

destitute of means, and his children were possessed of property, I think he might be quite justified in using the interest of their money for their education and maintenance.

LORD ADAM—I am of the same opinion and have nothing to add.

The Court pronounced the following interlocutor:—

“Recal the interlocutor of the Sheriff of date 18th May 1885: Find in terms of an arrangement between the parties that the sum to be paid to the female pursuer as the share due to her of her father's personal estate is £69, 13s: Decern against the defenders for payment of the said sum to the pursuer, with interest at the rate of 5 per cent. per annum on the said sum from the date of marriage of the female pursuer till payment thereof.”

Counsel for Pursuers—Darling—Thorburn.
Agent—Andrew Wallace, Solicitor.

Counsel for Defenders—Gloag—Strachan.
Agent—Andrew Newlands, S.S.C.

Saturday, October 31.

FIRST DIVISION.

CARR *v.* THE NORTH BRITISH RAILWAY COMPANY.

Poor's Roll—Where Reporters on Probabilis causa litigandi are Equally Divided in Opinion—Decision Adverse to Applicant in Sheriff Court—A. S., November 21, 1842.

Where the reporters on the *probabilis causa litigandi* reported to the Court that two of them were of opinion that an applicant had, and that two of them were of opinion that she had not, a *probabilis causa*, the Court, on the ground that the applicant had already two judgments in the Inferior Court adverse to her case, *refused* to admit her to the benefit of the poor's roll.

This was an action of damages for personal injury raised by Mrs Janet Neilson or Carr, residing at 4 Gellatly Street, Dundee, against the North British Railway Company.

The action was raised in the Sheriff Court of Forfarshire, and decree was pronounced both by the Sheriff-Substitute and by the Sheriff in favour of the railway company.

Mrs Carr presented a note to the First Division of the Court of Session praying for admission to the poor's roll.

On 17th October 1885 the Court remitted the application to the reporters on the *probabilis causa litigandi*.

On 31st October the reporters reported that they were equally divided in opinion upon the application, and that they respectfully left it to be disposed of by the Court.

The applicant craved the Court to admit her to the benefit of the poor's roll.

The railway company objected to the application on the ground that not only were the reporters equally divided, but the applicant came to

the Court of Session with two judgments of the Inferior Court against her, and that in these circumstances the application ought to be refused.

Authorities—*Williamson*, November 21, 1863, 2 Macph. 126; *Duncan v. Morrison*, January 16, 1863, 1 Macph. 257; *Marshall v. North British Railway Company*, July 31, 1881, 8 R. 939.

Replied for the applicant—The case of *Marshall* favoured the application. There the reporters were equally divided and the Court admitted the applicant to the roll.—*Halliday*, June 25, 1864, 2 Macph. 1288.

At advising—

LORD PRESIDENT—I think that there is a very clear distinction between this case and that of *Marshall* to which we were referred. In *Marshall's* case the object of the application was to enable the applicant to institute proceedings in this Court. The reporters were equally divided in opinion as to whether the applicant should or should not be admitted to the benefit of the poor's roll, and we admitted the applicant.

Here the action was raised in the Sheriff Court, and by the judgments of both Sheriffs the defenders are assolzied from the conclusions of the action. The applicant has therefore obtained from these Judges a distinct opinion adverse to her claim, and she has not succeeded in satisfying more than two of the reporters that she has any case at all. This case is one involving solely a question of fact, and an adverse decision has been given in the Sheriff Court. I do not think that such a case ought to be carried any further, and I am not disposed to encourage such appeals. I think therefore that this application ought to be refused.

LORDS MURE, SHAND, and ADAM concurred.

The Court refused the application.

Counsel for Applicant—MacWatt. Agent—James Forsyth, S.S.C.

Counsel for Respondent—Dickson. Agents—Millar, Robson, & Innes, S.S.C.

Saturday, October 31.

SECOND DIVISION.

[Sheriff of Lanarkshire.]

MACLEOD *v.* THE CALEDONIAN RAILWAY COMPANY.

Master and Servant—Reparation—Known Danger—Relevancy—Averment sufficient to Entitle to an Issue.

In an action of reparation by the personal representative of a workman against an employer for personal injuries resulting in death, caused by the alleged unsafe state of the premises on which the workman was employed, averments not amounting to an allegation that not only did the master know, but that the servant was ignorant of the danger, *held* relevant and sufficient to entitle the pursuer to an issue.

This was an action in the Sheriff Court at Glasgow by Murdo Macleod, designing himself as a crofter at Portree, against the Caledonian Railway