, the decision turned upon the fact that the signer of the promissory-note made it an express condition of his signature being used that another person should also sign as co-obligant with him, which condition was not purified owing to the other person refusing to sign. In *Hogarth* v. *Latham & Company* (1878), 3 Q.B.D. 643, the plaintiff was held to be aware that his firm had no authority to sign the bill, and that the firm name of the acceptors had been signed by one partner without authority from the defendant, who was the other partner. To bring this case up to that one the defenders would have to be proved to have known that it was stipulated by the pursuer that no one but Knox was to be the drawer of the bill. The defenders might therefore, being *bona fide* holders for value, have obtained payment of the bill from the pursuer if they had not discounted it. They were therefore under no obligation to reimburse him what he had paid to the bank.

Argued for the pursuer—This case was ruled by *Hood* v. *Darling*, November 25, 1808, Hume's Decisions 59, which was not referred to in *Disher* v. *Kidd, cit.*, and was treated as still an authority in *Grassick* v. *Farquharson, cit.* (2) Under the Bills of Exchange Act, section 20 (2), such a blank acceptance as this could only be enforced against the acceptor if it had been filled up "strictly in accordance with the authority given," except in the case of a "holder in due course." The defenders were not "holders in due course." A "holder in due course" was a holder who had taken "a bill complete and regular on the face of it" and without "notice of any defect in the title of the person who negotiated it"—Bills of Exchange Act 1882, section 29. This document when received by the defenders was not "a bill complete and regular on the face of it"; it was not a bill at all—*Hood* v. *Darling, cit.*; *Awde* v. *Dixon, cit.*; *Hogarth* v. *Latham & Company, cit.* It was not enough that they had given money for the document. They could not therefore have enforced the bill against the pursuer unless they had found that the pursuer had authorised the insertion of their name as drawers, or at least the insertion of some other name than that of Knox. This they had not done, and the *onus* was upon them to prove the authority—*Awde* v. *Dixon, cit.*; *Hogarth* v. *Latham & Company, cit.* Moreover, it was proved that the pursuer granted his acceptance only on the distinct understanding that Knox himself was to be the drawer of the bill. The defenders knew this. Further, the bill had been materially altered and was consequently avoided in terms of the Bills of Exchange Act 1882, section 64. See also *Hanbury* v. *Lovitt* (1868), 18 L.T.R. (N.S.) 366. It was therefore plain that the defenders could not have enforced payment of the bill against the pursuer. They were also bound to reimburse him what he had paid to the bank. They had drawn a bill upon the pursuer without authority to do so from him, without giving him value for his acceptance, and without having any claim of debt upon him. They had discounted the bill with the bank and obtained the money for it, in consequence of which he had been compelled to pay the bank, and he was now entitled to have recourse against them. This was an accommodation bill, and the defenders knew this and that the pursuer got no value for his acceptance. They were therefore bound to reimburse the pur-

suer. They could not plead that they were *bona fide* holders for value. That plea was not open to a person who filled up blanks in a negotiable instrument in his own favour, and such a person's rights were the same as those of the person from whom he had received the instrument in blank—*France* v. *Clark* (1884), 26 Ch. D., *per* Lord Selborne, L.C. at p. 262. The defenders therefore stood in Knox's shoes, and were liable to reimburse the pursuer just as Knox would have been if he had drawn the bill himself.

At advising—

LORD JUSTICE-CLERK—I do not think it is necessary to call for any further argument. The original transaction here was of a very simple and common kind. It was arranged between Russell and Knox that Russell should give his acceptance to Knox for his accommodation. He did that by handing to Knox a signature upon a blank bill stamp. That was an authority to Knox to get it filled up as a bill for any amount which the stamp would cover. That has been distinctly decided in the cases which were cited to us, about which there is no dispute, and it is in accordance with practice, and also in accordance with the Bills of Exchange Act 1882. Now, what was done with the bill stamp? Knox did not fill in his own name as drawer. Having doubts as to whether the bank would give him the money for the bill, he went to the Banknock Coal Company and asked them to give their name as drawers of the bill. The company consented, and having so consented, they obtained the money and gave Knox credit for it in account with them. They therefore got the bill for value. The result has been that Russell has had to retire the bill. He desires now to make the Banknock Coal Company pay him back what he has had to pay to the bank to meet his acceptance. The grounds on which he makes that claim is that the bill was filled up in a way contrary to the arrangement between him and Knox. That made no difference to him. Being acceptor of the bill he was bound to pay the amount of the bill in discharge of his acceptance. He has suffered no prejudice. Suppose Knox had drawn the bill himself and then indorsed it to the Banknock Coal Company, who had then discounted it with the bank, the result would have been exactly the same, and Russell would have had to pay just the same. He would have been exactly in the same position as he is now. I am unable to see how, apart from some specialty in the case—and there is no specialty here—the acceptor could have any claim against the drawer in such circumstances as we have in this case.

I should like to guard myself from being supposed to say anything as to what would be the result if there were evidence that the acceptor had made it a condition that the name of the person to whom he was giving accommodation, and the name of no one else, should appear as the drawer of the bill. In that case the result might be different. But in this case there is no evidence to satisfy me that the pursuer made any such stipulation when he gave his signature. It may have been understood by him that Knox would be the drawer of the bill, but that there was any binding arrangement which should prevent him from getting someone else to give his name as drawer appears to me not to be proved in this case.

I do not think the case of *Hood* has any bearing on the present. It is clear from the rubric that there was a specialty in that case which was the ground of the decision. Baron Hume, who was very careful about such matters, would not have used the words "perverted to a wrong purpose" unless there had been some specialty in the case of the kind indicated by these words, That this specialty was the true ground of the decision in that case also appears from the opinion of the Lord Justice-Clerk in the subsequent case of *Grassick*. The case of *Grassick* is really the same as the present, and I know of no reason why we should not follow it.

LORD YOUNG—I am of the same opinion, and have very little to say. The transaction here was a very plain and simple one. The pursuer signed a piece of paper with a bill stamp for 2s. on it. That piece of paper was therefore capable of being converted into a bill of exchange for any amount which the stamp would cover. He did this for the accommodation of Mr John Knox, Mr John Knox having accommodated him with a similar acceptance. It appears that the sum filled in was £189, 13s., and as to the amount there is no controversy between the parties. The bill was discounted with the Clydesdale Bank, and Knox got the money for it, not directly from the Bank, but I take it on the evidence he got it through the Banknock Coal Company. When the bill became due the bank got payment of it from Russell the acceptor. That demand was irresistible and was not resisted. This action is now brought by him against the Banknock Coal Company to recover from them the sum which he paid to the bank in discharge of his obligation as acceptor on the bill. I have been at a loss to understand the ground of such an action. So far as I understand, the only explanation is that the Banknock Coal Company agreed to aid Knox in getting the money from the bank on this bill by becoming drawers of it. The effect of that was only to facilitate the discounting of the bill. They got the money and gave Knox credit for it in account with them. What, then, is the ground of Russell's claim against them. The first plea-in-law is—"The said bill having been accepted by the pursuer for the accommodation of the drawers, the defenders as drawers thereof are bound to relieve the pursuer of all liability thereunder." That is absolute nonsense. The bill was accepted for the accommodation of Knox, not for the accommodation of the Banknock Coal Company, and Knox was accommodated. To say that because the Banknock Coal Company aided him to get the money for the bill by becoming drawers of the bill they were accommodated is

absurd. Then the second plea-in-law is—"The defenders having, without the authority of the pursuer, filled up and signed the said bill as drawers, and having thereafter negotiated the same, are liable to relieve the pursuer of liability therefor." I think that is equally unsound and untenable. Under the statute and irrespective of the statute any person who comes to be honestly in possession of a blank bill with a bill stamp on it and a signature is entitled to fill up the bill in any way he pleases, provided he does not make it for a larger sum than the stamp will cover. Of course, this does not apply to a thief or a finder of such a piece of paper. He is not in honest possession. But the Coal Company were, and if they were they were entitled to fill up the bill by signing it themselves as drawers. If it could be shown that the pursuer was prejudiced by what the Coal Company did it might be different. If he had suffered prejudice, he might get something by way of damages from the defenders for having done something to his prejudice. But there is no suggestion of prejudice to the pursuer. If Knox had signed the bill himself as drawer, and indorsed it to the Banknock Coal Company, who had discounted it with the bank, the pursuer's liability would have been exactly the same—that is to say, to discharge his obligation as acceptor. Why he is to have relief from the Banknock Coal Company because he has fulfilled his obligation on the bill, I confess I cannot understand. This is an action against the Banknock Coal Company, and it must be based upon some intelligible ground. The pursuer is not suing them on the bill except as drawers of the bill which he has accepted; there is no relation between them and him at all. I am therefore of opinion that with appropriate findings in fact, which in this we are bound to make, we must find in law that the pursuer has no legal ground for a claim against the defenders, and assoilzie them from the conclusions of the action.

LORD TRAYNER — I agree. I have not heard any ground stated which would entitle the pursuer, in my opinion, to our judgment. If the present defenders had been suing the pursuer upon the bill in question, I could have understood the argument—I do not say I could have assented to it—that he was not liable in respect of the alleged irregularity in the constitution of the bill. But that is not the case or kind of case we have before us. The pursuer is suing the defenders for repetition of a sum which he paid in respect of his own obligation to his own creditor. The pursuer was the primary obligant on the bill; he was the acceptor. He accepted the bill for the purpose of enabling his friend to raise money on his, the pursuer's, obligation by discounting the bill. The bill was in the hands of the bank, who discounted it, and the pursuer paid the bank as he was bound to do when the bill matured. In doing so he was, I repeat, paying his own debt to his own creditor. Why should the defender be called upon to reimburse him? I think the claim for repetition out of the question. If the pursuer could have shown that the interposition of the Banknock Company as drawers instead of Knox had prejudiced him, perhaps a claim of damages might have arisen. But the pursuer has plainly suffered no prejudice. He has not been called upon to do anything more than fulfil the obligation which he voluntarily undertook on behalf of Knox.

LORD MONCREIFF — I am of the same opinion. *Prima facie* delivery to Knox of the bill stamp, signed by the pursuer as acceptor, authorised Knox to get the bill filled up with any name he chose as drawer. This is in accordance with the cases of *Disher* and *Grassick*, and also with the Bills of Exchange Act 1882. It is not necessary to consider what would have been the result if there had been an express stipulation that Knox should fill up the bill with his own name as drawer, because in my opinion such a stipulation is not proved. It is not enough to prove that authority was not expressly given by Russell to Knox to get the bill filled up with some-one else's name as drawer. It was necessary to show that when Russell gave his acceptance it was made a condition, express or necessarily implied, that Knox alone should sign as drawer. Now, the proof does not come up to this. The Sheriff-Substitute's judgment is based upon a finding that it was understood between them (that is, Russell and Knox), if not expressed, that each was to fill up his own name as drawer on the bills. In one sense this may be true, but the understanding, such as it was, is not shown to have amounted to a condition. I think the interlocutor is erroneous and should be recalled.

The Court pronounced the following interlocutor:—

"Sustain the appeal and recal the interlocutor appealed against: Find in fact (1) that on 23rd June 1896 John Knox, coal merchant, Glasgow, met the pursuer in Glasgow, when it was agreed between them that they should grant each other accommodation by way of cross bills; (2) that accordingly each handed to the other a blank acceptance to be filled up for the sum of £189, 13s. at four months' date; (3) that though it was in the contemplation of the parties that each should become drawer of the bill to be accepted by the other, there is no evidence that there was any agreement come to which precluded the bill, so handed to the said John Knox, being filled up with another name as drawer than his own; (4) that accordingly the pursuer wrote across a paper bearing a stamp, which would cover the sum of £189, 13s., his acceptance payable at the Bank of Scotland, Hope Street branch, Glasgow, and handed it to the said John Knox; (5) that the said John Knox, for facility in discount, procured the bill accepted by pursuer and handed to him, to be filled in with the agreed-on sum, and

at the agreed-on usance, but with the name of the defenders' company as drawers, the drawers' subscription being adhibited by himself as a director and by Jonathan Howell, the secretary of the defenders' company; (6) that the bill so completed and endorsed was discounted by the defenders with the Clydesdale Bank, and the proceeds, less discount, applied to the uses of the said John Knox; (7) that the said John Knox having become bankrupt failed to retire the bill when it fell due on 26th October 1896, and called a meeting of his creditors on 29th October 1896, on which day the pursuer retired the bill: Find in law that the pursuer has in these circumstances no claim to recover from the defenders the sum which he has paid to the Clydesdale Bank as onerous endorsees of the bill: Therefore assoilzie the defenders from the conclusions of the action, and find them entitled to expenses in this and in the Inferior Court, and remit," &c.

Counsel for the Pursuer and Respondent J. Wilson — Wilton. Agents — Gray & Handyside, S.S.C.

Counsel for the Defenders and Appellants—Johnston—C. K. Mackenzie. Agent —R. Ainslie Brown, S.S.C.

Thursday, July 1.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

SMYTH *v.* MACKINNON.

Reparation — Slander — Misappropriation of Money—Privilege.

An auctioneer who, acting under the instructions of the owners' law-agent, had removed goods from a house and sold them at his auction rooms, wrote to the law-agent asking him to give him time to pay up the amount received for the goods, and explaining that he had been misled into making advances with the money, and that he was sorry for the irregularity.

The law-agent, after some correspondence in which he pressed for payment, wrote that he was to meet his clients, the owners, early next week, and would "put before them your misappropriation of their money, and take their instructions. The consequences I have little doubt will be of a very serious character to you." Four days after the date of the letter the auctioneer paid up the sum due.

Thereafter he raised an action of damages for slander against the law-agent, averring (1) that in his letter the defender had represented that the pursuer had been guilty of dishonest and fraudulent misappropriation of money belonging to his clients; and (2) that after the pursuer had paid up the money the defender had stated to a bank agent in Aberdeen that the pursuer had shortly before misappropriated moneys belonging to the defender's clients, meaning thereby that the pursuer had dishonestly appropriated to his own uses money belonging to said clients.

The defender averred that the bank agent was his father and partner in his law business, and counsel for the pursuer, in answer to a question by the Court, said he understood that this was the case.

The Court (1)—*rev.* judgment of Lord Kincairney—refused to grant the pursuer an issue in regard to the alleged slander in defender's letter; but (2)—*aff.* judgment of Lord Kincairney—*diss.* Lord Young—in regard to the alleged slanderous statement to the bank agent, allowed the pursuer an issue in which malice was not inserted, the question of privilege being left to the judge at the trial.

By letter dated 16th May 1896 L. Mackinnon Junior & Son, Advocates in Aberdeen, on behalf of the trustees of the late Mr Thompson of Pitmedden, instructed John Francis Smyth, auctioneer, Aberdeen, to remove some furniture from Pitmedden House, and sell it at his auction rooms in Aberdeen. Smyth duly removed the furniture, sold it on 20th May 1896, and rendered an account showing that the amount realised at the sale, less commission and expenses, was £73, 5s. 8d.

On 17th July 1896 Smyth wrote Lauchlan Mackinnon, a partner in the firm of L. Mackinnon Junior & Son — "When I sent in the statement of sale of the remainder of Pitmedden goods I said I would pay the cash to-day. Much to my annoyance the money on which I calculated for this purpose will not reach me, I find, before the beginning of August, and I have to ask you kindly to wait till then, as I cannot well *press* for payment without damage to my business."

On 21st July Mackinnon sent the following answer:—"I have received your letter of 17th inst., but am not disposed to wait longer for the money due to Mr Thompson's trustees. There is no reason why you should not at least make a substantial payment on account, and I await the same in course." On 24th July Smyth wrote in reply—"I did not at once reply to yours of 21st inst., because I thought I might get in some money, and be able to comply with your request to make a substantial payment to a/c., but I find it impossible meantime. I depended for the whole amount at the date I fixed (17th inst.) on a gentleman who has been travelling and has been detained. I am quite certain to have it next month, and early in the month, and shall at once square up. I was misled into making some advances on the assumption that I would have the money referred to above on the 16th inst., and I thought it unnecessary to make any other provision, and I cannot recover my advances yet. I am exceedingly sorry for this irregularity, but have to ask you kindly to extend your indulgence as far as you can,