

injured. I think these two circumstances are fair elements of corroboration of the informer's evidence, and considering that the Lord Ordinary had an opportunity of seeing the witnesses, and that everything depends on his view of their credibility, I do not feel that I could interfere with the judgment which he has pronounced, and I am therefore of opinion that we should adhere to his interlocutor.

LORD ADAM—I concur with Lord Shand.

The Court adhered.

Counsel for Pursuer—Sol.-Gen. Robertson—Lorimer. Agent—D. Crole, Solicitor for Inland Revenue.

Counsel for Defender—A. S. D. Thomson. Agent—Marcus J. Brown, S.S.C.

Saturday, July 11.

SECOND DIVISION.

ANDERSON v. BLACKWOOD.

Process—Poor's-Roll—Poverty—Probabilis causa litigandi.

A man earning 15s. a-week of wages admitted to the benefit of the poor's-roll to enable him to appeal to the Court of Session in an action of damages for personal injuries in which he was pursuer.

Thomas Anderson, miner, petitioned for admission to the benefit of the poor's-roll in the Court of Session, to enable him to insist in an appeal from the Sheriff of Lanarkshire in an action of damages for personal injuries at his instance against John Blackwood. Both the Sheriff-Substitute and the Sheriff had decided the case against the applicant. The Court remitted to the reporters on the *probabilis causa litigandi* to inquire and report whether the applicant had a *probabilis causa litigandi*, and in doing so to have special regard to the applicant's means. The applicant produced to the reporters a certificate of poverty from the minister and elders of the parish of Old Monkland. The certificate bore that the applicant had appeared before them and stated that he was fifty-seven years of age; that his wife was a pauper inmate of a lunatic asylum; that he had a son, aged twenty-two, living in family with him, who was earning 20s. a-week; that he was possessed of no property, and was earning an average wage of 14s. or 15s. a-week. The certificate further bore that no part of that statement was consistent with the certifiers' own proper knowledge, but that it depended entirely on the applicant's own statement, and was affected by a letter from the underground manager of the mine in which the applicant was working, which stated that he was earning "something like 4s. or 5s. per day for twenty days of the four weeks."

The reporters reported that the applicant had a *probabilis causa litigandi*, and that, having special regard to his means, as appearing from the certificate to be 15s. a-week, he was, in their opinion, entitled to the benefit of the poor's-roll.

Blackwood objected to the applicant's admission, and argued—The case of *Stevens v. Stevens*,

Jan. 23, 1885, 12 R. 548, was not conclusive, for though the applicant in that case was earning 5s. a-week more than this applicant, yet he had an imbecile son to support, while on the other hand this applicant had a son living with him earning as much as Stevens did, and had no one to keep. Further, Stevens' action was one which could be brought only in the Court of Session, while this applicant had already the judgments of two Sheriffs against him.

At advising—

LORD JUSTICE-CLERK—I think we must admit this applicant. It is not very easy to draw a line between those who ought and those who ought not to be admitted, but the reporters have reported that the man has a *probabilis causa litigandi*, and I think it is plain enough from the amount of his earnings that he cannot litigate in this Court under the ordinary conditions, and therefore, without laying down any general rule, or saying that whenever the applicant's earnings do not exceed 15s. I should repeat the judgment, I think the present application should be granted.

LORD YOUNG—I am of the same opinion. I confess I think it a safe judgment. I must say I should like to see more uniformity in the decisions. I think we are getting more uniform, and that our later decisions are based on a sound and right principle. The *ratio* of the matter is, that the agents and counsel for the poor should not be required to give their services except to necessitous persons who cannot afford the expenses of litigation. It was formerly my opinion when at the bar, and I have frequently given advice to that effect, and would be prepared to act on it still, that with respect to the opposite party, he is always better in a question with a poor adversary in the hands of the agent for the poor than in those of a speculative agent, so far as his own interests are concerned; and I do not think much, I must say, of those who would take advantage of the chance that their poor adversary may find no one ready to take up his case as a speculation. I do not like that. I should like to put it on the plain principle that the man's circumstances are not such that he can pay his own way in the Court of Session, and if that be so, and he is reported to have a *probabilis causa*, and no other objection is suggested, I should be always ready to admit him.

LORD RUTHEBFURD CLARK—I think, following the decisions we have recently pronounced, we have no alternative but to admit this man.

LORD JUSTICE-CLERK—I should just like to say further, that I think the principle which Lord Young suggests would be a very desirable one to adopt, but I am not prepared to say I would rest it entirely on the grounds on which he has put it.

LORD CRAIGHILL was absent.

The Court granted the application.

Counsel for Applicant—C. K. Mackenzie. Agent—W. J. Cullen, W.S.

Counsel for Respondent—Maconochie. Agents—Maconochie & Hare, W.S.