Styles (L.R., 14 App. Ca. 393)—"Besides issuing life policies, the appellant company issues without participation sums payable at fixed periods, sells annuities, and has funds invested which bear annual interest. It is not disputed that, in so far as its transactions relate to non-participating policies, whether for life or for periods certain, and to annuities, the company carries on a trade in the same sense as any proprietary office does; or that surplus moneys arising upon these transactions are business profits, and as such are liable to income-tax. With these profits and with the income derived by the company from its investments we have no concern."

Then as to the question whether income from investments does or does not constitute profit in the sense of the enactment which we have to construe, the Surveyor's argument rests on this, that in the Income-Tax Acts interest on money is separately mentioned as a subject of taxation. The later Income-Tax Acts no doubt are so worded as to reach interest upon money lent or invested, even although the person who receives the interest may make no ultimate profit in his business—*Clerical, &c., Insurance Society* v. *Carter*, 22 Q.B.D. 449. But it does not follow that interest from investments does not constitute profit for the purposes of this enactment. The members of a mutual society have more than one object in view in joining it. One is to obtain policies upon as good terms as possible; another is to derive gain from the profitable investment of the large accumulated funds of the society. In this sense therefore I feel no doubt that interest on investments constitutes profit in the sense of the Act.

Lastly, the Society has power to deal in reversions and re-insurances, both of which involve transactions with third parties and may be expected to yield profit.

The business must be judged of as a whole, and so judged, I have no hesitation in saying that it is a business carried on for profit.

I should add that the Surveyor also relied on the case of *Muat* v. *Shaw Stewart*, 17 R. 371. That was a decision of Seven Judges, and of course we are bound by it so far as in point. While some of the *dicta* certainly support the Surveyor's argument, I do not think that I misrepresent the judgment, taken as a whole, when I say that it proceeded on this view—that the premises which were occupied in Ardgowan Square, Greenock, as an estate office were not truly occupied for the purpose of any trade, business, or professional avocation, but simply to enable Sir Michael Shaw Stewart, a private gentleman of large means and estates, to transact the business connected with the management of his funds and estates more conveniently than he could do in his own house or in that of his factor. The position of a private individual, however wealthy, dealing simply with the management of his own means and estate is surely widely different from that of a large public body like this Society, which conducts its business for purposes of profit with the aid of a board of directors and a large resident staff.

In regard to the interpretation of the word "solely," I agree with Lord Trayner, with this qualification, that there may be cases in which a substantial part of a tenement may be devoted by the same occupier to purposes in which profit is not sought, so completely unconnected with the business carried on in the remainder as to forfeit the exemption. On such a case I reserve my opinion.

I am therefore of opinion with your Lordships that the Society's premises do come within the exemption, and that the appellant Society is not liable in inhabited-house duty in respect thereof.

The LORD JUSTICE-CLERK concurred.

LORD YOUNG was absent.

Counsel for the Appellants—Dundas, Q.C. —Fleming. Agents — Tods, Murray, & Jamieson, W.S.

Counsel for the Surveyor of Taxes—Solicitor-General (Dickson, Q.C.) — A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Wednesday, November 7.

FIRST DIVISION.

[Sheriff Court of Dumfries.

CROSBIE *v.* CROSBIE'S TRUSTEES.

Bill of Exchange—Joint Acceptors—Liability inter se — Relief—Parole Evidence—Bills of Exchange Act 1882 (45 *and* 46 *Vict. c.* 61), *sec.* 100—*Payment—Proof of Payment.*

Where one of two persons, who had both signed a bill as acceptor, claimed in the sequestration of the other to rank for the whole amount in the bill, and produced the bill in support of her claim, *held* that she was entitled, independently of the provisions of the Bills of Exchange Act 1882, section 100, to prove by parole evidence (1) that she had accepted the bill merely as cautioner for the bankrupt, (2) that the bankrupt had received the whole benefit of the bill, and (3) that she had paid the whole sum due on the bill to a bank.

Opinions reserved as to whether the 100th section of the Bills of Exchange Act 1882 applied to a case of this kind.

Bill of Exchange — Drawer Acting on Behalf of Third Party—Value—Parole Evidence—Loan—Proof of Loan.

The mother of a bankrupt claimed in the sequestration upon a bill of which she was the holder. The bill was drawn by her son-in-law upon and accepted by the bankrupt, and was endorsed blank by the drawer after the date of the sequestration. The claimant was met by the defence of no value received. The drawer admitted that in taking the bankrupt's acceptance he had acted on behalf and in the interest of the claimant.

Held that she was entitled, as against the trustee on the bankrupt's estate, to prove by parole evidence that the drawer, in drawing the bill, had acted as a *negotiorum gestor* or volunteer agent for her, and that the sum in the bill was truly due to her in respect of a loan granted by her to the bankrupt, for which she had taken no document of debt.

On 21st January 1899 the estates of Robert Crosbie, farmer, Neither Keir, Auldgirth, were sequestrated, and Mr Henry Hay Brown, C.A., Edinburgh, was appointed trustee. On 6th February 1899 Mrs Sarah M'Adam or Crosbie, mother of the bankrupt, lodged an affidavit and claim in the sequestration, in which she claimed to be ranked for the sum of £394, 18s. 3d.

The account of debt annexed to the claim was as follows:—

"Mr Robert Crosbie to Mrs Crosbie.

1892.				
April 16.	To cash lent you .	£200	0	0
	Interest thereon to 17 Feb. 1897, at 5 per cent.	48	7	1
		£248	7	1

"*Note.*—Mrs Crosbie borrowed the principal sum from Mr Robert Stoba, solicitor, Dumfries, on the security of the estate of Lagganlees. Mr Stoba took Mr Robert Crosbie's acceptance as an acknowledgment of the debt. The bill, of date 16th April 1892, is herewith produced. Mr John Gibson, Rosemount Terrace, Dumfries, Mrs Crosbie's son-in-law, thereafter purchased Lagganlees, and paid Mr Stoba the £200 advanced by him. He asked and got from Mr Stoba, in order that he might hold it on behalf of Mrs Gibson, the bill. At the end of five years Mr Gibson took, on her behalf, a new bill from Mr Crosbie for the principal sum and interest. The bill, dated 17th February 1897, is produced . . £250 0 0

1899.				
Jan. 11.	Interest thereon from 17th Feb. 1897 to this date—1 year, 348 days, at 5 per cent. . . .	23	14	2
		£273	14	2
1894.				
June 20.	Bill accepted on bankrupt's behalf, produced	£100	0	0
1894.				
Oct. 29.	Sum paid to Commercial Bank in respect thereof	£100	0	0
1899.				
Jan. 11.	Interest thereon from 29th Oct. 1894 to date—4 years, 74 days .	21	4	1
		121	4	1
		£394	18	3

"Said bill was signed by Mrs Crosbie as security for Robert Crosbie, who received the value. Mrs Crosbie paid the sum contained therein to the bank for Mr Hiddleston."

Annexed to the affidavit and claim was a declaration taken by John Gibson before a justice of peace in which he acknowledged and declared that what was stated in regard to the sum of £273, 14s. 2d., an item in the foregoing account of debt, was "strictly true and correct," and that "the interest as creditor in the bill of £250" was entirely in "his mother-in-law Mrs Crosbie."

In support of her claim Mrs Crosbie produced (1) a bill for £200, dated 16th April 1892, and payable one day after date, drawn by "Ro. Stoba" upon and accepted by "Robert Crosbie;" (2) a bill for £250, dated 17th February 1897, and payable one day after date, drawn by "John Gibson" upon and accepted by "Robert Crosbie" and endorsed blank by "John Gibson;" (3) a bill which ran as follows:—

"*Dumfries, 20th December* 1893.

"Six months after date pay to me or my order, within the Commercial Bank of Scotland, Ltd., Dumfries, the sum of One hundred pounds stg. for value received.

"JOHN HIDDLESTON.
"S. CROSBIE.
"ROBERT CROSBIE.

"To Mrs Sarah Crosbie, Lagganlees, Dunscore; and Mr Robert Crosbie, Nether Keir

"*Endorsed*—Pay the Commercial Bank of Scotland, Ltd., or order.

"JOHN HIDDLESTON."

[The name of "John Hiddleston" was scored through both on the front of the bill and in the endorsement.]

The bill for £250 produced was not endorsed by John Gibson until after the date of Robert Crosbie's bankruptcy.

There was no document of debt to prove that Mrs Crosbie had lent to the bankrupt the sum obtained from Mrs Stoba on the security of the estate of Lagganlees, and it was admitted that no such document of debt ever existed. There was no written proof to show that Mrs Crosbie had signed the bill for £100 merely as cautioner for the bankrupt, or that he had got the whole proceeds of the bill, or that she had paid the whole amount due thereon to the bank.

The trustee, by deliverance dated 3rd June 1899, rejected Mrs Crosbie's claim. She appealed, and on 30th June 1899 the Sheriff-Substitute (CAMPION) recalled the deliverance and allowed the appellant a proof *prout de jure* in support of her claim. Thereafter parole proof of the facts alleged in the account of debt annexed to the claim and quoted *supra* was led before the trustee. The nature of the facts deponed to sufficiently appears from the opinions of the Judges *infra*.

When he obtained the bankrupt's acceptance to the bill for £250 John Gibson had no authority or instructions from Mrs Crosbie to do so, and she did not even know that he had done so. It appeared that she was about seventy years old at that date.

By deliverance dated 4th April 1900, after hearing the proof adduced, the trustee rejected the claim.

The claimant appealed, and by interlocutor dated 15th June 1900 the Sheriff-Substitute dismissed the appeal and affirmed the deliverance appealed against.

The appellant appealed to the First Divi-

sion of the Court of Session, and argued—(1) As regards the bill for £100, the appellant had paid the amount as cautioner for the bankrupt, and was therefore entitled to relief. It was competent to bring in extraneous evidence to show what was the true relation between the two co-obligants—*Drummond* v. *Nicolson's Creditors*, February 3, 1697, M. 12,329; *Smollett* v. *Bell & Rannie*, February 21, 1793, M. 12,354. It was not a question of the liability of the co-obligants to the creditor on the bill, where the respondent's objection to bringing in parole evidence to explain the bill might be good; but in a question purely between the co-obligants themselves it was competent to prove that the appellant had signed only as a cautioner, and that the bankrupt had received the full benefit of the bill — *North British Insurance Company* v. *Tunnock and Fraser*, Nov. 1, 1864, 3 Macph. 1, at 5; *Lindsay* v. *Barmcotte*, Feb. 19, 1851, 13 D. 718, at 725; *Kilpatrick* v. *Kilpatrick*, Nov. 27, 1841, 4 D. 109; *Hamilton & Company* v. *Freeth*, July 17, 1889, 16 R. 1022. In any event, even if no extraneous evidence were admitted, the appellant was entitled to rank for one-half of the amount in the bill. But apart from the competence of parole evidence at common law, it was specially authorised by section 100 of the Bills of Exchange Act 1882 (45 and 46 Vict. cap. 61), which provided, that "any fact relating to a bill of exchange . . . which is relevant to any question of liability thereon may be proved by parole evidence." That was a very wide provision, and though its effect had by decision been somewhat narrowed as regards the holder for value of a bill, it would exactly cover the present case — *Gibson's Trustees* v. *Galloway*, Jan. 22, 1896, 23 R. 414; *National Bank of Australasia* v. *Turnbull & Company*, March 5, 1891, 18 R. 629; *Simpson* v. *Brown*, June 9, 1888, 15 R. 716. (2) As to the bill for £250 there was clearly a good document of debt. The presumption was, that as the holder the appellant, was entitled to be ranked, and that presumption was not displaced, but, on the contrary, confirmed by the proof.

Argued for the respondent—(1) *Ex facie* of the bill the appellant and the bankrupt were the joint-acceptors. But the appellant proposed to prove a collateral contract, and relied firstly on common law as making it competent to do so. Such a course was discredited in the case of *Walker's Trustees* v. *M'Kinlay*, June 14, 1880, 7 R. (H.L.) 85. She was in fact attempting to prove a guarantee, and for the purpose of such proof writing was required. Moreover, the drawer's signature to this document had been cancelled. It no longer possessed the privileges of a bill, and accordingly there was no obligation between the parties extant. Nor was the appellant aided by section 100 of the Bills of Exchange Act. That section did not apply, because it was concerned only with questions of liability on the bill. But, according to the appellant's own argument, this was not a question of liability on the bill, but solely between the two acceptors — *Thomson* v. *Robertson*, Oct. 19, 1900, 38 S.L.R. 3. (2) As regards the other bill, there was no good antecedent obligation. The appellant was not the holder for value, and accordingly it was a case of a gratuitous alienation by a bankrupt to a conjunct and confident person, and no claim in respect thereof could be ranked.

LORD PRESIDENT—The question in this case, is whether certain facts relative to two bills of exchange claimed on by the appellant Mrs Crosbie in the sequestration of the estates of her son Robert Crosbie can competently be proved by parole evidence, and if such evidence is competent, whether the proof adduced is sufficient to establish these facts.

The two bills of exchange upon which the appellant claims are one for £100, dated 20th December 1893, drawn by John Hiddleston upon and accepted by the appellant and the bankrupt, and the other for £250, dated 7th February 1897, drawn by John Gibson upon and accepted by the bankrupt.

The question relative to the first-mentioned bill is, whether a claim of relief by the appellant against the bankrupt for the sums which she paid under the bill can be proved by parole. She alleges in effect that she accepted the bill to procure the advance for the bankrupt, that he got the whole proceeds, and she accordingly claims a ranking on his estate for total relief.

It was not disputed in the argument before us that where there are two acceptors of a bill there is, from the form of the instrument, a presumption that as between themselves the acceptors are ultimately liable only each in one-half of the amount, and that if one has paid the whole the other would *prima facie* have a claim of relief to the extent of one-half. But as the question of relief does not depend solely or mainly on the terms of the bill, but the real nature of the transaction, and as proof of the true relations of the acceptors *inter se* would not in any way contradict the terms of the bill, I consider that these relations can competently be proved by parole, so that if in the result it is established that the bill was exclusively for behoof of one of them who got the whole proceeds of it, the other would be entitled to total relief. I arrive at this conclusion independently of section 100 of the Bills of Exchange Act 1882, and consequently it does not appear to me that for the purposes of the present question we require to give any opinion as to the construction or effect of that section.

The case of the bill for £250 is somewhat different, as the name of the appellant does not appear upon it, the sole drawer being John Gibson and the sole acceptor being the bankrupt; and the question relative to it practically resolves into this, whether it is competent to prove by parole that John Gibson in drawing the bill acted on behalf or in the interest of the appellant, and that the sum of £250 in respect of which it was granted was truly due by the bankrupt to her. It is alleged that in taking the bill John Gibson virtually acted as a *negotiorum*

gestor or volunteer agent for the appellant, to whom he was aware that the bankrupt was owing a just debt of the amount for which the bill was granted. This again is a question as to which it appears to me that parole proof is competent, as it does not in any way contradict the terms of the bill, but relates to something outside of it. It appears from the proof that in April 1892 the bankrupt required an advance of £200, and that Mr Stoba agreed to give a loan of that amount upon the appellant granting to him a postponed bond for it over a small property which belonged to her, the bankrupt at the same time granting a bill to Mr Stoba as a sort of collateral security for the same sum upon the bond, and the bill being granted, the £200 was advanced to the bankrupt. The advance was repaid in January 1897 by John Gibson, a son-in-law of the appellant, who purchased the property under burden of the bonds upon it, including the £200 bond. As the £200 was truly due to the appellant, John Gibson got up the bill, with a view to recovering the amount on her behalf, and afterwards obtained for the benefit of the appellant the bill for £250 claimed on as representing the £200 due under the first bill and accrued interest. Upon these facts I think that the appellant is entitled to a ranking for the amount of the last-mentioned bill, seeing that the debt was truly due to her by the bankrupt, and parole proof being, in my view, competent, because it is not adduced to contradict or interfere with the terms of the bill but to establish relevant facts collateral to and outside of it.

LORD ADAM—There were two questions argued in this case—(1st) whether Mrs Crosbie is entitled to rank in respect of the bill for £100, and (2nd) whether she is entitled to rank in respect of the bill for £250.

The bill for £100 was drawn by John Hiddleston, and accepted by Mrs Crosbie and the bankrupt. It was paid by Mrs Crosbie when it became due, and was then handed over to her. In the meantime, Mr Hiddleston's signature was deleted, as often is done in such cases to prevent, I suppose, the bill from getting into circulation again. Well, Mrs Crosbie having paid the £100 to the drawer of the bill, no question arises between him and the acceptors. The only question is, whether the acceptors can have their mutual relations as acceptors settled outwith the bill, and the true state of liability between them proved by parole evidence, and not by reference to writ or oath. It was said by counsel for the trustee that Mrs Crosbie could not, in any view, prove this by parole evidence, because the allegation made by her was that she paid the bill as cautioner for the bankrupt, and that, accordingly, there was a difficulty arising out of the Mercantile Law Amendment Act 1856, which prevents guarantees or cautionary obligations from being proved otherwise than by writ. But that argument is used under a misapprehension of the circumstances of the case. The only cautionary obligation—if any there was—was between the creditor on the bill and Mrs Crosbie, she guaranteeing that her son, or failing him, she herself, would pay the bill. And the present question is, whether, having paid the bill in full, she is entitled to have relief for that payment from the other acceptor. It is not a question of caution at all but of relief, and I cannot see why the extent of the liability must be determined by writ only and not by parole evidence. It was not disputed that in the case of this bill the presumption is—there being no evidence to the contrary—that the acceptors were each liable in one-half of the bill, and that if one paid the whole he would be entitled to relief from the other. Now, I see no incompetency in Mrs Crosbie proving that she paid the whole amount, and that her son was the true debtor, and in that case why should she not be entitled to relief against him? It is not a question of proving a loan by parole evidence, but of whether or no it was the fact that the whole amount was paid by Mrs Crosbie, and her son was the true debtor. With reference to the bill for £250, the position is this. There is a document of debt for £250, of which she is the endorsee, holder, and creditor. Why should she not be ranked in respect thereof? The answer is that she did not pay the value. That is not true in point of fact, for she did pay the sum of £200 to the debtor on the bill, and her money went to the renewal of a bill for £200, of which this present bill is the representative. Again, it is said that because the name of her son-in-law, who was negotiating for her, appears on the bill, it could not be held that she really gave value for it. I do not agree with that view. I think it is clearly proved that Crosbie got the £200 from her in 1892. I therefore concur in holding she is entitled to rank on this bill.

LORD M'LAREN—I have very little to add, but I shall state my opinion on the points in the case in the order in which they have been argued to us.

1. With reference to the bill for £100 signed by the mother and son as joint acceptors, it appears to me that in the case of a joint obligation, whether undertaken in a bond or cash-credit obligation, or by joint subscription of a bill, it is no doubt of the essence of the obligation that each party is liable *in solidum* to the creditor, but there is nothing whatever in the words of the obligation to determine the reciprocal liability *inter se* of the joint obligants, or the extent of the right of relief which will arise when payment is made by one of them. We are familiar with the rule of law that payment of money in a question between debtor and creditor can only be proved by writ or oath, but I have yet to learn that this rule applies when the question is not one between debtor and creditor, but where payment is to be proved with reference to a collateral right such as the right of relief of a co-obligant who pays the debt out of his own funds. There is no presumption that joint obligants are liable in equal shares *inter se*, and in business it is a common occurrence that a signature should be appended to a bond or bill without the

party signing receiving value, and with the view of assisting or accommodating his co-signatory. If there is no presumption of fact as to the liability *inter se* of the joint obligants, the question of liability must be investigated by proof at large if, as I assume, there is no limitation to writ or oath. In this case the proof is clear that Robert Crosbie received the whole proceeds of the bill, and in a question with his mother, who has paid the bill, is liable in total relief.

2. In regard to the bill for £250 I should only say this, that Mrs Crosbie is holder as indorsee, and *prima facie* is entitled to enforce it against the bankrupt, who is the acceptor, and the proof, so far from displacing this assumption, appears to me to support it.

LORD KINNEAR—By their joint acceptance of the bill for £100 Mrs Crosbie and her son Robert are placed in the position of joint obligants in a question with the drawer, but their reciprocal obligations *inter se* are not determined by anything on the face of the bill. If, then, reciprocal obligations are to be ascertained at all, and they are not constituted by written instrument, they must be ascertained by parole proof. There is no question of the rule of law that if one of two joint obligants pays more than his share of the debt he is entitled to relief against the other obligant, and the fact of payment, as well as the facts which go to show that the actual payment has exceeded the obligant's share, are proper subjects for judicial inquiry. In this case it is proved that Robert Crosbie received the contents of the bill and that the bill has been met by Mrs Crosbie, and if he got the money for his own purposes, and she has paid the whole amount, the consequence is that she has paid his debt, and is entitled to be reimbursed by him. I know of no rule of law which should prevent the mother from making good this claim, and it does not appear to me to be necessary to consider any question as to the application of section 100 of the Bills of Exchange Act 1882. As to the claim upon this bill for £250, I have nothing to add to what your Lordships have said.

The Court pronounced this interlocutor—

"Sustain the appeal: Recal the interlocutor of the Sheriff-Substitute dated 15th June 1900, together with the deliverance of the trustee dated 4th April 1900: Remit to the trustee to rank and prefer the claimant appellant, in terms of her claims as stated in her affidavit and claim, with the exception that the interest found due on the bill for £250 is restricted to interest on £200; and decern: Find the respondent liable to the appellant in expenses, and remit the accounts thereof to the Auditor to tax and to report."

Counsel for the Appellant—Dove Wilson. Agent—Arthur B. Paterson, W.S.

Counsel for the Respondent — Cook. Agents—E. A. & F. Hunter & Company, W.S.

Tuesday, November 27.

FIRST DIVISION.

[Sheriff Court of Lanarkshire.

MONAGHAN *v.* THE UNITED COLLIERIES, LIMITED.

Reparation—Workmen's Compensation Act 1897 (60 *and* 61 *Vict. c.* 37), *secs.* 1 (1) *and* 7 (1) *and* (2)—*Mine—Coal Mines Regulation Act* 1887 (50 *and* 51 *Vict. c.* 58), *sec.* 75—*Employment on, in, or about Mine—Colliery Siding—Junction with Main Line—Employment on Colliery Engine — Engine Used for Work Unconnected with Mining.*

By section 7 (1) of the Workmen's Compensation Act it is enacted that the Act "shall apply only to employment by the undertakers . . . on or in or about," *inter alia*, "a mine." By section 7 (2) it is declared that "mine means a mine to which the Coal Mines Regulation Act 1887 . . . applies." By section 75 of that Act it is declared that "mine" includes every shaft in the "course of being sunk, and every level and inclined plane in the course of being driven, and all the shafts, levels, planes, works, tramways, and sidings, both below ground and above ground, in and adjacent to and belonging to the mine."

A workman in the employment of the proprietors of a colliery as brakesman of a pug-engine used in connection therewith, proceeded with his engine along a siding belonging to the colliery, and was directed by the engine-driver to detach two empty waggons from a train on the line of the Caledonian Railway in order that the engine might take them to a sand-hole three or four hundred yards distant on the Caledonian line. The length of the siding from the colliery to the line was about 80 yards; it was not used in connection with any other pit. The colliery proprietors had contracted with the tenant of the sand-hole to remove the sand for him by means of the colliery engine, but in the railway company's waggons, the practice being that the waggons were taken to the sand-hole by the engine, loaded there, brought back to the colliery siding where they were weighed, and finally removed by the railway company. The sand-hole traffic had no connection with the working of the mine as such. While engaged in uncoupling the waggons as directed the workman was killed.

Held (*diss.* Lord Adam) that the accident arose out of and in the course of the deceased's employment on or in or about a mine within the meaning of the Coal Mines Regulation Act 1887, section 75, and the Workmen's Compensation Act 1897, and that his employers were liable in compensation.

In a claim under the Workmen's Compensation Act 1897, at the instance of