Wednesday, February 28.

SECOND DIVISION.

NOTE FOR JAMES ALLAN FOR ADMISSION TO POOR'S ROLL.

Poor's Roll—Status.

Held that it is incompetent to state objections to the *status* of a person claiming the privilege of the Poor's Roll after a remit has been made to the Reporter *probabilis causa litigandi.*

In this case the Reporters made a report to the Court that it had been stated to them that the circumstances of the petitioner were such as not to entitle him to the benefit of the Poor's Roll.

A. J. YOUNG, for the objector, founded upon the terms of the Act of Sederunt of 1842, by which the Reporters are to certify, not only that there is a *probabilis causa*, but that the applicant otherwise merits to be put on the roll; and asked that it be remitted to them to inquire as to his alleged circumstances. The cases of *Hackett*, June 23, and *Oal*, 14 S. 1120, were referred to.

FORDYCE for the petitioner.

The Court refused to remit, and admitted the petitioner.

At advising—

LORD NEAVES—This is too late. Notice is given in the minute-book for the express purpose that objections may be stated when the case appears in the Single Bills. The change in the A. S. of 1842 from that of 1819 was made in order to alter the system formerly pursued.

LORD BENHOLME concurred.

LORD COWAN—I think it very important that the present rule should be adhered to. According to it, an opportunity for objecting is always given when the case is in the Single Bills; objections are frequently stated there, and are perhaps disposed of at once; or perhaps we may then remit to the Auditor to report on the matter of poverty under the certificates, while the *probabilis causa* is remitted to the Reporters. I am very clear, that where the objection to their report comes to this, that there should never have been a remit at all, it cannot be listened to.

Agent for Petitioner—Thomas Veitch, S.S.C.

Thursday, February 29.

GRANT *v.* YUILL.

Parent and Child—Bastard, custody of—Perjury.

The father of an illegitimate female child of ten years of age offered to take the child and aliment her in family, in answer to a demand by the mother for yearly aliment. *Held* that the fact that in a prior action he had denied the paternity on oath did not prevent him from exercising his option either to aliment the child in family or pay a certain sum per annum to the mother.

In this action Grant sued Mr Yuill, farmer, Newlands, for the sum of £12 per annum, as aliment for an illegitimate child of the pursuer and defender, until said child attained the age of fourteen years complete. The nature of the action and of the defence sufficiently appear from the following interlocutor and note of the Lord Ordinary:—

"25*th November* 1871.—The Lord Ordinary having heard parties' procurators, and considered the closed record, proof adduced, and whole process, finds that the defender has made a reasonable offer to take charge of and educate the pursuer's child, who is now ten years of age; therefore sustains the defences, assoilzies the defender from the conclusions of the action, and decerns; finds him entitled to expenses, of which appoints an account to be given in, and remits the same, when lodged, to the Auditor to tax and report.

"*Note.*—The Lord Ordinary, having regard to the position of the leading witnesses examined for the defender, and to the manner in which they gave their evidence, has seen no reason to doubt that the offer made by him to aliment and educate the pursuer's child, under the care of his sister, who is ready to undertake the charge in her own house, was made in *bona fide.*

"But the main difficulty the Lord Ordinary has felt in dealing with the case arises from the fact that the defender for some time denied the paternity of the child; and that appears to have been laid down in the case of *Keay*, Feb. 19, 1825, 3 S., p. 561, that in such a case the defender could not discharge himself of his obligation to aliment a child by offering to take the custody of it. And if that decision is to be held as laying down a general rule, that in all cases where a defender has denied the paternity, and has only paid aliment under force of a decree in a defended action, he is to be precluded from at any time thereafter pleading his readiness to take the custody of the child, as a defence to a claim for continued aliment after the child has arrived at seven or ten years of age, as the case may be,—the present defender is in that position. The Lord Ordinary, however, has been unable so to read that decision. Because the report shows that, at the time the decision was pronounced, the defender was judicially denying the paternity, and the opinion of the Court appears to have proceeded upon that circumstance, as it bears that the defender was not entitled to the custody 'while,' and not because he had at one time denied the paternity.

"In the present case, on the other hand, the defender judicially admits the paternity, and if the offer of the defender had been to take the child into his own house, as in the case of *Kay*, June 14, 1826, 4 Shaw, p. 706; *Corrie*, Feb. 22, 1860; and in the older case of *Ballantine*, Feb. 22, 1803, Hume, p. 424, no objection could, it is thought, have been made to the proposal. The intention, however, of the defender is not to take the child into his own house, but to place her under the care of his sister, a widow, resident on a farm in the country, who has agreed with him to aliment and educate the child, and the question raised is, whether that is a proper fulfilment of the defender's obligation. Now, having regard to the fact that the defender is unmarried, and has no female relative resident in his house, it appears to the Lord Ordinary that this is a fair and reasonable arrangement, for the child in question has never resided with the pursuer, and has for the last six or seven years been placed by her under the charge of her sister, where the pursuer occasionally sees her; and as the period has now arrived when the putative father is entitled to discharge himself of his liability, as explained by