

Counsel for the Owners of the "Spaniel"—Salvesen—Burns. Agents—J. & J. Ross, W.S.

Counsel for the Owners of the "Ross-gull"—Sol.-Gen. Dickson, Q.C.—Younger. Agents—Webster, Will, & Ritchie, S.S.C.

Wednesday, June 30.

## SECOND DIVISION.

### MACASKILL v. MACLEOD.

#### *Poor's Roll—Admission.*

A man who is earning 31s. 6d. a-week, with a wife and two children dependent on him, is not entitled to the benefit of the poor's roll.

This was an application for admission to the poor's roll presented on behalf of Alexander Macaskill, joiner, Fort William, with a view to enabling him to bring an action against Macleod of Macleod, and John Macaskill, Kilmuir, Skye, the applicant's brother.

The proposed action was for reduction of a lease bearing to be dated 31st January 1885, granted by Macleod of Macleod in favour of the applicant's father Ewen Macaskill, and for declarator that the applicant was tenant of the subjects leased, for decree of removing against John Macaskill, for an accounting against him, and for damages.

On 14th May the application was remitted to the reporters on *probabilis causa litigandi*, who on 4th June reported that counsel for the parties admitted that the applicant was earning 31s. 6d. a-week, and that out of this he had to support his wife and two children, and to pay £16 of rent for a house, and with the exception of his household furniture he had no other property, and that on the merits, in their opinion, the applicant had a *probabilis causa litigandi*.

Counsel for the applicant moved for admission.

Counsel for Macleod of Macleod objected, and argued—No applicant earning as much as 31s. per week and with only two children to support had ever been admitted to the poor's roll. The strongest case for the applicant was *Paterson v. Linlithgow Police Commissioners*, July 4, 1888, 15 R. 826; he had a wife and four children dependent on him, and the proposed action was for damages for personal injury, whereas this was for reduction of a lease granted in favour of the applicant's own father, which had been allowed to stand unchallenged since 1885. In that case it was also to be noted that Lord Rutherford Clark dissented. In the case of *Robertson*, July 8, 1880, 7 R. 1092, it was laid down *per* L.P. Inglis that in ordinary circumstances a man earning 23s. a-week is not entitled to admission. In *Stevens v. Stevens*, January 23, 1885, 12 R. 548, the applicant's nett income was only £53 per annum.

Argued for the applicant—It was conceded that no applicant earning more than

27s. per week had ever been admitted, but on the principle laid down by Lord Young in *Stevens v. Stevens*, *cit.*, at p. 549; and in *Anderson v. Blackwood*, July 11, 1885, 12 R. 1263, at p. 1264, which was that the criterion must be whether a man can pay for counsel and agents in the Court of Session—a man with 31s. 6d. a-week was entitled to admission. In the latter case the applicant, though only earning 15s. a-week himself, had a son living with him who earned £1 per week. In *Wright v. Kerr*, February 27, 1890, 17 R. 516, where the applicant could earn 30s. a week, the Court refused the application, not in respect of the applicant's high wages, but on the ground that the action should have been brought in the Small Debt Court. See *per* the Lord Justice-Clerk at p. 517.

LORD JUSTICE-CLERK—If this application had come before us as a new thing, for my own part I should consider it absolutely necessary to give it the most careful consideration, and consider whether such an application should be refused, because I think that not only the nature of the case but the circumstances and time require to be taken into consideration. But I do not myself feel at liberty to go against what has been apparently an established rule of the Court for some time, and what has been practically acted upon in recent times, and therefore I am for refusing this application.

LORD YOUNG—It is perhaps altogether superfluous for me to repeat what I have had an opportunity of saying, and have said on former occasions, but I may take the liberty of saying now that I consider this matter had better be considered and put upon a right footing—that is, a reasonable footing—either by statute or by Act of Sederunt. The sense and reason for admission to the poor's roll is to aid poor people who are not in worldly circumstances to enable them to carry on a litigation in this Court, if they have a *probabilis causa litigandi*. There is no other reason or sense in it. I think that will be admitted by everybody. The professional bodies have with great generosity appointed members of their own professions, both law-agents and counsel, to conduct such cases, and they also appoint members of their own profession to consider the circumstances of individual cases—whether it is fitting that they should give their professional services upon those exceptional terms—without pay—in the individual cases. Every case in which such an application is made upon a report of *probabilis causa litigandi* made by the professional bodies, who give their services gratuitously in cases in which they are satisfied, is of that character. Well, as I have said before, when a party is really in poverty, which a man with a family and 25s. or 30s. a-week really is, and the professional bodies—whether Writers to the Signet or counsel—are ready and willing to give their services in the individual case, having looked into it, we can hardly say (it is not reasonable or sensible)—“Oh! but he has

plenty of money to pay." It is nonsense in the estimation of anybody who is acquainted with the practice of this Court and the expense of the litigation in this Court, to say that a man with 30s. a-week has money sufficient to pay his way. Well, then, the poor's roll is just to aid people who have not money to pay their way. If there is an Act of Parliament, which can only be altered by the Legislature, declaring that anybody with 25s. a-week has money to pay his way in a litigation in the Court of Session, we must bow to that, whatever the good sense of it may be; and if there is an Act of Sederunt, which cannot be altered at least without a majority of the Court, and the majority decline, being of opinion that 25s. a-week is quite sufficient for anybody to support a wife and family and to carry on litigation, we must bow to that too, and if that is the position in which this matter stands I bow respectfully, but at the same time I take the liberty of repeating what I began with—that I think it would be better if this matter were put on a satisfactory footing quite distinctly decided, and that in putting it on that footing the good sense and reason of the thing should be taken account of.

LORD TRAYNER—Following the authorities as they at present stand I am of opinion that we have no alternative but to refuse this application.

LORD MONCREIFF—I am of the same opinion.

The Court refused the application.

Counsel for the Applicant—J. H. Millar. Agent—James M'William, S.S.C.

Counsel for Macleod of Macleod—C. K. Mackenzie. Agents—Blair & Finlay, W.S.

Wednesday, June 30.

SECOND DIVISION.

[Lord Pearson, Ordinary.

G. & R. M'ULLOCH v. GILLON.

*Bankruptcy—Illegal Preference—Petition to Annul Bankrupt's Discharge—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), sec. 151.*

Evidence on which the Court granted the prayer of a petition for annulling a bankrupt's discharge in terms of the Bankruptcy (Scotland) Act 1856, sec. 151.

This was a petition presented in the Bill Chamber under section 151 of the Bankruptcy Act 1856 for the purpose of having the discharge of a bankrupt annulled, on the ground that he had given a preference or a gratuity to a creditor to induce him to consent to a certain composition being accepted, and so to facilitate his discharge.

The Bankruptcy (Scotland) Act 1856 (19

and 20 Vict. c. 79), sec. 151, enacts as follows:—"If the bankrupt shall have been personally concerned in or cognisant of the granting, giving, or promising any preference, gratuity, security, payment, or other consideration, or in any secret or collusive agreement or transaction as aforesaid, he shall forfeit all right to a discharge and all benefits under this Act; and such discharge, if granted either on or without an offer of composition, shall be annulled, and the trustee, or any one or more of the creditors, may apply by petition to the Lord Ordinary to have such discharge annulled accordingly."

The facts, so far as material, with the exception after noted, sufficiently appear from the opinion of the Lord Ordinary (PEARSON), who, after a proof, issued an interlocutor dated 20th March 1897 refusing the petition.

*Opinion.*—"This is a petition under section 151 of the Bankruptcy Act 1856, in which I am asked to annul a bankrupt's discharge, on the ground that he was personally concerned in the giving of a preference or gratuity to a creditor for supporting an offer of composition, and thereby facilitating the discharge.

"The bankrupt Alexander Gillon held a public-house licence in his own name. The business was carried on under the firm of J. & A. Gillon, the lease of the premises being taken and the goods in stock being supplied in the firm name. The initials of the firm represented the bankrupt's two sons, one of whom was a minor, and I think it may be taken that the business truly belonged to the father.

"Mr Gillon was sequestrated in July 1893. Mr Richard M'ulloch, accountant in Glasgow, was appointed trustee, and among the creditors were Messrs G. & R. M'ulloch, accountants, Glasgow (the present petitioners), and Mr Thomas Barr, colliery owner and wine merchant in Glasgow. Mr Barr was one of the leading creditors, and his claim for £744 was partly for cash advances to the bankrupt and partly for goods supplied to the public-house.

"Mr Gillon at first expected to be in a position to offer a composition of 4s. or 5s. in the £ on a basis of a total liability of £7000. His debts turned out to be much larger, and the trustee was authorised, by letter of 5th December 1893, to submit to the creditors an offer of 3s. 6d. The creditors met to consider this offer on 9th January 1894, and they accepted it on 5th February. Mr Gillon was discharged on 17th April 1894.

"Matters so remained until December 1896, when Mr Thomas Barr's son (Robert Barr) gave verbal intimation to the trustee that his father had been induced to vote for the acceptance of the offer of 3s. 6d. by a gratuity received from the bankrupt. Mr Robert Barr having been required to put his statement in writing, sent the trustee the letter along with the articles which had been handed to his father in 1894, namely, three gold watches, two gold chains, and a valuable mining compass. The trustee's