Lord Mure concurred.

Lord Shand—It is impossible to read the evidence in this case without coming to the conclusion that most of the shareholders were induced to take shares in the company by Mr Fraser, and that too upon the footing that he was to take £1000 of stock, for which amount the liquidators now seek to make his representatives liable. It is quite true that in the original memorandum the parties to it were not committed to any particular form of joint-stock company. But the proposal was made which ultimately led to the formation and registration of the company. Between the date of the original memorandum and the date when Fraser endorsed the printed private prospectus of the company there were several meetings of the promoters, which show distinctly that Fraser was to hold £1000 of stock. No doubt he was registered for one share only; but we have Mr Cruickshank's evidence in regard to that, that when Mr Fraser's attention was drawn to it, and he was asked what was meant by one share, he (Mr Fraser) replied—"Oh, that is a mere form. You know I have £1000, and you have £500. That putting one share is a mere form. It makes no difference. It is known what you have and what I have." So that, if I had seen legal grounds upon which I could have proceeded, I would have held Mr Fraser's representatives liable to be put upon the list of contributories.

But upon consideration of the evidence I cannot see any good grounds for holding that Mr Fraser agreed to become a partner of this company. It was maintained for the petitioner that the company were bound to give Mr Fraser shares, because the incorporators had arranged amongst themselves that he should take shares. But that contention is unsound, because the company were not bound by any such agreement which was not part of the articles of association. Besides, as was pointed out by the respondent's counsel, there is a clause in the articles of association to the effect that the directors shall have an unfettered discretion in the allocation of the shares. On the other hand, there was an agreement between the promoters binding Mr Fraser to take shares as between themselves. But the point in which the case of the liquidators fails is, that if there was an agreement between the promoters themselves there never was any with the company. I do not think that Mr Fraser ever undertook such an obligation to the company itself after it was registered. Such an undertaking would have required writing as between him and the company, or at least an unequivocal mandate entitling the other promoters to take shares upon his behalf. But Fraser having died immediately after the registration of the company, and nothing having been done to allocate the shares before that time, I do not think the company were entitled to allocate any to him as they subsequently did. And therefore I do not think the liquidators of the company are now entitled to place his representatives upon the list of contributories in the liquidation.

The Lords therefore refused the prayer of the petition.

Counsel for Petitioners—D.-F. Kinnear, Q.C. —Lorimer. Agents—Boyd, Macdonald & Co., S.S.C.

Counsel for Respondents—Asher—Mackintosh. Agent—R. W. Wallace, W.S.

Friday, March 18.

FIRST DIVISION.

DOUGLAS *v.* M'VEIGH.

Poor Roll, Admission to—Time for Stating Objections—A.S. 21st December 1842, *sec.* 5.

Held (following *Allan* v. *Allan*, 28th Feb. 1872, 10 Macph. 510) that objections to the admission of an applicant to the benefit of the poor roll, on the ground that his circumstances do not entitle him to that benefit, must be stated when the application is moved in the Single Bills, and before a remit is made to the reporters on *probabilis causa*.

The 2d section of the Act of Sederunt of 21st December 1842 provides that no person shall be entitled to the benefit of the poor roll unless he shall produce a certificate from the minister and two elders of the parish where he resides, setting forth his other circumstances according to a formula annexed to the Act. The 3d section makes provision for party making a declaration before the minister and elders respecting his circumstances. Section 4 provides that ten days' previous intimation, by letter post paid, shall be given to the adverse party of the time and place fixed for making the declaration or statement before the minister and elders. By section 5 it is further provided "that said declaration of the party and certificate of the minister and elders, with the certificate of intimation to the adverse party, shall be transmitted, free of expense, to one of the agents for conducting the causes for the poor for the time, and shall, at the distance of not more than three months from the date of the declaration, and as much sooner as circumstances will permit, be lodged, with an inventory thereof, in the office of one of the principal Clerks of Session; and if the same shall appear to him or his assistant to be correct, notice thereof shall be forthwith entered in the minute-book in the form of the intimation at present given on applications for admission to the benefit of the poor's roll; and on the elapse of eight days after the date of insertion in the minute-book, or of four days next after publication of the printed minute-book containing said intimation, if the papers have been lodged during vacation or recess, the party's agent shall box a note to the Lord President of the Division, simply stating the names and designations of the parties, and craving a remit to the reporters on the *probabilis causa*; on moving which the Court may, on hearing any objections, either refuse the application *de plano*, or remit to the reporters, who, on considering the parties' case and hearing all objections, shall report whether the applicant has a *probabilis causa litigandi* and otherwise merits the benefit of the poor's roll," &c.

James Douglas being desirous of admission to the roll for the purpose of pursuing an action

against James M'Veigh, appeared, after due intimation as prescribed by sec. 4 above quoted, before the minister and elders of his parish and made the required declaration as to the state of his circumstances. Thereafter notice thereof was duly given in the minute-book and a remit to the reporters craved for under sec. 5. Neither before the minister and elders nor at the moving of the remit to the reporters was any objection offered to the applicant's admission to the poor roll. Their Lordships of the First Division therefore remitted in common form to the reporters on the *probabilis causa litigandi*, "to report whether the applicant has a *probabilis causa litigandi.*" M'Veigh then appeared before the reporters and objected that the applicant was not entitled to be admitted to the poor roll in respect that he had means of support which he had not disclosed to the minister and elders. The reporters declined to consider the objection, and reported that the applicant had a *probabilis causa.* Douglas then moved to be found entitled to the benefit of the roll, and for a remit to counsel and agent to conduct the case. M'Veigh appeared and objected, on the ground that the applicant had not truly disclosed the state of his affairs, and was not entitled to the benefit of the roll. The applicant argued that the objection came too late, founding on *Allan* v. *Allan,* Feb. 28, 1872, 10 Macph. 510; *M'Gill* v. *Bell's Trustees,* Feb. 5, 1876, 3 R. 427; *Key* v. *M'Intosh,* June 15, 1878, 5 R. 524.

At advising—

Lord President—I think the rule laid down in the case of *Allan* in the Second Division on the construction of the Act of Sederunt of 1842 is the sound rule, and I am not for disturbing it. The Act of Sederunt provides that the applicant cannot come here at all until he has got a certificate from the Kirk Session, and in order that he may obtain this certificate the 4th section requires—[*His Lordship here read the section as above, and also the 5th section down to* "craving a remit to the reporters on the *probabilis causa*"]. Now, I think the meaning of all this is that the adverse party, as he is called, is to have abundant notice, first, of the declaration before the Kirk Session, in order that he may, if he pleases, attend there; and secondly, of the time at which the Court are to be moved to remit the application to the reporters on the *probabilis causa,* in order that he may attend on this second occasion and state objections. The Act then goes on to provide that "on moving which, the Court may, on hearing objections, either refuse the application *de plano,* or remit to the reporters, who on considering the parties' case and hearing all objections, shall report whether the applicant has a *probabilis causa litigandi,* and otherwise merits the benefit of the poor's roll." It appears to me that the reporters will report either simply on the *probabilis causa,* or on other matters relating to the merits of the application for the benefit of the poor roll, according to the terms of the remit which is made to them. It is not intended that they shall go beyond the terms of the remit when the remit is merely to inquire into the *probabilis causa.* The adverse party has had ample opportunity to state his objections when the case was first moved in Court, and it would be highly inexpedient to go back upon these objections after the reporters have taken the trouble—and no small trouble it is sometimes—of considering the merits of the applicant's case and his chance of success. I think the rule laid down in *Allan's* case is not only in perfect consistency with the Act of Sederunt, but is also in accordance with the practice, which was well settled even before the case of *Allan,* for in that case the reporters on the *probabilis causa* in their report to the Court stated—"An objection was stated to the reporters that the circumstances of the applicant do not entitle him to the benefit of the poor's roll; but the reporters, following what they understood to have been the practice for many years, declined to consider it, as such an objection is usually stated and disposed of before the remit to the reporters is made." Now, taking that report, and the Act of Sederunt, and the practice, the Judges expressed themselves thus:—Lord Neaves observed—"This objection comes too late. Notice is given in the minute-book for the express purpose that objections may be stated when the case appears in the Single Bills. The change in the Act of Sederunt of 1842 from that of 1819 was made in order to alter the system formerly pursued." And Lord Cowan observed—"I think it very important that the present practice should be adhered to. According to it an opportunity for objecting on the ground of the poverty not being established is always given when the case is in the Single Bills, notwithstanding the power which the adverse party has under the Act of Sederunt to appear before the minister and elders. . . . But when no appearance is made, and no good ground is stated to account for this, I am very clear that the objection on the ground of poverty not being proved comes too late." It is quite true, as the objectors has observed, that parties have been heard in other cases after the remit to the reporters, but these were cases in which the objection does not seem to have been taken, and the Court did not advert to the matter. It must now, however, be distinctly understood that objections must be stated at the first stage when the applicant comes to the Court.

The other Judges concurred.

The Court admitted the applicant to the benefit of the poor roll.

Counsel for Applicant — Sym. Agent — T. M'Naught, S.S C.

Counsel for Objector—J. M. Gibson. Agent—W. S. Harris, L. A.