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 Rutherfurd 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 29th 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 specialty 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.

Wednesday, July 4.

FIRST DIVISION.

[Lord Trayner, Ordinary.

EARL OF ROSEBERY, PETITIONER.

Entail—Compensation for Land Taken—Investment—Loan by Trustees to Heir of Entail in Possession.

Part of an entailed estate was acquired by a railway company under its compulsory powers, and the compensation money was invested in consols in the names of trustees for behoof of the heir of entail in possession and the succeeding heirs.

In a petition for authority to lend this money to the heir of entail in possession on the security of fee-simple lands belonging to him, the Lord Ordinary reported the case to the First Division, on account of the decision in the case of *Innes*, 10 D. 870. The Court remitted to the Lord Ordinary to sanction the loan on his being satisfied of the sufficiency of the security.

The Earl of Rosebery, as heir of entail in possession of entailed estates situated in the counties of Edinburgh and Linlithgow, presented this petition praying for authority to sell the sum of £5110, 18s. 9d. of consols, and to borrow the proceeds on the security of his fee-simple estate of Malleny.

This sum represented the compensation money paid for part of the entailed estates acquired by the Forth Bridge Railway Company. It had been invested in consols in the names of the Honourable Bouverie Francis Primrose, C.B., and Mr James Auldjo Jamieson, W.S., as trustees for the petitioner and the succeeding heirs of entail.

On 1st May 1888 Mr John Montgomerie Bell, W.S., was apointed curator *ad litem* to the heirs of entail first and second next entitled to succeed, who were then in pupillarity.

On 12th May 1888 the Lord Ordinary (Trayner) granted the prayer of the petition in so far as it related to the sale of £5110, 18s. 9d. consols.

With reference to that portion of the prayer in which the Court were asked to authorise the loan of this money by the trustees to the petitioner, the Lord Ordinary reported the petition to the First Division.

"*Note.*—The petitioner prays the Court (1) to authorise the sale of certain stock held by trustees for behoof of the heirs of entail of the estates of Newhalls and others, of which he is at present the heir of entail in possession; and (2) to authorise the said trustees to lend the proceeds of such sale to the petitioner 'on the security of his fee-simple estate of Malleny.' The first part of the prayer I have granted, but with regard to the second part it is pointed out by the reporter that in the case of *Innes*, 10 D. 870, a case in all essential particulars the same as the present, it was announced by the Lords of the Second Division (after consultation with the other Judges) that it had been 'determined never again to sanction the money being lent to the heir of entail himself.'

"That being so, I regard myself as precluded from considering whether the authority prayed for is unreasonable in itself, or from doing anything except giving effect to the determination of the Court so announced. The Court, however, may reconsider, and if it think fit alter the decision announced in *Innes'* case, and I have reported this matter that the petitioner may have the opportunity which he desires of being heard thereon before the Court."

Argued for the petitioner—The case of *Innes* was decided before the passing of the Rutherfurd Act, which made material alterations on the law of entails. Besides, in that case the same party was both borrower and lender, while in the present case there was in existence an independent trust. The only practical question was the sufficiency of the security; that could be ascertained by a remit to the Lord Ordinary, and all other interests were fully protected by the trustees—*Innes, Petitioner*, March 8, 1848, 10 D. 870.

Lord President—The difficulty that occurs to me is that this is a petition at the instance of Lord Rosebery without the concurrence of the gentlemen who are named as trustees in the petition. It would be desirable to have a minute put in by the trustees expressing their concurrence, and we shall continue the case to allow of this being done.

A minute was lodged by the trustees, expressing their concurrence in that part of the prayer of the petition which related to the loan.

At advising—

Lord President—The money in the hands of the trustees comes from lands taken by a railway company, and the compensation money was lodged in the hands of the trustees, and invested by them in consols, and the object of the prayer of this petition is for authority to sell the consols, and to lend the proceeds to the Earl of Rosebery on the security of his fee-simple estate of Malleny.

I should not have any doubt about the advisability of this proceeding provided the trustees are satisfied with the sufficiency of the security.

But it has been suggested that what we are asked to do is in opposition to the decision in the case of *Innes*, in 10 D. 870. That case, however, occurred before the Entail Amendment Act, and it may fairly be contended that objections which would have been considered good then would not now be entertained.

This case, however, is quite distinct from that of *Innes*. In it the bond was granted by the heir in favour of himself, and so the deed came to be a somewhat anomalous one. But that is not the case here, for we have an independent trust intervening, and what is suggested is, that the trustees should lend this money to Lord Rosebery on the security of his fee-simple lands. The trustees are a separate and independent body, and so the respective relations of debtor and creditor may quite well exist.

I propose therefore that we should remit to the Lord Ordinary to sanction the loan provided that he is satisfied with the sufficiency of the security.

Lord Mure and Lord Adam concurred.

Lord Shand was absent on circuit.