regular, I should be of opinion that the judgment of the Court was good against the owners, and that we ought to enforce it.

The Lord Ordinary has allowed a proof to the defenders of their averment to the effect that the captain did not agree to take the assessment of the Court in question, did not know the Norwegian language, and did not agree to have the question of salvage settled by a Norwegian Court, and that there was no trial of the case, and no inquiry into the facts, and no opportunity given to the captain to answer a claim for salvage. The pursuer is content that that inquiry shall take place. Indeed, he seems to concede that he could not claim the judgment in terms of the Norwegian Court's decree without evidence, or without the defender having an opportunity of leading evidence upon this point. That necessarily involves going to Norway to take evidence, and if the parties go to Norway to take evidence it appears to me that the reasonable course is for the pursuers to prove their averments as to the nature of this Court and the proceedings before it, to show that the Court was one of competent jurisdiction, and that the proceedings before it were regular. And if the master's conduct in leaving the Court, constituted as it shall be shown to have been, to determine the matter without evidence shall depend upon the whole circumstances of the case, as I think it may, I am of opinion that the most reasonable course, because it is that most likely to guard the legitimate interests of the parties, not only in ascertaining the exact merits of the case, but also in the important matters of economy and despatch, will be observed in allowing the pursuer a proof of his whole averments, including the circumstances in which the master made the bargain with the salvors while he was yet upon the rock—the bargain which is said to have been to the effect that if they rescued him—his ship and cargo—he would pay what the Nautical Court determined to be reasonable. I repeat that if the proceedings were regular before a Court of competent jurisdiction, I should myself be very hard to move to interfere with the sum which that Court awarded, dealing with the case under the alternative conclusions. That may, however, have to be the result, if we shall have to deal with the case under the alternative conclusion; and if the pursuer is allowed a proof of his whole averments, I think, without any material increase of expense in the result, the Court will be in a position to determine the case under the one conclusion or the other without further procedure or evidence thereafter—in a position to say under the first conclusion whether the captain represented the owners in making the bargain, which was a reasonable one, to pay what the Nautical Court should determine to be a reasonable sum, and that the proceedings were regular; and under the other conclusion, upon the opposite assumption, to say whether the proceedings were such as to bind the owners. I do not see that there can be very much in what I propose in addition to what would be the matter of proof under the Lord Ordinary's interlocutor. It would merely be the exact position where the ship was on the rock within sight of Egersund, and what passed between the captain and the salvors. Beyond that there seems to me to be nothing at all except the efforts which were made—and these could be put within a reasonable compass—to take the ship off. The parties might agree, if they are wise, as to the value of the ship salved, and the value of the cargo on board. These matters seem to have been the subject of inquiry in Norway—we were told so—and that the result of the inquiry was that the two together were worth £14,000. With the explanation I have given, and which does not need to be embodied in the interlocutor, I propose that we remit the case to the Lord Ordinary to allow the parties a proof of their respective averments.

Lord Craighill—I concur in the judgment your Lordship has proposed. Had it been in doubt that a proof was at all necessary, the regret that one would have felt in entering on an inquiry so large would have been considerable; but it is conceded on both sides that there must be a proof to determine whether or not the judgment pronounced by the Court in Norway is binding on the defenders. As inquiry is absolutely necessary, it appears to me, for the reasons your Lordship has explained, that the inquiry should be enlarged, so that we may make sure that once the proof has been reported there will, under one conclusion or another, be a judgment by which justice will be done to both parties.

Lord Rutherfurd Clark—I think upon the whole the course which your Lordship proposes is the most expedient for all parties. That there is to be a proof is matter for regret, but considering there is to be one, I think it is more expedient that no chance shall be left for a second proof. I therefore agree that there should be a proof of the nature your Lordship indicated. I abstain from giving an opinion on the legal questions which have been more or less argued to us.

Lord Young—We will recal the interlocutor of the Lord Ordinary, and remit to him to allow the parties a proof of their averments, and to each a conjunct probation. We reserve all questions of expenses.

The Lord Justice-Clerk was absent.

The case was subsequently compromised.

Counsel for Pursuers—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Defenders—M'Nair. Agents—J. & J. Ross, W.S.

Saturday, July 11.

FIRST DIVISION.

[Exchequer Cause, Lord Fraser.

THE LORD ADVOCATE *v.* SCOTT

Revenue—Stamp—Receipt—Stamp Act 1870 (33 *and* 34 *Vict. cap.* 97,) *sec.* 23.

Circumstances in which it was *held* that the provisions of the Stamp Act of 1870 had not been complied with, and penalty inflicted.

This was an information brought before the

Lord Ordinary on Exchequer Causes at the instance of the Lord Advocate, on behalf of the Inland Revenue, under the Stamp Act (33 and 34 Vict. c. 97), sec. 23, against James Scott, Prestonpans.

The first count charged him with having on 27th September 1884 written or signed, or caused to be written or signed, a receipt for payment of a sum exceeding £2 (being £7), and therefore liable to stamp-duty under the Act, without a stamp being impressed on the paper, or an adhesive stamp being affixed thereto as by law directed, whereby he was liable in a penalty of £10. A second count charged him with having on the same occasion refused, when requested, to give a stamped receipt for the said £7, whereby he was also liable in a penalty of £10.

The prosecution proceeded on the statement to the authorities of George Kell, a quarrymaster, who employed the defender to win stone. On the date in question he owed the defender £7, 0s. 8d., for stone wrought for him, and paid him that money. Kell swore that defender then wrote on an unstamped piece of paper a receipt, which was produced in process, and said he would give a stamped receipt afterwards, and that he afterwards asked him for one several times, but not getting it, gave information, because he was afraid he would be asked for the money again.

The only corroboration of this account was that in a letter which the defender wrote to the solicitor of Inland Revenue in answer to a letter from him it was not alleged that any receipt was granted, and that this letter was in writing very like the receipt which Kell produced to the officials as defender's. The receipt, however, was roughly done in blue pencil.

The defence was that a stamped receipt was really granted, and a pass-book was produced containing a receipt properly stamped. The defender swore that this book was kept by him for his course of transactions with Kell, and the receipt properly entered in it; that what Kell paid was part only of what was due; and that it was found necessary to summon Kell and get decree against him for the balance. A labourer who worked with defender swore that such a book was kept.

The Lord Ordinary decerned against the defender conform to the first count of the information.

The defender reclaimed, and argued—The *onus* of proving that the receipt in question was given by the defender to Kell lay upon the pursuer. The *onus* was doubly heavy, because the action was for recovery of a penalty. The pursuer had only the evidence of a single witness, whose evidence was directly contradicted by the defender. There was no corroboration of Kell's evidence save the similarity of handwriting. This was at best but slight corroboration, and to rely upon it alone would be dangerous. Moreover, the corroboration required was that of facts and circumstances wholly extrinsic of the witness whose testimony is to be corroborated, and here it was not extrinsic. The defender here was at a disadvantage in the matter of *comparatio literarum*, because the receipt in question was written, not in ink but in coarse blue pencil, which rendered forgery more easy and detection more difficult. There was no unreasonableness in supposing forgery here, as there was evidently a strong *animus* on the part of Kell against the defender, who had to sue Kell to recover the balance of his account. Kell's evidence was not corroborated, but even contradicted, not only by the defender but by the defender's witness, who was at one with defender in stating that it was part of the arrangement between them and Kell that they should keep an account in their book of work done and payments made under the contract; and although Kell denied any such arrangement, the book produced shewed that such an account had in fact been kept; and that it was part of the arrangement was shewn by the fact that on no other occasion save on this one of 27th September had Kell ever asked for or obtained a receipt although he had often made larger payments than the one in question. On the balance of proof the defender's case was the stronger, and, in any view, the pursuer had failed to discharge the *onus* incumbent upon him.

Replied for respondent—*Comparatio literarum* was a good test in a case like the present. The handwriting in Scott's letter to the Treasury was wonderfully like that in the unstamped receipt. Then there was the evidence of Kell; if he was to be believed, there was an end of the case for the reclaimer, and there was no ground for saying that he was not giving a true account of what took place.

At advising—

Lord President—This is undoubtedly a very narrow case, and it is just the case in which one is bound, in coming to a conclusion, to weigh the credibility of the two witnesses—one on each side. Now, unfortunately, we have very little opportunity of doing that—not at all the same opportunity that the Lord Ordinary had. He saw the witnesses, and was able to judge of their demeanour, and the way in which they gave their evidence; and while I would have considerable difficulty in finding this charge proved if I were bound to give a first judgment upon the written proof, I attach great weight to the interlocutor of the Lord Ordinary, and to the opinion which he has formed of the credibility of these two witnesses, and I do not think myself entitled to alter his interlocutor.

Lord Mure—I think the case is very narrow indeed, and I find it difficult to say what I would have done if I had been Lord Ordinary. It depends entirely on credibility, as your Lordship has put it. The Lord Ordinary must have believed the evidence for the pursuer, and in the whole circumstances I am not for altering his judgment.

Lord Shand—I have come to the same conclusion. The case was presented by Mr Thomson in his very careful review of the facts as if there was no corroboration of the informer's evidence. But I think there are two circumstances which the Lord Ordinary might very fairly take as corroboration. The first is that the handwriting and signature of the letter to the Crown officials in reference to this matter, and which was confessedly written by the defender, is extremely like the writing in the document said to have been granted as a receipt without the stamp, and the second is that in that letter there was no suggestion that a receipt-stamp had *de facto* been used, and that therefore the Revenue had not been

injured. I think these two circumstances are fair elements of corroboration of the informer's evidence, and considering that the Lord Ordinary had an opportunity of seeing the witnesses, and that everything depends on his view of their credibility, I do not feel that I could interefere with the judgment which he has pronounced, and I am therefore of opinion that we should adhere to his interlocutor.

Lord Adam—I concur with Lord Shand.

The Court adhered.

Counsel for Pursuer—Sol.-Gen. Robertson—Lorimer. Agent—D. Crole, Solicitor for Inland Revenue.

Counsel for Defender—A. S. D. Thomson. Agent—Marcus J. Brown, S.S.C.

Saturday, July 11.

SECOND DIVISION.

ANDERSON *v.* BLACKWOOD.

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

A man earning 15s. a-week of wages *admitted* to the benefit of the poor's-roll to enable him to appeal to the Court of Session in an action of damages for personal injuries in which he was pursuer.

Thomas Anderson, miner, petitioned for admission to the benefit of the poor's-roll in the Court of Session, to enable him to insist in an appeal from the Sheriff of Lanarkshire in an action of damages for personal injuries at his instance against John Blackwood. Both the Sheriff-Substitute and the Sheriff had decided the case against the applicant. The Court remitted to the reporters on the *probabilis causa litigandi* to inquire and report whether the applicant had a *probabilis causa litigandi*, and in doing so to have special regard to the applicant's means. The applicant produced to the reporters a certificate of poverty from the minister and elders of the parish of Old Monkland. The certificate bore that the applicant had appeared before them and stated that he was fifty-seven years of age; that his wife was a pauper inmate of a lunatic asylum; that he had a son, aged twenty-two, living in family with him, who was earning 20s. a-week; that he was possessed of no property, and was earning an average wage of 14s. or 15s. a-week. The certificate further bore that no part of that statement was consistent with the certifiers' own proper knowledge, but that it depended entirely on the applicant's own statement, and was affected by a letter from the underground manager of the mine in which the applicant was working, which stated that he was earning "something like 4s. or 5s. per day for twenty days of the four weeks."

The reporters reported that the applicant had a *probabilis causa litigandi*, and that, having special regard to his means, as appearing from the certificate to be 15s. a-week, he was, in their opinion, entitled to the benefit of the poor's-roll.

Blackwood objected to the applicant's admission, and argued—The case of *Stevens* v. *Stevens*, Jan. 23, 1885, 12 R. 548, was not conclusive, for though the applicant in that case was earning 5s. a-week more than this applicant, yet he had an imbecile son to support, while on the other hand this applicant had a son living with him earning as much as Stevens did, and had no one to keep. Further, Stevens' action was one which could be brought only in the Court of Session, while this applicant had already the judgments of two Sheriffs against him.

At advising—

Lord Justice-Clerk—I think we must admit this applicant. It is not very easy to draw a line between those who ought and those who ought not to be admitted, but the reporters have reported that the man has a *probabilis causa litigandi*, and I think it is plain enough from the amount of his earnings that he cannot litigate in this Court under the ordinary conditions, and therefore, without laying down any general rule, or saying that whenever the applicant's earnings do not exceed 15s. I should repeat the judgment, I think the present application should be granted.

Lord Young—I am of the same opinion. I confess I think it a safe judgment. I must say I should like to see more uniformity in the decisions. I think we are getting more uniform, and that our later decisions are based on a sound and right principle. The *ratio* of the matter is, that the agents and counsel for the poor should not be required to give their services except to necessitous persons who cannot afford the expenses of litigation. It was formerly my opinion when at the bar, and I have frequently given advice to that effect, and would be prepared to act on it still, that with respect to the opposite party, he is always better in a question with a poor adversary in the hands of the agent for the poor than in those of a speculative agent, so far as his own interests are concerned; and I do not think much, I must say, of those who would take advantage of the chance that their poor adversary may find no one ready to take up his case as a speculation. I do not like that. I should like to put it on the plain principle that the man's circumstances are not such that he can pay his own way in the Court of Session, and if that be so, and he is reported to have a *probabilis causa*, and no other objection is suggested, I should be always ready to admit him.

Lord Rutherfurd Clark—I think, following the decisions we have recently pronounced, we have no alternative but to admit this man.

Lord Justice-Clerk—I should just like to say further, that I think the principle which Lord Young suggests would be a very desirable one to adopt, but I am not prepared to say I would rest it entirely on the grounds on which he has put it.

Lord Craighill was absent.

The Court granted the application.

Counsel for Applicant—C. K. Mackenzie. Agent—W. J. Cullen, W.S.

Counsel for Respondent—Maconochie. Agents—Maconochie & Hare, W.S.