plenty of money to pay." It is nonsense in the estimation of anybody who is acquainted with the practice of this Court and the expense of the litigation in this Court, to say that a man with 30s. a-week has money sufficient to pay his way. Well, then, the poor's roll is just to aid people who have not money to pay their way. If there is an Act of Parliament, which can only be altered by the Legislature, declaring that anybody with 25s. a-week has money to pay his way in a litigation in the Court of Session, we must bow to that, whatever the good sense of it may be; and if there is an Act of Sederunt, which cannot be altered at least without a majority of the Court, and the majority decline, being of opinion that 25s. a-week is quite sufficient for anybody to support a wife and family and to carry on litigation, we must bow to that too, and if that is the position in which this matter stands I bow respectfully, but at the same time I take the liberty of repeating what I began with—that I think it would be better if this matter were put on a satisfactory footing quite distinctly decided, and that in putting it on that footing the good sense and reason of the thing should be taken account of.

LORD TRAYNER—Following the authorities as they at present stand I am of opinion that we have no alternative but to refuse this application.

LORD MONCREIFF—I am of the same opinion.

The Court refused the application.

Counsel for the Applicant—J. H. Millar. Agent—James M'William, S.S.C.

Counsel for Macleod of Macleod—C. K. Mackenzie. Agents—Blair & Finlay, W.S.

Wednesday, June 30.

SECOND DIVISION.

[Lord Pearson, Ordinary.

G. & R. M'CULLOCH *v.* GILLON.

Bankruptcy — Illegal Preference—Petition to Annul Bankrupt's Discharge—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 79), *sec.* 151.

Evidence on which the Court *granted* the prayer of a petition for annulling a bankrupt's discharge in terms of the Bankruptcy (Scotland) Act 1856, sec. 151.

This was a petition presented in the Bill Chamber under section 151 of the Bankruptcy Act 1856 for the purpose of having the discharge of a bankrupt annulled, on the ground that he had given a preference or a gratuity to a creditor to induce him to consent to a certain composition being accepted, and so to facilitate his discharge.

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 151, enacts as follows:—"If the bankrupt shall have been personally concerned in or cognisant of the granting, giving, or promising any preference, gratuity, security, payment, or other consideration, or in any secret or collusive agreement or transaction as aforesaid, he shall forfeit all right to a discharge and all benefits under this Act; and such discharge, if granted either on or without an offer of composition, shall be annulled, and the trustee, or any one or more of the creditors, may apply by petition to the Lord Ordinary to have such discharge annulled accordingly."

The facts, so far as material, with the exception after noted, sufficiently appear from the opinion of the Lord Ordinary (PEARSON), who, after a proof, issued an interlocutor dated 20th March 1897 refusing the petition.

Opinion.—"This is a petition under section 151 of the Bankruptcy Act 1856, in which I am asked to annul a bankrupt's discharge, on the ground that he was personally concerned in the giving of a preference or gratuity to a creditor for supporting an offer of composition, and thereby facilitating the discharge.

"The bankrupt Alexander Gillon held a public-house licence in his own name. The business was carried on under the firm of J. & A. Gillon, the lease of the premises being taken and the goods in stock being supplied in the firm name. The initials of the firm represented the bankrupt's two sons, one of whom was a minor, and I think it may be taken that the business truly belonged to the father.

"Mr Gillon was sequestrated in July 1893. Mr Richard M'Culloch, accountant in Glasgow, was appointed trustee, and among the creditors were Messrs G. & R. M'Culloch, accountants, Glasgow (the present petitioners), and Mr Thomas Barr, colliery owner and wine merchant in Glasgow. Mr Barr was one of the leading creditors, and his claim for £744 was partly for cash advances to the bankrupt and partly for goods supplied to the public-house.

"Mr Gillon at first expected to be in a position to offer a composition of 4s. or 5s. in the £ on a basis of a total liability of £7000. His debts turned out to be much larger, and the trustee was authorised, by letter of 5th December 1893, to submit to the creditors an offer of 3s. 6d. The creditors met to consider this offer on 9th January 1894, and they accepted it on 5th February. Mr Gillon was discharged on 17th April 1894.

"Matters so remained until December 1896, when Mr Thomas Barr's son (Robert Barr) gave verbal intimation to the trustee that his father had been induced to vote for the acceptance of the offer of 3s. 6d. by a gratuity received from the bankrupt. Mr Robert Barr having been required to put his statement in writing, sent the trustee the letter along with the articles which had been handed to his father in 1894, namely, three gold watches, two gold chains, and a valuable mining compass. The trustee's

firm as creditors now make this application to have the bankrupt's discharge annulled, the trustee himself having been discharged in February 1896.

"I have said that the bankrupt's two sons were ostensibly carrying on the public-house under the firm name of J. & A. Gillon. Early in the sequestration it appeared to the trustee that there might be assets in that quarter which ought to be available for the father's creditors, and the two sons were accordingly sequestrated on 16th September 1893. It turned out that their creditors were in the main the father's creditors, and that their assets were nil, and the father, who had led the sons into this position, became anxious to get them out of it.

"Hence it was that the letter of 5th December 1893, which authorised the trustee to submit a composition offer of 3s. 6d. was conditioned thus—'The making of this offer, and its receipt by you as trustee, is on the distinct understanding that the sequestration of Messrs J. & A. Gillon is to be recalled, and the creditors thereon ranked on Mr Gillon's estate.'

"Most, if not all of the creditors, appear to have been made aware of this condition, and to have made no difficulty in assenting to it. As the facts turned out, they had no interest in keeping up the son's sequestration. But although the condition had been virtually assented to by the end of 1893, it was not in any formal way made a counterpart or condition of the acceptance of the composition offer, and accordingly it was judged safer to issue forms for the signature of the creditors, expressly assenting to the recal of the son's sequestration. These forms were issued independently of the composition offer, and some if not all of them were issued and signed after that offer had been accepted. This makes it appear as if the question of recal were not merely separate from the question of composition, but as if the former question had remained open after the latter question had been closed. This was so in form and possibly in law, but in substance and in fact those who were in a position to judge regarded the recal of the son's sequestration as having been practically arranged for by the end of 1893 if for no other reason than this, that it had by that time become plain that no one had a pecuniary interest in keeping it alive. It turned out, however, that the recal was not a matter of course after all. Certain creditors had to be argued into signing the letters, and one (Mr Brand) held out. The consequence is that the son's sequestration has not been recalled yet.

"Now, it is certain that on a day in January or February 1894 the bankrupt appeared in Mr Thomas Barr's coal office in Glasgow, bringing with him the gold watches, gold chains, and mining compass to which I have referred, and that after a brief interview with Mr Barr he departed, leaving the articles behind him, together with a note, which stated their cost at £95, 5s., and their value at say £57, 10s.

"Mr Barr says that this happened prior to the creditors' meeting of 5th February, at which the composition offer was accepted; that it was done with express reference to that offer, and with a view to influencing his vote at that meeting; and that, as a consequence, he instructed his son Robert Barr to vote for accepting the offer, which he did.

"Mr Gillon has been ready with several inconsistent explanations of the transaction. But the one to which he has ultimately settled down, although no statement of it is vouched upon record, is this, that the articles were handed over about ten days after the creditors' meeting of 5th February, and without any previous agreement, or any connection whatever with the composition offer; that it was done solely in connection with obtaining Mr Barr's consent to the recal of the son's sequestration, and was done on the suggestion of Mr Barr himself.

"It is obvious that the whole circumstances are charged with suspicion. And certainly a comparison of the witnesses adduced on either side does nothing to rehabilitate the respondent's case. The respondent himself is, in my judgment, a man whose word is worthless. The two daughters who were examined are in my opinion quite honest, but I formed a strong impression during their examination that they are wholly under their father's influence. The petitioner's witnesses are above suspicion, and their evidence is as distinct and detailed as could be expected after the lapse of three years.

"The only doubt which the respondent succeeds in raising is founded on the evidence of David and Robert Hunter. The one is a foreman blacksmith, the other an engineer, and both earn journeyman's wages. David Hunter is connected with the bankrupt by marriage (their wives being sisters), and was cautioner in the composition arrangement which cleared him out. Robert's connection with the bankrupt is a curious one. He himself lives in a £10 house, but he holds under the trustees of a private trust created by the bankrupt, a lease of the bankrupt's villa residence at a rent (unfurnished) of £45, and he sublets it at the same rent to the bankrupt's daughter. This arrangement seems, however, to date only from about Whitsunday 1895, and curious though it seems to be, I do not regard it as impeaching in any degree the credibility of Robert Hunter. Both the Hunters seem to me to be independent and straightforward witnesses, with no trace of being dominated by the Gillon influence, and with memories as distinct and accurate (in their way) as those of the petitioners' witnesses. Now, the Hunters give evidence which brings delivery of the articles to Mr Barr down as late as February 15th or thereabouts, and at all events some days later than the meeting of 5th February, and this not from general recollection, but from a recollection specialised as to dates by letters still in existence. These letters are (1) a letter from the agent Mr Orr, dated 8th February, asking the bankrupt to arrange for a meet-

ing, either at his house or in Glasgow, and (2) a letter of 9th February from the bankrupt to David Hunter, referring to that letter and asking him to take a run over some afternoon next week. The petitioners attempted to impugn the good faith of this letter, but in my judgment the attempt entirely failed. The Hunters did run over as requested, and found Mr Gillon polishing up the articles in question, and on the following day Robert Hunter (as arranged) accompanied Mr Gillon to Glasgow, and helped to carry them to Mr Barr's office.

"This, of course, does not bear directly upon the motive for handing them to Mr Barr, and I may say that if the case made for the petitioners had been consistent with the idea that the articles may have been handed over after the creditors' second meeting, in pursuance of an agreement or understanding previously arrived at, I should without hesitation have disregarded the discrepancy in dates, and have linked the two things together. But I think the petitioners' case does not admit of being so treated. Their witnesses have pinned themselves down to this position, that the articles were actually handed over in the coal office, and lodged in the safe at the wine office, before the meeting of 5th February; and this being so, it becomes obvious that the evidence of the Hunters touches the petitioners' case just at the thinnest part of it, and challenges attention to the evidence for the petitioners in the matter of dates. Now, the petitioners' proof does not stand this test very well for various reasons—the lapse of time for one thing, and the long and serious illness of Mr Barr for another, make it natural, and indeed inevitable, that the dates should be left somewhat vague. Mr Barr starts by being a year out of reckoning, and as for the month, he pronounces for January 'on account of the weather.' Mr Law, the cashier, says he cannot from memory give the exact date when the articles were left at the office by the bankrupt. He adds—'I remember the two meetings of Mr Gillon's creditors; it was previous to these meetings that I saw him at Mr Barr's; it was previous to Mr Barr's acceptance of the offer of 3s. 6d. in the £, I know that." Mr Robert Barr is the most distinct of the three, as he has most reason to be since it was he who got instructions from his father and voted at the meeting. He expresses himself as perfectly certain that the articles were left before the second meeting of creditors took place.

"I would not be understood as impugning the evidence of these three witnesses, or its accuracy so far as it goes. Read together, there can be no doubt that it shows that though they cannot fix the date absolutely, they are at one in the honest belief that they can fix it relatively, as having occurred before the second meeting of creditors. But then there is the evidence of the Hunters, which I am unable to disregard, and which goes to fix the date of the delivery some days subsequent to that meeting, bringing it down to a period when the composition had been accepted, and when undoubtedly the recal of the son's sequestration was being pressed, arranged for, and canvassed for. I do not mean that this counter case is proved; very far from it. But it casts at least some doubt upon the accuracy of the petitioners' proof at the very point where such accuracy is in my view essential in order to make out a charge involving highly penal consequences. My verdict therefore is 'not proven.'"

The pursuer reclaimed, and argued—The case was sufficiently proved by the evidence of the Barrs and Law. The exact date was not of importance if the motive with which the articles were handed over was proved.

Argued for the respondent—This was a *quasi* criminal and highly penal proceeding. If the petition were granted the respondent would be left an undischarged bankrupt for life. In such a case clear evidence should be required. Barr was a *particeps criminis*. The evidence of the Hunters was at least sufficient to raise a reasonable doubt, to the benefit of which the respondent was entitled. The Lord Ordinary's verdict of "not proven" was the right one.

LORD JUSTICE-CLERK—The point in dispute is not whether the respondent desired to effect something illegal, but whether the illegal act, which was undoubtedly done, was in his own sequestration or in that of his sons. The evidence of the Barrs and Law, which the Lord Ordinary accepts as honest and trustworthy, if we accept it, proves the petitioner's case absolutely. I do not think it is of very much consequence whether we can ascertain with exactitude the date at which these watches were left in Barr's hands, if we can ascertain what the truth is as to the purpose for which they were left; whether it was intended by leaving them there to offer a bribe to the creditor to consent to the composition, or whether having, as he thought, obtained his consent by the proposal that he should do so, they were left after that consent had been obtained. I think that would be a very troublesome question. The evidence of the Barrs is absolutely distinct to the effect that the proposal to give these pieces of jewellery was for the purpose of inducing Barr, as a creditor in the respondent's sequestration, to consent to his discharge upon a smaller composition than he would have been prepared to take. Now, that point appears to me to be proved, and there is nothing against it tending to shake one's confidence except the evidence of Gillon and his daughters and the evidence of the Hunters. Now, as regards Gillon and his daughters, I agree with the Lord Ordinary that their evidence is practically worthless. The Lord Ordinary says that the evidence of Gillon himself is not to be trusted, and the daughters were evidently under the influence of this worthless father. The evidence of the Hunters comes to nothing more than creating some difficulty as to whether the articles were handed over before a particular date or not—a matter

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