

the contrary is, that one-half of the money was George's property at his death. If that be the true result, then everything for which the pursuer contends admittedly follows. I cannot say that I am altogether without misgivings that John may have made less of this money himself, and that more of it should belong to the family, and on the other hand I am not without misgivings either that the truth may be that a larger proportion than the half was his own earnings. George's money was the money belonging to the family, and his (John's) own earnings ought to have been kept entirely separate. He ought to have been able to show what of George's money he got, and what moneys included in the deposit-receipts were his own earnings. But he has not done that, and so if he suffers any injustice he has himself to blame for it. I think we have no evidence on which it would be safe to alter the Sheriff's judgment to the effect that he must account for one-half as if it belonged to George as the legal result of the documents in the absence of satisfactory evidence to the contrary.

Upon the whole matter, therefore, I do not think we can safely arrive at any other conclusion than that we have no satisfactory grounds upon which we can interfere with the judgment of the Sheriff.

LORD CRAIGHILL and LORD RUTHERFURD CLARK concurred.

The LORD JUSTICE-CLERK was absent.

The Court dismissed the appeal, and affirmed the Sheriff's interlocutor.

Counsel for Pursuer—Pearson—Guthrie. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for Defender—Mackintosh—M'Lennan. Agents—Philip, Laing, & Trail, S.S.C.

Friday, January, 23.

## SECOND DIVISION.

STEVENS v. STEVENS.

*Process—Poor's-Roll—Poverty—Probabilis causa litigandi.*

A man earning an income of £138 a-year, out of which he was obliged, for the purposes of his business, to make an outlay of £85 a-year, and who was burdened with the aliment of a grown-up son unable to work, held entitled to the benefit of the poor's-roll to enable him to sue an action competent only in the Court of Session.

William Stevens, Main Street, West Calder, petitioned the Court for admission to the poor's-roll to enable him to carry on an action in the Court of Session against his wife for reduction of a final decree in an action of separation and aliment at her instance against him.

Mrs Stevens opposed the application, and a remit was made to the reporters on the *probabilis causa litigandi* to inquire into the circumstances. They reported that he had a *probabilis causa*, and that he had stated that he was in the

employment of the Parochial Board of West Calder at a salary of £138 per annum, from which he had, in the course of his employment, to provide for a man, horse, and cart, which cost him £85 per annum; that further, for more than a year he had been burdened with the support of an invalid son able formerly to earn 21s. a-week; and that they were satisfied that these statements were substantially correct.

Mrs Stevens maintained that the petitioner's pecuniary circumstances as reported on did not show poverty sufficient to entitle him to the privilege of suing *in forma pauperis*, and referred to the cases of *Duncan v. Morrison*, January 16, 1883, 1 Macph. 257; and *Williamson v. Irvine*, November 21, 1863, 2 Macph. 126.

At advising—

LORD CRAIGHILL—I have grave doubts about this application. The applicant is the owner of a cart and horse, and that seems to me to be inconsistent with the idea of his being put on the poor's-roll. Rightly or wrongly we have no doubt of late been opening the door very widely in cases of this sort, but I cannot remember any case in which an application similar to the present has been granted, and if this man is found to be entitled to be put on the poor's-roll, many persons will find themselves entitled to sue *in forma pauperis* who have no idea that they possess any such right.

LORD RUTHERFURD CLARK—As this is the only Court in which this applicant's case can be brought, and as he has a *probabilis causa*, I think we can do nothing else than grant the application.

LORD YOUNG—I should have thought that too clear for argument until I heard the opinion of Lord Craighill, for which I have the greatest respect. I understand the benefit of the poor's-roll is for those who have a *probabilis causa litigandi*, and who from poverty are unable to bear the expenses of litigation in Court. This man has a *probabilis causa litigandi*, and it is ridiculous to say that a man who has a free income of £53 a-year—just about a pound a-week—and who has to support an invalid grown-up son, is in circumstances to bear the expenses of a litigation in this Court. In point of fact he cannot. As to the horse and cart, they are not stated to be his property, but I assume that they are, and it is by means of them that he earns his pound a-week, and that if he did not have them he would not be able to earn that pound a-week, and would be in absolute poverty. If we take it that he has a *probabilis causa litigandi*, and that he is certified as having a pound a-week, then in admitting him to the poor's-roll we do no more than say that a man in these circumstances is not in a position to meet the expenses of a litigation in this Court.

The Court granted the application.

Counsel for Mrs Stevens—Campbell Smith. Agent—Thomas Carmichael, S.S.C.