he intended, I am satisfied that he intended conversion. I think his intention was that his whole property should be turned into money.

The question here applies only to a small part of the heritage, which altogether amounted to £35,000, the whole estate being almost a quarter of a million. Of that £35,000 the trustees in the execution of the will, and in pursuance of what they thought was the testator's intention, have sold heritage of the value of £27,000, and we have been told that no question is raised as to that money, but a question is raised as to the remainder. It seems a curious proposition to submit that the testator did intend conversion to the extent of £27,000 worth of heritage, but did not intend it with regard to the remaining £8000. There was here no necessity to convert, no bankruptcy or anything of that sort, nothing to go upon other than the intention expressed in the will. The trustees in the execution of that will converted £27,000, and are not said to have acted wrongly in so doing, but we are told we cannot collect from the will the intention to convert the comparatively small remainder. I cannot assent to that. The testator clearly intended that the trustees should sell when they could do so to the advantage of the estate. In fact, he meant them to convert. It would require the utmost ingenuity to see how the trust could have been executed without conversion. It is said, looking to the authorities, that in such a case as this, even if a man leaves a shop in equal shares to 100 great-grandchildren, that shop will not be converted into money unless it appears that it was absolutely necessary so to convert it. I could not impute such an intention to any man sane enough to make a will.

I collect from this will, read and construed according to well-established rules, that the testator intended conversion not only of the property amounting to £27,000, which the trustees have in execution of the will already converted, but also of the remaining £8000 property.

Lord Rutherfurd Clark—Having in view the two cases of *Sheppard* and *Duncan*, I have had considerable difficulty about this case, but as I understand your Lordships are agreed, I do not dissent from the judgment proposed. I proceed, however, upon the ground that reading the deed as a whole conversion was indispensable and necessary to its due execution. I may, I think, put that construction upon it, and I therefore concur, but I say nothing against the two cases I have referred to.

Lord Trayner—Looking to the terms of the deed, I think it was indispensable that the power of sale should be exercised. The trustees could not otherwise have carried out the purposes for which the trust was created, and I gather consequently from that that it was the testator's intention that conversion should take place. I am therefore of opinion that the question should be answered in the affirmative.

The Court answered the question in the affirmative.

Counsel for the First and Second Parties—Dickson—Napier. Agents — Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Third Parties—H. Johnston—Wallace. Agents—Lindsay & Wallace, W.S.

Saturday, December 6.

SECOND DIVISION.

[Sheriff of Dumfries.

JOHNSTONE *v.* DRYDEN.

Process — Caution for Expenses— Pursuer in Receipt of Parochial Relief — Poor's Roll.

An unmarried woman in receipt of parochial relief brought an action in the Small Debt Court, as proprietrix of certain subjects, for arrears of rent. Her title having been objected to, she raised an action of declarator in the Sheriff Court. In that action it was pleaded as a preliminary defence that being a pauper she was bound to find caution for expenses, and upon her failing to do so the defender was assoilzied. The pursuer appealed to the Court of Session. There was no appearance for the defender. *Held* that the pursuer was not bound to find caution for expenses as a condition of insisting in her action.

Anne Johnstone, residing in Lockerbie, brought an action in the Small Debt Court at Dumfries against David Oliver, joiner, Hightae, for payment of arrears of rent due to her as proprietrix of certain subjects in Hightae of which the defender was the tenant. Objection was taken to the pursuer's title, and the action was sisted to have the rights of parties determined.

Anne Johnstone thereupon raised an action in the Sheriff Court at Dumfries against Mrs Jane Richardson or Dryden to have it found and declared that she was the heritable proprietrix of the subjects in question.

The defender pleaded—"*Preliminary*—(2) The pursuer being in the lower rank of life, being a pauper, and having taken no steps to be placed on the poor's roll, which would have had the effect of eliciting a report whether there was a *probabilis causa*, should be ordered to find caution for expenses."

The Sheriff-Substitute (Boyle Hope) sustained that plea-in-law. The pursuer failed to find caution, and in consequence the defender was assoilzied both by the Sheriff-Substitute and by the Sheriff.

The pursuer appealed to the Second Division of the Court of Session. She admitted that she received 1s. 6d. a-week

from the parochial board, but argued that the case was ruled by that of *Macdonald* v. *Simpson*, March 7, 1882, 9 R. 696, which overruled the previous case of *Hunter* v. *Clark*, July 10, 1874, 1 R. 1154.

There was no appearance for the defender.

At advising—

LORD JUSTICE-CLERK—I think that the case of *Macdonald*, which seems to be the last decided case upon this question, is an authority for this proposition—that it does not follow as a matter of course from a pursuer being in receipt of parochial relief that he is not entitled to sue an action except upon condition of either establishing a *probabilis causa* and then suing *in forma pauperis* or finding caution for expenses. The case of *Hunter* v. *Clark* does indeed appear to be an authority to the effect that such a pursuer, if he cannot establish a *probabilis causa*, and so get the benefit of the poor's roll, must find caution for expenses, but I see that the Judges who decided *Macdonald* v. *Simpson* considered that there must have been special circumstances in the case of *Hunter* which led to the Court exercising their discretion in the way they did. There are certain peculiar circumstances in the present case which are not favourable to a judgment ordaining the pursuer to find caution. To begin with, the defender does not choose to appear to defend the judgment she obtained, and to state to us any circumstances justifying it. In these circumstances I think we are entitled to regard the statements of the pursuer as a substantially accurate account of the facts. Now, from these statements it seems that the pursuer had long enjoyed the right to certain heritable subjects. She let them, and she brought an action in the Small Debt Court for the rent. The answer made to her was that she had no title; that someone else had a title. So far, the case does not appear to be that of a woman who has absolutely no estate. The Sheriff sisted the small-debt action (I do not think discreetly) for the purpose of allowing the pursuer to raise an action of declarator of title, and the pursuer brought such an action in order to establish a title which had hitherto not been disputed. The defender maintained in that action that she must find caution because she had obtained parochial relief, and as she failed to do so, the Sheriff assoilzied the defender. I think that judgment was not justifiable in the circumstances. I think that we should follow the case of *Macdonald* v. *Simpson*, and decide that the pursuer need not find caution as a condition of insisting in the present action.

LORD YOUNG—I agree. I think the case of *Macdonald* rules the present one. It is indistinguishable from it. I need not add more, as I should only repeat my judgment in that case.

LORD RUTHERFURD CLARK—I agree. I have some doubts whether I am correctly reported in the case of *Macdonald* v. *Simpson*, because I am made to say that I saw no difference between that case and the case of *Hunter* v. *Clark*. I think there must be an error in that. In the special circumstances here, however, I think we should not require the pursuer to find caution.

LORD TRAYNER—I agree in the result at which your Lordships have arrived, but upon the ground that there has been no appearance for the defender. I am not prepared to base my judgment upon the grounds upon which your Lordships are proceeding. I think as a general rule that a pauper who does not choose to apply for the benefit of the poor's roll, and to sue *in forma pauperis*, is not entitled to litigate without finding caution. Upon that question as a matter of principle I should adopt the opinion of the Lord President in the case of *Hunter* v. *Clark*.

The Court sustained the appeal.

Counsel for Pursuer and Appellant—A. S. D. Thomson. Agents—Irvine & Gray, S.S.C.

Tuesday, December 9.

SECOND DIVISION.

[Lord Trayner, Ordinary.

THE MERRYTON COAL COMPANY *v.* ANDERSON.

Coal Mine — Check-Weigher — Interdict — Coal Mines Regulation Act 1887 (50 *and* 51 *Vict. cap.* 58), *sec.* 13.

The miners employed in a coal mine appointed a check-weigher in terms of the Coal Mines Regulation Act 1887. The mine-owners became dissatisfied with the check-weigher, and dismissed their miners who had appointed him, and only re-engaged them on the stipulation that they would not appoint him as check-weigher. The miners on their re-employment did not reappoint him. *Held* that the mine-owners were entitled to interdict against him from entering their colliery premises, as his employment fell when the persons who made it ceased to be employed at the mine.

The Coal Mines Regulation Act 1887, section 13 (1), provides—"The persons who are employed in a mine, and are paid according to the weight of the minerals gotten by them, may at their own cost station a person (in this Act referred to as a 'check-weigher') at each place appointed for the weighing of the mineral, and at each place appointed for determining the deductions, in order that he may, on behalf of the persons by whom he is so stationed, take a correct account of the weight of the mineral or determine correctly the deductions, as the case may be. . . . (4) If the owner, agent, or manager of the mine desires the re-