granted to him, the amount of the loan being paid to him by the respondent in exchange for the accepted bill, which thus became the property of the respondent. The ground of the complainer's suspension is that the drawer of the bill is on the face of it a company—The Exchange Loan Company, Limited—and that there is no such company. The respondent's averment is that he did business under that name, that this was well known to the complainer, and that no objection was taken in the Court when his summons in that name was raised, although the complainer was present when the case was before the Court and consented to decree.

It is plain that the decree went out against him on his acceptance on the face of the bill, and if he was to object to the instance he had opportunity to do so, and allowed decree to pass. Thereafter he paid £2 to account to prevent the sale of his goods under a poinding, and no diligence was pressed further against him.

I am unable to see how it can be objected successfully in a suspension to the rights of the holder of a bill for value, that the lender of the money has used a particular name as drawer. He is claiming his debt in respect he holds the bill, and unless it can be alleged that the acceptance was obtained by fraud, or that the holder of the acceptance has obtained possession of the document illegally, there can be no defence to the diligence used upon it. There can be no stay of execution upon such a decree in the ordinary case, and I see no ground for holding that the assumption of a name, whatever it may be, shall entitle the debtor on a bill to suspension of diligence.

It was urged that the complainer has ascertained that there does exist in England a company of the same name as that adopted by the respondent. I am unable to see how this can affect the question. A bill may be drawn in a name which is quite common, and there may be a question of fact who the actual individual who used the name was. But that cannot affect the obligation of the acceptor to meet his obligation when it falls due to the holder of his acceptance, for the holder has it as a warrant for diligence, and unless his right so to hold it can be impugned on some special ground, he is entitled to the assistance of a law court to enforce the obligation under it.

I therefore agree with your Lordships in recalling the judgment of the Lord Ordinary.

LORD LOW was absent.

The Court recalled the interlocutors in both actions, refused the suspension, and assoilzied the defender in the action for damages.

Counsel for the Reclaimer—M'Lennan, K.C.—Forbes. Agent—Robert Broatch, L.A.

Counsel for the Respondent—Trotter. Agent—Francis Green, Solicitor.

Friday, March 16.

SECOND DIVISION.

BROWN *v.* BROWN.

Poor's Roll—Circumstances Warranting Admission.

A porter earning 23s. a week, with no children, who had been found to have a *probabilis causa litigandi, held* entitled to admission to the poor's roll in order to defend an action of adherence and aliment brought against him by his wife, and to raise an action of divorce on the ground of adultery against her, she having been already admitted to the poor's roll.

The Lord Justice-Clerk *dissents* from the opinions expressed by Lord Young in the following cases—*Stevens* v. *Stevens*, January 23, 1885, 12 R. 548, 22 S.L.R. 356; *Anderson* v. *Blackwood*, July 11, 1885, 12 R. 1263, 22 S.L.R. 865; *Paterson* v. *Linlithgow Police Commissioners*, July 4, 1888, 15 R. 826, 25 S.L.R. 601; *Macaskill* v. *M'Leod*, June 30, 1897, 24 R. 999, 34 S.L.R. 752.

John Cunningham Brown, porter, 16 Archibald Place, Edinburgh, applied for admission to the poor's roll in order to defend an action of adherence and aliment brought against him by his wife, and to raise an action against her for divorce on the ground of adultery. She was on the poor's roll.

On 24th January 1906 the Court remitted the application to the reporters on *probabilis causa litigandi* to report whether the applicant had a *probabilis causa litigandi*, and also whether, in the circumstances of his application, he was otherwise entitled to the benefit of the poor's roll.

On 2nd March 1906 the reporters reported that the applicant had a *probabilis causa litigandi*, but that they did not think him entitled to admission to the roll.

The facts were as follows:—The applicant was a porter, thirty-seven years of age, married, without children, employed at the General Register House, Edinburgh, at a salary of sixty pounds a year or twenty-three shillings a-week. He had no means whatever beyond his salary.

Brown moved to be admitted. His wife opposed the motion on the ground that his circumstances did not warrant his admission.

Argued for the applicant—He was entitled to admission, the test being, could he, looking to the whole circumstances of the case, bear the ordinary costs of litigation. He could not—*Miller* v. *Gordon*, March 8, 1828, 16 S. 812; *Robertson*, July 8, 1880, 7 R. 1092; *Stevens* v. *Stevens*, January 23, 1885, 12 R. 548, 22 S.L.R. 356; *Anderson* v. *Blackwood*, July 11, 1885, 12 R. 1263, 22 S.L.R. 865; *Paterson* v. *Linlithgow Police Commissioners*, July 4, 1888, 15 R. 826, 25 S.L.R. 601; *Macaskill* v. *M'Leod*, June 30, 1897, 24 R. 999, 34 S.L.R. 752. See especially Lord Young's opinion in the last four cases. The following special circumstances were strongly in his favour—his wife was already

on the poor's roll, the proceedings were consistorial, he was a defender, being defender in the action of adherence and aliment, and pursuer in the action of divorce only because of it; if not admitted he would have to pay aliment, his own costs and his wife's costs—Act of Sederunt, 21st December 1842, section 16.

Argued for the objector—The question was whether the applicant was in necessitous circumstances. He was not, looking to the wages he earned, and the fact that he had no dependents—*Robertson, cit. sup.*, governed the case, where Lord President Inglis laid it down that a man earning twenty-three shillings a-week was not except in exceptional circumstances entitled to get on the roll. See also *Muir*, February 1, 1850, 12 D. 632; *Mackenzie* v. *Campbell*, March 18, 1892, 29 S.L.R. 594. The Lord Ordinary had power to dispense with the payment of Court dues — The Clerks of Session (Scotland) Regulation Act 1889, section 9.

LORD JUSTICE-CLERK—Cases of this kind must be dealt with, first, upon general rules, and second, on considerations which the Court may think justify departure from such general rules. Lord President Inglis in the case of *Robertson* (7 R. 1092), laid down the general rule that a man with 23s. a-week is not entitled to the benefit of the poor roll, but that special circumstances may justify the admission of such a person; and in that case the applicant in the special circumstances was admitted. In this case the peculiarity of the position is that the applicant is not really a pursuer. He has been brought into Court by his wife. She demands adherence and aliment, having been away from her husband for eighteen months. He says that in order to meet this claim he wishes to bring an action of divorce. The reporters on *probabilis causa* report that he has a *probabilis causa*. His wife practically compels him to bring such an action, for I must assume at this stage that what she is trying to do is to extract aliment for the purpose of enabling her to live in adultery. If he is not admitted the applicant must pay his wife's costs, his own costs, and aliment to his wife. I think these are special circumstances enough to justify admission to the roll in this case.

In coming to this conclusion I desire to say that I do not assent to the opinions delivered by Lord Young in the cases cited. I do not think the views expressed by his Lordship are to be accepted as correctly stating the grounds on which the Court ought to decide such questions.

LORD KYLLACHY—I am of the same opinion. The special circumstances here are sufficient to justify the admission of the applicant.

LORD STORMONTH DARLING—I agree.

LORD LOW—I also agree.

The Court admitted the applicant.

Counsel for the Applicant — Melville. Agent—W. H. Hamilton, S.S.C.

Counsel for the Objector—Laing. Agent —J. B. Lorimer, W.S.

Friday, March 16.

FIRST DIVISION.

[Sheriff-Substitute at Perth.

YEAMAN *v.* LITTLE.

Bankruptcy—Election of Trustee—Appeal—Competency—Error of Sheriff in Deducting Amount of a Vote which in Fact had not been Given—Bankruptcy (Scotland) Act 1856 (19 *and* 20 *Vict. c.* 79), *sec.* 71.

At a meeting of creditors for the election of a trustee in a sequestration objection was taken to a number of votes for one of the two candidates on a ground which the Sheriff subsequently upheld. The Sheriff, misled by the parties themselves, in giving effect to his judgment disallowed the vote of a creditor who, according to the minute of the meeting, had in fact not voted, and deducted the amount of it from the candidate's total. By doing so the Sheriff was led to declare the wrong candidate in a majority and trustee. The unsuccessful candidate brought an appeal.

Held that the appeal was incompetent inasmuch as the Sheriff had exercised his jurisdiction and his decision was, under section 71 of the Bankruptcy (Scotland) Act 1856, final.

Farquharson v. *Sutherland*, June 16, 1888, 15 R. 759, 25 S.L.R. 573, *distinguished.*

The Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), section 71, enacts—"*Judgment by Sheriff as to Trustee Final.*—The judgment of the Sheriff declaring the person or persons elected to be trustee or trustees in succession shall be given with the least possible delay; and such judgment shall be final, and in no case subject to review in any court or in any manner whatever."

At a meeting of creditors, held at Perth on 27th January 1906 for the purpose of electing a trustee or trustees on the sequestrated estates of Thomas Warrand Farquharson, of Cammock and Whitehills, Glenisla, votes to the value of £971, 1s. 1d. were given for John Yeaman, solicitor, Alyth, and to the value of £581, 10s. 5d. for John Little, solicitor, Perth. Objections were taken to a number of the votes and, *inter alia*, to a number given for Yeaman on the ground that the Justice of the Peace before whom the oaths bore to have been taken was a "solicitor" and a "procurator in an inferior court," contrary to 6 Geo. IV, c. 48, section 27. The Sheriff-Substitute (SYM) sustained this objection, and after a scrutiny of the votes, by interlocutor of 13th February 1906 found Little to be in a