

items of the curator's account are to be allowed to stand. On the merits of the case I have no doubt at all. No one disputes that the *curator bonis* had no power without the authority of the Court to enter upon the expenditure in question. The result lies upon himself. The expenditure was illegal *prima facie*. No doubt expenditure may be made without the authority of the Court, and it may not always be disallowed, but that is when it has clearly been for the benefit of the ward. It is perfectly clear that if the *curator bonis* had come to the Court with a petition for special powers that petition would not have been granted. The act was a most imprudent one. I can therefore see no alternative but to conclude that the item must be disallowed. I am equally clear that that is the only proper matter before us. As to the claim for recompense by the curator against the ward, we have not that question before us, and we have no materials for disposing of it. It is very doubtful, I think, whether there will be such a claim against the ward when he succeeds.

The Court pronounced the following interlocutor:—

“Find that the respondent Thomas Tennent, as *curator bonis*, acted illegally in entering into contracts which involved the expenditure of the ward's funds to the amount of £3500 in rebuilding the mansion-house of the estate of East Overton: To that effect and extent sustain the second and third of the objections for the reclaimers to the accounts lodged by the said Thomas Tennent: Repel the other objections, and remit to Mr Molleson to re-consider the curator's accounts in accordance with the above finding, reserving to the curator any claim of recompense which he may be able to establish in respect of any benefit accruing to the ward's estate in consequence of the said expenditure, and to all other parties their answers as accords.”

Counsel for the Petitioners—Balfour, Q.C.—
W. Campbell. Agents—Gill & Pringle, W.S.

Counsel for the Respondent—Comrie Thomson
—Strachan. Agent—W. Officer, S.S.C.

Tuesday, July 3.

SECOND DIVISION.

CRAIG v. NORTH BRITISH RAILWAY
COMPANY.

*Process—Action of Damages for Personal Injuries
—Diligence to Recover Pursuer's Business Books
and Income-tax Receipts.*

A merchant who had been injured in a railway collision, raised an action of damages against the railway company, stating that he had been obliged, owing to the shock to his system, to abstain from business for several weeks, whereby he had suffered loss. The defenders moved for a diligence to recover the pursuer's “business books, cash books, ledgers, balance-sheets, statements of profit, accounts, receipts for payment of income-tax, and all other books

kept by or for him during the last four years, in order that excerpts may be taken therefrom of all entries showing his income from his business during these years.” The Court (*diss.* Lord Rutherford Clark) refused the motion.

This was an action of damages for £2000 at the instance of Robert Hunter Craig, a produce merchant in Glasgow, against the North British Railway Company, on account of personal injuries alleged to have been sustained by him in a collision between a passenger train on their line running between Kilsyth and Glasgow and a mineral train which was standing at Bishopbriggs Station.

He averred that owing to the shock he had sustained he had been “obliged to abstain entirely from business for several weeks, and for several weeks thereafter was able to attend only partially to business.” He further averred that “in consequence of the injury he sustained he had been put to considerable expense, and owing to his inability to attend to business he had further sustained serious loss and damage therein.”

The Lord Ordinary (LEE) closed the record, and adjusted an issue. Notice of trial was given for the Summer Sittings.

The defenders then moved the Second Division of the Court for a diligence and commission for the examination of havers and recovery of the writings contained in the following specification—“All the business books, cash books, ledgers, balance-sheets, statements of profit, accounts, receipts for payment of income-tax, and all other books and documents kept by or for the pursuer, or by or for any firm of which he has been or is a partner during the last four years, in order that excerpts may be taken therefrom of all entries showing or tending to show the pursuer's income from his business during these years.”

The pursuer's counsel opposed the motion, submitting that as the pursuer only averred that he had been incapacitated from business for several weeks after the accident, it was unreasonable to force him to disclose the state of his business for so long a period as four years. The defenders, however, were quite entitled to see his books with reference to all his transactions during the period named in his record.

The defender's counsel replied that the diligence now craved was the usual one given in such cases. The matter was of vital importance to railway companies. The pursuer here sued for a slump sum of £2000. How was it possible to ascertain the true profits of the business for which he said he had been incapacitated through the defender's fault, in order to assess his damages, unless the defenders were allowed access to his books? The state of his books for the last four years would enable an average to be struck for these damages in the event of his being awarded them. In order to have a basis of fact on which to found cross-examination at the trial it was necessary that the diligence craved should be granted.

At advising—

LORD YOUNG—I think the diligence craved is altogether unreasonable. I think the pur-

suer may with reason be asked to state what sum he puts on the loss he has sustained from being kept from his business for several weeks. But to expect him to produce his books for the last four years as the condition of raising his action is, I repeat, quite unreasonable. I am, then, for refusing the whole diligence.

LORD RUTHERFURD CLARK—I think the pursuer has put his affairs in issue, saying that he has suffered pecuniary loss from the injuries which have incapacitated him from work. I think, then, that he is bound to disclose his books on the demand of the defenders. Whether the demand should be extended for the whole period of four years asked for is a different question, and is not perhaps so clear. It is a right, however, which the defenders possess, and if they do not get the information I think their interests may suffer. With respect to the income-tax receipts I have doubts. I do not know what the practice of the Court is as regards them. It has varied, I should think, and I should rather prefer to limit the diligence to the books, and I daresay they will fulfil what the defenders desire just as well.

LORD JUSTICE-CLERK—I am not for granting the diligence. I do not say that an application of the kind, very much restricted, might not be entertained. I give no opinion on that. I think, however, this proposal is far too wide in its terms, and oppressive in its nature, and has no foundation in what I understand is the nature of the allegations made.

LORD CRAIGHILL was absent.

The Court refused the motion.

Counsel for the Pursuer—Ure. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defenders—Graham Murray. Agents—Millar, Robson, & Innes, S.S.C.

Wednesday, July 4.

SECOND DIVISION.

PATERSON, PETITIONER.

Process—Poor's Roll—Poverty.

An application for admission to the poor's roll by a party with a *probabilis causa litigandi*, granted (diss. Lord Rutherford Clark) in the case of a person with a weekly wage of 27s. a-week who had a wife and four children.

George Paterson, blacksmith, Linlithgow, presented an application for admission to the poor's roll in order to enable him to carry on an action of damages for personal injuries against the Police Commissioners of the burgh of Linlithgow. When the application was moved in the Single Bills the respondents objected that the applicant's circumstances were not such as to entitle him to the benefit of the poor's roll. On 22nd June the Court remitted to the reporters on the *probabilis causa litigandi* to inquire and report whether he had a probable cause, and also whether in the circumstances he was otherwise entitled to the benefit of the roll. On 23rd June the reporters reported that "in our opinion the applicant has a *probabilis causa litigandi*. We beg further to

report that the applicant's wages amount to 27s. per week, but that he has dependent upon him a wife and four children, the eldest of whom is nine years of age, and the youngest six weeks."

On 4th June, in the Single Bills, the counsel for the Burgh Commissioners again opposed the application, and contended that the applicant was not qualified by poverty. The practice of the Court had always been to refuse admission to a man who had so high a wage as 27s. a-week. There was no speciality in the case to take it out of the general rule.

Authorities—*Collins v. King & Company*, February 28, 1867, 39 Scot. Jur. 257; *Robertson*, July 8, 1880, 7 R. 1092, per Lord President.

Counsel for the applicant was not called on.

At advising—

LORD JUSTICE-CLERK—I am for admitting the applicant.

LORD YOUNG—I also am for admitting him. I have read with surprise certain observations in these cases, and I own that they have appeared to me to proceed on an erroneous consideration of the matter. Professional bodies here—voluntarily, or at all events under a benignant law, but a law which they always gladly obey—appoint members of their respective professions to act as agent and counsel for poor people who cannot afford the ordinary costs of litigation, but on the condition that no person is to have the benefit unless it is ascertained that he has a probable cause of litigation and is in poor circumstances. That is for their protection and for nothing else, because in the case of any litigant suing for an alleged wrong it is infinitely better for the defender that he should be in the hands of the agent and counsel for the poor than in the hands of agents who take up his case only for speculation. Therefore the report upon *probabilis causa* and poverty is really to protect professional bodies against gratuitous assistance being given to persons who are well able to afford the cost of litigation or who have no *probabilis causa*. Now, there is in the present case both probable cause and poverty. The applicant here has a wife and family, and earns 27s. a-week. Is a man in such circumstances able to pay a law agent and counsel? I must say I think he is not, and I cannot concur with any observations, wherever made, to the effect that a man only earning 23s. a-week is able to pay such expenses.

I therefore, without any hesitation, am of opinion that he is entitled to admission.

LORD RUTHERFURD CLARK—I should prefer to follow what has been the practice of the Court in the matter, and refuse the motion. I do not think that we ought to establish a practice inconsistent with that of the other Division. There may no doubt be cases of exceptional circumstances which may prompt the relaxation of the ordinary rule of practice, but this is not such a case, and I am therefore for refusing the application.

The Court, in respect of the report, found the applicant entitled to the benefit of the poor's roll.

Counsel for the Applicant—Davidson. Agent—James D. Turnbull, S.S.C.

Counsel for the Respondents—J. Mackintosh. Agent—J. C. S. Millar, W.S.