and that even if this was not the case, it in no way contributed to the casualty which occurred more than ten hours afterwards, during which interval the master had two opportunities (of which he appears to have availed himself) of testing his position, and that the discrepancy alluded to in the answer does not appear to have been sufficient to excite any apprehensions in the master's mind. That there is nothing in the sailing directions or on the chart submitted to bear out the statement that the set of the tide would affect the vessel's course as described by the Court below.

"We are also of opinion that the course made is wrongly described in the annex as being magnetic N.E. by N. by the pole compass, and that the loss of the 'Sevilla' was occasioned by an error of judgment on the part of the master in over-estimating his distance from the shore of the island of Harris, an error which was shared by all the witnesses from the vessel, and was due to the misty and deceptive condition of the atmosphere. That with this exception the vessel appears to have been navigated with an average amount of proper and seamanlike care."

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties on the appeal, and considered the cause with the assistance of Captain James Bucknell Atkins and Captain George Rawlinson Vyvyan, Assessors appointed in terms of the statutes, Recal the finding and sentence set forth in the report of the Sheriff-Substitute of Lanarkshire appealed against: Find that the loss of the steamship 'Sevilla' of Glasgow was occasioned by an error in judgment on the part of the master, the appellant, in over-estimating his distance from the shore of the island of Harris, an error which was shared by all the witnesses from the vessel, and was due to the misty and deceptive condition of the atmosphere, the consequence of which error was that the vessel was run upon the sunken rock known as 'Poor Woman's Rock:' Find that with the exception of said error in judgment the vessel was navigated with an average amount of proper and seamanlike care, and that the fault of the appellant was such as would have been sufficiently dealt with by reprimand and caution: Find that the appellant's certificate ought to be returned to him, and direct that it be returned to him accordingly: Find him entitled to the expenses of the appeal: Remit to the Auditor to tax the same and report: Further, direct that this judgment be reported to the Board of Trade in terms of the rules to that effect, and decern."

Counsel for the Master (Braeter)—Dickson — Aitken. Agents — Webster, Will, & Ritchie, S.S.C.

Counsel for the Board of Trade—Lord Adv. Robertson, Q.C.—Sol.-Gen. Darling, Q.C.—H. Johnston. Agent—David Turnbull, W.S.

Thursday, November 7.

SECOND DIVISION.

DRUMMOND *v.* FLETCHER & COMPANY.

Poor's Roll — Admission where the Reporters on the Probabilis causa litigandi are equally Divided in Opinion — Case Competent only in the Court of Session.

A person applied for the benefit of the poor's roll to enable him to raise an action in the Court of Session which could only be brought there. The reporters on the *probabilis causa* were equally divided.

The Court (following the case of *Marshall* v. *The North British Railway Company*, July 13, 1881, 8 R. 939) *admitted* the applicant.

William Ayson Drummond, 166 Perth Road, Dundee, applied for the benefit of the poor's roll to enable him to carry on an action for damages for infringement of patent and for interdict depending in the Outer House before Lord Wellwood against Thomas Fletcher, gas engineer, and Thomas Fletcher & Company, gas engineers, both of Thynne Street, Warrington, in Lancaster, against whom jurisdiction had been founded by arrestment.

The Court remitted to the reporters on the *probabilis causa*, who reported that they were equally divided in opinion, one of the counsel and one of the agents being of opinion that the applicant had, and the other counsel and the other agent that he had not, a *probabilis causa litigandi*.

The applicant moved the Court to admit, and argued that the case was ruled by that of *Marshall* v. *The North British Railway Company*, July 13, 1881, 8 R. 939. The more recent cases of *Carr* and *Watson*, in which the Court had[1] refused to admit where the reporters were equally divided, were appeals from the Sheriff Court where both Sheriffs had decided against the applicant. The case of *Shanks* was very peculiar. Here the action could only be brought in the Court of Session, consequently he was in a more favourable position than the applicant in *Marshall's* case. This distinction had been pointed out by Lord Rutherfurd Clark in the cases of *Stevens* v. *Stevens*, January 23, 1885, 12 R. 548 and *Wright* v. *Brown's Trustees*, May 21, 1885, 12 R. 959.

The defenders objected to the admission of the pursuer, relying upon Lord Shand's opinion in *Marshall's* case, and upon the more recent cases of *Carr, &c.* v. *The North British Railway Company*, November 1, 1885, 13 R. 113; *Shanks* v. *The Moderator, &c., of Reformed Presbyterian Church*, March 11, 1886, 13 R. 749; and *Watson* v. *The Callander Coal Company*, November 17, 1888, 16 R. 111.

At advising—

LORD JUSTICE-CLERK—I think we must follow the case of *Marshall* and admit.

LORD YOUNG, LORD RUTHERFURD CLARK, and LORD LEE concurred.

The Court admitted the applicant.

Counsel for the Applicant—James Clark. Agent— David Dougal, W.S.

Counsel for the Defenders—Gunn. Agent —Robert Stewart, S.S.C.

Saturday, November 9.

SECOND DIVISION.

[Sheriff of Lanark.

ROE *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

Reparation—Damages—Relevancy.

A passenger sustained injuries by leaving a railway carriage while the train was in motion and approaching a station. In an action of damages against the railway company he averred that he had acted with due care, but was misled to the conclusion that the train had stopped through the fault of the defenders in not providing a sufficient number of lamps upon the platform, and in not having the existing lamps properly lighted. *Held* (*diss.* Lord Young) that the action was relevant.

Alexander Robertson Roe, hairdresser, 60 Buccleuch Street, Glasgow, travelled to Largs on the evening of Saturday 3rd August 1889 by the Glasgow and South-Western Railway Company's train, which was timed to leave St Enoch's Station, Glasgow, at 11·5 p.m., and to reach Largs at 12·40a.m. Upon approaching Largs station he looked out, and thinking that the train had stopped he stepped out of the compartment. He was knocked down by the door of the compartment, the train being still in motion, and severely injured. He brought an action of damages in the Sheriff Court at Glasgow against the railway company, in which he averred—"The injuries which pursuer sustained were due to the fault and negligence of the defenders, or of those for whom they are responsible. The station at Largs at the place where the pursuer was injured is unsafe and dangerous, and badly constructed. There was not a sufficient number of lamps on the arrival platform to light it sufficiently for safety to the travelling public, and, except quite close to the roofed-in portion, it was in total darkness. The arrival platform is about 260 yards long; of this about 60 yards are roofed in, and the remainder is uncovered. In the covered portion there are eight gas lights, which are believed to be lighted at night, but on the uncovered portion there are only five lamps for the whole distance of 200 yards, and of these only two (the two nearest the covered portion) were lit on the night in question, and for some reason they were not burning brightly, and were yielding little light. . . . It was the duty of the defenders to have had the station properly and sufficiently lighted for this as for other trains. The night in question was very dark, and several of the carriages, and amongst them the pursuer's, were brought to a stand at a portion of the platform which was in total darkness. Before the pursuer could be rescued after the accident matches had to be lighted and lamps sent for. . . . The approach of a train to Largs station is not only gradual and prolonged, but unusually smooth. Its motion is quite imperceptible to passengers within the train, and they can only tell that it is in motion by observing objects outside. The pursuer on the night in question thought, and had good reason for thinking, before he attempted to alight, that the train had stopped. The motion had become imperceptible to him and to the other passengers in the compartment. He opened the window and looked out twice to make sure that all was right. Had the platform been lighted, as it ought to have been, he could have seen that the train was in motion, and the accident would not have happened. . . . The pursuer waited a reasonable time before attempting to alight, and it was the duty of the defenders, or those for whom they are responsible, to assist the passengers in alighting at said dark part, or to warn them that the train had not stopped. This duty they did not perform."

The pursuer pleaded—"The pursuer having been injured by the fault of the defenders, or of those for whom they are responsible, is entitled to decree against them as craved."

The defenders pleaded—"(1) The averments of the pursuer are irrelevant and insufficient to support the conclusions of the action. (3) *Separatim*—The accident having been caused by or materially contributed to through the fault of the pursuer, the defenders should be assoilzied, with expenses."

The Sheriff-Substitute (SPENS) on 24th October 1889 pronounced the following interlocutor:—"For the reasons in note assigned, Sustains the first and third pleas-in-law stated for defenders, and assoilzies them from the conclusions of the action.

"*Note.*—The pursuer left St Enoch Station on the 3rd August by the 11·5 p.m. train timed to arrive at Largs at 12·40 a.m. on the 4th August. It is not disputed that he left the train when it was in motion, and has been very seriously injured, but he says the train was going so slow, and the platform was so insufficiently lighted, that he had reasonable grounds for believing that the train stopped, and he alleges *culpa* on the part of the railway company in respect of the insufficiency of light. No case was quoted to me where a passenger was successful in claiming damages for injuries received by him in consequence of attempting to leave a train when still in motion. It is narrated by pursuer in his condescendence that he took certain ineffectual precautions for the purpose of ascertaining whether the train had stopped. I am of opinion that a duty was incumbent on him of ascertaining the fact with absolute certainty. He could assuredly have done this