sive, nor the transaction harsh and unconscionable within the meaning of section 1 of the Money-Lenders Act 1900.

On 18th December 1902, the defender Mrs Philp, who was the managing directress of the Cockburn Hotel, Limited, Glasgow, with a considerable interest in the business, borrowed from the pursuers, a firm of money-lenders registered under the Money-Lenders Act 1900, the sum of £600, which she, by indenture of that date, bound herself to repay with the sum of £100 as bonus or interest by the following instalments, viz., £50 on the 18th of every month, commencing on 18th January 1903 until and including 18th July 1903, and the balance of £350 on 19th July. It was further agreed that in case any one or more of the instalments should not be paid on the day appointed for payment, and so long as such instalment or instalments should remain unpaid, she should pay interest thereon at the rate of 30 per cent. per annum. In security the defender assigned to the pursuers a policy of assurance on her life, originally for the sum of £1000 but subsequently reduced to £252, the surrender value as the time being £103, 4s. Towards repayment of the sum of £700 the defender paid three sums of £50 each, on 20th January, 20th March, and 21st May 1903 leaving a balance of £550. The defender paid interest on arrears only down to 18th May 1903, leaving a further balance due by her of £47, 10s. In the present action the pursuers sued her for these two sums. The defender having become bankrupt after the raising of the action her trustee sisted himself in her room.

The defender pleaded, *inter alia*—(1) The bonus or interest charged by the pursuers under the indenture libelled being excessive they are not entitled to decree. (2) The terms of the said indenture being harsh and unconscionable by reason of the bonus or interest charged against the defender being excessive, the pursuers are not entitled to decree. (3) The defender is entitled, in terms of section 1 of the Act of 63 and 64 Vict. cap. 51, to have the terms of said indenture, as regards the bonus or interest payable by her altered and modified.

The following cases were cited—*Young* v. *Gordon*, January 23, 1896, 23 R. 419; *Wilton & Company* v. *Osborn* (1901), 2 K.B. 110; *Ex parte the Debtor* (1903), 1 K.B. 705; *Levene* v. *Greenwood*, March 21, 1904, 20 T L.R. 389.

The Lord Ordinary after proof granted the pursuers decree, being unable to hold that in the circumstances the rate of interest was excessive or the transaction harsh or unconscionable.

Counsel for the Pursuers—C. K. Mackenzie, K.C.—Thomson. Agents—R. & R. Denholm & Kerr, S.S.C.

Counsel for the Defender—T. B. Morison—Wark. Agents—J. & J. Galletly, S.S.C.

Friday, June 17.

SECOND DIVISION.

[Sheriff Court at Dumfries.

EDGAR *v.* JOHNSTON.

Poor's Roll—Reporters Equally Divided in Opinion as to Admission of Applicant to Poor's Roll.

Where the appellant in a Sheriff Court appeal applies for the benefit of the poor's roll and the reporters are equally divided in opinion, *held* (*diss.* Lord Young) that the rule is settled that the Court will not admit the applicant.

Ormond v. *Henderson & Sons*, January 23, 1897, 24 R. 399, 34 S.L.R. 323, *followed.*

An action was raised in the Sheriff Court of Dumfries and Galloway at Dumfries by *poor* Margaret Little Simpson Edgar, domestic servant, 3 Old Well Road, Moffat, against Robert Johnston, shoemaker, Gowan Cottages, Buccleuch Street, Moffat.

After a proof the Sheriff-Substitute (CAMPION) on 15th March 1904 granted decree against the defender.

The defender appealed to the Court of Session, and made application for admission to the poor's roll.

The defender's application was remitted in ordinary form to the reporters on *probabilis causa litigandi*, and they reported that they were equally divided in opinion as to whether the applicant had or had not *probabilis causa litigandi.*

The defender presented a note to the Lord Justice-Clerk praying his Lordship to move the Court to find him entitled to the benefit of the poor's roll and to remit the case to a counsel and agent to conduct.

At calling of the note in Single Bills, counsel for the pursuer moved the Court to refuse the application, relying on the case of *Ormond* v. *Henderson*, January 23, 1897, 24 R. 399, 34 S.L.R. 323.

Argued for the applicant—When the reporters were equally divided in opinion, the admission or non-admission of the applicant was a question for the Court, and the applicant was entitled to the benefit of any doubt—*Marshall* v. *North British Railway Company*, July 13, 1881, 8 R. 939, 18 S.L.R. 675.

At advising—

LORD JUSTICE-CLERK—The question in this case is whether an applicant for the benefit of the poor's roll can be successful where the reporters on *probabilis causa* are equally divided. The question has in my opinion been already settled by decision, and the unanimous judgment in the case of *Ormond*, 24 R, definitely disposed of the question. My opinion therefore is that the note presented for admission must be refused.

LORD YOUNG—I am unable to regard the decision to which your Lordship has referred upon such a question as this as

equivalent to a statute or Act of Sederunt. I think it always in the discretion of the Court to deal with these matters. My opinion is that where the reporters on *probabilis causa litigandi* are equally divided, the Court may, and if they think fit ought to, admit the applicant to the poor's roll.

LORD TRAYNER—I agree with your Lordship. I think the question was settled, and not for the first time, in the case of *Ormond*. A rule being once fixed should not be gone back upon, and there is no reason in the present instance why it should.

LORD MONCREIFF was absent.

The Court refused the prayer of the note.

Counsel for the Pursuer and Respondent—C. J. L. Boyd. Agent—A. Bowie, S.S.C.

Counsel for the Defender and Appellant—A. Duncan Smith. Agent—P. F. Dawson, W.S.

Friday, June 17.

SECOND DIVISION.

FRASER'S TRUSTEES *v.* ROBERT MAULE & SON.

Lease—Notice to Terminate Lease—"Whitsunday"—Removal Terms (Scotland) Act 1886 (49 and 50 Vict. c. 50), sec. 4—Calendar or Lunar Month.

By written lease A let to B & Company a stable and workshop for eight and a-half years from the term of Martinmas 1900, "with a break in the said lease in favour of either party at Whitsunday 1904, on the party desiring the break giving written intimation of her or their intention to take advantage of the same six months at least before the said term of Whitsunday 1904."

On 27th November 1903 B & Company gave intimation of their intention to terminate the lease, and maintained that their notice was timeous, because (1) "Whitsunday" 1904 in the lease meant 28th May 1904, and (2) even if "Whitsunday" 1904 meant 15th May 1904, 27th November 1903 was six lunar months before that date.

Held (*diss.* Lord Young) that in order to take advantage of the break in the lease intimation required to be given six calendar months before 15th May 1904.

By lease dated 25th and 28th February 1901 Mrs Fraser, at that time sole trustee under the trust-disposition and settlement of Robert Fraser, let to Robert Maule & Son, drapers and upholstery warehousemen, Edinburgh, certain premises at Sunbury, Edinburgh, consisting of a stable and coach-house and a workshop, "and that for the space of eight years and six months from and after the term of Martinmas 1900, which is hereby declared to be the said Robert Maule & Son's entry thereto, with a break in the said lease in favour of either party at Whitsunday 1904, on the party desiring the break giving written intimation of her or their intention to take advantage of the same six months at least before the said term of Whitsunday 1904."

By letter dated and delivered on 27th November 1903 Robert Maule & Son gave notice to the trustees then acting under Mr Fraser's trust-disposition that they desired "to terminate the lease at the removal term of Whitsunday (28th May) 1904." By letter dated 28th November 1903 Mr Fraser's trustees acknowledged the letter, but refused to accept the notice as sufficient intimation in terms of the lease that the same was to be brought to an end at Whitsunday 1904, in respect that it was not given six months before the term of Whitsunday 1904, which they maintained was 15th May 1904. They accordingly intimated that they held Robert Maule & Son bound by the lease for the remainder of the eight and a-half years which had still to run. Robert Maule & Son on the other hand maintained "(1) that the term of Whitsunday should not be construed in two different meanings in the same clause of the lease, and (2) that the word 'month' in the lease meant lunar month, and that, even if notice had to be given six months before 15th May 1904, such notice had been given in respect that there was a period of six lunar months between 27th November and 15th May."

For the settlement of the point a special case was presented to the Court by (1) Mr Fraser's trustees and (2) Robert Maule & Son.

The question of law was—"On a sound construction of the lease, was notice to terminate the lease at Whitsunday 1904 timeously given by the second parties to the first parties?"

Argued for the first parties—Sufficient notice of removal had not been given. (1) Where Whitsunday was mentioned in a lease it meant the 15th of May; that date was the legal term of Whitsunday—*Hunter* v. *Barron's Trustees*, May 13, 1886, 13 R. 883, 23 S.L.R. 615. The Removal Terms (Scotland) Act 1886 specially enacted (sec. 4) that where warning to remove was required 40 days before Whitsunday the date of warning must be calculated as prior to 15th May, not 28th May. (2) By the law of Scotland the word "month" meant a calendar month—*Farquharson* v. *Whyte*, February 3, 1886, 13 R. (J.C.) 29, 23 S.L.R. 360; *Smith* v. *Roberton*, February 10, 1826, 4 S. 442; Interpretation Act 1889 (52 and 53 Vict. cap. 63), sec. 3.

Argued for the second parties—Section 4 of the Removal Terms Act 1886 was a statutory declaration that for the purposes of removal and entry Whitsunday and Martinmas were to be the 28th May and the 28th November respectively. In the clause under construction there was no doubt that Whitsunday 1904, at which the break was to occur, was 28th May 1904, and six months before said term must mean 28th November,