

argument.' With regard to these latter observations, the pursuer's counsel referred to passages upon her record in which it is stated that 'she is prepared to grant a valid discharge of her liferent interest under the said trust-disposition and settlement upon receiving payment of the capital sum'; and, 'further, the pursuer is prepared, if necessary, to find caution for repetition of the sum paid to her in the improbable event of child or children being born by her.' For the reasons already explained, I am against the pursuer upon the bare contention expressed in the summons, viz., that her father's residue must, in the circumstances, be treated as intestate succession, and be paid over to her. It remains to consider whether the averments which I have just quoted might entitle the pursuer to payment upon sufficient caution being found by her for repetition in the event of her having issue. It is true that in the cases of *Scheniman* and *Shaw*, to which I have referred, the Court allowed payment to children upon securing their mother's liferent and finding caution for the contingency of another child being born; and that a similar course, under somewhat similar circumstances, was sanctioned by the Second Division, after a long interval of years, in the case of *M'Pherson's Trustees*. The circumstances of the present case are not identical with those in which that course has been adopted. I do not say that, as a matter of practical expediency and convenience, some such solution might not reasonably be resorted to. But the question involved is not, as I think, one of law for the Court to decide, but rather one of fact, probably not capable of actual demonstration as a fact at all. If the Court is entitled, as apparently it is, to resort in its discretion to an equitable remedy in circumstances in which no question of law is really submitted for its decision, that course is in my opinion only open to one or other of the Divisions, and not to a single Judge in the Outer House. So far as I am aware there is no precedent for the exercise of such an equitable jurisdiction by a Lord Ordinary, and I am not prepared to inaugurate it. If the views which I have expressed are well founded, they are conclusive of the matter, and there is no need that I should deal with the argument which was submitted in reference to the third plea-in-law stated for the defender. Upon the whole matter I shall sustain the second plea-in-law stated for the defender, and assolvie him from the conclusions of the action."

The pursuer reclaimed, and maintained that while she might not be entitled to payment of the residue as matter of right, still on finding caution to repeat in the event of children being born the Court would, following the authorities, authorise payment to her. She cited the following authorities—*Shaw v. Shaw*, 6 S. 1149; *Scheniman v. Wilson*, June 25, 1828, 6 S. 1019; *Blackwood v. Blackwood's Trustees*, June 11, 1833, 11 S. 699; *Macpherson's Trustees v. Hill*, June 13, 1902, 4 F. 921, 39 S.L.R. 657; *De la Chaumette's Trustees v. De la*

Chaumette, March 20, 1902, 4 F. 745, 39 S.L.R. 524; *In re Lowman*, L.R. [1895], 2 Ch. 348, per Lindley, L.J., at p. 366; *Anderson v. Ainslie*, January 24, 1890, 17 R. 337, 27 S.L.R. 276; *Beattie's Trustees v. Meffan*, March 11, 1898, 25 R. 735, 35 S.L.R. 580; *White's Trustees v. Whyte*, June 1, 1877, 4 R. 786, per L.P. Inglis, at p. 789, 14 S.L.R. 499; *Munro v. Macarthur*, November 23, 1878, 16 S.L.R. 126.

The defender supported the judgment of the Lord Ordinary.

LORD JUSTICE-CLERK—There is no doubt that it has long been a fixed doctrine in our law—and the same seems to be the case in England—that there is no age at which a woman is presumed to be incapable of child-bearing. Nevertheless the Court have in several cases considered themselves able to allow property which is to all intents tied up when there is practically no possibility of children being born to be divided on security being found to make repetition in the event of a birth taking place. I think we may follow these cases on the present occasion. I therefore propose that we recal the interlocutor of the Lord Ordinary, and allow a proof before answer of the averments for the pursuer contained in articles 6 and 7 of the condensation.

I should add that while we recal the interlocutor of the Lord Ordinary I do not think his Lordship could have treated the present case otherwise than he has done.

LORD STORMONTH DARLING—I quite agree. It is to be understood that we agree with the Lord Ordinary in his view that he could not in this case have done anything but what he has done. It has been argued that we ought to follow the decisions which have been cited to us, and which lay down a rule which does not constitute a rule of law but a rule of practice. We think this is a suitable case for applying that rule.

LORD LOW—I am of the same opinion.

The Court recalled the interlocutor of the Lord Ordinary, and before further answer allowed a proof.

Counsel for the Pursuer (Reclaimer)—Howden — J. H. Henderson. Agent — William Considine, S.S.C.

Counsel for the Defender (Respondent)—M'Robert—C. A. Macpherson. Agents—M'Leod & Rose, S.S.C.

Friday, July 12.

EXTRA DIVISION.

[Sheriff Court at Kirkwall.

LAWSON'S EXECUTORS *v.* WATSON.

Bills of Exchange—Act of 1882 (45 and 46 Vict. cap. 61), sec. 3 (1) and (2) and sec. 20—Absence of Drawer's Signature—Incomplete Instrument as a Proof of Indebtedness.

L's executors, in an action against W, founded on an incomplete instrument

in the form of a bill of exchange, signed by Was acceptor, but lacking the signature of L the drawer, in whose repositories it was found at his death. The instrument was dated and addressed from L's house, and L and W had had a long series of business transactions. The defender maintained that, at least ever since the Bills of Exchange Act 1882, the instrument could not be treated as a proof of indebtedness. *Held* that, while the instrument was not a bill of exchange, it was a valid proof of indebtedness.

Question whether his executors could have added the drawer's name after his death.

Process—Appeal—Competency of Evidence—Omission to Take Objection when Evidence Tendered—Objection Taken on Appeal.

Per Lord M'Laren—"I am not prepared to hold that absence of objection would exclude a party from founding on the incompetency or insufficiency of evidence on appeal."

The Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61), sec. 3, enacts—" (1) A bill of exchange is an unconditional order in writing addressed by one person to another signed by the person giving it. (2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange. . . ."

Sec. 20, which deals with "inchoate instruments," *i.e.*, bills "wanting in any material particular," in sub-sec. (2) enacts—"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. . . ."

On November 11, 1905, Mrs Janie Simpson or Lawson, residing at West Cults, Aberdeenshire, and another, executors of the late Charles Lawson, farmer, brought an action in the Sheriff Court at Kirkwall against R. O. Watson, horse proprietor there, in which they sought to recover £182, or alternatively to obtain a full and true account of all his transactions with the deceased. Watson, on the other hand, in January 1906, brought an action against Lawson's executors in which he sought to recover £61, 10s. The two actions were conjoined and a proof was taken.

The main question between the parties was in regard to a document, No. 13 of process, found in Lawson's repositories, which was as follows:— "Mains of Cults,

"£60 stg. "Aberdeen, 11th March, 1901.

"On demand pay to me or my order within the North of Scotland Bank at Aberdeen the sum of Sixty pounds stg. for value received in season of shire stallion.

"Mr R. O. Watson, "ROBERT O. WATSON.

"Broad Street, Kirkwall, Orkney.

"(1s. Bill Stamp.)"

The facts are given in the findings and note (*infra*) of the Sheriff (M'LENNAN), who, on an appeal from an interlocutor dated 20th July 1906 of his Substitute (HARVEY),

pronounced this interlocutor, dated 20th September 1903—"Recals the interlocutor of the Sheriff-Substitute of 20th July 1906 complained of: Finds in fact (1) that the pursuers admit liability to Robert O. Watson (hereinafter referred to as the defender) for the sum of £162; (2) that no other or further sum is proved to be due by the pursuers to the defender; (3) that the defender admits liability to the pursuers for the sum of £80, and for a further sum of £32 due under the bill dated 1st November 1901 (No. 14 of process); (4) that on 11th March 1901 the defender signed his name as acceptor on the stamped bill paper No. 13 of process, and delivered it to the said Charles Lawson, authorising him to fill it up as a bill in his own favour for £60, being the agreed on hire of a stallion 'Lambton Lad,' then hired by the defender from the said Charles Lawson for the season 1901; (5) that in accordance with the authority then given the said document was on or about the said date filled up as a bill for £60 in the terms which it now bears by the witness Charles Lawson junior, but that the said Charles Lawson senior died on 5th May 1905 without having inserted his name as drawer of the said bill, and that the said bill has been produced in judgment without any name of a drawer being inserted therein; (6) Finds in law that the said document No. 13 of process constitutes a valid voucher for a debt of £60 incurred by the defender to the late Charles Lawson, and that the defender has failed to prove that the said sum or any part thereof has been paid by him to the said Charles Lawson or to the pursuers as his representatives; (7) Further finds in fact that the pursuers have failed to prove that any further sum is due or resting owing to them by the defender; (8) Finds that the total sum due by the defender to the pursuers thus amounts to £172, leaving a balance of £10 in favour of the pursuers: Therefore in the action at the instance of the executors of the said Charles Lawson against the said Robert O. Watson decerns against the defender for payment to the pursuers of the sum of £10 sterling, with the legal interest thereon from the date hereof until payment, and *quoad ultra* assoilzies the defender from the conclusions of the said action; and in the action at the instance of the said Robert O. Watson against the said executors assoilzies the said executors from the conclusions of the said action, and decerns. . . ."

Note.—"Three points were argued under the appeal—(1) whether the document constitutes a valid and subsisting document of debt for the sum of £60, due by the defender Watson to the pursuers, the executors of the late Charles Lawson. The Sheriff-Substitute has decided that the document is inoperative. . . ."

"The first point raises a question of difficulty, on which there appears to be no recent authority. It is admitted by the defender in his evidence that on 11th March 1901 he visited the late Charles Lawson at his farm at Mains of Cults, Aberdeenshire, and arranged with him to hire for the

season Mr Lawson's stallion 'Lambton Lad' at a hire of £80, and that on the same date he signed the bill stamp, which he asserts was then blank, except that the sum of £60 may have been written on it, and delivered the bill stamp to Mr Lawson. He does not, either on record or in his evidence, dispute that the blank acceptance was handed to Mr Lawson for the purpose of being filled up as a bill for £80, and from the evidence of Charles Lawson junior, the son of the late Mr Lawson, it appears that the document was filled up in his handwriting. It is in these terms:— . . . (*quotes supra*). . . .

"There appears to be no room for doubt that the document was filled up strictly in accordance with the authority given; but although Mr Lawson survived until 5th May 1905 he never inserted his name as drawer. The pursuers, his executors, have not inserted their names as drawers prior to raising the action, and the question is whether the document in its present state constitutes an enforceable document of debt.

"Now, if this question is to be decided in accordance with the Scots authorities prior to the Bills of Exchange Act, there cannot, in my judgment, be room for doubt regarding the answer. By a series of decisions, whereof the clearest is *Macdonald's Trustees v. Rankin*, June 13, 1817, F. C., action has been held competent on a bill found in the repositories of a defunct blank in the drawer's name. I have carefully examined the session papers in this case, and find that the bill when sued upon and produced in judgment by the trustees of the defunct was in the same condition as the bill in the present case, that is to say, no name at all was inserted as drawer. The session papers also disclose that the Lord Ordinary (Lord Alloway) sustained the validity of the document as a voucher of debt, in respect that the subscription of the defender to the document was not denied, and that the action was an ordinary action brought for constitution of a debt. In his note he relied on the cases of *Drummond v. Drummond's Creditors*, 1785, M. 1445; *Hare v. Geddes*, 1786, M. 1446; and *Fair v. Cranston*, 1801, M. 1677, as having completely altered the older practice of not sustaining action on a bill when the drawer's name was left blank. He added—'There seems to be as little doubt in this case as in the case of *Fair* that Glencoe (*i.e.*, Macdonald of Glencoe, the pursuer's author) was meant to be the drawer of the bill, and the representers have not even denied that fact. . . . According to the doctrine laid down in *Fair's* case, therefore, there is nothing to prevent the pursuers, as standing in the place of Glencoe, to have subscribed the bill or to bring an action, as has been done in the present case.' The Faculty Collection report bears that the Court ultimately allowed a condescendence as to the state of accounts between the parties; but from the session papers I infer that this condescendence related to a plea of compensation founded by the defenders on bills granted in their favour by Macdonald. In addition to the

case of *Macdonald's Trustees*, and the authorities mentioned in Lord Alloway's note, I may also refer to *Ogilvie v. Moss*, 1804, M. 'Bills of Exchange,' Appendix No. 17; *Fairlie v. Brown*, 1834, 3 S. 5 (N. E. 4)—(a case in which the session papers show that the bills when sued upon were still blank in the drawer's name); Lord Ivory's note to Erskine's Institutes, iii, 2, 28; and Dickson on Evidence (Grierson's edition), section 807. From these authorities it appears that the statement of Erskine (Institutes, iii, 2, 28) puts the matter too strictly.

"The case of *Elde v. Marshall*, 1830, 9 S. 133, I have omitted from the authorities relied on, because the bills which were there produced blank in the drawer's name were prescribed, and the debt was held to be proved by holograph letters of the acceptor. There being in the present case no doubt that the document was signed by the defender, and that it was intended to constitute a document of debt for £80 in favour of the late Mr Lawson, it appears to me that upon the authorities above cited it must be sustained unless rendered nugatory by the Bills of Exchange Act. The common law in England appears to have been different, and prior to the Act action was denied on an acceptance bearing to be 'payable to my order,' where the drawer's signature had not been inserted—*M'Call v. Taylor*, 34 L.J., C.P. 365; *Stoessiger v. S. E. Ry. Co.*, 1854, 3 E. & B. 549, and other authorities quoted in Byles on Bills, 16th ed., p. 99. Since the Bills of Exchange Act it has been held in England that endorsees of a bill had no right of action against the acceptor where the drawer had omitted to sign his name as drawer although he had endorsed the bill, and although it expressly bore to be drawn to his order—*South Wales and Carnock Chase Coal Co. v. Underwood & Son*, 1899, 15 T.L.R. 157. Probably a similar judgment would have been given in our Courts, seeing that the action was based upon the document as a complete and negotiable bill, and not merely as a voucher of a debt between debtor and creditor. But once it is conceded, as I think it must be, that the document here in question does not constitute a bill of exchange in any proper sense, there appears to be no reason, notwithstanding the statute, why its validity as a voucher of debt should not be regulated by the common law of Scotland. In England, as well as in Scotland, an I O U is enforceable by the person to whom it is delivered although it does not bear to be addressed to any person—*Curtis v. Richards*, 1840, 1 M. & G. (C.P.) 46; *Macpherson v. Munro*, 1854, 16 D. 612.

"If I am right in holding the document valid as a voucher of debt, I think it follows that its discharge can be proved only by the writ or oath of the creditor—*Robertson v. Thomson*, 1900, 3 F. 5, 38 S.L.R. 3; *Thiem's Trs. v. Collie*, 1899, 1 F. 764, 36 S.L.R. 557. In *Robertson's* case it was held that no alteration of the requirement for a written discharge in the case of a bill is introduced by the 100th section of the Bills of Exchange Act. Further, that section

must be inapplicable if the document is not a valid bill. Under a mistaken view regard the scope of that section, however, it appears that parole evidence of payment to account of the £60 has in the present case been allowed without objection, and, this being so, there is authority—*Simpson v. Stewart*, 1875, 2 R. 673; *Kerr's Trs. v. Kerr*, 1883, 11 R. 108, 21 S.L.R. 89—that the proof led must be considered notwithstanding its incompetency. The proof led, however, consists solely of the statement of the defender, supported to a limited extent by his wife, to the effect that in July 1901, when he returned the stallion to Mr Lawson, he paid £28 to account without receiving a receipt. This evidence seems to me quite inadequate as proof of payment to account of a money obligation constituted by writing. The defender asserts that he gave the bill for £32, which he admits to be due for the balance of the hire of the stallion. That bill was not granted till 1st November 1901, more than three months after the alleged payment; and if his story be correct it is curious that he did not demand delivery of the original document for £60 when he granted the £32 bill, particularly as he had no reason at the time to suppose that the original document had not been completed by Mr Lawson's signature as drawer. It is no doubt curious that the pursuers are unable to explain in respect of what other transactions the £32 bill was given, but there were admittedly a number of transactions between the parties, and I do not think that there is any onus upon the pursuers to explain the ground of indebtedness for which an admitted bill was given. I am therefore of opinion that the Sheriff-Substitute's judgment must be altered on this question of the £60. . . ."

The defender appealed, and argued—The Bills of Exchange Act 1882, secs. 3 and 20, rendered the incomplete instrument invalid as a bill. That Act had also displaced the early authorities on which the Sheriff based his judgment. The instrument could not now be treated as a valid voucher of debt. Even in those early cases the name of the creditor was discoverable either *in gremio* of the imperfect bills or otherwise from separate documents—*Hare v. Geddes*, 1786, M. 1446. The defender, it was true, had admitted the constitution of the £60 debt, but his admission must be read along with the qualification of payment and satisfaction—*Kerr's Trustees v. Kerr*, November 16, 1883, 11 R. 108, 21 S.L.R. 89. Facts relating to any question of liability on a bill might be proved by parole evidence under section 100 of the 1882 Act, and even if that were not so it was now too late to take objection to the parole evidence of payment.

Argued for the respondents—The action was for a debt, not upon the incomplete bill. Although incomplete it was writ under the debtor's hand and therefore a good document of debt—*Fair v. Cranston*, 1801, M. 1677; *Ogilvie v. Moss*, 1804, M. "Bills of Exchange" App. No. 17—and it did not require to be holograph or tested—*Paterson v. Paterson*, November 30, 1897,

25 R. 144, 35 S.L.R. 150. There being, therefore, valid evidence of indebtedness, the onus was on the defender to prove payment and he had failed in this. Section 100 of the Bills of Exchange Act 1882 did not authorise parole evidence to prove payment—*Robertson v. Thompson*, October 19, 1900, 3 F. 5, 38 S.L.R. 3; *Thiem's Trustees v. Collie*, March 14, 1899, 1 F. 764, 36 S.L.R. 557—and even if the parole evidence was admitted it was not sufficient.

At advising—

LORD M'LAREN—I cannot say that the result of the argument has been to displace the inference that the Sheriff's interlocutor was the true solution of these cases. The two actions relate to transactions between the two parties, Mr Lawson, now deceased, farmer in Aberdeen, and Mr Watson, who is a horse proprietor and carter. The parties seem to have trusted each other and not to have been particular as to vouchers or as to the forms of their accounts. The result of the action, brought in order to clear up the accounts, was to settle all outstanding disputes except what relates to a document in the form of a bill for £60, dated 11th March 1901, which was in this form:—[*His Lordship read the terms of the document, quoted above.*]

Now, from the date and address it may naturally be inferred that this bill was to be drawn by the deceased Mr Lawson on Mr Watson. It is addressed to Mr Watson and is signed by Mr Watson, presumably as acceptor, but it wants the signature of the drawer.

Along with this we have to consider another bill of later date, 1st November 1901, for £32, in the following terms:—[*His Lordship read the bill.*]

The result of the judgment of the Sheriff is that effect is given to both these documents. No exception is taken to the bill for £32, but exception is taken to the bill for £60, on the ground that it cannot be founded on as an obligatory document after Mr Lawson's death. But then Mr Watson depones that he made a payment to Mr Lawson in July 1901 of £28, and that he granted the bill of 1st November 1901 for the unpaid balance of the £60. The effect of this would be to displace the £60 bill by a kind of *novatio*.

It is impossible to treat the £60 bill as a bill of exchange, because it is not drawn by anyone, and does not bear to be payable to anyone. Notwithstanding some authority to the contrary, I venture to doubt whether executors could supply the signature of a drawer after his death. But then the Sheriff has allowed the document effect as an acknowledgment of debt, on the authority of certain cases quoted in his note. The principle of these cases is that, by whatever name you may design an uncompleted bill, the two facts that the debtor has put his signature on a document of this description, and that the document is found in the repositories of the creditor, constitute it, if not an acknowledgment, at all events a proof of debt. It was contended by Mr Crabb Watt that at

least in two of these cases there were other distinct means of satisfying the Court that the document was intended to be completed by the drawer's signature; in this case the only evidence is that it is found in the deceased's repositories, and that it is stated in *gremio* to be for value therein described. But in two cases—*Macdonald's Trustees v. Ranken*, June 13, 1817, F.C.; and *Fair v. Cranston*, 1801, M. 1677, which do not turn upon specialties, it was distinctly laid down that the debtor's acceptance would be evidence of his indebtedness although the drawer had not also signed.

Accepting the authority of these decisions, we are not left to depend entirely for proof of the indebtedness on this inchoate bill for £60, because we have the facts that Mr Lawson had yearly transactions with Mr Watson, that bills were frequently used between the parties, and that an action of accounting between them has been found necessary. These facts are sufficient for the application of the principle of *Macdonald's* case.

Mr Watson has attempted to displace this liability by evidence of payment. No answer could be more satisfactory if payment were proved. The only evidence of payment is that of the debtor, partially corroborated by that of his wife. For Mr Watson it was contended that this evidence could not now be rejected as incompetent, because no objection was taken to it at the proof. Now, I am not prepared to hold that absence of objection would exclude a party from founding on the incompetency or insufficiency of evidence on appeal. An appeal from the Sheriff Court brings up the whole case just as in the old process of advocacy, and while it might be competent to found on such evidence with regard to collateral matters, I cannot hold the evidence of the debtor to be in itself good evidence of payment, nor is it sufficiently corroborated.

There being then an unexplained acknowledgment of indebtedness found in the creditor's possession, and there being no proof of payment, it follows in my view that the sum of £60 must be allowed as an item of credit to the executors of Mr Lawson, and that the judgment of the Sheriff is right and must be affirmed.

LORD PEARSON—This is a small case as regards amount, but it raises a question of some nicety. I agree that the Sheriff is right. There are two questions in the case—first, as to the uncompleted bill for £60, and secondly, as to the alleged payment of £28 by the appellant to Lawson.

As regards the bill, it is practically admitted that it is not a bill within the meaning of the Bills of Exchange Act 1882. It could have been made a valid bill; all that was required was the signature of the drawer. He died without signing it, and though it is an open question whether his executors could have signed it after his death they did not do so, and the question does not arise.

But though not a bill this document is

sued on as a voucher of debt. A number of authorities were quoted showing that in such a case an incomplete bill may be so used, not having all the attributes of a bill, but yet having the capacity of being used in an ordinary action as proof of the existence of a debt. It is said that the Bills of Exchange Act 1882 has changed all that, but I am not of that opinion. It is clear from the authorities referred to that down to 1882 a document such as this was a good ground for suing and recovering a sum of money. The best authority is perhaps *McDonald's Trustees v. Rankin*, June 13, 1817, F.C. There the question was whether a document of this nature found in the repositories of the deceased blank in the drawer's name could be sued on in an ordinary action for debt. This question was regarded as so well settled that the Court would not order answers to the petition against the Lord Ordinary's judgment sustaining the action lest it should be conceived they had a doubt on the point.

There is, however, a second point in the case. It is said that, even if the document can be sued on the debt therein has been paid or satisfied, first by the payment of £28 in cash, and secondly by the substitution of another bill for £32 for the balance. I agree with the Sheriff that the payment of £28 has not been competently proved. As to the £32 bill there is some difficulty on each side, for the debtor did not get up the £60 bill in exchange for it, while the creditor is unable to point out any other transaction to which this £32 bill can be attributed. But I think that here also the Sheriff has come to a right conclusion.

LORD ARDWALL—I agree with your Lordships that the Sheriff's judgment should be affirmed. These two conjoined actions practically resolve themselves into an action of accounting between the parties. There are now two points in dispute in the accounting—first, as to a sum of £60 alleged to be contained in a document which we may call an incomplete bill, and, second, as to whether the appellant is entitled to credit for an alleged payment of £28.

It is said that the document in which the £60 is contained is not a bill, and I agree that this is so. It was found in the repositories of Mr Lawson after his death; it was not originally signed by the drawer and was never completed in terms of section 20 of the Bills of Exchange Act 1882. Now I do not think that the Act of 1882 innovates on the old law of Scotland so as to render the principles established in the numerous decisions quoted by the Sheriff inapplicable or obsolete. The Sheriff-Substitute apparently holds that a change was made by section 20 of the Act. But section 20 merely gives power to the holder of an inchoate bill to fill it up and complete it. But that is a power which was always possessed by the holder of a bill, as is clear from the passage in the case of *Macdonald's Trustees v. Ranken*, June 13, 1817, F.C. quoted by the Sheriff as follows:—"There seems to be as little doubt in this case as

in the case of *Fair*, that Glencoe, *i.e.*, Macdonald of Glencoe, the pursuer's author, was meant to be the drawer of the bill, and the representatives have not even denied that fact. . . . According to the doctrine laid down in *Fair's* case, therefore, there is nothing to prevent the pursuers, as standing in the place of Glencoe, to have subscribed the bill or to bring an action as has been done in the present case." Accordingly under the law as it stood before the Bills Act of 1882 it was open to any holder of a bill in which the drawer's name was blank to fill it up, and section 20 does not alter the law at all.

The question, then, is—Is there anything to prevent the document in this case being regarded as a document of debt? The authorities make it clear that there is not. Mr Crabb Watt endeavoured to differentiate this case from the cases quoted by urging that in them it clearly appeared who the drawer of the document was. But in this case also there is no doubt who was in right of the obligation and whose name should have been inserted as the drawer. In the first place the document is stamped, and is addressed "Mains of Cults, Aberdeen," Mr Lawson's home; and then it bears *in gremio* to be "for value received, in season of shire stallion." That being so, it is vain to say that the identification of the drawer is not perfectly established by the document itself. Then Mr Watt says the document is not holograph; but in the case of such a document as this that can make no difference. I therefore think that Lawson's executors are entitled to credit for the £60 contained in the document in question, because that document, although not a bill in the sense of the above mentioned Act, is valid as an acknowledgment of debt.

As to the alleged part payment of £28, I am of opinion that it has not been proved. I quite agree with what has been said by your Lordship that we must not scan too critically proofs coming up from the Sheriff Court. But where a proof *prout de jure* is allowed in an action of accounting it does not follow that it is unnecessary that each item be proved *habili modo*. The evidence of the debtor, partially corroborated by his wife, is not habile to prove payment or part payment of such a debt as is here in question. I therefore am of opinion that Mr Watson is not entitled to credit for the said sum.

On the whole matter I agree with your Lordships that the Sheriff's interlocutor should be affirmed.

The Court affirmed the Sheriff's interlocutor.

Counsel for the Pursuers (Respondents)—A. R. Brown. Agents—Finlay, Rutherford, & Paterson, W.S.

Counsel for the Defender (Appellant)—Crabb Watt, K.C.—Moncreiff. Agents—Simpson & Marwick, W.S.

Friday, July 12.

FIRST DIVISION.

MOTHERWELL MAGISTRATES *v.*
DAVID COLVILLE & SONS, LIMITED.

Assessments—Burgh—Water—Owner's Water Assessment—Liability of Owner of Premises Supplied by Meter—Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), secs. 264 and 359—Motherwell Water (Additional Supply) Act 1900 (63 and 64 Vict. c. lxvii), sec. 25—Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901 (1 Edw. VII, c. 24), sec. 2.

A burgh which, under section 264 of the Burgh Police (Scotland) Act 1892 and a section in somewhat similar terms of a private Act, had been supplying manufacturers, who were both owners and occupiers of their works, with a supply of water for other than domestic purposes, by agreement, and charging therefor by meter, adopted Part I of the Burgh Sewerage, Drainage, and Water Supply (Scotland) Act 1901, and proposed to charge them, in addition to the charge by meter under the agreement, the owner's half of the water assessment, under section 2 of that Act.

Held that the manufacturers were not chargeable with the owner's water assessment.

The Burgh Police (Scotland) Act 1892 (55 and 56 Vict. c. 55), sec. 264, which makes provision for the commissioners of a burgh where there is more water than is required for domestic purposes giving a supply for other than domestic purposes, by agreement or on terms fixed by the Sheriff, contains this proviso—"Provided that when water is thus supplied from such surplus it shall not be lawful for the commissioners to charge the parties obtaining the same both with the *portion of the burgh general assessment applicable to water supply* [water assessment], and also for the supply of water obtained by them, but the commissioners may either charge the said assessment leviable on such premises or charge for the supply of water furnished to the same as they shall think fit. . . ."

Section 340 provides for the commissioners assessing all occupiers of lands or premises according to the valuation roll, subject to the exceptions after provided, in the sums necessary for the general purposes of the Act.

Section 359 provides for the commissioners levying upon all owners and occupiers of lands and premises a special assessment not to exceed threepence in the pound for the general improvement of the burgh, and enacts—"And such special assessment shall for the purposes of this Act be called 'the general improvement rate,' and shall be leviable either from the owner or occupier of such lands or premises in equal proportions, or in whole from the occupiers