

it appears that the action is sought to be brought against the trustee not only in his capacity as trustee but also as an individual, but I can see no ground whatever in anything stated on record for personal liability, and upon that ground I think the action falls to be dismissed. The agent can claim in the sequestration and get his preference given effect to, if he has any.

LORD ADAM—This action is laid against the defender both as trustee and as an individual. A trustee may no doubt grant an obligation which he may be compelled to fulfil by an action at common law, but in the present case I cannot see anything indicating a shred of obligation undertaken by him as trustee. The receipt founded on was merely an expression of the legal rights of parties, as these rights are fixed by the Sequestration Statutes. It neither enlarged nor modified the rights either of the trustee or of the parties. So far as directed against the defender as an individual, this action is irrelevant. So far as directed against him as a trustee the ordinary and proper way was to claim in the sequestration. It is really a claim upon the trust funds, and the proper way to make such a claim effectual is to make it in the sequestration, where due effect will be given to any existing preference, and I see no reason why that course should not be followed here. There are special cases where different proceedings may be necessary, but we have no such case here. If the pursuers have a preference over the claims they will have the benefit given by the statute, but I agree with your Lordships in thinking that no sufficient reason has been stated why the present action was raised.

LORD DEAS and LORD SEAND were absent.

The Court refused the appeal.

Counsel for Pursuers (Appellants)—Young—Orr. Agents—W. Adam & Winchester, S.S.C.

Counsel for Defender (Respondent)—J. Burnet—M'Neill. Agent—Knight Watson, Solicitor.

Friday, May 30.

## SECOND DIVISION.

MACFARLANE, PETITIONER.

*Process—Poor's Roll—Application for Admission to Benefit of Roll—Remit to Reporters.*

Circumstances in which, in an application for admission to the benefit of the poor's roll, the Court remitted to the reporters *probabilis causa*, and instructed them to inquire and report their opinion as to whether the case of poverty had been substantiated.

David Macfarlane applied for a remit to the reporters, with the view of obtaining the benefit of the poor's roll. The application was made with a view of enabling him to bring an appeal from an interlocutor of the Sheriff of Forfarshire in an action of damages for injury to the person raised at his instance against William Thomson.

Thomson opposed the application, and stated that during the proof in the Sheriff Court, Mac-

farlane had stated that he earned thirty-seven shillings a week, and that he could earn twice that sum when on piece-work. Since his recovery from the accident Macfarlane had been earning thirty-five shillings a week, and a certificate from his employers to the effect that he had been earning thirty-five shillings a week up to the date of the appeal was produced. In these circumstances, and on the authority of the case of *Snaddon*, June 9, 1883, 20 S. L. R. 648, the respondent maintained that Macfarlane was not a person entitled to the benefits of the poor's roll. Macfarlane replied that although it was true that he was earning thirty-five shillings a week, all the balance above £1 had been arrested at the instance (1) of the agents of Thomson for payment of their expenses, and (2) by his own agents for payment of their account, for which they held a decree. The poor's agent in Dundee was now acting on his behalf. On these facts Macfarlane argued that Thomson was not entitled to oppose the application, as they had themselves been the cause of his poverty.

The Court pronounced this interlocutor:—

“Remit to the reporters, and instruct them to inquire and report their opinion as to whether the case of poverty has been substantiated.”

Counsel for Appellant—Gardner. Agent—J. A. T. Sturrock, S.S.C.

Counsel for Respondent—Law. Agent—

Friday, May 30.

## SECOND DIVISION.

PATERSON v. WILSON.

*Bankruptcy—Cessio—Process—Sheriff—Appeal—Debtors Act 1880 (43 and 44 Vict. c. 34), secs. 8 and 9.*

In a petition at the instance of a creditor to have his debtor ordained to execute a disposition *omnium bonorum*, the Sheriff pronounced an interlocutor dismissing the action. The pursuer appealed to the Court of Session. The appeal was signed by the agents of certain other creditors, who had not appeared in the Sheriff-Court, but who lodged minutes in the Inner House craving to be sisted as appellants in the action. Held that, not having entered appearance before the Sheriff's interlocutor dismissing the action was pronounced, they were not now entitled to do so.

Charles E. Paterson presented a petition in the Sheriff Court at Edinburgh against David Hay Wilson, S.S.C., for decree ordaining him to execute a disposition *omnium bonorum* for behoof of his creditors, and for the appointment of a trustee on his estate. He averred that the defender was notour bankrupt within the meaning of the Bankruptcy Act 1856 or the Debtors Act 1880, and was unable to pay his debts; that certain of his effects had been sold by the Sheriff's warrant, under decree of sequestration for rent; and that he was a creditor of the defender to the extent of £9, 13s. 4d., which sum was composed of the amount of two debts both con-