disposing of a case in the Small Debt Court he might find it necessary to transfer it to his ordinary roll, and therefore I agree in thinking that his common law powers should here be exercised.

The LORD PRESIDENT was absent.

The Court pronounced the following interlocutor:—

"Recal the interlocutor of the Sheriff-Substitute of 29th April 1875, and the interlocutor of the Sheriff of 7th July 1875, in so far as relate to the finding that, as regards the conclusion for poor-rates, the Sheriff's duties are only ministerial, and that the defender's pleas as to the assessments being imposed on too large a valuation cannot therefore be entertained in the Sheriff-court: Find that, as regards the registration assessments, the findings of the Sheriff-Substitute and Sheriff are not objected to, but, on the contrary, are mutually acquiesced in: Recal *in hoc statu* the decerniture for the sum of £555, 18s. 3½d. sterling of poor-rates, and also the finding as to expenses: Reserve all other questions *hinc inde* between the parties, and continue the cause in the roll; and reserve also all questions of expenses in the Sheriff-court and this Court."

Counsel for Respondents (Pursuers)—Asher—Mackintosh—Maclachlan. Agents—Maclachlan & Rodger, W.S.

Counsel for Appellants (Defenders)—Dean of Faculty (Watson)—Pearson. Agent—James Hope jun., W.S.

Saturday, February 5.

FIRST DIVISION.

[Sheriff of Lanarkshire.

CAMERON *v* M'LEAN.

Paraphernalia.

Circumstances in which a wardrobe was held to be *inter paraphernalia.*

Mr and Mrs Cameron, three months after their marriage, ordered a wardrobe, which was delivered in three months. For the first three months the clothes of both the spouses were kept in it, but on the birth of the first child the husband's clothes were removed to another place, and ever afterwards the wardrobe was used only for the clothes of the wife and the infant. The wife had no other receptacle for her clothes. Four years after the marriage the husband became bankrupt, and his furniture was taken possession of by the trustee. The wife brought a petition for the restitution of the wardrobe as being *inter paraphernalia.*

The Sheriff-Substitute and Sheriff held that in the above circumstances it was not so, and refused the prayer of the petition.

The petitioner appealed to the Court of Session.

Appellant's authorities—*Dicks,* M. 5822; *Pitcairn,* M. 5825.

Respondent's authorities—Erskine, i. 6-15; *Hewatt,* Hume's Decisions, 210.

At advising—

LORD DEAS—It was quite right in the trustee to retain this article and not include it in the general sale. The question is whether this wardrobe is paraphernal or not. There has been no case of the sort for a considerable period. They were more common in old times, for the ladies of those days were very jealous of certain rights of this class. But the law on this subject was perfectly well understood, and I take it to be this—*First,* That those articles are in their nature paraphernal which are adapted for the use and enjoyment of the female spouse as distinguished from promiscuous use. *Second,* That articles of promiscuous use may be made paraphernal by being gifted to the wife before or on the day of the marriage, either by the husband or by friends, and either by express or implied gift, if they are not out of keeping with the rank of the recipient. It is with the first branch only that we have to do here. It is admitted that the wife's clothes are adapted for her own, and not for promiscuous use. It seems naturally to follow that she must have some place to put them in. If this wardrobe had been used by her alone from the beginning there could not have been the slightest doubt. The only room for doubt arises from the fact that it was used by both for the first three months. But it does not appear that at first the husband had any place to put his clothes in, and I do not think that this partial use by him for the first three months is sufficient to alter the legal character of the article. It is not suggested that it is inconsistent with the rank of the spouses. The case reported by Hume is quite different. There there was a quantity of furniture, of which the chest of drawers was an article. I am therefore for recalling the interlocutor of the Sheriffs, and granting the prayer of the petition.

LORD ARDMILLAN—I concur. I do not think that the occasional use by the husband here could destroy the paraphernal character of the article.

LORD MURE concurred.

The LORD PRESIDENT was absent.

The Court granted the prayer of the petition.

Counsel for Petitioner (Appellant)—R. V. Campbell. Agents—T. & W. A. M'Laren, W.S.

Counsel for Respondent—Lang. Agents—Campbell & Smith, S.S.C.

Saturday, February 5.

SECOND DIVISION.

[Lord Young.

M'GILL *v.* BELL AND OTHERS.

Process—Poor's Roll.

Circumstances in which the Court admitted to the benefit of the poor's roll a pursuer who was earning £1 a-week, and who had only one child residing in family with him, who was earning 6s. a-week.

This was an action at the instance of Mrs M'Gill, with consent of her husband, against Mrs Bell, widow of John Bell, writer in Dundee, and others, trustees under Mr Bell's settlement, for reduction of a disposition by Mrs M'Gill and others in 1854 of certain house property to which Mrs M'Gill had an eventual right of fee, on the ground that the consideration for which the disposition had been granted was inadequate, that the transaction had been carried through when she was in a state of mental weakness and in ignorance of her true rights, and that the signature of her name appearing upon the deed was a forgery.

When the action was in the Procedure Roll before the Lord Ordinary the pursuers applied for admission to the benefit of the poor's roll, and the usual remit was made to the minister and kirk-session, who reported that Mrs M'Gill was fifty-two years of age and her husband fifty, that they had no property, and were entirely dependent upon the earnings of M'Gill, who was an engineer, making on the average £1 a-week, that they had two daughters, one of whom was married, and the other, who was thirteen years old, lived in family with her father and mother, and earned 6s. a-week as a mill-worker.

Upon this report the pursuers moved the Court to remit the cause to the reporters *in probabilis causa litigandi*, and the motion was opposed upon the ground that the poverty of the pursuers was not such as to entitle them to sue *in forma pauperis*. The Court, before answer upon this question, remitted to the reporters, who decided that there was a *probabilis causa*. The pursuers then asked for admission to the poor's roll, and this motion was opposed upon the same ground as the former motion.

The defender argued—There was no precedent for admitting to the benefit of the poor's roll parties in such good circumstances as the pursuers.

The pursuers were not called on.

At advising—

Lord Justice-Clerk—No doubt there have been conflicting decisions on this point, but these cases are always questions of circumstances, and for the consideration and discretion of the Court.

We have here a distinct allegation that this deed was forged, and that the value of the property in question is £2000. We sent the case to the reporters on *probabilis causa*, and they have reported that the pursuer has a *probabilis causa*. Without laying down any general rule, and expressly upon the ground of the gravity of the averments, I am for admitting this pursuer to the benefit of the poor's roll.

Lord Neaves—I am of the same opinion. The result of not admitting the pursuer to the poor's roll would apparently be that there would be no inquiry into this matter at all. The pursuer of course must be held to have a *probabilis causa*. I do not think that 25s. a-week is enough to enable a pursuer to bear the expense of such a litigation as this is likely to be.

Lord Ormidale—I am unable, having regard to the precedents, to hold that every individual who has an income of 25s. a-week is entitled to the benefit of the poor's roll. But, in the special circumstances of this case, I do not dissent from your Lordships. A serious charge of forgery will, I understand, fall to be investigated, and yet having this in view the reporters have found that the pursuer has a *probabilis causa*. That gives a character to the present case which distinguishes it from those which usually occur.

Lord Gifford—I agree upon the special ground of the nature of the litigation. I think that this is an element which may often be very material, and which must be kept in view as well as the amount of wages or income which the applicant enjoys.

The Court admitted the pursuers to the benefit of the poor's roll.

Counsel for Pursuers—Low. Agent—David Roberts, S.S.C.

Counsel for Defenders—Pearson. Agents—Webster & Will, S.S.C.

Tuesday, February 15.

SECOND DIVISION.

[Sheriff of Aberdeen.

GORDON *v.* M'KERRON AND OTHERS, AND M'KERRON AND OTHERS *v.* GORDON.

Road—Possessory Judgment—Proof of Possession.

Counter actions of interdict were brought in the Sheriff-court by a landed proprietor and several members of the public, relating to an alleged public road through the estate of the former. It was proved that such a road had formerly existed, but that in 1815 it was shut up by order of the road trustees, acting under a local statute, some doubt however existing as to the formality of the trustees' proceedings. For at least seven years prior to the raising of these actions the road had been used by the public by climbing over or breaking down fences, and going over cultivated ground, and had also been used by the proprietor by planting, cultivating, and enclosing—*Held*, upon appeal (dissenting Lord Gifford), that before obtaining a possessory judgment the character of the possession founded upon must be ascertained, the inquiry for this purpose not being limited to the seven years prior to the institution of the action, and that, as in this case there was *prima facie* evidence that the road in question had been shut up and the subsequent possession by the public unlawful, the parties claiming it were not entitled to a possessory judgment.

Opinion per Lord Gifford — That the only question before the Court related to the state of possession of the road during the seven years preceding the raising of the actions, and that to go back beyond that period for the purpose of ascertaining whether there actually existed a permanent right or not would be to obliterate the dis-