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DIGEST OF DECISIONS

RELATING TO

THE POOR LAW OF SCOTLAND,

WITH

DECISIONS UNDER THE LANDS VALUATION,
PUBLIC HEALTH, AND EDUCATION ACTS;
WITH RELATIVE STATUTES.

BY

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ADVOCATE.

EDINBURGH:
DUNCAN GRANT, FORREST ROAD.
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PREFACE.

THE present collection of cases on the Poor Law of Scotland has been prepared with the view of providing, in a handy and condensed form, reports of the Decisions of the Courts of Law on all questions relating to parochial administration, for the use of Parochial Boards, Inspectors of Poor, and all who are practically engaged in the work of carrying into execution the provisions of the Poor Law. While this is the main object of this Digest, it is hoped that it may also be found useful to the legal profession generally, as a volume of illustrations of the standard treatises on the subject.

The compiler desires to acknowledge the valuable assistance he has received in the preparation of the Index from Mr. A. Macrorie, Inspector of Poor of Kilwinning.

JOHN ALEX. REID.

2 DRUMMOND PLACE,
EDINBURGH, *March* 1880.

CONTENTS.

PAGE

I. Funds applicable to the Support of the Poor . . . 1

II. Administration of the Funds 17

III. Officers of the Parochial Board 33

IV. Assessment and Valuation 39

V. Exemption from Liability for Poor Rates . . . 94

VI. English Cases on Valuation and Assessment . . . 110

VII. Persons entitled to Relief; and the Nature and Sufficiency of the Relief 117

VIII. Recourse—

1. Against Relatives 132
2. Against other Parishes 154

IX. The Insane Poor 175

X. Settlement—

1. By Birth and Parentage 183
2. By Marriage 232
3. By Residence 265

XI. Actions and Judicial Procedure 333

XII. Cases under the Lands Valuation Acts 373

XIII. Cases under the Public Health Acts 403

XIV. Cases under the Education Acts 412

STATUTES.

I. The Poor Law Acts—

1. 8 & 9 Vict., c. 83 (1845) 435
2. 19 & 20 Vict., c. 117 (1856) 472
3. 24 & 25 Vict., c. 18 (1861) 474
4. 24 & 25 Vict., c. 37 (1861) 477

PAGE

5. 25 & 26 Vict., c. 82 (1862) 478
6. 25 & 26 Vict., c. 113 (1862) 479
7. 28 & 29 Vict., c. 62 (1865) 482

II. Lunacy Acts—

1. 20 & 21 Vict., c. 71 (1857) 483
2. 21 & 22 Vict., c. 89 (1858) 538
3. 25 & 26 Vict., c. 54 (1862) 539
4. 27 & 28 Vict., c. 59 (1864) 550
5. 29 & 30 Vict., c. 51 (1866) 551
6. 34 & 35 Vict., c. 55 (1871) 561
7. 40 & 41 Vict., c. 53 (1877) 564

III. Valuation Acts—

1. 17 & 18 Vict., c. 91 (1854) 566
2. 30 & 31 Vict., c. 80 (1867) 589
3. 42 & 43 Vict., c. 42 (1879) 593

IV. Public Health Acts—

1. 30 & 31 Vict., c. 101 (1867) 598
2. 38 & 39 Vict., c. 74 (1875) 653
3. 42 & 43 Vict., c. 15 (1879) 655

V. Registration of Births &c. Acts—

1. 17 & 18 Vict., c. 80 (1854) 657
2. 18 & 19 Vict., c. 29 (1855) 695
3. 23 & 24 Vict., c. 85 (1860) 698
4. 41 & 42 Vict., c. 43 (1878) 706
5. Rules relative to the duties of Registrars made in pursuance of Section 15 of 41 & 42 Vict., c. 43 715

VI. Vaccination Act—

1. 26 & 27 Vict., c. 108 (1863) 722

Index of Subjects 735

Index of Cases 797

DIGEST OF POOR LAW CASES.

I.—FUNDS APPLICABLE FOR THE SUPPORT OF THE POOR.

1. Birnie *v.* Earl of Nithsdale, November 29, 1678.—M., 2489.

Communion Elements—Poor.—The sum payable for communion elements not having been expended therefor, held that it fell to be added to the poor's fund.

The same point was decided in heritors of Abdie *v.* Corsan, July 21, 1713.—M., 2490.

Note.—If the allowance for communion elements had actually been paid over to the minister, it has been held that he cannot be compelled to repay, although the communion has not been celebrated. Hay, July 14, 1780.—M., 2492.

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2. Sir Andrew Ramsay *v.* James Grant, February 9, 1711.—M., 10551.

Money Lost in Gaming.—Held that the kirk treasurer, for behoof of the poor, is entitled to sue for, and to recover money lost in gaming.

Note.—This decision was founded upon the provisions of the Act 1621, c. 14, which enacts that "all money lost at cards, dice, horse races, and other games, above 100 merks Scots, shall belong to the poor."

See also Straiton *v.* The Laird of Craigmillar, July 19, 1688.—M., 9506, where debt sued for was contained in a bond, and the Court allowed proof of the allegation made in defence that the bond had been granted for a gaming debt. And, similarly, as to a bill in Maxwell *v.* Blair, July 14, 1774.—M., 9522.

3. Minister and Kirk-Session of Montrose *v.* The Magistrates of the Town and Heritors of the Parish, July 2, 1730.—M., 7915.

Bell-ringing and Burial Fees.—Held that the money arising from the ringing of the bells and burying within the church did not properly belong to the poor, and, therefore, fell to be burdened with the reparation of the church.

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4. Henry Hill *v.* Archibald Thomson, June 19, 1739.—M., 8011.

Dissenting Congregations.—Held that collections, voluntarily made at a meeting-house of Seceders, did not fall under the administration of the kirk-session of the parish.

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5. Gabriel Hamilton of Westburn *v.* Minister and Kirk-Session of Cambuslang, November 23, 1752.—M., 10570.

Kirk-Session—Session Clerk and Presbytery—Title to Sue—Heritor.—Held that a single heritor had a title to call upon the kirk-session to exhibit their accounts of the funds belonging to the poor, in order to determine whether certain disbursements made by them were proper charges thereon; and, also, held that the payment of the session clerk was a proper charge on the funds of the poor in the hands of the minister and kirk-session, but not the payment of the presbytery clerk.

This was an action brought by a single heritor of the parish of Cambuslang against the minister and kirk-session, for the exhibition of the account-books of the parish belonging to the poor, and contained a conclusion that the defenders should be ordained to repeat whatever sums should be found to be a misapplication of these funds.

The accounts being produced, the pursuer challenged the following disbursements, debited to the poor's fund:—

1. A new tent for the field preachings.
2. The expense of repairing said tent from time to time.
3. The communion forms, tables, and tablecloths.
4. The rent for a preaching field.
5. Payments to constables and officers for attending to keep the peace at the Sacrament.

6. Sum for damages done to a heritor's dyke adjacent to the preaching field.
7. The presbytery and session-clerk's salary.

The Court (1) maintained the title to sue; (2) allowed the first and second items, and the small salary paid to the session-clerk, as proper charges on the poor's funds; but refused the others; (3) found that the payment of the presbytery-clerk out of the funds of the poor was illegal, but in respect of the prevalence of an universal custom, did not surcharge for past payments; (4) decerned against the defenders for the balance, and allowed diligence to that effect to proceed against them at the instance of the pursuer or any of the heritors of the parish.

Note.—The articles allowed would seem to be sustained on the principle that they were expenses directly incurred in creating the fund.

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6. Turnbull and Kirk-Session of Kippen *v.* John M'Claws and Others, August 10, 1756.—M., 8013.

Mortcloth Dues.—Held that a kirk-session had the sole right of keeping mortcloths for the funerals of persons dying in the parish, and of applying, for the use of the poor, such sums as arose from the hire thereof.

Note.—The same decision was given in 1718, in an action between the Kirk-Session and the trades of Kilwinning, but without prejudice to private persons using mortcloths belonging to themselves; but it was subsequently held, in the case of the Kirk-Session of Dumfries *v.* Incorporation of Squaremen, February 18, 1783, M., 8018, that individuals, or societies, may acquire a joint right to them, along with the kirk-session, by usage.

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7. Andrew Beveridge, Session-Clerk of Dunfermline *v.* James Bayne and Others, June 26, 1765.—M., 8014.

Proclamation Fees.—Held that kirk-sessions were not entitled to exact dues of proclamations of marriage for the behoof of the poor.

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8. John Wilson, 1771.—M'Laurin's Criminal Trials, 744.

Right to Glean.—Held that the poor have no right to glean or gather.

9. Kirk-Session of Dumfries *v.* Kirk-Sessions of Kirkcudbright and Kelton, June 15, 1775.—M., 10580.

Gaming.—Held that the poor of a parish, where a wager was laid, were entitled, under the Act 1621, c. 14, to the surplus of money, won upon a horse race, above 100 merks.

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10. A. Spiers and Others (Heritors of Neilston) *v.* Rev. Alexander Fleming and Others, June 1, 1831.—9 Shaw, 659; 3 *Jur.*, 460.

Collections at Church Door.—Held that the members of Kirk-Session, who had received collections made in the churchyard, for the purpose of carrying on a litigation with the heritors—the object of the collection having been intimated from the pulpit, and the plates in which it was made being distinguished from those used for the ordinary collection for the poor—were not bound to account to the heritors for the collections so received, as forming part of the funds destined to the support of the poor.

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11. Lord Panmure and Others *v.* William Sharp and Others, May 30, 1839.—1 D., 840; 11 *Jur.*, 471.

Church-Door Collections.—Held that collections, made at the door of the chapel of a *quoad sacra* parish, must be devoted to the support of the poor and the other purposes specially sanctioned by law.

The facts were—A church was erected, mainly by voluntary subscriptions and a grant from the Church Extension Commttee of the General Assembly; but a part of the cost of the building remained a debt upon the church. The managers of the new church, in whom it was feudally vested as trustees, presented a petition to the Presbytery of the bounds to have a constitution for the church approved. By that constitution they undertook to provide a competent stipend, and, also, made it a condition that they should be liable to apply the weekly collections at the church doors towards the support of the church, the minister of which should always be either a licentiate or ordained minister of the Church of Scotland, to the jurisdiction of which church the minister and congregation were to remain subject. The General Assembly approved of the constitution, and, under the

Act of Assembly 1834, c. 9, a *Quoad Sacra* parish was assigned to the new church. In a process of suspension and interdict at the instance of several of the heritors of the parish, within which the new church and the *Quoad Sacra* parish were situated, it was held that "the ordinary collections at the new church in question, on occasions of divine worship, must be held to be appropriated to the maintenance of the poor of the parish . . . according to the rules of law," and interdict was granted against making such collections for other purposes.

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12. The Rev. Robert Smith and Others *v.* Robert Jaggard and Others (Brown's Executors), July 7, 1843.—15 *Jur.*, 579.

Bequest to Poor.—A sum of £4000 sterling having been bequeathed to the poor of Lochwinnoch to be invested, and the interest to be "divided amongst the poor of the said parish by the minister and elders of the Parish Church of Lochwinnoch." Held that the investment ought to be made in the name of the minister and kirk-session, and their successors in office, as trustees for behoof of the poor of the parish, but subject always to the control and superintendence of the heritors of the said parish, or any committee to be appointed by them as interested in the management of the poor's funds, and, particularly, subject to such control in the investment, uplifting, or re-investment of the principal sum, three months' notice being always given to the heritors, or their committee, of any proposed change of investment.

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13. James Robert Hope and John Hope (Watson's Executors) *v.* The Heritors and Kirk-Session of Cramond, and Lady Aberdour, June 7, 1844.—16 *Jur.*, 484.

Legacy.—Held that the administration of a legacy, bequeathed to "the poor in the parish of Cramond," fell to the heritors and kirk-session.

The facts were—A legacy having been bequeathed in the above terms, the residuary legatee claimed the sum so left, on the ground that the legacy was void in respect of vagueness and uncertainty, and he alternatively pleaded that, if the legacy was

not void, the administration of it fell to the residuary legatee. The heritors and kirk-session, and the executors also each claimed the right of administration.

The Court held that the heritors and kirk-session were entitled to administer the fund.

Observed by the Lord President—"Who are the parties entitled to manage the fund? It would be extravagant to hold that every poor person might come forward, and raise something like a multiplepoinding in the name of the trustees, and so compete for his share. Is it not evident that the management must belong to those who are the legal guardians of the poor? The character of the kirk-session in this respect, is just as distinctly recognised by the Legislature, as the spiritual duties of the minister."

Note.—A fund so left would now fall, as matter of course, to be administered by the parochial board.

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14. The Arbroath Banking Co. *v.* The Rev. R. Stevenson and Others, and the Rev. W. Clugston and Others, June 16, 1847.—9 D., 1228; 19 *Jur.*, 534.

Bequest—Mortification—Debt.—A sum of money had been mortified for behoof of the poor of the burgh of Forfar. The income of the sum, which was heritably invested, had been, when taken along with the church-door collections, sufficient for the support of the poor till the year 1837, when, owing to the stagnation of trade, the number of poor increased so greatly that it became necessary largely to augment the fund. This was done, not by assessment, but by the managers borrowing money from the Arbroath Banking Co. The Bank afterwards raised an action for the sums so advanced. Held that the heritable subjects in which the mortified sum had been invested could not be adjudged; but that the creditors were entitled to operate their relief by payment to them of the rents of the said subjects.

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15 The Rev. John Cunningham and Others (Kirk-Session of Crieff) *v.* William M'Ewan (Inspector of Crieff), February 9, 1854.—16 D., 511; 26 *Jur.*, 235.

Proclamation Fees—Funds.—Held that dues, received from time immemorial by the kirk-session for proclamation of banns

of marriage, did not fall under the operation of the 52d section of the Act of 1845, and, therefore, that the kirk-session were not bound to account for them to the parochial board.

Observed by the Lord President—"The question is whether, under section 52 of the Poor Law Act, this fund of dues for the proclamation of banns, to any extent, or except in so far as it goes to pay the officer who makes the proclamation, is given over to the parochial board of this parish? I do not think so. The sources from which the poor were maintained previous to the passing of the Act, in parishes especially where there was no assessment, were various—the voluntary contributions being the great source from which they were maintained. The contributions at the church door were all brought together for parochial expenses, including payments to the poor. No doubt one-half of the collections at the church door was dedicated to the poor. But the poor had a right to other funds, inasmuch as there was an obligation on the part of those, who made these voluntary collections, to support them. But this was a parochial fund for their support; and when the statute was passed, it required that the parochial board should have the control and management of all funds raised for support of the poor. One of those funds, which, at that time, was a proper fund for the support of the poor, was one-half of the church door collections. That, however, was by this Act excepted from the management of the parochial board, and was vested along with the other half in the kirk-session. . . . How does it appear that the proclamation dues belonged to, or were vested in, the heritors or kirk-session for the use and behoof of the poor? I do not know by what law or authority that can be maintained. They were managed and collected by the kirk-session. . . . In that state of matters I do not think that this section (52) applies. There are purposes to be served in every parish for which there is no other fund except this fund; and, if the Legislature had intended that this fund should no longer be applicable to these purposes, they would have provided some other fund for paying them. The object of the statute is to protect the poor, but not to rob any other sources, applicable to other purposes, for the sake of protecting them. It was the leading object of the statute to make the provision for the poor perfectly certain and secure. But it left it to the option of parties themselves to say how that provision should be raised. . . . The poor are not put in a worse position than they were before. The ratepayers may be, but not the poor. But the taking away of this fund would deprive the parish of that source from which all the other parochial expenses are paid. It was considered expedient, in framing the statute, to leave the fund to

be administered by the kirk-session, independent of the parochial board. In many cases this may be beneficial to the interests both of those who are in destitute circumstances, and of the rate-payers. There being such a fund, and so administered, it may have the effect of preventing some persons from applying for parochial aid, and becoming a burden upon the parish."

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16. John Liddle and Others *v.* The Kirk-Session of Bathgate, July 14, 1854.—16 D., 1075; 26 *Jur.*, 584.

Legacy—Title to Sue—Interest in Fund.—A legacy having, prior to the statute of 1845, been left to the "minister and kirk-session" of a parish, "for the benefit and behoof of the poor in the said parish." Held (1) that parishioners, who described themselves as operatives liable to be thrown out of employment, but who, as able-bodied, had no legal claim to parochial relief, had a good title to sue an action of declarator as to the administration of the said legacy; (2) that the able-bodied, as well as the legal poor, had a right to the benefit of the legacy; and (3) that the parochial board was not entitled to the administration of the fund.

The facts were—The late Mr. Joseph Dawson, who died on 9th March 1844, bequeathed by his deed of settlement a legacy of £3000 "to the minister and kirk-session of the parish of Bathgate, for the time being, for the benefit and behoof of the poor in the said parish." This legacy was handed over by the kirk-session, to whom it had been paid, to the parochial board of Bathgate, by whom it was invested, and the dividends accruing from the principal sum were not kept separate from the ordinary assessment levied under the Act of 1845, but both were used as a common fund for the support of paupers on the ordinary roll. Thereafter an action was raised by twenty persons, who designed themselves "Weavers in Bathgate, and also all parishioners of the parish of Bathgate and residenters therein, and having all of them an interest in the due management and administration of the charitable bequest and legacy." They averred that they all belonged to a class of operatives, who are frequently thrown out of employment from the stagnation of trade and otherwise, and who, on such occasions, come under the denomination of able-bodied poor, for whom no provision is made under the Poor Law Amendment Act. The defenders called were the minister and kirk-session, and the object of the action was to have it declared that the defenders were bound to invest the legacy in their own names, and, further, that the defenders were bound to

afford relief from the proceeds of the legacy to such occasional or other poor of the parish who have no legal claim for relief under the Act. The defenders pleaded that the pursuers had no title or interest to sue, and that the fund in question fell to be administered, in terms of the statute, by the parochial board. It was held (1) that the pursuers had a good title to sue; and (2) that the fund should be held, not by the parochial board, but by the minister and kirk-session, for the behoof, not only of such poor who had a claim as being on the roll of paupers, but for behoof of the able-bodied poor, who had no legal claim of relief.

Observed by the Lord President—"The question as to the class of persons to be benefited is not free from difficulty. The import of the bequest is not very clear. The deed was executed in 1844, and the funds are given 'for the poor of the said parish of Bathgate,' and the administration of them is given 'to the minister and kirk-session.' If the administration had been committed to the heritors and kirk-session, then, I think, there would have been no question that it would have fallen under the statute of 1845. The bequest would then have been held to be for those poor for whom these parties were in the situation of a board of administrators. But the bequest is not made to a particular board; it is to 'the minister and kirk-session,' and, therefore, there is not the same presumption that it was intended exclusively for the poor of the parochial board. It is not within the words of the statute, nor, perhaps, within the view of the statute. 'The poor,' neither in common parlance, nor in law, are the persons only who are chargeable on the parish, for, besides these, there is another large body of 'the poor,' who are sometimes, and very properly, described as able-bodied poor, and who are not entitled to parochial relief; and, besides, there are many who may clearly be classed among 'the poor,' though having relatives bound to support them, because they are poor, or from moral duty. There are others, again, who have just means enough to exclude them from right to parochial relief—who have no relatives, and who, from their circumstances of great poverty, are very properly considered generally as poor—not only recognised in common parlance, but also in law as poor; and there do exist funds which the minister of the parish is authorised to administer to all these classes which I have described. I mean the collections at church doors, and funds of that kind, which are handed over to the minister and kirk-session. . . . I cannot hold that this bequest, which was made to 'the minister and kirk-session,' was meant to be for behoof only of the poor receiving aid from the parochial board. I do not think it can be so restricted as to exclude persons of the class the pursuers say they belong to, . . . and I further think that the fund should not be made over to the parochial board, but to the minister and kirk-

session, to be administered by them. The next question is, whether, in the administration of the fund, its benefits are to be confined to persons who have no legal claim under the character of poor, to the exclusion of persons having that claim? I am clearly of opinion that poor persons are not excluded because of having claim to relief from the parochial board. I see nothing in the deed to limit the bequest in this way. On what ground, then, are we to hold that the poorest of the poor are excluded? those, whose poverty is best ascertained—those who are most pre-eminently and familiarly 'the poor'? Poverty is the qualification under this deed, not the disqualification. But it is said that, being provided for by the parish, they do not require aid. That view appears to me altogether unsound, for it cannot be contended that the fund is to be kept up and accumulated for the relief of able-bodied persons in seasons of occasional distress, which may be very unfrequent."

Observed by Lord Ivory—"This is a trust for the benefit of 'the poor *in* the parish of Bathgate.' I think this is not quite a synonymous term with 'the poor *of* the parish.' The former is a much more elastic term, for a person, who has not acquired a legal settlement, may yet be included among the poor in the parish, though not among the poor of the parish. The case is the same with occasional and able-bodied poor, and various others. Therefore, I think that this is a private trust, to be administered by the minister and kirk-session, and to be kept altogether separate from the funds of the parochial board."

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17. George Hardie (Inspector of Linlithgow) *v.* The Kirk-Session of the Parish of Linlithgow, November 15, 1855.—18 D., 37; 28 *Jur.*, 6.

Funds—Parochial Board.—Lands having been purchased by a kirk-session, with funds in their hands, in trust for the poor, and the revenue having been applied for the relief of the poor, both parochial and casual, and the heritors not interfering with the management. Held (altering judgment of Lord Benholm, and Lord Ivory dissenting) that the kirk-session was not bound, under the 52d section of the Act of 1845, to make over the property to the parochial board.

The facts were—In 1707, twenty-five acres of land had been disponed to William Pinkerton, then eleemosynary for the poor of the parish, "for the use and behoof of the kirk-session of Linlithgow, and the poor of the said parish." These lands were

purchased by the kirk-session, with funds held by them in trust for relief of the poor, and the revenue from the lands, as well as from the funds before their investment, had been applied by the kirk-session for the relief of poor persons, not necessarily "destitute poor," in terms of the statute. The heritors took no part in the management of the fund, though on one or two occasions they seem to have had an opportunity of examining the eleemosynary's books. In an action at the instance of the parochial board, to obtain a transfer of the property from the kirk-session, it was held that this was not a trust to which the provisions of the Poor Law Act of 1845 were applicable, and, therefore, that the kirk-session were not bound to make over the funds, or account for them to the parochial board.

Observed by the Lord President—"The property in question being vested in point of form in the kirk-session, but to be administered by them, is *prima facie* a trust vested in the kirk-session, the management being also vested in them; and if there had been nothing here to reflect any light on the origin and history of the fund, then I should be disposed to hold that this is not a case within the provisions of the Act of Parliament, relative to transferring the management to the parochial board for the more limited purposes of that body. That compels me to look back to the history of this fund, and to the origin of the property. . . . I do not see very clearly how this fund originated. The kirk-session seem to have been always managers of it. They have managed various funds mixed together, and managed them in the way which seemed to them most advantageous for the poor generally, including the casual and occasional poor, and also for other purposes, for which some of these funds are properly applicable in law. I find, indeed, throughout the minutes of the kirk-session, that the fund is frequently called 'a poor's fund,' but it is also called by other names, and I do not think that such use of that general term is here to have any restrictive or exclusive meaning. We should rather look to the use and the application of the fund, and its administration. It does not appear to me that the minutes or documents made it clear what the origin of the fund was, so as to overcome the fact, that it has always been vested in and administered by the kirk-session alone. If this had been a fund clearly vested by any other party in the kirk-session in the general terms here used, and which the kirk-session had been in use to apply in the same general way, I hold that it would not fall within the provisions of the statute. . . . I, therefore, cannot disturb the existing administration of that fund under this action, which calls upon us to hold that the fund falls under the provisions of the statute."

Observed by Lord Deas—"Although the title stands as it does,

the pursuers might have made out, by other evidence, that it was a mere trust for behoof of the heritors and kirk-session jointly, as the legal administrators of the poor. I can find, however, no such evidence, but a great deal of evidence the other way. The permanent poor have, no doubt, shared in the benefit of the fund, and I do not say they may not be entitled to continue to share in it. But the fund has been largely applied for other classes of the poor, who could not legally have claimed relief (and who will remain entitled to the benefit of it), as well as for a variety of charitable and other purposes of a more general description, all directed and arranged by the kirk-session, according to their discretion, without any interference or control on the part of the heritors. If compulsory assessments had been levied, from time to time, for support of the statutory poor, and the income from these lands had been, on these occasions, applied, *pro tanto*, to save the pockets of the heritors, *that* might have presented a very different case for our consideration. But there has been no usage of the kind. On the contrary, as soon as the heritors pretended any right to interfere, which they scarcely seem ever seriously to have done, their interference was protested against, and effectually resisted."

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18. Robert Ferrier *v.* Rev. William Dunn, January 18, 1860.—3 *P. L. M.*, 16.

Funds—Mortification.—Funds having been bequeathed in 1689 to the patrons or overseers of the parish "for the good and benefit of the poor of the parish . . . to and for each of them as are betwixt" two specified places in the parish. Held (by the Lord Ordinary, and acquiesced in) that the said funds fell under the operation of the 52d section of the statute, and the claim of the parochial board to their management was sustained.

The facts were—A sum of £500 was bequeathed in the year 1689 by Mrs. Jane Moore of Wapping, Whitechapel, in the following terms, to the patrons or overseers of the parish of Cardross:—"Item, for the good and benefit of the poor of the parish of Cardross, in the kingdom of Scotland, to and for each of them as are betwixt the burn of Auchinfrae and the Keppoch, I do give and bequeath £500 sterling, which said £500 my will and meaning the same to be laid out by my executors hereafter mentioned, by the advice of the patrons and overseers of the poor of the said place for the time being, in free estate and purchase for and towards the relief of the said poor, and the rents, issues, and profits hereof to be given to and divided amongst the said poor for ever." The money so bequeathed was received by the mini-

ster and heritors, and duly invested in land, in terms of the will. The fund remained for about eighty years under the management of the minister and kirk-session, and of the heritors of the district of the parish mentioned in the will. In 1789, however, it was decided by the Court that the administration of the mortified fund belonged to the heritors of the parish at large, who had the legal administration of the poor's funds in conjunction with the minister and kirk-session; and accordingly, thereafter, the fund was administered in terms of this judgment. In 1849 the Inspector of Poor of Cardross raised an action, claiming the fund for the parochial board, under the provisions of the 52d section of the Act of 1845. It was pleaded in defence that the fund in question was not a public trust for the benefit of the poor of the parish generally, but only for the poor of a particular district fixed by the testator, and, therefore, that the parochial board, as administrators for the general poor, were not entitled to have the fund transferred to them. It was held, however, by the Lord Ordinary (Kinloch), and his judgment was not reclaimed against, that the fund legally fell to be administered by the parochial board.

Observed by the Lord Ordinary in his note—"It appears to the Lord Ordinary that the present case exhibits a marked contrast to those of Bathgate and Linlithgow, recently decided. The will of Mrs. Jane Moore points directly to the parochial poor and the parochial administrators, and in the prior judicial proceedings, the bequest has been interpreted as made to the heritors and elders. The only peculiarity of the case is, that the benefit of the funds is restricted to the poor within a particular locality. But this limitation on the extent of its application cannot, as the Lord Ordinary thinks, affect either the nature of the bequest or the designation of the administrators."

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19. Alexander Bruce (Bruce's Executor) *v.* The Rev. James Welsh and Others (Ministers and Kirk-sessions of the Presbytery of Deer) and Mrs. Catherine Bruce or Mitchell and Others, January 20, 1865.—3 M., 402; 37 *Jur.*, 198; App., H. of L., March 22, 1867; 1 L. R. Sc. Ap., 96.

Legacy—Construction.—Where a testator left the residue of his property "to poor of this Presbytery, to be divided—I mean the interest—by the sessions of the several churches, but to be paid to all Christians, except Roman Catholics." Held that the legacy was not void from uncertainty, but that it was a bequest in favour of the poor within the territory or district of the Presbytery mentioned, and fell to be administered by the kirk-sessions of the Established Church, according to their discretion.

Note.—Regulations for the investment, and regulation of the legacy so bequeathed, were afterwards approved of by the Court. They will be found reported in Bruce *v.* Presbytery of Deer, June 19, 1868.—6 M., 940.

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20. David Johnston White (Inspector of Kinglassie) *v.* The Kirk-Session of Kinglassie, June 14, 1867.—5 M., 869; 39 *Jur.*, 484; 1 *P. L. M.*, 18 and 53.

Poor of Parish.—Held that lands purchased in 1726 and vested in the minister and three elders of a parish, and "their successors in office from time to time, as minister and elders of the said kirk-session, for the use and behoof of the said parish," belonged to the kirk-session, as trustees for the heritors and kirk-session of the parish, and therefore fell to the parochial board under the 52d section of the Act of 1845.

The facts were—In 1726 the Kirk-Session of Kinglassie acquired a farm, the disposition being taken in favour of the minister and elders, "for the use and behoof of the poor of the parish." In 1864 the inspector of poor of the parish, founding on the 52d section of the Act of 1845, raised an action against the kirk-session to have it declared that, at the passing of said statute, the said farm belonged to the defenders, as trustees on behalf of the heritors and kirk-session, for the use of the poor of the parish, and that the right thereto had then vested in the parochial board. Held by the whole Court, (1) that the terms of the disposition of 1726 did not clearly show whether the terms "poor of the parish" were intended to embrace the "general" poor, or only the "legal" poor; but (2) that the usage from 1726 was admissible to explain these terms, and that that usage showed that the lands had been held by the heritors and kirk-session jointly for behoof of the legal poor.

This case is to be distinguished from the case of Hardie *v.* The Kirk-Session of Linlithgow (*supra*), in which it was held, upon a construction of the title, that the property was held in trust by the kirk-session, and not for the heritors and kirk-session.

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21. Ninian Flockhart (Inspector of Aberdour) *v.* The Kirk-Session of Aberdour, November 24, 1869.—8 M., 176; 42 *Jur.*, 77; 3 *P. L. M.*, 276.

Poor of Parish—Funds—Legacy.—Certain funds were invested in 1735 by the kirk-session of a parish, "for behoof of the

poor of the parish." These funds had originally been derived from various sources, and the kirk-session had the exclusive interest in a portion, while, in the rest, the kirk-session and heritors had a joint interest. After 1735 the funds were administered, with the acquiescence of the heritors, for the benefit of the general poor. Held (1) that the funds fell to be transferred to the parochial board, in terms of the 52d section of the Act of 1845, for behoof of the legal poor; and (2) that a legacy left to a kirk-session, who were bound to apply the interest "towards the relief of the poor of the parish," is a bequest to which the legal poor alone, and not the occasional poor, were entitled, and fell to be administered by the parochial board.

The facts were—Previous to 1848, when, for the first time, a compulsory assessment was imposed in the parish of Aberdour, the funds necessary for the support of the poor were raised by the voluntary contributions of the heritors, collections at the church doors, sums paid for mortcloths and marriages, sessional penalties and fees paid for the erection of headstones in the churchyard. The funds so derived were administered by the kirk-session, and, previous to 1735, they were more than sufficient for the support of the poor, and a surplus of 1500 merks (£86) had accumulated, which, in 1735, was invested by the kirk-session in the purchase of a house and three acres of land. The disposition was taken in favour of the minister and kirk-session "for the use of the indigent poor" of the parish. The rents of the property so held were carried to the credit of the poor's funds, and applied for the benefit of the poor. In 1800 the property was sold to the Earl of Moray for £323, 12s., a bond being granted for the price, bearing that it was for behoof of the poor of the parish. The interest of this bond was duly paid to the kirk-session down to 1845, and along with it there was also paid to the kirk-session, by the Earl of Moray, the interest of the sum of £45, which had been bequeathed in 1825 to the kirk-session "towards the relief of the poor of the parish," and which sum had been lent to the Earl of Moray. The question raised in this action was, whether these two funds fell to be transferred to the parochial board of the parish, under the 52d section of the Act of 1845, and were to be applied by the board in support of the legal poor alone. The Court held that the said funds fell to the parochial board.

Observed by Lord Deas—"I do not call in question the principle of the cases of Bathgate and Linlithgow, that the words 'for behoof of the poor,' do not necessarily mean those who are called the 'legal poor,' that is to say, the poor who by law may claim

relief; and that it is in every case a question of circumstances whether that construction is to be put on the words or not. That principle was fully recognised in the Kinglassie case, which resembles this case more closely than either of the other two. In the Kinglassie case, there were, however, two very important circumstances which do not occur here. First of all, the heritors had been parties to the purchase of the property which was there in dispute; and, in the second place, for more than the prescriptive period, the heritors had been parties to all the leases which had been granted to tenants of the property. These two facts of themselves clearly showed that the property had been held by the kirk-session and heritors jointly. The Kinglassie case, therefore, does not rule this case. But, although the circumstances are different, the question remains, is there not enough here also to show that the larger of these two funds has been held and administered by the minister and kirk-session for behoof of themselves and the heritors jointly? I find it impossible to answer that question otherwise than in the affirmative. . . . Had the fund been administered from 1800 downwards by the minister and kirk-session, exclusively for behoof of the occasional poor, or even if it had been administered for behoof of the general poor, permanent and occasional, without the interference of the heritors, I should have held that it did not fall to be made over to the parochial board. But while it is clear enough that the benefit of the fund was not confined to the legal poor, but was extended to the occasional poor also, it is equally clear that the fund was so administered by the kirk-session as acting, not for themselves alone, but for themselves and the heritors jointly."

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22. Christina Husband or Turbyne *v.* The Kirk-Session of Leuchars, October 15, 1875.—3 R., 10.

Bequest—Power of Kirk-Session.—A testator left a sum of money to the kirk-session of Leuchars, the interest to be applied to the relief of such poor persons as the session considered proper objects of aid, and who had not been paupers, and declared that "the minister and elders constituting the kirk-session . . . shall be perpetual patrons of the said sum, and shall have the sole power of naming the said individuals." Held that the minister may competently be appointed dispenser of the fund, and that every application for relief need not be considered at formal meetings of the kirk-session.

II.—ADMINISTRATION OF THE FUNDS BY THE HERITORS AND KIRK-SESSION, AND SUBSEQUENTLY BY THE BOARD OF SUPERVISION AND PAROCHIAL BOARDS.

1. The Heritors of Humbie *v.* The Minister and Kirk-Session of Humbie, February 15, 1751.—M. 10555.

Rights of Heritors in administration.—Held that the heritors had a joint right and power with the kirk-session in the administration of the funds belonging to the poor in collections, as well as sums mortified, and had right to be present and join with the session in their administration of such sums, without prejudice to the kirk-session proceeding in their acts of administration, though the heritors were not present.

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2. The Earl of Strathmore *v.* The Minister and Feuars of the Parish of Kirriemuir, February 26, 1762.—M. 13128.

Right of Feuars to Vote.—Held that feuars, who paid cess, either separately or in a cumulo valuation, were entitled to vote at the election of a parochial schoolmaster by the heritors and kirk-session.

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3. William Toshach *v.* Alexander Smart, July 18, 1771.—M. 13134.

Right to Vote—Liferenter.—In the election of a parochial schoolmaster, Held (1) that heritors who are liable in payment of cess and parish burdens, have a right to vote, whether their lands are separately valued in the cess roll or not; and (2) that a liferenter has a right to vote in preference to the fiar.

4. Cardross Case, 1789; Note to the Case of Galloway, February 22, 1810, F. C., and fully narrated in the Session Papers in Galloway.

Management.—Where funds had been left to a certain district of the parish of Cardross, to remain under the management of the "patrons or overseers of the poor of said place," Held that the heritors of the whole parish were entitled to a share in the management, though for eighty years the funds had been administered without interference by the minister and kirk-session, in conjunction with the heritors of that district of the parish alone, for the benefit of which the fund was destined.

The facts were—In 1691, Mrs. Jane Moore bequeathed for the good and benefit of the poor in the parish of Cardross, in the kingdom of Scotland, to and for such of them as are between the burn of Auchinfrae and Cappoch, &c., £500 sterling; which said £500 sterling, my will and meaning is, the same be laid out by my executor, hereafter named, with the advice of the patrons and overseers of the poor of the said place, for the time being, in free estate and purchase, for and towards the relief of the said poor, and the rents, issues, and profits thereof, to be given to, and divided amongst, the said poor for ever." The executor not having at once paid over the legacy, an action was raised against him by the minister of the parish, and certain heritors, who resided in that part of the parish which lies between the burn of Auchinfrae and Cappoch, for themselves, and in the name, and on behalf of the remaining heritors and elders of the parish and kirk-session of Cardross, overseers of the poor of the parish; and decree was obtained in that action against the executor. With the money thus recovered, the minister and heritors of the specified district purchased certain lands, the destination in the title being to the minister and heritors of said district, "managers and overseers of the said mortified money, and their successors in office in all time coming; managers and overseers thereof, for the use and behoof of the said parish of Cardross, conform to the said Jane Moore's mortification and destination." Thereafter, the fund continued to be managed by the minister and the heritors of the said district, for upwards of eighty years, when, for the first time, certain other heritors of the parish, but outwith the district, claimed to be assumed into the joint management, and to examine the accounts of the mortification. That claim was resisted on the ground, (1,) that the fund was destined to a particular district only of the parish, and that the word "place" was used as relative to that district, as otherwise the donor would

have used the word "parish" instead of it; and that, as it was the poor of that special district who alone had the benefit, the truster had naturally given the management only to those heritors who belonged to the district; and (2) that eighty years' uninterrupted management by the minister and district heritors barred the claim of the other heritors. The Court disregarded both grounds, and held that the administration of the mortified funds belonged to the heritors of the parish at large, in conjunction with the minister and kirk-session.

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5. The Minister, Heritors, and Kirk-Session of Dalry *v.* John Newal and Others, November 17, 1791.—M. 14557.

Heritors and Kirk-Session.—Held that the heritors and kirk-session of a parish were entitled to sue and defend as a corporate body, in a question as to a charitable fund under their administration.

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6. Earl of Galloway *v.* The Minister and Kirk-Session of Dalry, February 22, 1810.—F. C.

Kirk-Session—Vote.—Held, where the management of funds destined for the benefit of the poor is in the hands of the heritors, minister, and kirk-session, that each member of the kirk-session is entitled to a vote.

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7. Janet Roberts *v.* Robert Fife, February 5, 1825.—3 Sh. 500.

Exclusive Jurisdiction.—Held that the heritors and kirk-session were the sole judges of the *amount* of aliment for an illegitimate child.

Note.—The *amount* of aliment is now matter of discretion for the parochial board, there being power, in the event of the relief being inadequate, to complain to the Board of Supervision.

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8. William Robertson *v.* Robert Murdoch, February 23, 1830.—8 Sh. 587; 2 *Jur.* 279.

Right to Vote—Proxy.—Held (1) that all heritors who paid poor rates were entitled to vote at meetings of heritors and kirk-

sessions regarding the administration of the Poor Laws, whether they were entered in the cess roll or not; (2) that forty years' prescription renders voting by proxy at such meetings legal in any parish; and (3) that no party who used proxies was entitled to object to their use by another at the same election.

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9. Duchess of Roxburgh and Others *v.* The Magistrates of Dunbar; and Jean Ferrier *v.* Heritors and Kirk-Session of Lanark and The Magistrates and Council of Lanark, July 4, 1833. —11 Sh. 879; H. of L. 1 S. & M'L. 134; 7 *Jur.* 454.

Royal Burgh.—Held (by the House of Lords reversing the decision of the Court of Session) that where a parish consists of a landward portion and of a royal burgh, there is no distinction between the two parts as regards the liability of the heritors to maintain the poor of the whole, and that the right of administration is jointly in the magistrates of the burgh, the minister and kirk-session, and the heritors of the landward part of the parish, acting as one body.

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10. Thomas Currie and Others, Burgh Heritors of Lanark, *v.* Sir Norman Macdonald Lockhart and Others, Landward Heritors, March 5, 1841.—3 D. 799; 13 *Jur.* 326.

Parochial Management and Usage.—Held, following the case of Dunbar (*ante*), that in a parish comprehending a royal burgh and a landward portion, and where the practice for upwards of eighty years had been to have separate management and assessment for the poor in the two districts, that one roll of poor was to be made up for the whole parish, and the administration of the poor rates must be a joint administration by the magistrates of the burgh, and the minister, kirk-session, and heritors of the landward part, acting as one body.

11.—The Rev. Archibald Livingstone, Minister of the Parish of Cambusnethan *v.* the Rev. William Proudfoot, Minister of the Parish of Avondale, and Others.—June 26, 1846; 8 D. 898; 18 *Jur.* 471; H. of L. May 15, 1849; 6 Bell's Ap. 469.

Want of Qualification.—Held that the sentence of a Church Court

is not void because some of the persons, who acted and voted as members, did not possess the legal qualification so to act.

Observed by the Lord Chancellor—"We find that, according to the law of Scotland . . . and the law of England . . . the rule is, that, as to those who are known and 'holden and reputed,' according to the language of the cases, to be the proper possessors of, and exercising the duties of an office, their acts shall be good so long as they hold and exercise the duties of those offices; although, in point of fact, they may not have, upon investigation, any title to the offices of which they were so exercising the duties.

Note.—The same principle applies to the case of parochial boards and their proceedings.

12.—The Board of Supervision *v.* The Parochial Board of Dull, June 9, 1855.—17 D. 827; 27 *Jur.* 425.

Powers of Parochial Board—Board of Supervision.—The parish of Dull obtained a share of the parliamentary grant in aid of medical relief for the poor. The grant was administered by the Board of Supervision under a minute prepared and approved by the Home Secretary. This minute provided that the legally qualified medical officers who are appointed "shall be bound to obey all the rules and regulations which the Board of Supervision may from time to time make for their guidance, and which shall have been approved by one of Her Majesty's Secretaries of State, and that if any medical officer . . . shall fail, or neglect, or refuse to perform the duties of his office, or shall be found unfit or incompetent to discharge them, the Board of Supervision, by a minute or order, shall have power to dismiss him." The Parochial Board of Dull appointed a medical officer, and in 1854, in consequence of his neglect or improper treatment of a pauper lunatic, he was dismissed by the board, but was afterwards reappointed. The Board of Supervision, however, after due inquiry, dismissed the medical officer, but the parochial board continued him in office until it should be determined by a court of law, whether the Board of Supervision had a right to dismiss. In these circumstances the Board of Supervision presented a petition and complaint to have it

found that the continuance of the medical officer was, in the circumstances, illegal and irregular, and an undue obstruction in the execution of the Act, and to prohibit and interdict the parochial board from employing the medical officer so dismissed. The prayer of the petition was substantially granted.

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13. William Stewart *v.* John Sproat, 1858.—*P. L. M.* 82.

Member of Parochial Board—Privileged Statement.—At a meeting of a parochial board, a member stated that the inspector of the parish had informed him that the chairman of the board had said or admitted to him (the inspector) that he (the chairman) had swindled the board out of certain assessments. An action of damages for slander was brought by the chairman against the member. The jury returned a verdict for the defender.

Observed by the Lord Justice-Clerk, in directing the jury on the question of whether the statements made by the defender were privileged—"In order to give him that protection, it is necessary that you should be satisfied, in the first place, that the words were uttered at a meeting of the parochial board, not merely in the room where the board is accustomed to assemble, and in the presence of the members of the board, but while there was a meeting actually there assembled and transacting its business. There they must be uttered, in order to afford protection, by a member of the board; and, in the third place, the words uttered must have reference to the business then before the board. It is not necessary that they should in a strict sense be pertinent to the business; that is not necessary. But they must be uttered in reference to the business which is before the board. The person who utters them may be perfectly mistaken in supposing that they have any pertinency or relevancy to the subject in dispute at all; but still, if, in the discussion of the business, he makes the statement as to business then under discussion, that is sufficient to satisfy the third requisite."

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14. John Coats, M.D. *v.* John Stevens (Registrar of Clyde District, Glasgow), February 14, 1861.—3 *P. L. M.* 527.

Fee for Medical Certificate.—Held (in the Sheriff Court of Lanarkshire by Sheriff Bell) that a medical practitioner is

not entitled to payment from the registrar of a fee for a certificate of the death of any of his patients.

By section 41 of 17 and 18 Victoria, cap. 80, and section 14 of 23 and 24 Victoria, cap. 85, a certificate setting forth the cause of death must be given to the registrar within a specified period by the medical attendant of the deceased. This action was raised to test the question whether the medical attendant was bound to grant this certificate without being remunerated by the registrar to whom it was given. "There is much equity," Sheriff Bell observes, "in the pursuer's contention that he should not be held bound to give his time and labour for nothing. But there are two difficulties in the way of his succeeding in this action. The first is, whether the Acts in question have not imposed the duty upon him, as a *munus publicum*, which he is to discharge without remuneration; and the second is, whether, though he were entitled to a fee, the defender, *quâ* registrar, is liable in payment of it. It is plain that under the first Act, the 'medical person' incurred a penalty of 40s. if he failed to transmit the certificate. It may, perhaps, admit of doubt, whether this penalty is still exigible under the altered enactment of the last statute, but under neither Act is any provision made for remuneration. If it could be held that no penalty is now incurred by failure to forward the certificate, the grievance complained of might thus be got rid of. But that question does not arise here, for the certificate was sent in compliance with the defender's requisition. There is nothing in the Registration Acts themselves to show definitely whether the Legislature intended that the 'medical persons' should or should not be remunerated, except that the Acts contain no provision or machinery for giving remuneration. . . . Where a thing is required to be done under a penalty with a view to a national or general benefit, the presumption rather seems to be that it is to be done gratuitously. . . . Why should the registrar, who, in writing for the certificate, does only what he is bound to do under the Act, and gets no payment for his trouble, be held liable in payment to the doctor? . . . It is true, that by the last Registration Act, the registrar is allowed to include, in his half-yearly accounts, 'the expense attending the postage or carriage of all letters or packets, and all other necessary disbursements *relating exclusively to the execution of his office*,' and for all such expenses he is to be repaid out of the assessment authorised to be levied by the first Registration Act. But the sum now sued for, would not, if paid by the defender, be recoverable under the above enactment. It would not be a 'disbursement relating to the execution of his office,' but a payment to a third party for something done in the execution of that party's office. As the Acts at present stand, therefore, there is no valid claim against

the registrar by the 'medical person.' If he is still bound under a penalty to give a certificate of the death and cause of death, it may perhaps be worthy of consideration whether a fair fee for doing so is not chargeable as a part of the death-bed expenses against the estate of the deceased patient."

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15. Andrew Knox *v.* John Macarthur, June 7, 1865.—3 M. 890; 37 *Jur.* 528; 8 *P. L. M.* 105.

Member of Parochial Board—Reparation.—A pauper inmate of a poorhouse raised an action of damages against a member of the house committee of the parochial board, on the ground (1) of an alleged assault committed by the defender when visiting the poorhouse officially; and (2) of the defender having on the same day improperly given the pursuer into custody on a charge of riotous conduct and assault. Held, that without an inquiry into the facts as regards the first ground of action, it could not be determined whether the 86th section of the Poor Law Act, which provides that all actions on account of anything done in the execution of the Act shall be brought before the Sheriff Court, applied to the action, and a plea of incompetency was therefore repelled in so far as it imported that action should be dismissed without inquiry.

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16. Andrew Knox *v.* Alexander Montgomery, June 7, 1865.—3 M. 890; 37 *Jur.* 528; 8 *P. L. M.* 110.

Member of Parochial Board—Reparation.—A pauper inmate of a poorhouse raised an action of damages against a member of the house committee of the parochial board, on the ground of the defender, when visiting the poorhouse officially, having, maliciously and without probable cause, given the pursuer into custody on a charge of assault and riotous conduct. Held that, under the 86th section of the Poor Law Act, the action was incompetent in the Court of Session, in respect that the averments of the pursuer disclosed that the act complained of was done by the defender in "the execution of the Act."

Observed by the Lord President—"The question here is, whether the thing complained was done 'in the execution of the

'Act,' by which I do not mean that the party was following out correctly and properly the provisions of the Act, for in that case, no wrong could be committed. The question is, whether, assuming a wrong, it was done under cover of the statute? Now I cannot find in the statement of the pursuer anything to show that the defender, on the occasion referred to, was not acting in the execution of the statute. On the contrary, I think it is clear, that throughout he was engaged in the performance of his statutory duties. I do not attach much importance to the allegation that the defender knew the charge upon which the pursuer was given into custody to be groundless; for that could not take the case out of the statute, if it were otherwise within it. Then it is said that the defender had no right, as a member of the visiting committee, to give the pursuer into custody; that what he ought to have done was to report the matter to the house governor, who would have brought it before the house committee. I cannot adopt that view. I think that if a member of the visiting committee finds an inmate of the poorhouse in a disorderly and refractory state, such as requires the interference of the civil magistrate, he is just as much entitled to give the party into custody as the house governor, and that he may do so, although the house governor does not consider such a step necessary."

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17. Margaret Meikle or Keith *v.* John Cassels (Inspector of Lanark), July 4, 1866.—4 M. 1025; 38 *Jur.* 520; 8 *P. L. M.* 603.

Power of Board of Supervision—Remedy where relief inadequate.—A petition was presented, on 31st May 1865, to the Sheriff by a woman, who had been deserted by her husband, alleging that she was in a state of destitution and starvation, that she had received 1s. from the inspector of poor on 22d May, and was told that she would receive nothing more till 8th June, and praying the Court to ordain the inspector to grant relief *ad interim*, and to find the petitioner entitled to permanent relief. It appeared that the petitioner had received relief from 15th March 1865 to 22d May. Held that the petition to the Sheriff was not competent, but that the proper remedy was by appeal to the Board of Supervision, on the ground of inadequacy of relief.

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18. Joseph Thompson *v.* The Parochial Board of Inveresk and John George Muir, November 30, 1871.—10 M. 178; 44 *Jur.* 107; 5 *P. L. M.* 136.

Mandate.—The meeting of a parochial board, for the purpose of electing an inspector of poor for the parish, was fixed for a certain day, and mandates were printed to be used of that date. The day of meeting was changed, and, anterior to the day fixed, the printed date on the mandates was erased, and the proper one substituted. Held (1) that the mandates so altered were valid, the date not being *inter essentialia* of the mandate; and the words written on erasure being held *pro non scripto*, the mandate became a general one to be used at the meeting convened for the election of an inspector; and (2) that mandates granted to be used at a meeting of the parochial board to be held on 2d August, for the election of an inspector, or on any subsequent day to which the meeting might be adjourned, were validly used at a meeting held for the said purpose on a later day, although there had been no meeting on the 2d August, and therefore no adjournment.

Observed by Lord Neaves—"This is a question of general importance. It should be generally understood how members of parochial boards can vote at their meetings. They are not always acquainted with public business—for example, females and aged persons. It is, therefore, necessary that they should be allowed to vote by proxy, and I think we must uphold their proxies when it is clear that the parties who have their apparent, have also their real, authority."

Observed by Lord Benholme—"When such mandates are granted, they are meant to be used whenever the business which was to have been taken up at the meeting, for which they were granted, is being considered."

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19. Patrick Queen *v.* Franc Gibb Dougall, December 1871.—5 *P. L. M.* 195.

Burghal Parish—Election—Title to Object.—Where a ratepayer in a burghal parish, not being himself a candidate for membership of a parochial board, or nominated to be a member, objected on various grounds to certain ratepayers who were returned as elected members; Held (by Sheriff Bell in the Sheriff Court of Lanarkshire) that as he had not been nominated, and could not himself claim to have been duly elected, it was not competent for him to impugn the election.

20. Charles Kennedy *v.* Ebenezer Adamson (Inspector of City Parish of Glasgow), June 1872.—5 *P. L. M.* 518.

Burghal Parish—Election.—Held (by Sheriff Bell, in the Sheriff Court of Lanarkshire) that in an issue of voting papers to decide a contested election, the inspector must issue them to every elector whose name is on the roll, whether his rate be paid or not, certifying at the same time that the vote is of no effect unless the rate has been duly paid.

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21. Andrew Stewart of Auchlunkart *v.* The Rev. Thomas Fraser (Inspector of Boharm), May 20, 1873.—1 *P. L. M.* 409.

Bank Account of Board—Parish Minister Member of Board.—Observations by the Court as to mode of operating on bank account, and also (by Lord Ordinary) on question whether the parish minister, not being a ratepayer, can be member of board.

Observed by Lord Justice Clerk—"I think it very doubtful whether the inspector should be allowed to keep a bank account, and operate upon it himself."

By Lord Benholme—"I think it improper for a board to go on increasing its debt from year to year; and I have always thought that it was not the intention of the Legislature that the bank account should always square with the assessment. Any margin over must be paid off before starting again. Here there was a constant increase from year to year, on a system. I distinguish such an increasing debt from any small margin a board may take care to clear off, and so prevent parties who may come to a parish being assessed for debt not contracted in their time."

By Lord Neaves—"I think the conduct of this board, going on increasing debt, and allowing the inspector to operate on the bank-account, highly irregular and dangerous."

Observed by the Lord Ordinary—"Although it is true that Mr. Masson (the parish minister of Boharm) was chairman of the meeting, and that it has been held that a parish minister is not assessable for the poor as the owner and occupier of lands and heritages in respect of his manse and glebe, it does not appear to the Lord Ordinary necessarily to follow that he may not be a member of the parochial board and chairman of its meetings.

Mr. Masson is minister of the parish, and, of course, a member of the kirk-session, while, by section 22d of the Poor Law Amendment Act it is provided, in reference to such a parish as Boharm, that the parochial board shall consist among others of the kirk-session, or of six of them elected for the purpose, where it consists of more than that number. The complainer has not made it clear, by the proof or otherwise, that under this statutory provision Mr. Masson may not have been legally a member of the board. Besides, by the same section of the Act, while it is provided generally, that the parochial board shall consist of the owners of lands and heritages of the yearly value of £20 and upwards, it is not provided that such owner must be actually assessed or assessable for the poor. Mr. Masson, it has been proved, stands on the valuation roll applicable to the parish as the owner, in respect of his manse and glebe, of lands and heritages to the extent of £42, 12s. yearly value. . . . The Lord Ordinary having regard to these provisions of the Act, is not prepared to hold that Mr Masson cannot be taken to be a member of the parochial board, and, as such, competent to be its chairman."

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22. Duncan Clark *v.* Board of Supervision for the Relief of the Poor in Scotland, December 10, 1873.—1 R. 261; 1 *P. L. M.* 633; 2 *P. L. M.* 14.

Board of Supervision—Powers—Review.—Held (1) that the board being of opinion that an inspector of poor, while continuing a member of a school board, and discharging its duties, did not properly do his duty as inspector, were entitled to dismiss him; and (2) that their action could not be reviewed in the Court of Session.

The facts were—The Board of Supervision adopted and issued a minute, stating that in their opinion it was inexpedient that inspectors of poor should act as members of school boards, or managers, or officers under the Education Scotland Act, and intimating that any inspector of poor holding these offices, must resign them or his inspectorship. An inspector, who was a member of a school board, having been threatened with dismissal, in consequence of his refusal to resign his membership of the school board, presented a note of suspension and interdict, praying to interdict the Board of Supervision from dismissing the complainer from his office as inspector of poor, pleading that his threatened removal from that office was *ultra vires* of the board, and that the only unfitness for which the board have power to dismiss an inspector, was personal unfitness, and that the

resolution embodied in the minute was invalid, until it received the approval of the Secretary of State, under section 7 of the Poor Law Amendment Act. It was pleaded for the board, that in such questions of administration, it was not intended that the board should be controlled by the courts of law, unless there was a gross abuse of discretion.

It was held in the Bill Chamber that the board was entitled to dismiss the complainer, they being of opinion that he was unfit to discharge his duties as inspector, so long as he continued to hold the office of member of the school board, and, secondly, that the judgment of the board was not subject to review.

Observed by the Lord Justice Clerk—"The Board of Supervision have called upon the complainer to resign the office of member of the school board, under pain of being dismissed as unfit to discharge the duties of the office of inspector of poor of the parish of Portmoak. Now, their power to dismiss him is derived from the 56th section of the statute 8 and 9 Vict., c. 83, which provides that it shall and may be lawful for the Board of Supervision to suspend or dismiss an inspector of poor, not only if such inspector shall fail, or neglect, or refuse to perform the duties of his office, but also if he 'shall, in the opinion of the Board of Supervision, be unfit or incompetent to discharge the duties of his office.' Now, although I do not think that this clause confers on the board an arbitrary or discretionary power to dismiss an inspector, but merely a power of dismissal for satisfactory causes,—*i.e.*, causes satisfactory to themselves,—I have no doubt that the Legislature has given the board the right and power to form a final and conclusive opinion on the matter of the inspector's unfitness, or incompetency. On that matter, I apprehend, your Lordships will not interfere with the discretion of the board; and I therefore think there can be little doubt as to this branch of the argument for the complainer. The second branch of the argument, as to the power of the board to pass a general resolution that it was inexpedient for an inspector of poor to hold the office of member of a school board, might, in certain circumstances, have given rise to more difficulty. If this had been the first time that such a power had been exercised, I should have desired further argument, for it may undoubtedly be contended with considerable force, that the words of the statute, empowering the board to judge of the fitness or unfitness of each particular inspector, do not justify the general view of the inexpediency of uniting the two offices of inspector of poor and member of a school board. I by no means wish to say that they are not entitled to consider this question of expediency. Extreme cases may be easily put on either side, to which the best answer would probably be that the Legislature, in conferring the power of dismissal, assumed that the board would exercise it with

discretion as well as with honesty. But still, as I have said, if the question had stood there, I should have desired further argument. I find, however, and it is not disputed, that this is by no means the first time that the Board of Supervision has interfered in this way, there being in point of fact a series of cases in which they have exercised similar powers. . . . Some difficulty arises under the 7th section of the statute. But, on the whole, I think the resolution in question was not intended by the board to be a rule and regulation binding on their successors in office, but merely an intimation of what they meant to do. It is hardly enough to say that they could alter it at their pleasure; they could so alter any rule that had not received the sanction of the Secretary of State. But I look upon it as a proclamation of their view, and of their intention to act upon it."

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23. James C. Money *v.* The Parochial Board of Blantyre and Others, 1874.—2 *P. L. M.* 22.

Election of Registrar—Disputed Election Appeal.—Held (in the Sheriff Court of Lanarkshire by Sheriff Bell) that an appeal against a disputed election for the office of registrar, under section 12 of the Registration Act, in conjunction with the 76th or interpretation clause of the Statute, contemplates only one appeal either to the Sheriff or Sheriff-Substitute, and an appeal having been taken to the Sheriff-Substitute, and he having pronounced a judgment disposing of the appeal, review of that judgment by the Sheriff was incompetent.

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24. Thomas Laurie *v.* Andrew Thomson and Others, January 23, 1874.—1 R. 403; 2 *P. L. M.* 89.

Mandatory—Election of Registrar.—It is provided by section 12 of the Registration Act, 1854 (17 and 18 Victoria, cap. 80), that "when there shall be a vacancy in the office of registrar, the parochial board shall, by a majority of the votes of the members present at a meeting specially called for the purpose, elect the registrar." Held that heritors, who are members of the parochial board, are entitled at such election to be represented by mandatories, just as at the ordinary meetings of the board.

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25. The District Board of Lunacy for Elginshire *v.* Alexander Bremner (Inspector of Rathven), and James Elder (Inspector of Elgin), July 10, 1874.—1 R. 1155; H. L. June 24, 1875; 2 R. 136; 3 *P. L. M.* 415.

Arbitration—Society of Inspectors of Poor—Delectus personæ.—Held that an agreement to refer a dispute between two parishes as to the settlement of a pauper to the decision of the Society of Inspectors of Poor, the practice of which society was to determine such questions by vote at their general meetings, was a binding reference, and that the award could not be challenged on the ground that arbitration requires *delectus personæ.*

Observed by the Lord Chancellor upon the question of the reference having been made to the society—"I now turn to the arbiters who were chosen. Who were they, and was there any incapacity on their part to undertake an arbitration of this kind? They are described as a society consisting of inspectors of poor and assistants in Scotland. . . . They therefore were a body as to whom it is not too much to say that there was no objection in point of law to choosing them as arbiters. They were eminently qualified to undertake the task, and, as a consultative and deliberative body, to pronounce an opinion upon the subject referred to them, as to which, they, of all persons in Scotland, were competent to speak. Now, was there any objection in point of law to a body of that kind as arbiters when the parties agreed to select such a body? Your Lordships have heard an elaborate argument to show that in Scotland there must, as regards the choice of arbiters, be a *delectus personæ;* and you were referred to authorities which show that, where there is a contract beforehand to refer to the arbitration of individuals not named, or of individuals filling an official position, or of individuals composing a fluctuating body, and where, therefore, at the time the contract is made to refer to arbitration future disputes which may not arise for years, there can be no *delectus personæ,* there a contract of that kind cannot be urged and founded on to oust the regular jurisdiction of the courts of law. I should be sorry to express any opinion adverse to those decisions, or tending to throw any doubt upon the propriety of these decisions, but they appear to me to have no application whatever to the present case. The question is this—Is it the law of Scotland that where there are two persons competent to refer to arbitration where a dispute has arisen, and where those persons may select the arbiter at their option, there is some invalidity in point of law in the selection as arbiter of a society consisting of a

number of members? I have anxiously attended to the argument in order to find out whether there was any authority in the Scotch books upon that subject, and certainly none has been produced to show that a reference of that kind would be invalid. I apprehend that in this country (England) there is nothing whatever which would prevent persons who are minded to refer to arbitration from referring to the arbitration of an unincorporated society consisting of a number of members, or to the members of an incorporated society. How the arbitration so made should be worked out—by what members it should be decided—whether at a public meeting, or in what way, is a different question, which may be kept distinct from the question whether such persons can be chosen as arbiters. I therefore arrive at this stage of the case, that I find those who were competent to bind the parish of Rathven willing to refer to the Society of Inspectors as arbiters, and that there is nothing in law that I have discovered which prevents a valid reference being made to a society of that description."

III.—THE OFFICERS OF THE PAROCHIAL BOARD.

1. John Meek and Others *v.* The Monkland Canal Company, November 14, 1846.—9 D. 55; 19 *Jur.* 10

Title of Inspector to Sue.—An inspector having been duly appointed, in terms of the statute, by the heritors and kirk-session, who formed the old board for the management of the poor funds;—Held that he had a good title, as representing the board, to sue for arrears of rates due before the new Act became operative.

Note.—An opinion was indicated, that old boards continued to exist till the new boards, prescribed by the statute of 1845, were appointed.

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2. Her Majesty's Advocate *v.* William Hardie, April 10, 1847.—Stirling Circuit, Arkley 247.

Criminal Charge against Assistant Inspector—Culpable Homicide—Relevancy.—Relevancy of indictment, which charged an assistant inspector of poor with culpable homicide; as also the wicked and wilful, or wicked and culpable neglect of duty, and violation of the duties of his office, sustained.

The indictment charged the assistant inspector of Falkirk with the alternative crimes mentioned in the rubric, and the minor set forth in detail certain duties which it was alleged belonged to the office of assistant inspector, and which the panel was said to have neglected or violated. It was objected to the relevancy of the libel that these duties were not in point of fact those of such an officer, which were defined by the statute of 1845, which was not libelled on. This objection was repelled, the Court, however, being of opinion that it might have an important bearing on the merits of the case. The panel having pleaded not guilty, the case was certified to the High Court, but no further proceedings were taken.

3. Her Majesty's Advocate *v.* William Main, 1850.—Reported fully in Caird's Manual, 6th Ed., p. 433.

Criminal Charge against Inspector—Culpable neglect of Duty—Sentence.—An inspector of poor convicted of culpable neglect of duty, and sentenced to fine and imprisonment.

The panel was charged with wicked and culpable neglect of duty, and violation of the duties of his office, in having failed to administer relief to a married woman who was dangerously ill, and deserted by her husband, in consequence of which she died. He was convicted, and sentenced to a fine of £50 and one month's imprisonment.

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4. The Board of Supervision for the Relief of the Poor *v.* The Parochial Board of the City Parish of Glasgow and William Anderson, February 1, 1850.—12 D. 627; 22 *Jur.* 228.

Inspector—Competency of Double Appointment.—Held (1) that it is illegal for a parochial board to appoint two inspectors, one to take charge of the out-door labour, and the other the in-door, the remedy where the whole work is too heavy for one inspector being, either to appoint assistant inspectors, or to divide the parish into districts, with an inspector for each; and (2) that the Board of Supervision could competently bring the proceedings of the parochial board before the Court by summary petition and complaint.

Observed by the Lord President—"This is just an attempt to create a new office unrecognised by the statute, which contemplates an individual office of inspector for each parish or combination, or for each district into which a parish or combination may be divided."

Observed by Lord Mackenzie—"If a parochial board have any right to appoint one additional inspector, they may not only appoint as many as they please, but they may divide the duties as they please; so that, instead of an inspector with defined statutory duties, you have a body of officials with duties undefined, except by his own parochial board alone."

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5. Evan Macpherson *v.* Ebenezer Adamson (Inspector of City Parish, Glasgow), June 2, 1858.—1 *P. L. M.* 29.

Assistant Inspector—Power of Dismissal.—Held (by the Lord Ordinary and acquiesced in) that an assistant inspector, appointed in terms of the 55th section of the Act of 1845, is not, like the inspector, an official dismissable by the Board of Supervision only; nor is there anything in the nature of the duties which he has to discharge which presumes a yearly hiring; but, on the contrary, he is to be considered, in the absence of an express agreement, a subordinate official, dismissable by the parochial board at any time, on reasonable notice.

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6. Peter Beattie (Inspector of Barony Parish, Glasgow) *v.* William Alexander and Adam Dixon, February 1859.—1 *P. L. M.* 418.

Inspector—Personal Liability.—Held (in the Sheriff Court of Lanarkshire) that an inspector of poor is not personally liable for debts due by the parochial board he represents, and that his private effects are not attachable for these debts.

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7. James Finlay *v.* Alexander Lemon (Inspector of Eastwood), August 8, 1859.—2 *P. L. M.* 27.

Election of Registrar—Mandate.—Held (in the Sheriff Court of Renfrewshire, by Sheriff Macfarlane, now Lord Ormidale) that at an election of a registrar by a parochial board it is not necessary that the members of the board should be personally present, but they may be competently represented by mandatories.

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8. William Crawford (Inspector of Eaglesham) *v.* Peter Beattie (Inspector of Barony Parish of Glasgow), May 12, 1860.—22 D. 1064; 32 *Jur.* 488; 2 *P. L. M.* 600.

Powers of Inspector to Submit to Arbitration—Effect of Small Debt Decree.—A lunatic having become chargeable as a pauper, and the relieving parish having claimed relief (1) from the parish of the lunatic's birth, and (2) from that alleged to be

that of his residential settlement, the inspectors of these parishes agreed that the question of liability should be tried in the Small Debt Court of the county in which the parish of alleged residential settlement was situated, and, in an action raised under that arrangement, the parish of birth was decerned against and paid the sum in the decree, and for two subsequent years supported the pauper. The inspector of the relieving parish having thereafter raised an action in the Court of Session against the parish of the pauper's residential settlement;—Held that it was *ultra vires* of the inspectors to enter into the arrangement to try the question of liability in the Small Debt Court; and, therefore, that the action in the Court of Session was not barred by the judgment in the Small Debt Court, and that the payments made by the parish of birth for the two years did not amount to homologation by that parish of the judgment of the Sheriff.

Observed by the Lord Justice Clerk—"The duties of an inspector are clearly defined by the Poor Law Amendment Act; while he is entitled to sue in name of the parochial board, he does so under their directions and control, and there is no indication in the Act of any intention of the Legislature to empower him to submit questions, in which the parochial board is interested, to any but the ordinary tribunals of the county to which the parochial board is subject."

Observed by Lord Benholme—"I look on this as a case of importance for the guidance of inspectors and parochial boards, because it very often happens that three or more parishes are involved in questions of this kind; and hence arises a difficulty in getting a decision without coming to this Court, which alone has jurisdiction over all. It is therefore very expedient that boards should come to satisfactory arrangements as to the trial of such questions; and I would wish to say nothing to discourage such arrangements. But it is beyond the power of the inspector to do anything of the kind. Even when an action is raised in the proper Court, he is the mere hand of the parochial board, and can take no decisive steps on his own authority. Far less has he power to oblige the board to be bound in all time coming by the decree of a Small Debt Court, pronouuced by a judge who has no jurisdiction over the board. To hold an inspector entitled to do so would be to disregard all the principles as to the relations of inspectors and parochial boards laid down in the Act. But it will be very easy for parochial boards to regulate such matters. Inspectors, *with the authority of their respective boards,*

may advantageously make agreements to be bound by the decision of a competent referee or judge, who otherwise might not have full jurisdiction."

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9. James Shaw *v.* Peter Beattie and the Parochial Board of the Barony Parish of Glasgow, and Charles Stewart Meek, February 27, 1862.—24 D. 609; 34 *Jur.* 305; 4 *P. L. M.* 367.

Collector.—Held that a collector of poor rates does not hold his office *ad vitam aut culpam.*

The facts were—In May 1860 Mr. James Shaw was elected collector of poor rates for the Barony Parish of Glasgow, the tenure of his office being during the pleasure of the parochial board. His remuneration was by a percentage of 2½ per cent. on the amount collected by him, and he was obliged to find security to the extent of £3000. He duly entered upon the duties of his office. At the date of his election there were uncollected arrears to the amount of £630 of the assessment for 1859-60. In August 1860 the assessment for the year from Whitsunday 1860 was imposed by the board, and at the same meeting Mr. Charles Stewart Meek was appointed collector of that assessment. Thereupon Mr. Shaw presented a note of suspension and interdict against the board, and against Mr. Meek, praying the Court to interdict the respondents from interfering with the complainer in the discharge of his duty as collector, and specially from preventing his collecting the assessment for the year 1860-61, and the complainer also brought a reduction of the minutes of the parochial board in so far as they appointed the respondent, Mr. Meek, to collect the assessment for 1860-61.

It was held (1) that the appointment of collector was not *ad vitam aut culpam*; (2) that it was within the power of the board to remove their collector if his conduct were unsatisfactory to them, and that the complainer, not having been dismissed, and not having resigned, was entitled to collect the assessment for 1860-61, as well as the arrears of the previous years' assessment, and had right to a percentage for such collection; and (3) that the remedy sought by the complainer of reduction and suspension to this effect were proper and competent.

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10. Robert Duguid Laing (Inspector of Denny) *v.* James Laing, July 17, 1862.—24 D. 1362; 5 *P. L. M.* 161.

Inspector's Liability to Count and Reckon—Docqueted Accounts.—During a period of thirteen years, the accounts of an inspector

of poor were from time to time laid before a committee of the parochial board, and formally docqueted and discharged. After the inspector had retired from office, his successor, on behalf of the parochial board, brought an action of count and reckoning against him, and also a reduction of the docquets, alleging that the defender's books were irregularly kept while he was inspector, that his accounts were grossly inaccurate, that no materials had been laid before the committee to enable them to check the accounts, that they had never been duly audited, and that he had appropriated to himself, or, at all events, failed to account for large sums belonging to the parish. Held (1) that no relevant reasons had been stated for reduction of the docquets; but (2) that the docquets did not of themselves suffice to exclude a count and reckoning.

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11. William Taylor (Inspector of Huntly) *v.* James Strachan (Inspector of Bellie) and John Brown (Inspector of Urquhart), November 8, 1864.—3 M. 34; 7 *P. L. M.* 122.

Power of Inspector to Bind Board.—Held that an inspector has no authority to admit a claim against his parish, so as to bind the parochial board.

IV.—ASSESSMENT AND VALUATION.

1. James Scott (Collector of West Kirk Parish) *v.* John Fraser, January 19, 1733.—M. 10577; Hailes 522.

Real and Valued Rent.—Held that heritors had power to assess for the maintenance of the poor upon the real rent where that is expedient, although the practice had been to assess upon the valued rent.

Note.—The Act 1663, c. 16, and the proclamation of the Privy Council in 1692, were founded on in argument by the heritors.

Observed by the Court—That the proclamations of the Privy Council undoubtedly formed a part of our law in this matter, and that no limitation is imposed by them as to the mode of laying on assessments for the maintenance of the poor.

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2. Collector of Inveresk *v.* The Magistrates of Musselburgh and Sir Archibald Hope, May 28, 1794.—M. 10585.

Mills, Coal, and Salt Works.—Held that proprietors of mills, and of coal and salt works were liable to assessment for poor rates.

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3. Thomas Laurie (Collector of City of Glasgow) *v.* Robert Dreghorn, December 2, 1797.—M. 10587.

Mode of Assessment.—Held that the Magistrates of Glasgow were entitled to assess the inhabitants for poor rates, according to the extent of their heritable property within the city, and of their personal property wherever situated, and that this mode of assessment was sanctioned both by the Act 1579, c. 74, and by immemorial usage.

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4. Buchanan, November 22, 1798.—Dunlop's Parochial Law, p. 425.

Landward Parish—Burgh.—Held that the same individual may be assessed as an inhabitant both of a landward parish and of a burgh.

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5. Francis Ross (Collector of City Parish of Glasgow) *v.* Robert Carrick, December 16, 1800.—M. App. *v.* Poor, No. 3.

Royal Burgh—Inspection of Books.—In an action for the share of assessment for poor rates falling upon an inhabitant of a royal burgh;—Held that the defender, the ratepayer, had a right to an inspection of the books kept by the authorities of the burgh, relative to assessments for the poor, to ascertain whether he is rated proportionally with the other inhabitants, but decree granted in the action without prejudice to the defender being afterwards heard in an action of declarator for repetition.

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6. Bell *v.* The Earl of Wemyss, February 16, 1805.—13 F. C. 444.

Mineral Proprietor.—Held that the proprietor of minerals or coals is not liable to be assessed for any share of the expense of building a new parish church.

Note.—In deciding this case, the Court, who were nearly unanimous, proceeded on the ground that the profit derived from a coal mine, being of the nature of casual rent, should not be made to bear a share of a permanent burden. It was pointed out that such a payment was very different from the payment of assessments for the maintenance of the poor, which are casual, and levied according to the rent really derived during the year; and if the rent ceased, then the assessment would cease also.

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7. The Rev. William Thomson and Others *v.* the Rev. John Pollock and Others, November 17, 1808.—15 F. C. 7.

Parish quoad sacra.—Held, that so far as regards the maintenance of the poor, the annexation of parishes, *quoad sacra tantum*, does not affect or transfer the previously subsisting civil rights and obligations.

8. Gammell, November 26, 1816.—Dunlop's Parochial Law, p. 410.

Disjoined Parish.—Held, that when a part of a parish is disjoined, or annexed *quoad sacra* merely, an assessment can only be imposed by the heritors and kirk-session of the parish to which this portion is attached *quoad civilia*, and for the support of the poor of that parish only.

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9. The Rev. Archibald M'Lea, D.D. *v.* James Walker, 1819.—House of Lords, 1 Bligh, 535.

Clergy—Liability to Assessment.—Held that the clergy of the Established Church of Scotland are liable in assessed taxes on their manses, glebes, and stipends, and are not exempted generally from taxation by the general laws of Scotland, nor by the Scots Act, 1593, c. 166.

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10. James Gammell *v.* W. Weir and J. Barr (Collectors of Greenock), May 31, 1822.—Dunlop's Parochial Law, pp. 409, 572.

Burghs of Barony.—Held that burghs of barony fall under the class of landward parishes, royal burghs alone having been considered to constitute the other class.

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11. P. Cochrane *v.* W. Manson, February 11, 1823.—2 Shaw 179.

Act 1579, c. 75.—Held (1) that the Act 1579, c. 74, was not in disuetude; (2) that the rule as to assessment therein fixed, was applicable to landward parishes; and (3) that the personal estate, wherever situated, of those residing within the parish, was liable to be assessed.

Note.—It was observed that if the party possessed property in any other parish, on which he was liable to be assessed, he would be entitled to a corresponding deduction.

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12. A. Buchanan (Collector of City Parish of Glasgow) *v.* C. S. Parker, February 21, 1827.—5 Shaw 390.

Held (by a majority of the Court) that the partner of an extensive mercantile company, carrying on business in a counting-house within a burgh, where, the greater part of the year, he personally attended, but whose dwelling-house was in another parish, in which he was assessed as a householder, was at the same time an inhabitant of the burgh, and as such, liable to assessment for poor rates.

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13. Heritors and Kirk-Session of South Leith *v.* Magistrates of Edinburgh and Leith Harbour Commissioners, November 12, 1833.—15 Shaw 204.

Harbour—Feu-Duties.—Held (by the Lord Ordinary, and acquiesced in) (1) that the Magistrates of Edinburgh, who in virtue of ancient royal charters, granting them the port and harbour of Leith, were entitled to levy certain dues on all vessels using the harbour, were not liable in poor rates on the dues and profits of said harbour, in so far as these were applied to the maintenance and improvement of the harbour; (2) that a duty on goods imported for the support of the clergy is not subject to assessment; (3) that the rents of buildings, erected by money borrowed by the Magistrates under statutory powers, which rents were appropriated by the statute exclusively to the purposes of the harbour, are not liable to assessment; and (4) that feu-duties are not subject to assessment.

Note.—The Magistrates agreed to pay poor rates on the estimated rent of the *solum* on which the buildings were erected, as distinct from the buildings.

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14. Baker's Society of Paisley *v.* Stentmasters and Magistrates of Paisley, December 6, 1836.—15 Shaw 200; 9 *Jur.* 124.

Friendly Society.—The Baker's Society of Paisley was established chiefly for providing support for poor members, but had erected mills for grinding flour for the members and the public, and at which the members were taken

bound to grind all their grain, the profits being appropriated in the first instance to the support of the poor members, any surplus being declared applicable "to the use of the Society;"—Held that the Society, not being a purely charitable institution, was liable to assessment for the poor, but that the Society was only assessable in so far as there were rents or profits accruing from the mill, or other property or trade belonging to the Society, over and above the usual allowance granted to poor and aged members, and divisible among the members, or applicable to the purposes of the Society generally.

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15. Charles Cunningham W.S. (Factor for the Proprietors of the Waterloo Hotel, Edinburgh) *v.* Peter M'Craw (Collector of South Leith) and Peter Hill (Collector of the City Parish of Edinburgh), H. of L. July 14, 1837.—2 Shaw and M'Lean 773.

Disjunction—Liability.—The Waterloo Hotel, Edinburgh, was built on land situated within the parish of South Leith, but which land was by statute annexed to, and incorporated with, the royalty of Edinburgh, though the statute did not expressly disjoin it from South Leith. Held (reversing the judgment of the Court of Session) that the proprietors of the hotel were liable in assessment for poor rates in the city of Edinburgh, and not in South Leith.

Note.—This decision affirmed the right of single rating, and excluded double rating.

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16. William Howieson Crawford *v.* Alexander Harkness (Collector for Parish of Kilmarnock), May 31, 1838.—16 Shaw 1072; 10 *Jur.* 461.

Mode of Assessment.—In a landward parish, containing a town population of 18,000, and a country population of 2000, or thereby, the valued rent of the town portion was extremely small, compared with the valued rent of the country district, and at a meeting of heritors, one half of the poor's assessment was imposed upon the valued rent. A country heritor brought a suspension of a charge of his proportion of the assessment, contending that it should be imposed on the real rent, subject to a just deduction for repairs, &c. Held

(1) that the process of suspension was competent; (2) that the Court had power to review the mode of assessment if plainly unjust; and (3) that, in the circumstances of this particular case, the rate of assessment ought to have been, and should be thereafter, fixed with reference to the real, not the valued, rent of the parish, regard always being had to a suitable deduction on the rent of house property.

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17. Hart Anderson (Collector of St. Cuthbert's) *v.* The Union Canal Company, March 7, 1839.—1 D. 648; 11 *Jur.* 409.

Canal.—Held (by a majority of the whole Court) that a canal company were liable to assessment for poor rates, as proprietors of an heritable subject, the total revenue of the canal being taken as the rental upon which it fell to be assessed.

In this action the collector of poor rates for the parish of St. Cuthbert's sued the Edinburgh and Glasgow Union Canal Company for the company's proportion of the assessment of that parish, from Whitsunday 1835 to Whitsunday 1836, for their heritable property within the parish, and in their own occupancy, that property consisting of the canal basin, and that portion of the canal which lay within the parish. The claim of the parish was maintained upon the principle that all heritable property falls to be assessed for the support of the poor according to its real rental or value, Crown property, churches, manses, and glebes, and property held as a public trust for the benefit of the whole community, and from which the trustees derived no patrimonal advantage being the only exceptions; and that a canal which belonged to a company who received the profits, if any, did not fall within any of these exceptions. For the defenders it was pleaded that the canal itself was not rateable, the ground occupied by it being admittedly still liable in assessment, which was paid by the proprietors from whom it had been acquired; that the whole revenue was applied in extinguishing debt incurred in completing the undertaking; and that, in this respect, as well as the public use to which it was applied, it fell to be ruled by the previous case of the Leith Docks (*supra*, p. 42). It was further contended that no works, constructed with a view to the public service and use, are liable to assessment, and that canals like highways are therefore not rateable. It was held by a majority of the whole Court, that that portion of the canal which was within the parish of St. Cuthbert's was assessable for the poor rates of that parish, in the pro-

portion effeiring to the parish of the whole annual value of the canal.

Observed by Lord Cunninghame (who delivered the leading opinion of the majority of the judges)—"I apprehend that canals, formed by individuals or by associations, with a view to a profitable investment of capital, fall directly within the class of properties that are assessable, and within none of the cases in which exemptions have been hitherto admitted from rating. A canal is a property, the whole value of which is derived from the land it occupies, and the water conveyed into it; and from the position of the premises, as inviting greater or less resort. It is, therefore, an estate, in which the chief, if not the sole elements of the value arise from a combination of heritable subjects."

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18. The Rev. John Burns, D.D. and Others *v.* James Ewing, William Dunn, and the Magistrates and Town Council of Glasgow, May 17, 1837.—15 Sh. 936; H. of L. June 6, 1839; Maclean and Robinson 435.

Liability—39 *and* 40 *Geo. III., c.* 88.—Lands having been disjoined by Act of Parliament from the parish in which they had previously been assessed for poor rates, and annexed to the extended royalty of a burgh, and an action having been raised by the kirk-session of the original parish against (1) the owners and occupiers of houses on the lands so disjoined for their proportion of poor rates, as if they were still liable to the original parish, and (2) against the Magistrates and Town Council of the royal burgh, as liable in relief to the other defenders;—Held (reversing the judgment of the Court of Session) (1) that, on a sound construction of the Act of Parliament, the owners and occupiers called as defenders, were not liable in poor rates to the original parish, and that the Magistrates and Town Council were not liable to the pursuers either directly or in relief of the other defenders; (2) that in such an action a decree, by which the parties liable, as in relief, were ordained to make payment of sums decerned for against the primary obligants, in the event of the primary obligants failing to pay, would be incompetent; and also further held that acquiescence in a particular construction of a statute, founded on a practice to which the individual defenders were no parties, was not relevant evidence as against these defenders.

19. Charles Macintosh and Others (for Heritors and Kirk-Session of Barony Parish of Glasgow) *v.* Playfair's Trustees and Others, May 20, 1841.—3 D. 893; 13 *Jur.* 404.

Coal.—Held (by the whole Court) that where the assessment for the poor was laid upon the real rent of a parish, the rule for assessing collieries was the actual rent or lordship paid to the proprietor by the tenant.

Note.—This is the rule as to collieries in England also.

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20. Peter M'Craw and Others *v.* William Allan, February 15, 1839.—1 D. 513; 11 *Jur.* 339; H. of L. October 6, 1841; 2 Robinson 507.

Parish of Assessment.—Certain lands, having in 1756 been given off in feu by the governors of Heriot's Hospital, on condition that in the event of the royalty of Edinburgh being extended, so as to comprehend them, they should be subject to the parochial burdens of the city, were, by the Act 7 Geo. III., c. 27, for extending the royalty of the city of Edinburgh, disjoined from the parish of South Leith, of which they had formed part, and annexed to the royalty of Edinburgh. The 10th section of the statute granted power to the Magistrates and Town Council of Edinburgh, to levy from the proprietors of these lands "cess, annuity, poor's money, and watch money," and the 16th section provided that the lands so disjoined should "remain liable to, and be subjected to, the minister's stipends and other parochial burdens . . . in the same manner as if this Act had never passed," and these lands having been subsequently built upon;—Held (by the House of Lords affirming the Court of Session) on a construction of the clauses of the statute, that the proprietors and occupiers of the grounds and of the houses thereon, were liable for assessment for the poor rates of South Leith, according to the value of the whole property, irrespective of any distinction between the *solum* and the houses built thereon, and that they were also liable to assessments for the poor rates of the royal burgh of Edinburgh.

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21. Hart Anderson *v.* Edinburgh and Glasgow Union Canal Company, January 12, 1847.—9 D. 402; 19 *Jur.* 187.

Canal.—In the parish of St. Cuthbert's, Edinburgh, the assessment for poor rates was laid on the heritable property, one-half on the proprietors and heritors, and the other half on the tenants and occupants;—Held (1) that a canal company, who worked the canal for profit, were liable both as proprietors and as occupants; (2) that the Canal Company were entitled to a deduction for tenant's profits, and also in respect of the capital embarked by them in the carrying trade; and (3) that house property at the terminus of the canal, and occupied by the company, is assessable exclusively in the parish in which it is situated, and is not liable to assessment in the different parishes through which the canal passes.

Observed by the Lord Justice-Clerk—"A curious point has been raised with regard to warehouses. This is more a legal subtlety than a real difficulty. It is said that warehouses ought not to be assessed in this parish, (*i.e.*, St. Cuthbert's); that the Canal Company cannot carry on business, or draw revenue at all, without warehouses; that they are part of the canal as a whole, and fall to be assessed along with it. The pursuer contends that as there is no legal necessity for including the house property along with the canal, the fairest mode is to assess it in the parish in which it is actually situate. I understand that the practice in England is to assess the termini separately. I am disposed to assess the subjects separately from the canal."

Observed by Lord Cockburn—"There may be buildings or erections connected with the canal which are not of any use or value when disconnected with it, and which will not be subject to separate assessment, such as bridges leading roads over it, &c.

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22. Alexander M'Neel *v.* Henry Watt, February 18, 1848.—10 D. 735; 20 *Jur.* 247.

Means and Substance—Deductions.—Held that a person assessed under the 34th section of the statute on means and substance in the parish in which he is resident, is entitled to deduction of the interest paid by him on debts secured on heritage situated in other parishes.

23. Daniel Walkinshaw *v.* Alexander Maxwell Adams (Inspector of City Parish of Glasgow) and Others, November 29, 1850.—13 D. 198; 23 *Jur.* 70.

Means and Substance—Deductions.—Held (by a majority of the whole Court) (1) that the salary of the manager of an insurance company, who is removeable at pleasure, is "means and substance," and therefore rateable for support of the poor; (2) that such a servant was liable to assessment for the parish in which the company's office was situated, though his dwelling-house was in another parish, where he was assessed in respect of his occupancy; and (3) that a parochial board were not entitled to lay on the assessment, on the principle of charging four per cent. only upon such heritages and incomes as exceeded £110, and a smaller percentage on incomes between £110 and £50, and altogether exempt incomes below the latter sum.

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24. Alexander Maxwell Adams (Inspector of City Parish of Glasgow) *v.* M'Leroy, Hamilton, & Co. and John Meek (Inspector of Barony Parish of Glasgow), December 18, 1851.—14 D. 248; 24 *Jur.* 114; 1 Stuart 202.

Place of Assessment.—Held that when a manufacturing company had their works in the Barony Parish of Glasgow, and their counting-house in the City Parish, that they were liable in assessment in both parishes proportionally on their means and substance.

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25. The Rev. Robert Gillan *v.* John Meek (Inspector of Barony Parish of Glasgow), December 18, 1851.—14 D. 248; 24 *Jur.* 114; 1 Stuart 205.

Minister of Parish—Stipend.—Held that the minister of an ecclesiastical parish, which formed part of a parish *quoad omnia*, but whose residence was in a different parish, was liable in in assessment for poor rates in respect of his stipend only in the parish of which he was incumbent, and of the rental of which parish the stipend formed part.

26. George Salmond *v.* Alexander Maxwell Adams (Inspector of City Parish of Glasgow), December 18, 1851.—14 D. 248; 24 *Jur.* 114.

Procurator-Fiscal—Place of Assessment.—Held that a procurator-fiscal was liable to assessment for poor rates, in respect of his income, in the parish in which his chambers were situated, and was not liable in the parish of his residence.

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27. Thomas Napier *v.* Alexander Maxwell Adams (Inspector of City Parish of Glasgow), December 18, 1851.—14 D. 248; 24 *Jur.* 114.

Tradesman—Place of Assessment.—Held (in conformity with Walkinshaw, *supra*, p. 48) that a tradesman in the employment of a company carrying on business in the City Parish of Glasgow, but who himself was resident in the Barony Parish, in which he had also acquired a residential settlement, was liable to assessment in the City Parish.

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28. Thomas Allan *v.* the Parochial Board of Edinburgh and the Parochial Board of South Leith, July 14, 1849.—11 D. 1391; 21 *Jur.* 532; H. of L. March 26, 1852; 1 M'Q. 93.

Disjoined Parish.—Held that certain lands, which by the statute 7 Geo. III., c. 27, had been disjoined from Leith and annexed to Edinburgh, and which by the same statute were declared to be liable for the parochial burdens of both those parishes, were freed from double liability by the Poor Law Amendment Act of 1845, which provides (sec. 46) that owners and occupiers of lands are not to be assessed for them in more than one parish or combination, and which further (sec. 91) repeals all laws, statutes, and usages, so far as at variance with itself.

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29. James Murray *v.* Robert Bruce, May 25, 1852.—14 D. 781; 24 *Jur.* 447.

Annual Value—Rent—Modification of Rule of Assessment.—The parochial board of a parish resolved to impose the assessment half upon owners and half upon tenants, "to be rated

according to the annual value of the lands," &c.; and they further agreed to exempt "all tenants and occupants paying an annual *bona fide* rent not amounting to £12 sterling." This mode of assessment was approved by the Board of Supervision, and was for some years acted upon. Thereafter the parochial board resolved to assess all tenants "whose possessions shall be equal to, or exceed £2 of yearly rent," and they proceeded to impose the assessment on tenants, the real annual value of whose premises was £2, though the actual rent paid was less. In a reduction it was held (1) that the resolution to assess tenants with premises of £2 value did not require the sanction of the Board of Supervision, and (2) that the "annual value" does not mean the actual rent paid for subjects, but the rent which might be got for them one year with another, and, therefore, that while the rent generally formed a convenient criterion of the annual value, it was competent for the parochial board to determine the "annual value" by actual valuation.

Observed by the Lord President—"In its strict sense 'rent,' or nominal value, is not within the statute at all. The statute looks only to annual value. In many cases the rent is taken as the best criterion of the annual value. But there may be cases in which the rent is palpably inadequate to the value, and in which there are other stipulations by the tenant, on taking which into account the rent will not appear inadequate. In such cases regard must be had to these stipulations in ascertaining what, in the sense of the statute, the 'rent' is,—that is to say, the sum for which the subject would let one year with another. I am of opinion that there was nothing to preclude the parochial board from proceeding to ascertain the real annual value of the pursuer's croft."

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30. Rev. David Landsborough *v.* Peter Barclay and James Orr (Inspector and Collector of Stevenston), December 4, 1852.—15 D. 188; 25 *Jur.* 123.

Parish of Assessment—Dissenting Minister.—In a suspension of a threatened charge for poor rates at the instance of the Inspector and Collector of Stevenston against a minister of the Free Church, who resided in the parish of Ardrossan, but whose church was situated in the parish of Stevenston, the members of the congregation being resident, some in the

parish of Ardrossan, some in that of Stevenston, and some in that of Kilwinning, and the minister's stipend being drawn entirely from the Sustentation Fund of the Free Church,—Held (1) that the suspender did not fall within the description of a person "carrying on trade," and that his church did not fall within the description of "premises" in the sense of the 47th section of the Act of 1845, and (2) that the suspender was liable to assessment on means and substance in the parish of his residence, but not in the parish in which his church was situated.

Observed by Lord Cunninghame—"The enactment in the 49th section of the Act making stipends assessable applies only to stipends paid to established ministers in parishes in which the assessments are laid on, and not to the precarious contributions voluntarily paid to ministers of other denominations preaching to congregations gathered from many adjoining parishes.

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31. George Anderson *v.* George Gillanders, and Alexander Fraser *v.* George Anderson and George Gillanders, March 22, 1853.—15 D. 577; 25 *Jur.* 353.

Ferry—Parish of Assessment.—In a question between the inspectors of poor of the parishes in which the landing-places of a ferry across a frith which separated two parishes and counties were situated, the right of ferry forming part of a barony, the lands of which lay wholly on one side of the frith,—Held that the ferry was liable to assessment as "lands and heritages" in the parish in which was situated the estate of which it was by feudal title a part and pertinent, along with the lands to which the ferry was united by title.

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32. James Greig *v.* Thomas Maxwell, March 28, 1853.—15 D. 620; 25 *Jur.* 365.

Parish of Assessment.—In 1847 the assessment for the poor in the parish of Montrose was imposed on means and substance. The master and part-owner of a vessel, which, during the winter months, was usually laid up in the harbour of Montrose, resided in the parish of Craig, in which he was liable for poor rates, which were there assessed on means and sub-

stance. He did not occupy any house or office in Montrose, the business of the vessel being carried on by a ship's husband resident there; Held that, under the 47th section of the Act of 1845, the master was not assessable in the parish of Montrose on the income derived from the vessel.

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33. Alexander M'Laren and Mandatory *v.* Alexander Steel (Inspector of Tulliallan), December 20, 1853.—16 D. 274.

Assessment on Person not Inhabitant of Parish.—A suspension and liberation was raised by a person who had been incarcerated for alleged arrears of poor rates—the ground of suspension being that he left the parish of his birth in 1824 to be a seaman, and that, since 1840, he commanded vessels belonging to the port of London, where he resided when on shore, and that when he was apprehended, he was only paying a passing visit to his friends. The following issue was adjusted for the trial of the question:—"It being admitted that the complainer, the said Alexander M'Laren, is a native of the parish of Tulliallan, and resided therein as a member of his father's family until the year 1824: Whether at the date when the assessment for poor rates demanded from the complainer, the said Alexander M'Laren, was laid on, viz., on or about 7th June 1847, the said complainer was an inhabitant of the parish of Tulliallan?"

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34. John Hay *v.* Edinburgh Water Company, July 13, 1850.—12 D. 1240; 22 *Jur.* 562; H. of L. February 13, 1854; 1 M'Q., 682.

Water Company.—Held that a water company is liable to assessment for poor rates, as owners and occupants of the ground under the streets of a city in which their water pipes were fixed and laid.

Observed by the Lord Justice-Clerk—"The principle of the statute, with a view to raising an annual fund for an annual burden of a most onerous and pressing character, is very plainly announced to be the natural, convenient, and reasonable ground for assessment—viz., to hold and take as owners all who are in the actual receipt of the rents and profits of land, without the

least regard to the question of titles, distinctions, and qualities of feudal estate or heritable right, or the relative position of parties to others from whom relief may be demanded—and, further, without the least regard to the kind or purpose of such actual possession. Provided the party is in the actual receipt of the profit of the land, he is to be deemed the owner for the purpose of the assessment. Proprietor he may not be, feudal title he may not have, and may never be in a condition to demand. Proprietor in questions with others, it may be that law could not hold or describe him. His possession may be conditional—it may be anomalous. It may be such as to admit of assessment on another for the surface. In short, all difficulties are cut short, and all distinctions disregarded, and the statute declares that 'owner shall *apply to* (significant terms) persons in the actual receipt of the profits of land.'"

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35. Robert Ainslie *v.* James Turnbull (Inspector of Gladsmuir), July 12, 1854.—16 D. 1043; 26 *Jur.* 564.

Lease—Rent.—Held that, in the ordinary case of a *bona fide* lease, the criterion for fixing the annual value of lands, for the purpose of assessment for poor rates, is the rent actually paid under the lease.

Observed by the Lord President—"The assessors have proceeded on the principle that the rent might be competently taken, and ought to fix the annual value. It would require a very special averment to make out that the parochial board did wrong in so acting. I do not think they were proceeding contrary to the statute in taking the rent under the lease as the annual value of the estate. . . . I think the rent in the lease is the best criterion which could be taken. There may be special circumstances to take the case out of that category. . . . I do not see any such stringent view in the words 'annual value,' as excludes the rent being taken for it. We must read the whole statute together, and look to the purposes for which the assessment was laid on. The rent to be taken is the rent at 'which, one year with another, such lands and heritages might, in their actual state, be reasonably expected to let from year to year.' That compels parties to judge prospectively of the annual value. It does not require that there shall be an annual valuation. . . . It must be presumed that the parties themselves must know their own interests, and that they do get at the real annual value one year with another, unless some special averments are made to show that this is not the case."

Observed by Lord Robertson—"It appears to me not only that the rent payable under a *bona fide* lease is the correct mode of ascertaining the value, but to my mind it is much more satisfactory than a report of valuators, for it is a report by parties having opposite interests—the one to have the rent as high as possible, the other to have it as low as possible—entering into a contract for a certain period; and, therefore, I think that section 37 of the statute is sufficiently complied with, and better by a current lease than by any other way."

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36. The Edinburgh, Perth, and Dundee Railway Company *v.* George Arthur (Inspector of Ferry-Port-on-Craig), December 22, 1854.—17 D. 252; 27 *Jur.* 99.

Parish of Assessment—Ferry—Railway.—A railway company having, by statutory authority, acquired a right of ferry which, by one of the company's statutes, formed part of their general undertaking;—Held that the company were liable in assessment for the ferry as a property separate from their line of railway, and therefore not on the principle of mileage; the parish of assessment being the parish of the barony of which the ferry had been a pertinent.

Note.—In this case the Court viewed the ferry as a subject separate from the railway. The ferry, before its acquisition by the railway company, had formed part of a barony, and when acquired by the company, while not *de facto* a part of the line, it was not a thing which could be exclusively used for the railway. This mode of assessing ferries acquired by railway companies is now altered, and by the 22d section of the Valuation Act, the entire rent or value is apportioned according to the lineal measurement of the line, "including ferries attached thereto."

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37. Thomas Scotland (Inspector of North Leith) *v.* The Commissioners for the Harbour and Docks of Leith, November 26, 1852.—15 D. 95; 25 *Jur.* 69; House of Lords February 6, 1855; 2 Macq. 28; 27 *Jur.* 229.

Assessable Revenue.—Held (reversing the judgment of the Court of Session) that there is no authority in the Poor Law for assessing a sum of money.

The facts were—The Magistrates of Edinburgh were authorised by statute to levy certain dues at the harbour of Leith, and spe-

cially to levy a prescribed impost for the maintenance of the clergy and schools of the city. On the security of these duties the city borrowed, under the authority of Acts of Parliament, large sums of money, which were applied to the improvement of the harbour of Leith. By the City Agreement Act, 1838, passed after the insolvency of the city for the purpose of arranging its affairs, the special duties for the maintenance of the clergy and schools were abolished, and in place thereof the Commissioners of the Harbour were appointed to pay annually £7680 to the Queen's Remembrancer in Exchequer, to be paid by him in proportions fixed by the Act to the clergy, to the creditors, and to the schools of the city, the surplus revenue to be applied in payment of the interest on the debt and the improvement of the harbour. The duties levied in the harbour yielded a revenue more than sufficient for these purposes, and the surplus was by another statute appropriated to certain improvements on the harbour. In an action by the Inspector of North Leith for payment of poor rates, in respect of the revenue of the harbour and docks, it was held by the Court of Session (1) that the sum of £7680, set apart as aforesaid, was liable to assessment, and (2) that the surplus revenue having been specially appropriated by statute to the improvement of the harbour was not liable in assessment.

This judgment was taken by appeal to the House of Lords, and was there reversed upon the ground that there was no authority in the Act for assessing poor rates upon a sum of money. This decision, however, was pronounced upon the special circumstances of the case, and with the express reservation that it was not to be held as prejudicing or affecting the general questions which formed the real issues in the case.

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38. The Edinburgh and Glasgow Railway Company *v.* Ebenezer Adamson and Others, March 10, 1853.—15 D. 537; 25 *Jur.* 383; Affd. in the House of Lords June 11, 1855; 2 Macq. 331; 27 *Jur.* 428.

Railway—Stations.—Held (1) that a railway company was liable in assessment, both as owners and as occupiers, and (2) that stations and buildings accessory thereto are to be regarded as parts of the whole railway, and were not to be assessed separately in the several parishes in which they were situated, but the whole having been valued, the assessment was to be apportioned according to the length of the line in each parish.

This action was brought to determine the principles applicable to the assessment of railways. The question raised and the prin-

ciple given effect to appear from the Lord President's opinion:—"The question now to be decided is—What are the component elements of that species of heritage called a railway, the annual value of which, as a whole, for letting is to be estimated? It is not merely the land upon which the rails are laid; it is the whole composite subject making up the railway to be let. It comprehends the lands, the rails, the tunnels and bridges, sidings and banks, and also the stations, as necessary parts or appurtenances of the railway. It comprehends everything which a tenant taking a railway from year to year would be entitled to expect as part of his tenement. A railway without its stations would be a dilapidated, severed, mangled subject, which no tenant, taking the railway as a whole, would be willing or bound to accept. The stations are part of the composite subject from which the annual value is derived. It would be very difficult to get at the annual value of a railway, as a railway, separately from all its stations. But it is the value of the railway, as a railway, that section 45 directs to be apportioned. It is not the value of the land in the parish, occupied by the railway, nor even the value of that land as increased by the use made of it, that you are to find. With that we have nothing to do. The breadth of ground occupied by one mile of railway may, by reason of embankments or sidings, be two or three times as great as that of another mile of the same railway; but that is of no consequence. The question is, not in reference to the breadth of the ground, or the value of the ground, or the extent or value of the operations or works at any place, or in any parish, but it is the *cumulo* annual value of the whole railway from end to end; and I think it very clear that in ascertaining that *cumulo* annual value on the principle of what the railway would let for as a railway, in its actual state, we cannot separate the stations from the rest of the undertaking. . . . The only question now before us is, whether the stations, properly so called, are or are not component parts of the entire railway, from which the annual value of the railway is derived. I think they are so as much as the turntables within them or the tailings outside of them."

The judgment of the Court of Session was affirmed in the House of Lords, the Lord Chancellor observing, with reference to the 45th section of the Act—"'Railway' must mean something more than the actual line of rails. What more? I can come to no more reasonable conclusion than that it must mean, in addition, all that is *necessary* for the using of those lines of rails. . . . There ought to be no refined reasoning upon what may be abstractedly the right meaning of the word 'railway;' but what we are to look at is the way in which it is popularly used, and not only popularly used, but used by the Legislature in abundance of other Acts, in which we find that the word is so used as to include that which is necessary, or so convenient as

to be fairly brought within the meaning of the words 'necessary for the convenient use of the railway.' That includes the stations erected at each end and along the line. There is no doubt that the word 'station' ought not to be extended to include anything more than what is necessary for the convenient use of the railway. The word 'station' is a perfectly well understood term, and any definition would be open to the observation that it was *clarum per obscurius*. Everybody knows what the word 'station' means—that it is a place to which every person using the railway may come on foot or in carriage, and bring their luggage, and it probably has connected with it a room where persons may wait, if it is a railway for taking various descriptions of passengers—first, second, and third-class passengers—and all that description of accommodation without which a railway cannot be conveniently used. It certainly will not include an hotel and other matters not necessary for the occupation and convenient use of the railway."

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39. The Edinburgh and Glasgow Railway Company *v.* Ebenezer Adamson and Others, June 28, 1855.—17 D. 1007; 27 *Jur.* 514.

Railway—Principles of Assessment.—Held that the statutory mode of ascertaining the annual value of a railway company for purposes of assessment is to take the rent at which the railway, in its actual state, as a heritable subject, might be reasonably expected to let from year to year under the following deductions:—(1) The expense of conducting the business carried on by the railway company as public carriers, including the cost of working the line and of maintaining the way, and also the annual average cost of repairs and insurance, and all rates, taxes, and public charges; (2) the interest on capital invested in the carrying trade, and an allowance of the depreciation on that capital from tear and wear, and in respect of the deterioration of the stores necessary for carrying on the business of carrier; and (3) an allowance for contingencies arising from accident, and also for tenants' profits.

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40. Francis Archibald *v.* James M'Intyre (Inspector of Fossaway and Tulliebole), January 24, 1856.—18 D. 329; 28 *Jur.* 150.

Emerging Claim—How Met.—Held that a parochial board was

entitled, by assessment, to provide not only for the ordinary expenditure of the year, but also for a claim which ought to have been paid years before, but which had been disputed, and liability for which had been settled by a referee immediately before the assessment was laid, though the exact amount to be paid had not been fixed.

The circumstances were—In the united parishes of Fossaway and Tulliebole, the funds for the support of the poor were, until 1852, provided by voluntary assessment. In July 1852 a dispute with the parish of Auchtermuchty, as to the support of a lunatic, was decided by a referee against Fossaway and Tulliebole, though the sum to be paid to Auchtermuchty was not actually fixed for about a year after. The board of Fossaway and Tulliebole thereupon resolved to levy by assessment a sum sufficient not only for the ordinary support of the poor, but also to meet the claim which had emerged, and which embraced several years' support of the lunatic, and this was done and the board reconstituted under the Act 1845 in February and June 1853. Thereupon an action of reduction, so far as related to the expenses connected with the lunatic, was raised by a ratepayer who had gone to reside in the parish in November 1852. It was held that the board was entitled to levy an assessment to meet the said claim, and the defenders were assoilzied from the conclusions of the action.

Observed by Lord Cowan—"I am of opinion that the objection taken to the legality of these proceedings is untenable.

"1. There was an outstanding debt or burden due by Fossaway, which the legally constituted parochial board were bound to discharge, and to meet which they could not do otherwise than impose an assessment on the ratepayers. They were as much bound to provide for it, as for the sums necessary for the support of the poor for the current year.

"2. The claim cannot be regarded in any other light than as an emerging obligation and debt, which the assessment for the year, from August 1852 to August 1853, afforded the only means of having discharged. It cannot reasonably be regarded otherwise. I am unable to view it in the light of a debt of prior years improperly allowed to stand unprovided for; for there is nothing in this case to infer any inexcusable delay in imposing the assessment to meet the claim.

"3. The parochial board, composed of the heritors and kirk-session, had power at any time to resolve on a legal assessment for the poor, and thereby alter the constitution of the board. Their power to do this was not affected by the emergence of this debt. On the contrary, it appears to me, so far from invalidating the proceedings, to have been a very good reason for their aban-

doning the voluntary and having recourse to the legal assessment, with its necessary consequence of a change being thereby effected in the constitution of the board.

"4. The assessment, though imposed by the new board only in June 1853, was for the purpose of meeting the exigences of the year, from August 1852 to August 1853."

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41. James Russell *v.* Keith Hutchison (Inspector of Old Deer) and Others, January 28, 1857.—19 D. 326; 29 *Jur.* 154.

Rent in Lease generally Criterion of Annual Value.—Two farms were let by the proprietor to his brother under a lease for 19 years. The lease stipulated that the tenant should expend £500 in draining, receiving a deduction from his rent of £50 per annum for 5 years. Held that the rent in the lease was the true basis of assessment, under the Poor Law Act, and that the deductions were in the circumstances not to be taken as proof that the rent was less.

Observed by the Lord Ordinary (Ardmillan)—"That there may be an exceptional case, in which such a criterion (viz., the rent in the lease) would be deceptive, is beyond doubt; but very precise and special averments, or very unusual and suspicious provisions in the leases, were necessary to raise such a case."

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42. Greville *v.* Thomson, July 10, 1857.—Guthrie Smith on Poor Law (2d Edn.), p. 114; (3d Edn.), p. 169.

Deduction.—Held, by Lord Ordinary (Neaves), that property tax is not a burden which falls to be deducted from the estimated rental of subjects assessable for the poor under the Act of 1845.

Observed by Lord Neaves—"The ground of this opinion is that, on a fair construction of the Property Tax Acts, the duties there imposed seem to be leviable, not on the property, but on the profits arising from it; and although the annual value of any property may be taken as a measure of the amount, the tax has still a reference to the income of the individual, and is in the strictest sense a personal tax, sought to be levied generally upon all sources of wealth, according to certain varying regulations for more easily ascertaining and more fairly equalising it."

Note.—The principle here enunciated has been recognised and applied by the Court in the subsequent cases on the subject.

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43. The Magistrates of Glasgow (Water Works Commissioners) *v.* John Miller and Ebenezer Adamson (Collector and Inspector of City Parish of Glasgow), December 16, 1857. —20 D. 290; 30 *Jur.* 146.

Exemption—Statutory Commissioners.—Held that statutory commissioners, who were empowered to acquire property, and to levy rates, in order to supply a city with water, and who were bound to apply the profits of any one year to the diminution of the rates of the next, and who derived no personal emoluments, were not exempt from assessment for the poor of one of the parishes of the city, imposed in respect of lands therein, of which they appeared in the Valuation Roll as owners and occupiers.

The facts were—The Magistrates of Glasgow were empowered by statute to acquire certain properties, and to levy rates for the pnrpose of supplying the city with water. They derived no personal emoluments from the revenues of these properties, the entire benefit of which was communicated to the ratepayers, the statute under which they were incorporated as water commissioners requiring them to apply any surplus funds, over what was necessary for carrying out the purposes of the Act, to a reduction of the domestic water rate of the following year. In a suspension of a charge for payment of poor rates to the parochial board of the City Parish, imposed in respect of premises in that parish, of which the commissioners were entered as "owners and occupiers" in the Valuation Roll, the commissioners pleaded that they were trustees for public purposes only, and were not possessed of any revenue other than the rates which their Act authorised them to levy, that these rates went to the specific public purpose of supplying water to the inhabitants, and that they had no beneficial enjoyment of the premises in respect of which they were assessed. It was held, however, that they were not, without special statutory provision, exempt from liability for poor rates, in respect of lands held by them, and of which they appear in the Valuation Roll as owners and occupiers, and that whether or not the area over which, and the principle on which, the rates levied by the commissioners and by the parochial board be coincident.

Observed by the Lord Justice-Clerk—"I go on the broad

ground that the Scotch law and the recent Poor Law statute apply, in the first instance, to all owners and occupiers of lands and heritages in the parish. It is for any such to establish an exemption. There are certain exemptions known to law, and about which there is no dispute." His Lordship then comments upon the case of the Inspector of North Leith *v.* Leith Dock Commissioners (*infra*, p. 75), on which the suspenders mainly relied, pointing out that the ground upon which exemption from assessment was there sustained was, that the Leith Dock Commissioners held their property for national purposes—public purposes in the proper sense of the word—and that the docks so held were constructed by the aid of the public treasury; and, further, pointing out that that case "turned not on any abstract general principle, but entirely on the special objects of the enactments in the Leith Dock Acts for the benefit of the Treasury. It did not even establish the general rule that all the works of all public harbours were exempt from assessment, because their objects were of general utility to the lieges and all others, without regard to the purposes to which the rates were applied, as, for instance, where the burgh derived revenue from the rates, or satisfied therefrom extraneous public burdens. The supply of water to a great city is still purely a local purpose. Public, in one sense, you may call it, as it is for the benefit of the community of that city. But in the town, a great city, or a small village or burgh, the supply of water is still but a local purpose, and not altered by the extent of the population so supplied, else it would be local for a certain population, and would become public for a greater population, which would be absurd. It is an entire mistake, therefore, to say that in the estimation of law, at least of Scotch law, applicable to liability for Poor Law assessment, such supply of water is to be considered a public purpose, to be exempted as Crown property, such as court houses and the like. It is simply a case where, for the interests of the individuals of the town, a corporation is entrusted with the means of obtaining a supply of water—a most important matter for the community of the town, but still a purely local object for that community, whether great or small, and for the benefit of the individuals of that community. Hence, whether they also pay rates or not for the water, they derive patrimonial benefit by the waterworks, and ought to pay poor rates for the same."

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44. William Tod *v.* Peter Mitchell (Inspector and Collector of Cockpen) January 26, 1858.—20 D. 445; 30 *Jur.* 232.

Unoccupied Property.—The owner of some small houses having

raised a suspension of a charge to enforce payment of assessment, on the ground that it was imposed in respect of houses partly occupied;—Held that the letters were orderly proceeded, and that the question of general principle was not competently raised, the only matter in dispute being the amount of assessment on the houses unlet for the particular year.

Observed by the Lord Justice-Clerk (Hope)—"If the suspender wishes to maintain that no unoccupied property is ever assessable at all, that is a general question, which he may try by declarator. When he says that a portion of his property, which was let the year before, is not let this year, and he is not bound to pay assessment upon it, no general point is raised, because the question relates merely to the amount of the assessment on the houses unlet for the particular year. That is a question, not of principle, but of amount. It is not to be implied that I would encourage a declarator that unoccupied property is not liable to assessment. On the contrary, my present impression is, that it may be assessed."

Observed by Lord Cowan—"There is no provision in the statute exempting unoccupied property from assessment. On the contrary, all heritable property is to be assessed according to the annual value, one year with another, which it may yield. But, though unoccupied for the year to which a particular assessment applies, houses are not, on that account, exempt. If worthless and uninhabitable, that is quite a different question.

Observed by Lord Neaves (Ordinary)—"There are no grounds, either in the Poor Law Act or in principle, for holding that, where an assessment is imposed on owners, either along with occupiers or along with other parties, it makes any difference as to the owner's liability whether his property is occupied or not. He is to be assessed, not on rent, but on valuation, according to what the property might *be expected* annually to yield; and it would be wholly unwarranted, and would occasion confusion and injustice if it were held necessary that it should be either rented or yielding profit. An owner choosing, capriciously or arbitrarily, to leave his property unoccupied, or refusing to let it at a reasonable rent, might thus throw an unfair burden on the shoulders of other owners. The case may be different where property is not merely uninhabited, but uninhabitable. The owner of such property may be free from assessment, not because the property is exempted, but because it is of no value."

45. Edinburgh and Glasgow Railway Company *v.* Alexander Arthur (Inspector of Bathgate); Thomas Hislop (Inspector of Uphall); James A. Lewis (Inspector of Livingstone); and Thomas Hutton (Inspector of Kirkliston); February 24, 1858.—20 D. 677; 30 *Jur.* 344.

Actual Rent.—Held that the actual rent paid under their lease by the lessees of a branch line of railway, formed the proper basis of assessment for poor rates, although such rent far exceeded the sum which the railway would yield as net rent from year to year.

The facts were—The Edinburgh and Glasgow Railway Company became lessees of the Edinburgh and Bathgate Railway, the rent stipulated in the lease being £9500 per annum for the period of 999 years from the completion of the line. The parochial boards of the parishes through which the line passed, assessed the Edinburgh and Glasgow Railway Company as lessees of the portion of the line within their respective parishes, according to the full rent paid by the Company, on the footing that the rent so paid, viz., £9500, was the "annual value." The company thereupon raised an action of declarator to have it found that the real annual value, as ascertained from certain principles stated by them, was only £725. It was held that the parishes were entitled to take the rent actually paid as the true annual value of the line.

Observed by the Lord Justice-Clerk—"There is no authority for saying that in Scotland where a rent is actually fixed and paid, the parochial board are not entitled to take that as the annual value."

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46. James Miller (Inspector of St. Quivox) *v.* John Taylor Gordon, June 17, 1859.—21 D. 975; 31 *Jur.* 532; 1 *P. L. M.* 713.

Private Railway.—Held that a private railway in connection with a coal pit, and used solely for the conveyance of coals to market, is not assessable as a separate subject from the collieries to which it is an adjunct.

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47. The Glasgow, Barrhead, and Neilston Direct Railway Company *v.* The Caledonian Railway Company, and Robert Oliver, and Robert Henderson (Abbey Parish of Paisley),

July 20, 1855.—17 D. 1148; 27 *Jur.* 588; H. of L. February 10, 1860; 22 D. 1; 32 *Jur.* 292; 2 *P. L. M.* 638.

Railway Owner.—The Barrhead Railway Company, by authority of an Act of Parliament, granted a "lease" of their line to the Caledonian Company for 999 years, the consideration payable being a "rent" or a "dividend." The Caledonian Company did not take immediate possession, and the line remained in the hands of the Barrhead Company, which was assessed for poor rates both as owners and as occupiers. In a suspension of a charge for payment of the assessment,—Held (by the House of Lords) that the Barrhead Company were not liable, as "owners" of the line, to assessment for poor rates.

The ground of judgment, as stated by the Lord Chancellor, was, that under the Act which authorised the lease to the Caledonian Company, the powers and liabilities of ownership had been transferred to the Caledonian Company for 999 years. His Lordship observed—"The length of the period was very material, showing that the owner granting the lease did not contemplate any resumption of possession. Although the words 'lease' and 'rent' occurred, they must look to the meaning of parties, and operation of the transaction, which here clearly was, that the Caledonian should possess all the rights and liabilities of the Barrhead Company. The repayment to be made to the Barrhead Company had by no means the ordinary characteristics of rent. There remained nothing of the relation of landlord and tenant."

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48. George Croll (Inspector of Perth) *v.* Scottish Central Railway Company, March 16, 1861.—23 D. 747; 33 *Jur.* 376; 3 *P. L. M.* 444.

Deduction—Approval of Mode of Assessment by the Board of Supervision.—In the parish of Perth the poor rates were, from the year 1820, levied on the real rental without any deduction therefrom for repairs, insurance, &c. After 1845, the parochial board, with the approval of the Board of Supervision, determined to continue the previous mode of assessment. The approval of the Board of Supervision had been given under the misapprehension that deductions for repairs, &c., were allowed, and entered the parish in the annual reports as assessed under the first mode allowed by the Act, until 1856, when it was properly entered as

assessed according to local usage. Held that this did not invalidate the assessment, and that a railway company, assessed in the parish, were not entitled, under section 37 of the Act of 1845, to any deductions for repairs, insurance, and other expenses.

Observed by Lord Deas, with reference to a resolution of a parochial board as to the mode of assessment—"The sanction of the Board of Supervision is not necessary as a condition precedent to the resolution taking effect. The resolution takes effect at once. The way the approval of the Board of Supervision comes in is, that when once it is interposed, the resolution shall continue to be acted on till it is altered or departed from with their sanction. But if, through any misapprehension as to the meaning of the resolution, it cannot be said to have been either approved of or disapproved of, the matter just stands on the resolution of the parochial board, *ad interim*, till it is again brought before the Board of Supervision, and that board, *causa cognita*, resolve one way or other."

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49. William Stuart Stirling Crawford *v.* Archibald Stewart (Collector and Inspector of Blair Athol), June 6, 1861.—23 D. 965; 33 *Jur.* 498; 3 *P. L. M.* 607.

Shootings.—In a parish where the assessment for poor rates was imposed "one half upon the owners and the other half upon the tenants or occupants of lands and heritages within the parish rateably according to the annual value of such lands and heritages,"—Held that the lessee of shootings in that parish was liable in assessment as tenant or occupant of lands and heritages.

Observed by the Lord Justice-Clerk—"The person holding the land under the owner, and who is in the personal occupation of it, is to be held the occupier under the statute, without regard to his title of possession. . . . It is said that the lessee of the shootings is not, within the meaning of the Act, the tenant or occupier of the lands, because the lands were in the occupation of another tenant, who rents them for grazing. But I see no difficulty in holding that lands may be occupied for two purposes at one and the same time. If the owner can turn his land to a double account, by letting it to one party for shooting, and to another for grazing, and if he gets rent from both, I do see why the one of these is more properly the occupier of the land than the other."

50. Glasgow and South-Western Railway Company *v.* Magistrates of Glasgow, the Parochial Board of Govan, and George Dods (Assessor of Railways and Canals), September 19, 1862.—5 *P. L. M.* 116.

Railway—Cumulo Value—Let Subjects.—Held that heritable subjects, the property of a railway company, but occupied by a tenant of the company at a yearly rent, are not part of the *undertaking* of the railway within the meaning of the Lands Valuation Act, and that the rents derived from them are not to be included in the *cumulo* annual rent or value of the railway fixed by the assessor of railways and canals, but are to be valued by the local assessor and included in his valuation for separate assessment.

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51. The Glasgow Gas Light Company *v.* Ebenezer Adamson (Inspector of City Parish of Glasgow), March 23, 1863.—1 M. 727 ; 35 *Jur.* 410 ; 6 *P. L. M.* 417.

Deductions—Feu-Duties.—In a suspension by a gas light company of a charge by a parochial board for payment of poor rates, assessed upon the gross annual value of their heritages, under deduction of 20 per cent., being the allowance made by the parochial board as the probable annual average cost of the repairs, insurance, and other necessary expenses, under the 37th section of Act of 1845, the ground of suspension being that allowance so made was not sufficient to cover the deductions to which the statute entitled the company ;—Held that the following items formed proper deductions ;—(1) A sum to meet the cost of repairing meters and other parts of the works ; (2) Assuming the company to be their own insurers, a sum on account of insurance ; (3) A sum on account of poor rates, on the ground that the parochial board could not say that they had not granted this deduction to other ratepayers, in the allowance of 20 per cent. ; and (4) (by Lord Ordinary, and acquiesced in) that feu-duties do not form a proper deduction under the 37th section.

Observed by the Lord President—"The first thing is a claim on the ground of 'depreciation.' That word is peculiar, and is not to be found in any of the statutes, and I know of no authority

for it. We must therefore ascertain what it means in reality. I understand that this assessment is imposed on heritages, and certain things connected with heritages by annexation, such as gas meters, &c., which are of temporary existence, and wear out rapidly. They require certain annual repairs, and also other repairs at longer intervals, which are of the nature of replacement of the subjects themselves. They are still portions of the larger heritable subject to which they are annexed, and that subject itself requires replacement. I think an allowance for that replacement, which is truly of the nature of repair, is a fair allowance, the repairs being necessary to the upholding the subjects in a fit condition for yielding rent; any other result would be to impose the assessment on capital and not on income. It appears to me that that is a very plain principle.

"The next thing is insurance, and I see no difficulty about that. The circumstance of the party being their own insurers, introduces no specialty. The language of the statute is 'a probable annual average' which shows that more than actual payments might be included. . . . Then there is the deduction for poor rates. This is a matter of no consequence, if the principal is applied equally to all parties. It is the same if you deduct from all the ratepayers, or from none; the service for each year will be the same. In the parish there has been a general allowance."

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52. The Scottish North Eastern Railway Company *v.* Thomas Gardiner (Inspector of Coupar-Angus) and W. E. C. Wood and Others (Heritors of Coupar-Angus), January 29, 1864.—2 M. 537; 36 *Jur.* 259; 6 *P. L. M.* 617.

Railway—Exemption—Repeal.—A railway company obtained an Act prior to the Lands Clauses Act, under the terms of which it was held that exemption from "public and parish burdens" had been effectually conferred, and this exemption was further held to be transferred by another Act to a second company, which acquired the line constructed by the original company, but the exemption was limited to the line of the second company, in so far as on the ground acquired by it from the first company, and it was further held that the 91st section of the Poor Law Act, which provides "that all laws, statutes, and usages shall be, and the same are hereby repealed, in so far as the same are at variance with the provisions of the Act," did not repeal the exemption in favour of the railway company.

The facts were—The Newtyle and Coupar-Angus Railway

Company was incorporated by 5 and 6 William IV., c. 84, the 16th section of which provides that grounds conveyed to the company in terms thereof "shall not be liable for any duties or casualties to the superiors, nor for land tax, nor any public or parish burthen." The Newtyle Company was afterwards purchased by the Scottish Midland Company, under the Act 8 and 9 Vict., c. 170, "with all powers, rights, and privileges whatsoever," of the original company. The Scottish Midland Company were, under said Act, authorised to acquire, and did acquire additional lands, and the line so constructed was a double one, one line being on the land acquired by the Newtyle Company. By the Act 19 and 20 Vict., c. 184, the line so constructed was acquired by the Scottish North Eastern Railway Company, who raised an action to have it declared that, in respect of the foresaid clause in the Act 5 and 6 William IV., c. 84, they were not liable for poor rates in the parish of Coupar-Angus, in respect of that portion of their railway in the parish, consisting of one mile and two furlongs, constructed on ground acquired by the Newtyle and Coupar-Angus Railway Company, and for repayment of certain poor rates which had been paid by them. When the case reached the Inner House (Second Division), written arguments were ordered.

The cases were laid before the whole Court, and it was held in conformity with the opinions of the majority of the judges, that the Scottish North Eastern Railway Company were not liable for poor rates in the parish of Coupar-Angus, so far as regarded that portion of their railway in said parish, which was constructed exclusively on ground acquired by the Newtyle Company, and that the 91st section of the Act of 1845 had not the effect of repealing the exemption.

Observed by the Lord President—with reference to the clause of exemption—"It has reference to certain parish burdens, and the enactment on that subject is, that 'the grounds so conveyed to the said company shall not be liable for any public or parish burden.' I think the expression 'so conveyed' applies to either of the modes of conveyance sanctioned by the preceding section. The declaration that 'the grounds' shall not be liable, is, I think, an inaccurate, but not unintelligible, mode of expressing what was intended. The object in view could not have been to exclude poinding of the grounds, because public and parish burdens are not *debita fundi;* neither could it have been to exclude any adjudication of the grounds, because there is no attempt to exclude adjudication for other debts. Nevertheless it must have been intended to confer an exemption from public and parish burdens, with reference to 'the grounds,' and, therefore, must mean an exemption from that liability for parish and public burdens, which, but for such exemption, would have at-

tached to the company as owners of the grounds. . . . It has been contended that the exemption conferred by the 16th section of the Newtyle Railway Act, has, in regard to poor rates, been repealed by the assessing clause in the Poor Law Amendment Act, taken in conjunction with the 91st section. . . . I think that the force thus attempted to be given to the 91st section is beyond what it will bear; and, if sustained, would go the length of sweeping away all exemptions whatever, even of crown property and the like. . . . It has been contended that the exemption has reference only to the grounds, and is inapplicable to the composite subject, the railway, comprehending the rails and stations, and all the et ceteras that give value to a railway—constituting a new species of property, which is the thing valued in the valuation roll. I think that this view is not sound. The use to which the ground has been turned, is that with reference to which the exemption was given. That use, or the relative works that have been constructed on the ground, may have enhanced its value; but the present annual value is the subject and the limit of the assessment.

"The principle of assessing railways, introduced in 1845, in reference to poor rates, and established in 1854, in reference to all assessments levied on the real rent, appears to me to have a practical bearing on this question. The value on which the pursuers are to be assessed in the parish of Coupar-Angus, has reference to the lineal measure of their line within that parish. The breadth of their ground, or the superficial area of it, are not elements in the calculation. Accordingly, their demand in the summons is to be relieved of assessment, as regards one mile and two furlongs, or thereby, of the length of their line, which they say is for that distance constructed on the ground acquired by the Newtyle Company, under the Act of 1835. From the printed minute for the pursuers I understand that the exact length for which they claim exemption is 102 chains. But from that minute it also appears that of these 102 chains, 38 include ground that did not belong to the Newtyle Company, but was acquired by the Midland Company, in order to give additional breadth to their line. For that distance of 38 chains, the railway is composed of ground partly acquired from the Newtyle Company, and partly not so acquired. The other portion, extending to 64 chains in length, is said to be entirely on ground that belonged to the Newtyle Company, and, if so, a deduction proportionate to the ratio of 64 chains to the whole length of line in the parish of Coupar-Angus, would appear to be equitable in regard to these 64 chains. But in regard to the 38 chains, there is not the same obvious means of extrication. In regard to that piece of the line, the claim for exemption is not pure, and, as breadth or superficial area are not elements in the valuation, I do not think that they can be taken as legitimate elements for apportioning the valua-

tion. I am therefore disposed to repel the claim as regards these 38 chains, and to sustain it as to the 64 chains."

Note.—Compare this judgment with the decision of the House of Lords in the subsequent case of the Scottish North Eastern Railway Company *v.* Duncan (*infra*, p. 88), which lays down a different principle.

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53. The Edinburgh and Glasgow Railway Company *v.* Charles Stewart Meek (Collector of the Barony Parish of Glasgow), December 10, 1864.—3 M. 229; 37 *Jur.* 109; 7 *P. L. M.* 234.

Deductions—Competency—Lands Valuation Act.—A parochial board, anterior to the date of the Lands Valuation Act, imposed an assessment according to a system of classification, approved of by the Board of Supervision, under which, *inter alia*, a deduction of 20 per cent. was allowed off the gross rents of house property, and 15 per cent. from the rent of lands devoted to agricultural purposes. After the passing of the Valuation Act, the assessment continued to be imposed in the same manner. A ratepayer, having suspended a charge for payment of poor rates, on the ground of inadequate allowance to cover the deduction specified in the 37th section of the Act of 1845, the parochial board pleaded that the suspension was incompetent; because,—1st, Under the Valuation Act, the assessment falls to be laid on according to gross rent, and the deductions referred to in the 37th section of the Poor Law Act are repealed; and, 2d, the allowances of 20 and 15 per cent. were part of a system of classification acted on in the parish. The Court repelled these pleas, holding the suspension competent, and allowed the case to proceed, for the purpose of ascertaining the sufficiency of the deductions allowed by the parochial board.

Observed by the Lord President—"It is not necessary for us to determine whether the deductions specified in the 37th section of the Poor Law Act have been abrogated by the provisions of the Lands Valuation Act. I think that they have not, and that the right to get these deductions still exists; but it is unnecessary to decide the point in this case. I may, however, remark that to hold otherwise would make the 41st section of the Lands Valuation Act scarcely intelligible. The operation of the

Lands Valuation Act is this:—The 37th section of the Poor Law Act defines annual value to be what the subjects would let for one year with another. The Lands Valuation Act has taken that inquiry, and the necessary investigation in order to ascertain the rent, out of the hands of parochial boards, and has provided that a certain sum, to be fixed under the Valuation Act, shall be taken as the rent. But then the 37th section of the Poor Law Act provides that the parochial board shall do something more—they shall make certain deductions. The assessment is to be imposed on the rent 'under deduction' of certain things. Now, the Lands Valuation Act does not provide—makes no provisions as to these deductions—and the obligation of the parochial board, under the Poor Law Act, to make them, would therefore seem to remain operative. It is said that this view would interfere with the utility of the Lands Valuation Act. I think not. The utility of the Lands Valuation Act consists in rendering it unnecessary for parochial boards to employ valuators in order to ascertain what the subjects would let for."

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54. Ebenezer Adamson (Inspector of City Parish of Glasgow) *v.* The Clyde Navigation Trustees, January 27, 1860, and June 26, 1863.—22 D. 606; 1 M. 974; 32 *Jur.* 203; 35 *Jur.* 569; 2 *P. L. M.* 350; 5 *P. L. M.* 607; H. of L. June 22, 1865; 3 M. 100; 37 *Jur.* 512; 4 Macq. 931; 8 *P. L. M.* 3.

Liability to Assessment—Wharfs, Docks, &c.—Principle of Assessment.—The Clyde Navigation Trustees, as statutory Commissioners for improving the navigation of the Clyde and erecting and maintaining wharfs, docks, &c., were authorised to borrow large sums of money, to purchase ground, and to levy dues on the shipping using the river and harbour, and on the goods landed thereat. They exercised all their powers, and appropriated the dues so levied to certain purposes specified by statute, and, *inter alia*, "the ordinary outgoings and expenses of the trust." Held (by the House of Lords, affirming the judgment of the Court of Session)—(1) that the Commissioners, as owners and occupiers of lands and heritages, were, in terms of the Act of 1845, liable to assessment for poor rates, and that said Act made no exemption in favour of those who occupy only for the benefit of the public; (2) that the trustees were liable to assessment on the annual value of the wharfage ground, quays, &c., it being competent for the assessor to take these into account in fixing the valuation of dues levied under

the statute; (3) that the trustees were not liable in assessment in respect of the river and right of harbour as separate subjects; but (4) that they were liable as owners and occupiers of a ferry within the parish.

The grounds maintained on each side on the general question appear from the following portion of the joint opinion of Lords Deas, Neaves, Ardmillan, Mackenzie, Jerviswoode, and Ivory :—

After quoting section 34 and the interpretation clause of the Act of 1854, the opinion proceeds—"Keeping in view these explanatory clauses, we see no reason to doubt that the defenders are owners, in the sense of the Act, and that their quays, wharfs, and docks are lands and heritages in respect of which an assessment may be made, whatever may be said of other subjects connected therewith. It is not pleaded, and could not be maintained, that the defenders have any personal privilege of exemption from assessment, as representing the Sovereign. Their lands and heritages are not the property of the Crown, nor are the defenders the mere servants of the Sovereign, as some public officers are, who cannot, therefore, be assessed, because this would be to tax the Sovereign. Neither is there any pretext for saying that their lands and heritages are such as in their own nature to exempt them from liability. But it is said—1st, that the free annual revenues are applicable solely to the improvement of the subjects; and, 2d, that the subjects themselves are held solely for the public purposes—viz., the purposes of trade and navigation, in which the whole members of the public are equally interested. But the application, whether voluntary or cumpulsory, of the whole income derived from a particular subject, to the improvement of that subject, will not, in the ordinary case, found exemption from assessment under the Poor Law Act. Nor is it essential to assessability that the owners should be in receipt of the rents and profits for their own use, or that their occupancy should be beneficial to themselves or to any one. These are not elements which the statute requires to be looked to in this matter, or in reference to which an immunity from taxation can be given, where it cannot otherwise be claimed. This objection to assessability, therefore, really resolves into the next—viz., the public nature of the purposes for which the subjects are held. But the subjects are not held for behoof of the whole public in any other sense than this—that those members of the public who find it for their interest to pay certain dues, are entitled to the enjoyment of certain corresponding advantages. True, every one has the right who complies with the condition of payment. But so it is with a public inn, a public railway, a public ferry, and so on. In all such cases, equally, it is presumable that the dues or charges will be higher or lower in proportion to the burdens laid upon the owner and

occupant. But poor rates and other burdens are exigible nevertheless. Nor is it unreasonable that those who benefit by the trade and commerce of a port should thus, indirectly, contribute to the maintenance of the pauper portion of the population, which that trade and commerce naturally tend to foster and increase. . . . It seems, in the present case, impossible to say that the defenders are not owners of statutory subjects of some value. They are owners, *inter alia*, of quays, wharfs, and docks; and as these were constructed on land that was assessable, and are themselves of some use, they must be persumed to be of some value. The value by the Poor Law Act, is to depend on what a tenant may be supposed from year to year to give for the subjects, after certain deductions, such as the expense of maintenance and repair."

Observed by the Lord Justice-Clerk—"My own opinion upon the general question involved in this case is, and always has been, that there is no exception from taxation, general or local, in this country, of any property whatever, except Crown property; or in other words, property belonging to the State, or devoted to State purposes. I avoid the use of the term 'public purposes' as being ambiguous. I mean property devoted to State purposes, and in the hands, or under the management and control of some department of the Government. I think the property in the Leith Dock case was fairly described as being in that position."

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55. Edinburgh and Glasgow Railway Company *v.* David Hall (Collector of City Parish of Glasgow), January 19, 1866. —4 M. 301; 38 *Jur.* 157; 8 *P. L. M.* 269.

Railway—Deductions—Mode of Computing.—In a suspension by a railway company of a charge for poor rates on the ground of insufficient deductions under the 37th section of the Poor Law Act of 1845, a remit was made to the Assessor of Railways and Canals to report as to the deductions proper to be made. He reported that the sums actually expended by the company for repairs, insurance, &c., including the expense of maintenance and renewal, amounted, on an average of twelve years, to 28·60 per cent. But the reporter proposed to allow the company (1st) an additional deduction of 5 per cent., in respect that the company had not expended a sufficient sum for renewal during these twelve years, and that, as the average "life" of a railway is sixteen years, a larger outlay would be required during the

next four years; and (2d) an additional deduction of 1·53 per cent., on the ground that other lands and heritages in the parish had received to that extent too large an allowance. Held that the company was not entitled to the additional deductions of 5 and 1·53 per cent. And held by the Lord Ordinary (and acquiesced in), (1) that the taxes actually payable for the year of valuation must be deducted under the 37th section of the Act of 1845, and that to deduct an average of the rates and taxes was contrary to the section; and (2) that in estimating the average deduction for repairs, &c., the proper mode is to calculate according to the proportion the gross amount of several years' expenditure for repairs, &c., bears to the gross amount of valuation of the subject for the same years.

Observed by the Lord Justice-Clerk—"With regard to the proposal to allow the additional deduction of 1·53 per cent., it seems to me an entirely incompetent proposal in a suspension. The ground on which we are asked to allow the deduction is, that by unauthorised and illegal calculation of the statutory deductions given in different classes of property other than railways in the parish, the owners have received deductions beyond what they are entitled to by 1·53 per cent.—that they have been benefited to that extent at the expense of the railways; and, therefore, the suspenders claim to receive in this suspension the ease that has thus been illegally allowed to the other owners. That amounts to a proposal that the Court should do something against the law for the benefit of the suspenders, because extrajudicially a similar illegality has been committed between the parochial board and the other owners. I have no difficulty in saying that that is entirely incompetent. The only question of any importance is raised by the demand for an allowance of 5 per cent., in addition to the other deductions proposed by the reporter, and enumerated in his report. . . . Now, in disposing of this question, we must keep strictly in view the provisions of the Act of Parliament. The valuation is to be made 'under deduction of the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state.' Whatever cannot be brought properly under the name of repairs, cannot be taken into the calculation. But in practice, and the practice has been justified by the decision of the Court in the case of the Glasgow Gas Light Company *v.* Adamson, the expense of renewing portions of a composite heritable subject like a railway has been allowed as a repair. In one sense such renewals are not repairs, being the replacement of a particular subject, but they

are, nevertheless, repairs of the general composite subject, the railway. Even house property, as everybody knows, requires repairs of this kind. . . . Such repairs fall to be made on all such property, and it is therefore fair and proper that they should be allowed, as within the meaning of the Act of Parliament. But, on the other hand, we must not be misled by the use of this term 'renewal' into supposing that the original cost of construction requires to be repeated from time to time, and that a yearly allowance must be made for bringing the whole subject into existence again at the expiry of some definite period. The reporter in this case speaks of this period as the 'life' of the railway. Now, to estimate the life of a railway appears to me a most speculative proceeding, and cannot be taken as the basis of any calculation which the Court could sanction. . . . The position of the railway company is that they are bound to show what, in point of fact, is the cost of maintaining the railway. They may produce evidence of this for as many years as they can, or as they think expedient. But if they fail to obtain and produce the evidence for a sufficiently long period, they must be the sufferers. In this case they have given the particulars for twelve years, and the average of these gives the result of 24·85 per cent. I am unable to see any reason under the Act why this should not be taken as the 'probable annual average cost of repairs.' The past cost of the repairs for these years affords as good data as that of any other years."

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56. John Wilson Gardiner (Inspector of North Leith) *v.* The Commissioners for the Harbour and Docks of Leith, June 17, 1864.—2 M. 1234; 36 *Jur.* 617; 7 *P. L. M.* 61; H. of L. March 12, 1866; 4 M. 14; 38 *Jur.* 279; 8 *P. L. M.* 432.

Docks—Liability.—Held by the House of Lords (affirming judgment of the Court of Session) that the Leith Dock Commissioners were liable to assessment for poor rates, in respect of their docks, harbours, &c., as being, in the sense of the statute, "owners and occupiers" of "lands and heritages," there being no statutory appropriation of the harbour revenues to any public purpose.

This case raised the same question as the Clyde Navigation Trustees case, which was under appeal to the House of Lords at the date of the Leith case. The question was, whether the Commissioners for the Harbour and Docks of Leith were, in the sense of the Act of 1845, owners and occupiers of the docks,

&c., and therefore liable in assessment for poor rates? The ground upon which exemption was claimed was, that the property held by the Commissioners was solely and exclusively for the benefit of the public, and the revenues accruing therefrom were by statute appropriated to the maintenance and repair of the harbour, and to the liquidation of the debt incurred in the construction of the works. The Court of Session (Lord Curriehill dissenting) repelled this view, and held the Commissioners liable—as owners and occupiers, and this judgment was affirmed on appeal by the House of Lords.

Observed by the Lord President—"I think the mere circumstance that the revenue derived from these subjects is appropriated under a commission to general purposes, is not a reason for relieving these subjects from liability for poor law assessment; and that the words of the statutes, especially the last, leave the matter open to the construction, that all burdens and charges of of this kind are to be defrayed before you get the clear revenue of the trust. But the question arises, whether, from the nature of the subjects, and the appropriation of the revenues, there is exemption? One view maintained by the defenders was, that these subjects are not assessable, in respect that a great portion of them is composed of lands recovered from the sea. I think that view is quite untenable. Whatever may have been their former condition, they are lands now converted to use for buildings, and attached to the land. No doubt they are used by the introduction of water from the sea; but that does not exclude them from assessment, any more than it does canals or aqueducts. . . . I cannot view these buildings as extra-parochial. There are no such things as extra-parochial houses and buildings. . . . Then there arises an important question, whether these subjects are, in their own nature, to be regarded as lands and heritages in the sense of the Poor Law Act? I have no doubt they are, so far as use is made of them. But then it is said that the whole revenue is applicable to public purposes, which exempts them from assessment; and, on that point, reference is made to the interlocutor of an eminent judge, the late Lord Mackenzie, in regard to the harbour of Leith. I cannot say, however, that I am convinced by that opinion that these are purposes which take the subjects out of the rule of the Act in regard to assessment. I think that matter was substantially decided by the case of Adamson *v.* The Clyde Trustees. I cannot see any distinction, in this respect, between that case and the present one. This property is held by commissioners for the use of the public, such of the public as find it convenient to use it, but it is subject to all the charges legally exigible. . . . It may be, it is said, that there are certain interests here which bring the subject within the exemption applicable to Crown property. I confess I

do not see the case in that light. None of these revenues are applicable to the proper purposes of the Crown, as part of the heritable revenue of the Crown. None of them are applied to relieving the general taxation of the country; not even to the payment of debts due to the nation. In what respect, then, is exemption claimed? The ground is merely another form of the argument that this property is devoted to public purposes, and that only amounts to this—that harbours and docks are matters of convenience, for the purposes of conveyance and trade. But that is not enough. It may be said of other species of property which are not exempt. The same may be said regarding the tenure of the property. The defenders are commissioners for the public interest; but they do not hold these revenues as part of the hereditary revenue of the Crown, or funds applicable to national purposes."

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57. Peter M'Laren *v.* The Trustees of the Clyde Navigation and Robert Harvey, November 17, 1865.—4 M. 58; 38 *Jur.* 28; 8 *P. L. M.* 233.

Assessment for Rebuilding Parish Church—Purpose of Valuation Act.—By section 6 of the Lands Valuation Act it is provided, that where lands are let under lease for more than twenty-one years from the date of entry, the rent payable under such lease shall not necessarily be assessed as the yearly rent or value of the lands; "but such yearly rent or value shall be ascertained in terms of this Act, irrespective of the amount of rent payable under such lease, and the lessee under such lease shall be deemed and taken to be also the proprietor of such lands and heritages in the sense of this Act, but shall be entitled to relief from the actual proprietor" for the proportion of assessment corresponding to the rent payable to such proprietor; and section 41 further provides, that "nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment." Held that a lessee under a lease for more than twenty-one years is not liable for any part of an assessment imposed for rebuilding a parish church, notwithstanding the above terms of the 6th section of the said statute.

Observed by Lord Neaves (who delivered the opinion of the Court)—"It is important to inquire what is the general purview of the Valuation Act. This seems to be explained in the title and preamble of the Act. Its title is 'An Act for the Valuation

of Lands and Heritages in Scotland.' Its preamble is, that 'it is expedient that one uniform valuation be established of lands and heritages in Scotland, according to which all public assessments leviable, or that may be levied, according to the real rent of such lands and heritages, may be assessed and collected, and that provision be made for such valuation being annually revised.' Further light upon the leading object of the Act is to be derived from the last section but one of the Act—the section which immediately precedes the interpretation clause—by which section (41) it is declared, *inter alia*, 'That nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment.' From these elements it seems easy to understand what the main purpose of the Act was. There exist, in reference to the exigencies of the country, a variety of assessments of different kinds imposed upon different classes of persons in respect of different classes of heritable property; and, in order to work out more easily the collection of those assessments, it was thought advisable to have one uniform valuation made up, which might be resorted to in calculating and levying the assessments imposed by the previous Acts, where those assessments are or may be levied according to the real rent. The Valuation Act is not an Act for taxing parties. It is an Act merely for valuing properties. The warrant and nature of each assessment must be looked for in the original Acts imposing it, and it is only the arithmetical ascertainment of its amount that the Valuation Act is intended to facilitate. All sorts of heritages are to be put into the roll and valued; but all sorts of heritages are not to be subjected to each assessment on that account. The original Act must fix what classes of properties are to be looked for, and it is the value only that is to be found in the valuation roll. In the same way, certain classes of persons are to be entered in this roll in connection with heritages; but those persons only are to be subjected in any assessment who are made liable by the statute imposing it. The 33d section of the Act makes it imperative to take the real rent of any subjects from the valuation roll; but it is nowhere said that the roll is to be the rule as to the parties assessable. The entry of a person's name upon the roll is no ground of liability unless he is otherwise liable, and its omission from the roll is no ground of exemption if he is not otherwise free."

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58. The North British Railway Company *v.* George Greig (Inspector of City Parish of Edinburgh) and John Mackay (Collector of said Parish), March 20, 1866.—4 M. 645; 38 *Jur.* 333; 8 *P. L. M.* 483.

Railway—Refreshment-room—Book-stall—Cab-stand.—Held (by

a majority of the Judges of the First and Second Divisions, and reversing the judgment of the Lord Ordinary) that refreshment-rooms at a railway station, which were let at a fixed rent to a tenant for the exclusive use of railway travellers, and subject to the railway company's regulations, the license being held by the tenant in his own name, did not form part of the railway undertaking, and therefore did not fall to be included in the general valuation of the company's lands and heritages, made by the assessor of railways and canals, but fell to be valued by the local assessor of the parish in which they were situated; and further held (affirming the judgment of the Lord Ordinary) that when the railway company let the privilege of selling books and periodicals at their station, the tenant having right to erect book-stalls, and also let the privilege of supplying cabs within the station, that the book-stalls and cab-stands formed part of the general undertaking of the company, and fell to be assessed as such by the assessor of railways and canals.

This was a suspension of a threatened charge by the City of Edinburgh for payment of poor rates said to be due by the North British Railway Company. The facts and arguments appear from the opinion of Lord Neaves, who delivered the leading opinion of the majority of the Judges.

Observed by Lord Neaves—"A question has arisen as to the manner in which certain subjects belonging to the North British Railway Company shall be dealt with. These subjects are certain cab-stands, refreshment-rooms, and book-stalls, at or near the stations of the North British Railway Company at Waverley Bridge, Princes Street, and Scotland Street, respectively. . . . I shall first deal with the question of the refreshment-rooms. . . . By the 21st section of the Valuation Act, the special assessor is to fix the rent or value of all lands and heritages belonging to or leased by each railway company, and 'forming part of its undertaking.' By this clause, then, any particular and visible subject can only be excluded from the ordinary valuation, and included in the railway valuation, provided it fall under this double category—1st, that it belongs to, or is leased by, the railway; 2d, that it forms part of its undertaking. It is not enough that a subject shall belong to the railway, it must also form part of its undertaking; and the reason of this limitation is obvious. A railway company may legitimately come to be the owners of many subjects not forming part of its undertaking. It may

have right to fields which are put to ordinary agricultural uses, or to houses which are let to ordinary tenants on ordinary terms. It is plainly not the object of the Valuation Act to exempt such subjects from ordinary valuation and assessment. If it is not enough to bring them under the railway clauses, that subjects belong to the railway, neither is it enough that the subjects lie contiguous to, or continuous with, the undoubted works of the company. It is not the locality, but the character and uses of the subjects that must determine this question. It is needless, however, to dwell on this matter at length, because I understand it to be conceded, and hold it at any rate to be indisputable, that an inn or hotel, though belonging to a railway company, and even situated within the limits of its station, of which there are well-known examples, would not be held to be part of its undertaking, and so exempted from valuation. The present case comes in this way to a narrow issue. On the one hand, it is clear that a mere waiting-room, held and used by the company as a shelter for passengers, would be a part of the undertaking; while, on the other hand, an inn or hotel, though in the same local position, would not be held part of the undertaking. To which, then, of these two classes is a refreshment-room to be assigned or assimilated? Is it to be a waiting-room, or is it to be a hotel? Now, in the first place, there is this feature about refreshment-rooms, that they are not held or occupied by the railway company, but by a tenant. . . . It has been suggested in argument that the occupant of these refreshment-rooms is rather to be considered as a servant of the railway company, employed by them as a hand for supplying refreshments to their passengers. . . . If the occupant were the company's servant, the profit and loss of the concern would be the company's; whereas all that here falls to the company is the fixed rent, while the occupant runs the risk of not making even so much by the business, and has also the chance of making much more, which will entirely belong to himself. . . . I see no reason to doubt that the tenant could maintain his possession against the landlord during the term of his lease, or until it is duly put an end to under some of its special stipulations. In so far, therefore, as regards the matter of tenancy and occupancy, it is clear that these refreshment-rooms come under the same category with an inn or hotel, and not under that of a mere waiting-room or place of shelter. . . . The tenants of the refreshment-rooms in question have obtained certificates as for public-houses, for the sale of excisable liquors within the premises in question, and on the usual conditions, and the relative excise licences have also been granted for carrying on the trade of a publican on that footing. The refreshment-rooms in question are parted with by the railway company, for the purpose of another occupant therein carrying on a trade of

his own, at his own risk. This is surely not a devolution on the occupant of any functions belonging to the railway company, but a demise or location by the company of their property for a rent, to enable the occupant to carry on a different undertaking of his own. . . . There are two grounds of argument, which have been urged in favour of the railway company, which I shall shortly notice. 1. It is said that the lease of the refreshment-rooms is made subject to conditions and regulations by the company; but I do not think that these can change its character. A proprietor establishing an inn at his own door, may subject it to regulation for his own convenience, but that would not otherwise affect it. 2. It is said that these refreshment-rooms are established for the benefit of the company, and to promote their traffic, by consulting the convenience of travellers. But the same might be done by establishing an inn or hotel, or by setting up a bazaar, or series of shops, to be occupied by different tradesmen, for the sale of articles connected with travelling. Such subjects, however, would plainly be no part of the company's undertaking. In conclusion, I would observe, that according to the system of local taxation established in this country, some taxes are levied upon owners, and some upon occupiers. If the railway company are here the owners, and the tenants the occupiers of these refreshment-rooms, why should that mode of assessment not be followed out? and why should the Valuation Roll not furnish the material for doing so? . . . With regard to the cab-stands and book-stalls, I am of a different opinion, and upon this ground, that in neither of these cases does there appear to be a proper tenancy, or a proper subject of tenancy. With regard to the cab-stand, the agreement of parties merely lets the exclusive privilege of supplying with cab accommodation the passengers arriving by the company's trains; and in like manner, as to the book-stalls, there is merely let the exclusive privilege of retailing books and newspapers at the stations. The tenant, indeed, as he is called, agrees to erect a book-stall, bnt no premises are truly let, and no permanent structure of any kind is stipulated for. These, therefore, seem to be merely grants of access to the station or platform for certain purposes, with an exclusion of any competition in that business. I do not think that this is a proper lease of any portion of the company's buildings or property."

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59. George Greig (Inspector of City Parish of Edinburgh) *v.* The Feoffees of Trust and Governors of George Heriot's Hospital, March 28, 1866.—4 M. 675; 38 *Jur.* 362; 8 *P. L. M.* 558.

Exemption—Charitable Institution.—Held that the Governors of

Heriot's Hospital were liable in assessment for poor rates, as owners and occupants of the hospital buildings and grounds.

The case raised the questions similar to those decided in the case of the University of Edinburgh (*infra*, p. 86). The grounds upon which Heriot's Hospital claimed exemption, appear from the opinion of the Lord President—"I am not moved by the argument that there are no owners here in the sense of the statute, because the word 'owner' means the person who is in receipt of the rents and profits of the subject. I hold that a person who has the beneficial occupation of a subject, is in receipt of the rents and profits of that subject. And I think that the parties to be looked to here are not the boys, but the trustees who are proprietors of the subject, and the managers of the estate. The mere fact that they do not make the boys pay rent is nothing. They have a beneficial occupation of the premises—from the use of them for that purpose, for which the institution was established.

"Is there, then, an exemption by reason of this being an educational institution, and also a charitable educational institution? That it is an educational institution will not do, otherwise all educational institutions would be exempted. Neither is its charitable character sufficient to give it exemption.

"Then, is this a Crown or a national institution? I cannot think that it is. I do not think that a private Act of Parliament, passed for enabling the trustees to apply the revenues to other purposes than those to which they were originally limited, is to be regarded as making this a national institution, when it was not so before. If it were possible to make out any ground of exemption under that Act, it would be for the schools established under its authority; but I am far from saying any such claim could be made out. . . . Therefore, I do not think that a national character can be claimed for this institution, from the circumstance that there has been a recognition of it by the legislature in this Act of Parliament.

"Then, is it itself a national institution? I cannot think that it is. George Heriot left this fund for the establishment of an hospital, and for a limited purpose—not merely for a local purpose, but for a limited purpose, for it was instituted for the benefit of a limited class, the children of burgesses. The institution has since become very large, and the class benefited by it has been extended. But still that is its character, and it cannot be called a national institution in any sense. It is true that it is described in the early Act of Parliament 'as an ornament to the nation,' and I adopt that expression as applicable, not to the building, but to the foundation, in the same way as, when a man is spoken of as an ornament to his country, the expression is not meant to apply to his physical appearance. But the nation has

nothing to do with this institution, and it is quite out of the rule that has been established for the exemption of national property.

"It is said the institution has been hitherto exempt. That means that it has not hitherto been taxed. For a long time, however, the Poor Law, as regards rating, was very loosely administered, and a very loose way of granting exemption prevailed. . . . But that will not give a legal right to exemption. . . . Nothing is now exempt but Crown or national property, and the Lord Chancellor expressly says that charitable institutions and hospitals can no longer be regarded as exempted. That was said in the Mersey Dock case; but the same thing applies to Scotland."

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60. Edinburgh and Glasgow Railway Company *v.* David Hall (Collector of City Parish of Glasgow), June 29, 1866.—4 M. 1006; 38 *Jur.* 515; 8 *P. L. M.* 593.

Annual Value—Deduction—Income Tax.—Held that, in estimating the annual value of lands and heritages, income tax charged on income derived from such lands and heritages, under the Income Tax Act, is not, being a personal tax, one of the rates, taxes, and public charges, which, in terms of the 37th section of the Poor Law Act, fall to be deducted.

Observed by the Lord Justice-Clerk—"I think a consideration of what the true nature of the income tax is, will make it very clear that it is impossible to hold the income tax to fall under any such general description as 'public purdens,' or 'public and parochial burdens,' or 'rates, taxes, and public charges,' which last is the expression used in the 37th section of the Poor Law Act. The income tax, as it is popularly, and, I think, very accurately called, is really a tax upon the free income of every subject of Her Majesty, above a certain amount, at the rate of a certain percentage upon that free income. That is the nature of the tax. . . . Now, if we consider what its operation is, especially with reference to the rents of land—the thing that we are here dealing with—I think we shall see very plainly that it cannot be said to be a public charge of any kind payable in respect of lands and heritages. A landed proprietor is not directly charged with the tax on his rents. On the contrary, the payment of the landlord's income tax is made in the first instance by his tenant. The 7d. in the pound, where the estate is let to a tenant, is paid by the tenant who is in the occupation, and that 7d. in the pound is deducted by the tenant from the rent which he pays to the landlord. But, then, although in this way the landlord receives his rent, *minus* the tax, and so indirectly is made to pay

7d. in the pound upon his rent, it by no means follows that he pays in the end a tax of that amount, because it depends entirely on what the amount of his own free income is, whether he pays 7d. in the pound upon his rents, or whether ultimately he will pay anything in the pound upon his rents at all; for if he is burdened to the full amount of the value of his estate with debt —whether heritable or personal debt, does not matter—or, in other words, if the rents which he receives from his tenants, he is obliged to pay away in the shape of interest to his creditors, he will deduct from that interest the amount of the income tax, and the result will thus be, that the creditors of the landlord, and not the landlord himself, will bear the burden of the tax. Now, that being so, it would be a very strange thing, if a tax which can be shifted so as to become payable by a person who has no sort of connection with the land at all, or whose connection with the land is only that of a creditor secured over it, should yet be called a tax or public charge 'payable in respect of lands and heritages.' I think that would be a misconstruction of the fair meaning of these words. But this will be made still more clear if we attend to the contrast which arises between the incidence and operation of the income tax, and those of the ordinary taxes which are called public and parochial burdens; and we cannot take a better example than the poor rate itself. The poor rate is charged as a percentage upon the annual value of the heritable subject, as fixed under this 37th section. But that subject may, from accidental causes, in point of fact be not yielding a shilling to its owner, and yet the owner will be liable to pay the poor rate to the full amount, according to the rateable value of the subject. On the other hand, in the case of the income tax, the rateable value of the subject cannot subject the owner in liability, unless he not only receives that value, but keeps it in his own pocket. There cannot be a greater contrast than is thus presented between these two different kinds of taxes. And so I come back to what I think was very clearly and well stated as part of the judgment of this Court by Lord Neaves, in the case of Hard *v.* Anstruthers, in dealing with this very matter of the income tax. His Lordship says in that case, where it was proposed to charge the income tax on a person who was the owner of the estate for the time, but was not, in point of fact, receiving the rents, or receiving any value out of the estate—'It seems to me to be sufficient to say that the pursuer has no income out of these lands effeiring to the period. Income tax is truly a personal tax on personal income. It is of no consequence how it is levied as to machinery. The thing is to ascertain how, and by whom it is due. It cannot be due without income.' . . . It appears to me, therefore, that the income tax cannot be allowed as one of the deductions which are to be made under the 37th section of the Poor Law Act."

61. The Glasgow Gas Light Company *v.* Peter Beattie (Inspector of Barony Parish of Glasgow), February 15, 1868.—6 M. 406; 40 *Jur.* 194; 1 *P. L. M.* 425.

Overpayment—Agreement.—The Glasgow Gas Light Company brought a suspension of a poinding for recovery of poor rates, executed by the City Parish of Glasgow, on the ground that sufficient deductions had not been given from the gross rental. While that process was in dependence, an agreement was entered into in 1856 between the company and the Barony Parish of Glasgow, whereby it was agreed that the questions between them, as regards the year's assessment then payable, should be ruled by the decision in the case between the company and the City Parish, and the Barony Board bound itself to repay such part of the said assessment as might, by that decision, be found to have been illegally imposed. This agreement was renewed in 1857 for the next year's assessment. In 1858 and 1859 no formal agreement was executed, but the receipts granted by the board for the assessments then levied bore that the money was paid on the above footing. In 1860, 1861, and 1862 the receipts contained no reservation or reference to the arrangement. Held (1) that the assessments for 1860, 1861, and 1862, equally with those of former years, must be regarded as paid by the company and received by the board, subject to the terms of the agreement as to repetition; and (2) that interest was due on all sums overpaid by the company.

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62. John Douglas and Others *v.* John Dickie (Inspector of Stevenston), March 10, 1868.—1 *P. L. M.* 365.

Tenants under £4 *Rental—Exemption—Parochial Board.*—A parochial board came to a resolution to exempt from payment of assessment all tenants and occupants whose rents did not exceed £4 per annum. An action of declarator and reduction of this resolution having been raised by two members of the board;—Held (by Lord Jerviswoode, whose judgment became final)—(1) that the pursuers had a good title to sue the action; and (2) that the resolution was illegal, as *ultra vires* of the parochial board, in respect that amount

of rent is no test of "inability to pay" poor's assessment, and that tenants under £4 of rental are not a class of persons in the sense of the 42d section of the Poor Law Act of 1845.

Observed by the Lord Ordinary in his note—"It appears to the Lord Ordinary the direct operation of the exemption provided under the resolution complained of, is not, as authorised by the statute, to exempt 'any person or *class of persons*,' but to exempt only a *class*, or certain description of *property*, for which there is no warrant within the provisions of the statute."

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63. Anne Macome *v.* William Noon Dickson, June 6, 1868.—40 *Jur.* 508.

Furnished House—Liability for Taxes.—Where a house was let furnished on a three years' lease, with no stipulation as to payment of taxes;—Held that the taxes were payable, not by the tenant, but by the landlord.

Note.—This has been applied in the Sheriff Court to the case of poor rates.

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64. The University of Edinburgh *v.* George Greig (Inspector of City Parish of Edinburgh), July 20, 1865.—3 M. 1151; 37 *Jur.* 598; 8 *P. L. M.* 159; H. of L. June 8, 1868; 6 M. 97; 40 *Jur.* 520; 1 Sc. Ap. 348.

University—Liability to Assessment.—Held (by the House of Lords reversing the judgment of the Court of Session) that Edinburgh University is liable to assessment for poor rates.

The University of Edinburgh raised an action of declarator against the City Parochial Board of Edinburgh, concluding "that the pursuers are not liable, either as owners or as occupants, to be assessed for poor rates for the City Parish of Edinburgh" in respect of the site and buildings of the university, averring that the University buildings were used solely for purposes connected with the studies carried on in the University, and the training of students—that no revenue was derived from their occupation, and that the whole buildings belonged to the University. The pursuers pleaded that the University buildings being national or public property, or property dedicated to national or public purposes, and from which no revenue was derived, were not subject to assessment for poor rates. The defenders main-

tained that the said buildings being lands and heritages in the sense of the Act of 1845, they were liable to assessment, according to the value in the valuation roll. The Lord Ordinary (Barcaple) decided against the University, but his interlocutor was reversed by the Second Division of the Court of Session, whose judgment again was reversed by the House of Lords, the result being that the University was held not to be exempt from assessment. The grounds of judgment in the Court of Session, as stated in the opinion of the Lord Justice-Clerk, were that the University was, as owner of the University buildings, in the position of a trustee for public purposes, to which purposes the property was devoted by the sovereign power, and of which purpose the government of the country could, if necessary, compel the implement. These views were, however, held by the House of Lords to be erroneous.

Observed by the Lord Chancellor—"The general principle is this, that the Crown not being named in the English or Scotch Statutes on the subject of assessment, and not being bound by statute when not expressly named, any property which is in the occupation of the Crown, or of persons using it exclusively in and for the service of the Crown, is not rateable to the relief of the poor. If that is the true principle (and such it must now be taken to be), it is very easy of application to the present case. The University of Edinburgh is, no doubt, a great public and national institution; but the corporation of the University of Edinburgh is a corporation independent of the Crown; no doubt, originally created by, but still independent of the Crown. Its property is not Crown property, but it is property vested in the Senatus Academicus for the University purposes. . . . With regard to the allegation that it is property dedicated to public purposes, that dedication, after the previous decisions of this House, must now be taken to be a wholly insufficient ground of exemption. Therefore, on the first argument of exemption on the score of Crown privilege, it appears to me that the buildings of the University of Edinburgh cannot be brought, in any sense, under that exemption. Then, on the second point, . . . it has been stated that the property is not capable of producing value. . . . It might be sufficient to dispose of that argument to say that in a case where we find the University of Edinburgh actually in occupation, and conducting all the great purposes for which they are incorporated, in and by means of these buildings, that alone is a beneficial occupation, which, subject to the question of what the quantum of benefit may be, is clearly an occupation rateable for the relief of the poor."

Observed by Lord Westbury—"The true ground of exemption was ascertained and expressed by this House in the Mersey Dock case; and it was found to rest altogether upon this fact, that the

Poor Laws did not include the Crown, the Crown not being named in the statute. The result, therefore, was, that Crown property, and property occupied by the servants of the Crown, and then—according to the theory of the constitution—property occupied for the purposes of the administration of the government of the country, became exempt from liability to poor rates. The confusion and looseness involved in the words 'national objects' were thereby removed; and those words, in speaking of the law upon this subject, ought to be considered as applicable to those purposes which are essentially involved in the administration of the government of the country. Now, nobody will contend that the functions of a University—to teach, to instruct, to confer degrees—are functions involved in the administration of the government of the country. They are perfectly distinct, and it is impossible therefore to bring the functions of a University within the proper meaning of government purposes; and, if so, it is impossible to hold that property granted by the Crown to the University, or for the purposes of a University, is property granted for the service of the government of the country."

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65. The Scottish North-Eastern Railway Company *v.* Walter Duncan (Inspector of St. Vigeans), December 13, 1867.—6 M. 152; 40 *Jur.* 76; H. of L. May 2, 1870; 2 Sc. Ap. 20; 3 *P. L. M.* 490.

Railway—Exemption.—Held (by the House of Lords reversing the decision of the Court of Session) that the provisions of certain local railway acts under which the railways were exempted from liability for "any public and parish burdens whatever" were abrogated by the Poor Law Act of 1845, and by the General Valuation of Lands Act of 1854; and further, held that under the said Act of 1845 a railway is to be regarded as an heritable subject to be valued *in cumulo*, and that the proper mode of valuation is to ascertain the *cumulo* yearly rent of the lands held by the railway, from which is to be deducted 3 per cent. for the cost of stations, &c., and then the proportion payable to each parish through which the line passes is ascertained in proportion to its length therein.

Note.—The terms of the exemption and the grounds upon which the Court of Session came to an opposite conclusion will be found in the case of Scottish North-Eastern Railway Co. *v.* Gardiner (*supra*, p. 67).

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66. The Trustees under the "Glasgow Bridges Consolidation Act 1866" *v.* The Board of Police of Glasgow, and the Parochial Boards of the City Parish of Glasgow and of the Parish of Govan, June 18, 1870.—4 *P. L. M.* 22.

Bridges.—Held (by the Lord Ordinary) that bridges are heritable subjects, in the meaning of the Poor Law Act and other statutes, and are liable to be assessed for the rates which, by those statutes, are authorised to be levied.

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67. The University and College of Glasgow *v.* The Burgh of Partick, December 24, 1870.—43 *Jur.* 181; 4 *P. L. M.* 214.

Entry in Valuation Roll.—The University of Glasgow claimed entire exemption from all public or local taxation and assessments, in virtue of a series of Royal Charters, Acts of Parliament, &c., combined with immemorial usage; and the old University buildings in High Street of Glasgow were never entered in the Valuation Roll. On the transference of the University to new buildings at Gilmorehill, near Glasgow, objection was made to the entry of the new buildings in the Valuation Roll. Held that they were properly entered in terms of the Act, whether they were subject to assessment or not, such entry being merely for the purpose of valuation.

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68. British Fisheries Society *v.* Magistrates and Town Council of Wick, January 30, 1872.—10 M. 426; 44 *Jur.* 248.

Suspension and Interdict—Competency.—The Magistrates of Wick, having power by a local Act to levy annual assessments for "maintaining, keeping in repair, and improving roads and bridges within Wick," had, for several years, imposed an assessment larger than was necessary for these purposes in each year in order to accumulate a fund for rebuilding a ruinous bridge;—Held that the legality of the assessment could not be tried in a process of suspension and interdict raised by a ratepayer, but opinions were indicated that the assessment imposed was legal, though no judgment was given on the point.

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69. The Commissioners of Supply for the County of Argyle *v.* The Commissioners of the Caledonian Canal, March 19, 1872.—10 M. 639.

Canal—Public Property.—A canal was constructed by a number of private individuals, incorporated by Act of Parliament, by which they were authorised to levy dues and tolls for their own behoof. A subsequent statute passed in 1799 regulated the assessment of the company's property for all public or parochial rates. The company having failed to repay large advances which had been made by the Government for the extension of the canal, an Act was passed in 1848, by which the property and administration of the canal were vested in commissioners for public purposes, the company having a power of redemption within twenty years, which, however, they failed to exercise. Held (1) that the commissioners were liable to assessment for county rates as owners and occupiers of the canal, and (2) that the valuation fell to be made in accordance with the Valuation Act of 1854, and not under the special Act of 1799.

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70. The Glasgow Tramway and Omnibus Company (Limited) *v.* The Assessor under the Valuation Act, April 2, 1873.—1 *P. L. M.* 270.

Tramway Companies—Supplementary Valuation Roll.—Held (by Lord Shand) that a tramway company commenced after the completion of the Valuation Roll for the year, is not liable to be placed in a supplementary valuation roll, there being no provision in the statute for a supplementary roll, in respect of undertakings omitted, or started since the completion of the roll, and the purpose for which the company were sought to be included in a supplementary roll not falling within the scope of section 17 of the Valuation Act.

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71. The Clerk of Supply *v.* The Parochial Board of Orwell, March 16, 1874.—2 *P. L. M.* 198.

Copy of Roll—Parochial Board.—Held (in the Sheriff-Court of Kinross-shire, by Sheriff Monro) that under a true construc-

tion of the 18th section of the Valuation Act, a clerk of supply is bound to furnish, without fee, to the several parochial boards within the burgh or county, a copy of so much of the valuation roll as relates to their respective parishes.

Note.—The expense of the copies furnished was held by Sheriff Monro to form part of the costs provided for in section 18.

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72. James Craig (Inspector of St. Cuthbert's, Edinburgh) *v.* The Edinburgh Street Tramways Company, May 27, 1874.—2 *P. L. M.* 399.

Tramways—Lands and Heritages.—Held that a tramway company were liable to be assessed for support of the poor, as owners and occupiers of lands and heritages.

This decision followed the principle laid down in the cases of Hay (*supra*, p. 52) and Pimlico Tramway Company *v.* Greenwich (*infra*, p. 114).

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73. The Glasgow Corporation *v.* Dods and Others, September 23, 1874.—2 *P. L. M.* 589.

Valuation—Tenant's Profits—Deduction.—Held (following the principle laid down in the Mersey Docks case) that a gas company, not worked to commercial profit, was not entitled to a deduction for tenant's profits, in fixing its value as a heritable subject under the Valuation Act.

Observed by Lord Ormidale—"The 'tenant' in such a case as the present, as in the case of the Mersey Docks, would in reality be little different from a collector of rates or dues. But holding his position to be more that of a collector than an ordinary tenant, allowance ought still to be made to him of a sufficient remuneration for his trouble, risk, and skill, whatever that may be, and it is of no consequence whether such allowance is called 'tenant's profits,' or designated by some other expression; but if the gas works were farmed out, and let to a tenant, they could only be so subject to the provisions of the Act, and, therefore, no allowance can be made on the ground of trade."

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74. James Galloway (Collector of South Leith) *v.* David Nicolson, March 19, 1875.— 2 R. 650; 3 *P. L. M.* 203.

Lands and Heritages—Owner and Occupier.—Held that, where the assessment is laid one-half on owners, and the other half on occupiers, one-half of the *cumulo* sum falls to be raised from owners as a class, and the other half from occupiers as a class.

The 34th section of the Act of 1845 provided three alternative methods, according to which assessments might be imposed. The first of these methods, namely, one-half of the assessment to be imposed upon the owners, and the other half upon the occupants of all lands and heritages within the parish, rateably according to the annual value of such lands and heritages, was adopted by the parish of South Leith, and by the Poor Assessments Act, 1861, this became the only legal method for imposing the assessment for the poor. In an action for recovery of poor rates against the owner of certain lands or heritages in the parish of South Leith, it was contended for the pursuer that the meaning of the provision in the 34th section of the Act of 1845 was, that the rate per pound on the annual value of lands and heritages within the parish, necessary to be imposed, so as to produce funds sufficient for the relief of the poor, having been fixed, individual owners and occupiers alike were to be assessed at one-half the rate. The defender pleaded that the gross amount of funds required was to be divided equally, one-half raised from the owners, as a class, and the other half from the occupiers, as a class; it was held that the defender's construction of the section of the statute was the sound one, and his plea was given effect to.

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75. The Caledonian Railway Company, &c., *v.* George Dods (Assessor of Railways and Canals), September 25, 1875.— 3 *P. L. M.* 587.

Railway—Water and Gas Company—Deductions.—Held (by Lord Ormidale) (1) that the circumstance that while the traffic of a railway has largely increased, the assessable value has decreased, though indicating that some error has been made in the value, is not sufficient cause for reducing the allowance for tenants' profits from 25 per cent., which had been fixed some years previously, to 22½ per cent.; (2) that in respect of carting-plant, canal-plant, and office furniture, the railway company was entitled to a deduction of 25 per

cent.; and (3) following the judgment of 1874 (*supra*, p. 91), that water and gas companies, not worked to commercial profit, were not entitled to any deduction for tenants' profits, in fixing the value of their undertaking.

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76. James Mackenzie *v.* Walter King, November 1, 1875.—3 R. 8; 3 *P. L. M.* 643.

Notice of Assessment—Due demand.—Held (in the Registration Appeal Court) that where a notice of assessment for poor rates was left by the collector at the occupier's usual place of abode, they had been "duly demanded by a demand note," in terms of the 18th section of the Act 31 and 32 Vict., cap. 48.

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77. The Highland Railway Company *v.* George Dods (Assessor of Railways and Canals), September 21, 1876.—4 *P. L. M.* 603.

Railway—General Valuation.—Held (by Lord Shand) that coal-depots, auctioneers' stances and stables, let by a railway company, did not fall to be included within the general valuation of the company's property; but that book-stalls, cab-stands, advertising-places, offices and warehouses, occupied by the company, and the cultivated banks or slopes of the railway, did.

V.—EXEMPTION FROM LIABILITY FOR POOR RATES.

1. James Bruce Carstairs *v.* Robert Greig and Others, January 23, 1773.—M. 2333.

Superior and Vassal—Clause of Relief.—In a feu-charter, the superior bound himself to relieve the vassal of "all cess, and public burdens, minister's stipend, and schoolmaster's fees, payable forth of the lands in all time coming;"—Held that this did not free the vassal from paying his proportion of the expense of a manse and offices for the minister of the parish.

A similar judgment was pronounced in the case of Dundas, M. 8511.

Note.—This exemption was afterwards extended to poor rates by Lord Mackenzie in the case of the Heritors and Kirk-Session of North Leith *v.* Magistrates of Edinburgh, November 12, 1833, Dunlop's Parochial Law, p. 97.

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2. The Lord Provost and Magistrates of Edinburgh *v.* the Faculty of Advocates and Others, January 29, 1788.—M. 2418; H. of L. May 25, 1790; 3 P. 155.

Exemption—College of Justice.—Held (by the House of Lords affirming the decision of the Court of Session) that the College of Justice was not liable to assessment for poors' money and other taxations imposed by the Magistrates of Edinburgh.

Note.—This privilege is expressly repealed by the 58th section of the Act of 1845.

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3. John Murray *v.* James Scott, February 20, 1794.—M. 15092.

Superior and Vassal—Relief.—Held that a superior is not obliged

to relieve the vassal from any share of parochial burdens, unless there is a special agreement to that effect.

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4. James Bruce *v.* Hugh Veitch, November 28, 1810, F. C.

King—Non-exemption from Taxation.—Held that property of the Crown, acquired from a subject, and used for a public purpose, was liable in king's cess, town-tax, and militia money.

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5. The Commissioners of Barracks *v.* David Milroy (Collector of Canongate), November 21, 1815, F. C.

Crown Property.—Held that property acquired by the Crown from a subject, and used as barracks, was liable to assessment for the maintenance of the poor.

Note.—These cases are not consistent with the later decisions under which property acquired by the Crown, and used for public purposes, is not liable to assessment for poor rates and other such burdens.

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6. Heritors and Kirk-Session and Minister of Cargill *v.* Tasker and Others, February 29, 1816, F. C.

Exemption of Parish Minister.—A departure from the mode of assessment for poor rates under the Act of 1663, c. 16, was corrected by the Court, and further, Held (reversing the judgment of the Lord Ordinary—Gillies) that the clergyman of a parish was not liable in his clerical character to be assessed for poor rates, the Court observing that the clergymen is, *qua* minister, neither an heritor, a tenant, nor a possessor.

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7. The Principal Officers of the Ordnance *v.* the Heritors and Kirk-Session of North Leith, June 14, 1825.—4 Sh. 91, February 14, 1829; 7 Sh. 416; 1 *Jur.* 7.

Crown.—Held that property acquired by the Crown from a subject, and on which a fort had been built, (1) was liable to assessment for poor rates, although the property previous to

said acquisition had not been so assessed, and (2) that at a rental equal to that of unoccupied ground in the vicinity for the time.

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8. Alexander Sprot and Others *v.* The Governors of Heriot's Hospital and the Magistrates of Edinburgh, May 29, 1829.—7 Sh. 682; 1 *Jur.* 216.

Superior and Vassal—Clause of Relief.—The Governors of Heriot's Hospital granted a feu of lands then situated in the parish of St. Cuthbert's, and beyond the royalty of Edinburgh, and bound themselves to relieve the feuars, "a solutione omnium stipendiorum ministris, et omnium salariorum ludi magistris, et omnium censuum alioriumque impositionum impositorum aut imponendorum dict. acris." The lands so feued were afterwards by statute brought within the royalty of Edinburgh, disjoined from St. Cuthbert's, and annexed to St. Giles' parish, except as to payment of stipend and parochial burdens. Houses having been built on the land, the inhabitants became liable to the Magistrates of Edinburgh in payment, *inter alia*, of poor rates. Held that the clause above quoted did not confer a claim of relief for poor rates against the superiors of the lands.

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9. William Morris *v.* Patrick Orr, W.S., December 11, 1840.—3 D. 232; 13 *Jur.* 81.

Exemption—College of Justice.—The Sheriff-Clerk of the county of Forfar, who, as a Writer to the Signet, was a member of the College of Justice, and whose permanent residence was in Edinburgh, rented an office for conducting the business of the Sheriff-Clerk, in a burgh within the said county, which was not, however, the county town, but the seat of a Sheriff-Substitute. He visited this burgh at intervals, and for very short periods, and on these occasions lived at an hotel, the business being carried on by clerks. Held (1) that he was not an "inhabitant" of the burgh, and therefore was not liable to assessment for poor rates, and (2) that the circumstances of his being a member of the College of Justice did not *per se* entitle him to exemption.

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10. James Reid *v.* Peter Williamson, February 16, 1843.—5 D. 644; 15 *Jur.* 308.

Superior and Vassal—Clause of Relief.—A superior bound himself in a feu-charter granted by him to relieve his vassal "of all feu, teind and blench duties, ministers' and schoolmasters' stipends and salaries, building, repairing and upholding of kirk and kirkyard dikes, ministers' manses, schoolhouses, future augmentations, and for all cesses, taxations, highway-money, and other public burdens whatever, due or payable furth of, or that anywise may be imposed upon the lands and others above mentioned in all time coming." Held that under this clause the vassal was entitled to be relieved by the superior of poor rates imposed on the vassal as an heritor.

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11. William Allan *v.* The Governors of George Heriot's Hospital, May 26, 1846.—20 *Jur.* 1.

Superior and Vassal—Clause of Relief.—Held that an obligation by the superior in a feu-charter in favour of the vassal, to relieve from burdens "to be imposed on lands and tithes," did not imply relief from poor rates, which are not a burden on lands, but a personal assessment, though the land may be taken as a measure of its extent.

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12. The Advocate-General *v.* Andrew Garioch, January 22, 1850. —12 D. 447.

Crown—Exemption.—Held (1) that the property of the Crown is not liable to assessment for any taxes of a public nature, unless such liability is specially imposed by Act of Parliament; and (2) that Crown property was not liable for prison assessment or rogue money.

Observed by Lord Murray—"No principle appears to be more clearly established than that the Crown is not liable to pay taxes, and that the Court of Exchequer cannot order the Crown to pay its debt. . . . It has further been decided in various cases, that persons directly and immediately in the service of the Crown are not liable to pay taxes, while beneficiaries of the

Crown are rated to pay them. The principle which seems to have ruled all the decisions which have been referred to is, that taxes are grants made for the better support of the Crown, and it is inconsistent with the principle of such aids to take money from the Crown to be paid to itself. The general terms of an Act imposing a tax do not include the Crown, or authorise the taking of money which is in the possession of the Sovereign, either directly or through the receiver, in whose hands it is."

Observed by Lord Ivory—"The Crown is never liable to be subjected in burden or taxation, unless the statutory words be so expressed, as by necessary construction, to include the Crown as a party liable.

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13. The Advocate-General *v.* Robert Oliver (Collector for Abbey Parish of Paisley), January 19, 1852.—14 D. 356; 24 *Jur.* 177.

Crown—Barrack Grounds.—Held that subjects occupied or possessed for Her Majesty's use, or which are the property of Her Majesty, *e.g.*, barrack grounds, are not liable to be assessed for poor rates, no such assessment being either expressly or by clear implication imposed by the Act of 1845 or any other Poor Law Act.

Observed by Lord Rutherford—"It cannot be maintained that the statute of the 8th and 9th Vict., cap. 83, or any of the Poor Law statutes now in force, has either expressly, or by clear intendment, imposed assessment for the poor 'on occupation, use, or possession for Her Majesty, or on property of Her Majesty, or on property used for Her Majesty.'"

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14. The Rev. John Forbes *v.* Laurence Gibson, December 18, 1850.—13 D. 341; 23 *Jur.* 120; H. of L. June 14, 1852, 1 Macq. 106.

Parish Minister—Manse and Glebe.—Held (by the House of Lords affirming the judgment of the Court of Session) that a parish minister is not liable to assessment for poor rates, in respect of ownership or occupancy of his manse and glebe.

The Rev. John Forbes, minister of the parish of Symington, brought a suspension of a charge for poor rates, raised by the inspector of poor of the parish, to recover payment of rates for

which Mr. Forbes was assessed in respect of his occupancy of the manse and glebe. The grounds of suspension maintained in argument were, that, previous to the Act of 1845, manses and glebes of parish ministers not having been liable to assessment for poor rates, this privilege could not be taken away by implication; and the statute not only did not expressly abolish, but by implication confirmed this immunity. Part of the previous exemption, that, viz., which regarded the stipends of parish ministers, was taken away by the Act, and it therefore followed that the remainder of the exemption—viz., as to glebes and manses—remained. It was maintained, on the other side, that the previous immunity of parish ministers proceeded from the fact that the old statutes were so framed as not to reach their case, while the new Act was so framed as to embrace their case, and the simple question therefore was—whether a parish minister was a heritor—or an occupant—in the sense of the Act? If either, he was liable in assessment, and by the interpretation clause of the statute, it appeared that the word "owner" included the case of a minister in possession of a manse and glebe. It was held by the Court of Session, and affirmed by the House of Lords, that the suspender, as a parish minister, was not liable in assessment in respect of his manse and glebe.

Observed by the Lord President—"We have to consider whether it was not universally understood, till the case of Cargill (*supra*, p. 95), that the minister was not liable to any assessment for poor rates. The principle on which it was there contended, and as I apprehend with sufficient reason, that there was an exemption, is inveterate usage. There was no proof that a parish minister was ever before attempted to be assessed. I do not shut my eyes to the broad words of the Act, but it is the fact that no assessment was ever laid on the parochial clergy—that it was the inveterate usage to exempt them. It was held that they were neither owners nor occupants. This was the clear opinion of the Court in 1816, and no attempt was made to bring the minister of the parish under the assessment from that time down to the passing of the late Act.

"We must consider, in the second place, whether the late Act has done anything more than what is expressly contained in the 49th section, in reference to stipends. I apprehend that it has not altered the law with regard to manses and glebes. It must be presumed that the Legislature knew that, in addition to their stipends, the clergy were in the enjoyment of manses and glebes; and if it had been intended to impose on them a new liability, in respect of their manses and glebes, would that not have been done in terms as express as the provision with regard to their stipends? . . . If we hold that by the rules of our old law, by inveterate usage, and by the decisions of this Court, the clergyman is ex-

empt from this assessment, there is not one syllable to be found in the new Act to indicate his liability. I think the law kept in view the peculiar situation of the minister, and the peculiar duties which he is called upon to discharge with reference to the poor.

Similar views were expressed in the House of Lords.

Note.—While this case settles the law as to manses and glebes generally, it is to be kept in view that glebes feued under the Glebe Lands Act, 1866, are liable to assessment.

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15. The Advocate-General *v.* Peter Beattie (Inspector of Canongate), January 29, 1856.—18 D. 378.

Crown—Liability to Assessment.—The Advocate-General having moved, in the Court of Exchequer, for a rule on the defender to show cause why an assessment for poor rates imposed on the Master Gunner at Edinburgh Castle, in respect of the quarters in the fortress occupied by him and his family, should not be set aside as incompetent, the Castle being the property of the Crown—Held that the assessment being imposed in respect of beneficial occupancy by an individual, was a mere personal claim, and in respect it did not affect Her Majesty's revenues, the Court of Exchequer had no jurisdiction.

Note.—It will be observed that the question of law intended to be raised by this case was not decided by the Court, as it was considered that the proper mode of trying the validity of the assessment was by suspension in the Court of Session.

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16 Thomas Lees and Others (Burgh of Musselburgh) *v.* Alexander M'Kinlay, November 11, 1857.—20 D. 6; 30 *Jur.* 10.

Superior and Vassal—Clause of Relief.—The Magistrates of Musselburgh, in a feu-contract granted in 1826, bound and obliged themselves, and their successors in office, to free and relieve the vassals "of all cess, minister's stipend, schoolmaster's salary, and other public burdens which may be claimed or demanded furth of the ground hereby feued, of all which the Magistrates and Treasurer for themselves, and in name foresaid, bind and oblige themselves, and their successors in office, to free and relieve the disponee." A similar

clause was contaiued in a feu-charter of resignation and confirmation obtained by the successor of the original vassal from the Magistrates in 1852, when he acquired the feu. Held, following the case of Reid *v.* Williamson (*supra*, p. 97), that the vassal was entitled to relief of poor rates imposed under the Poor Law Act of 1845.

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17. David Hunter of Blackness and his Trustees and Commissioners *v.* Sir William Chalmers, July 16, 1858.—20 D. 1311; 30 *Jur.* 767; 1 *P. L. M.* 152.

Superior and Vassal—Obligation of Relief.—Held that, under an obligation by a superior granted in 1789, to relieve the vassal of cess, minister's stipend, and all other public burdens payable for the lands in all time coming, (1), that this obligation was prospective, and embraced poor rates; (2) that the vassal could enforce his relief, although he had sub-feued the lands without assigning the clause of relief, but with an obligation similar to that in the original charter; and, (3), that the superior was bound to implement the obligation, though the value of the lands had been greatly increased by the erection of buildings.

By feu-contract, dated in 1789, the superior was bound to free and relieve the feuars "of all cess, minister's stipend, and whole other public burdens whatever, due and payable furth of, and for, the said lands and teinds of all bygone and in all time coming." The lands were sub-feued by contracts containing obligations in similar terms, but the clause of relief in the original feu-charter was not assigned. Extensive buildings were afterwards erected on the lands, which were situated in the parish of Liff and Benvie. In the parish where the lands were situated, the assessment was laid one-half on lands and heritages, according to their annual value, and one-half on means and substance.

In an action at the instance of the superior against the descendant of the original vassal, it was contended that poor rates were not included in the clause of relief, and that the defender, as owner of a mid-superiority, was not liable for poor rates, and, therefore, not entitled to relief; and, further, that the nature of the subjects having been changed by the erection of buildings, the superior was not liable under the clause of relief. The defender maintained that not only he, but all parties having right to the lands through or under him, were entitled to deduct the

poor rates paid by them from the feu-duty under the foresaid clause. It was held (1) that poor rates fell within the clause of relief; (2) that in the circumstances above stated as to the sub-feu-contracts, the defender was entitled to enforce relief; and (3) that the alterations on the lands by building did not affect the liability of the superior.

Observed by Lord Wood—"The contention was that, although the obligation of relief might reach poor rates payable at the date of the contract, it was not prospective, and gave no relief from poor rates subsequently imposed, whether for the first time, or additional in amount to those previously payable, I have carefully examined the cases which were founded on, and having regard to the terms of the clauses of relief in them, as compared with the terms of the clause in the present case, I am of opinion that, by the latter, according to a fair reading of its meaning, the superior became bound to relieve the vassal of poor rates subsequently imposed, and . . . that the obligation is effectual, although it may be, that prior to the date of the contract, there had been no assessment laid on for the support of the poor in the parish of Liff and Benvie, in which the lands feued are situated. Augmentations of stipend form a special case, the rule as to which does not apply to other burdens. I further think that it affords no ground for rejecting this construction, if otherwise correct, that, by the erection of extensive buildings on the lands in the feu-contract, or other improvements, the rate that might come to be imposed might be greater in amount than that of the reserved feu-duty. If it were so, it is only a consequence of the relief having been agreed to be given in the terms in which it is conceived; an unexpected one it may be, but still one of which it must be held that the superior took the risk, believing, in all probability, that it was not worth considering, just as he had no doubt supposed that the obligation would never involve a relief which would be equal, or even nearly equal, to the feu-duty.

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18. Alexander Paterson and Others (Trustees of the late William Paterson) *v.* David Hunter and his Trustees, December 10, 1863.—2 M. 234; 36 *Jur.* 115.

Superior and Vassal—Clause of Relief.—In a feu-contract granted in 1796, the superior bound himself to relieve the vassal "of all cess, minister's stipend, augmentations thereof, and whole other public burdens whatsoever due and payable furth of, or for, the said two acres of lands and teinds thereof of all time bygone and in all time coming." At the date of

the contract there were no buildings on the land, which was then and for many years after used as a market garden. There being no restriction against building, the vassal erected a cottage and outhouses upon the ground, and the whole subjects were, after 1844, assessed on a valued rental of £65. Under the above clause in the feu-contract the vassal claimed relief from poor rates from the superior, who admitted his obligation only to the extent effeiring to the feu-duty paid by the vassal. Held that the clause of relief applied, and that it was applicable not only to the poor rates assessed on the feu-duty, but to the rates levied on the vassal as owner of the houses.

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19. Thomas Andrew Macfarlane *v.* The Monklands Railway Co., January 29, 1864.—2 M. 519; 36 *Jur.* 251.

Railway—Exemption—Manse.—The Act, by which a railway company was incorporated, provided "that the grounds to be acquired for the purpose of the Act shall not be liable in payment of any feu-duty, casualties of superiority, cess, stipend, schoolmaster's salary, or other public or parochial burdens, but the same shall be paid by the original proprietors of such grounds." Held (by the whole Court, dissenting Lords Justice-Clerk and Cowan) that by this provision the railway company had not a mere right of relief against the former proprietor, but an entire exemption from assessment, in respect of their railway, for the expense of a manse.

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20. Colonel Baillie of Redcastle *v.* Inverness Police Commissioners, March 20, 1866.—4 M. 625; 38 *Jur.* 323.

Pier—Ferry.—Held that a pier, which had been built on the seashore, the property of the Crown, by the proprietor of a ferry, as an adjunct of the ferry, was exempt from assessment for poor rates.

Observed by the Lord Justice-Clerk—"If it be not easy or possible to say that a ferry is assessable, how is it possible to assess that which, in the hands of the pursuer, is no more than an adjunct of the ferry? Colonel Baillie is not entitled to use the pier for any other purpose but that of landing passengers

using the ferry; and the moment he purposes to use it for any other purpose, he will be going beyond his right, and may be restrained in the use of it. It might be—but for the width of the ferry—that there might be substituted for the ferry a bridge, which would form a part of the highway between Ross and Inverness. Was it ever heard of that a large and expensive bridge, forming part of a road, could be assessed for poor rate or prison rate? Certainly not, and why? Because the bridge is inseparable from the aggregate subject of which it forms a part, just as the pier is inseparable from the ferry."

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21. The Collector of Poor Rates of Lauder *v.* The Parish Minister of Lauder, 1867.—1 *P. L. M.* 123.

Burial Ground Assessment—Exemption—Parish Minister.—Held (in the Sheriff-Court of Berwickshire, by Sheriff Rutherfurd Clark, afterwards Lord Rutherfurd Clark) that a parish minister is not liable in burial ground assessment.

The ground of judgment appears from the Sheriff's note.—"The 50th section of the Registration Act is the only one which deals with the matter of assessment. It provides that it shall be lawful to levy by assessment such sums of money as shall be sufficient to meet the expenses therein mentioned, and such assessments shall be made and levied in the same manner as, and along with, but separate from, the assessment for the poor. If there be no assessment for the support of the poor, another mode is provided; but as there is an assessment for the support of the poor in the parish of Lauder, this case falls under the enactment above recited. It was argued for the pursuer that the Poor Law is only referred to for the mode of levying the assessment. The Sheriff has found himself unable to adopt this construction. For if the Poor Law Act be referred to only for the mode of levying the assessment, and the statute imposes no assessment, no one will be bound to pay any. This, of course, leads to an absurd result, and therefore the Sheriff is of opinion that the Poor Law Act is referred to for the purpose of determining the liability to assessment, as well as fixing the manner in which it is to be recovered. Under the Poor Law Amendment Act a minister is not liable to be assessed for his manse and glebe, and hence, if the above construction of the Registration Act be sound, he is not liable under that Act. The same considerations apply to the Burial Act."

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22. Margaret Wilson *v.* The Provost, Magistrates, and Town Council of Musselburgh, February 22, 1868.—6 M. 483; 40 *Jur.* 250.

Superior and Vassal—Clause of Relief.—By a feu-contract entered into in 1765 it was provided "that the feu-duty payable to the superior should be in full of all cess, ministers' stipends, and all other public burdens whatever payable, or which may be claimed or demanded furth of the said lands hereby feued," and the superiors were bound to relieve the vassal thereof now "and in all time coming." Held (1) that the clause of relief applied only to burdens payable under laws in existence at the date of the feu-contract; and (2) following the cases of Reid *v.* Williamson and Lees *v.* M'Kinlay that the vassal was by the clause relieved from poor rates imposed in respect of property but not in respect of occupancy.

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23. The Statute Labour Road Trustees of the Barony Parish of Glasgow and George Gordon (their Clerk) *v.* The Caledonian Railway Company, December 10, 1868.—7 M. 197; 41 *Jur.* 127.

Exemption.—A canal company's Act provided that the company should "not be chargeable with any part or portion of the land tax, minister's stipend, poor rates, or of any other public burdens or taxations whatsoever" for lands acquired under the Act, but that all such taxations and public burdens shall be chargeable upon the lands remaining with the vendor or vendors after such partial alienation to the company." Held that a railway company, who afterwards acquired the undertaking, were not liable in statute labour assessment, in respect of lands acquired under the powers conferred by the Act.

Note.—This judgment was pronounced in conformity with M'Farlane *v.* The Monkland Railway Company (*supra*, p. 103). The principle laid down is, of course, applicable to poor rates.

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24. John M'Isaac (Inspector of Campbeltown) *v.* Kenneth M'Kenzie, C.A. (Eddington's Judicial Factor), March 3, 1869.—7 M. 598; 41 *Jur.* 323; 2 *P. L. M.* 519.

Exemption—Militia Stores.—Held that the exemption from assessment in the Militia Act of places for keeping militia stores provided by the Commissioners of Supply extends, in the case of rented buildings, to the landlord, as well as the tenants.

It is provided by the 36th section of the Militia Act (17 and 18 Vict., cap. 106) that "no place provided for the keeping of militia stores under this or any former Act, nor any buildings or premises appurtenant thereto, shall be liable to be valued or assessed to any county, burgh, parochial, or other local assessment." Certain buildings having been let to the Commissioners of Supply of Argyllshire for the use of the Argyll and Bute Militia, as staff-sergeant's quarters, hospital, and stores, a question arose whether the landlord, under the clause of the Act quoted above, could claim exemption from assessment for poor rates, the ground upon which it was contended that the exemption did not extend to him being, that the exemption was intended for the public behoof, and not for the benefit of any private party. It was held (dissenting Lord Kinloch) that the landlord was entitled to the benefit of the exemption.

Observed by Lord Deas—"I am unable to see any sufficient grounds for holding that the benefit of this exemption does not extend to the private proprietor of the subjects, as well as to his tenants, the Commissioners of Supply, who, it is conceded, are exempt from liability in virtue of this clause. It may be that the poor rate is a personal tax, but it is a personal tax imposed in respect of real property, upon the rental of which it is levied. It is only by reading the clause as exempting the property in question from liability for assessment that the Commissioners of Supply, as tenants and occupants, can derive any benefit from the immunity it affords, and according to the same reading, the proprietor must escape also. The clause does not say that occupants are to be exempt any more than that proprietors are to be exempt. What it says is, that the 'place' shall be exempt. The place is neither to be valued nor assessed, if it be a place provided for keeping militia stores, which a portion at least of the place in dispute admittedly is."

25. Robert Nisbet *v.* Thomas Lees (Clerk to the Trustees under "The Musselburgh Estate Act 1851"), June 15, 1869.—7 M. 881; 41 *Jur.* 502.

Superior and Vassal—Clause of Relief.—A feu-contract, dated in 1805, provided that the feu-duty payable to the superior was "in full of cess, minister's stipend, and all other public burdens whatsoever, payable, or which may be claimed or demanded furth" of the lands feued. The feu was granted in view of the erection of buildings on the ground, and houses were in point of fact erected by the vassal. Held that the superior was bound to relieve the vassal of poor rates imposed on him under the Act of 1845, as owner of the buildings, as well as of the ground.

Note.—Doubts were expressed whether liability for an amount greater than the feu-duty could be imposed on the superior.

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26. The Caledonian Railway Company *v.* Charles Stewart Meek (Collector of Barony Parish, Glasgow), February 2, 1870.—8 M. 476; 42 *Jur.* 222; 3 *P. L. M.* 560.

Exemption—Repeal.—By the 5th section of the Act 8 George III., cap. 63, by which the "Company of the Forth and Clyde Navigation" was incorporated, it is provided "that the said company of proprietors shall not be chargeable with any part or portion of the land tax, minister's stipend, poor rates, or of any other public burdens or taxations whatsoever, for the lands which shall be so set out, and purchased to and by them for the use of the said navigation, by virtue of the powers given them by this Act as aforesaid, but that all such taxations and public burdens shall be chargeable upon the lands remaining with the vendor or vendors," &c. This exemption was repeated in a Consolidation Act obtained in 1841, so far as the lands purchased under the original Act were concerned, there being added to the clause of exemption the following proviso:—"Provided always that nothing herein contained shall be held to limit or affect any liability which by law does or may attach to the said company, or to the property now belonging to or occupied by, or which may hereafter belong to or be occupied by

them, to be rated or assessed for the relief of the poor, nor to impose any such liability for any such rate or assessment upon any lands remaining with any vendor or vendors after any partial alienation to the said company as aforesaid." Held that the exemption from poor rates contained in the original Act was not repealed by the provision of the Consolidation Act.

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27. Sir Henry Lindsay Preston, Bart., and Others *v.* The Lord Provost, Magistrates, and Council of the City of Edinburgh, February 4, 1870.—8 M. 502; 42 *Jur.* 232.

Superior and Vassal—Clause of Relief.—A feu-contract, granted in 1757, and by which the vassals feued a piece of ground "with the houses and planting, built and planted, or to be built or planted thereupon," contained an obligation by the superiors to relieve the vassals of "all teinds, minister's stipend, king's cess, supply, and other public burdens, which do or may affect the same now, and in all time coming." Held that the superiors were bound to relieve the vassals of poor rates levied in respect of houses recently erected on the ground.

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28. The Hon. Caroline Georgiana Hope and Others (Hope's Trustees) *v.* Stamford Robert Lumsdaine, June 22, 1871.—9 M. 865; 43 *Jur.* 466.

Superior and Vassal—Clause of Relief.—A feu-charter, granted in 1718, contained the following clause:—"And it is hereby provided that the said Archibald Christie, and his said spouse (the original feuars), and their foresaids, shall be bound and obliged to paie the whole cess and public burdens, they always having allowance thereof in the first end of the foresaid feu-duty yearly at clearing." In an action by the superior for arrears of feu-duty—Held (1) that the vassal was entitled to retain the sums paid for poor rates, not only for the years during which the feu-duties were in arrear, but also for previous years, the feu-duties for which had already been paid to the superior, without any deduction for poor rates; but (2) that the vassal was not entitled to any interest on these poor rates, on the ground that he could have operated his relief when the feu-duties were paid.

29. Smith, Laing, & Company *v.* Lewis Mintland and Another, January 7, 1876.—3 R. 281.

Superior and Vassal—Clause of Relief.—A feu-charter, granted in 1814, contained the following clause:—"That during the existence of the present feu-right, all public and parochial burdens or taxes, imposed or to be imposed, shall be paid by the superior and vassal, as if the former was proprietor and landlord, and as if the latter was tenant under him." Held that the superior was only bound to relieve the vassal of poor rates on the annual value of the feu-duty.

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30. The Trustees of the late Sir George Dunbar, Baronet of Hempriggs, and Another *v.* The British Fisheries Society, December 19, 1877.—5 R. 350; H. of L. July 12, 1878; 5 R. 221.

Superior and Vassal—Clause of Relief.—A feu-contract, dated in 1823, contained an obligation by the superior to free and relieve the vassal "of the whole cess or land tax . . . ministers' stipends, schoolmasters' salaries, and other public burdens due and exigible out of the whole lands and subjects hereby feued, or that may become due and payable for or from the same in all time coming." Held that the superior was bound to relieve the vassals of the whole poor rates payable by them as owners of the lands and of the buildings erected thereon, and that the liability of the superior was not limited by the amount of the feu-duty.

VI.—ENGLISH DECISIONS ON VALUATION AND ASSESSMENT.

1. Lord Amherst *v.* Lord Sommers and Others, April 18, 1788.—2 Durnford and East 372.

Exemption—Cavalry Stables.—Held that stables rented by the colonel of a regiment, by order of the Crown, for the use of the regiment, are not rateable for relief of the poor.

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2. The Queen *v.* Edward Shepherd, January 20, 1841.—1 Adolphus and Ellis 170.

Exemption—Jail.—Held that the governor, matrons, and turnkeys of a jail were not liable in assessment for poor rates, in respect of their occupation of houses situated within the prison, they being obliged to live within the walls, and the houses so occupied not being larger than necessary.

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3. The Queen *v.* Sir M. A. Shee and Others, November 18, 1842.—3 Gale and Davison 80.

Exemption—National Gallery.—Held that the trustees of the National Gallery were not liable in assessment for poor rates, as occupiers of the gallery, in respect they had no beneficial occupation in the shape of actual residence, and only held the property for the purposes of the institution, and as agents for the Crown for furthering public purposes.

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4. The Queen *v.* The Overseers of Manchester, January 25, 1854.—3 Ellis and Blackburn 336.

Exemption—County Court.—Held that a building, leased by the treasurer of a County Court, and used exclusively as a County

Court, was not a rateable subject in respect of said occupation.

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5. John Smith *v.* Overseers of Birmingham, April 22, 1857.—7 Ellis and Blackburn 483.

Exemption—Post-Office.—The Post-Office authorities having leased certain premises for use as a post-office;—Held that these premises, being occupied for public purposes by servants of the Crown, were exempt from assessment in respect of said occupation.

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6. The Queen *v.* Stewart, November 7, 1857.—8 Ellis and Blackburn 360.

Exemption—Keeper of Crown Stores.—Held that a storekeeper employed by the Crown, and occupying premises belonging to the Crown, for the purposes of performing the duties of his office, was exempt from assessment for poor rates.

Note.—The same was held as to the governor of a garrison town, occupying Crown property as a residence, and an adjutant having charge of militia stores. In all such cases, however, the principle has been recognised, that if the premises in occupation are more extensive than is reasonably necessary for the performance of the duties of the occupier, he is rateable in respect of the excess. In estimating the question of excess, the station or rank of the occupier is an important element for consideration.

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7. The Justices of Lancashire *v.* the Overseers of Stretford, May 1, 1858.—Ellis, Blackburn, and Ellis 225.

Exemption—Police Buildings.—Held that buildings used exclusively as police offices, with the necessary accommodation for the residences of police sergeant and constables, were not rateable subjects.

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8. Staley and Another *v.* the Overseers of Castleton, June 8, 1864.—33 L. J. Mag. Ca. 178.

Liability to Assessment—Mill Out of Work.—Held that the occupier of a mill, which is not being worked, is not thereby exempt

from liability to assessment for poor rates, in respect of his occupancy of the mill.

Note.—A similar judgment was given in the following year in Harter *v.* the Overseers of Salford, 34 L. J. Mag. Ca. 206.

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9. The Mersey Docks and Harbour Trustees *v.* William Cameron and Others, June 22, 1865.—H. of L. 11 Clark 443; 35 L. J. Mag. Ca. 1.

Docks—Public Purposes—Occupation.—Held that docks vested in trustees for the benefit of the shipping frequenting the port of Liverpool were rateable subjects, and that the trustees were therefore liable to be rated as occupiers, though they held such docks only for the purposes specified by Act of Parliament, and derived no benefit from the occupation.

Observed by Justice Blackburn (who gave the opinion of the majority of the consulted Judges)—"A company, forming docks under an Act of Parliament, incorporating these Acts (*i.e.*, the Companies Clauses and other Acts), is bound to maintain the docks, and to keep harbour masters and other officers there, and to allow the public to use the docks on payment of the rates, and to allow Her Majesy's vessels to use them without making any payment; and by these means they confer a benefit on the public; the company, by virtue of its occupation, receives the rates on shipping using the docks, and the amount thus received is applicable to keeping up the docks, and then to paying interest on the loans, the amount of which is limited, and then in paying dividends on the share capital; and it is common to have a maximum limit put on the rate of dividend; when that maximum dividend is reached, the rates must be lowered. It is indisputable that a company thus occupying a dock is an occupier, and rateable as such. Now, if without in any way altering the mode in which the docks are enjoyed by the public, or altering the rates leviable, or changing the harbour masters and others who manage it, we change the name of the body which occupies it from that of 'the company' to that of 'the board,' and if, instead of 'the company' paying to the shareholders a maximum dividend on their capital, 'the board' must pay to the same individuals the same identical sums, but call them 'interest on bonds' instead of 'maximum dividend on share capital,' what difference does this make?"

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10. The Queen *v.* M'Cann and Others, January 18, 1868.—L. R. 3 Q. B. 141.

Exemption—Bridge held by Commissioners of Works and Buildings.—The Commissioners of Public Works and Buildings were empowered by the Acts, under which they were incorporated, to build a bridge with money borrowed from the Treasury, on an assignment of the tolls, which the commissioners were authorised to levy, for the purposes of maintaining and paying the expense of the bridge. Held that the commissioners were exempt from assessment for the poor, in respect they occupied the bridge as servants of the Crown, and derived no benefit from the revenue of the bridge.

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11. The Overseers of Greenwich *v.* The Metropolitan Board of Works, November 25, 1868.— L. R. 4 Q. B. 15.

Sewers—Pumping Stations, &c.—The Metropolitan Board of Works were empowered by Acts of Parliament to construct sewers and other works in connection with the main drainage of London. The sewers passed under the highways of the Metropolis, or under land which was not the property of the board, except at the pumping stations, which were built upon land which belonged to the board, but was used solely in connection with the drainage system, as were also a wharf, a lay-by for barges, tramways, engine-houses, coal-sheds, and dwelling-house, which were all in the occupation of the board. No profit was derived from these works. Held that the sewers not being the subject of a beneficial occupation, were not assessable for poor rates, but that the other subjects had an occupation value, and were rateable, there being no exemption applicable to them in the statutes.

Note.—The same point was similarly decided in the subsequent case of The Metropolitan Board of Works *v.* West Ham, November 19, 1870; L. R. 6 Q. B. 193. The only distinction between the two cases was, that, in the earlier, the sewers were under the surface, while in the later case, they were above the surface.

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12. The Guardians of Kingston Union *v.* The Overseers of Malden, April 28, 1869.—L. R. 4 Q. B. 326.

Unlet Houses.—Held that unlet and occupied houses, which were newly built and ready for occupation, were rateable subjects within the meaning of the Union Assessment Committee Act of 1862.

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13. Sir Ivor Bertie Guest *v.* The Overseers of East Dean, January 24, 1872.—L. R. 7 Q. B. 334.

Principle of Assessment.—Observed by Lord Blackburn, in commenting on the English Assessment Act, which contain a clause identical in terms with the 37th section of the Poor Law Act of 1845—"You are to see all those benefits that the hypothetical tenant would have by having the property which is to be rated let to him, and you are to set against it all that he would have to pay and discharge in order to get that benefit, and allow him a fair tenant's profit, and then the balance would be the rateable value. That is a difficult thing to do, but it is repeatedly obliged to be done; and has been done in rating railways and other things of that sort, where there is no real tenant at all."

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14. The Pimlico, Peckham, and Greenwich Street Tramway Company *v.* The Assessment Committee of the Greenwich Union, November 19, 1873.—L. R. 9 Q. B. 9.

Tramways.—Held that a tramway company which was formed under the Tramways' Act, 1870, and which had laid down a tramway on a highway, the soil of which was vested in the district board, was rateable for poor rates in respect of their occupation of the road by their tramways.

Observed by Lord Blackburn—"It seems to me they (the company) are occupiers of land to the same extent, and in the same manner, as in the cases which are now perfectly well established, and of every day occurrence, where a gas company or a waterworks company lay in the road their main pipes, and carry them along the road under the surface of the soil, instead of coming above it, in which, in respect of their pipes, which carry

the water from the supply to the place where it is to be distributed, the company are held liable as occupiers of so much of the land as the pipes occupy for the purpose, the beneficial value of which occupation is to be got at by considering that it facilitates their carrying gas or water from the points of supply to the points of distribution.

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15. The London and North-Western Railway Company *v.* Buckmaster and Others, November 20, 1874.—L. R. 10 Q. B. 70.

Landlord and Tenant—Occupier.—A railway company being owners of some stables situated within their station, permitted certain coal owners to use the stables under an agreement by which, while a rent was paid by the coal-owners, the company retained control over the stables, and did not part with the exclusive occupation. Held that the company were liable in assessment as occupiers of the stables.

Observed by Lord Blackburn—"The occupier of any property is the person who has the sole and exclusive possession of it, and he is the person who ought to be rated. Whenever the owner of property demises it to another, giving him the exclusive possession and occupation, so as to make him tenant of it, it is the tenant who should be rated and not the landlord. In this case, however, I do not think what was done did amount to a demise of any part of this property, but merely to a giving of a license to have the easement and use of it, analogous to the case of a lodger."

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16. The Lord Mayor and Corporation of London as Governors of St. Thomas' Hospital *v.* Stratton and Others, March 1, 1875.—L. R. 7 H. of L. 477.

Hospital—Exemption.—Held (by the House of Lords) that a hospital, founded by the Royal Charter, and the funds of which, arising from lands vested in the Mayor and Corporation of London, were directed, after payment of the necessary officers, to be devoted to "the use and maintenance of the poor, sick, and infirm folk of the said hospital," was liable to assessment for poor rates.

Note.—The judgment in this case proceeded expressly on the

precedents of the Mersey Docks and University of Edinburgh cases.

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17. The Queen *v.* The Overseers of West Derby, April 28, 1875. —L. R. 10 Q. B. 283.

Exemption.—Held that premises certified under the Industrial Schools Act, 1866, as a "certified industrial school," are liable to assessment for poor rates.

Note.—This case confirms a former decision to the same effect in the Queen *v.* Temple, 2 E. and B. 160.

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18. Corry and Others *v.* Bristow, December 11, 1875.— L. R. 1 C. P. 54.

Principle of Assessment.—The question in this case depended on the construction of certain sections of the Thames Conservancy Act, and the case is chiefly valuable for the following statement of the general rule of law as to assessable subjects given by Lord Justice James:—"There is no dispute as to the general principle of law—viz., that where any part of the soil is permanently occupied by anybody for profitable purposes, as, for instance, where it is occupied by a company by means of its water, or gas pipes, or telegraph posts, then the person so occupying is rateable in respect of such occupation; but when a person has a mere right to use the land in the nature of an easement, which does not amount to occupation, and the occupation remains in some one else, as for example, in the case of a lodger, where the occupation remains in the lodginghouse keeper, then such person is not liable to be rated. The rateable value of the portion of land so used is not gone, but it is rateable in the hands of the person who is the occupier."

VII.—PERSONS ENTITLED TO RELIEF; AND THE NATURE AND SUFFICIENCY OF THE RELIEF.

1. Pollock *v.* Darling, January 17, 1804.—M. 10591.

Able-bodied Poor.—Held that persons who, through the failure for two successive years of the crops, were compelled to have recourse to charitable aid, but who, in ordinary circumstances, could gain their livelihood, were entitled to parochial relief, and that an extraordinary assessment for that purpose might be levied.

Note.—In pronouncing this judgment the Court was not unanimous—several of the Judges having expressed their opinion that this case did not fall under the provisions of the existing Poor Laws, and that the extension of them would be dangerous.

This decision is not now the law. See Maxwell Adams *v.* M'William, &c., and Isdale *v.* Jack, *infra*, pp. 121 and 126.

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2. Luke Higgins *v.* Heritors and Kirk-Session of Barony Parish of Glasgow, July 9, 1824.—3 Shaw 239.

Foreigner.—Held that a foreigner, who had enjoyed an industrial residence for the requisite period, was equally entitled to relief as a native, if in other respects a fit object for parochial support.

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3. Janet Robert *v.* R. Fife, February 5, 1825.—3 Sh. 500.

Aliment—Delay in Application.—Held (1) that the heritors and kirk-session were liable to the mother of a bastard child in aliment from its birth, although no application had been made for four years after its birth, during which time the child had been supported by relations, though intimation of the mother's poverty had been made at an early period; and (2) that, while it belonged to the kirk-session to modify the

amount of aliment, they were not bound to award it for any specific period.

Note.—It can scarcely be doubted that this judgment would not now be recognised as sound. The statute of 1845 (sec. 70) lays upon the parochial board the duty of administering relief only *after* application has been made by those entitled by law to claim it.

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4. Agnes Watson or Richardson and Children *v.* Heritors and Kirk-Session of Ancrum, March 7, 1828.—6 Sh. 736; February 28, 1829; 7 Sh. 495; 1 *Jur.* 116.

Persons entitled to Relief.—Held (1) that the circumstances of a woman having been deserted by her husband, and having two infant children to support, and having been assisted by private charity, did not of themselves entitle her to parochial relief, the heritors and kirk-session being of opinion that she was able to maintain herself, and that her husband's father was able to support her and her children; but (2) she was held entitled to temporary aid, pending an action at her instance against her father-in-law to have him ordained to maintain the children.

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5. Elspeth Pryde or Duncan *v.* The Heritors and Kirk-Session of Ceres, February 14, 1843.—5 D. 552; 15 *Jur.* 287.

Amount of Aliment.—Circumstances in which held that the amount of relief awarded to a pauper was insufficient, and did not amount to "needful sustentation" for her and her family.

The facts were—A weaver in Ceres died in 1840, leaving destitute a widow far advanced in pregnancy, and a family of seven children, the eldest of whom was under 14, and the youngest under 2 years of age. The eldest daughter earned from two to three shillings a week by weaving, and the mother, by winding bobbins, from one shilling to one shilling and sixpence. The second daughter was provided for outwith her mother's house. The amount of relief awarded to the mother, for herself and family, by the heritors and kirk-session, was 3s. 6d. a week. Against this the widow presented a note of advocation, pleading that the allowance was altogether inadequate, and that the respondents were bound to grant an allowance sufficient for the support of

the applicant and her family. The respondents pleaded that the advocation was incompetent. It was held (by a majority of the whole Court) that the advocation was competent, and that the Court of Session was entitled to review the decision of the kirk-session as to the amount of aliment awarded by them, and that, in the special circumstances of the case, the amount awarded to the advocator was too small. The case was remitted for reconsideration to the kirk-session.

Observed by the Lord President—"It by no means follows from this that any more than needful sustentation can be claimed—that is, such an allowance as can secure from the cravings of hunger, or the risk of the loss of health from an inadequate supply of food. . . . If actual indigence is once established, then sustentation, in terms of the statute, ought to be provided in an adequate and sufficient manner."

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6. Janet and Mary Halliday *v.* The Heritors and Kirk-Session of Balmaclellan, June 11, 1844.—6 D. 1131; 16 *Jur.* 494; and July 16, 1845.—7 D. 1057; 17 *Jur.* 540.

Amount of Relief.—Held that an allowance of £6, or under fourpence a day, and ten carts of peat per annum, and the rent of a hut to live in, granted by the heritors and kirk-session, was not needful sustentation for two old pauper women, and 3s. 6d. per week to each was ordained by the Court as the allowance to be made by the kirk-session.

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7. Janet Lyall or Lumsden *v.* The Heritors and Kirk-Session of Leslie, July 18, 1846.—8 D. 1251; 18 *Jur.* 588.

Bastard—Aliment—Relief.—Held that the grandmother of a bastard who had, on the refusal of the kirk-session, alimented the child, the mother being alleged to be in poverty, was entitled to relief against the kirk-session, subject to deduction of such sum as might have been contributed by the mother of the child during such times as she was able to earn wages for her own and the child's support.

The facts were—The pursuer, a poor and aged woman, lived with her two daughters, the elder of whom had an illegitimate child in October 1842. After the birth, the mother obtained decree against the father of the child for in-lying expenses and aliment, but only recovered 18s. The child was taken charge

of by its grandmother, the earnings of the mother, when she was was able to work, amounting to only 5s. or 5s. 6d. a week, out of which she contributed to the support of the household. In 1844 two unsuccessful applications for relief were made to the kirk-session of Leslie, and soon after the grandmother removed to an adjoining parish, where she was supported partly by charity and partly by contributions from her daughters. In an action against the kirk-session of Leslie by the grandmother, for payment of her daughter's in-lying expenses, and for the past and future aliment of the child, it was held—(1) that the pursuer had a right to insist in the action for aliment (the claim for in-lying expenses having been given up), but that in modifying the amount "there must be taken into view the fair proportion of what ought to have been contributed by the bastard's mother during the time she was drawing wages," and (2) that "the same proportion must be continued to be paid by her when so drawing wages in time coming."

Observed by the Lord President—"It would be hazardous to say that a woman earning 5s. a week, and having one child only, is entitled to throw it on the parish, and say that the parish must aliment it."

Note.—The authority of this case, as to bygone aliment, is very doubtful. See note to Robert *v.* Fife (*supra*, p. 117).

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8. John Hay (Inspector of City Parish of Edinburgh) *v.* A. M. Adams (Inspector of City Parish of Glasgow) and William Begbie (Inspector of Lasswade), January 23, 1851.—3 *P. L. M.* 173 (1860).

Lunatic Wife—Able-bodied Husband.—Held (by Lord Dundrennan) that the lunatic wife of an able-bodied workman earning 10s. a week is a fit object of parochial relief.

Observed by Lord Dundrennan—"It was contended, on the authority of the cases of Adams and of Thomson, 27th February 1849, that the female in question, being the wife of an able-bodied man, is not a proper object of parochial relief, and that therefore the defender is neither liable to relieve the pursuer of advances which must have been improperly made, nor to maintain the alleged pauper in time coming. This plea might avail in the ordinary case of the wife of an able-bodied man resident in family with her husband, but the present is an exceptional case, to which, in the opinion of the Lord Ordinary, the decisions in the cases of Adams and Thomson have no application whatever.

Here the wife is a dangerous lunatic, and, as a matter of public policy, has been by public authority placed in an asylum, where she cannot be maintained for less than from £23 to £25 per annum, a sum nearly, if not altogether, equal to the husband's entire earnings. It is obvious, therefore, that so far from being capable of maintaining her, the assumption, in point of fact, on which the defence proceeds, it is utterly beyond his means to support his wife in the asylum. In these circumstances, it is thought the wife is beyond all question a proper object of parochial relief."

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9. John Hay (Inspector of City Parish of Edinburgh) *v.* Catherine Doonan, June 25, 1851.—13 D. 1223; 23 *Jur.* 577.

Deserted Wife—Able-bodied.—Held that a women, deserted by an able-bodied husband and left destitute with three young children, is, though herself able-bodied, entitled to parochial relief for herself and children.

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10. A. Maxwell Adams (Inspector of City Parish of Glasgow) *v.* William M'William, Feburary 27, 1849.—11 D. 719; 21 *Jur.* 253; H. of L. March 26, 1852; 1 Macq. 120.

James Thomson and John M'Tear (Inspectors of Gorbals) *v.* William Lindsay, February 27, 1849.— 11 D. 719; 21 *Jur.* 253; H. of L. 1 Macq. 155; 24 *Jur.* 391; Paterson's Scotch Appeals I. 24.

Able-bodied—Right to Relief.—Held (in conformity with the opinions of a majority of the whole Judges of the Court of Session, and affirmed by the House of Lords) that an able-bodied man who, being out of, and unable to find employment, is destitute, has no legal claim for parochial relief, either for himself or for his pupil children.

The facts in the case of M'William were—William M'William, a boiler maker in Glasgow, presented a petition to the Sheriff setting forth that he had been out of employment for three months; that he was in very destitute circumstances; that he had no means wherewith to support himself, and although he had exerted himself in every way to find work, he had entirely failed; that he had applied to the inspector of poor of the parish of Glasgow for relief, but had been refused, and he therefore prayed the Sheriff to find that he was legally entitled to interim relief.

The facts in Lindsay's case were—William Lindsay, a cotton

spinner in Glasgow, able-bodied and in good health, presented a similar petition to the Sheriff with similar averments as to his poverty, and its causes, but praying for relief, not for himself, but for his four children, the eldest of whom was ten, and the youngest three years of age, and whom he was unable to support.

The Sheriff-Substitute and Sheriff sustained the prayer of the petitions, but this decision was overruled, and it was held, in conformity with the opinions of a majority of the whole Court, and subsequently confirmed by the House of Lords, that an able-bodied man who is out of employment and destitute of the means of subsistence, has no legal right to demand relief either for himself or for his children in pupillarity.

The main ground relied on by the appellants in the House of Lords was, that according to the sound construction and true meaning of the statute of 1579, and succeeding statutes relating to the relief of the poor, persons in the situation of the appellants, who are admitted to be unable to earn their livelihood by any kind of work or employment, are entitled to claim relief from the parochial funds, and that this construction had been given effect to by the decisions of the Courts. The decision of the House of Lords proceeded on a construction of the Act of 1579, as well as upon the proviso in the 68th section of the Act of 1845. By this judgment the decision in the early case of Pollock *v.* Darling (*supra*, p. 117) has been overruled. With reference to that case the Lord Chancellor (Brougham) observed:—"My view of Pollock *v.* Darling is, that we cannot uphold it together with the present decision; that the two are irreconcileable, and cannot stand together. But the authority of that case is, in my judgment, exceedingly impaired, not only by the strong opinion against it of the two greatest lawyers then on the bench, Lord President Campbell, and Lord Justice-Clerk Eskgrove, as well as by the strong opinion of Lord Pitmilly, and other writers on the subject, but above all, on the kind of reasoning on which those proceeded who pronounced the decision. One Judge holds that periodical bad crops make such remedies expedient—another is influenced by viewing the interests of those who make the assessment, as an adequate check. But the most able and learned of those Judges who concurred in the decision, Lord Meadowbank, proceeds on the ground that there would be 'risk of insurrection if it were held that the Legislature had left without a remedy the most perilous of all cases, that of the poor made such by scarcity.' We thus perceive that the prevailing alarm, and feelings of natural and praiseworthy compassion, appear to have influenced the consideration of the question, and to have affected what ought to have been a strictly legal argument in the construction of a statutory enactment. It is not denied that this decision has been far from commanding the

assent of the profession ever since; and it is not denied that it has remained in practice a dead letter."

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11. George Leslie *v.* Robert Gibson (Inspector of Peebles), June 15, 1852.—3 *P. L. M.*, 517, 1861.

Proper Object of Relief—Foreigner.—A foreigner, having no residential settlement in Scotland, England, or Ireland, took ill of fever, and was maintained by a parish until his recovery, when relief was discontinued. Under an application by him for further relief, it was found that the proof did not show that he was unable to support himself, and, therefore, that in any view he was not a proper object of relief; and further, it was held (by Lord Cowan—but his judgment *quoad hoc* recalled by the First Division as unnecessary) that whether he was able to support himself or not, there is no provision in the Poor Law Act, or in any of the enactments relative to the poor, under which he could claim relief from parochial funds in Scotland.

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12. Rosie Watson *v.* Joseph Welsh, February 26, 1853.—15 D. 448; 25 *Jur.* 267.

Offer of Relief.—Held that when a parochial board has, with the sanction of the Board of Supervision, arranged that paupers belonging to the parish should be admitted into the poorhouse of certain united parishes situated at a distance of 25 miles, and not contiguous to the parish of the pauper's settlement, the offer of admission to that poorhouse to a pauper in receipt of out-door relief, was a sufficient offer of relief by the board, and that the pauper, having refused such an offer, the board were justified in witholding further aliment.

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13. Patrick M'Kie or Mackay and Mary M'Kie or Mackay *v.* John Baillie (Inspector of Old Monkland), July 20, 1853.—15 D. 971.

Offer of Relief—Able-bodied Women.—Patrick M'Kie or Mackay, with the consent of his mother, presented a petition to the

Sheriff of Lanarkshire for an order upon the inspector of Old Monkland, to afford him parochial relief, upon the ground, that being only about eight years of age, he was unable to support himself. His father was dead, and his mother, the concurring petitioner, was unable to support herself and her child. Held (1) that an offer by the parochial board to receive mother and child into the workhouse was a sufficient tender of parochial relief, and that they were not bound to receive the child alone, and (2) that the burden of proving that a mother, applying for relief for her child, is able-bodied and capable of supporting herself and her child, lies upon the parochial board.

Observed by the Lord President.—"Where the father is dead, the mother, if she have the means, is bound to support her child; and if she is sufficiently able-bodied, it is incumbent on her to do so. On the other hand, if she is not able to do so, she is entitled to claim relief to enable her to support her child. . . . In the case of an able-bodied father, there is a presumption, *juris et de jure*, that he is able to gain his livelihood, so as to support himself and family, but there is no such presumption in the case of a mother. It depends altogether upon circumstances whether a woman is capable of supporting herself and child—she is not held to have the same strength of body as the father."

Note.—In the case of James Laing *v.* Christian Adamson or Fisher, May 22, 1857, 19 D. 749, the Lord President made the following observations upon Mackay *v.* Baillie—"We do not consider that the case of Mackay fixed any abstract or absolute rule that, in such an application as the present, by a woman with one child, the burden of proving that she is able to support that child is necessarily thrown upon the parochial board. That depends on the circumstances of each case. The circumstances for consideration may vary much, and little may turn the *onus* one way or the other."

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14. Alexander Petrie (Inspector of Mearns) *v.* Charles Stewart Meek (Inspector of Barony Parish of Glasgow) and George Hunter (Inspector of Carmunnock), March 4, 1859.—21 D. 614; 31 *Jur.* 334.

Able-bodied Poor.—Held, following the cases of Adams *v.* M'William, and Thomson & M'Tear *v.* Lindsay (*supra*, p. 121), that a parochial board was not entitled, out of the funds raised by

assessment for the support of the poor, to grant relief to an able-bodied man out of employment, and that the continuity of residence of an able-bodied person who had received relief from a parochial board, was not interrupted by its receipt.

Note.—The judgment in this case was confirmed in the later case of Jack *v.* Isdale, (*infra*, p. 126) which is now the leading authority on this point.

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15. Joan Small or M'Intosh *v.* Andrew Welsh (Inspector of Cupar), July 13, 1860.—22 D. 1423; 32 *Jur.* 649; 3 *P. L. M.* 68.

Removal—Offer of Relief.—The parochial authorities, to whom a pauper had made application for relief, having offered to remove the pauper free of expense to a parish which admitted liability for his support;—Held that, after such offer, the pauper was not entitled to interim relief.

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16. Henry Jack (Inspector of Dundee) *v.* Robert Thom (Inspector of Rattray), December 14, 1860.—23 D. 173; 33 *Jur.* 79.

Able-bodied—Object of Parochial Relief.—Held (1) that a person who, though in bad health, is able to earn wages, is not, in the sense of the statute, "a proper object of parochial relief," and therefore (2) that the receipt of relief by a person so circumstanced, did not operate as a bar to his acquisition of a residential settlement.

The facts were—The pauper was born in the parish of Rattray, and after a residence with his wife for eight years in the parish of Liff and Benvie, he settled in Dundee in November 1843, and resided there till February 1849, when he died, his wife having predeceased him on January 30, 1848. On February 7, 1848, he applied for relief to the parochial board of Dundee, and in March following he received pecuniary aid from the board. At that time, though in bad health, he was able to earn wages. It was held that being able to earn wages, he was not "a proper object of parochial relief," and, consequently, that the relief afforded was not sufficient to prevent his acquisition of a residential settlement.

Observed by the Lord Justice-Clerk—"A man may be able-

bodied, though not so strong as some other men are. The expression 'able-bodied' is a comparative term. What the statute means by an able-bodied man, is a man not labouring under any disability (bodily or mental) to work so as to earn his subsistence. It was settled in the case of Petrie, that such a person has no right to parochial relief, and that the fact of relief being given does not hinder the acquisition of a residential settlement, if it was not properly given. . . . The difficulty suggested in the words of the 76th section of the statute is without foundation. . . . We must hold the meaning of the clause to be, that if, being entitled to relief, a person received relief, or, having applied for it, was improperly refused, the receipt of relief, or application for it, in such circumstances, would prevent the acquisition of a residential settlement." Upon the question of a person being entitled to relief, his Lordship says, "Nothing, except that a man is under inability to work, affords any ground for giving him parochial relief."

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17. Robert Hawlker Isdale *v.* Henry Jack (Inspector of Dundee), March 31, 1864; 2 M. 978; 36 *Jur.* 484; 6 *P. L. M.* 445 and 500; affd. H. of L. February 12, 1866; 4 M. 1; 38 *Jur.* 221; 8 *P. L. M.* 384.

Able-bodied Poor—Relief.—Held (following the case of Petrie *v.* Meek, *supra*, p. 124, and the principle laid down in Adams *v.* M'William, *supra*, p. 121), that it is illegal for a parochial board to apply the funds raised by assessment under the Poor Law Act in relief of able-bodied men out of employment, and suspension and interdict granted against a parochial board continuing so to apply the poor's funds.

Observed by the Lord Justice-Clerk—"The respondent reads the 68th section of the statute as authorising and empowering parochial boards to apply funds raised by assessment to relief of the able-bodied out of employment, but without giving these persons any right to relief. I think, if there had been any intention to introduce so serious and radical a change into the Scotch Poor Laws, it would have been enacted in express terms, and not left to an obscure and doubtful implication. But I am also quite unable to understand an application of funds authorised by statute for a beneficial public object, which does not create a corresponding legal right, in the person intended to be benefited, to claim the benefit, if it be improperly withheld from him. The more natural and obvious construction is, that the enactment of the 68th section was intended for the benefit of that class of occasional poor who are for the time reduced by disease,

bodily or mental, below the condition of being able-bodied (and who were, under the older statutes, proper objects of parochial relief); and that the proviso (in harmony with the older laws) excludes the able-bodied absolutely from the application of this enactment. Such was Lord Brougham's opinion in Adams *v.* M'William. 'It is,' he said, 'a proviso in the section extending the enactments to occasional relief; and to prevent the mere want of employment from bringing persons within the class of those entitled to such relief, *the proviso in terms excludes them from whatever in the enactment is given.*' The language of Lord Truro, in like manner, makes it very clear, that he considered the power of the administrators to give relief out of the rates, and the legal right to demand participation in the rates, to be commensurate, and that a voluntary application of the rates by the parochial board to relieve able-bodied persons, could just as little be sustained, as a demand of right by the able-bodied to be relieved out of the rates. He says—'The rate, in which the appellant claims to participate, was made under the authority of this Act alone. The Act *directs how this new statutable rate shall be applied*, and declares in effect that no able-bodied person shall have any right to claim under the Act to be included in the list of persons entitled to participate in the rate.' . . . 'To allow the rate made under this Act to be applied to the relief of a list of persons, which included the names of able-bodied paupers, would certainly be inconsistent with this statute.' Again, in the case of Lindsay *v.* M'Tear, decided on the same day with Adams *v.* M'William, the same noble and learned Lord says —'The House is bound to declare, whether the overseers (meaning, of course, the parochial board) are authorised by law to apply the rate in question to the relief of these individuals; and I think that by law they are not so authorised, and that the children's rights and claims are dependent on those of the parents.'"

Observed by Lord Mackenzie—"What is the meaning of 'occasional poor' as used in the 68th section? No definition is given of that term in the interpretation clause. The statute employs 'occasional' simply in contradistinction to 'permanent,' so as to denote temporary as well as permanent disability. The object appears to have been to remove all doubt that the class of occasional poor who, for the time, are reduced by temporary disease, bodily or mental, below the condition of able-bodied persons, should be entitled to relief from the poor's funds raised by assessment in the same manner as those permanently disabled. But as poverty was often the consequence of want of employment, it was considered necessary to guard the enactment with this proviso, 'That nothing herein contained shall be held to confer a right to demand relief on able-bodied persons out of

employment.' These views are corroborated by the 33d section of the Act, which declares it competent to the parochial board 'to resolve that the funds requisite for the relief of the poor person entitled to relief from the parish or combination, including the expenses connected with the management and administration thereof, shall be raised by assessment.' Here the power to give relief is made dependent upon the right of the applicant to demand it. He must be a poor person 'entitled to relief.' An able-bodied man out of employment has no such title to relief."

Observed by the Lord Chancellor (Cranworth)—"It has been already decided almost unanimously in the Court of Session . . . and that decision has been affirmed after great deliberation in this House, that no able-bodied person, though he might come under the description of occasional poor, had any right to demand relief. But then it is said, that that is not the present case. The person does not demand relief in this case, or at least if he does, it is not because he demands it, that it is given to him. No doubt he really does demand it or ask for it. But what is said is this, although he could not have demanded it, it is competent to the administrators of this fund to give it to him, whether he demands it or not. That appears to me to be absolutely inconsistent with the notion of a fund levied for a certain definite purpose, defined as that purpose is in the 33d section of the Act of the 8 and 9 Victoria, c. 83, which is this, that it shall be lawful for the parochial board, at any meeting to be called for the purpose, to resolve that the funds requisite for the relief of the poor persons entitled to relief shall be raised by assessment. Now, is this a person entitled to relief? Clearly not, unless he is a person entitled to demand relief. I am unable to distinguish or to see any difference in principle between being entitled to relief and being entitled to demand relief. The whole argument rests upon the very subtle distinction, that in that last line of the 68th clause, the words are, that nothing herein contained shall be held to confer 'a right to demand relief' instead of 'to relief.' Suppose the words had been a right to relief, there would not have been a shadow of foundation for the argument. But it appears to me, that variation in the language makes no real difference, and although it was not actually the point decided in this House in the case of M'William *v.* Adams, it is impossible not to see that both Lord Brougham and Lord Truro thought, that the right to give and to receive relief were correlative; that if there was no right to demand, there was none to give relief. It must be so. It cannot be, that where a fund has been raised for the special purpose defined in an Act of Parliament, and given into the hands of the persons whose duty it is to carry the Act into execution, it is open to

them to say, 'We think that you are not within the class of persons defined in the Act, but we think you are a proper object of relief, and therefore we shall give it to you, although we are not authorised by the Act to do so.'"

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18. Margaret Meikle or Keith *v.* John Cassels (Inspector of Lanark), July 4, 1866.—4 M. 1025; 38 *Jur.* 520; 8 *P. L. M.* 603.

Relief—Adequacy.—Held (1) that the remedy of a pauper who has been in receipt of casual relief, which is alleged to be inadequate, is by appeal to the Board of Supervision, in terms of the 74th section of the Act of 1845, and not by action before the Sheriff; and (2) that a person though entered only on the roll of "casual" and not of "permanent" paupers, is a pauper in the sense of the Act.

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19. Francis Forsyth *v.* John Nicholl (Inspector of Duffus), January 19, 1867.—5 M, 293; 39 *Jur.* 129; 9 *P. L. M.* 200

Tender of Relief—Adequacy.—Held that an offer of admission to the poorhouse of the parish is a legal tender of relief, and its adequacy, if questioned, must be brought in the first instance before the Board of Supervision.

Observed by the Lord Justice-Clerk—"I concur in a remark that was made in the course of the argument by my brother on my left (Lord Benholme), as to the sentimental matter in the preamble of the 60th section of the Act, and that the enacting part of the clause is alone of importance. The notion that the poorhouse system was introduced into Scotland for the first time by the 8th and 9th of Victoria, is a total mistake. It was well known in Scotland long before then, and, indeed, had grown up with the whole system of our Poor Law. It would have been strange had it been otherwise. For when the impotent poor are to be maintained, it is as necessary to provide them with a house to live in, as with food and clothing, and it would be a strange thing to restrain a parochial board from collecting in one house the poor scattered throughout the parish. I am aware that the question has been raised, whether there are not many cases to which the poorhouse test should not be applied, and I have no wish to interfere with the kind and benevolent administration of

the Poor Law in that respect. But the question before us is not one of propriety of administration, but of pure law. Is any one of the legal poor entitled, as matter of right, to out-door relief. As to that question, I have no hesitation in giving the answer, that it is in all cases a legal tender of relief to offer admission to the poorhouse."

Note.—An unreported case, Dempster *v.* The Inspector of Kirkmahoe, is referred to by Mr. Caird in his Manual (6th edition), p. 4, in which an applicant, who was admittedly entitled to relief, and who was labouring under serious disease, was required by the inspector of poor to go to an infirmary, where alone he could be properly treated. The applicant refused to do so, and the Sheriff-Substitute decided against the inspector, on the ground that he was not entitled to attach a condition to the grant of relief. The pauper afterwards complained to the Board of Supervision that the relief he received was inadequate, but his application was disregarded "in respect you (the applicant) have it in your power to receive adequate relief in the infirmary at Dumfries."

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20. John Murray (Inspector of Carstairs) *v.* Marion Frame or Hutchison, March 20, 1867.—3 *S. L. R.* 326; 9 *P. L. M.* 401.

Married Women—Able-bodied Husband.—A married woman having presented a petition to the Sheriff for parochial relief, on the ground that she had been improperly refused relief by the parochial board;—Held that she was not a proper object of parochial relief, her husband being able-bodied, and not having deserted her.

Note.—This judgement was arrived at after a remit had been made by the Court to Dr. Littlejohn to ascertain the physical condition of the husband.

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21. Irvine *v.* Thomas Waugh (Inspector of Riccarton), March 2, 1870.—3 *P. L. M.* 403.

Written Application for Relief—Refusal.—Held (in the Sheriff Court of Ayrshire) that a written application for relief is not necessary; and that to require a person who can neither read nor write to make an application in that form is an act equivalent to a refusal of relief.

22. Isabella Lyall *v.* George Andrew Bell (Inspector of Kinnell), 1870.—3 *P. L. M.* 613.

Application for Relief.—Held that a pauper resident in the parish of A., but whose settlement was admittedly in B., and who had applied directly for relief to the inspector of the parish of B., was not justified in raising an action against the inspector of B., on the ground that he had refused relief, he having been from home when the personal application was made, and not being aware of the address of the pauper, who raised the action a month after her application, during which time she took no steps to obtain relief either in the parish of B. or A.

It was observed by the Court that the law did not recognise any right in the pauper to enforce relief in the way she had adopted. The Statute had provided a mode of obtaining relief when this was refused, which the petitioner had not adopted. It was the duty of the Court to discourage the incurring of expense.

VIII.—RECOURSE BY RELIEVING PARISH.

1. Against Relatives.

2. Against Other Parishes.

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1. Recourse Against Relatives.

1. Children of Netherlie against the Heir, January 24, 1663.—M. 415.

Brother and Sister.—Held that an eldest son who had succeeded to his father's estate was bound to support his younger brothers and sisters, in so far as he may be *lucratus* by the succession.

The same principle was recognised in a large number of old cases—the references to which will be found in Fraser on Parent and Child, pp. 107-108.

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2. Catarine Frazer *v.* Hugh Fraser, February 11, 1663.—M. 415.

Brother and Sister.—Held that a son succeeding to his father's estate was bound to aliment his sister, the child of his father's second marriage.

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3. Hastie and Ker *v.* Hastie, November 10, 1671.—M. 416.

Claim against Brother Sustained.—Held that one brother, who represented his father by the disposition of his goods, was bound to aliment a posthumous brother, who had been left unprovided for, but this only during minority, or such part thereof as he was without a trade or means to aliment himself.

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4. John Ker *v.* Tutors of Moriston, December 7, 1692.—M. 1363.

Bastard.—Held that the heir of the father of a bastard was not bound to aliment the bastard.

This decision is not now authoritative; Lord Ivory observed in the case of Clarkson *v.* Fleming, July 7, 1858; 20 D. 1224—"I can pay no respect to the decision in the case of Ker. It shows a very loose conception of what the law was in that olden time, but it has since been perfectly ascertained that such a claim as this is a claim of debt. When duly constituted, the claim is so much of a debt, that the creditor would be entitled, in a sequestration of a debtor, to claim on his estate."

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5. William Ayton *v.* Dame Margaret Colvill, July 25, 1705.—M. 451.

Stepmother.—Held that a stepmother liferented in her deceased husband's estate, was liable in aliment to his son and heir, who was an advocate, without practice, on the principle that the father, by training his son to a precarious profession, was bound to maintain him if he failed in obtaining practice, and that the same obligation fell on the widow, who represented her husband in the estate.

Note.—In the ordinary case, a stepmother is not liable in aliment to her stepchildren. The circumstance that the stepmother in this case liferented the whole estate rendered her liable under the statute 1491.

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6. Alexander Brown *v.* George Brown and Alexander Brown, July 20, 1710.—M. 448.

Parent and Child.—Held that children were bound to aliment their indigent parents.

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7. Margaret Anderson and Rachel Gibson *v.* James Gibson, January 25, 1754.—M. 427.

Brother and Sister.—Held that a brother who had succeeded to

the estate of a distant relative, was not liable in aliment to a sister upwards of twenty-one years of age.

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8. Catharine Drummond *v.* Robert Stewart, March 2, 1756.—M. 412.

Mother and Son—Accession of Fortune.—A mother alimented an idiot son, who had himself no means, for thirty years, when he succeeded to a considerable estate, Held that the mother had no claim for repayment of the sums expended by her.

Note.—The same was held in the case of Jean Home *v.* The Assignee of Lady Wedderburn, July 12, 1757, M. 412.

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9. Mary Scott *v.* Mary Sharp, March 8, 1759.—Mor. App. *v.* Parent and Child 1.

General Disponee of Parent.—Held that the general disponee of a parent was bound to aliment a daughter who was destitute, and who had been left with only a recommendation to the charity of the general disponee.

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10. Mrs. Margaret Seton *v.* Sir John Paterson, June 25, 1761.—M. 429.

Mother—Sisters.—Held that a mother was entitled to aliment, *jure naturæ*, from her son, but that sisters had no such right, where their brother did not represent their father.

Note.—A similar decision as to the mother's right was given in Buchanan and Dunlop *v.* Morison and Leny, January 21, 1813, F. C., in which the right was extended to a maternal grandmother.

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11. Helen Adam *v.* Sir Andrew Lauder, March 1, 1762.—M. 398.

Daughter-in-law.—Held that a daughter-in-law deserted by her husband was entitled to aliment from her father-in-law.

The authority of this case was doubted in the later case of Christie *v.* M'Millan, 1802, Mor. App. *v.* Aliment 5.

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12. Mrs. Barbara Lowther *v.* Murdoch M'Laine, December 15, 1786.—M. 435.

Claim of Widow against Husband's Heir.—Held that the widow of a landed proprietor, who was not entitled to any provisions from her husband, either legal or conventional, had a claim for aliment against the husband's heir.

Note.—In Nicolas Thomson *v.* David M'Culloch, March 6, 1778, M. 434, it was held that where a widow's terce is insufficient for her support, she has a right to additional aliment from the husband's heir. A similar rule was applied in Primrose Young *v.* Charles Campbell, January 27, 1790, M. 400, and in Mrs. Agnes Ferguson *v.* George Logan and Others, July 11, 1809, Hume 5.

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13. Elizabeth Dalziel *v.* Robert Dalziel, December 14, 1788.—M. 450.

Uncle and Niece.—Held that an uncle, who had succeeded his father in a large estate, was bound to aliment the daughter of a deceased elder brother, and to continue it during her life, or till her marriage.

Note.—In this case, the aliment was held to be payable after majority, in consequence of very special circumstances connected with the family history of the parties.

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14. Kirk-Session of Wigton *v.* John Dalziel, February 6, 1795.—Hume 453.

Kirk-Session—Title to Recover Aliment.—Held that a kirk-session had a good title to raise an action of filiation and aliment of an illegitimate child who had been for some years under their charge, and as to whose aliment they were in advance.

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15. Belch *v.* Belch, December 1, 1798.—Hume 1.

Grandfather and Grandchildren.—Held that a grandfather was bound to aliment his grandchildren, but not his daughter-in-law, who had been deserted by her husband.

This judgment against the right of a deserted daughter-in-law to aliment from her father-in-law during her husband's life has been followed in Tait *v.* Whyte, 1802, Mor. App. *v.* Aliment 3, and Christie *v.* M'Millan, 1802 Mor. App. *v.* Aliment 5.

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16. Isabel Howie and Kirk-Session of Alyth *v.* Kirk-Sessions of Arbroath and St. Vigeans, January 25, 1800.—Mor. App. *v.* Poor 1; 3 Brown's Synopsis 1589.

Advances by Relations prior to Application for Relief.—Held that advances by relations of a pauper, made previous to the application for relief, cannot be claimed from the parish of the pauper's settlement, such advances being regarded as having been made *ex pietate.*

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17. Mary Tait *v.* William White, February 28, 1802.—Mor. App. *v.* Aliment 3.

Liability of Grandfather.—Held that aliment was due, *ex debito naturali,* to a grandchild by a grandfather, where the father is unable to maintain the child.

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18. Riddells *v.* Riddell, March 6, 1802.—Mor. App. *v.* Aliment 4.

Claim by younger Children against Trustees of Father.—Held that younger children whose provisions, left by their father, were not payable till they attained majority, had a good claim for aliment during minority against the trustees of their father.

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19. De Courcy *v.* Agnew, July 3, 1806.—F. C.

Heir of Entail—Son's Widow.—Held that the proprietor of an

entailed estate is bound to maintain the widow of his son, who is the mother of his heir.

Note.—This case is of doubtful authority. See Hoseason *v.* Hoseason (*infra*, p. 150).

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20. Isabella M'Cowan *v.* Christian and Ann Paterson, May 20, 1809.—F. C.

Widow—Husband's Heirs.—Held that a widow, who, before marriage, had been a servant, had no claim for aliment against the heirs of her husband, whose whole heritable property was worth £12 per annum.

Note.—In the later cases of Smith *v.* Smith, March 11, 1812, F. C.; Bowie or Harvie *v.* Harvie, January 23, 1829, 7 Sh. 305; and M'Conochy, February 26, 1830, 8 Sh. 604, an opposite view was, in similar circumstances, given effect to, and a sum of aliment awarded to the widow, although the annual value of the property left by the husband was small, and the widow belonged to the lower ranks of life.

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21. Elizabeth Finlayson *v.* Matthew Gown, July 7, 1809.—F. C.

Bastard—Lapse of Time.—Held that the mother of a bastard who had made no claim against the father for fifteen years, was entitled to recover from him in-lying expenses, and aliment for the child for each of the past years.

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22. Janet Duncan *v.* John Hill, February 17, 1810.—F. C.

Father-in-law—Daughter-in-law.—Held that a father-in-law was bound to aliment his daughter-in-law during the lifetime of his son, who was incapable of maintaining her.

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23. Elizabeth Yuill or Marshall *v.* James Marshall, December 21, 1815.—F. C.

Father-in-law—Daughter-in-law.—Held that a father-in-law was not bound to aliment his son's widow—who belonged to the lower ranks of life.

Note.—The Judges distinguished this case from the earlier case of De Courcy *v.* Agnew—in which the pursuer was of high rank, and her son the heir of entail and to the title of his grandfather.

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24. Greig *v.* Crawford, 1817.—Dunlop's Parochial Law, p. 372.

Sufficient Implement of Obligation to Aliment.—Held that an offer by a son to receive his parents into his own house, is a sufficient implement of his obligation to aliment them, provided the circumstances of the son are such that he is unable to afford a separate maintenance.

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25. Murray *v.* Craik, 1817.—Dunlop's Parochial Law, p. 359.

In-lying Expenses.—Held that the mother of a child which was supported by the parish had a good claim against the parish for in-lying expenses.

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26. The Kirk-Session of Garvald *v.* John Forrest, February 14, 1817.—F. C.

Right of Parish to Recover Aliment from Father of Bastard.—Held that a kirk-session has no title to raise an action for aliment against the father of an illegitimate child, unless a claim for the support of the child has been actually made against the parish.

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27. John, Mary, and Jean M'Kissock *v.* John M'Kissock, February 14, 1817.—Hume 6.

Liability of Grandfather.—Held that a grandfather, whose own family was large, and whose means were moderate, was only bound to maintain his indigent grandchildren in family with himself.

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28. James Maidment *v.* Jane Anne Woolley or Maidment or Landers, May 25, 1815.—F. C.; H. of L. May 27, 1818; 6 Dow 257.

Mother and Son.—Held (reversing the decision of the Court of Session), that a mother in wealthy circumstances was not

bound to support her son until he is able to maintain himself, upon the ground that under the mother's marriage contract the son was entitled to a reversion, payable on his mother's death, and which he could turn to account.

Note.—For a similar decision see Drysdale *v.* Drysdale, December 3, 1831, 10 Sh. 98.

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29. Heritors and Kirk-Session of Ettrick *v.* W. & W. Sword, February 14, 1824.—2 Sh. 595.

Right of Parish to Recover from Relations.—Held that a parish supporting a pauper is entitled to relief from every party liable to aliment him, and that the proper procedure in such cases was for the heritors and kirk-session to refuse the application for maintenance, either altogether or in part, so as to oblige the pauper to have relief against those relations who were liable to support him.

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30. A. Wilson *v.* Heritors and Kirk-Session of Cockpen, February 18, 1825.—3 Shaw 547.

Grandchildren.—Held that while there is an obligation to support grandchildren as strong as to support children, and though the mere circumstance of the grandfather being a common labourer in the lower ranks of life, would not exempt him from liability, yet there may be special circumstances which would have that effect.

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31. R. Ramsay *v.* Officers of State and Others, March 1, 1825.—3 Shaw 597.

Criminal.—Held that the burden of supporting prisoners after trial fell upon the burgh in which they were imprisoned.

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32. The Hon. William Maule *v.* Fox Maule, June 1, 1825.—H. of L. 1 W. and S. 266.

Father and Son.—Held (by the 'House of Lords, reversing the judgment of the Court of Session) that a father, who was

heir of entail in possession of an estate worth £10,000 per annum, was not bound to make any further provision for a son, to whom he allowed £100 a year, and who held a commission in the army as ensign, with £90 of pay.

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33. Thomas, Earl of Strathmore *v.* Sir John Dean Paul and Others (Trustees of John, late Earl of Strathmore), June 17, 1825; H. of L. 1 W. and S. 402.

Claim against Trustees of Deceased Brother.—Held that the younger brother of an earl, who was major, and had received from his father £12,500, and afterwards succeeded to the title on the death of his brother, but was excluded from the estates by a trust deed executed by his brother, was not entitled to any sum in name of aliment from his brother's trustees, although he was in a state of destitution.

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34. Mrs. Jackson *v.* J. Jackson, March 3, 1825.—3 Shaw, 610; November 17, 1825, 4 Shaw 186.

Mother—Son.—Held that an offer by a son in good circumstances to receive his mother into his own house was not sufficient implement of his obligation to aliment, such an offer being sufficient only where the son is clearly unable to afford a separate maintenance.

Observed by Lord Glenlee—"I have no idea that in a question between a son and his mother the son has the same rights as those which a father has, who aliments his children. The father is entitled to the services of his children, in so far as they are able to contribute to the support of the family generally. A child, however, has no such privilege as to his parent; and, except under very particular circumstances, the parent must have a separate aliment."

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35. Margaret M'Lauchlan *v.* Kirk-Session of Stevenston, January 25, 1828.—6 Shaw 443.

Right of Kirk-Session to Adjudge.—The father of the pursuer possessed heritage to the value of £120, but had for some

time before his death been on the roll of poor, and had been alimented. He, however, had not granted a disposition *omnium bonorum*. By his settlement he left his heritage to his daughter (the pursuer) under burden of a legacy of £10 to his only other child—a son. After the father's death an action was raised against the daughter by the kirk-session, in which they obtained decree in absence for the advances to her father, and four years after, a second action was raised against her for repayment of alleged advances to her brother, in which they also obtained decree. The kirk-session had taken possession of the heritage and drew the rents, and subsequently obtained decree in absence in an action of adjudication proceeding on the former decrees. The daughter thereupon brought an action of reduction of the decree of adjudication. Held, in these circumstances, that the pursuer was entitled to decree of reduction, but in an accounting that the defenders were entitled to the rents they had drawn, and to the £10 legacy left to the brother.

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36. Thomas Nicoll *v.* Magistrates, Heritors, and Kirk-Session of Dundee, June 19, 1832.—10 Sh. 670; 4 *Jur.* 509.

Grandfather's Liability to Support Bastard.—Held that the maternal grandfather of a bastard pauper was not bound to maintain him.

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37. James Pott and James Rankine *v.* James Pott, December 7, 1833.—12 Shaw 183.

Duration of Father's Liability to Support Illegitimate Child.—Held (1) that the father of an illegitimate child is bound to maintain him as long as he is unable to support himself, whether that inability arises from ill health, or from having been prevented, by previous ill health, from learning a trade, but (2) that if the child has reached his sixteenth year, and the father has then to provide for him, the father is entitled to his custody, with a view to teaching him a trade.

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38. Elizabeth Beattie or Pagan *v.* John Pagan, January 27, 1838. —16 Sh. 399.

Father-in-law—Son's Widow.—Held that, while the grandfather was liable to aliment his grandchildren, left indigent after their father's death, he was not bound to aliment their mother.

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39. Robert Weepers *v.* The Heritors and Kirk-Session of Kennoway, June 20, 1844.—6 D. 1166; 16 *Jur.* 507.

Aliment—Bastard—Relief.—In action by the father of the mother of a bastard child, against the heritors and kirk-session, for the aliment granted by him to the child on the failure of the child's father to maintain it;—Held that the parish was liable in relief for past aliment granted by the pursuer to his grandchild, and also for future aliment, so long as he should support the child, the parents being unable to do so.

The facts were—The mother of a female illegitimate child raised an action for in-lying expenses and aliment against the father, and although she obtained decree against him, did not succeed in recovering anything from him. She being in poverty, and unable to support the child, her father from time to time alimented the child, and raised an action against the heritors and kirk-session of the parish of the mother's settlement for these advances, and for future aliment, so long as the child was supported by him. The defenders were held liable in past aliment, and also in future, so long as the pursuer supported the child, and the parents were unable to do so, or till the child should in her own right be entitled to parochial relief, and this although the father of the child had offered on two occasions to take the child from her mother, one a few days after birth, and the other when it was three months old, it being held that the mother had the absolute right of custody.

Observed by Lord Jeffrey—"I hold it to be settled that in a question between the father and mother of an illegitimate child, the mother's right of custody is absolute, and that no offer of the father can be pleaded against the natural, predominating, and overbearing right of the mother to have the custody during its tender years . . . and this right is not to be overcome by the extraneous circumstance, that the support is to be claimed from the parish."

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40. Ranald George Macdonald *v.* Mrs. Jane Macdonald and Others, June 20, 1846.—8 D. 830; 18 *Jur.* 452.

Stepmother.—Held that there is no obligation on a stepmother to aliment a stepson.

Observed by the Lord President—"I am clearly of opinion that there is no vestige of authority for the claim against the stepmother. No natural obligation exists; there is no connection between them; and whether or not she may give aliment from feelings of kindness, it is clear that the law cannot compel her."

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41. John Anderson *v.* The Heritors and Kirk-Session of Lauder March 11, 1848.—10 D. 960; 20 *Jur.* 332.

Bastard.—Held that the father of an adult illegitimate daughter was bound to aliment her, and relieve the parish of the burden of her support, she being, from bodily infirmity, unable to maintain herself.

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42. Mrs. Susanna Stewart Goldie or Wallace *v.* Lieutenant John Goldie, July 20, 1848.—10 D. 1510; 20 *Jur.* 573.

Claim of Married Woman for Aliment against her Father.—In an action by a married woman against her father for aliment, upon the ground that her husband was bankrupt and could not support her;—Held that an offer by her father to receive the pursuer into his house and support her there was sufficient implement of his obligation to aliment her.

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43. A. Robertson or Anderson, Dundee *v.* Her Three Sons, June 29, 1857.—1 *P. L. M.* 547.

Mother—Sons.—Held (in the Sheriff Court of Forfarshire) that a woman fifty-four years of age is not from that cause alone entitled to aliment from her lawful children, although they are able to maintain her, and a summons for aliment, which set forth no other ground of action, dismissed as irrelevant.

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44. Robert Henderson (Inspector of Linton) *v.* Janet Smith, November, 1858.—29 *Jur.* 559; 1 *P. L. M.* 148.

Donation—Repetition of Advances by Pauper.—Held (by Lord Ardmillan) that advances made to a pauper, either by the heritors and kirk-session under the former law, or by the parochial board under the Act of Victoria, the pauper not having been compelled to grant a disposition and assignation *omnium bonorum*, are of the nature of charitable donations, and that action for repetition thereof from a pauper who has succeeded to considerable means is incompetent.

Observed by Lord Ardmillan—"In practice, a disposition *omnium bonorum* is often taken by a parochial board from a claimant for relief supposed to be in possession of property. Even if the claimant have no present means, yet if he have a vested interest on which funds for his support can be raised, that interest has a marketable value, and he may be compelled to assign it. In every case, however, where the claimant has no funds or means, present or prospective, which can be made available, or of which a conveyance can be demanded, the relief is given as aliment to a poor and destitute person, on the footing of charity. In such a case, when no conveyance is taken, and no means or prospects exist of which conveyance could be demanded, the aliment to support the pauper is bestowed without any expectation or condition, or express or implied obligation of repayment by the pauper receiving it. The statute of Queen Victoria does not expressly confer any right on a parochial board to compel repayment from a pauper of aliment advanced while he was in a state of admitted destitution; and since it is not conferred by the statute, or by any positive law, and has not been recognised by judicial authority, it becomes necessary to consider on what ground of legal principle it can rest. There is here no paction, no condition or stipulation attached to the supply of aliment, and no provision in the statute arising in place of paction, and imposing an obligation to repay. . . . The demand for repayment cannot be sustained on the ground of *condictio indebiti*. It is admitted that the aliment was given to a person, then a destitute pauper, unable to work, and having no means and no prospects. It could not lawfully have been withheld. It cannot be said that it was *indebitum*. It was due by law, and nature, and equity, and charity, and Christian duty; for on all these grounds the old Scottish statutes place the right of relief, and it cannot be reclaimed on the ground that it was not due. But if the demand cannot stand on the plea of *condictio indebiti*, and if the aliment given without paction to a destitute pauper,

is presumed a donation, then the obligation sought to be enforced can arise only by force of statute, for at common law, it does not exist. But it is not alleged that there is any provision of the statute creating such an obligation, and no case is quoted in which it has ever been enforced."

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45. Helen Barron or Corrie *v.* Thomas Adair, February 24, 1860. —22 D. 897; 32 *Jur.* 377.

Duration of Father's Obligation to Support Illegitimate Child.—Held that the father of an illegitimate child is bound to aliment him till the child can support himself, and that it is a question of circumstances whether an offer to aliment the child in his own family is, or is not, a discharge of that obligation.

Observed by the Lord Justice-Clerk—"The relation between a father and his bastard child is not in any proper, civil, or municipal sense, the relation of parent and child. A bastard is in the eye of the law *filius nullius.* Not only has he no father, but no proof can give him a father—nothing can do that but marriage between his mother and his putative father. The bastard having no father, what is the relation of the man by whom paternity has been admitted, or against whom it has been proved? It is not a relation which creates reciprocal duties and obligations. The father has no right of custody of the bastard's person, or of administration of his estate; he has none of the characteristics of the *patria potestas.* The only relation is, that the father is, to a certain extent, and under certain conditions, liable to aliment the child. But even in the matter of aliment, the relation between a bastard child and his father is different from that between a legitimate child and his father. In the latter case the obligations are reciprocal, but they are not so in the former. The only vestige of connection is the obligation on the part of the father, under certain conditions, to provide or contribute to the maintenance of the child while unable to support itself. This depends upon no principle of the civil law, or of the law of nations, but arises entirely *ex jure naturali,* and is one of those natural obligations to which the municipal law of this country has seen proper to give legal effect, on account of the natural justice on which it is founded. In giving effect to such natural obligations, however, we are bound to see that we do not press the natural obligation beyond or against considerations of clear justice and equity. We are not hampered by any technical or fixed rule as to what may be held to take place at the expiry of seven, or any other number of years; the question

is, whether the father continues responsible, or has done enough to relieve himself from the natural obligation."

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46. Elizabeth Bain *v.* Sinclair Bain, March 16, 1860.—22 D. 1021; 32 *Jur.* 447.

Parent and Child—Sufficient Support.—In an action for aliment by a daughter, aged twenty-nine, against her father, the pursuer averred that she was of weakly constitution, and unable to support herself, and that the only support given her by her father, whose income was about £100 per annum, was an allowance of 5s. per week, and accommodation in a room adjoining his own house; and, further, that her life was rendered uncomfortable, as she was not permitted by her father and her stepmother to hold any intercourse with her father, or even to enter his house. The Court refused to interfere, or order the defender to increase the aliment.

Observed by the Lord Justice-Clerk—"We have a general principle to guide us. That principle is, that we are to protect a child against want, and that principle goes no further. I think the principle is founded on sound considerations of social expediency."

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47. Jonathan Stiven (Inspector of Elgin) *v.* George Buie, December 5, 1863.—2 M. 208; 36 *Jur.* 103; 6 *P. L. M.* 240.

Grandchild's Obligation—Sufficiency of Offer—Extent of Parochial Board's Right of Relief.—An old woman having become chargeable to the parish, the inspector intimated this to her grandson, and that he held him liable in relief. The grandson immediately thereafter stated his willingness to support and maintain his grandmother in his own house. The old woman refused to go to her grandson's house. In an action by the inspector;—Held that the grandson's offer was an adequate offer of relief to the inspector, who, therefore, had no claim for reimbursement for advances made after its date, and that an inspector of poor has no title to claim from the relatives of a pauper anything beyond relief from his obligation to give needful sustentation.

Observed by the Lord Justice-Clerk—"The true question in a

case of this kind is, whether such an offer was made on the part of the advocator (the grandson), as was equivalent to his taking the place of the parochial board, in furnishing needful sustentation to this old woman. If he did that, if he went the length of undertaking to do all that the parochial board was bound to do, the inspector of the parish had neither title nor interest to go one step further. As to the matter of fact, there is no room for doubt, because it is admitted by the inspector that soon after receipt of the letter of 21st February, 'the defender called upon him and intimated that he would support his grandmother in his own house.' This, I think, was an adequate offer. It, of course, implied that the grandmother was to live in family with him, and was to share the meals of the family, as well as to be entertained at bed, and most assuredly that amounts to such needful sustentation as the parish is bound to afford, or as the parish, under the 71st section of the Act, can enforce against the relatives of the pauper. I could quite understand, that if it could be made out that the offer was not made in good faith, or that there was any well-founded charge of cruelty against the relative who made it, either in regard to an old quarrel, or the like, the offer might go for nothing, and the inspector of the poor would not be discharging his duty if he handed over the pauper to such custody as appeared to him, on good grounds, to be improper custody, in which the pauper would not meet with reasonably kind treatment, but, on the contrary, would be exposed to cruelty, and perhaps to half starvation. That is a case I entirely except from the operation of the rule I have explained."

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48. Mrs. Ann Douglas or M'Kenzie or Thom *v.* Thomas M'Kenzie, December 2, 1864.—3 M. 177; 37 *Jur.* 86; 7 *P. L. M.* 506.

Parent and Child.—Held that a son is bound to afford such aliment to his mother as shall keep her above want, relative to her position in life and previous circumstances, and that the amount of aliment should be fixed without reference to the son's fortune.

Observed by the Lord Justice-Clerk—"The obligation to aliment a relative is not necessarily a permanent obligation. The party cannot be called on to grant a bond of annuity, and as little is the other party entitled to a decree for an annuity permanently. The pursuer may become richer, or the defender poorer; or the pursuer may obtain such an income from other sources as to place her (or him) above the reach of want; and then we should have no jurisdiction to entertain an action for aliment. The form of decree for aliment must therefore be to

find the pursuer entitled to aliment, fixing its amount, and ordaining the defender to pay aliment at that rate from a particular date, but not fixing any date as the term of endurance of the obligation to aliment. Under such a decree the defender may, if any change of circumstances justify it, obtain immunity from the obligation."

Note.—The cases in which the question has arisen as to the amount of aliment to be awarded, will be found noted in Fraser on Parent and Child, p. 88, *et seq.* The principle which now rules is, that the amount of aliment is to be nothing more than "support beyond want."

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49. Elizabeth Simpson *v.* Thomas Cassels and John M'Gregor, January 14, 1865.—3 M. 396; 37 *Jur.* 182.

Right of Mother to Custody of Illegitimate Child.—Where the mother of an illegitimate child had obtained a decree for aliment against the father, and, two years before the period during which aliment was payable expired, applied for custody of the child, who was then eight years of age—Held that she was entitled to the custody on giving up all claim for further aliment.

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50. Walter Reid *v.* William Moir, July 13, 1866.—4 M. 1060; 38 *Jur.* 551; 9 *P. L. M.* 84.

Husband and Wife—Liability of Son-in-law.—Held that a husband having sufficient means is bound, during the subsistence of the marriage, to support the indigent parents of his wife.

Observed by the Lord Justice-Clerk—"The foundation of the husband's liability is this: By reason of her marriage the wife's person is entirely sunk, and her movable estate is transferred by assignation to her husband, so that his and her estate, during the subsistence of the marriage, form one movable estate, under the control and management of the husband. The legitimate consequence of this is, that every personal obligation of the wife is, along with her estate, transferred to the husband and becomes his debt. . . . It is said that the wife brought no estate to her husband, that he was not *lucratus* by the marriage; but there is nothing more clearly fixed in our law than that this does not affect the liability of the husband for the wife's debts."

Observed by Lord Cowan—"The reciprocal obligation between parents and children for aliment when necessary, springs out of the natural relationship in which they stand to each other, and subsists so long as that relationship endures. *Inhæret ossibus* of the relationship, and it will be enforced whensoever, during the lifetime of the parties, the necessity to provide aliment by the one for the other emerges. Having this origin, the obligation cannot be extinguished by the marriage of a daughter. Two principles have been appealed to as adverse to the claim insisted in against the husband; the one that a wife cannot, after marriage, contract any personal obligation to the effect of subjecting her husband in liability for debt; the other that it is only for debts and obligations already contracted, or at least exigible from the wife before her marriage, that such liability can be asserted. The first of these principles is indisputable, and had the claim made in this action against the husband its origin in a personal obligation contracted by the wife since the marriage, it could not be sustained. But this is not its character. It springs *ex debito naturali*, and not from any act or contract of hers. And as regards the second principle relied on, it cannot be disputed that at the date of the marriage this claim did not subsist as an operative debt or obligation capable of being enforced. It did not then exist as a debt at all. But there was a possible or contingent liability for such alimentary claim, from which the daughter by her marriage could not disengage herself. The seeds of it were sown in her natural relation to her parents, although the circumstances that gave vitality to the obligation did not exist till after her marriage. Emerging as an operative debt for the first time on the occurrence of these circumstances, it is a debt from which her marriage cannot free her husband from liability, any more than he can be freed from debts actually existing at the date of the marriage. It is a claim good against her *ex debito naturali*, and may be enforced so far as any debts of hers can be made good—against her estate, if she has any separate estate, and against her husband as administrator of the goods in communion, and liable as such for his wife's personal debts."

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51. Mrs. Marjory Fraser or Wilson *v.* Mrs. Janet Caithness or Todd and Robert Todd, January 9, 1867.—3 S. L. R. 192; 1 *P. L. M.* 486.

Parent and Child—Husband and Wife.—Held (by Lord Jerviswoode, and acquiesced in) that a husband and wife are both bound to support the wife's indigent mother, although the wife is illegitimate.

Observed by the Lord Ordinary—"The recent case of Reid *v.* Moir, July 13, 1866, seems a direct authority for the liability of the defender, Mr. Todd, at least while his present marriage subsists."

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52. Daniel Mackintosh (Inspector of Brechin) *v.* Peter Taylor, November 5, 1868.—7 M. 67; 41 *Jur.* 41; 2 *P. L. M.* 51.

Brothers—Lunatic.—The father of a lunatic died intestate, leaving both heritable and moveable property. The heritage was taken by the eldest son, as heir, and he (as executor-dative) divided the movable property among the widow and children of the deceased, according to their legal rights. The share falling to the lunatic was expended on his maintenance in the asylum, after which he was maintained by the parish. In an action raised by the parish against the lunatic's brother for payment of the advances made, and relief from the future support of the lunatic;—Held that the lunatic's brother was not liable, and that no obligation transmitted against him, as representative of his father, for the lunatic's support, beyond the payment of the lunatic's share of the movables.

Observed by Lord Ormidale—"As a general rule, brothers and sisters are not under any legal and enforceable obligation to aliment each other, although it is true that certain exceptions to this rule have been introduced, to the effect that an heir who has succeeded to the whole estate of a party deceased, or at any rate a considerable, or as it has been sometimes termed, a competent estate of one who has left his younger children wholly unprovided for, is liable, under qualifications according to the circumstances, in aliment to such children, when in a state of destitution. . . . The present case is not of a description to bring it within the exceptional class referred to by these authorities. To have brought it within that class, two conditions were requisite—first, that the inheritance to which the respondent (the heir) succeeded was considerable; and, secondly, that the advocator (the pauper) had been left without any provision."

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53. Mrs. Mary Anderson or Hoseason *v.* Robert Hoseason and his Judicial Factor, October 21, 1870.—9 M. 37; 43 *Jur.* 20; 4 *P. L. M.* 168.

Parent and Child.—Held that a father is not legally bound to aliment the widow of his deceased son.

Observed by the Lord President—"There can be no doubt that, as a general rule, legal claims for aliment arise only where the parties stand in the relation of husband and wife, or of parent and child, or grandchild; and where the eldest son of a family, having largely benefited by the father's succession, has been found liable, on the ground of representation, to support a brother or sister for whom no provision has been made, that is merely an application of the same principle—the eldest son being bound to fulfil the obligation of the parent to whose estate he has succeeded. The obligation is a natural and equitable obligation arising from the close relation subsisting between the parties, and, in the ordinary sense, it is undoubtedly reciprocal."

Note.—The early case of De Courcy *v.* Agnew, July 3, 1806, F. C. (*supra*, p. 136), founded on by the pursuer in support of the widow's claim, was referred to as of doubtful authority.

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54. Annie Dowling Smith or Stewart *v.* William Bruce Stewart, February 14, 1872.—5 *P. L. M.* 338.

Aliment—Husband and Wife—Divorce.—Where the provisions made by the husband in his wife's favour, in their antenuptial contract of marriage, consisted almost entirely of a life-rent of sums included under certain policies of assurance over his life (means being also provided for the keeping up of the said policies by the trustees); and when, consequently, the said provisions could not become available to the wife until the natural death of the husband—Held (by the Lord Ordinary, and acquiesced in) that the wife, on obtaining a divorce from her husband on the ground of adultery, was not entitled to aliment from him from the date of the divorce up to and until the time when her conventional provisions under their marriage-contract became available to her.

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55. George Ligertwood *v.* John Brown, June 21, 1872.—10 M. 832; 44 *Jur.* 472; 5 *P. L. M.* 575.

Aliment—Triennial Prescription.—A. alimented the bastard child of B. in circumstances which implied that he did so under a contract or agreement with B.;—Held that A.'s claim for repayment of the sums expended by him was subject to the triennial prescription.

Note.—Where the aliment has been given *ex pietate*, no claim for repetition arises, even although the person alimented afterwards becomes able to repay. See Ludquharn *v.* Gight, M. 11425.

Where advances are made by a stranger or distant relative, these may be recovered; but a claim for such is subject to the triennial prescription. See Taylor *v.* Allardice, January 16, 1858; 20 D. 401.

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56. William Gibson *v.* Alex. Wood (Inspector of Pencaitland), September 16, 1874.—2 *P. L. M.* 551.

Aliment—Imprisonment—Relief.—Held (by Lord Craighill, in the Bill Chamber) that a decree obtained by an inspector of poor against a defender in an action of relief for recovery of sums disbursed by the parochial board in the aliment of the defender's mother-in-law, was a decree for a sum "decerned for aliment" within the meaning of the Act 5 & 6 Will. IV., c. 70, and was therefore competent to sustain imprisonment thereon, though the sum decerned for did not amount to £8, 6s. 8d.

Observed by Lord Craighill—"The question raised is, whether the debt for which the complainer has been incarcerated is a sum decerned for aliment within the meaning of 5 & 6 Will. IV., c. 70, . . . and the Lord Ordinary is of opinion that the answer must be in the affirmative. The complainer failed to aliment his mother-in-law, who could not support herself; she in consequence became chargeable to the parochial board; and the decree, which is the warrant of the incarceration complained of is, except in so far as the expense of obtaining it is concerned, for sums disbursed for her support by the parochial board. The claim to which originally the complainer was liable was undoubtedly aliment; and its nature has not been changed by reason of his failure to discharge it when it became exigible, or because in the meantime what he ought to have furnished has been supplied by the parochial board. The fallacy in the complainer's argument is the assumption that the debt for which he has been imprisoned is a different debt, or a debt of another nature than that for which his mother-in-law originally was the creditor. First and last, the complainer's liability was for aliment, and if this is the true view of its character, the imprisonment of the complainer was lawful, and he is not now entitled to be liberated."

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57. William Hamilton, Senior *v.* William Hamilton, Junior, March 20 1877.—4 R. 688.

Parent and Child.—In an action for aliment by a father, he called as defender only one of four children. A plea by the defender that the other children should have been called was repelled, on the ground that the plea was not supported by any averment that the children not called were in a position to contribute to the support of their parent.

Observed by the Lord President—"In order to support the claim of a father, two things are necessary, 1st, that the father should be indigent, and, 2d, that the children should have a superfluity after providing for the maintenance of themselves and their own families. Unless both these circumstances occur, the father has no claim."

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58. —— Duncan (Inspector of Banff) *v.* James Forbes, February 8, 1878.—15 *S. L. R.* 371; 6 *P. L. M.* 189.

Circumstances in which a Father held bound to give Relief for Maintenance of Pauper Son.—A crofter had a large family dependent on him, one of whom, owing to illness, was obliged to obtain partial relief from the parochial board. His father-in-law was also dependent upon him. In an action by the parochial board against him for relief of advances made on account of the pauper son—Held, in respect it appeared that the father was contributing to the maintenance of a son who was earning a wage sufficient in itself for that purpose, and was therefore possessed of more means than was absolutely necessary for himself and his family, that the board was entitled to relief.

The Sheriff, in addition to finding the defender liable in repayment of the advances made by the parochial board, further found him "bound to relieve the pursuer of all subsequent advances." This part of the judgment of the Sheriff was recalled, the Lord President observing—"As regards the second part of this interlocutor, I consider it to be entirely unfounded in point of law; for it will depend on the circumstances of the parties at the time whether the defender will be liable for aliment, and it is quite impossible for an interlocutor to decide that a decree of aliment can obtain in all time coming, and it is just as clear that no one can by a decree be relieved in all time coming."

2. Recourse Against Other Parishes.

1. John Hay (Inspector of City Parish of Edinburgh) *v.* William Knox (Inspector of St. Ninians), June 20, 1850.—12 D. 1060; 22 *Jur.* 464.

Mora.—Held that a parish which had alimented a pauper, who had no settlement therein, from 1836 to 1849, during which period no notice was given to the parish of settlement, was barred by *mora* from insisting in a claim for repayment of the sums expended.

The facts were—A weaver, who had acquired a settlement in St. Ninians, deserted his wife in 1836, 1837, and 1839, after which he was not heard of. In November 1836, she applied for relief for herself and her children to the parochial board of the City Parish of Edinburgh, by whom aliment was granted, and continued till August 1849. During the period from 1836 to 1849, no intimation was made to the parish of St. Ninians. The Court gave effect to the plea of *mora* stated by the defender, and held that the pursuer, not having given notice of any claim, was not after the lapse of thirteen years entitled to repayment of advances.

Note.—A further question was raised, but not decided, in this case, whether the 71st section of the Act of 1845 applied to the case of relief given partly before, and partly after the passing of the Act.

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2. John Williamson (Inspector of Dalkeith) *v.* William Leslie (Inspector of Crichton), December 17, 1850.—13 D. 335; 23 *Jur.* 151.

Relieving Parish—Right to Recourse.—Held, where interim relief had been given to a female pauper, that the relieving parish, in which the pauper had no settlement, was not entitled to claim repayment from another parish to which the pauper had previously applied for assistance, on the ground that the parish first applied to had improperly refused relief.

Observed by Lord Moncreiff—"I can find nothing in the statute which entitles the inspector of one parish to make such a demand against the inspector of another, that other parish not being alleged to be the parish of any legal settlement of the

pauper. And it appears to me, that to admit such a claim without any warrant for it in the statute, might be productive of very serious confusion in the practical administration of the Act of Parliament."

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3. John Hay (Inspector of City Parish of Edinburgh) *v.* A. M. Adams (Inspector of City Parish of Glasgow) and William Begbie (Inspector of Lasswade), January 23, 1851.—3 *P. L. M.* 173 (1860).

Right of Relieving Parish to Recover Advances Directly from Parish of Settlement.—Held (by Lord Dundrennan) that the parish of interim chargeability is not bound to discuss the relatives of the pauper who may be liable in relief, but can proceed direct against the parish of the pauper's settlement, leaving that parish to work out its own relief.

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4. Matthew Brown, (Inspector of Galston) *v.* James Gemmell (Inspector of Loudoun) and *Poor* Catharine Howie, May 29 1851.—13 D. 1009 ; 23 *Jur.* 464.

Removal of Pauper by Inspector Out of his Parish.—A female pauper having applied for and obtained interim relief from the inspector of a parish where she had no settlement, but in which she was at the time residing, was subsequently induced by the inspector to remove at his expense to another parish, where also she had no settlement, and where he provided her with a house;—Held that he was not thereby freed from liability for interim relief, until her settlement should be legally ascertained.

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5. John Hay, (Inspector of City Parish of Edinburgh) *v.* Henry Jack (Inspector of Dundee), February 15, 1853.—15 D. 388 ; 25 *Jur.* 234.

Mora—Notice.—A relieving parish having made no claim for relief against the parish of the pauper's settlement for a period of seven years ;—Held (1) that this was sufficient *mora* to bar the claim. Opinion expressed (by the Lord Justice-Clerk) that to entitle the relieving parish to recover from the parish of a pauper's settlement, notice of the chargeability of such pauper is requisite under the 71st section of the Act of 1845,

even where the relief had commenced before the passing of that statute.

Observed by the Lord Justice-Clerk as to the principle on which the defence of *mora* is founded—"The principle is this, that the claim being one of relief, not a claim of original debt, the party is not entitled to avoid bringing it to a trial, by bringing up and accumulating for seven years that which should have been the subject of immediate discussion.

Observed by Lord Cockburn—"Seven years must, in ordinary circumstances, be considered as great *mora*. *Mora* is a question of circumstances, more than of time; and if a parish knowing the claim it had against another, neglected for even *one year* to bring its claim of relief before that other parish, I should be disposed to decide against it on the ground of *mora*."

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6. Ebenezer Adamson (Inspecter of City Parish of Glasgow) *v.* R. Hodgert (Inspector of Eastwood), March 8, 1853.—4 *P. L. M.* 132 (1861).

Parish of Casual Birth—Liability to Parish of Exposure.—Held (by Lord Cowan) that the parish in which an illegitimate child was exposed and deserted had recourse against the parish of the child's casual birth in a lying-in hospital, *prima instantia*, leaving it to that parish to trace out and obtain its relief against the parish of the mother's settlement, or the parish of her residence when *enceinte*.

The facts were—In January 1849 a female child was exposed and deserted in the parish of Eastwood, and on the 2d February following the inspector of that parish received the following letter, bearing to be from the mother of the child:—"Glasgow, 2d February 1849. To the Committee.—Gentlemen: It has been my misfortune to become the mother of a child to Mr. John Strang, Pollockshaw's bakery. I am going to leave the child with him. The reason why I write to you is that he may not impose the child on the parish, he being the father, and having the means to do for it; also, his wife knows the whole affair.—Yours, Helen Beaton." This child was alleged by the inspector of Eastwood to have been born about 20th December 1848, within the lying-in hospital, St. Andrew Square, Glasgow, and, on the 27th February 1849, statutory intimation and claim of relief was given to the inspector of the City Parish. It was also alleged that the child's mother had resided for some time

during her pregnancy in the City Parish. The City Parish denied, in the first place, that the child exposed in the parish of Eastwood was the child of which Helen Beaton was delivered in the lying-in hospital; and, further, assuming that the identity of the child was established, maintained that Helen Beaton was a married woman, and that, as neither she nor her husband had a settlement in the said parish, her child could have none either. After proof, it was held, both by the Sheriff and by Lord Cowan, that the identity of the child was sufficiently made out; and, further, that the City Parish, as the parish of actual birth, was bound to relieve the parish of Eastwood of the advances made for behoof of the child.

Observed by Lord Cowan—"It may well enough be that the principle which the Court recognised in the case of Dalmellington would relieve the City Parish in a question with the parish of the actual residence of the mother previous to, and at the time of, her going to the hospital to be delivered. That is quite a different question from the present. Here the mother is not proved, nor alleged even, to have had any connection with the parish of Eastwood whatever. She must have come within its bounds to expose the child; but that is all. Now, is not the parish of actual birth liable to relieve the parish of exposure, *prima instantia*, to whatever redress it may be entitled from the parish of the mother's residence when *enceinte*. Supposing no parish liable as the mother's residential settlement to exist? It is thought that the actual birth parish must take the burden of making out liability (if it exists) against some other parish as presumably bound to support the child. It may be true that this imposes a hardship on a parish within which a general receiving maternity hospital has been established; but the evil may be provided against by greater precautions in the admission of inmates, or by more careful inquiry as to their residence at the time, and their proper settlement. In England, indeed, birth in public hospital does not impose the liability of a birth settlement on the parish; but this is by force of express statutory provision."

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7. Peter Beattie (Inspector of Canongate) *v.* Andrew Greig (Inspector of Largs), November 22, 1853.—4 *P. L. M.* 238 (1861).

Error in Law—Withdrawal of Admission.—Opinion expressed by Lord Cowan that a parish, after admission of a claim (and reimbursement for two years and a half of outlay connected therewith) to another parish, against which the pauper's only right to support was that of having become charge-

able there, is not entitled to withdraw its admission on the ground of error in law, so as again to throw the burden of the pauper on the parish of original chargeability.

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8. John Hay (Inspector of City Parish of Edinburgh) *v.* William Murdoch (Inspector of Huntly), January 28, 1854.—16 D. 424; 26 *Jur.* 201.

Expenses of Investigation incurred by Relieving Parish.—In an action by a relieving parish against the parish of a pauper's settlement for expenses in investigating the claim incurred after the date of written notice by the relieving parish;—Held that such expenses fell within the terms of the 71st section of the Poor Law Act, and were recoverable, subject to taxation.

Note.—The subsequent case of Austin *v.* Shennan (*infra*, p.171) is not altogether consistent with this decision.

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9. William Scott (Inspector of Crail) *v.* James Anderson (Inspector of Carnbee), July 15, 1854.—16 D. 1094; 26 *Jur.* 594.

Mora—Acquiescence.—Held that a claim of relief by a relieving parish was barred, where the pauper had been maintained for twenty-two years, without any notice of a claim of relief being made against the parish of alleged settlement, though inquiry had been made as to the pauper's residence at the beginning of the period.

The facts were—A pauper, born in 1803, in Carnbee, shortly after that date removed to Crail, where he resided until Martinmas 1818, when he returned to, and lived in Carnbee ,as an apprentice blacksmith, for the period of four years. During that time he was in the habit of returning to his parents' house in Crail, on Saturday evenings, and remaining there till Monday morning, when he returned to his master's house in Carnbee, his parents supplying him with clothes and other necessaries. From 1822 till 1829 he did not reside in any one parish for a period sufficiently long to give him a residential settlement, and in 1829 he became insane, and an object of parochial relief. The sum necessary for his maintenance was furnished by the parish of Crail, which continued to do so without any notice to the parish of Carnbee until April 1851, when due notice was given. In

1829 a committee of the heritors of Crail had made an investigation into the circumstances. It was held that the claim by the parish of Crail for relief of advances made during the period of twenty-two years was barred by *mora* and acquiescence.

Observed by Lord Ivory—"I do not speak of *mora* as affecting the rights of parties here, but along with acquiescence it goes a far way to settle the facts. Why was there here this *mora* if the parties had not been satisfied of their liability? Does not that show that there must have been a *prima facie* case against them, and in favour of their liability? and they having acquiesced in that state of things for twenty years, it makes a very strong case against them."

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10. John Hay (Inspector of City Parish of Edinburgh) *v.* Andrew Craig Simpson (Inspector of South Leith), December 19, 1856.—19 D. 200; 29 *Jur.* 97.

Terms of Notice by Relieving Parish.—Terms of letter held sufficient to attach liability to the parish of alleged settlement.

The facts were—A female pauper was maintained by the City Parish of Edinburgh, from March 24, 1846 to 1853, with the exception of the period from November 10, 1852 to November 28, 1853. A letter bearing the post mark, March 25, 1846, was sent from the City Parish of Edinburgh to the inspector of South Leith, in these terms—"Office of Parochial Board, Edinburgh, 1846—John Lyon, Esq., Inspector of Poor, South Leith.—Christian M'Donald or Paterson,—Dear Sir,—The above individual, who appears to be about twenty-two years of age, and who is evidently an imbecile, applied here to-day for parochial relief, and informed me that she had aid from your parish for many years, which was discontinued about a year ago. . . . Let me know what you know of her, and if her statement is correct." On March 25, 1846, the inspector of South Leith answered this letter, stating, *inter alia*, "You should either send her to the house of refuge or offer to take her into your workhouse, of course at our expense." On December 2, 1853, statutory notice was given to South Leith, which was acknowledged by that parish, and liability for the support of the pauper admitted. In an action for the aliment supplied previous to 1853, it was held that the letter of South Leith, already quoted, amounted to a contract or agreement which, having been implemented by the City Parish, imposed liability on South Leith, irrespective of the provisions of the statute, and that no statutory notice was necessary to create that liability, and that the claim by the City

Parish was not affected by the delay in making it, it being the duty of South Leith to satisfy itself that the provisions of the contract were duly implemented.

Observed by the Lord President—with reference to the plea that the letter of the City Parish of Edinburgh, of March 1846, was not a statutory notice—"I cannot come to the conclusion that it is a proper statutory notice, and I am not disposed to admit of loose and equivocal statements in letters of this kind as an equivalent. The letter was merely intended to make some inquiry about this pauper, whether she was chargeable upon the parish of Leith or not. . . . Statutory notice should always be simple, and cannot be too much so."

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11. John Hay (Inspector of City Parish of Edinburgh) *v.* William Melville (Inspector of Burntisland), February 3, 1858.—20 D. 480; 30 *Jur.* 259.

Expenses of Visiting Pauper—Removal.—A female pauper and her child, who were resident in the City Parish of Edinburgh, but whose settlement was admittedly in the parish of Burntisland, received relief from the City Parish;—Held (1) in terms of minute of the Board of Supervision, dated October 1, 1855, that the parochial authorities of the parish in which a pauper resides, although it may not be the parish of settlement, is responsible for the relief, proper treatment, and entire charge of the pauper; (2) that when the relieving parish disputes the sufficiency of the aliment furnished by the parish of settlement, it is not entitled to make against that parish any separate charge for the expense of visiting the pauper, or generally for inspection; and (3), that the parish of settlement is not bound to remove a pauper from any parish in which he may be resident, but that such parish of residence is entitled to remove a pauper at the expense of the parish of settlement, unless a satisfactory agreement is made by the latter for the pauper's support.

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12. Peter Beattie (Inspector of Barony Parish of Glasgow) *v.* Fanny Ann Mahon or Wilson, January 25, 1861.—23 D. 412; 33 *Jur.* 204; 3 *P. L. M.* 353.

Removal.—Held that the provisions as to the removal of paupers

to England or Ireland apply in all cases where, at the date of the application for warrant of removal, the pauper has no settlement in Scotland, although a settlement may formerly have been acquired and lost.

The facts were—The inspector of the Barony Parish of Glasgow presented a petition to the Sheriff of Lanarkshire for the removal to Ireland of a female pauper who had become chargeable to his parish. The pauper was a native of Ireland. She had come to Glasgow with her husband in 1843, and lived there in the City Parish till May 1855, when she and her husband removed to the Barony Parish. While there, she was deserted by her husband, and thereafter in October 1859 she applied for parochial relief, and she and her children were received into the poorhouse. In answer to the petition it was pleaded on behalf of the pauper that, having once acquired a settlement in Scotland, she was not liable, though she had now lost such settlement, to be removed to Ireland under the provisions of the Poor Law Acts.

It was held that the provisions of the statutes for the removal of paupers to England and Ireland are applicable to all natives of these countries who possessed no settlement in Scotland when the application for warrant to remove was presented, although they may at one period of their residence there have acquired a settlement which has been lost previous to the date of the application.

Observed by the Lord Justice-Clerk;—"It is a fundamental principle of the Poor Law, that a person who is destitute is entitled to receive relief, *ad interim*, whether he has a settlement in the parish in which he happens to be or not; but this principle is accompanied by another equally fundamental, that so far as possible the parish, or the person granting the relief, shall have recourse against those who are liable to maintain such pauper. If the pauper is Scotch, the application of that principle is clear and simple, and relief can at once be got from the parish of the pauper's settlement. But the policy of the Act was to extend the same principle as far as the powers of the Legislature extend, namely, to all parts of the United Kingdom. The fair interpretation of the statute is, that the person or parish seeking relief shall get it against the parish liable in Scotland, if the pauper has a settlement there; and if that cannot be obtained by reason of the pauper having been born in England, Ireland, or the Isle of Man, and having no settlement in Scotland, then the parish alimenting shall have the power of obtaining an order of removal to England, Ireland, or the Isle of Man, as the case may be."

13. Sir Patrick Murray Thriepland, Bart., and Others (Duncan's Trustees) *v.* Alexander Gow (Inspector of Caputh), January 31, 1861.—23 D 420; 33 *Jur.* 213.

Mora.—Circumstances in which delay of twenty-four years in making a claim of relief held sufficient to bar action.

The facts were—In November 1834 a lunatic was received, under a warrant of the Sheriff, obtained on the application of the Procurator-Fiscal of Perthshire, into Murray's Royal Lunatic Asylum in Perth, the Procurator-Fiscal becoming bound to pay the expense of the lunatic's maintenance there. That expense was regularly paid as it fell due, till 19th June 1857, and in July 1857 the Procurator-Fiscal died, and his trustees then raised action against the inspector of poor of the alleged parish of settlement of the lunatic, for repayment of the sums advanced on his behalf, with interest. No previous intimation of the claim had ever been made to the parish of Caputh. It was held that a plea of *mora*, stated by the defender, ought to be sustained, no claim against the defender having been insisted in for a period of twenty-four years.

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14. Matthew Scott (Inspector of Girvan) *v.* Thomas Oliver (Inspector of Kirkoswald), March 8, 1861.—5 *P. L. M.* 67.

Admission of Liability.—Terms of correspondence between Inspectors held (by the Lord Ordinary, Jerviswoode, and acquiesced in) to be insufficient as an admission of liability.

The facts were—In January 1853 a female pauper applied to the inspector of Girvan for, and obtained from him, parochial relief. On 6th January 1853 the inspector of Girvan sent the usual statutory notice to the inspector of Kirkoswald, as the alleged parish of the pauper's settlement. On the 7th, the inspector of Kirkoswald wrote in answer:—"I am by to-day's post favoured with yours of the 6th current, intimating that the above person has become a burden upon the parish funds. Before even receiving the particulars upon which you claim relief from this parish from the burden of alimenting the said pauper and her children, on the mere supposition that she is the daughter of widow Daniel Muir, resident for the last six months in Girvan, I hereby express a hope that you have very sure grounds for giving her, with only two children, any relief at all. I warned you before that every means would be resorted to to extort relief from the parish funds from such a person as she has uniformly shown herself to be. Let me have the particulars, and then I

shall at once give a definite reply." On the following day, the inspector of Kirkoswald, without having received any further particulars of the case, wrote the following additional letter to the inspector of Girvan:—"I will thank you to give the above person notice that this parish will upon no account allow her anything, should she even be in circumstances entitling her to relief, unless she come and reside within this parish, and be under the surveillance of the inspector himself." An opinion was expressed by the secretary of the Board of Supervision, that the terms of the letter of the inspector of Kirkoswald imported an admission of liability, but the Lord Ordinary adopted the opposite view, being of opinion that the letter of 7th January was conditional in its terms, and that the letter of the 8th did not do away with that condition, so as to bind Kirkoswald.

Note.—All such cases depend upon their special circumstances, and the terms and fair import of the correspondence.

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15. Peter Beattie (Inspector of Barony Parish of Glasgow) *v.* Ebenezer Adamson (Inspector of City Parish of Glasgow) and James D. Kirkwood (Inspector of Govan), May 30, 1861.—23 D. 915; 3 *P. L. M.* 588.

Amount of Board to which Relieving Parish Entitled.—Held that a parish which has charged other parishes for board of paupers, according to a certain rate during particular years, is not entitled to go back on the rate, and charge a higher rate against parishes with which it had unsettled claims for these years.

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16. Henry Jack (Inspector of Dundee) *v.* Peter Fraser (Inspector of Kilmorack), July 19, 1861.—4 *P. L. M.* 22.

Mora—Errors in Claim—Burden of making Inquiry.—Statutory notice that a pauper had become chargeable was sent by D. to K. on 9th November 1850, which was followed on the 25th by a letter of particulars. In this letter the pauper was described as born in K., and as the daughter of a man, named and designed, residing there. In answer, K. refused the claim on the ground that there was no such man in K. as that mentioned in D.'s letter. Nothing further took place until February 1858, when D. renewed the claim, and

supplied further information which had been obtained. K. then admitted the claim, but refused liability for prior advances. Held that, as the description in D's letter of 1850 was sufficient to have enabled the inspector of K. to trace out and identify the man described as the pauper's father, although the pauper was misnamed, and the information otherwise incorrect, the *mora* was attributable to K.; that D. was justifiably misled by the assurance that there was no such person in K., and, therefore, that D. was entitled to recover from K. all its advances subsequent to the date of statutory notice.

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17. George M'Donald (Inspector of Lasswade) *v.* George Taylor (Inspector of Liberton) and James Craig (Inspector of St. Cuthbert's), July 3, 1863, and November 26, 1863.—9 *P. L. M.* 348 (1866).

Admission of Liability—Reference.—After a summons for repayment of advances on account of a pauper, and relief in future, had been called in Court, it was arranged that the agents for the parties should adjust and settle the dispute, which they accordingly did, but without any regular or formal award being pronounced. Under this arrangement the pauper was supported by the parish of L. until she ceased to be chargeable. The pauper again became chargeable to the same parish without having acquired any other settlement in the interval, but L. refused to admit the claim, and alleged that C. was the parish liable. Held (by Lord Kinloch) that the former adjustment of the pecuniary claim then pending did not bar the parish of L. from raising the question of liability under a second action arising out of the second chargeability.

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18. Alexander Lemon (Inspector of Eastwood) and James S. Brown (Inspector of Paisley) *v.* Angus Cameron (Inspector of Lismore and Appin), January 19, 1864.—2 M. 454; 36 *Jur.* 233; 6 *P. L. M.* 351.

Mora—Notice.—In August 1848 a married woman, alleged to be deserted, received parochial relief from the parish of Paisley. In April 1850 statutory notice claiming relief was given by

Paisley to Lismore and Appin, as the parish of the husband's birth, the inspector of which, after a qualified admission of liability, finally, in October 1850, refused the claim on the ground (1) that the husband was not born in the parish; and (2) that he was able-bodied. This refusal was repeated in September 1851 by the agent for Lismore. On 12th September 1851 intimation was made by Paisley to Eastwood as the birth settlement of the pauper herself, and immediately thereupon Eastwood undertook the support of the pauper. Finally, on 12th June 1860, statutory notice was given to Lismore by Eastwood, and this was followed by an action by the two relieving parishes against Lismore. Held that all claims for advances prior to the notice in 1860 were barred by *mora*.

Observed by Lord Benholme—"I incline to agree with the Lord Ordinary, that the notice of one parish cannot, in the general case, enure to another parish."

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19. Henry Jack (Inspector of Dundee) *v.* Andrew Craig Simpson (Inspector of South Leith), June 14, 1864.—2 M. 1221; 36 *Jur.* 609; 6 *P. L. M.* 574.

Mora—Notice.—On 26th December 1851 the inspector of Dundee intimated to the inspector of South Leith that Felix Scott, aged eight years, had become chargeable to Dundee, and in the particulars appended to the notice stated that the boy's father, an Irishman, was in a very bad state of health and unfit for removal, and also that the boy was born in South Leith. No answer was made to this notice. The boy continued to receive relief from Dundee till October 1857, and though his father died in February 1852 no notice was sent to South Leith. In January 1862 the boy again became chargeable to Dundee, notice of which was duly made to South Leith, which parish admitted liability as from January 1862. Though accounts between Dundee and South Leith had been settled several times between 1851 and 1862, no claim had been made in respect of Felix Scott. Held in these circumstances (1) that the notice of 26th December 1851 was not a notice in terms of the statute available to Dundee in any circumstances, as it stated a claim which, at

the time, was bad in law, and which, therefore, the inspector of South Leith was entitled to disregard; and (2) that claims for advances by Dundee prior to February 1862 were barred by *mora*.

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20. William Taylor (Inspector of Huntly) *v.* James Strachan (Inspector of Bellie) and John Brown (Inspector of Urquhart), November 8, 1864.—3 M. 34; 37 *Jur.* 16; 7 *P. L. M.* 122.

Inducement to Leave Parish.—In an action for repayment of advances by a parish where a pauper, with no ascertained settlement, had received temporary relief against other two parishes in which temporary relief had also been granted, on the ground that the inspectors of these parishes had fraudulently induced the pauper to leave, and that their liability under the 70th section of the Act therefore continued;—Held that it was not proved that there was any recognition of the pauper as such in either of the parishes, nor any fraudulent purpose in aiding the pauper to leave them, and the defenders were therefore assoilzied.

Observed by the Lord President—"The general object of the statute is clear, that when a person is found destitute in a parish, it is the duty of that parish to afford relief to the poor person, and to continue to afford relief until the settlement of the pauper has been ascertained, as being in a parish which shall be ultimately liable, and to which parish the pauper is to be removed." And his Lordship further observed, that if an inspector fraudulently sends a pauper out of his parish, for the purpose of transferring the liability of maintenance to some other parish, it is "an act against which redress would be given, and instantly given, so as to restore matters to the position in which they stood at the time the act was committed."

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21. John Anderson (Inspector of Marykirk) *v.* William Mackenzie (Inspector of Liff and Benvie) and Henry Jack (Inspector of Dundee), December 16, 1864.—3 M. 253; 37 *Jur.* 125; 7 *P. L. M.* 276.

Burden of Proof upon Relieving Parish.—Held that a relieving parish is not entitled to call two adjoining parishes as being either one or other liable as the parish of the pauper's birth,

showing merely that the pauper must have been born in one or other. The relieving parish must prove the case against one or other.

In this case the pursuer, as representing the relieving parish, called as defenders two parishes which adjoined each other, alleging that the husband of the pauper had a birth settlement either in the one or the other. The Sheriff found that the pursuer had failed to prove his case against either parish, and found the pursuer liable in expenses, and on advocation the Court of Session adhered.

Observed by Lord Cowan (who gave the judgment of the Court)—"I think this case may teach a useful lesson to inspectors. It will not do to call two adjoining parishes, and to say, either one or other of you two is liable as the parish of birth, and then leave the question to be fought out between them. The relieving parish must make out its case against some parish. It is different where the relieving parish has discovered the undoubted parish of birth, and also calls the parish of an alleged residential settlement; in that case the pursuer may retire from the field."

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22. Peter Beattie (Inspector of Barony) *v.* W. D. Wood (Inspector of Dailly), February 9, 1866.—4 M. 427; 38 *Jur.* 198; 8 *P. L. M.* 441.

Notice—Mora.—A pauper became chargeable to the Barony Parish in February 1853, and received relief till February 1854, but then ceased to be a proper object of parochial relief. Statutory notice was given by the Barony in August 1853 to Dailly, the birth settlement of the pauper's husband. On 2d November 1855, the pauper again became chargeable, and continued on the poor roll of the Barony till the date of the action, but of this no notice was given to Dailly till 1st October 1860. In an action of relief by the Barony against Dailly—Held (1) that as the pauper had ceased to be chargeable in February 1854, and continued rehabilitated for twenty months, the Barony was not entitled to recover any part of the sums advanced to the pauper after she became a second time chargeable on 2d November 1855, and before the notice of 1st October 1860 was given, a new notice being requisite when the pauper became chargeable the second time, but, *quoad ultra*, that the Barony was entitled

to recover; and (2) that the mere lapse of six and a-half years before the claim was made was not *per se* sufficient to sustain a plea of *mora*, founded on by the defender.

Observed by the Lord Justice-Clerk—"Wherever it can be fairly and distinctly alleged, as here, that for a considerable period of time a person has ceased to be a proper object of parochial relief, and has become self-supporting, if he should again be admitted to the roll of paupers, he is in the position of a poor person having become chargeable within the meaning of the section. I think this is the fair and reasonable construction of the Act of Parliament, and one not calculated to entail any hardships on those engaged in the practical administration of the Poor Law. . . . We have been told that there can be no *mora*, because, when the notice was originally given in August 1853, the parish of Dailly repudiated the claim, and denied all liability. I confess I cannot understand that argument, for I do not see how the plea of *mora* can have any existence, except where the parish of settlement denies liability. Where there is an admission, there can be no *mora;* the relieving parish then becomes the agent of the parish which admits its liability. It is only in the case of a denial that the plea emerges. Do the circumstances, then, of the present case found the plea of *mora?* It seems to me that all the elements necessary to raise that plea are awanting, excepting mere lapse of time; all the other circumstances are in favour of the pursuer; and I am aware of no case where the lapse of such a period of time as exists here has been held *per se* sufficient to sustain the plea.

Lord Cowan expressed some hesitation on the question of *mora*, but did not dissent.

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23. —— Bremner (Inspector of Rathven) *v.* William Taylor (Inspector of Huntly), November 13, 1866.—3 S. L. R. 24.

Error in Law no ground for Repetition of Advances.—Held (by the Lord Ordinary—Ormidale) that a parish which had repaid advances on behalf of a pauper, in the belief that it was in law the parish of settlement, was not entitled to recover the payments so made, on the ground that they had been made under error in law, which, by the law of Scotland, does not ground a claim of repetition.

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24. Ebenezer Adamson (Inspector of City Parish of Glasgow) *v.* Peter Beattie (Inspector of Barony Parish of Glasgow)

and William Knox (Inspector of St. Ninians), February 7, 1867.—3 S. L. R. 288; 9 *P. L. M.* 352.

Parish of Chargeability—Averments in Summons.—An action was raised by the inspector of a parish where certain paupers had become chargeable against the parish of admitted birth and the parish of alleged residential settlement. In the summons, the pursuer did not aver in point of fact that a residential settlement existed, but only that it was so alleged by the birth parish. The parish of alleged residence objected to the relevancy of the summons, on the ground of the want of averment of any legal liability against it. Held (by Lord Kinloch, and acquiesced in) that this was not a well founded plea, and the relevancy of the summons sustained.

Observed by Lord Kinloch—"What is averred by the pursuer is, that it is alleged that the residential settlement is within Barony; and, accordingly, St. Ninians (the parish of birth) not only avers this, but offers to prove it. It appears to the Lord Ordinary that this is enough. If the pursuer had committed himself to a positive statement that the residential settlement was in Barony, it might have been said with more justice that this was a reason for calling Barony and no other."

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25. J. D. Kirkwood (Inspector of Govan) *v.* James Knox (Inspector of Stirling), March 20, 1868.—2 *P. L. M.* 173.

Foreigner—Lunatic—Wife and Children.—A foreigner, resident temporarily in the parish of S., and having no settlement in Scotland, became insane, and chargeable to that parish. Two years afterwards, and while the lunatic was still alive, his wife and children became chargeable in the parish of G., where they were then residing. Held (by the Lord Ordinary—Jerviswoode) that the parish of S., in which the husband had been resident, was not bound to repay to G. the advances made on behalf of the wife and children.

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26. Hugh Knox (Inspector of Buittle) *v.* Richard Hewat (Inspector of Kelton), January 12, 1870.—8 M. 397; 42 *Jur.* 184; 3 *P. L. M.* 385.

Parish—Boundary.—In 1800 a stream, which formed the boundary between two parishes, was diverted from its course, and,

some years after, the ground between the new and old channels came to be regarded as part of, and was assessed for poor rates, in the parish to which it did not originally belong. Held, in a question of relief between the two parishes, that said ground must be regarded as still belonging to its original parish.

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27. George Arthur (Inspector of Forfar) *v.* James Stewart (Inspector of Aberlemno), February 8, 1871.—4 *P. L. M.* 278.

Admission.—A parish deliberately admitted liability for the maintenance of a pauper, and acted thereon for years, but thereafter repudiated the liability, and sought reimbursement of advances paid. Held (by the Lord Ordinary—Gifford) that there being no change of circumstances, or any averment that the admission had been obtained by misrepresentation or concealment, the admission was binding, and could not be withdrawn.

Observed by the Lord Ordinary—"The Lord Ordinary thinks that new light on questions of law is not a sufficient ground to entitle a parish to withdraw an admission which it has deliberately made as with another parish. If this were to be held, admissions would really go for nothing, and questions between parishes would be always reopening. Admission of liability by a parish is contemplated in the statute as part of the machinery of the parochial system. Section 70 of the Act 8 and 9 Vict., cap. 83, provides that *interim* relief shall be given where the destitution occurs, until the claim on the parish ultimately liable is 'admitted or otherwise determined.' Admission is a mode for the determination of the question, and where obtained in good faith is surely intended to be binding. An admission by a parish virtually puts the pauper upon the roll of the parish making the admission; and though no doubt an admission may be withdrawn, if made in error, this must be done *tempestive*, and while matters are still entire. It is otherwise when the admission is acted upon, especially after a lapse of time. Of course, if the admission has been got by any unfair statement, or by misrepresentation, it cannot be founded upon; but the very cases in which an admission so obtained has been held not binding, are authorities for the obligatory character of an admission deliberately given, and fairly and honestly obtained.

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28. James Austin (Inspector of Closeburn) *v.* Robert Shennan (Inspector of Kirkgunzeon), October 30, 1874.—2 R. 68; 2 *P. L. M.* 634.

Recovery of Disbursements by Inspector of Relieving Parish.—In an action by one parish against another (1) for repayment of advances for maintenance of a female pauper who had been deserted by her husband; (2) for repayment of the travelling expenses incurred by the inspector of the relieving parish in obtaining information as to the settlement of the pauper; and (3) for the expense incurred in prosecuting the deserting husband;—Held that the second and third items could not be recovered under the 71st section of the Act of 1845.

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29. Peter Beattie (Inspector of Barony) *v.* John Arbuckle (Inspector of Cambuslang), January 15, 1875.—2 R. 330; 3 *P. L. M.* 80.

Admission—Rehabilitation.—Held (1) that a parish, having admitted liability for the support of a pauper, and continued thereafter for several years to support the pauper, cannot reopen the question of liability upon the ground that the admission was made in error as to the facts, partly induced by *bona fide* misstatements by the inspector of the parish to whom the admission had been made; and (2) where, after liability has been admitted, a parish relieves the pauper for five years and seven months, and the pauper thereafter resides with a sister for five months, without receiving parochial relief, and is thereafter removed to an asylum, she having been insane for six weeks before her removal, there has been no interruption of the pauperism, so as to entitle the relieving parish to raise anew the question of liability.

Observed by the Lord Justice-Clerk—"I am of opinion that the mere allegation that the inspector of Cambuslang was in error in making the admission in 1863, is not a relevant ground for opening up an admission that has been given. By the terms of the 70th section of the Poor Law Amendment Act, the admission by the parish of its liability is one of the statutory modes of determining chargeability, and the parish which is applied to as ultimately liable by the parish actually giving

relief may delay giving an admission of liability for such period as may seem necessary for prosecuting inquiries as to the facts. . . . It would be exceedingly inconvenient if it were not in the power of parochial boards to terminate all questions of this sort, on reasonable and apparently satisfactory information. . . . The second question is, whether the fact of the pauper having been self-supporting—that is, off the books—for a short time, creates a new chargeability, and raises of new the whole question of settlement when she again applies for relief. It is not necessary to decide the point in this case, because I am clearly of opinion that, although when residing with her sister, the pauper did not draw parochial relief from either parish, still her chargeability as a pauper never ceased. I think it would be a very strong thing to say that, because for a month or two a pauper did not call for her relief, the whole question of settlement had to be reconsidered and resettled."

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30. William Young (Inspector of Perth) *v.* Alexander Gow (Inspector of Caputh), February 9, 1877.—4 R. 448; 5 *P. L. M.* 367.

Admission of Liability—Mora.—Held (1) that an admission of liability deliberately made by one parish to another cannot be withdrawn to the effect of opening up the question of liability, on the ground that the admission had been made in error either as to the facts or the law; and (2) that an action of relief was not barred by *mora,* where liability had been admitted and the admission subsequently withdrawn, the relieving parish refusing to accept the withdrawal, and frequently applying for payment, and finally, after seven years, raising the action of relief.

The facts appear from the opinion of the Lord President. His Lordship observed—"In this case the pauper become chargeable in 1866, towards the end of the year. She was residing in Perth, and the inspector of Perth at once gave the statutory notice of chargeability to the inspector of Caputh, and claimed relief from that parish as the parish of settlement. Four days later, on 28th November 1866, the inspector of Perth wrote to the inspector of Caputh stating that the pauper was resident in Perth, that her husband, Alexnder Cameron, was born in Dunkeld, in the parish of Caputh, that he had deserted the pauper twenty-eight years ago, and had not since been heard of. He then suggests a source from which information as to the history of the pauper's husband may be obtained, and concludes by saying—'I claim upon you in respect of

husband's birth. Your admission and instruction will oblige.' The correspondence continues at intervals for two or three months, until 8th April 1867, when we find the parochial board of Caputh, having before them all the information collected by their inspector upon the subject, deliberately instructing their inspector to admit liability. The letter written by the inspector of Caputh in consequence of these instructions has not been preserved. But there is no doubt that it was sent. From that time the pauper was maintained by the parish of Perth, at the expense of the parish of Caputh, until the following year, when (on 6th April 1868) the parochial board of Caputh having obtained more light upon the law, instructed their inspector to withdraw the admission of liability, with the view of throwing the liability for the pauper's support on the parish of Perth, in which the pauper then appeared to have acquired a settlement in her own right. This is at once met by the parish of Perth in the letter of 7th April 1868 refusing to accept the withdrawal of the admission of liability. A correspondence goes on between the two inspectors from that date down to the raising of this action, the inspector of Perth standing consistently throughout on the admission of 1867, and the inspector of Caputh maintaining as consistently that he was not bound by that admission.

In these circumstances, the question which now arises is, whether the parish of Caputh is bound for the future maintenance of this pauper, in consequence of its admission of liability made in 1867? Now it appears to me that the case of Beattie *v.* Arbuckle is directly in point. The Barony Parish was in that case the relieving parish, but it was also the parish, which, but for the admission of liability made by Cambuslang, would have been liable for the support of the pauper. In that case, the Judges of the other Division held unanimously that the admission could not be withdrawn, but was permanently binding on the parish making it. . . . Not only should I require strong reasons to induce me to go back upon this judgment, but I am quite satisfied no good reasons exist. I quite concur in the grounds on which that judgment was based, and think further that it introduces a most excellent and salutary rule in connection with this branch of poor law administration. I am of opinion that an admission of liability by one parish to another is not to be lightly made; but, being made, is absolutely binding. . . . It was, however, further contended that the pursuer here is barred by *mora*. Now, that is a plea of which I cannot see the applicability to the present case. An attempt was made to withdraw the admission in 1868. But there has been nothing like acquiescence in the withdrawal. The inspector of Perth has consistently said, You shall not withdraw your admission. You stand confessed, and I hold you to it. After consistently maintaining this position for seven years in all his correspondence, he is at

last driven to raising this action. To say now that he is barred by *mora*, would be a most extravagant application of that doctrine."

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31. Archibald Dempster (Inspector of City Parish of Glasgow) *v.* Alexander Lemon (Inspector of Eastwood), November 29, 1878.—6 R. 278; 7 *P. L. M.* 88.

Admission of Liability—Mora.—A claim of relief for advances made to a female pauper was made by the parish of G. against the parish of E. In reply to the statutory notice, the inspector of E. wrote,—"I have to admit she was born in this parish; please let me know if she is still chargeable." It was then intimated to E. that the pauper had ceased to be chargeable. E. afterwards paid to G. the amount of relief given, but before the payment was actually made, the pauper again became chargeable, of which statutory notice was given by G. to E. No answer was made by E. to this second notice. A correspondence ensued about three years after as to the liability of E., in the course of which there was no admission of liability given. Seven years after the date of the notice, G. threatened an action. E. then replied, denying liability, and stating that the former admission related only to the pauper's birth, and was not an admission of liability. An action was thereupon raised, in which the minutes of the parochial board of E. were recovered, from which it appeared that the inspector of E. had been instructed, after receipt of the first notice, to admit liability. Held that the original admission, along with the actings of E., was an admission of liability which was still operative and binding upon E.

IX.—THE INSANE POOR.

1. Scott *v.* Rev. John Thomson, November 13, 1818.—F. C.

Criminal Lunatic—Parish of Apprehension—Held that the parish in which a lunatic had been apprehended was bound in the first instance to maintain him in the bedlam of Edinburgh, where he had been sent by the Sheriff of Midlothian, on application from the Procurator-Fiscal, although the pauper lunatic had not been born in, nor, as far as appeared, had chiefly haunted, that parish, power being reserved to the parish to maintain the lunatic in any other place than the asylum to which he had been committed if they saw cause, at a cheaper rate, but always to the satisfaction of the Sheriff.

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2. The Commissioners of Supply of Wigtownshire *v.* The Officers of State, the Magistrates of Wigtown, and the Parishes of St. Quivox, Sorn, and Ochiltree, June 5, 1827.—5 Sh. 716; Revd. H. of L. March 10, 1830; 4 W. & S. 43.

Criminal Lunatic.—Held that the Crown was not liable in the support of a criminal lunatic, where the lunatic had been detained by order of the Court of Justiciary, the prisoner having been found not guilty on the ground of insanity.

Note.—The Court of Session had held that the Crown was liable, but this was reversed by the House of Lords. The case of prisoners found not guilty on the ground of insanity, is now regulated by 29 and 30 Vict., cap. 51, sect. 20, which provides that they are to be detained in the general prison at Perth.

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3. Heritors and Kirk-Session of Kilmorack *v.* John Beith, July 10, 1839.—1 D. 1231; 11 *Jur.* 600.

Criminal Lunatic—Liability of Parish of Apprehension.—Held in the case of criminal lunatic whose lunacy was held to bar trial,

that the parish in which he was apprehended was liable in his support until the parish of settlement could be ascertained.

The facts were—A pauper lunatic having been apprehended upon a criminal charge, insanity in bar of trial was pleaded, and proved at a Circuit Court of Justiciary. The Court found the prisoner not to be a fit subject for trial, continued the diet against him, and ordained him to be kept in custody till further orders. The prisoner having been supported in prison from county funds, supplied by the Collector of Supply and Rogue-money for the county, in a question between the collector and the parish where the pauper was apprehended, it was held (following the case of Scott *v.* Thomson, *supra*, p. 175) that the parish in which the pauper was apprehended, was, in the first instance, liable, until the parish of his real settlement should be ascertained, against which the parish of apprehension would have a right of relief.

The result was arrived at after opinions were returned by the consulted Judges. In the opinion of the Lord President, and Lords Gillies, Moncreiff, Jeffrey, Cockburn, Murray, and Cunninghame—it is observed—"The present case is analogous to that which arises when a child is found exposed, the parents of which, and the place of its birth, are alike unknown; in all questions of that class, the parish of exposure must, from the urgency and necessity of the case, defray the aliment of the child in the first instance, leaving them to establish their claim of relief against the parish of the parents when discovered. The liability of the parish of exposure was declared in the case of Tranent, so far back as 1737, adhered to by the Court in the later case of Orr (9 Sh. 912), and it may now be considered as a point finally settled. It is obvious that other cases of immediate and temporary liability arise in practice, which rest on the necessity and urgency of the case, till the parish liable permanently in aliment is ascertained. Thus, when a pauper, in travelling through a parish, or in an accidental sojourn in it, is struck down with an overwhelming disease, depriving him of the power of removing himself to any other locality, the parish where the disease comes upon the pauper must bear the burden of his support in the meantime. . . . It follows, on the same principle, that when it is necessary for the safety of the community to apprehend an insane pauper, in order to keep him from mischief, the parish in which he is first committed and detained, must aliment him till they find another parish bound to relieve them."

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4. James Dunbar, March 7, 1848.—10 D. 866.

Lunatic—Factor.—The estates of a lunatic were sold by his *curator bonis* under warrant of the Court, and after paying

all expenses, the balance remaining amounted to only 23s. The lunatic was thereafter admitted to the poor roll of his parish, and the Court granted warrant to the curator to pay said balance to the parochial board.

Note.—Observed by the Lord President, that this was a case in which a *curator bonis* should not have been appointed, the funds of the lunatic being so small.

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5. James D. Kirkwood (Inspector of Govan) *v.* Hart and Gemmell, Procurators-Fiscal of Lanarkshire, October 8, 1859.—2 *P. L. M.* 132.

Expense of Apprehension, &c., of Lunatic.—Held (in the Court of Justiciary) that a woman apprehended on a charge of child murder, and insane at the time of her apprehension, is one of the class of lunatics referred to in the 85th, and not in the 87th and 88th sections of the Lunacy Act, and the parish of her settlement is liable for the expenses connected with her apprehension and subsequent detention in an asylum.

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6. John Gemmell (Procurator-Fiscal of Lanarkshire) *v.* Peter Beattie (Inspector of Barony Parish of Glasgow) and Ebenezer Adamson (Inspector of City Parish of Glasgow), 1861.—3 *P. L. M.* 458.

Criminal Lunatic—Expenses.—Held (by Sheriff Bell in the Sheriff Court of Lanarkshire) that the parish in which a criminal lunatic—who admittedly had no funds of his own—was apprehended, is, in the absence of an admitted settlement elsewhere, liable to repay the Procurator-Fiscal all expense connected with his apprehension, committal to an asylum, maintenance there, and liberation.

Note.—An appeal against this decision was taken, but was held to be incompetent, the question having been determined on its merits in the Small Debt Court. See 24 D. 431.

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7. John Methven (Inspector of Monifieth) *v.* George Arthur (Inspector of Forfar) February 4, 1869.—7 M. 477; 41 *Jur.* 256; 2 *P. L. M.* 405.

Lunatic—Construction of Sects. 76 *and* 78 *of Lunacy Act.*—Held that a parish which had under an erroneous belief of liability made disbursements for the support of a lunatic, was entitled to be relieved by the parish ascertained to be the parish of settlement, of all expenses incurred during the year preceding the statutory intimation.

The facts were—A female pauper, whose husband was a native of Forfar, became insane in February 1866, when she was placed in the Royal Asylum at Morningside by the Inspector of St. Cuthbert's, who claimed reimbursement of his expenses against the parish of Monifieth, where the pauper's husband had resided, and which was therefore assumed to be her parish of settlement. Monifieth admitted liability, and in November 1866 the lunatic was removed to the asylum at Dundee. It being afterwards ascertained that the pauper's true settlement was in Forfar, notice was given to that parish by the inspector of Monifieth, in March 1867. Forfar admitted liability subsequent to date of the notice, but refused to reimburse Monifieth for the advances made previously. An action having been raised to determine the question, it was held by the Court, upon a construction of the 76th and 78th sections of the Lunacy Act, that Monifieth was entitled to be relieved by Forfar of all expenses incurred during the year previous to the notice.

Observed by the Lord President—"It was argued that there was not sufficient certification by the Sheriff of the amount paid. This is provided for by the 76th and 78th sections. Now, I do not read these provisions as meaning that the ascertainment of the expenses by the Sheriff is an indispensable prerequisite of an action for recovery. On the contrary, it is a privilege given to the disburser, that he may go to the Sheriff of his own county, which relieves him from the necessity of going to the Sheriff of another county to get the amount of expenses fixed. But, if he had not that privilege, he would not be shut out from proving the amount as in an ordinary action."

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8. James D. Kirkwood (Inspector of Govan) *v.* William Lennox (Inspector of Ayr), July 10, 1869.—7 M. 1027; 41 *Jur.* 572; 2 *P. L. M.* 565.

Lunatic—Settlement.—Held, that under the 75th section of the

Lunacy (Scotland) Act 1857, that the parish liable for the maintenance of a pauper lunatic is the parish of the lunatic's settlement at the date of the order or warrant of reception into the asylum.

The facts were—On 10th August 1864 Catherine Stewart was, under warrant of the Sheriff, obtained on the application of the inspector of Govan, in which parish she had at the time a residential settlement, sent to Gartnavel Lunatic Asylum, in the parish of Govan, under the belief that she was a pauper lunatic. She turned out, however, to be possessed of some funds, on which she was maintained till November 1868, when they became exhausted. In a special case between the parish of Govan and the parish of Ayr, where the lunatic was born, the question for decision was—"Whether the settlement of the said Catherine Stewart is in the parish of Govan, being the parish in which, prior to 10th August 1864, she had a residential settlement—or in the parish of Ayr, being the parish of her birth? The 75th section of the Lunacy Act provides that 'every pauper lunatic detained in any district asylum under this Act shall be deemed and held to belong, and be chargeable to the parish of the legal settlement of such lunatic at the time the order for his reception in such asylum was granted, and the expense of his maintenance in each district asylum shall be defrayed by such parish accordingly; and the residence of any pauper lunatic in any such district asylum shall be deemed to be the residence of such pauper in the parish legally chargeable with the maintenance of such lunatic."

It was held that the pauper was chargeable to Govan, as the parish in which her settlement was at the date of the warrant of committal to an asylum, though at that date she was not a pauper.

Observed by the Lord President—"I think it has been determined that a lunatic cannot acquire a residential settlement, and I have always been of opinion that a person who is incapable by residence of acquiring a settlement under the 76th section of the Poor Law Act, is incapable by residence of retaining a settlement under that same section."

Observed by Lord Deas—"It does not follow that, because a lunatic cannot acquire a settlement, he cannot retain a settlement already acquired. The counterpart of retaining is not acquiring, but losing. Whatever is not lost must be retained; and this will not cease to hold good although there may not be capacity to require something new. If mental capacity were necessary to retain a settlement, mental capacity would be equally necessary to lose it; and so the one necessarily would

negative the other. The true view, I think, is that, when the capacity ceases, matters remain as they were when the incapacity supervened."

Observed by Lord Ardmillan—"I think, where a person is attacked by insanity, his settlement is that which belonged to him at the date of the attack, and never changes during the continuance of his lunacy."

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9. John Dinwoodie (Inspector of Dumfries) *v.* William Graham (Inspector of Hoddam), January 27, 1870.—8 M. 436; 42 *Jur.* 209; 3 *P. L. M.* 467.

Lunatic—Recourse.—An inspector of poor having, in terms of the Lunacy Act, lodged in an asylum a person found insane in the parish and without means, and thereafter having raised an action against the parish of the lunatic's settlement—Held that a defence that the lunatic had means in England was not well founded, and that, in the circumstances, the relieving parish was entitled to recourse against the parish of the lunatic's settlement.

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10. John Palmer (Inspector of Stirling) *v.* John Russel (Inspector of Dunoon); Alexander Ross (Inspector of Lochbroom); Murdoch M'Donald (Inspector of Portree); and Donald Nicolson (Inspector of Bracadale), December 1, 1871.—10 M. 185; 44 *Jur.* 110; 5 *P. L. M.* 182.

Parish Liable in Support of Lunatic.—Held (1) that an able-bodied man is not entitled to parochial relief, and the confinement of a member of his family as a pauper lunatic, under the provisions of the Lunacy Act, does not render him a pauper; (2) that the permanent burden of maintaining a pauper lunatic falls on the parish of the lunatic's settlement, even if that settlement is derivative at the date of committal to the asylum, and remains upon that parish even if the derivative settlement is lost during the lunatic's confinement; and (3) that this liability is not voided when another asylum is by legal authority substituted for the district asylum.

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11. The Procurator-Fiscal of Edinburgh *v.* —— Padon and George Greig (Inspector of City Parish of Edinburgh), July 23, 1875.—3 *P. L. M.* 486.

Lunatic—Procurator-Fiscal's Expenses.—Held (by Sheriff Davidson in the Sheriff Court of Midlothian) that the procurator-fiscal is entitled to recover from the inspector of poor, as representing the parish, the expenses incurred in the apprehension of a dangerous lunatic.

Observed by Sheriff Davidson—"By the 4 and 5 Vict., c. 60, the expenses incurred by procurators-fiscal in cases of dangerous lunatics were paid—in the first instance at least—out of the rogue money of the county. The Act was repealed by the 20 and 21 Vict., c. 71, which provided that the 'person or parish' liable for the maintenance of the lunatic should be liable in the expenses of the apprehending, keeping, and maintaining him in the asylum. This, again, was repealed by the 25 and 26 Vict., c. 54, on the 15th section of which this petition is founded. The provisions of this section seem very clear. The Sheriff of a county in which a dangerous lunatic has been apprehended may, on the application of the procurator-fiscal, accompanied by a certain medical certificate, commit the lunatic to a place of safe custody and give certain notices; and if the inspector of the parish where the lunatic is apprehended or found, does not, within twenty-four hours, undertake for his safe custody, the Sheriff shall then proceed to take evidence of the lunatic's state, and if he is a lunatic and dangerous, &c., shall commit him to an asylum. The Sheriff is required to find 'the amount of the expenses connected with the said application, inquiry, and procedure, as the same shall be taxed,' and give decree therefor against the parish and in favour of the procurator-fiscal, &c. It is manifest from the whole enactment that the procurator-fiscal is to be paid by the parish all the necessary expenses actually incurred by him. If a proof (beyond the medical certificate by which the first application must be accompanied, and the personal examination of the lunatic) has been made unnecessary by the intervention of the inspector with a satisfactory arrangement, then the procurator-fiscal's expenses are limited to the first step of the statutory procedure. . . . It has not been suggested where a procurator-fiscal is to get his expenses, if the operstion of the 15th section of the Act is limited as contended for. It is said a procurator-fiscal's salary is intended to cover all expenses and outlay. Salary does not cover everything, for a fiscal has claims against both the exchequer and the county, though he is on salary. But every procurator-fiscal is

not on salary, and must be paid for his work by some party in the usual way. Now, such an account as this would not be paid by exchequer, which would point to the 25 and 26 Vict. Besides, the work done in such cases does not fall within any of the cases for which payment is made in exchequer. It would not be paid by the county, which would point to that Act also, and to the 20 and 21 Vict., which repealed the claim against the rogue money under the 4 and 5 Vict. The 25 and 26 Vict., cap. 54, put the burden of bearing the procurator-fiscal's expenses in the matter of dangerous lunatics on the parish; and the Sheriff has no doubt that, under the 15th section of the Act, the procurator-fiscal (if he is the party who presents the application to the Sheriff) is entitled to receive from the parish all the necessary expenses incurred by him. Such is the clear intention and express provision of the statute.

Note.—The cases relating to the parish of settlement of pauper lunatics will be found under Settlement.

X.—SETTLEMENT.

1. By Birth and Parentage.
2. By Marriage.
3. By Residence.

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1. Settlement by Birth and Parentage.

1. Kirk-Session of Inveresk *v.* Kirk-Session of Tranent, June 29, 1737.—M. 10552.

Parish of Infant's Settlement.—A woman, who had resided for many years in the parish of Tranent, married a soldier, occasionally quartered there, to whom she had a child, born in Tranent, and thereafter on her way to Ireland with her husband, she left, or exposed her child in the parish of Inveresk. The child having been taken care of and supported by the kirk-session of that parish, an action of relief was brought by them against the kirk-session of Tranent;—Held that no action lay at the instance of Inveresk against Tranent.

Note.—The report bears that the argument relied on by the pursuers was chiefly one drawn by inference from the Act 1663, c. 16, concerning beggars and vagabonds, whereby the Legislature considered the place of birth as creating an indelible relation to a parish.

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2. Kirk-Session of Inveresk *v.* Kirk-Session of Tranent, March 3, 1757.—M. 10571.

Birth—Residence.—Held that where the place of a beggar's birth is known, his maintenance is a burden upon that parish, although he had for the last three years resided in another parish.

Note.—This decision proceeded upon the provisions of the Acts of Parliament 1535, c. 22; 1551, c. 25; 1579, c. 74; 1672, c. 18, and an Act of the Privy Council 29th August 1693, as ratified in Parliament.

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3. Parish of Guthrie *v.* Parish of Arbroath, July 31, 1777.—5 Brown's Supplement 539.

Bastard—Parents' Residence.—A bastard child born in Arbroath, where both its parents were resident, was sent, soon after its birth, to be nursed in the parish of Guthrie—Held that the parish of Arbroath, as the parish of the parents' residence, must be held to be that also of the child, and therefore liable in its support.

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4. Heritors and Kirk-Session of Coldingham *v.* Heritors and Kirk-Session of Dunse, July 28, 1779.—M. 10582.

Pupil Children—Parents' Residence.—Held that two pupil children had their settlement, not in the parish where they were born, but where their parents had resided for three years prior to application.

Note.—This is one of the earliest traces in the law of the doctrine of derivative settlement, and it will be observed that it was a derivative residential settlement that was sustained.

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5. Heritors of Melrose and Stitchell *v.* Heritors of Bowden, January 24, 1786.—M. 10584.

Birth—Children.—Held that the parish of birth was liable in the support of poor children who had not resided three years in any other parish, although their father had at one time been resident for that length of time in another parish, but had left it some years before his death.

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6. Howie and The Kirk-Session of Alyth *v.* Kirk-Sessions of Arbroath and St. Vigeans, January 25, 1800.—Mor. App. *v.* Poor, No. 1.

Settlement of Legitimate Child.—Held that the settlement of a

legitimate child was determined, not by the place of its birth or residence, but by the residence of its parents.

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7. Kirk-Session of Rescobie *v.* Kirk-Sessions of Aberlemno, Dunnichen, and Forfar, November 28, 1801.—M. 10589.

Settlement of Bastard.—Held (1) that the burden of maintaining a bastard child fell upon the parish in which the mother had been domiciled for three years previous to its birth; and (2) that when a pauper, during the discussion of his claim, has been supported by a parish, or an individual not legally bound to support him, they are entitled to reimbursement from the parish ultimately found liable.

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8. Kirk-Session of Gladsmuir *v.* Kirk-Session of Preston and Salton, June 11, 1806.—Mor. App. *v.* Poor, No. 5.

Settlement of Idiot Bastard.—Held (following the case of Rescobie, *supra*) that the settlement of the mother is the rule for ascertaining the parish liable for the support of her illegitimate child, who was an idiot.

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9. Kirk-Session of Edinburgh *v.* John Brown, Kirk Treasurer of Canongate, June 11, 1806.—Mor. App. *v.* Poor, No. 6.

Settlement of Bastard.—Held that the parish of the mother's residence, and not that of the supposed father, is liable for the aliment of bastard children.

Note.—Two of the Judges differed from the majority, holding that when the father of a natural child was known, the parish of his residence ought to be liable in the first instance, but the majority held that the father of a natural child was, in the eye of the law, uncertain; that the circumstance of decree for aliment having passed against a particular person, is not sufficient evidence that he was the father of the child; and that the parish of his residence was not liable for this debt any more than other debts of the supposed father.

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10. Kirk-Session of Dalmellington *v.* Kirk-Session of Troqueer and Kirk-Session of Ruthwell, January 22, 1822.—1 Sh. 259.

Birth—Residence.—Held that the mere fact of birth in a particular parish does not render that parish liable.

The facts were—A travelling packman, Joseph Carruthers, married a native of the parish of Dalmellington, and by her had five children. He deserted his wife, who then returned with her family to Dalmellington, and having been supported for some time by that parish, an action of relief was raised by the kirk-session against (1) the parish of Troqueer, as the parish of the husband's last legal settlement, and (2) against the parish of Ruthwell, as the parish of his birth, and an action was also instituted by the parish of Ruthwell against the parish of Troqueer to be relieved in the event of being found liable to Dalmellington. These actions having been conjoined, the parish of Ruthwell pleaded that Carruthers was the illegitimate son of two persons born and residing in the adjoining parish of Mousewald, that the mother had come to Ruthwell to be there secretly delivered, and her child having been born, he was carried the day after birth out of the parish, and the mother herself left Ruthwell almost immediately after, and therefore that Ruthwell, though the parish of birth, was not liable. The Court sustained the defences pleaded for the parish of Ruthwell.

Note.—The ground of judgment in this case does not clearly appear, and it is now regarded as of doubtful authority.

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11. Heritors and Kirk-Session of Crieff *v.* Heritors and Kirk-Sessions of Fowlis-Wester, Little Dunkeld, and Monzievaird, July 19, 1842.—4 D. 1538; 14 *Jur.* 610.

Parent and Child—Mother's Settlement.—Held (on the principle laid down in the case of the Heritors of Coldingham, *supra*, p. 184), that where the mother of a legitimate posthumous child had acquired for herself a residential settlement, the father not having had any settlement by residence, the settlement so acquired by the mother was also the settlement of the child.

Observed by the Lord Justice-Clerk—"I do not see that the residence of the parent of an illegitimate child should be

different in its effect from the residence of the parent of a legitimate child. The right equally arises to the child from the parent. Say that a widowed mother comes to a parish, and contributes to the poor rate, &c., and gives the parish all the benefit of an industrial—it may be a wealthy residence; are her children to be told, at her death, that this residence is of no avail? Where there has been industrial residence of a mother, I cannot see any principle for refusing to her legitimate children the benefit of such industrial residence, when, in the case of residence of a father, there would have been no doubt."

Note.—This is the first case in which it was contended that a mother could not acquire a settlement for her children. The rule laid down in this case was confirmed in the subsequent case of Grant *v.* Reid, May 22, 1860 (*infra*, p. 205).

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12. Heritors and Kirk-Session of Lasswade *v.* Heritors and Kirk-Sessions of Newlands and St. Cuthbert's, and the Managers of the Edinburgh Charity Workhouse, March 6, 1844.—6 D. 956; 16 *Jur.* 425.

Illegitimate Child—Mother—Forisfamiliation.—Held that the settlement of an illegitimate child was that of its mother, and in a case where the mother had never acquired any settlement in her own right, her (the mother's) settlement was that which had been acquired by residence by her father, while she was in pupillarity, and not residing with him.

The facts were—Margaret White was born in the parish of Newlands in 1808, and resided there with her father till 1814, when her mother died, and she then went to reside with her maternal grandfather in the parish of Manor, where she remained apart from her father until she attained the years of puberty. In 1815 or 1816 her father removed to Edinburgh, and lived in the city from 1816 till Whitsunday 1822 or 1823. He then removed to St. Cuthbert's, and lived there till his death in 1832. During his stay in Edinburgh and St. Cuthbert's, he supported himself and family by his own industry. Margaret White went to service at Whitsunday 1821, and continued at service in various parishes, never residing for three years in any one parish, and without, therefore, acquiring a residential settlement for herself. In 1834 she gave birth to an illegitimate daughter in the parish of Penicuick, and died in the Edinburgh Infirmary in March 1836. For ten months previous to her death, she had

been working as a farm labourer in Lasswade, where her child was left, and where it became chargeable. The question then arose, whether Newlands, the parish of the mother's birth, or the City Parish of Edinburgh, or St. Cuthbert's, as, one or other of them, the parish of the mother's derivative settlement, was liable in the support of the child. The Court held the City Parish of Edinburgh liable.

Observed by Lord Moncreiff—"It is a fixed rule that an illegitimate child follows the settlement of the mother, if that can be ascertained; if not, the liability must fall on the parish of its own birth—to subsist, in either case, till it acquire an industrial settlement for itself by three (now five) years' residence after pupillarity, and supporting itself without parochial aid. The question here is, what was the legal settlement of the mother in this case? Was it in the parish of her birth (Newlands), or in the parish to which her father removed when she was six or eight years old, and where he continued to reside during six years—that is, Edinburgh? Or in the parish to which he afterwards removed, where he lived more than three years—St. Cuthbert's? I am clearly of opinion it was not in Newlands. At the moment of the mother's death, she could have made no claim on Newlands, because, after leaving it with her father, she had lived with him, or was legally part of his family for considerably more than three years in Edinburgh, whereby, before leaving his family, she had acquired a legal settlement in the parish of that city; for it appears that, while still in pupillarity till 1820, she continued to reside with her father, and is to be so accounted, being a pupil—at least from January 1816 till Whitsunday 1821, upwards of four years. At that term, being then thirteen, she went to service, and, except during six months after Martinmas of that year, when she had been with her maternal grandfather and aunt, and perhaps another interval when with her father, was constantly in service in various parishes, without ever having been resident in any one parish during three years. In the meantime, her father had removed into the parish of St. Cuthbert's in 1822, and died there in 1832. . . . The clear facts are—1. That before leaving her father's family, which she only did after coming above the years of pupillarity, she was part of her father's family more than three years in Edinburgh; 2. That she acquired no settlement for herself by residence; and, 3. That after having so left her father's family, she never was again resident with him, except for one period in St. Cuthbert's—admitted to have been very far short of three years. In this state of the case, I am of opinion that, when the young woman went to service, and left her father's family in Edinburgh in 1821, she had her legal settlement in that parish, not properly derivative from her father, but actual for herself, as a pupil in his family; and

that, as she never acquired any other settlement, either actual, or, as I think, derivative, Edinburgh continued to be her proper parish at the birth of her child, and at her death. I cannot think that a person, situated as this woman was, must necessarily have followed her father's migrations, after she had left his family with a fixed parish of settlement at the time, and had been, during many years, supporting herself by her own industry. . . . If, indeed, she had left her father's house before he and she had resided in Edinburgh for three years, the case might be a little different, her settlement then coming to depend on something derivative from his continued residence there for the necessary time to fix his own settlement, after she had ceased to reside there."

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13. William Hume *v.* John Halliday and James Pringle, December 22, 1849.—12 D. 411; 22 *Jur.* 121.

Forisfamiliation—Loss of Settlement.—When about four or five years of age, a child removed with his parents from Bolton, the parish of his birth, to Salton, where he remained with them till he attained the age of fifteen, when he enlisted. After serving eleven years he was discharged without a pension, and thereafter for twenty-four years he moved about from place to place, without acquiring any residential settlement, finally taking up his residence in Greenlaw in June 1842, where he maintained himself till 1847. In April 1847 he applied for and obtained parochial relief from Greenlaw. He had thus been resident in Greenlaw for more than three years previous to the passing of the statute of 1845, but during that period had not been a proper object of parochial relief; he had not completed the residence of five years required by the 76th section of statute of 1845. In an action brought by the parish of Greenlaw against the parishes of Bolton and Salton for relief, and for fixing the burden of support of the pauper—it was held (by the Lord Ordinary, and acquiesced in) (1) that Greenlaw was entitled to be relieved, in respect the pauper had not, during his three years' residence prior to the passing of the statute of 1845, been a proper object of relief, and had not subsequently to the said Act acquired a settlement by five years' residence; and (2) (by the Court) that the settlement acquired by the pauper from the residence of his parents in Salton, had been lost by his not having resided continuously in it for a year during any

subsequent period of five years; and (3) that Bolton, as the parish of birth, was liable, the pauper having lost his only derivative settlement.

Observed by Lord Jeffrey—"If the child be unable to acquire anything by its own industry, the law looks upon it as consubstantiated with its parent, with whom, *presumptione juris*, it is *unum quid*. Where the root is, the branches are supposed to be; they may overhang other parishes, or droop into them, but the true parish is that of the root."

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14. John Thomson (Inspector of St. Cuthbert's) *v.* William Morris (Inspector of Liff and Benvie) and George Stewart (Inspector of Kinloch), July 19, 1850.—12 D. 1266; 22 *Jur.* 598.

Lunatic—Parish of Birth.—Held that the parish of birth of a pauper lunatic was liable in his support, although his father was alive, but had no settlement except in his birth parish.

The facts were—In September 1846 the father of a lunatic son, aged sixteen, applied for and obtained aliment for his son from the parish of St. Cuthbert's, Edinburgh, the inspector of which raised an action of relief against (1) the parish of the father's birth, and (2) the parish of the lunatic's birth. The father left the parish of his birth in 1824, and for four years resided in various places in Scotland and England. From 1828 till 1842 he settled in Liff, where the lunatic was born, and from 1842 till September 1846 he resided in St. Cuthbert's. For St. Cuthbert's it was pleaded that the father of the lunatic had no settlement in that parish, not having resided there for five years, and that the lunatic could have no settlement there except derivatively from the father. For Liff—the parish of the lunatic's birth—it was pleaded that the lunatic could acquire no settlement for himself, but must follow his father's, and that, although the father had at one time a settlement in Liff, it had been lost by absence for five years without one year's continuous residence. For the parish of the father's birth it was pleaded (1) that the settlement in Liff was not lost, as the full five years had not expired, and (2) that the parish of lunatic's birth, and not that of his father, is liable for his support.

It was held, in conformity with the opinion of a majority of the whole Judges, that the parish of the lunatic's birth was liable.

Note.—This case is now of no authority, being inconsistent

with the view taken by the House of Lords in the subsequent case of Barbour *v.* Adamson. See also Hay *v.* Paterson, (*infra*, p. 200).

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15. John Thomson (Inspector of St. Cuthbert's) *v.* Simon Scott and Thomas Aitchison (Inspectors of Jedburgh and Kelso), February 26, 1851.—13 D. 783 ; 23 *Jur.* 356.

Parent and Child—Birth.—Held that where a father who had no residential, but only a birth settlement, deserted his children, the parishes in which they were severally born were liable in their support.

The facts were—John Skene, who had no settlement except that of birth in the parish of Jedburgh, deserted his children, leaving them destitute in the parish of St. Cuthbert's. Three of the children had been born in Kelso, and two in the City Parish of Edinburgh. The children were maintained at the expense of St. Cuthbert's, the inspector of which, as the relieving parish, claimed relief from Jedburgh as the parish of the father's birth, and subsequently from Kelso also, the process being also intimated to the City Parish of Edinburgh, being the parishes of birth of the children.

For Jedburgh it was pleaded that every settlement must rest either on birth or residence *in the person* of the party claiming, and in the case of minor children whose parents were dead, the claim lay against the parish of their own birth, not of their father's, and desertion had the same effect as death, in putting an end to a claim against the parish of the father's birth.

For Kelso it was pleaded that it was a fixed principle that the settlement of legitimate children, not emancipated, was to be determined by the settlement of the father—children being regarded as mere accessories of the parent, and incapable of acquiring any right distinct from his.

It was held that the parishes of the children's birth were liable, and not the parish of the father's birth, on the ground that the claim for relief was, under the statute, one directly for and on account of the children, and in no respect for or on account of the father, and that, therefore, the legal settlement of the children must be their own, not their father's, settlement, and their settlement was that of birth.

Note.—This is not now the law, the view given effect to in this case having been rejected by the House of Lords in the leading case of Barbour *v.* Adamson (*infra*, p. 192.)

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16. John Hay (Inspector of City Parish of Edinburgh) *v.* Robert Scott (Inspector of Duddingston), November 23, 1852. —15 D. 62; 25 *Jur.* 33.

Bastard—Mother's Derivative Settlement.—Held that the parish in which the mother of an illegitimate child had acquired a settlement through marriage was not liable in the support of the child which had been born subsequent to the death of the mother's husband, and that the parish of the child's birth was liable in its support.

Note.—This case is now of no authority. (See note to Thomson *v.* Scott).

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17. Robert Barbour (Inspector of Lochwinnoch) *v.* Ebenezer Adamson (Inspector of Glasgow), July 2, 1851.—13 D. 1279; 23 *Jur.* 603; Revd. H. of L. May 30, 1853; 1 Macq. 376; 25 *Jur.* 419.

Settlement of Legitimate Children in Nonage.—Held (by the House of Lords, reversing the judgment of the Court of Session) that the settlement of legitimate children in nonage is not in the parish of their own birth, but in the parish of their father's settlement, whether that settlement was by origin, or by residence.

The facts were—In 1846 a man named Duncan M'Intyre, who had been resident with his family in Glasgow, was transported for theft. His family consisted of a wife and five children, the eldest of whom was nine years of age, and the youngest an infant. The two eldest children were born in Falkirk, the third in Linlithgow, and the two youngest in Glasgow. The mother applied for, and received from the parochial board of Glasgow, relief for herself and her children, and this action was raised for reimbursment of the sums so advanced, the defender being the inspector of Lochwinnoch, which was the birth parish of the father. It was decided by the Court of Session that the liability to support the children attached to the parishes in which they were severally born, and the defender was therefore assoilzied. Against this judgment the parish of Glasgow appealed to the House of Lords, where the decision of the Court of Session was unanimously reversed, and the parish of the father's settlement, viz., the parish of his birth, was held liable in the support of the family. The arguments are fully referred to in the following extract from the judgment of the Lord Chancellor (Lord Cranworth).

"What is the law of Scotland as to the settlement of a child abandoned by its father, and driven to seek relief under the Poor Law? The appellant (parish of Glasgow) contends that until the child is emancipated, as we say in England, or until it is forisfamiliated, as it is said in Scotland, its settlement is constantly that of the father. The respondent, on the other hand, insists that the child must seek relief from the parish of its own birth. It is to be observed that neither in England nor in Scotland does the statute law make any provision as to derivative settlements. In Scotland there are but two original settlements—that acquired by birth, and that acquired by residence. In England there are many, and, till lately, there were more. But all the settlements that have been created by statute are original. No statute has ever said, in the English law, that a child shall derive a settlement from its father, or a wife from her husband. But yet, early in the administration of the Poor Laws, it was held that this was necessarily to be understood. It was assumed that the wife must be with her husband; that children must remain with their father; and that any settlement gained by him was gained, not for himself alone, but for all the family. . . . The doctrine is founded on the principle so well illustrated by Lord Jeffrey, where he speaks of the father as the root, and the children as the branches. Once ascertain in what soil the root is fixed, and you have the soil with which the branches are connected; and this connection, according to the doctrine of the English law, must continue, pursuing the same metaphor, how often soever and wheresoever the tree is transplanted, until the branch has been severed, and so ceases to be connected with the parent trunk. . . . The father's parish is the child's parish, and so bound to maintain it. This is certainly the rule in England, but it is said that a different rule obtains in Scotland. A child, it is contended, in a state of nonage, so long as its father is alive, has, by the laws of Scotland, no right to relief. The father is bound to maintain it. If, from age or infirmity, he is unable to do so, still no right to relief accrues to the child. The father, in such a case, has a claim to relief, the extent of which is measured by the wants of his child as well as his own; or rather by his own wants, treating the necessities of his child as a part of those wants. Still it is to him that the law gives relief, and not to the child. In such a case obviously the parish bound to furnish relief is the father's parish. That the child gets relief from the father's parish in such a case is not, it is said, the consequence of any direct right in the child against that parish, but of the child's claim on its father. If, therefore, the parish of the father's settlement has, by his death, or by his having deserted his family and absconded, or by his having been transported, ceased to be under the obligation of maintaining the father, it is under no obligation to maintain the child. The child, in such a

case, seeks relief on a new foundation—*i.e.*, on its own claim as a destitute child, and so must look to the parish of its own birth, and not to the parish which was bound to maintain the father. This is the reasoning on which the Court of Session has rested its decision.

"The question is, whether there are not other elements which ought to have been taken into consideration, and which would have led to a different result? I think there are. Considering the peculiar nature and object of the Poor Laws—the affording relief to those unable to maintain themselves—it is absolutely necessary that we should construe the provisions of the Legislature so as to meet the ordinary social wants of those for whose benefit they were made. It was on this principle that we in England permitted the doctrine of derivative settlements at all. . . . I see no reason why the same rule of construction is not to be adopted in Scotland. If, in the present case, the father had gained a settlement by residence, it is admitted that, by the law of Scotland, it would have enured for the benefit of his children as well as of himself. *His* residence would have been, for purposes of settlement, *their* residence; and when the children, having become poor and destitute children, were obliged to seek parochial relief, their claim would have been on the parish where they had thus acquired a settlement by his residence. I cannot understand why a different consequence should follow when the place of the father's settlement is not one acquired by residence, but one which he had by birth. The settlement acquired by the children by means of the father's residence is strictly derivative. This is plain from its being immaterial whether the child has actually resided with the father or not; and, indeed, it would be gained by a child under the age of five years, and who could not therefore have resided for the statutory term. . . . I am aware that in these cases (referring to some of the previous Scotch decisions), the settlement by parentage was a settlement gained by the residence of the parent, not that of his birth; but I have already said that I am unable to discover any ground of distinction in principle between the two cases. The moral necessity of treating the whole family as one and indivisible is the same in both cases. The evil of dispersing the children into different parts of the kingdom, instead of keeping them together, and so giving to family affection its fair chance of operating favourably on the character and contributing to the happiness of its objects, is as great when the parent has *not*, as when he *has*, gained a settlement by residence. . . . I am clearly of opinion that by the law of Scotland, as well as by that of England, legitimate children during nonage are to be considered as so far identified with their father, that it is to his place of settlement, *however constituted*, that they are to look for relief, when they are so circumstanced as to be entitled to relief at all. And

I come to this conclusion because any other interpretation of the laws of settlement would or might lead to a harsh and violent severance of the domestic tie in a manner which I cannot believe the Legislature to have contemplated."

By this judgment (in which Lord Brougham concurred) the previous case of Thomson *v.* Scott and Aitchison, February 26, 1851; 13 D. 783 (*supra*, p. 191), was overruled.

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18. Peter Beattie (Inspector of Canongate) *v.* Andrew Greig (Inspector of Largo), November 22, 1853.—4 *P. L. M.* 238 (1861).

Desertion—Pupil Children—Foreign Birth.—A Scotchman having married in this country, emigrated to New Zealand. After several children had been born to him there, he deserted his wife and family, who thereupon returned to this country. Held (by Lord Cowan) that the parish of the father's birth was bound to support his pupil children, notwithstanding his emigration, *animo non revertendi*, and the fact of the children having been born abroad.

Observed by Lord Cowan—"The principle applicable to the case is not affected by the father's continued absence; for the principle recognised by the House of Lords (in Barbour *v.* Adamson) being that 'legitimate children during nonage are to be considered as so far identified with their father, that it is to his place of settlement, however constituted, they are to look for relief, when so circumstanced as to be entitled to relief at all.' The only admissible inquiry, in the Lord Ordinary's apprehension, when relief for children in nonage found destitute in Scotland is required, regards the parish to which their father must have applied, had he been in this country destitute. It is sufficient that the children have been deserted by their father, and are *de facto* in Scotland destitute, to impose liability on their father's birth settlement for their aliment. That they have been born abroad in a British colony does not make them aliens, their parents having been Scotch."

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19. Robert Gibson (Inspector of Peebles) *v.* Thomas Murray (Inspector of Melrose), June 10, 1854.—16 D. 926; 26 *Jur.* 489.

Pupil Children—Foreign Father—Liability of Parish of Mother's

Settlement.—Held (by a majority of whole Court) that when a foreigner, who has acquired no settlement in Scotland, dies, leaving an able-bodied widow and children, the parish of the widow's birth is liable for the maintenance of the children, and not the parish or parishes in which they themselves were born.

The facts were—James Cook, a weaver, was born in England, but lived for many years in Scotland, without acquiring any residential settlement. He was married in May 1840 to a native of Peebles, where he was then residing. He afterwards removed to Melrose, where two children were born, but afterwards returned with his family to Peebles, and had been living there with his wife and family for some months, when he died on 31st January 1849. The mother was able-bodied, but aliment for the children was then applied for and awarded by Peebles, notice being given to, and relief claimed from, Melrose, in respect that the children were both born there. An action was then raised to enforce this claim.

It was argued for Peebles, that only illegitimate children followed the settlement of the mother, and that there was, in the present case, nothing to connect the children with their mother's parish. She was able-bodied, and was not a burden on it, nor seeking to connect herself with it. If the children derived no settlement from their father, their own settlement,—here a natal one, must rule.

For Melrose it was maintained, that birth settlements were only resorted to when none other could be found; and the general rule was, that children possessed a derivative settlement, 1st, from the father, but 2d, also, as determined in the Crieff case, from their mother, being a widow—from the relation of parent subsisting after the father's death; and that, carrying out the principle of the case of Barbour, children may, when their mother is a widow, acquire her natal, as well as her residential settlement. The case was argued before the whole Court, and it was held (by a majority) that Peebles, as the parish of the mother's birth, was liable in the support of the children.

The leading opinion of the majority was delivered by the Lord President, who lays down the following principles as ruling the case of pupil children:—"In the case of pupil children, the general rule is, that their settlement is regulated by that of their parents, and that in the event of their becoming entitled to parochial relief, the parish of the parent's settlement, if it be known, is that from which relief is to be drawn—not the parishes in which the children may have been born; though, if the parents be not known, or have no known settlement, the parishes in which the children were severally born may be resorted to. Thus:—

"1st. It is beyond question, that in the case of legitimate children, their settlement is derived primarily from that of their father, and that if on his death they become chargeable, the burden rests on the parish in which he had his settlement, rather than on the parish in which they were born. Nor is it of any consequence whether the father's settlement was acquired by residence, or belonged to him by birth. In either case, the children have the benefit of his settlement. The judgment of the House of Lords in the case of Barbour (30th May 1853) appears to be conclusive on that point.

"2d. In the case of illegitimate children, whose paternity is never held to be certain, the same rule cannot apply, for there is no known settlement of the father. In these cases the rule of law is, that they derive their settlement from their mother, just as lawful children derive their settlement from their father when he has a known settlement. This holds equally whether the settlement of the mother was acquired by residence, or belonged to her by birth. In either case, if the children become chargeable, the burden devolves on the parish of the mother's settlement rather than on the parishes in which the children may have been born.

"3d. Lawful children also may derive a settlement from their mother, on whom their care has devolved by the death of their father. That is a settled principle. If she has acquired a settlement by residence, the children will have the benefit of that settlement; and in the event of their becoming proper objects of parochial relief, or of her requiring parochial aid for their support, the liability will devolve on the parish in which they have so derived a settlement through her, rather than on the parishes in which they may have been born. That was decided in the case of Crieff, 19th July 1842. . . . In the present case, if the children had been illegitimate, there would have been no question of the liability of the parish of Peebles, as the parish of the mother's settlement. Or, being legitimate, if the mother's settlement had been acquired by her residence in Peebles, there would still have been no question. Does it make any difference that the mother's settlement belongs to her by birth, instead of having been acquired by residence? It would make no difference in the case of a settlement acquired through the father. The case of Barbour is conclusive on that point; and there does not appear to be any reason why it should make any difference in the case of a settlement derived through the mother. The grounds on which the judgment of the House of Lords in the case of Barbour proceeded, are equally applicable to the case of settlement derived through the mother. These grounds appear to me to be sufficient for the decision of the case. I do not think it necessary to dwell on the serious evils and inconveniences that would result from giving effect to the opposite view,

whereby each child would be thrown on the parish of its birth. Either harsh separation of families, or inextricable inter-parochial accountings and apportionments, must ensue. In the view I take of the law of the case, it will not be necessary to encounter these evils."

Observed by Lord Deas—"I see no greater difficulty in holding the children's own birth settlement to be suspended by the liability of their mother's birth settlement, while they are members of her family, than in holding it, as in Barbour's case, to be suspended by the liability of their father's birth settlement, while they were members of his family. In neither case is their own birth settlement lost or destroyed. The birth settlement of the parent is, in the circumstances, primarily liable, failing residential settlement; but when this liability ceases—for example, if the children grow up, acquire a residential settlement, and then lose it by non-residence—their own birth settlement will be liable for their support. The more difficult question seems to be, whether the children are truly to be regarded as, in the meantime, members of the mother's family. I think that they are—so far as this question under the Poor Law is concerned—although she may not have the same unqualified rights relative to their residence and education which the father had. They are *de facto* living with her, and maintained by her, so far as she is able to maintain herself and them, the deficiency only being (according to usual practice) supplied by the parochial board. If she had the means of fully maintaining them and herself without assistance, she would be bound to do so, as in a question with that board."

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20. John Hay (Inspector of City Parish of Edinburgh) *v.* John Thomson (Inspector of St. Cuthbert's); Alexander Murray (Inspector of Cranston); Peter Beattie (Inspector of Canongate); and James Laing (Inspector of Denny), February 6, 1856.—18 D. 510; 28 *Jur.* 191.

Bastard — Mother's Derivative Settlement — Loss of Residential Settlement.—Held (1) that the settlement of the mother, even if acquired by marriage, is the settlement of her illegitimate child; and (2) that, where a person might be presumed to be a pauper at the passing of the Act of 1845, a residential settlement of five years was not lost by absence for four years and a-half.

The facts were—A pauper, named William Campbell, died in the Royal Infirmary of Edinburgh, on 7th December 1845, having

with his family been in receipt of relief from the City Parish of Edinburgh. The question raised in the present action was as to the parish liable for past advances, and for the future maintenance of Campbell's widow and children. Campbell had resided in the parish of St. Cuthbert's from Whitsunday 1836 to Whitsunday 1841, when he finally left it. He was born in Denny, and had been three times married, his widow having been born in Cranston. Of his children, two, one of whom died in 1847, before the date of the action, were born in St. Cuthbert's, and two, who died in 1846, in Canongate. The widow resided after her husband's death in Canongate, and there gave birth to an illegitimate son. In February 1844, and until September of that year, relief was afforded to Campbell by the City Parish of Edinburgh, but, though his name was kept on the register, relief was then suspended; but at the time of his death, he was again in receipt of relief, as were also his wife and family. It was, in these circumstances, held, that being a proper object of relief in 1845, at the passing of the Poor Law Act, the provision of the 76th section applied, and that the pauper therefore retained his residential settlement acquired in St. Cuthbert's, and, further, that that settlement accrued to his widow and children. As to the widow's illegitimate child, it was held, by a majority of the whole Court, that he acquired his mother's settlement, in whatever way that accrued to her.

Observed by the Lord President—"In the case of illegitimate children, they follow the settlement of the mother, and that is admitted at all hands to be the rule applicable to cases where the settlement of the mother happens to be her birth settlement, and in cases where the settlement of the mother happens to be the settlement acquired by residence. But it is disputed that the rule is applicable to cases where the settlement of the mother is what is called a derivative settlement. . . . We have nowhere a clear definition of the expression 'derivative settlement.' . . . The general meaning of it is, that it is a settlement which the party derives, not by his own birth or residence, but through another. Such a settlement may be acquired through parentage, and in the case of a female, through marriage. . . . The general question is—'Whether a settlement so obtained is an exception to the general rule, or whether it is not?' The opinion which I have formed upon that point is, that a settlement so acquired is not an exception to the general rule. I think that the rule that the mother's settlement regulates the settlement of the illegitimate child, applies to this case as well as to others, and I do not see any principle of any strength, or any ground for holding that, when her settlement appears to be derived through marriage, and to be in a parish different from that of her own birth, and from that of the child's birth, it is to form any exception. When she

has acquired a settlement, it becomes hers to the exclusion of all others, so long as it lasts. It may be a settlement defeasible, so to speak, like any other settlement—by reason of residence, for example. But the law of settlement through the mother being the rule is not altered in any way, and the circumstance that her settlement by marriage might cease by a subsequent marriage, or by her acquiring a settlement elsewhere, is not a pressing consideration, for settlement by residence might cease in a similar manner."

Observed by Lord Ivory—"The law does not distinguish between different species or classes of settlement. That is to say, it does not recognise one kind of settlement, with one set of legal consequences, and another kind, with a different set of legal consequences. Once fix that there is a legal settlement, and all the consequences flowing from a legal settlement are identical in every case, without distinction, qualification, or exception of any kind."

Note.—By this judgment, the previous cases of Hay *v.* Scott, (*supra*, p. 192), is overruled.

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21. John Hay (Inspector of City Parish of Edinburgh) *v.* Alexander Paterson (Inspector of Dalkeith) and David M'Donald (Inspector of Laurencekirk), January 29, 1857.—19 D. 332; 29 *Jur.* 152.

Pauper Lunatic—Pupil.—Held that the burden of supporting a pauper lunatic in minority, falls upon the parish of the father's settlement.

The facts were—Robert Greig was born in Laurencekirk, and never acquired a residential settlement in any other parish. For eight or nine years prior to 1847 he resided in Ireland, and in 1848 applied for, and received for three months, parochial relief from the City Parish of Edinburgh for himself and his family. The advances so made were repaid by the parish of Laurencekirk. In 1853 Greig was confined in the prison of Edinburgh, and afterwards resided in Fifeshire. A son, Thomas Greig, was born in Dalkeith on 28th April 1838, and in December 1853 he became an object for parochial relief in Edinburgh, and, being then insane, was confined as a lunatic in Morningside Asylum, having been from infancy subject to epileptic fits, and he continued insane to the date of the action. At this time his father earned from 8s. to 11s. per week, with which he had himself and wife and several children to support. The question in the present action came to be, whether the parish of the father's birth or the parish of his own birth was liable for the support of the

lunatic son. For the parish of the lunatic's birth it was pleaded that, as the alleged pauper was a minor and a lunatic, and not forisfamiliated, his settlement followed that of his father; and for the parish of the father's birth, founding on the case of Thomson *v.* Morris, it was pleaded that the maintenance of a pauper lunatic is a burden separable from that of the maintenance of his father's family, and must be borne by the parish of his own birth.

It was held, on the principle laid down in the case of Barbour *v.* Adamson (*supra*, p. 192), that the burden of supporting the pauper lunatic fell upon the parish of the father's birth.

Observed by the Lord President—"It is a general principle as regards pupils that their settlement is in the parish of their father's settlement. It is also a principle that, while they are pupils, they cannot acquire settlements for themselves, even by living separate from their father. After they cease to be in pupillarity, and enter into the more advanced stage of life, they may acquire settlements for themselves by separate residence. I speak of children not subject to disability. But, in regard to lunatic children, it has not been decided—except in the case of Morris, so far as I know—that a lunatic child, though beyond pupillarity, is in a different position from a pupil. There are many reasons in respect of which the conditions of the two may be assimilated. . . . It had been previously decided that the settlement of a lunatic child is in the parish of the parent's settlement. I do not observe in the report of the case of Morris that any reference was made, either in the argument or in the opinions of the Judges, to the case of Gladsmuir, in which that point was very deliberately considered and decided. It was there decided that a lunatic child takes the settlement of its parent—not of its own birth. The case of Gladsmuir is a leading case in the Poor Law of Scotland. Many points were disposed of in that case, some of which had the authority of previous decisions, some not. One of the points was that a natural child takes the settlement of its mother, and not the settlement of its own birth, and that this rule applies where the child is a lunatic as well as where the child is not a lunatic. Another point decided there, and which had some authority from previous decisions, was, that a child living separate from its parents while in pupillarity does not acquire a separate settlement. And a third point decided there was, that, as regards the settlement of a lunatic child, the liability to maintain it during pupillarity and after pupillarity rests upon the parish of the mother's settlement, where it is a natural child. In that case the demand for relief was made in reference to aliment furnished before the child had attained the years of puberty, and also after the child had attained the years of puberty, and as to the continuing lia-

bility thereafter to maintain the child. All that matter was discussed after the child was past pupillarity, and before it had attained majority. The decision was, that the liability rested on the parish in which the mother had her settlement, and not upon the parish in which the child was born. But I see no reference made to that decision in the case of Morris. . . . Now, that decision goes a certain length towards solving the present case. I am quite aware that in that case the mother's settlement was not in the parish of her birth. It was acquired by residence, and confirmed, if I may so say, by marriage in the same parish. It was a settlement acquired by her. But that decision established an important principle, viz., that the obligation to support the child did not rest upon the parish of the child's birth in a competition with the parish in which the mother had a settlement. I am not aware that that decision has at any time been disputed. I have never heard it questioned. I hold it to be a standing decision, and one which is to be much regarded in law. The question comes to be, whether that decision or the decision in the case of Morris is to rule this case. I see no room for distinction between the case of Gladsmuir and the case of Morris, except in one point, and that point is strongly pressed in the case of Morris, and appears to have weighed with the Court in that case, as well as in some subsequent cases. It is this, that the parent's settlement was a birth settlement, not one acquired by residence; and it was argued, that although the child might claim a settlement, and the obligation to afford relief might rest on the parish in which the parent had a settlement in the case where that settlement was acquired by residence or otherwise, the same rule did not hold in a competition between the parishes of birth—and that, in the latter case, the obligation rests on the parish of the pauper's own birth, and not on that of the parent's birth. That distinction, that principle is urged in some of the opinions in the case of Morris, and it was the basis of decision in some subsequent cases. But that distinction or principle has, I think, been wholly overturned and displaced by the judgment of the House of Lords in the case of Barbour. And I confess that if I had been called on to give an untrammelled opinion before the occurrence of either of these cases, I should have been obliged to say that I could see no reason for distinction between the case in which the settlement of the parent had been acquired by residence, and the case in which it belonged to him by birth—the nature or origin of the parent's settlement is, I think, immaterial. Such would have been my view before these cases occurred. The only question with me would have been, where is the settlement of the parent? and, I think, that principle was distinctly laid down by the House of Lords, in altering the judgments of this Court, in the case of Barbour and the previous case of Jedburgh. If that be so, I

think there is a plain ground for not being bound by the decision pronounced in the case of Morris, which adopted the distinction that has since been displaced by the House of Lords. I do not say that all the Judges proceeded on that ground in that case of Morris. But it was an element which entered strongly into the decision, and so much so, that it ruled the decision in a subsequent case. But it is no longer part of our law, and I do not see that the judgment in the case of Morris would have been the same if the principle had been recognised that, where the question is, what is the settlement of the parent, it is of no consequence how that settlement has been obtained. Upon these grounds, I am of opinion that the child here, a lunatic, and in puberty, takes the settlement of the parent. The parish in which the parent has a settlement is liable to maintain it. That is settled by the case of Gladsmuir. It makes no difference whether the parent's settlement was acquired by residence or belonged to him by birth. That is settled by the decision of the House of Lords in the case of Barbour; and, taking these two principles which are now fixed in our law, they lead to the conclusion that the parish of the father's settlement is liable for the maintenance of this lunatic."

Note.—It will be observed that by this judgment, the principle laid down by the whole Court in the case of Thomson *v.* Morris, July 19, 1850 (*supra*, p. 190), is overturned.

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22. George Greig (Inspector of St. Cuthbert's) *v.* John Hay (Inspector of City Parish of Edinburgh) and Alexander Maclaine (Inspector of Torosay), May 18, 1858.—1 *P. L. M.* 36.

Pupil Son of Foreign Father.—Held (by the Lord Ordinary, Benholme, and acquiesced in) that the settlement of a pupil, whose father was an Englishman, who had died without having any settlement in Scotland, and whose mother, a native of Scotland, had predeceased the father, without leaving any settlement available to her but that of birth, was in the parish of the pupil's own birth, and not in the parish of the mother's birth.

Observed by Lord Benholme—"The pauper having been a legitimate child, his mother having died two years before his father, and she never having been in the situation of a widow or a deserted wife, the Lord Ordinary is of opinion that it is the parish of the pauper's own birth, and not that of his mother's

birth, that is liable. The case mainly relied on by the City Parish of Edinburgh, was that of Gibson *v.* Murray, which certainly carries the law as far as any former authority or decision in the direction for which the inspector of that parish contends; but the opinions of the majority of the Court seem based upon the very circumstance which is here wanting—the survivance of the mother."

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23. William Wilson (Inspector of Cumbernauld) *v.* George Greig (Inspector of City Parish of Edinburgh), January 17, 1860.—2 *P. L. M.* 633.

Presumed Parish of Birth—Exposure.—Held (by Lord Neaves) that the parish of exposure of a very young child found deserted or straying, is to be presumed to be the parish of birth, in the absence of proof to the contrary.

The facts were—The pauper, Agnes Cook, was a foundling. She was found exposed within the City Parish of Edinburgh about 1838; and the first trace of her history was her name standing on the roll of inmates of the Orphan Hospital in that parish. This Orphan Hospital had been formerly devoted to the purpose which its name implies, but on a new building being erected, the old premises were let by the managers of the hospital to the authorities of the Edinburgh Charity Workhouse, then representing the City Parish of Edinburgh, who used the building as a sort of auxiliary workhouse, and it was so used when Agnes Cook was an inmate thereof. No trace of her parents ever was discovered.

Observed by the Lord Ordinary—"The Lord Ordinary is of opinion that the parish of Edinburgh is to be held liable for the pauper's support, as being the presumed parish of her birth. While the pauper was little more than an infant, now nearly twenty-two years ago, she is seen to be in charge of that parish as one of its poor, and that burden continued to be borne by the parish for twelve years. It must be presumed, in such circumstances, that the pauper had a legal settlement of some kind in the parish of Edinburgh, and that no other parish was known to which the liability could be transferred. It is not likely that the settlement thus acknowledged was a settlement by parentage, as nothing is now known about the pauper's parents, and there is no evidence that anything was ever known about them. The settlement must have arisen from Edinburgh being considered as the parish of birth, proved or presumed. If it was merely regarded as the parish of exposure, this seems virtually to be the

same thing, and it is thought it must be held that the parish of exposure of a very young child who is found deserted or straying must, after so long an interval, be held to be the parish of birth. The child must have been born somewhere; it may have been born in the parish of Edinburgh, and in the absence of any proof to the contrary, it is more probable that it was born there, where it was first found, than in any other parish."

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24. James Hamilton (Inspector of Gorbals) *v.* Ebenezer Adamson (Inspector of City Parish of Glasgow) and Robert Ferrier (Inspector of Cardross), February 17, 1860.—2 *P. L. M.* 438.

Parish of Birth.—A married woman, residing in the parish of G., was removing at the usual flitting term to another house in the parish of B.; she was at the time pregnant, and near her confinement, and to avoid the labour and excitement incident on the removal, she went, a few days prior to the term, to her mother's house, in the parish of C., with the intention of being confined there. After her confinement she returned to her husband in the parish of B. In a question as to the birth settlement of the child—Held (by Sheriffs Bell and Alison, in the Sheriff Court of Lanarkshire) that it was in the parish of C., where the birth actually took place.

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25. George Robertson (Inspector of Blairgowrie) *v.* David Melville (Inspector of Bendochy), February 24, 1860.—22 D. 893; 32 *Jur.* 375; 2 *P. L. M.* 526.

Absence—Loss of Derivative Settlement.—Held that a woman having, at the age of fifteen, left a parish in which she had acquired a residential settlement by parentage, and having remained absent from that parish for the period of thirteen years, without acquiring a residential settlement in any other, had lost her derivative residential settlement, and that the parish liable for her support, when she became chargeable as a pauper, was the parish of her birth.

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26. Alexander Grant (Inspector of Leuchars) *v.* Benjamin Reid (Inspector of Kincardine O'Neil) and James Miller (In-

spector of Kilmallie), May 25, 1860.—22 D. 1110; 32 *Jur.* 499; 2 *P. L. M.* 628.

Widow—Imbecile Child.—Held that a widow can acquire a residential settlement for her imbecile child who is living in family with her.

Note.—For full statement of the facts see report under Residential Settlement.

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27. Hugh Carmichael (Inspector of New Kilpatrick) *v.* Ebenezer Adamson (Inspector of City Parish of Glasgow) and John M'Tavish (Inspector of Glassary), February 28, 1863.—1 M. 452; 35 *Jur.* 286; 5 *P. L. M.* 385, and 429.

Parentage—Pupil—Foreigner—Desertion.—The settlement of the lawful pupil child of an English father who has no settlement in Scotland, and a Scotch mother, the father being alive and in desertion, is in the parish of its mother's, and not that of its own birth.

The facts were—the pauper child, William Philips, whose settlement was in dispute, was the son of Michael Philips and Mary M'Nicoll, his wife, and was born in Glasgow in August 1853. His father, Michael Philips, was an Englishman, who never acquired a settlement in Scotland. His mother, Mary M'Nicoll, was born in Scotland, in the parish of Glassary. In March 1855, Michael Philips deserted his wife and child, went to sea, and, at the date of the action, had not since been heard of. His wife supported herself and her child till September 1857, when she was seized with small-pox, and on the 28th of that month became chargeable to the parish of New Kilpatrick, the place of her then residence. She died on 3d October 1857. The child was afterwards, in January 1858, placed on the roll of paupers of New Kilpatrick, by which parish the action was raised, to determine (1) whether the relieving parish had any right to repayment of advances, and (2) if so, whether the City Parish of Glasgow, as the parish of the child's birth, or Glassary, as the parish of the mother's birth, was liable in the support of the child. The Lord Ordinary (Jerviswoode) found the parish of the mother's birth liable, and his judgment having been reclaimed against, the Court ordered written minutes of debate.

It was argued for New Kilpatrick—It is fixed law that if a husband or father has a settlement in Scotland, his settlement is the settlement of his wife and unemancipated children. Their right, natural or acquired, in any other settlement, is suspended

or rendered dormant, and his parish is the only one that is liable for their support. But if the husband or father was not born in Scotland, and never had any settlement there, the case falls under a different category. The case of the wife and children must be considered irrespective of the English or Irish husband or father, whose connection with them has been broken, and as a part of whose family they cannot be removed with himself. In such circumstances their individual rights, as connected with Scotland by their own birth, or by the birth or maiden settlement of the wife or mother, must be given effect to. Every Scottish born person has a settlement in the parish of birth, by the mere fact of having been brought into the world therein, and such birth settlement, which was the only one originally known to the law, can never be lost or extinguished, however it may be superseded or suspended by another effectual settlement having been obtained.

It was argued for Glassary—(1) The *onus* of establishing what parish is really liable is thrown upon the parish of chargeability. (2) The real parish of the child's settlement is that of its father, whether by birth or residence. This was the old law, and though some apparently adverse decisions were given about the year 1850, these have been overruled by a judgment of the Court of last resort, which held that a father's birth or residential settlement is liable for the support of his child, even though he should be transported or dead. This rule was most effective in securing one of the great objects of the Poor Law, viz.—the retaining of families together as much as possible. (3) Even if the settlement of the father was not to be held as the settlement of the child, the settlement upon which the child must fall back is not that of its mother's birth, but that of its own.

It was argued for the City Parish of Glasgow—(1) That the case of M'Crorie must govern this case. In that case, the pauper was a wife, and here is a pupil. But the position and capacity of a wife and a pupil are closely analogous. The person of the wife is completely merged in that of the husband; and the person of the pupil is completely merged in that of the father or tutor. In the eye of the law, the pupil has no person at all, and therefore the case of the pupil is *a fortiori* of that of the wife. The other distinction between the case of M'Crorie and the present is, that in M'Crorie, the husband was in Scotland labouring for his own and his family's support; while here there has been desertion. But the Court has not decided that the parish of chargeability has no claim of relief against the wife's maiden settlement, because of any remedy provided to it in the 77th section of the statute; it has only been ruled, that, whether removable or irremovable, pending marriage, the parish of chargeability has no claim of relief against the parish of the wife's maiden settlement, and the analogy applies here. But assuming that the pursuer is entitled to be relieved of the sup-

port of the pauper, the claim lies against the parish of Glassary. This is the logical result of two legal propositions; (1) a wife deserted by an English husband, who has no settlement in Scotland, has a claim for support against her maiden settlement; and (2) the birth settlement of the mother is the settlement of pupil children whose father is dead, and never had a settlement in Scotland. This is the point decided in Gibson *v.* Murray, which only carried out to its legitimate result the principle introduced by Adamson *v.* Barbour.

It was held by a majority of the whole Court (1) that the parish of New Kilpatrick was entitled to be relieved, and (2) that the burden of supporting the pauper child fell upon the parish of the mother's birth.

Observed by Lord Cowan—"One principle I hold to be firmly settled, that no person born in Scotland can be without a parochial settlement, or ever be without a claim on some parish for support, when in destitution and not able-bodied, so as to be excluded from the class of persons alone entitled to be relieved. . . . Another principle is, that the maiden settlement of a female is superseded by her marriage, by force of which she loses her own, and acquires the settlement of her husband. I do not at present refer to the exceptional case of the husband having no settlement in Scotland. But so fixed has the liability of the birth parish been regarded as inherently attaching to the person, even in the case of a married female, that in Hay *v.* Carse a majority of the Court held that a widow who had lost, after her husband's death, the residential settlement she acquired through him, fell back not on his, but on her own birth parish. Again, this liability of the birth parish suffers modification in the case of children of nonage, who are held to acquire the parish of their parents derivatively, whether that parish be the birth or the residential settlement. . . . The proposition that a woman, born in Scotland, has, by her marriage with a foreigner, placed herself in such a position that she has lost her birth settlement, and can in no circumstances have recourse upon it when left destitute, appears to me objectionable both on principle and authority. The case of Hay *v.* Skene proceeded on the recognition of a rule the very reverse, and is a direct authority for holding that a wife, left destitute through her husband's desertion, may have recourse on her birth settlement. That settlement remains with her, if not displaced by a residential settlement acquired by a foreign husband, and becomes available to her when left destitute, and it enures to her children, through her, during her life, when the family is destitute. . . . There being, by the law of Scotland, derivative settlement through the mother, where the family are so peculiarly circumstanced as to have none through their father, there is no solid reason why the

same principle should not rule the case of destitution of the children through the desertion of their father, as when their derivative settlement is from him and not from the mother. In the one case the children have the father's settlement derivatively, and in the other they have their mother's. Desertion and destitution require that they should be supported out of the poor funds of the parish in Scotland, on which they would have a good claim, were their parents dead. They are not to be left in the parish where they were struck with poverty, and with which they have no connection otherwise than by the accident of their residence there when relief became imperative. But if so, then . . . the mother's parish must support her children, her settlement being theirs derivatively."

Observed by Lords Benholme and Kinloch—"The question is, whether, the mother having died, the primary settlement of the child is the same derivative settlement of the mother's birthplace, on which, if she had been in life, his support would unquestionably have been thrown? We are of opinion that it must be so held. We think the question is answered by the analogy between the death and desertion of the husband. When a husband dies, leaving a wife and pupil children living in poverty with her, we consider it to follow from the authorities that the settlement of the mother, when coming into operation on the failure of the father's settlement, enures to the children, so as to form their own proper settlement. In the first instance, the settlement derived from the father must be the settlement of both mother and children. But if this settlement fail, or be lost, and the mother is thrown on her own settlement, we conceive that this is equally the settlement of her pupil children after her death as before. All the principles which apply in the case of the father appear to us equally to hold in that of the mother. She is now the head of the house. The children are part of her family. She is liable to support them out of her own means, if she can. We can see no grounds on which, in such a case, the settlement of the father shall be held to have become inherent in the children, which does not equally apply in the case of the surviving mother. If the surviving mother die, we think the primary settlement of the pupil children left by her is the settlement derived from her, just as in the case of the father. Had Michael Philips died, in place of deserted, and the child had lived with his mother, the widow, during the years that elapsed before she also died, we are of opinion that his mother's birth settlement was now the child's. But we consider the desertion of Michael Philips as operating the same consequences with his death."

28. James Craig (Inspector of St. Cuthbert's) *v.* George Greig (Inspector of City Parish of Edinburgh) and George M'Donald (Inspector of Lasswade), July 18, 1863.—1 M. 1172; 35 *Jur.* 670; 6 *P. L. M.* 9, and 65.

Minor—Forisfamiliation.—A man, who had no residential settlement, died, leaving a pupil son, who, six years after his father's death, and when himself about sixteen years of age, became chargeable as a pauper. The son had not acquired any settlement in his own right; and after his father's death he lived with his mother, and for about two years previous to his becoming chargeable, he contributed to his own support. Held (by a majority of the whole Court) that his settlement was in the parish of his own birth, and not in the parish of his father's birth.

The facts were—The pauper, who was born in the City Parish of Edinburgh, was the son of the late James Smith, sometime a soldier in the 42d regiment. The father's birth parish was Lasswade, and he died on 29th August 1851, not having at that date acquired any residential settlement in the City Parish. On 7th August 1857, the pauper, being then about sixteen years of age, and not having acquired any residential settlement, became chargeable to St. Cuthbert's, the cause being his inability, owing to disease, to support himself. After the father's death, the pauper had lived with his mother, and, for about two years before August 1857, had contributed to his own support. The relieving parish, St. Cuthbert's, raised an action of relief, calling, as defenders, the parishes of the pauper's own birth and of his father's birth.

It was argued for the City Parish of Edinburgh—The pauper, when he became chargeable, was not forisfamiliated, and his settlement therefore was in Lasswade, the parish of his father's settlement at his death. A child, until it reaches the age of twenty-one, remains an integral part of the father's family. During pupillarity, the child is absolutely incapable of performing any legal act. After puberty is attained, the child may be forisfamiliated, but the law has been slow to hold the natural connection to be dissolved in nonage. In the present case, the mother became, at the father's death, the head of the family, and the children in nonage, who resided with her and were dependent on her, had the benefit of any settlement she might possess. The pauper, therefore, fell, on the death of his father, under the control of his mother, and became a member of the family of which she was the head; and he remained a member of that family, unforisfamiliated, till he became chargeable. But even assuming that the pauper was forisfamiliated previous to August

1857, he continued at that date to retain his parentage settlement in Lasswade, in respect that he had not, subsequent to his father's death, acquired a residential settlement. The necessary effect of a son's forismiliation is not at once to extinguish his parental settlement. It severs him from the parental settlement to this extent, that he no longer follows his father's family, or participates in any future settlement his father may gain. But the son's settlement derived from his father, to which he has right at the time of his forisfamiliation, whether by birth or residence, subsists until he actually acquire another settlement for himself; with this further limitatiou, in the case of a residential settlement by parentage, that it may be lost by his non-residence, under the 76th section of the Act of 1845. This is settled law as to residential settlement, and there can be no difference in principle between the endurance of one kind of derivative settlement and another.

It was argued for Lasswade—The law as to derivative settlements has never been carried further than this—that a child in pupillarity follows the actual settlement, whether of birth or residence of the parent. But to what extent is this rule, which burdens the birth parish of the parent, to be carried? To this there may be three answers—(1) The father's birth parish is to bear the burden until the child acquire a residential settlement for himself; (2) until the child attains majority; or (3) until the child attain puberty. The first of these answers goes beyond the reason of the rule laid down in the House of Lords in Adamson *v.* Barbour, and would practically abrogate settlement by birth altogether. As to the second, no statute fixes majority as having to do with the Poor Laws. The legal disabilities of a minor are very few. But because he cannot hold certain offices, and discharge certain functions, is there any sound reason for fixing on this arbitrary period as the point of time when he shall cease to be a burden on his father's birth parish? The third answer is most consistent with reason and with the authorities. The rule burdening the father's parish has never been carried further than this—that a legitimate child in pupillarity follows the actual settlement, whether of birth or residence, of the father. If the father has no settlement, the child is entitled to the actual settlement of the mother. If the child be imbecile, it is treated in the same manner, during its whole life, as if it were a pupil, and follows the settlement of its parent; and if it be illegitimate, the mother's settlement is the settlement of the bastard child. When pupillarity ceases and puberty begins—when the power to do almost every civil act is granted to a *minor pubes*—it would be a violation of principle, and in any view highly inexpedient and unreasonable, to hold that a minor is, in a question of Poor Law settlement, to be treated as a pupil, while in other questions he has all the powers of a person in majority.

The Court (by a majority, the dissenting Judges being Lords Cowan, Neaves, Kinloch, and Ormidale) held the parish of the pauper's own birth liable.

Observed in the opinion of the Lord Justice-Clerk and Lords Benholme and Mackenzie—"When the pauper's father died in 1851, his widow and child had no settlement but his, and nothing occurred to disturb this condition of the child, in respect of settlement, till he attained the age of puberty. But, as soon as he became *minor pubes*, an important change took place in the personal capacity and civil status of the child. . . . In puberty a minor is released from all incapacity, as regards his status, his personal rights and relations, and the disposal of his movable estate. . . . No doubt, if his father be alive, and the minor be not emancipated, there is a greater restraint upon his personal liberty by reason of the influence of the *patria potestas*. But the *patria potestas*, as distinguished from the mere administrative authority of the father, ceases to have any influence, when a *minor pubes* is emancipated or forisfamiliated. And the effect which is produced by emancipation of a *minor pubes* is quite as completely brought about by the death of his father; for the father cannot delegate or bequeath that authority to another. . . . The pauper, in this case, was in pupillarity when his father died, and therefore was not in a condition of legal capacity for some years afterwards. But, when he attained the age of puberty, he then combined in his own person legal capacity, with emancipation from the *patria potestas*, as completely as if his father had died when he was in puberty. . . . The mother never possesses any authority of the same kind with the *patria potestas*. During the years of nurture, the non-seperation of mother and child is a matter of necessity, arising from the plainest dictates of nature. After the years of nurture, the right of the mother to the custody of a child in pupillarity stands on a totally different ground. During the life of the father, the child is, by his overruling dominion, kept within the family, and so consigned to the custody of the mother. Even after the father's death, a child above the years of nurture, but in pupillarity, is still the subject of legal custody. But the mother has no title to that legal custody. It belongs to the tutor, whether tutor nominate or tutor of law, to provide for the residence, custody, and education of the child; and he will not, for slight reasons, be allowed to withdraw the child from the residence of its mother. But all the widowed mother's right to the custody of the child after the years of nurture, flows entirely from the tutor. . . . We are therefore of opinion that the pauper in this case, being, when he became chargeable, a person *sui juris*, and under no legal incapacity, is a burden on the parish of his own settlement, which is the parish of his birth."

Observed by Lord Barcaple—"I hold that the rule which regulates settlement depends upon the fact of birth, or of residence, modified only by those exceptional considerations of expediency to which the law gives effect; and I incline to think that a strict adherence to this as the true principle, will be found greatly to facilitate the solution of such questions as the present."

In this statement of the principle applicable in such cases, the Lord President concurred.

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29. George M'Donald (Inspector of Lasswade) *v.* George Taylor (Inspector of Liberton), and James Craig (Inspector of St. Cuthbert's), November 26, 1863.—9 *P. L. M.* 348 (1866).

Parish of Birth—Maternity Hospital.—A woman, after a residence of two or three weeks in the parish of C., on a temporary visit to a relation, was delivered of a child in the Maternity Hospital in that parish. The mother left the parish with her child whenever she was convalescent. Held (by the Lord Ordinary—Kinloch) that the child's birth settlement was in C.

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30. Joseph Hopkins (Inspector of Inverury) *v.* Alexander Ironside (Inspector of Tyrie), and James Wallace (Inspector of St. Nicholas), January 27, 1865.—3 M. 424; 37 *Jur.* 203; 7 *P. L. M.* 376.

Idiot—Lunatic—Derivative and Birth Settlement.—A congenital idiot, whose father was a Scotchman, and alive, became chargeable. The father had no residential settlement, and the relieving parish failed to prove his birth settlement. Held that the parish of idiot's own birth was not liable.

The facts were—A congenital idiot, twenty years of age, became chargeable as a pauper, her father being alive, and residing in Inverury. The idiot's father was a Scotchman, and had not acquired a residential settlement. The relieving parish raised an action against (1) the parish alleged to be that of the father's birth, and (2) the parish of the pauper's birth. The proof as to the father's birth was found insufficient, but it was argued that the relieving parish having done all in its power, though unsuccessfully, to ascertain the parish of the father's birth, the parish of the pauper's own birth, as the radical settlement, was liable, rather than the parish which had afforded temporary relief. It was, however, held that the parish of the pauper's birth was not liable.

Observed by the Lord Justice-Clerk—"It is an entire mistake to suppose that the relieving parish is liable only in temporary relief; the liability is a permanent one, unless it find some one liable, it may be a rich relation, or another parish."

Observed by Lord Cowan—"The burden is imposed on the relieving parish in the first instance, and it is left to it to seek relief from the parish of settlement. Here the state of fact is conclusive of the question, for the father is alive, and it is admitted, on record, that he is a Scotchman. It is therefore clear, that the relieving parish must seek out the parish of his settlement from residence or birth. He must have a settlement somewhere in Scotland, No native born Scotchman or woman can be alleged to be without a parochial settlement."

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31. —— Bremner (Inspector of Rathven) *v.* William Taylor (Inspector of Huntly), November 13, 1866.—3 S. L. R. 24.

Illegitimate Child—Marriage of Mother.—A woman, who was the mother of an illegitimate pupil child, having acquired a new settlement by marriage; Held (by the Lord Ordinary—Ormidale) that the settlement so acquired became also the settlement of the child, although he did not go to live with his mother, but continued to reside with his maternal grandfather in the parish of his birth.

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32. Peter Beattie (Inspector of Barony) *v.* Ebenezer Adamson (Inspector of City Parish of Glasgow), November 23, 1866.—5 M. 47; 39 *Jur.* 36; 9 *P. L. M.* 159.

Pupil—Notice.—The unemancipated pupil child of an able-bodied man became, in 1856, a proper object of parochial relief in respect of the state of her health, and was then admitted into the poorhouse of the Barony Parish, in which parish she and her father resided. The father had, in 1856, a residential settlement in the City Parish of Glasgow, which, however, he lost in 1858 by non-residence. In 1860, statutory notice was given for the first time by the Barony to the City Parish. Held (rev. Lord Barcaple, diss. Lord Cowan) (1) that, in 1856, when relief was first granted, the pauper's settlement was in the City Parish, by reason of her father then having an industrial settlement in that

parish; (2) that relief having been given, prevented that settlement being lost either by the pauper's or her father's absence; and (3) that the circumstance of no notice having been given for four years, did not affect the pauper's settlement.

Observed by the Lord Justice Clerk—"What was the child's settlement when she first obtained relief? That is not a difficult question to answer, because the child was a pupil, and she must have had the settlement of her father, and there is no dispute that, in 1856, her father's settlement was in the City Parish. But then it is said further, that in 1858, or 1859, her father lost that settlement by allowing five years to pass by without residing twelve months in the City Parish. That is a fact, but what is the effect of that on the settlement of the child who continues to be a proper object of parochial relief? If her father had received parochial relief in another parish, a failure to reside would not have altered his settlement. Is it otherwise with regard to the child? Certainly, if the theory is that the child's settlement is not its own, but that it follows that of the father, the case might be different. But, if that be true, what are we to say of the cases of Hume *v.* Pringle, and Allan *v.* Higgins, where it was laid down, that where a child has acquired a settlement through its father, that becomes the child's own settlement to all intents and purposes. If that be so, no loss of settlement by the father, who continues able-bodied, can in any way affect the settlement of the child, who has become a proper object of relief. Therefore it appears to me that the City Parish was the settlement of the child when she became chargeable, and will remain so as long as she continues chargeable. . . . The Lord Ordinary seems to think that the liability of the City Parish must depend, not on the question, when did the child become chargeable, but when was the statutory notice given to the City Parish? I am quite unable to see any grounds for that opinion. The object of a statutory notice is not to create a settlement; it is merely a compliance with a provision of the Poor Law Act, that, until a relieving parish gives notice, it shall have no right to recover from the parish of settlement the sums advanced. The giving or witholding notice has no effect on the law of settlement. There can be no doubt of the general principle, that the settlement of the pauper when relief is first given remains the settlement so long as the pauperism continues."

33. James Craig (Inspector of St. Cuthbert's) *v.* Donald M'Lennan (Inspector of Contin) and John Ross (Inspector of Lochbroom), March 12, 1867.—39 *Jur.* 390; 1 *P. L. M.* 161.

Parish of Birth—Actual and Constructive.—Held (by Lord Ormidale, and acquiesced in) that the parish of A., in which the pauper had been born during an accidental visit by his mother to the parish to attend a market, his parents having at the time a settlement in the parish of B., was to be regarded as the parish of the pauper's birth settlement, and that the birth was not to be held as being constructively in B.

Observed by Lord Ormidale—"Supposing it had been clearly established, in point of fact, that the presence of Roderick Mackenzie's (the pauper) mother in Contin parish at the time of his birth might be fairly said to have been casual or by chance—although what that precisely means may not be quite clear—the Lord Ordinary could not, in the circumstances of the present case, consider it sufficient to prevent that parish being his birth settlement. No authority in support of such a conclusion was cited; for the Lord Ordinary cannot hold the case of Dalmellington to be one. The report of that case is very meagre, and does not disclose the precise ground of judgment. But enough appears to show that it was materially different in its circumstances from the present. In that case, the mother of the party whose place of birth was in question, had gone from Dalmellington parish to a neighbouring one for the purpose of being delivered of her child 'in secret,' and, having accomplished that purpose, she immediately left it, and returned to Dalmellington, where she had her permanent residence. In no view, therefore, can the birth in that case be said to have been 'purely fortuitous,' as it is said to have been in the present instance, for the mother went to the place where she was delivered of her child, expressly for the purpose of having that done 'in secret.' But, in the present case, it is not pretended, and there is no reason whatever for supposing that the mother of Roderick Mackenzie had gone to Contin parish to be delivered of her child 'in secret,' or that she acted under any compulsion in going into that parish, or that in doing so, there was any object or design to relieve one parish at the expense of another."

34. Hector Mackintosh Fraser (Inspector of Killearnan) *v.* William Robertson (Inspector of Edinkillie), June 5, 1867.—5 M. 819; 39 *Jur.* 455; 9 *P. L. M.* 450.

Forisfamiliation—Lunatic.—A girl, aged twenty-three, became insane, and was removed to an asylum in 1853. Up to that time she had resided with, and was supported by, her father. The father died in 1858, having then a residential settlement in the parish of Killearnan, and in 1860 the daughter became chargeable as a pauper. Held (1) that, in 1853, she was unforisfamiliated; (2) that she did not lose the settlement derived by her through her father, by her absence in the asylum from 1853 to 1858; and (3) that her settlement in 1858 was her father's residential settlement, which still was maintained in 1860, when she became chargeable.

Observed by Lord Cowan—"We have a daughter *de facto* living in family at the age of twenty-three, supported entirely by her father, and doing nothing for her own support. There is neither principle nor authority for holding that a daughter, in such circumstances, ceases to be a member of her family in the matter of settlement. Her arrival at majority was maintained, at all events, to operate this effect, and reference was made to the opinions delivered in the case of Craig *v.* Greig (*supra*, p. 210), which was thought to support that view. But Craig's case differed essentially from the present, because in it the pauper's father was dead, and the question was, whether the settlement of the father belonged after that father's death to a son, who was a *minor pubes*. I thought that it did belong to him till majority, while the majority of the Judges held it to cease at minority; but that is quite a different thing from saying that majority, as a matter of course, forisfamiliates a child whose father is living. Holding then that, in 1853, when she became insane, Margaret M'Dougall was not forisfamiliated, was there any change effected by her confinement in the asylum during the five years that elapsed before her father's death in 1858? I think there was not. My view is, that a child becoming insane while yet in family with the father, although she has attained majority, is just in the position of an infant, whose settlement is that of its father."

Observed by Lord Neaves—"I am not favourable to the use of the word 'emancipation' in such cases, because I am not sure from what a minor is emancipated by our law. It is not well settled to what extent a father has power over his minor child, but I greatly doubt whether all the earnings of a *minor pubes* belong to the father. 'Forisfamiliation' is also a word of doubt-

ful meaning. In one sense, a child is not forisfamiliated so long as he has a claim to *legitim.* The true question in such cases as the present seems to be, is the child still a member of the father's family, so that the person of the child is sunk in the father's as regards residence? That question is one of fact, and not merely of law."

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35. Hugh Knox (Inspector of Buittle) *v.* Richard Hewat (Inspector of Kelton), January 12, 1870.—8 M. 397; 42 *Jur.* 184; 3 *P. L. M.* 385.

Unemancipated Child—Right to Relief—Able-bodied.—The unemancipated minor daughter of a farm labourer, suffered under a permanent form of scrofula, which rendered her helpless. Her father, aged sixty-seven, was unable to work in wet weather, and from his earnings, averaging seven shillings a week, was altogether unable to support his daughter in the way her health imperatively required, and the other members of his family;—Held (1) that she was a proper object of parochial relief, and (2) that the father was not able-bodied, and the parish of his settlement found liable, the daughter not being forisfamiliated.

Observed by the Lord Justice-Clerk—"My idea is that questions of Poor Law are not matters of strict law. The rules of that law must be reasonably interpreted, and effect must be given to the spirit as well as the letter of it. I reserve my opinion on the general question, whether, in the case of an able-bodied man, his child above the age of puberty, who has been stricken down with incurable disease, is in its own right an object of parochial relief. If it is to be held that a father, who is able to maintain himself, is to maintain also his bed-ridden child at an expense beyond his means, or, in order to keep it in life, throw himself as a pauper on the parish, I think a great hardship is inflicted on the father. The law can never contemplate taking him from a position of responsibility, and making him a pauper against his will."

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36. John Forbes Walker (Inspector of Stow) *v.* Thomas Russel (Inspector of Clackmannan), June 24, 1870.—8 M. 893; 42 *Jur.* 531; 4 *P. L. M.* 114.

Forisfamiliation—Imbecile.—Held (1) that, when a person who has no birth or residential settlement in his own right in Scotland has been forisfamiliated, the derivative settlement

which he possessed as a member of his father's family is not preserved; and (2) that this rule applies even if the person be of weak intellect, if he is capable of supporting himself, being therefore not incapable of forisfamiliation.

The facts were—The pauper's father was born in Clackmannan in 1793. When about twenty years of age he went to England, where he followed the trade of a travelling hawker, and the pauper (a daughter) was born in England in 1829, a few years after which her father deserted her mother and herself, and his subsequent history could not be traced. The mother, with the pauper, travelled about England and Scotland as hawkers, the mother dying in July 1866. The pauper, who was of weak intellect, though not a lunatic or idiot, was able, to some extent, to contribute to her own livelihood; but she became an object of parochial relief in May 1867, and thereafter, having become insane, was placed in an asylum. In an action by the relieving parish against the parish of the pauper's father's birth, it was held that the pauper was not incapable of forisfamiliation and of acquiring a settlement for herself, and, therefore, that the parish where she became chargeable had no claim of relief against the parish of her father's birth; and, further, applying the case of Craig *v.* Greig and M'Donald (*supra*, p. 210) that the circumstance of a forisfamiliated child having no birth or residential settlement in Scotland, does not preserve or revive the Scotch derivative settlement which had belonged to her as a member of her father's family.

Observed by the Lord President—"I am of opinion that, in the eye of the law, a person is not incapable of being forisfamiliated, or of acquiring a settlement, merely by weakness of intellect, or even by insanity, if not precluded thereby from maintaining himself by his own industry."

Observed by Lord Deas—"In cases such as this, the time to be looked to is the time when the person becomes chargeable as a pauper. At the time this woman became a pauper she was thirty-eight years of age, and till then she had earned her own maintenance. Her father had deserted her, and for years had ceased to support her. Where, then, was her settlement when she thus became a pauper? If she had had a birth settlement in Scotland, that would have been her settlement. But, it is said, as she had neither birth nor residential settlement, she must be held to fall back on the birth settlement of her father. Now, it is true that so long as she was a member of his family, that was her settlement. But her father's birth settlement was her settlement only in respect of her membership of his family.

If there had been pauperism at that time, her father would have been the pauper, and any claim for her maintenance would have arisen out of her identification with him. But when she ceased to be a member of her father's family, it necessarily follows that the qualification which she had in respect of that membership ceased also."

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37. Donald M'Lennan (Inspector of Contin) *v.* John Waite (Inspector of Dunse), June 28, 1872.—10 M. 908; 44 *Jur.* 496; 1 *P. L. M.* 30.

Parent and Child—Pupil.—Where the pauper had resided, after her father's death, with her mother for seven years in the parish of A., for four of the seven being in pupillarity, and having afterwards left her mother and removed to another parish for two years;—Held that she had no settlement in A., and that her own parish of birth was liable in her support.

This was a special case, of which the facts were—The pauper was born in the parish of Contin in 1851. Her father died in December 1857, having a residential settlement in Contin. In February 1858, the pauper accompanied her mother and the other members of the family to Glasgow, where they resided for about eighteen months. In 1859 they all went to Dunse, where the pauper resided in family continuously with her mother till October 1866, when she went to live with an aunt in Kenmore parish. The mother died in December 1867. The father was not born either in Contin or Dunse, and neither mother nor daughter applied for parochial relief during their residence in Dunse. In June 1868, the pauper applied for, and obtained, relief in Kenmore parish. Statutory notice was given by Kenmore to Contin and Dunse. The question was, Whether the parish of Contin or the parish of Dunse was the parish in which the pauper had her legal settlement on 6th June 1868, when she became chargeable?

It was held that the parish of Contin, as the parish of the pauper's birth, was liable for her maintenance from the date at which she became chargeable.

Observed by the Lord President, that the question raised in this case was practically determined by Craig *v.* Greig and M'Donald—"It was there decided that a person who has no residential settlement in his own right is chargeable on the parish of his birth, if he is above the age of puberty; and as soon as he does attain the age of puberty, his father being dead, his settlement is in his birth parish in preference to any

derivative settlement which he previously had. Applying this rule to the present case, we find that, when the pauper applied for relief in 1868, she was seventeen years of age, having been born on 15th July 1851. She then had a settlement in the parish of her birth, unless she had a residential settlement in her own right; but being only sixteen years of age, she could have no residential settlement in her own right, as such a settlement could not begin to be acquired until her attainment of the age of puberty. It was contended that she had lived continuously in Dunse for five years. But for two of these years she was in pupillarity, and living in family with her mother, and it is out of the question to say that a residential settlement can be constituted by a five years' residence, which is the residence, partly of the pauper as a pupil in family with her mother, and partly of the pauper after puberty in her own right."

Observed by Lord Kinloch—"By this residence of seven years (in Dunse) the residential settlement of the father was lost to both widow and child; and I think a residential settlement was acquired in Dunse for both. For I hold it to be settled by the case of Crieff *v.* Fowlis-Wester, that, after a father's death, the mother may acquire a residential settlement, both for herself and all the children residing with her, and forming along with her the family of which she is the head. I do not consider the settle- so acquired by the children necessarily to cease when each attains puberty. For puberty is not *eo ipso* emancipation; nor will the mere arrival of puberty necessarily cause the child to cease to be a child of the house. So it would unquestionably hold, if it were the father who was alive and the children resided in family with him. I think it equally holds in the case of the surviving mother continuing to have her children living in family with her. Any other doctrine would involve a premature separation between mother and child, to which our system of Poor Law is peculiarly hostile.

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38 Andrew Ferrier (Inspector of New Monkland) *v.* D. M. Kennedy (Inspector of Auchinleck), February 8, 1873.—11 M. 402; 45 *Jur.* 274; 1 *P. L. M.* 266.

Parent and Child—Emancipation.—Where the pauper, born in 1841, had lived with his father till the latter's death in 1860, but enlisted a few weeks after his father's death, and returned to Scotland from foreign service in 1872, and then became chargeable;—Held that the parish of his own birth was liable in his support.

This was a special case, in which the facts were—The pauper was born in New Monkland in 1841. In 1846 his father's family removed to Auchinleck, where the pauper continued to live with his father until the death of the latter in April 1860, at which time the father had acquired a residential settlement in Auchinleck. On 8th May 1860, the pauper, having enlisted, left Scotland, remaining in foreign service until February 1872, when he was discharged, and returned to Scotland, and became chargeable as a pauper to the parish of Kilmarnock in February 1872. The pauper was unmarried, and when abroad had no house or place of residence in Auchinleck. He had no settlement in Kilmarnock.

The question for decision was—"Whether the parish bound to support the said pauper is the parish of Auchinleck or the parish of New Monkland?"

It was held by the First Division (following Craig *v.* Greig and M'Donald, and M'Lennan *v.* Waite), that the parish of New Monkland, as the parish of the pauper's birth, was liable for his support, and that he had ceased to have any derivative settlement in Auchinleck by emancipation at his father's death.

Observed by Lord Deas—"The case which we are now dealing with is the case of a father leaving a son in minority, who is not said to have been pauperised by the death of his father. Now, one result of the father's death was undoubtedly to emancipate the son; and if the son maintained himself during the three weeks between his father's death and his own enlistment, or if he fell into poverty only towards the end of the three weeks, instead of twelve years afterwards, still, even in that case, he would have fallen into poverty after emancipation, and would have been chargeable upon his own parish. In the case of M'Lennan *v.* Waite, there was no doubt thrown upon this doctrine by Lord Kinloch, whose opinion I adopted. What Lord Kinloch, as well as myself, wished to guard against, was the stringent application of the rule in the case of children falling into poverty when forming part of the mother's family. But, in a case such as we are now considering, with no pauperism at the date of emancipation, and where the person emancipated has afterwards become a pauper, he must go upon his own parish, which is here the parish of his birth."

Note.—This case was decided upon the footing that the mother did not survive the father. It was expressly stated by Lord Deas, that, if the mother had survived the father, a totally different question might have been raised, and that this case must not be held as deciding the question, whether a surviving wife, with a family above pupillarity, but under majority, has a claim against the parish of her husband's residential settlement, both for herself and her family.

Compare this case with the later decision in St. Cuthbert's *v.* Cramond, (*infra*, p. 224), decided by the Second Division of the Court.

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39. John Muir (Inspector of Kirkcaldy) *v.* Thomas Thomson (Inspector of West Calder), November 7, 1873.—2 *P. L. M.* 95 (1874).

Foreigner—Birth Settlement.—Held (by Lord Mackenzie) that a pauper born in Scotland, and deriving no settlement from her parents, both of whom were dead and natives of Ireland, fell to be relieved by the parish of her own birth.

The facts appear from the Lord Ordinary's note—"The pauper, Bridget M'Carter, was born in the parish of West Calder on 10th October 1867, and was registered in that parish by the father as a legitimate child. It is admitted that both the father and mother were natives of Ireland, and that they had no settlement in Scotland at the date of their respective deaths. The mother predeceased the father, and he died on 8th September 1872. The pursuer avers that the father resided in the parish of Kirkcaldy with his family, consisting of the pauper and other two children, from and after Martinmas 1870. The question for decision is, whether in these circumstances the parish of West Calder, as the parish of the child Bridget M'Carter's birth, is liable to relieve the parish of Kirkcaldy, in which the child resided with her father, of the whole sums expended, or to be expended by the latter parish in her maintenance and support after her father's death.

"The pauper has no settlement in Scotland derived from her father. She has no settlement in Kirkcaldy, in which parish, when between four and five years of age, she received relief as a pauper. She is a natural born subject of Scotland, and the parish of her birth is West Calder. The Lord Ordinary considers that, when a pauper, a native of Scotland, has no other settlement, he has right, under the Acts 1579, c. 74 and 1672, c. 18, to parochial relief from the parish of his birth. And he is therefore of opinion that the parish of West Calder is liable in the support of the pauper Bridget M'Carter.

"The Lord Ordinary considers that Bridget M'Carter must, in the decision of this case be held to be legitimate. But even although she were held illegitimate, that would not affect the decision, because her mother was a native of Ireland, and had no settlement in Scotland at the time of her death."

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40. Inspector of St. Cuthbert's *v.* Inspector of Cramond, November 12, 1873.—1 R. 174; 1 *P. L. M.* 623.

Pupil—Forisfamiliation.—Held (by the Second Division) that a residential settlement in A., acquired by a father, enured on his death to his pupil son, and was not lost by the son on his attaining puberty, or by the marriage of his mother, to a person having a settlement in B., the son having continued to reside with his mother in A.

The facts were—The pauper, William Gardiner, was born in the parish of Cramond on the 18th July 1853. His father, at Whitsunday 1855, removed to St. Cuthbert's, where he acquired a residential settlement, and remained till his death on 12th September 1860. On the death of the father, his widow, with five dependent children, including William Gardiner, became chargeable to the parish of St. Cuthbert's on 3d October 1860, and so continued until 6th March 1863, when she married a second husband, James Brownlie, whose settlement was in his birth parish—Whitburn. After her marriage, Mrs. Brownlie continued to live in St. Cuthbert's apart from her husband, and William Gardiner continued to reside with his mother from the time of his father's death until 10th February 1871, when he enlisted in the 10th Hussars. He served with his regiment for ten months, when he was discharged as unfit for service, and, becoming chargeable to the parish of St. Cuthbert's, was afterwards placed by that parish in the Royal Edinburgh Lunatic Asylum. A question then arose whether St. Cuthbert's or Cramond was bound to support the lunatic.

It was argued for St. Cuthbert's—(1) That the pauper having become chargeable when above eighteen years of age, and not having resided in St Cuthbert's for five years after attaining puberty, his settlement was in Cramond, as the parish of his own birth. (2) Even assuming that the pauper possessed a derivative residential settlement at the time of his father's death, that settlement was changed at the time of his mother's second marriage, when she acquired both for herself and the children of her first marriage the settlement of her second husband.

It was argued for Cramond—(1) That the pauper having been a pupil at the time of his father's death, he then possessed in his own right a derivative residential settlement in St. Cuthbert's, which his father had acquired both for himself and his pupil children. (2) The pauper's derivative residential settlement was one which, like other residential settlements, could be lost by absence, or retained by continued presence in the parish, and in this case it was retained, the pauper having resided in St. Cuthbert's until he enlisted in 1871. (3) The second marriage of the

pauper's mother was immaterial, because at the date of chargeability the pauper was a *minor pubes.*

The Court found St. Cuthbert's liable.

Observed by the Lord Justice-Clerk—"I am clearly of opinion that the pauper had a residential settlement in St. Cuthbert's in his own right, and that he never lost it. The doctrine was fixed by the case of Hume *v.* Pringle, and it has been confirmed by more than one subsequent decision, not only that a father who acquires a residential settlement for himself, acquires it for his children as well, but that a settlement so acquired for the children is not a mere accessory or incident of the father's settlement, but a settlement of the children in their own right, subject to be retained and lost in the same way and under the same conditions as if it had been acquired by themselves. When a rule of this kind is established by solemn decision, I think the Court ought to adhere to it. . . . In regard to the question of residential settlement, I think there are three principles well established by decisions—1st, That where a residential settlement is acquired by five years' industrial residence, it is acquired for the individual himself, and also for his children in family with him; 2d, That the children acquire the settlement in their own right. These two propositions were decided in the Lasswade case before the recent statute. In Hume *v.* Pringle a third proposition was decided, that such a derivative residential settlement is retained or lost under the provisions of the 76th section of the Poor Law Act. If it were true that whenever a pauper is forisfamiliated he begins a new course, and his father's settlement comes to an end, the decision in Hume *v.* Pringle could not have been pronounced. . . . In the case of Ferrier *v.* Kennedy, the terms of the Lord President's opinion seem to be opposed to the view of the law which I have expressed; but I cannot reconcile that opinion with the case of Hume *v.* Pringle, and I do not think we ought to depart from the train of former decisions, unless the case of Ferrier necessarily raised the same question. It did not raise it. The pauper left home at the age of nineteen, and enlisted. He was absent for twelve years, and therefore unquestionably lost his residential settlement, whether direct or derivative. When a man on military service has a home to which he returns, he may be held to continue his residence; but in that case the pauper had none. . . . Another proposition has been submitted to us, that the mother, after her second marriage in 1863, constructively resided in the parish of her husband; and that the pauper, although living in family with her in the parish of St. Cuthbert's, must be held constructively not to have resided there. I am not prepared to give that effect to the mother's marriage. The child's residential settlement could only be lost by its residence actually ceasing—by its

being absent from the place—and in this case the child was not absent."

Observed by Lord Benholme—"I think a derivative residential settlement derived from a father is neither lost by the child reaching the period of puberty, nor by the second marriage of the mother, and as in this case there was no such absence as by the statute puts an end to the settlement, I think it endured, and must govern the question of liability."

Observed by Lord Neaves—"The pauper admittedly began with a good residential settlement, and it is a startling proposition, to which I cannot assent, that on his arrival at puberty he lost that settlement, though he continued to reside in the parish. The contention that, when the mother married again, the child followed the settlement of the stepfather is quite extravagant."

Note.—This case does not appear easily reconcileable with Ferrier *v.* Kennedy—decided by the First Division of the Court.

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41. John Lawson (Inspector of Annan) *v.* George Gunn (Inspector of Cramond), November 21, 1876.—4 R. 151; 5 *P. L. M.* 37.

Parent and Child—Imbecile.—Held that the settlement of a woman imbecile from infancy was, from the time of her father's death, in the parish of the birth settlement of the father, and not in the parish of her own birth.

The facts were—Alexander Ferrie was born in Cramond, was married in Dumfries, and after a residence of about five years in Annan, he died there on 19th December 1872. He had not, however, acquired a residential settlement in Annan, having before going there, and while there, received parochial relief, for which Cramond admitted liability. Ferrie was survived by his widow, who after his death continued to live in Annan, receiving from Cramond parochial relief. He was also survived by a daughter (the pauper), Maria Ferrie, born in 1851, in the parish of Yair, and who, though not a congenital idiot, was, from her early years, an imbecile, and unable to do anything for her own support. The pauper had lived constantly with her father till his death, after which she continued to live with her mother until 19th February 1874, when she was removed to the Southern Counties' Lunatic Asylum. The Court found Cramond, as the parish of her father's settlement, liable in her support.

Observed by Lord Ormidale—"There can be no doubt that the pauper, being insane from childhood onwards, never had a settlement apart from her father during his life. . . . The question then is, did his death, after she had attained majority, but while she was still insane, make any change in her settlement, so as to throw her back from her father's settlement to her own birth settlement. As the disabilities of pupillarity endure in the case of the insane beyond the years of pupillarity during the father's life, I can see no reason why they should cease on his death."

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42. Alexander Greig (Inspector of New Deer) *v.* John Ross (Inspector of Nigg), February 10, 1877.—4 R. 465; 5 *P. L. M.* 251.

Illegitimate Child—Puberty—Forisfamiliation.—Held that an illegitimate child, living apart from his mother, and who himself, by reason of personal infirmity, was unable to contribute to his own maintenance, had, on chargeability, his settlement in the parish of his own birth.

The facts were—The pauper, George Ross or Pirie, who was illegitimate, was born in Nigg on 5th May 1860, and lived there with his mother's mother till October 1868. His mother contributed towards his maintenance, till her marriage to George Robertson, in 1868, when George Ross or Pirie went to live in family with her and her husband in Aberdeen, and afterwards in Edinburgh, and earned towards his own support from 2s. 6d. to 4s. a-week. In September 1871, the pauper met with an accident, from which he never fully recovered. George Robertson died in November 1872, having his settlement in New Deer; and, after Robertson's death, the pauper continued to live with his mother until February 1873, when he was taken to the house of his mother's mother in the parish of Rosskeen. Immediately thereafter the grandmother applied on his behalf for parochial relief from Rosskeen, on the ground that he had no occupation, and was wholly disabled, and on 6th March 1873 the inspector ordered his admission to the poorhouse, which order was confirmed by the parochial board on 26th April 1873. The grandmother, however, refused to allow the boy to enter the poorhouse, and with occasional charitable assistance she supported him in her house till 24th December 1874, when he was allowed outdoor relief, which was continued to the date of this case. Since the date of the accident above referred to, the pauper had never worked for or supported himself, and had been unable to do so. In these circumstances, the question arose, whether the parish of

his own birth, or the parish of his mother's settlement, was liable in the support of the pauper.

The Court held, following the principle laid down in Craig *v.* Greig and M'Donald, (*supra*, p. 210), that Nigg, the parish of the pauper's own birth, was liable.

Observed by the Lord Justice-Clerk—"The mere fact of there being no such thing as *patria potestas* in the case of an illegitimate child, brings such a case more clearly under the general rule, that where a child attains the age of fourteen, and becomes a *minor pubes*, the parish of his birth becomes his settlement, and he loses the derivative settlement which he had during his pupillarity."

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43. Peter Beattie (Inspector of Barony Parish, Glasgow) *v.* James Mackenna (Inspector of Girvan) and Andrew Wallace (Inspector of Govan Combination), March 8, 1878.—5 R. 737; 6 *P. L. M.* 228.

Pupil—Second Marriage of Mother.—The mother of a pupil child having died, the child became chargeable. The mother had married a second time. Held that the parish of the pupil's father's settlement at the date of his death was liable for the support of the pupil.

The facts were—The pauper was born on 13th January 1866, in the Barony Parish, and was, therefore, a pupil at the date of the action. The pupil's father died in 1866, his settlement being in Govan, the parish of his birth. His widow married again in 1870, her second husband having a residential settlement in Old Monkland, and she died in 1872. On 1st June 1875 the pauper pupil became chargeable to the Barony Parish, but by this time her stepfather had lost his settlement in Old Monkland, and, being an Irishman by birth, had no other settlement in Scotland, and the question arose, whether the pupil had any claim upon the parish of her own father's settlement, her mother having, by her second marriage, lost her settlement in that parish. The Court found Govan, the parish of birth of the pupil's father, liable.

Observed by Lord Shand—"The claim of Govan, as the parish of birth of the pupil's father, to be relieved of the maintenance of the pupil, is rested on the ground that the pupil, after her father's death, acquired a new settlement by the subsequent marriage of her mother, who acquired her second husband's settlement. If the pupil had acquired her mother's settlement, and lost that settlement by non-residence, the question would arise, whether the pupil fell back on her father's birth settlement in Govan, or

her own birth settlement in the Barony Parish? That question, in my opinion, does not arise, for I think the pupil did not acquire a new settlement by the second marriage of her mother. The previous cases seem to come to this, that, where the mother has survived the father, the pupil children must, during her lifetime, be charged on her parish, because she is truly the pauper. The pupil still, however, has a settlement derived from her father. Though there may be a temporary suspension of that settlement in following that of the mother if she become a pauper, on the mother's death the child's settlement is that derived from his father. The result is that the principle laid down in the leading case of Barbour is carried out, and there is no separation of the family."

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44. John Anderson (Inspector of Maybole) *v.* Andrew Wilson Paterson (Inspector of Irvine), June 12, 1878.—5 R. 904; 6 *P. L. M.* 417.

Pupil—Acquisition of Settlement by Father after Relief granted to Pupil.—The female pupil child of an able-bodied Irishman obtained relief from the parish of Maybole, where she resided. The father had no settlement at the date when relief was granted, but eight months afterwards he, by the completion of five years' residence, acquired a settlement in Irvine, to which parish Maybole thereupon gave notice. The father refused a request by the parish of Maybole to take home his child. Held that the parish of Irvine was liable after the date of the notice.

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45. George Greig (Inspector of City Parish of Edinburgh) *v.* William Young (Inspector of Perth), June 21, 1878.—5 R. 977; 6 *P. L. M.* 423.

Pupil—Illegitimate—Foreigner.—The illegitimate pupil child, born in Scotland, of an Irishwoman, who had no settlement in Scotland, having become chargeable, in consequence of the mother being sentenced to seven year's penal servitude,—Held that the relieving parish had no claim of relief against the parish of the child's birth.

This was a special case, in which the facts were—In 1868 an Irishwoman, with no settlement in Scotland, gave birth to an illegitimate child in the General Prison of Perth, where the

mother was then undergoing a sentence of nine months' imprisonment. In 1870 the mother was sentenced to seven years' penal servitude, in consequence of which the child became chargeable to the City Parish of Edinburgh. The question raised by the special case was, whether the parish of Perth, as the parish of birth, was liable to relieve the City Parish of Edinburgh? The parish of Perth resisted the claim, on the ground that the pupil could have no independent settlement, but must follow the mother's settlement, and that recourse must be had against the Irish settlement of the mother. The Court sustained this view, and found that Perth was not liable.

Observed by Lord Deas—"It is to be observed that the mother is a single woman. The child was illegitimate, and being a pupil, the result is, that if the mother has a settlement, the parish of her settlement must be the parish of settlement of her pupil child. Now, the mother was born in Ireland, and has her settlement of birth in some parish in Ireland. In that state of matters the case is directly ruled by M'Crorie *v.* Cowan, March 7, 1862. The circumstances are so far different, but the principle applicable is the same. The question there related to the aliment afforded to a married woman who had become lunatic. The husband, though able-bodied, was not liable for her maintenance in the asylum, because the lunacy was regarded as creating a burden beyond the pale of ordinary domestic liability. Nevertheless, the husband's settlement was held to be the wife's settlement, and as his only settlement was a settlement of birth in some parish in Ireland, it was decided that the wife's settlement was also in that parish. So, in the present case, the illegitimate pupil child takes the settlement of its mother. She has a settlement by birth in some parish in Ireland, and that parish is therefore the settlement of the child in question. . . . The only hesitation I felt, when considering the case, arose from the peculiar history of the woman, who was under sentence of penal servitude, or in prison during almost the whole period when aliment was afforded to the child. I had in my memory perplexing questions, raised and decided a number of years ago, as to whether penal servitude was equivalent to death, and so on. But I am satisfied there is no room for considerations of that kind since the case of Barbour *v.* Adamson, and that the parish of settlement of the child's mother is here the parish of settlement of the child. The important question as to the effect of birth in a prison consequently does not arise, and I shall say nothing in regard to it. It is certainly not a question to be dealt with speculatively."

Observed by Lord Mure—"If the mother had not been undergoing penal servitude when her child required support, the remedy was plain. The relieving parish must have taken steps

to remove her to Ireland. . . . But, as she is undergoing sentence, the City Parish cannot at present take steps to remove her. That is their misfortune, and under the law, as laid down in the case of M'Crorie, that parish must be at the expense of relieving the child until the mother's settlement is found."

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46. Thomas M'Kenzie (Inspector of Renfrew) *v.* James M'Kenna (Inspector of Girvan) and Daniel Murray (Inspector of Carluke), July 20, 1878.—7 *P. L. M.* 255.

Parent and Child—Subsequent Marriage of Widowed Mother.—Held (by the Lord Ordinary—Curriehill) that two pupil children, who had a derivative residential settlement through their father, and whose mother married a second time and then died, took, on the failure of their stepfather to provide for them, the settlement which they had derived from their own father.

2.—Settlement by Marriage.

1. Isabella Pennycuick, in behalf of her Infant Children *v.* The Heritors of the Parish of Duddingston and Kirk-Treasurer of the City of Edinburgh, March 3, 1813.—F. C.

Husband and Wife—Desertion.—Held that a Scotchwoman, who with her children had been deserted by her husband, an Englishman, cannot, during his life, acquire for herself and children a residential settlement so as to entitle them to aliment from the poor's funds, and this although the deserting husband has no known settlement.

Note.—The doctrine here laid down is not consistent with the law applied in later cases of desertion. It is now settled law that a deserted wife is in the same position as a widow, who is capable of acquiring a settlement for herself and her family.

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2. William Gray (Inspector of St. Cuthbert's) *v.* James Fowlie (Inspector of St. Nicholas, Aberdeen), March 5, 1847.—9 D. 811; 19 J. 363.

Husband and Wife—Desertion.—Held that the settlement of the husband remains that of the wife, even if the husband has deserted her and gone abroad.

The facts were—William Fraser, a tailor, settled in Aberdeen in 1823, where he married in 1824, and by residence for three years he acquired a settlement there, in the parish of St. Nicholas. He afterwards went abroad, enlisted at Gibraltar, and served in the army for four years, all but a day, and was discharged in May 1830. At the end of that year he rejoined his wife and children at St. Andrews, and lived with them for about a year. He then deserted them, and emigrated to New South Wales, where he was said to have died either in 1839 or in 1843. After Fraser's desertion, his wife removed in October 1831 from St. Andrews to Aberdeen, and from thence to Edinburgh, where she obtained a situation as housekeeper at Merchiston, in the parish of St. Cuthbert's, and remained there four years. She left St. Cuthbert's in 1838 to become a teacher in Helensburgh, where, after a stay of nine months, she became insane. She was removed to an asylum at Greenock, and afterwards to the Crichton

Institution, Dumfries, and finally, in March 1845, she was confined by judicial authority as a pauper lunatic in the Royal Lunatic Asylum at Morningside, near Edinburgh, at the expense of St. Cuthbert's parish. The inspector of St. Cuthbert's then raised an action of relief against the parish of St. Nicholas, Aberdeen. The parish of St. Nicholas pleaded that the settlement there had been lost, and a new one acquired by the pauper in St. Cuthbert's, in consequence of the desertion of the husband. The Lord Ordinary (Robertson) assoilzied the defender. The pursuer reclaimed, and the Judges of the First Division being divided in their opinion, the whole Court were consulted, and, finally, in conformity with the opinions of the majority of the consulted Judges, the interlocutor of the Lord Ordinary was altered, and the parish of St. Nicholas, as being still the the parish of the husband's settlement, was found liable.

The principle upon which the judgment proceeded was, that the marriage being undissolved at the time of the desertion, every obligation and legal consequence thereof remained entire and intact; and until dissolved, or some distinct legal proceeding has established separate interests, marriage is the only criterion by which the legal consequence of the husband's acts can be judged of, and the only measure of the consequential obligations. It is one legal consequence of a husband's settlement, that if he abandons his wife and does not provide for her, that the parish of his settlement is bound to maintain her in respect of, and as a part of, his settlement. That is a burden in law imposed by the settlement of a married man, and fixed down on that parish.

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3. William Dinwidie (Inspector of Dumfries) *v.* William Knox (Inspector of St. Ninians), April 17, 1849.—Shaw's Justic. Cases 215.

Widow—Second Marriage—Child of First Marriage.—Held that when a widow marries a second time, she does not, by a joint industrial settlement with her second husband, acquire a settlement for her child by her first husband.

Observed by the Lord Justice-Clerk—"A widow stands in some respects in the position of a father, but here the mother married again. By that act, her settlement was changed at once. Suppose that the child became chargeable the day after the marriage of her mother, could it be said that she had thereby lost her right against the parish of her father? or could it be pretended that she had, by her mother's marriage, obtained a right against the parish to which her stepfather belonged?"

4. John Hay (Inspector of City Parish of Edinburgh) *v.* Thomas Skene (Inspector of Old Machar), June 13, 1850.—12 D. 1019; 22 *Jur.* 420.

Married Woman—Desertion—Parish of Birth.—Held that the birth parish was liable in the support of a Scotchwoman who had been deserted by her husband, an Englishman, who had not acquired a residential settlement in Scotland, and whose residence in England was unknown.

The facts were—A woman, born in the parish of Old Machar, was married in 1839 to an Englishman, who had not acquired any settlement in Scotland. In 1841, the husband, whose settlement, if he had any in England, was unknown, deserted his wife and was not afterwards heard of, and in 1847, while in Edinburgh, she became insane, and was removed to the asylum at Morningside, where, being entirely destitute, she was maintained by the City Parish of Edinburgh, the inspector of which raised an action against the inspector of Old Machar, for repayment of the money advanced for relief of the pauper, and to have it declared that Old Machar was the parish of the pauper's legal settlement. The defender pleaded that the pauper's claim against the parish of her birth was lost by her marriage, after which her settlement was the same as her husband's, who by birth had a settlement in England. It was held (Lord Moncrieff dissenting) that Old Machar, as the parish of birth or maiden settlement, was liable to maintain the pauper, and to repay the advances made by the City Parish of Edinburgh.

Note.—The law as to the settlement of married women is now distinctly settled; a woman, by marriage, loses any previous settlement she may have possessed. The former settlement is not suspended by marriage, but entirely extinguished. In the case of Hay *v.* Skene, while the general principle affirmed is not now the law, the result arrived at was probably sound, upon the ground that the woman having been deserted, was practically a widow when she became chargeable.

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5. John Thomson (Inspector of St. Cuthbert's Edinburgh) *v.* James Knox (Inspector of Stirling), June 28, 1850.—12 D. 1112; 22 *Jur.* 513.

Deserted Wife of Foreigner.—Held that the wife of a foreigner, who had no settlement in Scotland, and who had deserted his wife, was entitled to add the term of her residence dur-

ing marriage to her residence in the same parish when single, so as to create a residential settlement.

The facts were—The pauper, Maria Brymner, who was born at Stirling in 1808, and resided there till 1823, when she removed with her father to Kilsyth, and remained there till 1825. Thereafter, till 1830, a period of five years, she resided in Falkirk, maintaining herself by her own labour, and thus obtaining in that parish an industrial settlement, which, however, was not retained by her, she not having resided there continuously for one year in the subsequent five years. At Whitsunday 1830 she came to reside in the parish of St. Cuthbert's, where she maintained herself till, in 1834, she married a Pole, who had not acquired any settlement in Scotland. After the marriage, she continued to live with her husband in St. Cuthbert's parish till Whitsunday 1836, from which date till September she and her husband resided in Cupar-Fife. They then returned to St. Cuthbert's, where they remained till 1842, when they went to Dublin. In the end of 1843 the wife returned to St. Cuthbert's, and the husband, after removing in October 1844 from Dublin to London, where he remained till 1847 or 1848, finally disappeared. The inspector of St. Cuthbert's, where the pauper became chargeable, raised an action against the inspector of Stirling as the parish of the pauper's birth, for repayment of advances, on the ground that the pauper having been resident as a single woman in St. Cuthbert's for a period of three years only, was not entitled to add to that period the subsequent time during which she as a married woman resided there, so as to make up in all a period of five years. In these circumstances, it was held (1) that residence for three years in a parish anterior to the passing of the Act of 1845 was not sufficient to give a pauper a settlement there, unless during that period he or she had become a proper object of parochial relief; and (2) that the pauper was entitled to add to the period of three years previous to her marriage in which she resided in St. Cuthbert's parish, her subsequent residence in that parish, so as to make up the period of five years necessary to create a settlement there, and that her marriage, by which in the circumstances she obtained no new settlement, was no impediment to her obtaining a settlement in St. Cuthbert's.

Observed by the Lord Justice-Clerk—"If the woman had not acquired a settlement in St. Cuthbert's, the parish of her birth must be liable. Of that there is no doubt. The parish of birth must be liable if she has not acquired a settlement in another parish. . . . Before desertion, she had acquired a settlement by five years' continuous residence in St. Cuthbert's, if the fact of her marriage was not an impediment to her doing so, although

she continued to live on in St. Cuthbert's. I admit that in this last point, to which the case is brought, there is room for much subtle reasoning, and for raising, in technical logic and form, the semblance of a regular puzzle. In sound sense, I think there is no real difficulty. It is true the husband's settlement becomes that of the wife. The wife's is not superseded. She acquires a new settlement by her marriage. After the husband's death she may acquire another. But, at the date of the marriage, the husband, being a Pole, had no settlement in Scotland. Then, by the marriage she might acquire a new settlement, if he could acquire one, which I shall assume. But at first he had none. Would she then lose hers if she had had one? I think not. But the case is more favourable, for the husband comes into her parish, and begins to reside there, and she thus *de facto* lives on in St. Cuthbert's, and has completed a period of five years' residence there continuously, before her husband left it. He has deserted her, and never acquired a settlement in Scotland. I think *that* the important fact, viz., that he never obtained a settlement in Scotland. . . . Then, as he deserts her and never had a settlement, is her continued residence to be of no avail, because during two of the five years she was married to a person living in that parish? *De facto* her residence in that parish cannot be disputed. . . . Was she less living continuously for five years in the same parish because she had married a man who had come to and lived in that parish? That cannot be affirmed and predicated of her with any truth in point of actual fact. . . . As the husband did not, by five years' residence in St. Cuthbert's, acquire a settlement there, and had none in Scotland, being a Pole, I must hold the wife's continued residence in St. Cuthbert's after her marriage sufficient at least to complete her settlement. True, the last years of her five years' residence in St. Cuthbert's were with a husband; but if *he* did not live long enough there to obtain a settlement—deserts her and has never had a settlement in Scotland at all—then why should not her actual residence in St. Cuthbert's, though along with a husband, be of avail to complete a settlement for *her* in that parish? She surely was not the less resident there, in the eye of law, because she was married to a man in that parish. Neither could she be less resident, in point of fact, in that parish, because she was there as a married woman."

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6. John Hay (Inspector of City Parish of Edinburgh) *v.* John Thomson (Inspector of St. Cuthbert's) and Charles Manson (Inspector of Thurso), June 23, 1854.—16 D. 994; 26 *Jur.* 541.

Widow—Liability of Parish of Husband's Birth.—A pauper,

who, at the date of his death, had no settlement but that of birth, was survived by his widow,—Held that the parish of the husband's birth, and not that of the widow's, was liable in her support.

Observed by the Lord Justice-Clerk—"I hold this point, though not expressly decided, to be quite clear. When a woman marries, she acquires her husband's settlement, whatever it be; and it very often happens that if he be a young man, he has been moving about from parish to parish, and so has not acquired a settlement by residence distinct from his birth settlement; and now that five years are required, in order to obtain such a settlement, it is extremely likely that a large proportion of our labouring population, from shifting from place to place according to the demands of the labour market, may have acquired no industrial settlement whatever. And is it to be held, in that large class of cases, that the wife's own parish of birth, and not that of her husband, is, in the event of his death, to be considered the parish of the widow's settlement? There can be no doubt that the parish of the husband's settlement in such a case is that of his birth, as established by statute. I apprehend, when a woman marries a man with no settlement by residence, and they become paupers, the parish of his birth is the parish of his settlement; and if it be good for him, then is it good for her also. And if the distinction is to be held, which has been attempted to be set up, then there is the very large class of marriages I have pointed at, in which the wife never has had the husband's settlement at all, and she is to be made fall back upon her own birth settlement, or any maiden settlement she may have possessed at the date of her marriage. It is quite true that, after the death of her husband, she becomes *sui juris*, and is not incapacitated from marrying again, or from maintaining herself by her own industry; but if she does so maintain herself, it would be against every principle of the Poor Law to say that she is not to acquire a residential settlement, but is, if she ceases to be able to do so, to fall back upon the parish of her birth; and, therefore, in the case of Crieff, we held that she was to do no such thing, but was entitled to enjoy the benefit of her own industry. . . . In this case, the old law of Scotland is quite sufficient, and by it the settlement of the husband is the settlement of the wife, and remains so till she acquires a new one. Here the husband died a pauper, and his widow has acquired no new one, and must therefore be supported by the parish of her husband's settlement, that is, the parish of his birth."

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7. Robert Robertson (Inspector of Abbey Parish of Paisley) *v.* John Stewart (Inspector of Renfrew) and James Shaw

Brown (Inspector of Burgh Parish of Paisley), December 12, 1854.—17 D. 169; 27 *Jur.* 58.

Husband and Wife—Foreigner.—Held that when a foreigner becomes the wife of a resident Scotchman, she acquires at his death the settlement which then stood in her husband's person, whether then existing and available, or original, but suspended.

The facts were—The widow of a manufacturer in, and former Provost of, Paisley, was found destitute in the Abbey Parish, in November 1848. Her husband was born in Renfrew, and resided in the Abbey Parish of Paisley from 1832 till 1841, and, from Whitsunday 1841 till his death in December 1844, in the Burgh Parish of Paisley. He had not been at any period of his life an object of parochial relief. In January 1845 his widow went to England, where she had been born, returning to the Abbey Parish of Paisley in November 1848, and then became chargeable. In these circumstances the Abbey Parish sued the Burgh Parish, and the parish of Renfrew, for the expenses incurred on account of the pauper, and to have it declared that it was not liable for her future maintenance. It was held that the settlement by residence in the Burgh Parish, which had been acquired by the husband under the old law, and which existed at the date of his death, had been lost to the widow, as it would have been to the husband had he survived the passing of the Act of 1845, and that for the residential settlement thus displaced, his birth settlement was substituted, and, therefore, that the parish of Renfrew was liable.

Observed by the Lord President—"It is now a settled point that the widow takes the benefit of the husband's settlement, whether residential or by birth. Of course, if she takes that benefit, she takes the benefit of his latest settlement, for he cannot have more than one settlement operative at a time. . . . Now, the question we are to look to is, what must be held, in the present state of the law, to have been the husband's settlement? Settlements are either still by birth or residence; but there is this distinction—no settlement is acquired by residence if the residence be less than five years, except in particular cases, where the settlement had become operative before the passing of the Act. A widow is entitled to the benefit of her husband's settlement. Let us not be embarrassed by the word 'settlement,'—it means the right of relief from the parish where necessity for relief arises. We now come to consider this case with reference to the claim of the Abbey Parish first as against the Burgh Parish. . . . It is plain that this claim cannot be maintained

against the Burgh Parish; for at the date of the Act there was no necessity for relief, and no residence for five years. The next consideration of this case is, what is to be done? In regard to the Abbey Parish itself, it is equally clear that there can be no liability on that parish, except from the fact of the pauper being found there, and there being clearly no settlement by residence in that parish. It is stated that the husband left the Abbey Parish in 1840, and died in December 1844. It is not admitted that he took up his residence in the Burgh Parish till 1841; and as he did not die till December 1844, and left in 1840, he had lost his residence; five years had not elapsed from the time of his departure from the Abbey Parish till his death; five years had not elapsed at the passing of the statute. It has been decided that five years' non-residence is not necessary. Anything beyond four years' non-residence extinguishes the residence and the right to claim relief, inasmuch as the party cannot have a years' continuous residence. . . . The question comes to be, what is the liability of the birth parish of the husband? I have said he was four years absent from the Abbey Parish. This was before the passing of the statute; but then in the case of Hay *v.* Scott, in November 1852, it was recognised that non-residence before the statute forfeits the five years. We can only hold that the settlement of this party was not in the Burgh Parish, but in the parish of his birth. We cannot hold that he had a residential settlement, and therefore the only settlement is a birth settlement. The widow takes the settlement of the husband, and, in this case, the widow must take the birth settlement of her husband. The party himself would have been thrown back on the parish of his birth. He could not have gone to the Burgh Parish, because he had no settlement there; so also we cannot hold that he had acquired a settlement in the Burgh Parish."

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8. John Hay (Inspector of City Parish of Edinburgh) *v.* Robert Oliphant (Inspector of Forgandenny), February 5, 1856 (decided July 19, 1853).—18 D. 508; 26 *Jur.* 50.

Husband and Wife—Bastard.—A native of Forgan, who had never acquired a settlement in any other parish, was transported in 1847. His wife gave birth to two illegitimate children in 1849 in the City Parish of Edinburgh, and she and her children became chargeable to that parish. Held (1) that the wife's settlement was in the parish of her husband's birth, and (2) (following Hay *v.* Scott, *supra*, p. 192)

that the illegitimate children were not burdens upon the husband's birth parish.

The decision on the second point has been reversed in the subsequent case, Hay *v.* Thomson (*supra*, p. 198).

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9. John Hay (Inspector of City Parish of Edinburgh) *v.* A. R. M'Raild (Inspector of Kilwinning) and James Knox (Inspector of Stirling), November 25, 1858.—1 *P. L. M.* 415.

Widow's Settlement.—A widow, whose husband had died with a residential settlement available to him, lost that settlement by absence, and never acquired another settlement for herself during viduity. Held (by the Lord Ordinary—Kinloch) that the widow's settlement was in the parish of her husband's birth, and not in the parish of her own birth.

Note.—See Hay *v.* Waite and Carse, (*infra*, p. 242).

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10. William Keay (Inspector of Scone) *v.* Robert Stewart (Inspector of Kinfauns), December 10, 1858.—21 D. 89; 31 *Jur.* 68; 1 *P. L. M.* 345.

Husband and Wife—Desertion—Lunatic Daughter.—Where a husband, who has acquired a residential settlement in a parish, deserts his wife and children, and they continue to reside in that parish, but not in the same house as before the desertion;—Held (1) that the husband's residential settlement there was not continued by the residence of his wife and children; and (2) that the parish of the husband's birth was liable in the support of a lunatic daughter, to whom parochial aid had, on application, been supplied more than four years after the desertion.

The facts were—A female pauper had been from her infancy imbecile and incapable of supporting herself. Her father was born in Kinfauns, and removed with his family in 1838 to Scone, where he resided till 1846. On 15th May 1846 he left Scone, deserting his wife and his daughter and son, and thereafter settled in the neighbouring parish of Kinnoull, where he remained till 1850, when he removed to Glasgow. After the father left Scone,

his wife and daughter continued to live there in a house taken by his wife for herself, and in February 1855 application was made for parochial aid on behalf of the daughter, and relief was furnished. When the father went to Glasgow he was accompanied by another daughter, Elizabeth, who, however, returned to Scone, and, on 20th May 1850, applied for, and obtained, parochial relief. On 2d January 1846 the father was apprehended, and on 8th January sentenced to 60 days' imprisonment. In these circumstances, a question arose between the parish of Scone, which had been the parish of the husband's residential settlement, and the parish of Kinfauns, the parish of his birth, as to the liability to support the imbecile daughter, and it was held (1) that the residential settlement acquired by the father in Scone was not continued by the residence in that parish of his wife and family; and (2) that the parish of the father's birth was liable for the support of the pauper.

Observed by the Lord President—"It is now the law that if a party who has acquired a residential settlement is absent from the parish for a certain length of time, that destroys the residential settlement. It does so whether he has acquired a residential settlement in another parish or no. Under the former law, a residential settlement could not be put an end to without the acquisition of another settlement. But now absence is, of itself, an extinction of the settlement, and it is under that part of the Poor Law that this question arises. . . . The question is, whether William Peebles, the father, had lost his residential settlement in Scone by 1855? . . . Now, it will depend upon whether there were any circumstances to preserve the residential settlement, notwithstanding the apparent absence of nine years. Two things are founded on as preserving the residential settlement—first, that his wife and family remained in Scone, and that he was absent by having deserted them; and, second, that during that period of nine years, viz., on 20th May 1850 one of his family, not this lunatic, had applied for, and received, parochial relief in the parish of Scone. As to this last element, it is not, I think, in this case necessary for us to form any opinion as to what would have been the effect of such relief afforded to his daughter Elizabeth, if it had been furnished at a time which could, in any view, have broken the continuity of absence, because the dates bring out the matter in this way. I think that William Peebles had left Scone upon the 15th May 1846, and that relief is not proved to have been furnished to the daughter Elizabeth anterior to the 20th day of May 1850. Therefore four years and five days had elapsed from the time he had left Scone before this relief was furnished to her. It has been decided that if there is anything more than four years of continuous absence the provision of the statute takes effect, although the period for becoming chargeable has arisen before the

lapse of the five years. It has been so decided upon a construction of the statute, that a party cannot give a year of continuous residence during five years, he having been absent more than four years, and therefore there not remaining an entire year of the five to give residence in. . . . Therefore, as regards that element of relief furnished to Elizabeth, it does not interrupt the continuity of absence. Another thing said to have kept the residential settlement alive was, that the wife and family remained in the parish of Scone, and that the husband was in the position of a deserter of his family. No case has been cited in which it has been held that that kind of desertion has the effect of preventing the operation of the clause which extinguishes residential settlement by absence. No doubt, under the old law, residential settlement was not lost by absence. But here the kind of desertion was a very singular one. The man was residing in the neighbouring parish, and might be acquiring a residential settlement there. Was he to have two residential settlements? because he is the party in reference to whom residential settlement must be determined. He could not have two residential settlements, and it is the residence of the father of the pauper that we are to look to as being her residence. Therefore, the residence of the wife and family in Scone does not destroy the effect of the absence of the father. The only remaining point is, whether it is not the birth-settlement of the father that is liable for the support of the lunatic daughter? and in the case of Paterson it has been held that the settlement of the father is the settlement of the lunatic, and, consequently, it follows that the settlement acquired by the father in the parish of Scone having been lost by absence, that parish is relieved of the burden; consequently, the settlement of the father must be his birth settlement, and that is the parish liable."

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11. John Hay, afterwards George Greig (Inspector of City Parish of Edinburgh) *v.* John Waite (Inspector of Dunse); William Carse (Inspector of Prestonpans); and George Greig, afterwards James Craig (Inspector of St. Cuthbert's), February 24, 1860.—22 D. 872; 32 *Jur.* 366; 2 *P. L. M.* 420, 458.

Widow—Parish of Birth.—The widow of a person, who at his death had acquired a residential settlement, lost by absence the settlement which enured to her by marriage, and became a pauper before she had acquired a settlement for herself by residence. Held (by a majority of seven to six of the whole Court) that the parish upon which the burden lay of supporting the pauper was the parish of her own birth, and not that of her husband's birth.

The facts were—Mary Laidlaw or Paxton, a widow, became a pauper in the City Parish of Edinburgh on 6th May 1857. The pauper was born in the parish of Prestonpans, her husband having been born in Dunse. Her husband died in August 1847, having then a residential settlement in St. Cuthbert's; but, subsequent to his death, his widow lost that settlement by non-residence. In these circumstances, the relieving parish called as defenders to the action of relief (1) Prestonpans, as the parish of the pauper's birth; (2) Dunse, as the parish of her husband's birth; and (3) St. Cuthbert's, as the parish in which the husband had, at his death, a settlement. The Lord Ordinary found the parish of the husband's birth liable, and his judgment being reclaimed against, the Court ordered written argument.

It was argued for Dunse—That when a widow once loses the settlement which she had from her husband at the date of his death, she can acquire no new settlement through him, but must revert to some parish in which she can show that she has, on some recognised ground, a settlement in her own right. The reason why, during the subsistence of a marriage, a woman follows the settlement of her husband is, that, keeping in view the nature of the society of marriage, it is right that the settlement of the husband and of the wife should be the same, and because that of the husband, as the head of the family, ought to give the rule. But the society is dissolved and the family broken up by the husband's death. The widow becomes *sui juris*, and may remarry, or live where she pleases. What right she acquired from her husband, during the subsistence of the marriage, she retains until she loses them; and if, at the dissolution of the marriage, she had acquired, through her husband, a settlement by residence in any particular parish, she retains that right, amongst others, until she lose it. The husband's right of relief, supposing him to have been destitute at his death, was against St. Cuthbert's, and no other parish. If it be true that a man cannot give what he has not, it must be true that the husband of the pauper could not, at his death, give to his wife any settlement in Dunse. It was further urged that it would be inexpedient to make the parish of the husband's birth liable.

It was argued for Prestonpans—Where the settlement of the husband, at his death, was not a residential but a birth settlement, the widow must retain that settlement until she acquire a new one for herself, either by residence or by a second marriage. Her husband's birth settlement is incapable of being forfeited by her non-residence. The only way in which she can lose the settlement of her husband, when that is a birth settlement, is that in which alone the husband could have lost it, namely—by actually acquiring a settlement in another parish. The same rules should regulate the settlement of a widow as if the husband were still alive, as it is only her character as widow of her

husband that enables her non-residence to put an end to his residential settlement, and the result of the forfeiture must be the same as if it had been caused by his own non-residence, and that is to transfer the burden of relief from the parish of his residence to the parish of his birth.

The Court, by a majority of seven to six, recalled the Lord Ordinary's interlocutor, and found the parish of Prestonpans—the parish of the pauper's own birth—liable in her support.

Observed by the Lord Justice-Clerk, and Lords Wood, Neaves, and Mackenzie, in their joint opinion—"The pauper's husband, at the time of his death, could have only one settlement. It seems to us impossible, in the nature of things, that a person can have more than one settlement at a time. That settlement may be a settlement by birth, or a settlement by residence, and the state of the facts will determine which of these settlements it is. . . . When the facts are known, the law fixes the settlement in one parish, and only one. . . . It has been said, and said truly, that a settlement means merely a right of relief from a parish, when necessity for relief arises. Or, to vary somewhat the expression, it is an obligation upon a parish to support a party who stands towards it in a particular relation, by birth or otherwise. Strictly speaking, the party's right to relief lies against the whole community, and the law of settlement is merely the rule for distributing that liability among the different parishes into which the country is divided. But, it is not meant by any of the definitions suggested, that there is no settlement until the pauperism arises. Such a proposition would be obviously unsound. Every native of Scotland has a settlement in some parish or other, during his whole life, even while he is perfectly able to maintain himself. That is to say, there is at every moment a parish in Scotland which, in the event of his becoming a pauper, would be liable to maintain him. . . . But that liability only rests on one parish at a time, and the liability of any one parish being established, all liability in any other parish is excluded.

"At the time of the death of this pauper's husband, he had a settlement by residence in the parish of St. Cuthbert's. . . . No other parish was then liable to maintain him. The parish of Dunse, where he was born, may at one time have been so liable, but not necessarily so, for he would probably begin life with a settlement derived from parentage, and might immediately acquire a residential settlement. . . . Dunse was not liable, along with the parish of St. Cuthberts, or *subsidiarie*, in reference to that parish. Upon the dissolution of the marriage, accordingly, the pauper had her settlement in St. Cuthbert's, and she had a settlement in that parish alone. But as this was a residential settlement, it may be taken as fixed law under the decisions,

that by subsequent non-residence, the pauper might, and did lose that settlement, though derivative, in the same manner as she wouid have lost a settlement acquired by her own personal residence. When she so lost this residential settlement, the pauper was an independent person. The non-residence by which she lost it was her own act—the result of her own free choice. Her husband, who was dead, was no party to her loss of settlement. The pauper, then, having commenced her life as a widow, with a residential settlement, and having voluntarily relinquished it by a change of residence, without acquiring a new residential settlement, the question arises, what parish is now liable to support her, whether the parish of her husband's birth, or the parish of her own birth? . . . The general rule indisputably is, that a party losing a residential settlement, falls back on the parish of his own birth; and that rule must receive effect in the present case, unless it is excluded by another clear rule of law of an opposite tendency. We cannot, however, discover that there is any such opposing rule. The law of derivative settlement is founded on the principle that the person who obtains such a settlement is, from coverture or nonage, incapable of acquiring a settlement directly. That person, therefore, of necessity, takes the settlement which for the time belongs to the person on whom he depends. But, it seems a clear corollary from the same principle, that no person can, when *sui juris*, obtain or possess a derivative settlement, which he did not hold when in a state of incapacity. This pauper, therefore, could not in her viduity acquire or obtain a settlement in the parish of her husband's birth, except either—1st, By means of the fiction that her husband is still alive, and has lost the residential settlement of which he died possessed, so as to come upon his own birth settlement, and transmit it to the pauper as his wife; or 2d, By holding that the pauper, at her husband's death, derived from him two concurring settlements—the actual settlement which he died possessed of in the parish of his residence, and an eventual settlement in the parish of his birth, which in him was contingent on his happening to lose his residential settlement, but in her is to be contingent upon a similar loss on her part. The fiction referred to is novel and startling, and seems to be inadmissible; while we have already endeavoured to show that no person has at one time two settlements. The husband, therefore, being dead, and at the time of his death having only one settlement—a settlement in the parish of his residence—the wife could only derive from him that one settlement, there being no other then in existence. The husband's relation, at the time of his death, to the parish of his birth, was no settlement. . . . If, indeed, it could be said that the wife by marriage acquired, not merely any settlement that her husband might have, but actually acquired, to all intents and purposes, the local nativity

that belonged to him, so that his birthplace became her birthplace, there might be grounds for the plea under consideration. But such a proposition cannot be maintained. The wife does not acquire her husband's birthplace. According to a known rule of law, she acquires from time to time, *stante matrimonio*, the actual settlement which he possesses, and, no doubt, if his settlement is in the parish of his birth, the wife's settlement will also be in that parish. But there is no known rule of law, and no rule, so far as we are aware, has ever till now been heard of, to the effect that a man's widow, besides succeeding to his existing settlement by residence, succeeds also either to his birthplace as her birthplace, or to an eventual right to fall back upon his birth settlement, merely because he would have done so if he had lived, and if he had lost his residential settlement, without acquiring another."

Observed by Lord Ardmillan—"The birth settlement does, in one important aspect, differ from other settlements. It is not lost by non-residence, and is not altogether extinguished by the acquisition of a residential settlement elsewhere. It may be recurred to when other settlements fail; it may be re-acquired *ipso facto* by the loss of a subsequent settlement. But the recurrence takes place only on failure of other settlement, and to the re-acquisition of it the fact of the loss of subsequent settlement is essential. . . . Therefore, the two settlements cannot co-exist."

Observed by Lord Curriehill—"'Settlement' is not a word, which, so far as I am aware, that is in any statute or any Act of the Privy Council, or recognised in the law of Scotland. It does not occur in any of the statutory enactments on which our Poor Law system was originally founded; nor is it a word which occurs in the practice of Scotland for nearly a hundred years after these enactments were passed. It has been introduced into the phraseology of our legal discussions only since about the end of the last century, and has been imported from the law of England, where it has a technical meaning. What is its meaning in our practice is not very well settled, and the ambiguity attending it has given rise to many of the difficulties attending the discussions on the law of settlement. It is not a right which vests or has effect before a person falls into pauperism. If a person from birth acquires a legal right to aliment in the parish in which he is born, is that a right which immediately vests and is operative? What is its operation before that person falls into pauperism? I think at best it must be called a conditional right, the condition being that the child to whom, when born, it belongs, may at some future time fall into pauperism; but is there any right vested until that condition is purified? I cannot, as at present advised, see that this husband of the pauper had

any vested right to aliment in the parish of his birth, while, at the same time, he had a settlement in a different parish by residence there, whatever the nature of that settlement may have been. There could not be two co-existing rights of settlement at the same time, and upon that ground I think the pauper has no claim against the parish of her husband's birth."

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12. George Greig (Inspector of City Parish of Edinburgh) *v.* John M'Beath (Inspector of Fordyce), December 7, 1860.—3 *P. L. M.* 224.

Widow's Settlement.—Held (applying the principle of Greig *v.* Waite and Carse, *supra*, p. 242) that the parish of birth of a deceased husband, who at the time of his death possessed a residential settlement, can under no circumstances be liable for the support of his widow and children.

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13. Andrew M'Crorie (Inspector of Kilwinning) *v.* James M'Skimming Cowan (Inspector of Monkton), March 7, 1862.—24 D. 723; 34 *Jur.* 365; 4 *P. L. M.* 421.

Husband and Wife—Foreigner.—The wife of an Irishman, who, though resident in Scotland, had not acquired a settlement there, having become insane, and been committed to an asylum by the public authorities;—Held that the parish of her birth was not liable.

The facts were—An able-bodied Irishman married a native of the parish of Monkton. The husband, who was a quarrier by trade, resided in Ayrshire, but had acquired no residential settlement in Scotland. In 1859, while residing in the parish of Kilwinning, the wife became insane, and was supported by the inspector of that parish in an asylum, the husband being at the time working in the parish of Dalmellington. Relief for the advances so made was claimed against the parish of the wife's birth.

The parish of birth pleaded in defence that, assuming the husband to be the pauper, the proper course for the relieving parish was to remove the pauper and his wife to Ireland, and, assuming the wife to be the pauper, then it followed that, *stante matrimonio*, her settlement was that of her husband, and her own birth settlement was put in abeyance by her marriage to a foreigner, and could not revive during the subsistence of the marriage. This defence was given effect to by the whole Court, and it was

held that the relieving parish had no claim of relief against the parish of the lunatic wife's birth settlement.

Observed by Lord Deas—"It is admitted that the lunatic's husband was born in Ireland, and I do not understand it to be disputed that he has a birth settlement in that country capable of being ascertained. I think the wife took that settlement by force of the marriage, and, if so, while that settlement lasts, no liability can attach to the parish of her birth. . . . It does not follow, however, that the wife is not a pauper in her own right. The case of Barbour *v.* Adamson, as decided in the House of Lords, settles that there may be circumstances of separation which will entitle members of a man's family to be paupers in their own right, although his settlement is their settlement. Whether this be a case of that kind it is unnecessary here to determine."

Observed by the Lord Justice-Clerk—"The question is, whether the parish of birth of a married woman (the wife of an able-bodied Irish labourer, who is resident, but has never acquired a settlement in Scotland) can be made liable for monies expended on her maintenance in a lunatic asylum by the parish from which she has been sent to the asylum, under the Lunacy (Scotland) Act. To that question I am prepared to give an unhesitating answer in the negative, on the broad and simple ground that a married woman is in law incapable, *stante matrimonio*, to have any settlement in her own right, or independently of her husband. If her husband has a settlement, that also is her settlement. If her husband has no settlement, just as little has she. She is, in my opinion, just as incapable of possessing a settlement in her own right, during the subsistence of the marriage, as she is to have a separate domicile from the husband, or to enjoy any other personal *status* or franchise in her own right. . . . In giving my judgment, I assume in favour of the pursuer, that the wife is, in the eye of the law, the pauper. But that will not remove her legal incapacity to have a settlement in her own right, or any settlement except derivatively from her husband."

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14. James Dunlop Kirkwood (Inspector of Govan) *v.* Robert Wylie (Inspector of Lochwinnoch), January 19, 1865.—3 M. 398; 37 *Jur.* 196; 7 *P. L. M.* 323.

Husband and Wife—Widow's Residence.—Held that a woman cannot acquire a residential settlement by combining her residence, *vestita viro*, with her residence in widowhood in the same parish.

The facts were—The paupers were the widow and five pupil children of Thomas Shedden, a native of Lochwinnoch, and who died in September 1859, in the parish of Govan, in which he had resided for four years and four months, and where, therefore, he had not acquired a residential settlement. After her husband's death, the widow and children continued to live in Govan without parochial relief, and without recourse to begging till 1862, when they removed to the Barony Parish of Glasgow, and shortly after became chargeable. In a question between the parish of Govan and that of the husband's birth, it was held that the latter was the settlement of both the widow and the children, and that, during the subsistence of the marriage, the wife had no power to acquire a settlement, and that the husband's residence in a parish, in which he did not acquire a settlement, was not available to the widow in acquiring a residential settlement either for herself or her children.

Observed by the Lord Justice-Clerk—"We have to consider what is the settlement (1) of the widow, and (2) of the children. I am of opinion that the settlement of all the paupers is the settlement of the husband and father at the date of his death. When he died, he had no other than a birth settlement, and that settlement he left to his widow and children. From the day of their father's death, the children had that settlement as their own settlement. During their father's life, the children, being in pupillarity, had no settlement, but, at his death, they acquired a derivative settlement, which will remain theirs until they acquire another by residence, or until, by change of status, they fall back upon the parish of their own birth. So as regards the widow's settlement. During her husband's life she had no settlement, but from the moment of his death, her settlement was in the parish of her husband's birth. If either the widow or children had fallen into poverty shortly after his death, there is no doubt they would have fallen upon his birth parish. But, it is said that, subsequent to her husband's death, the widow went on to complete a settlement by residence, which the husband had begun to acquire before his death. Now, it appears to me, that to sanction such a view would be to introduce a refinement of subtlety into the construction of the Poor Law Act which might lead to dangerous consequences. The view contended for is an attempt to combine into one homogeneous whole two heterogeneous halves. If the husband had lived for five years in Govan, he would have acquired a settlement in that parish for himself and his family; but he did not do so. During the subsistence of the marriage there was no power in the wife to acquire a settlement, and, during that period, the parish of the husband's settlement was bound to support him and his belongings; but, from the moment of his death, the whole state of matters was changed.

It was no longer possible for the husband to complete his five years' residence, and, therefore, it was not possible for any one to complete a residential settlement in his person, and make it good as a derivative settlement to his widow. It is proposed to supplement the husband's residence by that of the widow, so as to constitute in her a residence partly derivative and partly residential; but who ever heard of such a settlement? I do not think that the case of Thomson *v.* Knox (*supra*, p. 234) has any bearing upon this case. I have my own views as to the soundness of the judgment in that case; but it is not necessary in the present case to throw any doubts upon it. There was in that case no attempt to make out a settlement partly derivative and partly residential, or to make out a residential settlement by the residence of two different persons. There was this peculiarity, that, during part of the five years' residence, the pauper was *vestita viro*. The Judges got over that difficulty by holding, on a construction of the Poor Law Act, that the existence of the husband, who was a foreigner, with no settlement, did not prevent the woman from continuing to acquire a settlement by residence, which she had begun to do before her marriage. It is important to observe, that in that case there was no question as to the rights of children—the question being, whether the parish of the woman's birth or of her five years' residence was liable for her relief. When the Court assoilzied the parish of Stirling, they found no more than this, that the birth settlement had been superseded by the residential settlement."

Referring to the case of Thomson *v.* Knox, Lord Benholme observed—"It appears to me that that case—be it well or ill decided—goes on the principle that the pauper had acquired a settlement in virtue of her own residence—first, as a maiden; and second, as a married woman. The peculiarity of the case was, that the Court gave effect to her residence, although she was married to a Pole. Now, this does not involve the anomaly that the Court there joined together two different things; for the Court did not look to the residence of the Pole, but of the married woman herself."

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15. George Greig (Inspector of City Parish of Edinburgh) *v.* Ebenezer Adamson (Inspector of City Parish of Glasgow) and James Craig (Inspector of St. Cuthbert's), March 2, 1865.—3 M. 575; 37 *Jur.* 286; 7 *P. L. M.* 431.

Second Marriage—Desertion—Pupil Children.—A widow, with lawful children in pupillarity, obtained parochial relief for herself and family from the parish of her late husband's

settlement. While in receipt of relief she married a second husband, and the relief was discontinued. The second husband afterwards deserted her, and she again became chargeable on account of her family;—Held (by a majority of one of the whole Court) that the parish liable to support her and her children by both husbands was the parish of the second husband's settlement, and that the children by the first husband had no claim against the parish of their own father's settlement.

The facts were—Elizabeth Anderson was born in St. Cuthbert's, and was married to James M'Donald in December 1844. Several children were born of the marriage, one being an idiot. The husband died in August 1857, having then a residential settlement in, and being at the time of his death supported as a pauper lunatic by, the parish of St. Cuthbert's. Shortly after her husband's death, Mrs. M'Donald and her family became chargeable to St. Cuthbert's, and received relief down to November 1859, when Mrs. M'Donald was married a second time, the second husband, Robert Smith, having no residential settlement, but a birth settlement, in the City Parish of Glasgow. One child was born of the second marriage, but died during the course of the action. Smith having deserted his wife in November 1860, she and her children were then relieved by the City Parish of Edinburgh, in which they were resident. Smith having returned to his wife, the relief was discontinued, but he again deserted in May 1862, and his wife and her children then again became chargeable to Edinburgh. A question then arose, whether the City Parish of Glasgow was liable in the support of the wife and children, in respect it was the parish of the birth settlement of the second husband, or whether the parish of St. Cuthbert's was liable in the support of the children of the first marriage, in respect it was the parish of their father's residential settlement. The City Parish of Glasgow admitted liability for the wife. The Lord Ordinary found the City Parish of Glasgow liable, and this judgment was adhered to by a majority of one of the whole Court.

In the minutes of debate which were ordered in the Inner House, it was argued for the City Parish of Glasgow—Lawful children continued to be settled in the parish of their father's settlement at his death, and were not transferred by their mother's second marriage to the settlement of their stepfather, to whom, by the law of Scotland, they stood in no legal relation. Lawful children take no settlement through the mother, to which general rule, two exceptions have been recognised, viz.:—(1) When a widow gained a residential settlement, she acquired it for her children also; and (2) if the father had no settlement in Scotland,

the children, on his death or desertion, took the settlement of the mother. In the present case, though the mother, by her second marriage, became a member of another family, that did not make her children so. The children had a settlement of their own, which they had derived from their father.

It was argued for St. Cuthbert's—A widow, on her husband's death, took his settlement, but might change it by residence or by marriage. If she changed it by residence, the settlement of the children changed with her. Why should the same result not follow if she changed it by marriage? After her second marriage she still had the custody of her children by the first. Their claims on her continued, and became burdens on her second husband. According to sound principle the children of one mother were never to be divided and sent for support to different parishes, on the ground that they were the offspring of different fathers. The testing question in such cases is—who is the pauper? Here it was the mother; she was bound to maintain her children. That the mother was the pauper clearly appeared from this, that it was a sufficient offer of relief to receive her and her children into the workhouse, and she was not entitled to insist that the board should take the children alone.

Observed by Lord Deas (who gave the leading opinion of the majority)—"The present question does not, in my opinion, relate to the settlement of these children, but to the settlement of their pauper mother. That the mother is to be held the pauper cannot, I think, consistently be doubted. She is an able-bodied woman. If she were not burdened with the maintenance of her children by her first marriage (the only child of the second marriage having died, pending the litigation), she would not be a pauper at all. Yet the inspector of Glasgow admits he must continue to aliment her as a pauper. The principle is not to be gone back upon—that when a widow, left with pupil children, does her best to maintain them as members of her family, but finds her efforts inadequate, the burden of their maintenance (different from the case of an able-bodied man) constitutes her disability, and entitles her to relief as a pauper, although, but for the burden thus resting upon her, she could not have been regarded as a pauper at all. This principle was involved in the case of Crieff, 19th July 1842, and was expressly affirmed by the great majority of the whole Judges in Gibson *v.* Murray, 10th June 1854. As Lord Curriehill correctly observed in the subsequent case of Carmichael *v.* Adamson, 28th February 1863, 'the principle there affirmed (that is, affirmed in Gibson *v.* Murray) was, that the mother was the pauper, and that the children were only introduced into the claim for relief as increasing the burden on her.' In Gibson *v.* Murray, the children had birth settlements in Scotland. If they had been held to be paupers in

their own right, these birth settlements ought to have been liable. But the mother's birth settlement was held liable, because she was the pauper. The *de facto* state of a family, when the claim of relief is made, is always to be considered in the administration of the Poor Law, which looks less to legal subtleties than to the natural ties which lead to and affect existing domestic relations. It is only when pupil children become paupers in their own right, that the question practically emerges, what is the parish of their settlement? So long as they are *de facto* maintained as members of their father's or their mother's family, the question simply is, what is the settlement of the pauper parent? Nobody can doubt that a mother who, on the father's death, brings up the pupil children of the marriage, acts in the performance of a great natural duty—not the less so if the performance of that duty makes her, as here—what she would not be otherwise—a pauper. If she is to get relief at all from the parish of her own settlement, the relief must be sufficient to enable to perform this duty. On the other hand, the parochial board is entitled to test the necessity for that relief by offering her the poorhouse for herself and her children. If the children were paupers in their own right, the test would be inadequate; for the board could, in that case, offer her the poorhouse for herself only. Nothing turns, I think, upon the legal rights and obligations of the second husband, with reference to the children of the first marriage. No doubt, he might have prescribed for them a separate residence, just as he might have done for the children of his own marriage. But to have urged that he possessed this right, would not have solved any question as to the aliment if he had become a pauper. He did not, however, become a pauper. His desertion left the wife a pauper, in consequence of the burden which reverted on her of maintaining the pupil children of her first marriage; and her position relative to these children is now precisely the same as if she had contracted no second marriage. Her second marriage has changed the parish of her settlement, but it has changed nothing else. She is precisely in the position in which the mother was in Gibson *v.* Murray. The mother's settlement by birth was the rule there, and, *pari ratione*, the mother's settlement by marriage must be the rule here."

Observed by Lord Ardmillan, in concurring in the opinion of Lord Deas—"A different question may arise if the children, ceasing to be pupils, become themselves paupers in their own right, and then it will be necessary to ascertain their individual positions in regard to settlement."

Note.—This judgment is not in accordance with the rule of English law, under which it is held that the mother of children by a first marriage does not by a second marriage affect their

settlement, the only modification to this rule being, that such children, so long as they are under seven years of age, go along with her to the parish of settlement of her second husband, but only for the purpose of nurture, without operating any change on on their own previously constituted settlement, which, accordingly, must support them, although away from their own parish in another with their mother as nurse-children.

The dissenting Judges were—Lord Justice-Clerk (Inglis), and Lords Curriehill, Cowan, Benholme, Neaves, and Ormidale.

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16. James Dunlop Kirkwood (Inspector of Govan) *v.* James Knox (Inspector of Stirling), June 3, 1868.—40 *Jur.* 503; 2 *P. L. M.* 173.

Husband and Wife—Foreigner.—A foreigner, with no settlement in Scotland, having become insane in 1861, became chargeable as a pauper lunatic in the parish of S., and was supported by that parish in an asylum till his death in 1866. In 1863 his wife became chargeable to the parish of G. In an action by the parish of G. against the parish of S., to recover the advances made to the wife;—Held (by Lord Jerviswoode, and acquiesced in) that S. was not liable.

Note.—In his note the Lord Ordinary regards the question raised as falling within the principle established in M'Crorie *v.* Cowan (*supra*, p. 247).

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17. James D. Kirkwood (Inspector of Govan) *v.* Hugh Manson (Inspector of Dailly), March 14, 1871.—9 M. 693; 43 *Jur.* 333; 4 *P. L. M.* 314.

Wife—Second Marriage.—Held (Lord Deas dissenting) that when a woman marries a second time, the settlement which she derived from her first husband is not merely suspended, but entirely lost, and does not revive on the dissolution of the second marriage.

This was a special case, in which the facts were—In May 1865 Dennis Gerry, a native of Ireland, died in the Glasgow Royal Infirmary. He had acquired a residential settlement in the parish of Dailly, though at the date of his death his residence was in Govan, where he left a widow and four children. His widow belonged to Ireland, and had no settlement in Scotland

other than that acquired by her husband in Dailly. Shortly after her husband's death, Gerry's widow applied to the parochial board of Govan for relief for herself and children, and this having been afforded, Govan claimed relief from Dailly as the parish of settlement. Dailly admitted liability, and thereafter continued to afford relief till January 1868, in which month Mrs. Gerry contracted a second marriage with James M'Geachy, a native of Ireland, and who had no settlement in Scotland. Upon her second marriage, Mrs. Gerry was struck off the Dailly roll. M'Geachy and his wife continued to live in Govan, supporting themselves by their own industry, till 19th November 1868, when M'Geachy, being unable to work from dropsy, applied to the parish of Govan for relief, which was granted, and continued down to his death on 29th May 1869. During the whole period of his chargeability M'Geachy was unfit for removal to Ireland. On 1st June 1869, Mrs. M'Geachy applied to the parochial board of Govan for relief for herself and the surviving children by her first marriage, and one child by her second, and on that date relief was afforded, and intimation made to the parish of Dailly, which denied liability. A special case was adjusted, the question submitted to the Court being—"Whether the parish of Dailly is bound to relieve the parish of Govan of the burden of maintaining the said Catherine Straiton or Gerry or M'Geachy or her said children, or any, and which of them?"

It was argued for Govan—That the settlement in the parish of Dailly, which had been derived by the pauper from her first husband, was suspended and not extinguished by her second marriage, the second husband having no settlement in Scotland, and that the principle applicable to the case was that which had been recognised in cases where the maiden settlement of a woman whose husband was a foreigner, with no settlement in Scotland, was held liable for her support on the dissolution of the marriage.

It was argued for Dailly, that the parish liable to support the mother, must also support her pupil children, and the only parish against which the mother has any claim was the parish of Govan, where her second husband died, leaving her destitute. Govan may be entitled to remove them to Ireland, M'Geachy not having had any settlement in Scotland, but, in the first instance, Govan is bound to afford relief. The Court (Lord Deas dissenting) answered the question in the negative.

Observed by the Lord President—"A derivative settlement acquired by marriage, belongs to the woman only while she retains the *status* of wife or widow of the man from whom the settlement is derived. By her second marriage her *status* is entirely altered. She is a wife, and not a widow, and has no

settlement except such as her second husband possesses, and if he has no settlement, she can have none. When the second husband dies, her *status* is that of widow of the second husband, and though her maiden settlement, if she has one, will revive, that which she once had derivatively and temporarily from her first husband, was, in my opinion, finally lost by her second marriage, and the only settlement which she can have derivatively after her second marriage, whether as wife or widow, must be the settlement of her second husband."

Observed by Lord Ardmillan—"It is important to bear in mind the distinction between a birth settlement, on the one hand, which is personal and abiding, following the person *sicut umbra sequitur*, and reviving or returning into view and effect as soon as other interposed settlements are lost; and, on the other hand, the benefit of a conjugal relation to a man who acquired a settlement—a benefit which is not personal from settlement, but derivative from marriage, and is not abiding, but available only while the woman is wife or widow of the man who has the settlement."

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18. John Palmer (Inspector of Stirling) *v.* John Russell (Inspector of Dunoon); Alexander Ross (Inspector of Lochbroom); Murdoch M'Donald (Inspector of Portree); and Donald Nicolson (Inspector of Bracadale), December 1, 1871.—10 M. 185; 44 *Jur.* 110; 5 *P. L. M.* 182.

Husband and Wife—Lunatic.—Held (1) that a married woman, living separate from her husband, but who has not been deserted by her husband, can have no settlement except in right of her husband; (2) that when the wife of an able-bodied man is dealt with by the parochial board as a pauper lunatic, in terms of the Poor Law and Lunacy Acts, the result is not to make the husband a pauper, though the wife may become chargeable to the parish; (3) that the lunatic wife becoming chargeable on the parish of her husband's settlement, at the date of her confinement, continues, in accordance with section 75 of the Lunacy Act, to be chargeable upon that parish throughout the whole term of her confinement, though the husband's parish of settlement may have changed during that period; and (4) that where there is no district asylum, or where, from peculiar circumstances, the pauper lunatic is, by the consent of the Lunacy Board, confined in some other than a district asylum, the require-

ments of section 75 are satisfied, and the above result equally follows.

The action was brought to recover the expense of maintaining a pauper lunatic, named Margaret M'Intosh or Tweedie, from 23d August 1861 to 2d February 1871, when she died under the following circumstances:—The lunatic was born in the parish of Lochbroom in 1819, and was married in 1838 to Robert Tweedie. On the very day of the marriage, she deserted her husband for another man, and afterwards maintained herself by her own industry. From 1854 to 1860, she lived in the parish of Dunoon as a domestic servant. On 23d August 1871 she became chargeable as a pauper lunatic to the parish of Stirling, and was sent to an asylum at Musselburgh, which was then used for pauper lunatics from Stirlingshire district, and she was afterwards removed, in 1869, to the Stirlingshire District Asylum at Larbert, which was then opened. The husband, Robert Tweedie, lived, for twelve years prior to 1859, in the parish of Portree, and acquired there an industrial settlement. From 1859 till his death in 1871, he lived in the parish of Bracadale, without applying for or obtaining parochial relief. The following parishes were called as defenders in the action:—(1) Dunoon, the parish of the lunatic's alleged residential settlement; (2) Lochbroom, the parish of her birth; (3) Portree, the parish of her husband's settlement when she became chargeable; and (4) Bracadale, in which the husband had a residential settlement from Whitsunday 1864 till his death. The Lord Ordinary (Lord Mackenzie) assoilzied all the defenders, but the Court recalled, and found the parish of Portree liable.

Observed by the Lord President—"It is the general rule that every pauper lunatic shall be sent to an asylum. That being so, when a married woman comes to be a lunatic, being the wife of a labouring man, this difficulty occurs:—He himself is not a proper object of parochial relief, but the law takes away his wife from his family, and sends her to be maintained in a lunatic asylum at an expense far greater than he can bear. It is reasonable that the law, which deprives him of his marital rights, should provide for the maintenance of the wife in the asylum, the confinement in which is prescribed on grounds of public policy. Hence, in an Act of Parliament subsequently passed, it is provided that the lunatic shall be treated as a pauper lunatic, and the parish of the settlement of the lunatic shall defray the expense of examination, removal, and maintenance, if he has no estate, and if that expense is not borne by his relations. The question therefore is, in this case, what is that parish? The answer must be, in the first place, the parish of the husband's settlement, because at the time of her confinement, and ever since, the lunatic

was a married woman. Here a great practical inconvenience occurs, because the parish of the husband is chargeable, and it may be that, during the detention of the wife in the asylum, that parish may change more than once. Thus, it might happen that by four years' residence in another parish, a man loses his settlement in the parish where he had a settlement at the date when his wife was taken to the asylum. But the second parish has not become his settlement, so that his birth parish becomes his settlement, and so continues for 364 days, at the end of which he acquires a new settlement in the parish of his residence. So, in the course of a long confinement, it follows that each acquisition of a new settlement by the husband would involve two different changes of settlement, and two shiftings of liability for the maintenance of the wife. The Lunacy Act intended to provide against this and other similar difficulties, and, accordingly, section 95 provides that 'every pauper lunatic to be detained under the powers of this Act shall be sent to the asylum for the district in which the parish of the settlement of such pauper lunatic is situated;' and then it provides that in special circumstances it may be lawful to provide otherwise. We must take in connection with this the 75th section, which enacts that 'every pauper lunatic detained in any district asylum under this Act shall be deemed and held to belong and be chargeable to the parish of the legal settlement of such lunatic at the time the order for his reception in such asylum was granted, and the expense of his maintenance in such district asylum shall be defrayed by such parish accordingly; and the residence of any such pauper lunatic in any such district asylum shall be deemed to be the residence of such lunatic in the parish legally chargeable with the maintenance of such lunatic.' Now, it is very difficult to see why this should not apply to a derivative as well as to a personal settlement. Indeed, the difficulty to be obviated is greater in the former than in the latter case, and I think that the clause was intended to apply to a derivative as well as an industrial settlement. In the present case, it happens that this lunatic pauper was not sent in the first instance to a district asylum, and it is said that therefore the 75th section does not apply. This raises a question of delicacy; but I am of opinion that where, from the necessity of the case, or from special circumstances, the general rule is relaxed under a warrant of the Board of Supervision or Lunacy Board, that does not affect the principle of section 75, because the other asylum so appointed comes in place of the district asylum."

19. James Wallace (Inspector of St. Nicholas Parish, Aberdeen) *v.* William Turnbull (Inspector of Stewarton), March 20, 1872.—10 M. 675; 44 *Jur.* 373; 5 *P. L. M.* 400.

Husband and Wife—Desertion.—Held (1) that a husband, who has deserted his wife, may acquire a residential settlement in the parish to which he has betaken himself, even although his wife is at the time receiving relief in another parish; and (2) that the parish in which the husband acquires a settlement is bound to reimburse the parish which has supplied relief to the wife.

The facts admitted or proved were—David Kerr, who was born in the parish of St. Nicholas, Aberdeen, in 1855, deserted his wife at Aberdeen. He had at that time acquired a residential settlement in the parish of Old Machar. Shortly after being deserted, his wife applied for, and obtained from Old Machar, parochial relief. This relief was continued for a few months prior to 14th January 1856, when she ceased to be chargeable, and supported herself for nearly five years, when she again became chargeable to the same parish, receiving relief from 27th October 1860 down to 5th February 1861, when she removed to the parish of St. Nicholas. In consequence of Kerr's absence from Old Machar since 1855, a statutory notice of chargeability was sent by that parish to the parish of St. Nicholas, upon the 27th October 1860, on the ground that Kerr had lost his residential settlement in Old Machar, and that St. Nicholas, as the parish of his birth, was bound to relieve Old Machar of his future maintenance, and, accordingly, the advances made by Old Machar, from October 1860 until February 1861, when the pauper removed to St. Nicholas, were repaid, and from 1861 down to 1869, the pauper was supported by St. Nicholas. In 1868 it came to the knowledge of the parish of St. Nicholas that the husband was living in Stewarton, and had acquired a residential settlement there, and thereupon statutory notice was given to that parish by St. Nicholas, and that was followed by the present action.

It was held that the parish of Stewarton, being the parish in which the husband had acquired a settlement by industrial residence, was liable to reimburse the parish of St. Nicholas the advances made to the pauper.

Observed by the Lord Justice-Clerk—"The defence stated for the parish of Stewarton raises two questions—1st. Was the wife a proper subject for parochial relief? and, 2d. Supposing that she was, which parish is liable? I am of opinion that she was a proper subject for parochial relief. The parish of Machar was bound to relieve her, and if she were properly transferred to St.

Nicholas, that parish was also bound to relieve her. I do not desire to say anything in regard to the case of a man deserting his wife and going to a neighbouring parish, in order to avoid the expense of supporting her. In such a case, I by no means say that the parochial board are bound to admit the wife to relief. . . . The next question is, what parish was the true debtor in the relief? As a general rule, the obligation to support the husband includes the obligation to support the wife. The settlement of the wife follows the settlement of the husband."

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20. John Johnston (Inspector of Campsie) *v.* Andrew Wallace (Inspector of Govan), June 13, 1873.—11 M. 699; 45 *Jur.* 422; 1 *P. L. M.* 357.

Husband and Wife—Desertion.—Where a wife has been deserted by her husband, an able-bodied Irishman, with no settlement in Scotland, and who went to reside in another part of Scotland, concealing his residence, and not giving anything towards the support of his wife and family;—Held that the parish of the wife's birth was liable in her support and that of the family.

The facts were—An Irishman came to Scotland in 1847, and there married a native of Govan. His wife became insane, and in 1865 her husband left her and her children, who were taken to the poorhouse in 1866. He returned to his wife for one month during the winter of 1866, when he again deserted her, and did not contribute towards her support, or that of the children of the marriage. He continued to live in Scotland, but the parish of his residence was unknown. In August 1868 the widow was found in Campsie, was relieved by that parish, and sent to a lunatic asylum about a month after, statutory notice of chargeability being duly given to the parish of Govan on 31st August 1868.

It was held that the parish of Govan, as the parish of the pauper's birth, was liable, it being a settled rule that where a wife has been deserted by her husband, who has no settlement in Scotland, and has become an object of parochial relief, that the parish which is liable to support her is the parish of her own birth settlement.

Observed by the Lord President—"The question as to desertion is a somewhat knotty one, because, undoubtedly, there is absent from this case what was in all the previous cases, viz., the husband did not here leave the country. The appellant contends that that is essential to legal desertion. . . . It is clear that

the husband went away desiring to remain concealed, and to prevent his wife or any one else discovering his abode, abandoning his wife and family to the charity of the parish. He is sought for by the parochial authorities of various parishes. . . . I cannot say that this is not a case of desertion,—a deserted wife. I see no ground for the principle that a husband cannot desert his wife, unless he flies the kingdom."

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21. Peter Beattie (Inspector of Barony Parish of Glasgow) *v.* George Greig (Inspector of City Parish, Edinburgh), July 9, 1875.—2 R. 923.

Desertion—Widow—Notice.—Mary Goldie or Rivers, who was a native of the City Parish, and widow of an Englishman, John Rivers, became chargeable as a pauper to the Barony Parish on 5th February 1869, receiving relief from that parish in short intervals till her death on 18th November 1871. Statutory notice was given by the Barony Parish on 15th April 1869 to the City Parish of Edinburgh, by which the claim was not admitted. At the time when the pauper became chargeable she had been deserted by her husband, but he returned to her in May 1869, and continued to live with her till his death on 19th January 1870. A second notice was given to the City Parish of Edinburgh on 24th August 1870;—Held (1) that the City Parish of Edinburgh, as the parish of birth, was liable for the period from February 1869 to May 1869, during which the pauper was deserted by her husband, who had no settlement in Scotland; (2) that the City Parish of Edinburgh was not liable for the period from May 1869 to January 1870, because during that time the pauper's husband was at home, and living with her; (3) that the pauper having ceased to be chargeable to the City Parish of Edinburgh when her husband returned, a fresh notice was necessary upon his death, therefore, that the City Parish was not liable from January 1870, the date of the pauper's death, till 24th August 1870, when the second notice was given; and (4) that the City Parish of Edinburgh was liable for the period from 24th August 1870 till the pauper's death.

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22. George Greig (Inspector of City Parish of Edinburgh) *v.* Andrew Gray Simpson (Inspector of South Leith) and James Craig

(Inspector of St. Cuthbert's), May 16, 1876.—3 R. 642; 4 *P. L. M.* 324.

Desertion—Effect.—Held that where a husband has deserted his wife and children, his absence did not destroy the residential settlement derived through the marriage by the wife and children; and, further, that desertion is equivalent to death so long as the desertion continues.

The facts were—John Scott was born in the parish of South Leith in 1835. He deserted his wife and family about 1st June 1868 in the parish of St. Cuthbert's, in which Scott had acquired a residential settlement. His wife and family continued in St. Cuthbert's until June 1873, receiving relief till June 1872. In 1873 they removed to the City Parish of Edinburgh, and the wife, in June 1873, applied for and obtained relief for herself and children from the City Parish. Notice was given to the parish of South Leith, as the birth settlement of Scott, and also to St. Cuthbert's, as the parish in which he had acquired a residential settlement. In November 1873 Mrs. Scott again became chargeable to, and was relieved by, the parish of St. Cuthbert's, upon which, notice was sent by that parish to South Leith, in respect of Scott's absence from St. Cuthbert's for more than the statutory period.

It was held that Mrs. Scott had not lost the residential settlement which she had derived through her husband in St. Cuthbert's Parish, upon the ground that desertion by a husband of his wife and children is, during the period of desertion, equivalent to his death.

Observed by the Lord President—"It has been decided that, in a question as to parochial relief of the wife and family, the desertion of the husband is equivalent to death. . . . That rule, applied here, ends the question. If, instead of deserting his wife and family, he had died in 1868, and left a residential settlement, there has been nothing since then to deprive the wife and family of their right to the residential settlement. But it is contended that the rule only applies to the case where the deserting huband and father has no birth settlement in this country. It is no doubt true that the case has never been decided in exactly the same circumstances as the present. But the rule that desertion by a husband is equivalent to his death admits of no qualification, except in this respect, that desertion only remains equivalent to death so long as the desertion lasts. The deserting husband may return, and then a new rule may come in to fix the parish which is bound to maintain him or his wife and family. He may revive a settlement which, during his desertion, cannot be gone

against for the support of the wife and family, or he may put an end to a settlement which has enured to the wife and family. But, with that exception, the rule laid down is of universal application, and I should be sorry to see it disturbed."

Observed by Lord Ardmillan—"Wilful desertion is the same in effect as transportation, so far as concerns the Poor Law administration."

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23. —— Paterson (Inspector ot Stirling) *v.* —— M'Donald (Inspector of Lasswade), May 22, 1877.—5 *P. L. M.* 417.

Deserted Wife.—Held (by the Lord Ordinary) that a woman who was deserted the year after their marriage by her husband, who had only a birth settlement in Scotland, had her settlement in the parish of her husband's birth, she not having acquired another settlement for herself by residence.

Observed by Lord Curriehill—"Although a residential settlement derived from a husband may be lost by non-residence on the part of the widow or deserted wife, I am not aware of any authority for holding that a derivative birth settlement can be so lost. . . . The principle which regulates the wife's derivative settlement I understand to be this, viz., that a woman by her marriage loses her own previously existing settlement, and follows the settlement of her husband. While the marriage subsists his settlement is hers, and when it is dissolved by his death, she has her settlement in the parish in which her husband had then his settlement. And the husband's desertion has the same consequences in this respect as his death. But the derivative settlement which the wife thus takes, is taken by her subject to all the qualities which attached to it while it was her husband's. Thus, if the husband's settlement was residential, the wife will lose it by her non-residence, because it is a quality of such a settlement that it is lost by non-residence. But if the husband's settlement is a birth settlement, the wife cannot lose it by non-residence, because it is a quality of such a settlement that it subsists until another is acquired."

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24. William Ireland (Inspector of Orwell) *v.* William Jackson (Inspector of Abbotshall), January 29, 1879.—7 *P. L. M.* 154.

Widow—Retention of Settlement.—The husband of the pauper was born in A., and, with the exception of the period between

11th August 1871 and Whitsunday 1873, resided there till his death on 9th January 1874. After his death, his widow continued till Whitsunday 1874 to reside in A. She then left, and went from place to place. In November 1876, she came to O., the parish of her own birth, and in December following she became chargeable, and received relief down to 14th June 1877. She again became chargeable on 28th March 1878. In an action of relief by O. against A.;—Held that the residential settlement acquired by the husband in A. enured to his widow, and that that settlement had been retained by her.

Observed by Lord Young—"I see that Lord Benholme in his opinion in Allan *v.* Higgins says—'Is it the father's absence or the daughter's? Such cases may occur, for the one may be absent and not the other. In such a case my own impression is (but I state it merely as an impression), that the father who acquires is the party to whose absence the law will look during his life in the event of losing the settlement, and on his death the child who inherits his settlement, if it remains absent, would be held to carry on the absence begun by its father.' Now, if for father and child we substitute husband and widow, and for absence, presence, and so on, I think there will be enough in that opinion so altered for the solution of this case. It would then read—'That the husband who acquires is the party to whose presence the law will look during his life in the event of retaining the settlement, and on his death the widow who inherits his settlement, if she remains resident, would be held to carry on the presence begun by her husband.' That is sufficient for this case if we follow Lord Benholme's opinion."

Observed by Lord Gifford—"I doubt whether it is competent on such a question to add the widow's absence after widowhood to the previous absence of her husband. But it is a sufficient answer to this case to say that if the widow's absence is to be added to that of her husband, then the converse must hold, and the residence of the widow after her widowhood in the parish of her husband's settlement must be added to the husband's own residence, in order to preserve the settlement from being lost."

Observed by Lord Ormidale—"I am not to be considered as concurring in the view that the separate periods of absence of the husband and wife can be added together so as to lose a settlement, any more than their separate periods of presence can be added together to acquire one. Here there was an end to the continuity by the death of the husband."

III.—Settlement by Residence.

1. Overseers of the Parish of Dunse *v.* Heritors of Edrom, June 5, 1745.—M. 10553.

Effect of Three Years' Residence.—Held that the parish in which persons indigent, or becoming indigent, have resided for three years immediately preceding an application by them for charity was bound to aliment them.

Note.—The main question in this case was, whether three or seven years' residence was necessary.

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2. Parish of Crailing *v.* Parish of Roxburgh, March 7, 1767.—M. 10573.

Three Years' Residence.—A pauper, eighty years of age, lived for the first forty years of his life in Crailing, the parish of his birth. During the last forty he earned his livelihood in other parishes, and for the three years immediately preceding his becoming indigent, he lived in the parish of Roxburgh. Held, in conformity with the case of Dunse *v.* Edrom (*supra*), that Roxburgh, as the parish in which he had been resident for three years, was liable.

Note.—The same rule was applied in the succeeding case of The Heritors and Kirk-Session of Hutton *v.* The Heritors and Kirk-Session of Coldstream, March 6, 1770.—M. 10574.

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3. Richard Waddel *v.* Heritors and Kirk-Session of Hutton, June 14, 1781.—M. 10583.

Three Years' Residence.—Held that the parish in which a pauper has been resident for three years is liable in his maintenance in preference to the parish of his birth, it being stated by the Court, that the law on the point was finally settled by the case of Crailing (*supra*).

4. John Runciman *v.* Heritors and Kirk-Session of Mordington, January 24, 1784.—M. 10583.

Three Years' Residence.—A pauper resided in Mordington for seventeen years previous to 1769, when he removed to a neighbouring parish. In 1770 he became blind, and was thus deprived of the means of supporting himself. In 1777 he applied for relief from Mordington. Held that the pauper had retained his settlement in Mordington, and that that parish was liable for his support.

Note.—The principle upon which this case was decided was, that no person who, as a matter of fact, is a proper object of relief can acquire a settlement by residence in a parish for any number of years, even although he had never, during that residence, received parochial aid.

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5. Heritors and Kirk-Session of Dalmellington *v.* The Magistrates, Minister, and Kirk-Session of Irvine, December 3, 1800.—M. App. *v.* Poor, No. 2.

Continuity of Residence.—Held that a parish in which an itinerant dancing-master had "his most common resort," teaching dancing, and living in lodgings therein for four or five months every year for fourteen successive years, was liable for his support as the parish of his residential settlement, though he never had a house in the parish, and followed his profession in other places during the remaining portion of each year.

The facts were—James Wallace was born in the parish of Dalrymple, and resided there with his father till he was about nine years old, after which his father removed to, and three years after died in, Dalmellington. Wallace lived in Dalmellington for about two years, when he went abroad, but returned in 1783 to Ayrshire, and continued in that county as an itinerant dancing-master till 1797. During that period he taught dancing for four or five months every winter in Irvine, but had no house of his own there, living in lodgings, and teaching in an inn. In 1797, while in Irvine, he became insane, and was supported in that burgh till July 1799, chiefly by his scholars and their parents, when he was sent by the kirk-session to Dalrymple as the parish of his birth. In these circumstances the Court were of opinion that, from Wallace having uniformly resorted to

Irvine for so long a tract of years during the winter months, his case resembled that of many descriptions of tradesmen, such as slaters and masons, who, not unfrequently, seek work at a distance in summer, and return to their homes in winter. On this ground the Court, nearly unanimously, held that the pauper had acquired a settlement by residence in the parish of Irvine.

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6. Mary Brown and Another *v.* Kirk-Session of Mordington, March 4, 1806.—M. App. *v.* Poor, No. 4.

Effect of Residence in England.—Held (by a majority of the Court) that a parish in Scotland in which a pauper had acquired a settlement by residence, was not liberated from the obligation to grant relief by the fact that the pauper had subsequently resided for three years in a parish in England, such residence in England not conferring a legal settlement.

Note.—In this case there was great difference of opinion on the Bench. The view of the minority of the Judges was, that the obligation of maintenance constituted against a particular parish ceased *ipso facto* by the party residing anywhere else for three years without application for charity, and that if the obligation were to be sustained indefinitely, it would be productive of most ruinous consequences, especially to parishes on the border. The ground upon which the majority of the Judges based their decision was, that an obligation once created against a particular parish is only taken off by an obligation constituted against another.

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7. Kirk-Session of Cockburnspath *v.* Kirk-Session of Coldingham, June 9, 1809.—15 F. C. 300.

Residential Settlement acquired by Forisfamiliated Minor.—Held that when a child, of about fourteen years of age, leaves his father's family, and lives in another parish as an apprentice, he acquires a settlement in that parish by residence, although he derives no profit from his labour, and is supported by his father.

Note.—The exact age of the boy when he left his father's house does not appear from the reports, but it is assumed that he was then more than fourteen.

8. J. Ross *v.* Earl of Haddington, June 8, 1824.—3 Sh. 115.

Parish.—Held that residence in Scotland implies residence in a parish, the existence of extra-parochial lands being inconsistent with the law of Scotland.

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9. Heritors and Kirk-Session of Haddington *v.* Heritors and Kirk-Session of Dunbar, December 19, 1837.—16 Sh. 268; 10 *Jur.* 164.

Residence of Person subject to Fits of Insanity.—Held that a person, who is liable to fits of insanity, but who can nevertheless work and earn wages, is capable of acquiring a residential settlement.

The facts were—The pauper had an original settlement in the parish of Dunbar. In 1813 she removed to service in the parish of Haddington, in which she acquired a settlement by residence for three years and a-half. She then returned to Dunbar for eighteen months, from which she went into farm service in the parish of Whitekirk, and in May 1819, returned to her mother's, in the parish of Dunbar, in a state of apparent insanity. Her mother was an old infirm woman, in receipt of parochial aid, and an unmarried daughter lived with her. From the period of the pauper's return to Dunbar, in 1819, she was never, according to the evidence of her friends, in sound mind, and was subject to occasional fits of great violence, and could not be trusted even out of the sight of her friends, but she was able to do out-door farm work, and earned wages. No parochial aid was received for her till after 1828, when her mother died, and the mother's allowance was continued to be paid by the parish of Dunbar, in ignorance, as was alleged, by the parish of the mother's death. In 1833, the parish of Dunbar made a claim of relief against the parish of Haddington. The pauper, by this time, was in confinement, and the parish of Haddington resisted the demand, on the ground that she had acquired a settlement in Dunbar by her residence there since 1819, and it was held that the pauper had acquired an industrial residence in Dunbar.

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10. Heritors and Kirk-Session of Crieff *v.* Heritors and Kirk-Sessions of Fowlis-Wester, Little Dunkeld, and Monzievaird, July 19, 1842.—4 D. 1538; 14 *Jur.* 610.

Continuous Residence Necessary.—Held, that in order to acquire a

settlement, the pauper must have resided continuously during a complete period of three years in the parish sought to be made liable.

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11. Thomas Skene (Inspector of Machar) *v.* William Beaton (Inspector of Udny), February 16, 1849.—11 D. 660; 21 *Jur.* 184.

Residence before Act of 1845.—Held, in construing the effect of the 76th section of the Act of 1845, that in order to bring the pauper within the proviso contained in that section, both the requisites of residence for three years, and having become a proper object of parochial relief, must have concurred prior to the passing of the Act of 1845.

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12. John Hay (Inspector of City Parish of Edinburgh) *v.* David Morrine (Inspector of Glencairn) and John Thomson (Inspector of St. Cuthbert's), February 7, 1851.—13 D. 628; 23 *Jur.* 430.

Absence—Loss of Residential Settlement.—Held that a person who had left the parish in which he had acquired a residential settlement, and been absent for four years and four months, had thereby lost his settlement in said parish, although he had not been absent the full period of five years, it being impossible for him, after such an absence, to reside in said parish for one year continuously within the period of five years, as required by the 76th section of the Act of 1845.

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13. John Thomson (Inspector of St. Cuthbert's) *v.* Robert Gibson and H. M. Borthwick (Inspectors of Peebles and Stobo), February 13, 1851.—13 D. 683; 23 *Jur.* 304.

Industrial Residence.—A person permanently disabled by paralysis, had resided in a parish for more than five years, supported by his father;—Held that, although he had not maintained himself by his own industry or from his own means, he had acquired a settlement in said parish.

Observed by the Lord Justice-Clerk—"That the words 'shall have maintained himself' in the 76th section of the Act of 1845, mean that the party shall not have been a burden on the parish, whether he may have been supported by his own funds,

now exhausted, or assistance from friends, or other means. The words are added, 'without having had recourse to common begging, either by himself or his family.' This was meant to exclude the worst description of pauper,—the pauper of idleness; and further—'without having received or applied for parochial relief.' This party has not received or applied for parochial aid, and there is no ground upon which we can stigmatise him as a pauper."

Note.—A further question was raised, but not decided—Whether a young man who has left his father's house for the first time to enter service, from which, after eight months, he is obliged by permanent paralysis to return to his father's house, can be held to have been forisfamiliated? An opinion was expressed by Lord Moncrieff that, in these circumstances, there had been no forisfamiliation.

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14. John Hay (Inspector of Edinburgh) *v.* John Cumming (Inspector of Dingwall), and John Forbes (Inspector of Coldingham) *v.* John Marshall (Inspector of Cockburnspath) and Robert Haswell (Inspector of Foulden), June 6, 1851.—13 D. 1057; 23 *Jur.* 490.

Continuity of Residence—Interruption.—Held (1) that the continuity of residence of a female pauper was not interrupted by the fact that she had entered into an engagement of service for six months, in a different parish from that in which she resided, and having entered on the said service, had broken her engagement in six weeks, and returned to the parish she had left; (2) that a person who is supported partly by her own earnings, and partly by the contributions of her family, or of the charitable, and who has not applied for or received parochial aid, is not, in the sense of the Act, a proper object of parochial relief.

The facts of Hay *v.* Cumming were—The pauper, a female, had admittedly at one time a settlement in Dingwall, which she left in 1833, and came to Edinburgh in 1835, where she obtained employment as a domestic servant. She came under various engagements of service, two of them being at Portobello and Gogar, but remained in each of these only for a few weeks, when she returned to Edinburgh. These absences from Edinburgh were held by the Court not to be sufficient to interrupt the continuity of her residence, but this view of the effect of such absence has not been confirmed, and cannot now be regarded as authoritative.

The facts of Forbes *v.* Marshall and Haswell, which raised the same point as the second question decided in Hay *v.* Cumming were—The pauper had acquired a settlement in Cockburnspath, from which, at Whitsunday 1842, he removed to Foulden, where he remained three years, and at Whitsunday 1845 he settled in Coldingham. During the latter portion of his residence in Foulden, and while in Coldingham, he did not earn sufficient for his own support, the deficiency being made up by members of his family, and it was not till November 1845 that he applied for parochial aid, and the question, therefore, arose, whether, prior to the Act of 1845, he was a "proper object of parochial relief." It was held that he was not.

Observed by the Lord Justice-Clerk—"It seems to me that, in a question between two parishes, the test of pauperism, which is said to prevent the residence creating a settlement, must be either that of relief granted, or the demonstration of pauperism by living on public begging, if the party had no other funds. If the party has received no relief from the parish, and has not been supported by public begging, then, as between the two parishes, the residence ought to be as good in the one case as in the other. Neither can I see how the parish which has not contributed in the least degree, during such residence, to the maintenance of the pauper, can yet say that they can oppose the acquisition of a settlement by reason of such residence, just as much as if they had supported her by parochial relief, merely because the party received considerable private aid from charitable individuals. The object of such relief is to keep such people off the poor roll, and to endeavour to aid them in maintaining themselves."

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15. Robert Hodgert (Inspector of Eastwood) *v.* Alexander Petrie (Inspector of Mearns) and John Mason (Inspector of Cumbernauld), June 13, 1851.—1 *P. L. M.* 350 (1859).

Sufficient Residence.—A collier, in May 1842, left his wife and family in a house in the parish of A., and took temporary work in the neighbouring parish of B., where he lived in lodgings. His wife and family remained in the same house in A., but paying no rent, until December 1842, when they removed to B., where a house had been obtained, and resided there till August 1847. Between May and December 1842, the husband visited his wife and children every alternate Saturday, remaining with them until the following Monday morning;—Held that the residence in B. dated from May 1842, when the husband first went to it, and not from

December, when he removed his family from A., and, hence, that a residential settlement had been acquired in B.

Observed by the Lord Ordinary (Ivory)—"The whole question turns on the effect to be given to the pauper's residence in Cumbernauld, during the period from May to December 1842, while his wife and family continued unremoved from Eastwood, the pauper himself visiting them there every alternate Saturday, staying over the Sunday, and returning to his work in Cumbernauld on the Monday morning. The Lord Ordinary is very sensible that, under such circumstances, the legal residence of the pauper in either parish may be considered as, in certain views, of an ambiguous and doubtful character, but, on the whole, looking to the spirit of the statute, and considering that what has been called the industrial residence of the pauper himself has been uninterruptedly within the parish of Cumbernauld, he thinks that the balance may fairly be held to preponderate in favour of fixing this as the parish of his settlement in the sense of the statute. There are other considerations to be here taken into view from what merely touch the question of domicile; and more especially the long period of after residence by the whole family within the parish of Cumbernauld, would seem to draw back and give a character and consistency to what might otherwise partake of ambiguity, as regards the pauper's own earlier residence; while it is not to be overlooked, perhaps, that although his family were left in Eastwood, they continued to live in their former dwelling, not on the footing of proper tenants paying rent, and therefore holding a legal title to reside, but on the footing of precarious occupancy, and allowed to continue rather by favour and tolerance, than as of actual right; while, on the other hand, the pauper himself was all the time paying for his own lodgings in Cumbernauld."

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16. John Hay, (Inspector of City Parish of Edinburgh) *v.* Joseph Kirkpatrick (Inspector of Torthorwald), July 9, 1851.—13 D. 1313; 23 *Jur.* 608.

Continuity of Residence—Interruption.—Held that the occasional absences of a journeyman tailor in the country from the parish of his usnal residence, but these absences being only for short periods, and during one of which he lived outwith the parish, though continuing to work in it, had not the effect of so interrupting the continuity of his residence as to prevent the acquisition of an industrial settlement.

The facts were—a tailor, who for five years worked in the City Parish of Edinburgh, was, during that time, occasionally absent (though not for work) for short periods, the longest of which was about six weeks, and also for part of the time lived beyond, but worked within the City Parish. The question arose whether he had acquired a settlement in the City Parish, and it was held that these absences had not so interrupted the pauper's residence in the parish, as to prevent the acquisition of a settlement therein.

Observed by the Lord Justice-Clerk—"In considering the question whether this pauper is to be held as having resided for five years in Edinburgh, we must take into account the specialties attending residence in a great town. Where a party has been working in Edinburgh, and has lived in Edinburgh for five years with that object, we cannot hold that he has left Edinburgh, because he accidentally changes his lodging to the other side of a street which happened to be beyond the boundary of the royalty. He did not leave Edinburgh for work. I think, if his calling was all the time in Edinburgh, he must be held to have lived there, notwithstanding his occasional residence beyond the boundary. It is out of the question to liken this to moving from one country parish to another."

Note.—It is open to some doubt whether the view taken in this case is consistent with the principles given effect to in later cases.

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17. John Hay (Inspector of City Parish of Edinburgh) *v.* George Ferguson (Inspector of Maybole) and William Lennox (Inspector of Ayr), January 17, 1852.—14 D. 352; 24 *Jur.* 155.

Acquisition of Settlement.—Held (following Hay *v.* Cumming, and Forbes *v.* Marshall, *supra* p. 270) that a blind woman, who had resided in a parish for five years, without applying for or receiving parochial relief, and without having recourse to public begging, but who was supported partly by her own labour, and partly by private charity, had acquired a residential settlement, and was not a proper object of parochial relief under the 76th section of the Act.

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18. John Hay (Inspector of City Parish of Edinburgh) *v.* Robert Scott (Inspector of Duddingstone), November 23, 1852.—15 D. 62; 25 *Jur.* 33.

Residence of Pupil.—A boy, under fourteen years of age, having been apprenticed in a parish other than that of his father's residence, lived there for three years supported by his own earnings, but having been for two months of that period in pupillarity. Question—Whether he was thereby prevented from acquiring a residential settlement under the former Poor Law?

Observed by the Lord Justice-Clerk—"I am under the necessity of stating that, in case such a question shall again occur, I must reserve my opinion on the point whether, in the actual facts proved here, of apprenticeship in a regular trade, in a different parish from that in which the father lived, of a lad who lived and supported himself in that parish for three years, although such apprenticeship commenced two months before fourteen, there was not such forisfamiliation under the law of Scotland, and such a complete and independent connection legally formed with that parish, on the part of the son as a separate person, as to constitute industrial residence inferring a settlement in Scotland, in the same way as such facts have been held to be sufficient in England, where the doctrine of emancipation is even more adverse to that result than our law as to forisfamiliation. That the father had either control over this person, or right to the earnings of the son whom he so placed, and so long as the master conducted himself without fault towards the apprentice, will be a point, if it ever arises, of great nicety."

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19. Rev. John Webster (Inspector of Forglen) *v.* David Mackenzie (Inspector of Grange), February 16, 1853.—15 D. 399; 25 *Jur.* 239.

Three Years' Residence previous to Act of 1845.—A person, previous to the passing of the Act of 1845, applied for relief in a parish in which he had resided for three years. He had during the latter portion of that period fallen into great poverty, and was unable to maintain himself and family, but there was no evidence of his having either applied for relief or resorted to public begging or private charity;—Held that he had acquired a residential settlement.

The fact were—James Tocher was born in the parish of Forglen, but while still a pupil, left it, and resided with his parents,

in the parish of Marnoch till 1812. From Marnoch he returned in 1812 to Forglen, remaining there till Martinmas 1841, during which period he supported himself and his family by his own labour. At Martinmas 1841 he became a tenant of a small croft in the parish of Grange, afterwards removing to another holding in the same parish, and while there he obtained parochial relief from the kirk-session of Grange, for himself and one of his daughters. Previous to that he had supported himself and his family without public begging or application for parochial relief, although for a great part of the time he was resident in Grange, he was in delicate health and poor circumstances and unable to work so as to support himself and his family. It was in these circumstances held that the parish of Grange, in which he had acquired a residential settlement, had no claim of relief against Forglen.

Observed by Lord Fullarton—"What is to be held a proper residence, giving a party a claim against a parish? Does it require that an actual claim should have been made against the parish? or is it sufficient that he was in very poor circumstances, and that from the bad health he suffered, he was not able to support himself? There are some cases which aid this view, but I do not think we can take so wide a step as to lay that down as a rule. I think there must be some proof, not only that he was in such a position as to entitle him to relief, but that he was, *de facto*, in such a situation that he could not support himself."

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20. John Thomson (Inspector of St. Cuthbert's) *v.* William Walker (Inspector of Killin) and William Blacklock (Inspector of Callander), November 19, 1853.—16 D. 66; 26 *Jur.* 41.

Three Years' Residence before Act of 1845.—Held that the provision of the 76th section of the Act of 1845, as to that statute not affecting "those persons who, previous to the passing of this Act, shall have acquired a settlement by virtue of a residence of three years, and shall have become proper objects of parochial relief," applies only to the case where the pauper had been a proper object of parochial relief at the passing of the Act, and not to the case where the pauper had ceased to be such at the date of the Act.

The facts were—A pauper lunatic, born in Killin in 1815, was taken, when two or three years old, by his father to Callander, where, in 1843, he became insane, and, on the 26th July of that

year, his father applied for, and received, parochial relief for him. He was confined in the Perth Lunatic Asylum till July 1844, when he removed to Musselburgh. He never entirely recovered, and was frequently confined in different asylums at the expense of his friends, but he received no parochial relief from July 1844 till March 1852, when he became chargeable to the parish of St. Cuthbert's, being then confined in the Morningside Asylum. By the 76th section of the Act of 1845 it is provided "that nothing herein contained shall be held to affect those persons who, previous to the passing of this Act, shall have acquired a settlement by virtue of a residence of three years, and shall have become proper objects of parochial relief." In these circumstances it was held that this provision applied only to the case where a pauper has been a proper object of parochial relief at the date of the passing of the Act of 1845, and was inapplicable if he had ceased to be a pauper at the date of passing, and therefore that Killin, as the parish of the pauper's birth, was liable.

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21. James Roger (Inspector of Rhynie) *v.* John Maconochie (Inspector of Keith), July 5, 1854.—16 D. 1005; 26 *Jur.* 549.

Continuity of Residence—Interruption—Imprisonment. — Held that a settlement was acquired by continuous industrial residence for five years, although for six months of that period the party was absent from the parish, for one part of it being imprisoned for breach of the peace, and then handed over to his regiment as a deserter.

The facts appear from the opinion of the Lord President—"The question here really is as to the residence of this party in the parish of Rhynie, and particularly in regard to his residence from July 1840 till June 1847. He appears to have resided there for that time, with the exception of the period from November 1843 to May 1844—a period of six months. During part of that time he was in prison, and from January 1844 till May 1844 he appears to have been with his regiment, or confined as a deserter; and the question comes to be whether, by reason of these absences, the residence from 1840 to 1847 is deprived of the character it would otherwise have had as a residence for five years continuously. The residence was, from its commencement to the termination, more than five years; but the question is, whether these absences deprived it of that character of five years' continuous residence. It appears to the Court that the Lord Ordinary has arrived at the right result." The Lord Ordinary (Cowan) had found that the pauper's com-

pulsory absence during the said period did not interrupt the continuity of residence.

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22. John Hay (Inspector of City Parish of Edinburgh) *v.* John Thomson (Inspector of St. Cuthbert's) and Others, January 17, 1855.—27 *Jur.* 122.

Residence before Act of 1845—*Proper Object of Relief.*—A pauper died in the Royal Infirmary of Edinburgh in December 1845, leaving a widow and children chargeable to the City Parish, by which parish an action of relief was raised, under which it became necessary to ascertain the settlement of the deceased as at the date of his death. His parish of birth was Denny. He resided continuously in St. Cuthbert's from Whitsunday 1836 to Whitsunday 1841, without becoming a pauper. In February 1844 he became a pauper, and received relief from St. Cuthbert's from that date down to September 1844, not being during that period actually resident in the relieving parish. No evidence was led as to his history from September 1844 down to the time of his admission to the Infirmary, and during this period the Act of 1845 was passed;—Held (1) that the pauper must be held to have been a proper object of relief at the passing of the Act; (2) that as he had prior to the Act acquired a settlement in St. Cuthbert's, the proviso at the end of the 76th section applied, thus excluding the operation of the statute; and (3) that his settlement in St. Cuthbert's, acquired under the old law, remained the parish of settlement, no other settlement having been acquired.

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23. William Porteous (Ispector of Dalrymple) *v.* Alexander Blair (Inspector of Dailly), December 16, 1856.—19 D. 181; 29 *Jur.* 83.

Interruption of Residence by Receipt of Relief.—Held that the circumstance of a small sum, in name of parochial relief, being given to a person who was not a proper object of relief, by the inspector of a parish in which the person had nearly completed a residence of five years, had not the effect of preventing his acquisition of a residential settlement in that parish.

The facts were—James M'Nish was born in the parish of Dailly, and after residence in several parishes without acquiring a residential settlement in any of them, he settled with his wife and daughter at Martinmas 1843 in Dalrymple, in which he would have completed a five years' residence on 22d November 1848. He never applied for parochial relief, and never received any parochial relief until 19th October 1848, thirty-six days before the completion of the said period of five years, when his wife received from the inspector of Dalrymple the sum of 5s., and on 18th November following, the further sum of 2s. 6d., in name of relief to her and her husband, these payments being equivalent to an allowance, in the first instance, of a penny a day to each individual, and, in the second instance, to a penny a day to both individuals. M'Nish had not himself applied for relief, nor instructed his wife to do so. Their own means of support at the time were alleged not to exceed 3s. 6d. a week. Subsequent payments, chiefly of sums of 2s. 6d. each, were also made. In October 1848 M'Nish was sixty-four years of age, his wife nearly sixty-two, and his daughter nearly fifteen. Mrs. M'Nish was rather infirm and unfit for much work, but M'Nish and his daughter, though not in perfect health, were both pretty constantly employed in out-door labour at from 9d. to 10d. a day all the summer and autumn of 1848, sometimes, however, interrupted for short periods either by the weather or temporary illness, and both continued in similar employment during the summer and autumn of 1849, at Whitsunday of which the daughter went into service, and M'Nish and his wife were able, out of their joint earnings from shearing in 1849, to realise about £1 clear, after paying their rent, which amounted to £2. The payments were made by the inspector of Dalrymple without further inquiry than the statement of M'Nish's wife, and no deliverance upon their case was made by the parochial board till 10th February 1849, when the matter was first reported by the inspector to the board. It was held, in these circumstances, that M'Nish and his wife were not proper objects of parochial relief, and that the payments made to them had not the effect of preventing M'Nish acquiring a residential settlement in Dalrymple, the payment having been made by the inspector for the purpose of saving his own parish.

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24. John Hay (Inspector of City Parish of Edinburgh) *v.* Peter Beattie (Inspector of Canongate) and George Hardie (Inspector of Linlithgow), December 1, 1857.—20 D. 146; 30 *Jur.* 83.

Continuity of Residence—Interruption.—Held that continuity of

residence is interrupted where the party breaks up his household, by selling his furniture, and then removing to another parish, even though he returns shortly after.

The facts were—Thomas Billings and his wife resided in the City Parish of Edinburgh for nearly three years prior to the end of April 1848, when they left Edinburgh and went to Berwick-upon-Tweed, leaving the half year's rent of their house in Edinburgh, payable at Whitsunday 1848, unpaid. Billings worked in Berwick-upon-Tweed for six weeks or two months, after which he and his wife returned to Edinburgh, and resided in the parish of St. Cuthbert's for five or six weeks. They then removed to lodgings in the City Parish of Edinburgh, remaining there four or five months, after which they lived in Leith for about two months. From Leith they removed to Linlithgow, where they lived six weeks, after which, in June 1849, they returned to the City Parish of Edinburgh, and resided there continuously for about four years, till May 1853, when they went to Newcastle, in which town Billings died, in September 1853. In November following, Billings' widow became chargeable as a pauper in the City Parish of Edinburgh, and a question then arose between the City Parish of Edinburgh, as the parish in which it was alleged that Billings had acquired a residential settlement, and the Canongate Parish and Linlithgow, as the parishes of the husband's and wife's births respectively. It was held that the City Parish was not liable in the support of the pauper, continuity of residence by Billings and his wife in that parish having been broken by their repeated absences, and his home in that parish having been completely broken up.

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25. George Greig (Inspector of St. Cuthbert's) *v.* Æneas Chisholm (Inspector of Kiltarlity), December 19, 1857.—20 D. 339; 30 *Jur.* 189.

Continuity of Residence—Lunatic.—Where a person in majority, who resided with his father in a parish for five years, was absent during the course of that period, first, for five or six months, and, subsequently, for two or three months, being on these occasions confined in a lunatic asylum, not in the parish;—Held (1) that these absences were not sufficient to interrupt the continuity of residence so as to prevent the acquisition of a residential settlement; and (2) that a person who had been confined to an asylum at parochial expense, and afterwards lived with his father for five years in the same parish, but who afterwards again became insane, and

had to be again placed in an asylum, had acquired a settlement by residence.

The facts were—William Fraser was born in Kiltarlity in 1809, and removed with his parents in 1823 to the parish of Kirkhill, remaining there till 1832. From 1832 to 1836 he was parish schoolmaster of Kilmallie, but in the latter year gave up his appointment from bad health, and was afterwards supported by his father. He lived with his father in South Leith from Whitsunday 1841 to 7th January 1842, when he became insane, and was removed to an asylum in the City Parish, where he was confined till 18th June 1842. On that date he returned to his father's house in South Leith, and lived there till 13th November 1845, when he again became insane, and was confined in Morningside Asylum, in St. Cuthbert's parish, till Whitsunday 1846. While he was confined on these occasions as a lunatic, he was supported by funds paid through the inspector of St. Cuthbert's, but supplied by the pauper's father. At Whitsunday 1846 the pauper's father left South Leith, in which parish he had had a house for a period of five years, and, accompanied by the pauper, settled in the parish of St. Cuthbert's. In August 1848 the pauper again became insane, and was removed to Morningside Asylum, and supported there till March 1849 at the expense of the parish of St. Cuthbert's, and in 1854 he was again sent to Morningside Asylum. The question came to be, whether the absences of the pauper in the asylum broke the continuity of residence, and it was held that the absences for the two periods, one of between five and six months, and the other of between two and three months, were not sufficient to interrupt the continuity of residence neccessary for the acquisition of a settlement, and that the pauper, after having been supported by parochial relief in an asylum, having lived for a period of five years with his father in the supporting parish, and having again become insane and required relief and support in an asylum, had acquired a residential settlement for himself.

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26. William Melville (Inspector of Burntisland) *v.* Ninian Flockhart (Inspector of Aberdour), Ebenezer Adamson (Inspector of City Parish, Glasgow), and Alexander Milne (Inspector of Montrose), December 19, 1857.—20 D. 341; 30 *Jur.* 183.

Lunatic—Residence in Asylum.—Held (1) that a lunatic, supported in an asylum by his own funds, does not, by residence in the asylum, acquire a settlement in the parish in which it is situated; and (2) that having, previous to his insanity, ac-

quired a residential settlement in another parish, he was, being insane, incapable of losing that settlement, and that that parish, and not the parish of birth, was liable in his support.

The facts were—The pauper was born in the parish of Aberdour in 1811. From 1834 to 1844, being then of full age, he resided in Glasgow, and maintained himself as a teacher, realising considerable surplus means. During this period he acquired a residential settlement in that city. In 1844 he became insane, and was removed, by the aid of the police, to Kirkton of Burntisland, where his brother took charge of him for two years, at the lapse of which time he was apprehended as a dangerous lunatic, and placed, by warrant of the Sheriff of Fife, in the Royal Lunatic Asylum at Montrose, where he remained till the date of the action. In June 1845 his own means, which had till then sufficed for his maintenance, became exhausted, and the procurator-fiscal consequently called upon the parish of Burntisland, in which he had been apprehended, to provide for his future maintenance, which was done, and an action of relief thereafter raised against the parish of the pauper's birth, and the parish in which he had acquired a residential settlement prior to his insanity, and also the parish in which the asylum was situated. The nature of the arguments appears from the opinion of Lord Deas, quoted below.

It was held (1) that the parish in which the asylum was situated was not liable; and (2) that the parish in which the pauper, previous to his insanity, had acquired a residential settlement was liable, although he had been absent from that parish for more than five years after the acquisition of that settlement, upon the ground that being insane, he was not only incapable of acquiring a new settlement, but also incapable of losing an old one.

Observed by Lord Deas—"The argument for the liability of the parish of Montrose was based upon this,—that *animus* has nothing to do either with the acquisition or loss of a settlement under the recent Poor Law Act. But if this be so, it is difficult to see why a natural idiot, of full age, whose parents are dead, but who has sufficient means for his maintenance, should not acquire for himself a residential settlement, by his mere bodily presence in a particular parish for five years. True, he has never been emancipated. But the reason why he has never been emancipated is, because, legally speaking, he has no mind; and if mind has nothing to do with settlement, this should not prevent him from either losing a settlement on the one hand, or gaining one on the other. Again, and still more clearly, if *animus* has nothing to do with settlement, confinement in a prison, whether for a civil debt or as a criminal (under sentence, for instance, of penal servitude for five years), ought to confer a

settlement. But this was felt to be too extravagant to be maintained, although it is really not more extravagant than to attribute the effect contended for to confinement in a lunatic asylum, which, along with the element of compulsion, has the additional element of insanity. I draw no analogy between settlement and domicile, the principles applicable to which are very different. But I think it impossible to say that residence, in the sense of section 76 of the Poor Law Act, is so totally independent of *animus*, that even mental incapacity and compulsion combined (as in this case) will not affect it. On these grounds, I hold that the pauper did not acquire a settlement in the parish of Montrose. Did he then lose his settlement in the City Parish of Glasgow? I humbly think not. True, there has been a subsequent period of five years, during which he has not been bodily present in that parish, and if *animus* has nothing whatever to do with residence, then his settlement has been lost. But, on the same principle (the residence having been long enough), the settlement elsewhere ought to have been gained—a conclusion already negatived. Now, residence in one place implies non-residence in another; and although the losing of a settlement in one parish does not imply the gaining of it in another, this is because a shorter period suffices to lose a settlement than to gain one, and because continuity is necessary in the positive act, though not in the negative, still the acts are counterparts of each other. True, the pauper may lose his settlement by absence in a country, in which no length of residence will give a settlement. But, in such a case, the character of the residence is the same, although the foreign law does not give the same effect to it. Suppose a person, after having left the parish of his residential settlement for four years, becomes insane, and is carried back, and detained in a lunatic asylum in that parish during the fifth year, could we hold consistently with the non-liability here of the parish of Montrose, that, during these five years, he had, (in the statutory phraseology) resided in the original parish 'continuously for at least one year?' I think this will scarcely be affirmed. And if not, it seems to me to demonstrate that the same principle must rule both branches of the enactment in section 76, so that the individual who is removed on account of insanity, is equally incapable of losing as of gaining a residential settlement."

Note.—Upon the second point, the Lord President differed from the other Judges, his Lordship thus states the point of difference —"Where I differ is, that I think it is not necessary that a parish, once the parish of residence, in seeking to free itself, shall do more than show absence, for it is not necessary to show that, during that absence, the residence of the pauper elsewhere has been of a character sufficient to acquire a new one."

27. H. Henry Watt (Inspector of Stranraer) *v.* John Hannah (Inspector of Inch), December 19, 1857.—20 D, 342; 30 *Jur.* 185.

Lunatic—Residence in Distant Parish.—Held that a lunatic does not, when boarded in a distant parish for upwards of five years, acquire a residential settlement in that parish.

The facts were—The pauper was born in Stranraer in 1794, where his parents were settled. His father died in 1803. After having been educated by his mother for the medical profession, he showed symptoms of insanity for some years, during which he lived in Stranraer with his mother and sister, and became violently insane in 1820, being then upwards of twenty-five years of age, his settlement then being in Stranraer. In 1820 he was boarded as an insane person in the parish of Kirkcolm for upwards of fifteen years, and from 1836 in the parish of Inch for ten years, being supported by his mother and other relatives. He became a pauper in 1846, and was maintained as a pauper lunatic for some years by the parish of Stranraer. During the time of his residence in Inch he not only was unable to support himself, but was altogether incapable of either mental or bodily labour, or of regulating his own movements, or taking care of himself, and was duly reported to the Board of Supervision, in terms of section 59 of the statute, as a lunatic pauper. In these circumstances, it was held that he had not acquired any settlement in the parish of Inch, so as to render it liable for his support.

Observed by the Lord President—"I am disposed to regard the place where the pauper lived as simply a place of safe keeping, just as much as if he had been in an asylum. I say this looking to the whole circumstances of the case, and it is in that manner each case must be looked at. But if this party had gone to this parish with his whole family, and an establishment been kept there for him, I reserve my opinion entirely. If a family emigrate to a new parish with their whole establishment by reason of the state of one of them, I say nothing as to the effect of their long residence there."

Observed by Lord Deas—"I am not disposed to say that all that large class of persons who are not quite sane are incapacitated from either acquiring or losing a settlement. As regards parties neither cognosced nor in a lunatic asylum, I think every case must depend on its own circumstances. But here the following things concur:—1st. The pauper was originally removed to and placed in the parish of Inch by the act of his friends, on

account of his insanity. 2d. He was all along, while there, incapacitated by insanity from either mental or physical labour. 3d. He was so insane as to be incapable of taking care of himself. 4th. He was all along in the keeping and under the charge of third parties, on account of his insanity; and latterly, without any alleged change of condition, he was treated as a lunatic pauper under the statute. What may be the effect of the absence of all or any of these elements, I do not wish to say."

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28. John Hay (Inspector of City Parish of Edinburgh) *v.* George Croll (Inspector of Perth) and Peter Beattie (Inspector of Canongate), February 5, 1858.—20 D. 507; 30 *Jur.* 272.

Continuity of Residence—Compulsory Absence.—In a question between the parish of a soldier's birth and that of his residential settlement before enlistment;—Held that the soldier's settlement in the latter was not lost by reason of his absence with his regiment.

The facts were—A female pauper and her daughter were respectively the widow and daughter of David Stark, a private in the 42d Regiment. Stark was born in Perth in June 1808. At Whitsunday 1820, he removed to the parish of Canongate with his parents, and resided there till August 1845, when he enlisted. He afterwards went abroad with his regiment, leaving his wife and child in the parish of Canongate. He remained in the army until his discharge in 1847, when he returned to Edinburgh. From 1843 to October 1847, his wife had become chargeable to the City Parish of Edinburgh; and, after the return of Stark, he continued to support them till his death in May 1848.

It was held that the parish of Canongate, as the parish of Stark's settlement before enlistment, was liable for the relief of his wife and child during his absence with his regiment, and also after his death, his compulsory absence on duty for a period of more than five years not having cut down his settlement there.

Observed by the Lord Justice Clerk—"When a man is absent, not from voluntary departure from his family, but in the service of the country as a soldier, his settlement continues in the parish where he acquired one, and in which he left his wife and family. Hence, when he returns on his discharge, that settlement continues, and he or his wife and children must be maintained, if they become paupers, by the parish in which he had acquired a settlement at the date of his enlistment. The act of absence

with his regiment does not destroy the settlement he had acquired in Canongate, by which parish it is admitted and found that his family must, during that absence, be maintained."

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29. Keith Hutchison (Inspector of Old Deer) *v.* John Fraser (Inspector of Boharm), February 11, 1858.—20 D. 545; 30 *Jur.* 294.

Continuity of Residence—Interruption.—Held that absence from a parish for eleven months, out of a period of five years, was sufficient to prevent the acquisition of a residential settlement in that parish, although there it was averred that throughout the absence there had been a desire to return.

The facts were—The pauper was a native of Boharm, and, from Whitsunday 1846 to October 1848, she was a servant in Old Deer. At the latter date she returned to her father's in Boharm in bad health, intending to return to Old Deer as soon as her health would permit. She remained at home till April 1849, when she returned to Old Deer with the intention of resuming her service, but found her situation had been filled up. She expressed a wish to continue to live in Old Deer as a dressmaker, and went first to Elgin and afterwards to Aberdeen to learn dressmaking, and after leaving Aberdeen she hired and lived in an apartment in Old Deer from August 1849, and supported herself till July 1851, when she became chargeable to the parish, and was afterwards removed, in December following, to a lunatic asylum. She was thus absent from Old Deer from October 1848 till August 1849, with the exception of a week or ten days in April 1849, her whole connection with the parish, including these eleven months, extending over a period of five years and two months. In these circumstances it was held that this absence was sufficient to prevent her acquisition of a residential settlement in Old Deer.

Observed by the Lord Justice-Clerk—"The term continuously does not designate or prescribe residence day after day for five years, without any interruption, in a parish, in order to acquire a residence in such parish. . . . Absence, occasionally or accidentally, will almost always occur, even in the steadiest residence among the lower classes. But such absence must be accounted for, and explained in such a manner as to prove that the residence was still in character a continuous residence, in such a manner as to amount to residence *de facto;* take the case of a servant's absence with his employer, or on his employer's busi-

ness, or on a temporary occasion, such as trying another place, but returning shortly after to the same parish or service. . . . But, of course, the object of the absence—such as an engagement in another service in another parish—may often be conclusive in giving character and effect to the actual service, and may render short absence sufficient to deprive the previous residence of the character of continuous. . . . It is obvious that the character of the absence must very much depend on the nature of the pauper's connection with the parish in which a settlement is said to have been acquired. And this observation is peculiarly applicable to the case of servants. It is true that residence in service is held to be industrial, and to give rise to a settlement. Whether the case of a person living in the family of another ought to have been so included, we need not now inquire. It would not have been easy to draw the distinction between domestic servants and those engaged in out-door work; and all have been held to have acquired, at the end of a fixed period, an industrial settlement. But then the connection of a domestic servant with the parish is purely accidental. In this case there was no other or antecedent connection with the parish. The party's family or relatives did not live in the parish. House she had none in it. When the service was left, her connection with the parish was at an end—her only bond or tie of connection, slight as it was, with the parish, was broken off for ever. But the special facts in this case mark that entire separation in a very strong manner. . . . In point of fact, the party was absent for eleven months out of any service connected with that parish (Old Deer). I am most decidedly of opinion that there was not continuous residence for five years. As to the attempt to introduce the rules as to the retention of an original or acquired domicile *animo revertendi*, I really say nothing; for it seems to me quite ludicrous to import this pauper's hope to return to her former service in the parish of Old Deer as a matter of legal effect in the question of fact, whether there was continuous residence for five years."

Observed by Lord Cowan—"A good deal of weight is ascribed by the Sheriff to the apparent desire of the pauper to return to Old Deer, and to make that parish her residence. But when the question is as to the acquisition of a settlement, I do not think this intention, although it were clear on the proof, of much consequence. Indeed, I doubt its relevancy altogether. In questions of domicile, when there has been absence from the place in which but for it the party would be domiciled, the *animus*, whether *revertendi* or *remanendi*, is all important. It is not so where actual residence must be established for a certain period to fix the right. The important consideration in such a case is —Whether the parish, from which there has been absence more

or less continued, can be viewed as the place of his abiding residence or home, with which the pauper has connected himself, and to which, when the temporary absence is at an end, he might naturally be expected to return, and he actually has returned. It is quite otherwise where the previous connection between the pauper and the parish has been of a temporary character, and is broken off. It is not absence, but departure, from the parish, which, in such a case, has to be dealt with ; and when that disseverance has been continued for such a length of time as occurs in this case, the return of the pauper to the parish is truly the commencement of a renewed period of residence. It is not a continuance of the former residence in any proper sense."

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30. James Turnbull (Inspector of Gladsmuir) *v.* Thomas Kemp (Inspector of Haddington) and Thomas Russell (Inspector of Moreham), February 27, 1858.—20 D. 703 ; 30 *Jur.* 370.

Retention of Settlement—Absence.—Held, in a question of retention of a residential settlement, that residence in another parish, for the statutory period, has the effect of destroying the previous settlement, unless the party has been regularly admitted to the roll in the parish of his actual residence, and this is the rule even although the party has, during the period, been in destitute circumstances, and in receipt of a small sum of temporary relief.

The facts were—A female pauper, born in the parish of Moreham, resided in the parish of Haddington for fourteen years prior to October 1846, when she left Haddington, and removed to Gladsmuir, where she resided till the date of the action. In January 1850, on her own application, she obtained from the parochial funds of Gladsmuir 3s. in money and 4s. worth of coals, which was not approved of by the board till 2d March following, and was then entered in the minutes of the board as "temporary aid." On 17th January 1850 the inspector of Gladsmuir gave notice to, and claimed relief from, the parish of Haddington, and on the 30th of January 1850 the inspector of Gladsmuir notified to the parish of Haddington that the pauper and her family were in destitute circumstances and unable to work. Thereupon the inspector of Haddington sent a medical man to examine the pauper, and he having reported that she was able-bodied, and labouring under no disease to incapacitate her for work, it was intimated to the inspector of Gladsmuir, by the inspector of Haddington, on 11th February 1850, that Haddington refused to ac-

knowledge liability. The alleged pauper received no support from the parish of Gladsmuir after January 1850 for a period of twelve months, though, during that time, she was in infirm health, and unfit for active exertion, and was supported chiefly, if not entirely, by the earnings of her natural daughter, who lived with her, and by occasional assistance from her neighbours; but she did not resort to common begging, and did not apply for parochial relief. In February 1851 she again applied for relief to the inspector of Gladsmuir, and was placed as a proper object of relief on the roll of paupers. On 12th February 1851 statutory notice of this was given to the inspector of Moreham. At this time the pauper had been absent continuously from the parish of Haddington for upwards of four years and three months. The question of liability having been raised between the interested parishes, the parish of Haddington resisted the claim on the ground that the criterion of pauperism in a question of retention of a residential settlement, is admission to the roll of paupers, and that the receipt of a few shillings of temporary aid will not prevent the loss of a residential settlement by absence, and, therefore, that the parish of Haddington was not liable, the pauper's residential settlement there having been lost by absence. This defence was sustained, and the parish of Moreham, as the parish of birth, was held liable.

Observed by the Lord Justice-Clerk—"I take the broad and clear ground that the woman was not upon the roll as a pauper until February 1851. I cannot take anything as proof of pauperism, except actual admission to the roll. . . . The question, in my opinion, always is—Did the person *de facto* get relief as a pauper? In the present case, no such relief was obtained till after a continuous absence of more than four years and three months from the parish of Haddington. The 'temporary aid' given by Gladsmuir, in February 1850, was not recognised by Haddington, which refused the claim, and thereupon the relief ceased. It may be that she was refused further relief at that time harshly, and in circumstances in which I think she ought to have been admitted as a proper object of parochial relief. But these are considerations upon which we cannot enter. Not having been admitted to the roll, but, on the contrary, having had her claim refused, having acquiesced in that refusal, and having been maintained, down to February 1851, by the earnings of her daughter, and by the charity of friends and neighbours, I cannot say that she was a pauper in the year 1850, and, as such, chargeable on the parish of Haddington. As to what might have been the case, if Haddington had recognised its liability for the small sum of temporary relief afforded in the beginning of 1850, I say nothing."

31. John Hay (Inspector of City Parish of Edinburgh) *v.* A. R. M'Raild (Inspector of Kilmonivaig) and James Knox (Inspector of Stirling), November 25, 1858.—1 *P. L. M.* 415.

Continuity of Residence.—A domestic servant had for a good many years been in the habit of residing with a relation in the parish of E. during the intervals between her various domestic services in different parishes. Held (by the Lord Ordinary—Kinloch) that she had not acquired a settlement in E. by such an indiscriminate series of fractions of residence.

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32. James Mackenzie (Inspector of Kingussie and Insh) *v.* James Cameron (Inspector of Blair-Athole, December 10, 1858. —21 D. 93; 31 *Jur.* 66; 1 *P. L. M.* 341.

Continuity of Residence—Interruption—Burden of Proof.—Held (1) that residence was not so interrupted as to prevent the acquisition of a settlement by two periods of absence—one of six weeks, and the other of about four months—during the currency of a period of five years; and (2) in a question between the parish of birth and the parish of alleged residence, the burden of showing where the pauper was during occasional absences lay on the parish of residence and not on the parish of birth.

The facts were—The pauper was born in Insh in May 1819, and resided there till he was about fourteen years of age. In April 1833 he entered service as a herd boy in the parish of Blair-Athole. His engagement as such was not a yearly one, but was limited in each year to the period from the beginning of April to the end of November. Each year in November he returned to his father's house in Insh, and resided there till the following April. From May 1836, however, till the beginning of December 1838, being two years and seven months, he remained continuously in Blair-Athole, and after an absence of six months, during which he was supposed to have gone back to his father's house in Insh, he returned to service in Blair-Athole for two years, from 26th May 1839 to 26th May 1841. Thereafter he continued in service as a shepherd in Blair-Athole, in 1841 from June to 29th November; in 1842 from about 10th March to 22d November; in 1843 from 20th March to 22d November; in 1844 and 1845 from 26th May to 22d November, and in 1846 from 20th April to 22d November.

During the winter months of these years he appears to have returned to his father's in the parish of Insh. He also lived in Blair-Athole from 26th January 1847 to 26th May 1849; and from 26th May 1849 to 26th May 1850 he was also engaged for a time in that parish, having been resident there up to the end of November 1849, and having returned in the beginning of April 1850. The question upon which the evidence turned was, whether the pauper had resided in Blair-Athole for five years continuously, from April 1846 to April 1851.

It was held that the absences for the two periods, one of six weeks, and the other of about four months, during the currency of the five years, neither of these absences having been at the commencement or close, did not so interrupt the continuity of residence as to prevent the acquisition of a residential settlement.

Observed by the Lord President—"I do not think that the fact of his going occasionally to his parent's house when he had no employment, or at a season of the year when his peculiar means of subsistence were in abeyance by reason of the weather or otherwise, his going for a short time in that way when he was substantially earning his subsistence in another parish during the rest of the year, would be material, unless his residence in his father's house were for a very long period indeed. But if there were very extensive gaps, such as a year, during his residence at Blair-Athole, that would be very material, and would decidedly destroy the acquisition of a settlement there."

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33. The President and Managers of the Infirmary of Aberdeen *v.* John Watt (Inspector of Rathen) and Charles Dunbar (Inspector of Fraserburgh), December 15, 1858.—21 D. 117; 31 *Jur.* 91; 1 *P. L. M.* 407.

Residence—Completed Period.—Where a person had resided in the parish of A., with his wife and family, for four years and eight months, and having become incurably insane, was removed by warrant of the Sheriff to an asylum, where for three months only, he was maintained by his friends;—Held that he had not acquired a residential settlement in A., and that the parish of his birth was liable.

The facts were—The pauper was born in Rathen, and at seventeen years of age became an apprentice on board a ship for three years from 1st May 1841, and afterwards served as an able seaman till February 1846. From 1841 to 1846, the ship in

which he served was engaged in foreign voyages, occasionally returning to Fraserburgh, and other parts in Great Britain, and from 1841 to 1846, the pauper only resided at Fraserburgh at distant intervals, and for short periods, not exceeding in all about six months, and on all these occasions he lived in lodgings, and occasionally visited an aunt who lived in the parish of Rathen. In February 1845 the pauper resided in Rathen for about a month, and on 17th March 1845 he was there married, and soon after sailed on a voyage to Mauritius, leaving his wife, who continued to reside with her mother in Rathen. In February 1846 the pauper returned, and after living a short time in Rathen, he, towards the end of March of that year, took and furnished a house in Fraserburgh, which he occupied with his wife till March 1849, when he removed to another house in Fraserburgh, which he occupied till his removal to a lunatic asylum in Aberdeen, about 20th November 1850. His board in the asylum was paid for the first quarter, but no further payment was made by him or his friends. The period during which he resided in Fraserburgh before his removal to the asylum, was thus four years and eight months.

In a question between Fraserburgh and Rathen, the parish of birth, it was held that he had not acquired a residential settlement in Fraserburgh, and that Rathen, as the parish of his birth, was liable for his support in the asylum.

Observed by the Lord Justice-Clerk—"Residence is the foundation of a settlement; that is personal presence. The tenancy or occupancy of a house has nothing to do with it; the tenancy of a house may assist to determine the quality of residence, but personal presence is what is required,—and such other circumstances are immaterial where there is no actual residence. . . . It is plain that nothing of the nature of constructive residence will meet the requirements of the Act. What is necessary is actual residence for a full period of five years, and these must be continuous years. It will not do to combine various periods of residence, so as to make up a residence of five years. The residence must be for five years continuously. That does not mean that absence for a day, a week, or a month will interrupt the continuity of residence, and put an end to the acquisition of a settlement, because the law must proceed on the ordinary conditions of human affairs, and the common case is that a man is occasionally called from home for one reason or another, and it is the rarest possible thing to find a person who has been in the same parish without any absence whatever for five years. But such incidental absences . . . are not to be taken into account in breaking the continuity of residence. This does not interfere with the principle that there must be five years' actual residence."

Observed by Lord Cowan—"I am quite prepared to decide that constructive residence is not sufficient, and that five years' actual residence—continuous, though it may not have been constant—are required by the 76th section of the statute. It will not do to say that the pauper, having been removed to a lunatic asylum before the period of five years was completed, but never returning, actual residence in the parish may be dispensed with. It does not signify what may be the cause of the change of residence, whether a party be removed as a lunatic, or under sentence as a felon, or whether he go voluntarily to another parish for the sake of his health, in which, after the expiry of the five years, he dies. The conclusive thing against the settlement in such cases is, that there has not been continuous residence, for the period of five years, from the *terminus a quo* to the *terminus ad quem*."

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34. James Shaw Brown (Inspector of Paisley) *v.* Thomas Skene (Inspector of Old Machar) and Robert Robertson (Inspector of Abbey Parish of Paisley), January 18 and 28, 1859. —1 *P. L. M.* 495.

Absence—Receipt of Relief—Loss of Settlement.—A person had a residential settlement in A. when he left it in May 1845. At that date he removed with his family to P., and resided there until May 1850. He afterwards resided in various parishes, but never for five years continuously in any one. On two occasions, during his residence in P., he received, when temporarily ill, relief from the inspector, viz., in October and November 1847, to the extent of 17s., and in January 1850, to the extent of 9s., when out of employment. Held (by the Lord Ordinary—Mackenzie) (1) That the residence for five years, from Whitsunday 1845 to Whitsunday 1850, in P. did not confer a residential settlement in respect of the above advances, which amounted to parochial relief in the sense of the statute; and (2) that the said advances did not prevent the loss of the settlement in A., though the same had been repaid at the time by A., in respect that, during the subsequent period of five years, from May 1845, there had been no residence in A. continuously for one year.

Observed by Lord Mackenzie—"Where temporary relief is given, there must be continuous residence for five years after such relief has ceased, in order to confer a settlement under the

express words of the statute. But the non-retention of a settlement seems to stand on a different footing; for it is made to depend on the fact of absence from the parish for a certain specified period. The time during which temporary parochial relief is given may require to be deducted in computing the period of non-residence required for losing a settlement; but it by no means follows that the period for losing a settlement must begin to run a new course from the time when such temporary relief ceased, according to the view contended for by the pursuer."

Note.—Upon the question of the effect of the receipt of parochial relief on the acquisition or retention of a residential settlement, see Johnston *v.* Black (*infra*), and Simpson *v.* Allan (*infra*, p. 295). From these cases it appears that if relief, whatever its amount, be given *in bonâ fide* to a person *in titulo* to receive it, the result is to prevent the loss of settlement.

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35. John Johnston (Inspector of Coldingham) *v.* Adam Black (Inspector of Oldhamstocks) and John M'Intyre (Inspecter of Ayton), July 13, 1859.—21 D. 1293; 31 *Jur.* 675; 2 *P. L. M.* 8.

Receipt of Relief—Interruption.—Held (1) that the receipt of relief for a few weeks during the currency of a five years' residence prevents the acquisition of a residential settlement in the relieving parish, and (2) that to infer loss of settlement by absence, a party must be absent for more than four years without receiving parochial relief.

The facts were—The pauper was born in Oldhamstocks about the year 1799. He resided in Ayton for about six years from Whitsunday 1842, acquiring thereby a residence in that parish. At Whitsunday 1848 he removed to Coldingham, and supported himself there without parochial aid till December 1851, when, in consequence of illness, he applied for, and obtained, relief from the inspector of Coldingham, notice being duly given to the parish of Ayton, which admitted liability. Relief continued to be granted to the pauper by Coldingham till February 1852, when it was discontinued in consequence of a letter from the inspector of Ayton, stating that the pauper was able to support himself. In September 1852 the advances made by Coldingham were repaid by Ayton. The pauper continued to live in Coldingham and to support himself from February 1852 till August 1855, when, in consequence of permanent infirmity, he again applied for, and obtained, parochial relief from Coldingham. Proceed-

ings were subsequently taken by the parish of Coldingham against the parish of Oldhamstocks, as the parish of the pauper's birth, for relief of the advances made by Coldingham. It was held (1) that the receipt by the pauper of relief for the period of two months, from December 1851 till February 1852, during his residence in Coldingham, was sufficient to prevent his acquisition of a residential settlement in that parish; and (2) that the pauper having acquired a settlement by residence in the parish of Ayton, and that parish having admitted liability for the relief granted to him in Coldingham three years and seven months after he had left Ayton, and the pauper having become permanently disabled three years and a-half after the granting of such temporary relief, that the parish of Ayton was still liable, the pauper not having been absent sufficiently long to lose his settlement therein.

Observed by the Lord President—"It was contended that all the statute required to destroy a settlement, was absence for five years without continuous residence for one year; or as the Court has construed the Act, absence for more than four years. It is very difficult to maintain that proposition abstractly and to its full extent. If a party having right to relief from the parish of Ayton should go into Coldingham, and become a pauper there, say at the end of a year, or of two years, and be put on the roll of paupers of Coldingham, and if the liability for the pauper were admitted by the parish of Ayton, then the case would be the same as if he were on the roll of paupers of the parish of Ayton; and if he continued to remain so for five, six, or seven years, can it be said that the settlement in Ayton is lost—all the while that it is admitted, and that he is getting the benefit of it? That cannot be so held; on the other hand, such a residence in one parish as would confer a right there, may not be necessary to destroy a settlement in another parish. I do not think that the loss of a settlement in Ayton, and the acquisition of a settlement in any other parish, necessarily depend on the same set of circumstances. There may be many circumstances which have the one effect, and not the other. But the question is, whether the circumstances we have here are such as to destroy the settlement in Ayton? The clause of the statute referred to (the 76th) has reference to the mere matter of absence and nothing else—to the effects of absence taken by itself. But this is not such a case. It has another very important element—viz., the element of a claim made for the benefits of a settlement, the recognition of the party as a pauper, and the giving him the benefits of a settlement—in fact, what is equivalent to putting him on the roll of Ayton, viz., the recognition of him by Ayton as a pauper, for whose relief, though furnished by the parish of Coldingham, they are liable. That is a separate element altogether, and takes the case out of the class of cases in which the

mere effect of physical absence is to be considered. When the party becomes a pauper, settled in the parish of Ayton, recognised as such, and relief is given him on that footing, he is then placed in the position of exercising and enjoying the benefit of his settlement. If he is afterwards rehabilitated, he may lose that settlement: if he is not rehabilitated, he will not lose it. If rehabilitated, he may, by an absence of five years, lose his settlement. But I do not conceive that he can lose his settlement, without being so rehabilitated. There is a new element in this case, which section 76 does not deal with, viz., the fact of his being established in the parish as a pauper, and his coming back in law claiming a settlement, and settling himself there. He has the status there of a parishioner and of a pauper. It may or may not be that he will be rehabilitated. But, in the meantime, he is placed there as before, and upon these grounds, it appears to us that the parish of Ayton is liable in this case."

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36. Andrew Craig Simpson (Inspector of South Leith) *v.* Robert Allan (Inspector of Newbattle), July 19, 1859.—21 D. 1363; 31 *Jur.* 744; 2 *P. L. M.* 80.

Receipt of Relief—Interruption.—Held (1) (in conformity with Johnstone *v.* Black, *supra*, p. 293) that payments made by an inspector of poor as "temporary aid" to a person in sickness who had not made any application for relief, were sufficient to interrupt the acquisition of a settlement; and (2) that the receipt of an allowance from a destitute sick society does not prevent the party receiving it from being a fit object of parochial relief.

The facts were—A pauper, who had been born in Newbattle, settled in South Leith in 1849, and resided there till 24th May 1857, when he became chargeable as a pauper, but in April 1852, he had, while ill with fever, received sums amounting in all to 11s. from the assistant inspector of South Leith, that advance being intimated to, and repaid by, Newbattle. The sums so granted were given as "temporary or occasional relief," the pauper being at the time in receipt of 3s. a-week from the Destitute Sick Society of Leith, the sub-inspector of South Leith being employed as visitor for that society. The repayment by Newbattle was made by the inspector of Newbattle, "under the reservation of, and on the understanding that, if, from any additional information I may receive, liability is found not to attach to this parish, I shall be entitled to reclaim my outlay." The action was raised for repayment to South Leith of advances made to the pauper

and his family, subsequent to 24th March 1857, when they again became chargeable.

It was held that the advances made by South Leith were not unnecessary, and had not been made improperly and without due inquiry, and that, therefore, they were sufficient to interrupt the acquisition of a settlement in the parish of South Leith, and that the relief afforded by the charitable society did not prevent the recipient being a fit object of parochial relief.

Observed by the Lord President—"If it had been averred that the advance was made improperly for the purpose of preventing the acquisition of a settlement, then, no doubt, if that appeared to be the fact, such advances would not do. . . . The relief is further said to have been improperly given, because the charitable institution and the destitute sick society was disposed to grant aid. Now, a claim having been made to the inspector (whether by the party claiming relief, or by a neighbour, does not signify), the inspector was bound to go and see how matters stood, and if he found that assistance was needed, then it was his duty to give the relief. The party might even be in such a state as to refuse to take the relief, and yet it might be the inspector's duty to give it. The charitable institution was not bound to continue to give relief. If a charitable party were supplying, and were willing to continue a liberal relief, that might make a different question; but here the charitable institution stopped when the parish continued to give relief."

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37. William Wilson (Inspector of Cumbernauld) *v.* George Greig (Inspector of City Parish of Edinburgh), January 17, 1860.—2 *P. L. M.* 633.

Loss of Settlement by Absence.—Held (by the Lord Ordinary—Neaves) that a pauper boarded in another parish at the expense of the parish liable, does not by absence lose his claim for support against that parish, so long as he remains a proper object of parochial relief, even although his allowance has been improperly stopped.

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38. George Greig (Inspector of City Parish of Edinburgh) *v.* Alexander M'Leod (Inspector of Kilmuir), March 7, 1860.—2 *P. L. M.* 593.

Retention of Settlement—Onus.—Held (1) that when a residential settlement has been acquired, the *onus* of proving that it

has been subsequently lost lies on the parish of such settlement, and that there is no *onus* on the birth parish of showing that it has been retained; and (2) that where a pauper had, previous to 1839, acquired a residential settlement in the parish of A., that settlement was not lost, in respect there was no evidence that during any period of five years subsequent to 1839 the pauper was absent from A. without having resided therein continuously for one year.

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39. Archibald M'Gregor (Inspector of Knockando) *v.* William Watson (Inspector of Rothes) and John Shanks (Inspector of Aberlour), March 7, 1860.—22 D. 965; 32 *Jur.* 410; 2 *P. L. M.* 472.

Continuity of Residence.—A farm-servant, who had lived for four years with his wife and family in the parish of A., took service in the parish of B., and resided there for ten months, when he died. During that period he occasionally visited his family in A., where they continued to live;—Held that his residence during the period of ten months must be held to have been in B. and not in A.

The facts were—Archibald Simpson was born in the parish of Rothes. He married in 1845, and previous to the term of Martinmas 1847 was employed as a farm-servant at different places. For four years prior to Whitsunday 1853, he was resident in the parish of Aberlour, though absent therefrom for short periods. At Whitsunday 1853 he entered service in the parish of Inveravon, under a six months' engagement, which was renewed at Martinmas 1853 for other six months. During the currency of this second period, and after he had been ten months in Inveravon, he met his death on 29th March 1854. While he resided in Inveravon his wife and children continued to live in Aberlour, but he occasionally visited them, and frequently spent the Saturday nights and alternate Sundays with them, and this in the knowledge of his master. In an action for repayment of aliment furnished to the widow, the question was raised whether, during the period of ten months, the residence of Simpson was in Aberlour or in Inveravon, and it was held that his residence during that period was not in the parish of Aberlour, but in the parish of Inveravon.

Observed by the Lord Justice-Clerk—"We have here nothing to do with anything except the fact of personal residence. In-

tention, which enters into the question of domicile, is of no avail; neither has the occupation or renting of a house anything to do with it. Nothing but personal residence can fix upon the parish the liability contemplated under the 76th section of the statute. Now, that being so, this labourer was not resident in the parish of Aberlour at the period of his death, and had not been so for ten months previously. He had only been four years in that parish, and, therefore, it is quite impossible that he could have acquired a residential settlement there. Whether, if his residence had continued uninterrupted down to his death, and he had thus had a continuous residence of four years and ten months in Aberlour, it would then have been possible in law for his widow to eke out such residence, so as to give her a residential settlement in that parish, is a question which, according to my view, does not arise. . . . But I desire to guard myself against being supposed to give any countenance to the notion that that sort of combination of the residence of the husband and his widow would be sufficient to make a settlement in terms of the 76th section of the Act."

With reference to this last question, Lord Cowan observed—"It seems to me a new proposition. I do not remember of its being raised before. Certainly it has never been decided, except in so far as it is so by the case of Thomson *v.* Knox (*supra*, p. 234). But in that case the Court went on the specialty that the woman, who had been resident for three years in the parish before her marriage, married a Pole, who had no settlement at all in this country. The peculiarity of the case was, that, in these circumstances, she was held to have acquired a residential settlement for herself, and that her marriage to a person with no settlement at all did not prevent her doing so."

Lord Benholme, on the same point, observed—"I think a strong argument might be arrived at from the case of Thomson *v.* Knox. There the husband was a Pole, and never had a residence which could be held to conflict with the residence of his wife. It was held that she had acquired, by a five years' residence, a settlement in her own right. And certainly it would be an anomalous thing that, where a husband has no residence in this country, the wife should be allowed to acquire a settlement for herself; but that, where the husband has had a residence, his widow should not be allowed to eke out that residence by her own, and acquire a settlement."

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40. Alexander Grant (Inspector of Leuchars) *v.* Benjamin Reid (Inspector of Kincardine O'Neil) and James Miller

(Inspector of Kilmallie), May 25, 1860.—22 D. 1110; 32 *Jur.* 499; 2 *P. L. M.* 628.

Continuity of Residence—Interruption.—Held that absence from a parish for several weeks, for the purpose of obtaining furniture and making arrangements for continuous residence, did not interrupt the continuity of residence in that parish.

The facts were—An imbecile pauper, who had not acquired any settlement for himself, had been born in the parish of Leuchars, where his father was stationed at the time as an excise officer. The father, subsequent to the birth of the pauper, left Leuchars with his family and went to other places, and finally died at Linlithgow in 1840, having then no settlement except that of his birth in the parish of Kincardine O'Neil; and his widow, after 1860, acquired a residential settlement in Kilmallie, in which parish she lived till 1846, when she sold off her furniture and left the parish with no intention of returning, but she did return in September 1847 to her brother's house in that parish, and thereafter, from July 1848, she lived in a house rented by herself at Fort William, in the parish of Kilmallie, till Whitsunday 1849, when she finally left the parish. During the period from Whitsunday 1847 to Whitsunday 1848 she was not out of the parish of Kilmallie, but from Whitsunday 1848 till the month of July following, she was absent in Glasgow, chiefly purchasing furniture for the house she was to occupy in Kilmallie, and to which she went in July 1848. She died in Dumfries in 1851, without acquiring any settlement there or anywhere else after 1846. It was admitted that Kilmallie was liable, unless she had lost her settlement there by non-residence. The question, therefore, came to be—Whether during the five years that elapsed between Whitsunday 1846 and her death, she resided for one year continuously in the parish of Kilmallie? The answer to this depended upon whether the absence in Glasgow from Whitsunday to July 1848, was or was not sufficient to interrupt the continuity of residence. It was held not to interrupt, and, therefore, that the residential settlement in Kilmallie was not lost by non-residence.

Observed by the Lord President—"In determining the effect to be given to these weeks of absence, it is proper to look to the character of the absence, its object and purpose. If she had gone to take up house in Glasgow, and, still more, if she had actually done so, but having found that not to answer, had then resolved to return to Kilmallie, it would be difficult to say that the continuity of residence had not been broken. If, on the other hand, she had merely gone on an excursion to Loch Katrine, or to the English Lakes, (intending to return in a few weeks to her

brother's house), it would be difficult to hold that the continuity of residence would have been thereby broken. The present case, however, is neither of these. . . . Her object in going to Edinburgh and Glasgow, was to make the requisite preparations for taking up her residence in Fort William, by providing furniture, and taking her daughter away from school. . . . No doubt this implies a change in her residence and in her mode of living. Instead of being an inmate of her brother's house, she was to take up house for herself. But it does not change the locality of her residence. It was still to be in the same parish."

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41. Walter Proudfoot (Inspector of Kingarth) *v.* Hugh Johnston (Inspector of Tyree and Coll), June 2, 1860.—3 *P. L. M.* 142.

Effect of Relief given without Application.—Held (by the Lord Ordinary—Ardmillan) that advances made by an inspector to an able-bodied man, burdened with three imbecile children, but without any application having been made by him for parochial relief, did not constitute the receipt of parochial relief in the sense of the 76th section of the Poor Law Statute, so as to prevent the man's five years' residence in the parish creating a settlement therein.

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42. Matthew Scott (Inspector of Girvan) *v.* Thomas Oliver (Inspector of Kirkoswald), March 8, 1861.—5 *P. L. M.* 67.

Loss of Settlement—Public Begging.—Held (by the Lord Ordinary —Jerviswoode) that recourse to public begging in a parish other than the parish of residential settlement, does not prevent the loss of that settlement by absence from the parish for the statutory period.

Observed by the Lord Ordinary—"The Lord Ordinary is of opinion that, under the 76th section of the statute, a resort to such a mode of maintenance (public begging) elsewhere is no bar to the loss of a settlement acquired by residence within a particular parish. The public begging in Govan may operate as a bar to a settlement there. It is no bar to the loss of that previously acquired in Kirkoswald."

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43. Peter Beattie (Inspector of Barony Parish of Glasgow) *v.* James Dunlop Kirkwood (Inspector of Govan) and Ebenezer Adamson (Inspector of City Parish of Glasgow), May 30, 1861.—23 D. 915; 3 *P. L. M.* 576.

Residence—Absence.—Circumstances in which held that an absence of between six weeks and three months was sufficient to prevent the acquisition of a residential settlement.

The facts were—The pauper's father, James Hare, resided in Govan from the time of the pauper's birth till Whitsunday 1847, when he removed to the City Parish of Glasgow. The pauper, Samuel Hare, was then fourteen years of age, and was earning wages sufficient for his own support. After James Hare left Govan, Samuel, though working in Govan, continued to live with him till July or August 1849, when James Hare left Glasgow for several weeks in search of work. During his father's absence Samuel Hare resided in Govan, but thereafter returned to his father's house in the City Parish, and lived there with his father till the latter left Glasgow for Arbroath in July 1850, and thereafter, till July 1852, he continued to reside within the City Parish. In July 1852 he left his lodgings, and, after wandering for a short time about the Barony Parish, he was taken charge of by the inspector of that parish, and, his mind having become unsettled, was committed to the asylum at Barnhill. The question was, whether the pauper's absence from the City Parish during 1849 was of such a nature as to interrupt the continuity of residence, the period of absence from that parish having been, according to the proof, altogether a period of from six weeks to three months.

It was held that the said absence had interrupted the pauper's industrial residence in the City Parish, and prevented his acquisition of a residential settlement there, and that, therefore, the parish of his birth was liable for his support.

Observed by the Lord Justice-Clerk—"The pauper's absence was not incidental to, but subversive of, the residence in the City Parish. The return to the City Parish I regard as purely accidental, and not a continuation of the former residence there. The cause of the absence is perfectly clear. When the pauper left the City Parish he had no longer any inducement to remain there. He had a plain inducement to draw him in another way, namely, to be near his work in Govan. The moment he left his residence under his father's roof, Govan is the place of residence he selects for himself. Therefore, I think, this is an interruption of the continuity of residence sufficient to prevent the acquisition of the settlement in the City Parish."

44. William Crawford, afterwards Alexander Petrie (Inspector of Eaglesham) *v.* Peter Beattie (Inspector of Barony Parish of Glasgow), January 25, 1862.—24 D. 357; 34 *Jur.* 180; 4 *P. L. M.* 312.

Absence—Lunatic—Residential Settlement Lost.—Where a person who had acquired a residential settlement in the parish of A., was absent from it for more than four years, being for one year and ten months of that period confined, at the expense of his friends, in a lunatic asylum;—Held that he had lost his residential settlement in A.

The facts were—The pauper was born in Eaglesham in 1820, and lived there till 1841, when he went to Glasgow to study divinity, and was employed there as a teacher and preacher till September 1851. During the last seven years of that period he resided in Barony Parish. In 1851 he removed to Cambusnethan, being settled at Wishaw as minister of the Reformed Presbyterian Church. In 1854 he became insane, and in August of that year was removed to Gartnavel Asylum, in the parish of Govan, where he was supported for one year and ten months by his friends, his father being dead. Thereafter he became destitute, and parochial relief was afforded by the inspector of Govan, who thereupon claimed relief against Eaglesham as the pauper's birth settlement, and against the Barony Parish as the parish of his residential settlement.

It was held, in conformity with the opinion of the majority of the whole Court, that the pauper had not retained his settlement in the Barony.

Observed by the Lord President—"The full period of time prescribed by the statute having elapsed betwixt the date of the pauper's migration and the date of his becoming chargeable, the only question in which the Barony Parish can, under the 76th section of the statute, have an interest, is, whether during that interval he did or did not reside in the Barony Parish continuously for at least one year? Unless that question can be answered in the affirmative, he cannot be held to have retained the settlement he had acquired by residence in the Barony Parish; and, as I think that the question cannot be answered in the affirmative, I am of opinion that he cannot be held to have retained the settlement. My reason for thinking that the question cannot be answered in the affirmative is, that I do not find any trace of residence in the Barony Parish continuously for a year, or even occasionally during any part of the period in question. Certainly he cannot be held to have resided in the

Barony Parish continuously during the first or the second year of his continuous absence from it;—he was then living at Wishaw as the resident pastor of a congregation there, and apparently without any intention of removing from thence. As little can he be held to have resided in the Barony Parish continuously during any of the subsequent years of his continuous absence from it, unless an attack of insanity, while residing in Wishaw, can be held to have been a resumption of his abandoned residence in the Barony Parish—a proposition for which there is no authority or principle that I know of."

Observed by the Lord Justice-Clerk—"What shall be held to be a party's settlement, depends on matter of fact, and on that only; and the Poor Law regards nothing but facts in questions as to settlements, and pays no regard to the intention, or purpose, or will of the pauper, or to the interest of the pauper. The pauper has no interest in such questions. His interest is merely that he shall receive the needful sustentation which his condition requires, and it does not signify to him by what parish that sustentation is furnished. Whether a pauper has a residential settlement is a question of fact; and it must be determined by the answer to this farther question, whether the pauper having a birth settlement to fall back on, as every person born in Scotland has, has acquired, by the fact of residing five years within another parish, a settlement there, or has, by the fact of residing one year out of each succeeding five years, retained that settlement. The question of domicile depends on entirely different considerations. It is essential, in considering the question of domicile, to consider what was the intention and purpose of the party, and mere physical fact alone is of no avail in a question of domicile. A man's domicile requires to be determined in order to regulate his succession, or for some such purpose; and the main question in such an inquiry is, to what law did the person intend to subject himself, so that it should regulate his succession, or the like. I think it is from confounding these two entirely different matters, that so many disputes have arisen in regard to this 76th section."

Observed by Lord Benholme.—"A lunatic cannot acquire a settlement. Mere bodily presence within the parish is not enough; he must be there as an intelligent person, with purpose and intelligence sufficient to enable him to acquire a settlement. So that we have not to consider a mere physical fact, but also the intellectual capacity of the party who acquires this right, which he will lose if he do not comply with a certain statutory condition. I know not that more is required of the party than mere capacity. To my mind, the not retaining a settlement is equivalent to losing it; and I think with the Lord President, that a man who has acquired a settlement must be said, and properly said, to lose

it, if he does not within each five years thereafter reside one year in the parish. To that loss of settlement, I think no intellectual purpose is required. He may fall into lunacy, and if he is out of the parish for more than four years, I think, the statutory condition not being fulfilled, loss of the settlement will follow."

Note.—This judgment is not altogether consistent with the earlier decision in the case of Melville *v.* Flockhart, December 19, 1857 (*supra*, 280), decided in the First Division.

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45. Peter Beattie (Inspector of Barony Parish) *v.* David Leighton (Inspector of Polmont) and James Mitchell (Inspector of Larbert), February 20, 1863.—1 M. 434; 35 *Jur.* 260; 5 *P. L. M.* 372.

Continuity of Residence—Interruption.—A pauper having, in 1857, become chargeable to the Barony Parish, notice was in due course given, and an action for repayment of advances subsequently raised on behalf of that parish against the parishes of Polmont and Larbert, as, one or other, the parish of the pauper's birth. The defence of both was that the pauper had acquired a residential settlement in the parish of Falkirk, which, therefore, was bound to repay the advances made to the pauper. The result of a proof was to establish that the pauper, who had been a collier, had resided in the parish of Falkirk from January 1850 till January 1856, with the exception of (1) a period of sixty days during which he was suffering imprisonment; and (2) for a period of five months in the year 1853, during a portion of which he had a house of his own in another parish, and where his wife joined him, leaving, however, a few trifling articles of furniture in Falkirk;—Held that this absence was not, looking to its character, incidental to a general residence in Falkirk, and, therefore, that the continuity of the pauper's residence in that parish had been interrupted, and no settlement therein acquired.

Note.—The Lord Ordinary (Neaves) observed in his note that the continuity of the pauper's residence was plainly not interrupted by his imprisonment for sixty days on a criminal charge.

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46. James Young Hamilton (Inspector of Gorbals) *v.* James D. Kirkwood (Inspector of Govan) and Walter Smith (Inspector of Bonhill), November 13, 1863.—2 M. 107; 36 *Jur.* 49; 6 *P. L. M.* 179.

Continuity of Residence—Interruption.—A man out of work left his house in G. and went to England in search of employment, but, being unsuccessful, he returned, after an absence of six weeks, to his house in G., where his wife and family had continued to reside while he was away;—Held that the continuity of his residence in G. had not been interrupted.

The facts were—James M'Gill was employed as a colour maker in the parish of Govan, where, from 28th May 1851 to 11th March 1856, he was continuously employed. At the latter date, having fallen out of employment, he left Govan to seek work in England, leaving his wife and family in his house in Govan, where they, being destitute, received small occasional relief. He returned to Govan, having been unable to find work, on 22d April 1856, and resided there, with his wife and family, till 2d June 1856. The parish of Govan resisted a claim of relief on the ground that the pauper had not resided in that parish continuously for the statutory period, his residence having been interrupted by his absence in England, where he went to obtain employment, with the intention of remaining wherever he could find work, his absence not being incidental to his residence in Govan. It was, however, held that, considering the duration and character of the absence, it had not the effect of interrupting the continuity of the five years' residence in Govan.

Observed by the Lord Justice-Clerk—"In order to judge of the effect of an absence of this kind, it is indispensable to have a precise notion of what the residence is, which is said to have been interrupted. The residence of James M'Gill in the parish of Govan was the residence of a working man employed in the peculiar work of colour-making. He was obtaining high wages, and was maintaining his family on the fruits of his industry within the parish. In short, it was a pure case of industrial residence. But there are various incidents of such a residence; and among these, one of the most common is the falling out of work. This may arise from many causes, as, for example, from sickness, as happened in the present case, or from the person's own misconduct. But the occurrence of any one of these incidents does not put an end to a man's industrial settlement any

more than it puts an end to his personal presence in the parish. When a man falls out of work, he does not at once leave the parish in which he resides. But, being out of work, what is the first step that a man so situated may be expected to take? Is it not to seek for employment, either the same or of a different kind from that in which he was before engaged? He may not be able to find it in the same parish, or he may. In a great measure this is a matter of accident. But will it destroy the continuity of his industrial residence that he goes out of the parish in which he resides to seek for work? Certainly not. . . . It appears to me that searching for work in this way is just one of the natural incidents to a still continuing industrial residence. . . . If his wife and family had joined him in England, and he had never returned to Govan, a question might have arisen as to the time when his residence in Govan ceased."

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47. Thomas Allan (Inspector of Cambusnethan) *v.* William Higgins (Inspector of Shotts), Walter Watson (Inspector of Carnwath), and John Alston (Inspector of New Monkland), December 23, 1864.—3 M. 309; 37 *Jur.* 149; 7 *P. L. M.* 314.

Loss of Residential Settlement—Absence.—A pauper became chargeable after being absent more than four years from the parish of A., in which her father had acquired a residential settlement, the father having left A. at the same time, and having died two years after;—Held that the residential settlement in A. was lost.

The facts were—The pauper was born in Shotts, but her parents left that parish when she was two years old, and removed to New Monkland, where they resided six years, after which they lived in Old Monkland for two or three years, returning for seven years to New Monkland, in which, therefore, the father had acquired a residential settlement, but they finally left New Monkland in July or August 1852. The pauper's father died in 1854, and she became chargeable as a pauper in 1857. In an action by the relieving parish directed against the parishes of the pauper's birth, of her father's birth, and of her father's residential settlement, it was held (1) that the settlement acquired by the father in 1852 in New Monkland, both for himself and his daughter, had not been retained by the pauper by reason of her own and her father's absence from said parish for at least four years and ten months, without either of them having resided in the parish for twelve months; and (2) that the settlement of the pauper was the parish of her own birth.

Observed by the Lord Justice-Clerk—"Looking to the fact that this pauper was a *minor pubes* unforisfamiliated in 1852, I have no doubt that the seven years' residence of her father in New Monkland did confer on the child a residential settlement there at that time. But such a settlement continues to subsist only on certain conditions; nobody can, as a matter of course, hold it in perpetuity. The words of the Act of Parliament are, 'no person who shall have acquired a settlement by residence in any parish or combination, shall be held to have retained such settlement, if during any subsequent period of five years he shall not have resided in such parish or combination continuously for at least one year.' . . . In applying this provision to a case of derivative residential settlement, these propositions are clear. First, so long as a child lives in family with the father, if the residential settlement of the father be kept up by continuous residence for one year in every period of five years, the settlement of the child will be preserved, even if the child should be accidentally absent during the year's residence; because the same kind of residence which was sufficient to acquire the settlement for the child, is sufficient to retain it. Second, if, after the child has acquired such a settlement, she is forisfamiliated, it depends on the child spending one year out of every five in the parish of her residential settlement, whether it will be retained. The difficulty only arises when the absence of the two is mixed up, and when the residential settlement is lost by the absence partly of the father and partly of the child, during part of which absence the child was unforisfamiliated, and during part forisfamiliated, no matter how, whether by the death of the father or otherwise. But the difficulty is solved by the words of the Act of Parliament, which are perfectly clear. If there be absence for more than four years, there cannot be a retention of the residential settlement. This is quite reasonable. A parish is always entitled to take up the position—You left us more than five years ago, and we have never heard of you since. You have not kept up your connection with us. In that view, I come to the conclusion that the settlement in New Monkland has been lost, and hence, that the only parish liable is that of the pauper's own birth."

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48. Sarah Cummings or Mason and Another *v.* George Greig (Inspector of City Parish of Edinburgh), March 11, 1865. —3 M. 707; 37 *Jur.* 348; 7 *P. L. M.* 382.

Settlement acquired by Residence of Wife—Husband Abroad on Military Service.—A man and his wife, both natives of Ireland, came to Edinburgh in 1849, and lived there for more

than five years, acquiring thereby a residential settlement A child was born to them during said residence. In 1855, the husband enlisted, and went abroad with his regiment, and from that time the wife had no assistance or communication of any kind from him, he remaining continuously out of Scotland with his regiment, while she continued, along with her child, to reside in Edinburgh, supporting herself by her own industry until 1863, when she became a pauper, her husband being still alive, and serving with his regiment abroad;—Held that she and her child were not removable to Ireland as paupers under the removal statutes, and that the woman had a subsisting settlement, acquired by residence, available for herself and her child in the City Parish of Edinburgh.

In the circumstances stated in the above rubric, the inspector of the City Parish of Edinburgh obtained from the Sheriff an order for the removal of the mother and child to the birthplace of the mother in Ireland; whereupon a suspension of the order was brought by the pauper and her child, on the ground that they were not liable to removal, in respect they had acquired a settlement in the City Parish of Edinburgh. The Lord Ordinary (Jerviswoode) refused the note of suspension, and his judgment having been reclaimed against, the Court ordered written argument.

It was argued for the paupers—(1) The absence of a soldier does not operate to destroy a settlement under the Poor Law, and therefore the suspenders had, through William Mason their husband and father respectively, a derivative settlement in Edinburgh. A settlement is not lost by absence until after the expiry of a period of four years and a day, and the *animus deserendi* with which the husband left was instantly overcome when he joined the army, where his attendance was compulsory, and where he ceased to have control of his movements. In a question of domicile, a native Scotchman, who has gone on foreign service as a soldier, is presumed to retain his Scotch domicile, and is exempted from the burden of proving the *animus revertendi*. The same rule should apply to settlement. (2) By the desertion of her husband, Mrs Mason was capacitated to acquire, and has by her residence acquired, a settlement in Edinburgh for herself and her child. (3) At least, the child has a birth settlement in Edinburgh, and (4) the proceedings complained of are competent only against the husband, and not against his wife and child. The 80th section of the Poor Law Act of 1845 provides for the criminal prosecution of husbands and fathers who desert their wives and families, and the provision is extended to the case of mothers who desert their illegitimate children, but this extension is because, in the eye of the law, illegitimate children have no fathers.

It was argued for the City Parish of Edinburgh — William Mason retained his settlement in the City Parish till 1859, or for four years after leaving, and he then lost it by non-residence; and then also the liability to support his wife and children ceased, and in the event of their becoming chargeable, they were removable to Ireland. Mrs Mason had, *stante matrimonio*, no capacity to acquire a separate parochial settlement for herself, and she therefore ceased to have any settlement in Scotland, when that acquired by her husband was lost through absence. The view contended for on the other side is based upon alternative views—first, that the husband had not lost his settlement at all, having been absent on duty with his regiment, and, second, that if his settlement was lost, his wife could acquire a settlement for herself, his absence being equivalent to desertion. As to the first, nothing short of personal presence in the parish of settlement will meet the requirements of the statute. As to the second, the ordinary rule must be applied, that a wife can have during the marriage no settlement but that of her husband, and cannot acquire one in her own right. A deserted wife is not in the same position as a widow.

On the question of removal, while it is true that the child had a birth settlement in the City Parish, that settlement was not available to him. His mother, and not he, is the pauper.

It was held by the Court that, if the husband intended when he enlisted to desert his wife, she had acquired a residential settlement for herself and her pupil child, and, therefore, was not removable; and if, on the other hand, the husband had no intention of deserting his wife when he enlisted, then his residential settlement in the City Parish still subsisted, and enured to his wife and child.

Observed by the Lord President—"I think it is a question still undecided whether, in the general case, a person who enlists, and goes abroad with his regiment, and remains abroad for more than five years, is to be held as having, by reason of such absence from the parish, ceased to retain the settlement he had acquired there by previous residence. If such absence is not in the general case to be regarded as destroying the settlement previously acquired by residence, it may be contended that, in the present case, William Mason's settlement in the City Parish of Edinburgh still subsists, and that his wife should have the benefit of it. But supposing that William Mason is to be held as having deserted his wife, the case may then be considered in two different aspects, either of which would be favourable to her. In the first place, if the desertion of the husband is in this question to have the same effect as his death would have had, then the settlement she had through him at the date of the desertion would enure to her till she acquired another. In the second place, even if desertion should not have that effect, still the

question arises, whether the deserted wife, having fallen into poverty, is not entitled to claim relief in virtue of her own residence in the City Parish. He deserted her in 1855. She did not fall into poverty till 1863. If she had continued to maintain herself till 1865, I think there could be no question that she would have acquired a settlement by residence. The difficulty is, that it is said there has not been that continuance of industrial residence after the husband's settlement expired by his absence, to have enabled the wife to have acquired a settlement by her own industrial residence. That depends on the effect to be given to the fact of desertion. It is clear that if the deserted wife had claimed as a pauper within four years of her husband's desertion, she would have been entitled to relief in any view that could have been taken of the case. But it is said she could not be in the course of gaining a settlement for herself at the very time her husband was in the course of losing one. I am not much moved by this kind of paradox. A similar thing occurs in the case of every person who changes his residence. He is acquiring one settlement, while he is losing another. If the deserted wife had removed into another parish, and had there maintained herself and child industrially for more than five years, and had then fallen into destitution, I think she would have been properly chargeable on such parish. If we are to regard her as a deserted wife, I think that she is in the same position as if she had lost her husband by death, to this effect, that she became *sui juris* from the time when the husband's desertion was ascertained. That being so, and she having continued to reside industrially in the City Parish, I think that she is not to be deprived of the benefit of that residence, but is entitled to claim a settlement in her own right."

Observed by Lord Curriehill—"I do not think that the mere fact of his enlisting destroyed his settlement. At the end of the four years, however, he is in India in the military service of his country; and did he, by not then returning, lose his settlement? I am not prepared to affirm that he did. All the authority we have tends the other way. My opinion is that, being abroad in the service of his country, his absence is not voluntary, and that his residence must be held to have continued when he left his family."

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49. John M'William (Inspector of Colmonell) *v.* John M'Bride (Inspector of Kirkmaiden), June 27, 1865.—9 *P. L. M.* 133.

Continuity of Residence—Interruption.—Held (by the Lord Ordinary—Jerviswoode) that residence from Whitsunday to

Martinmas in one parish, under a contract of service for that time, was sufficient to break the continuity of residence in another parish.

Observed by the Lord Ordinary—"The character of the absence is to be considered rather than its precise duration. Here the absence was for the period of six months only; but it was in its character industrial, under a legal engagement, and was such as, if continued for five years, might have conferred upon the pauper a right of settlement in the parish where she served."

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50. Andrew C. Simpson (Inspector of South Leith) *v.* George Greig (Inspector of City Parish of Edinburgh), July 11, 1865.—3 M. 1075; 37 *Jur.* 566; 8 *P. L. M.* 114.

Residence—Construction of 76th Section of Act of 1845.—The pauper, who had resided continuously in South Leith from April 1836 to May 1839, applied for relief from the parochial board of that parish in March 1843, and received aid from that date to August 1860; the pauper then removed to the City Parish of Edinburgh, and resided there for three years, and became chargeable there in October 1863;—Held that the proviso in the 76th section of the Act, that nothing therein contained "shall be held to affect those persons who, previous to the passing of this Act, shall have acquired a settlement by virtue of a residence of three years, and shall have become proper objects of parochial relief," had not the effect of making the pauper's three years' residence in Edinburgh sufficient to give her a settlement there, and that South Leith still remained the parish of settlement.

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51. William Hastings (Inspector of Kirkconnel) *v.* William Henry Hughan (Inspector of Penninghame) and Adam Semple (Inspector of Glencairn), January 27, 1866.—1 S. L. R. 123; 8 *P. L. M.* 331.

Continuity of Residence—Absence.—A man came to the parish of G. in July 1854, and lived there in lodgings, except for three weeks while absent at harvest work, until November 1854, when he brought his wife and family to G., and took up house there. He continued resident there till May 1859,

when he left, and was absent working elsewhere till August following. His wife and family continued to reside in G., and were supported by him. In August he returned to G., and after being there for about three weeks, again left it for work elsewhere, and again returned in November for a day, and finally removed with his wife and family on the 4th of that month. Held (reversing judgment of the Lord Ordinary) that the residence between July 1854, and November 1859, had been continuous, and that a settlement had been acquired in G.

Observed by the Lord President—"I do not think that personal presence in the parish is the sole test in such cases. We must look to all the circumstances of the case, and particularly to the character of the residence. The very fact that casual absence does not interrupt the continuity of a residence and prevent a settlement being acquired, proves that personal presence is not necessary. An important fact in deciding a case of this sort is the permanent character of the residence, as, for instance, if the person has been a householder during the disputed period, or, even if not a householder, if there be other facts tending to instruct an intention of permanent residence."

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52. Richard Hewat (Inspector of Kelton) *v.* George Hunter (Inspector of Tongland), July 6, 1866.—4 M. 1033; 38 *Jur.* 525; 9 *P. L. M.* 8.

Continuity of Residence—Interruption.—Held (1) that continuity of residence cannot be maintained without personal residence, and that residence by the wife and children of a householder, he himself being absent, is not sufficient; and (2) that absence from a parish under contracts of service, which compelled the servant to be resident in other parishes for several months at a time, has the effect of interrupting the continuity of residence.

The facts were—The pauper was born in the parish of Tongland, and, in 1856, he took a house in Kelton parish, and in it his wife and family lived, till he became chargeable in 1864. Between 1856 and 1864, the pauper had never himself resided in Kelton parish for a whole year, being engaged in service in various parishes. From Martinmas 1856 to Martinmas 1857, he was in Buittle parish. From Martinmas 1857 till March 1858, he remained in Kelton, going at the latter date to service in Kirk-

gunzeon, where he remained till May 1858. From May till August 1858, he was travelling about the country, returning to Kelton in August, and leaving it again in October following, to work in Balmaghie parish, where he remained till March 1859. From March till Whitsunday 1859, he was in service in the parish of Kirkcudbright, after which he lived in Kelton till April 1860, from which time, till August of the same year, he travelled about the country. From August 1860 to March 1861, he lived in Kelton. From March 1861 till August 1862, he was engaged on several contracts of service in different parishes, and, in May 1863, he removed to Tongland, and lived there till June 1864, when he returned to Kelton, and there became chargeable. The question then arose, whether he had acquired a residential settlement in Kelton. The Court held that he had not, and therefore that the parish of his birth was liable in the support of the pauper.

Observed by the Lord Justice-Clerk—"I am of opinion that what the statute means by a person residing in a parish is, that he shall personally reside in the parish, and not that he shall have a residence in it occupied by his family; and the only relaxation of that rule which we have recognised is that reasonable relaxation which arises of necessity from a consideration of the ordinary habits and occupations of human beings. It could never be meant that the statute should be so construed as that a person could not be away in the pursuit of his ordinary business, or for an occasional visit of pleasure, or on account of some accidental occurrence, without interrupting the continuity of his residence. In short, the statute must be read with reference to such a kind of absence as either accidentally or incidentally occurs from time to time in the life of every one. . . . In this case the scene of the pauper's industry is changed, and that is sufficient to destroy the continuity of residence."

Observed by Lord Benholme—"In estimating the effect of residence in any place where it is alleged to have lasted for five years, I am not inclined to attach much weight to the kind of employment the person was engaged in. His personal presence is just the same whether he was idle or busy. But when he is not personally present, we are called on to examine closely the character of the absence; and two qualities seem material—1st, the length of the absence, 2d, the nature and character of the employment in which he was engaged while absent."

Observed by Lord Neaves—"I think that occupancy of a dwelling-house by a man's wife and family may often be a material point in questions of residence. Such a fact will form *prima facie* a beginning and a centre of residence."

53. John Lindsay (Inspector of Row) *v.* John M'Kenzie (Inspector of Kiltearn) and Donald Faichney (Inspector of Strath), July 11, 1866.—4 M. 1037; 38 *Jur.* 530; 9 *P. L. M.* 45.

Continuity of Residence—Interruption—Lunatic.—Held that continuity of residence had not been interrupted by the confinement in prison for a few days of the pauper, as a dangerous lunatic, under a warrant of the Sheriff, and by his being treated as a pauper lunatic under the Lunacy Act.

Observed by the Lord Justice-Clerk—"There are two or three things material to be observed in construing this clause (the 85th of the Lunacy Act) of the Act. In the first place, it is not a clause confined to pauper lunatics, or to poor lunatics, but applies to rich and poor alike—to every lunatic who becomes dangerous, or is threatening to be so. The first thing which the Sheriff is to do is, on satisfying himself that there is a *prima facie* case of dangerous lunacy, to commit the party to safe keeping in the meantime, and thereafter, on more full investigation, if he is satisfied that the result of the evidence led is to show that the party is a dangerous lunatic, he is bound to send him to an asylum, and nowhere else; and, that being done, the persons who are liable for the maintenance of the lunatic, if he be above the condition of a pauper, or the parish which is bound for his maintenance, if he be a pauper, or if there are no other accessible means for his maintenance, must pay the costs which have been incurred by these proceedings."

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54. George Greig (Inspector of City Parish of Edinburgh) *v.* James Miles (Inspector of North Leith) and Andrew Craig Simpson (Inspector of South Leith), July 19, 1867.—5 M. 1132; 39 *Jur.* 617; 1 *P. L. M.* 103.

Continuity of Residence—Sailor—Absence.—A sailor was tenant for five years of a house in the parish of A, but was absent on voyages for more than half that time, returning home at the end of each voyage, and living in the house. During his absences, one of which lasted nearly two years, the house was occupied by his wife, who drew his half-pay, and paid the rent. Held (by the whole Court—diss. Lord President and Lord Benholme) that he had resided for five years continuously in A,, and therefore acquired a settlement there.

The facts were—At Whitsunday 1858, a sailor, named Thoms, with his wife and family, entered into possession of a house in

North Leith, from which they removed at Whitsunday 1863. During the period from 1858 to 1863, the sailor himself did not reside continuously in North Leith, though his wife and family did. The sailor was absent on voyages more than half the time, one of the voyages extending to nearly two years, and at no time did he reside in North Leith continuously for more than ten months, but at the end of each voyage he returned to the house, and lived with his wife and family. During his absences, his wife drew his half-pay, and paid the rent, but she also worked for her maintenance as a washerwoman. In 1865, when resident in the City Parish of Edinburgh, they became objects of parochial relief, and the question thereupon arose, whether South Leith, as the parish of the sailor's birth, or North Leith, as the parish of his alleged residential settlement, was liable to reimburse the advances made by the relieving parish.

The Court ordered written cases.

It was argued for North Leith, in which the sailor had his house—(1.) That the residence must be not constructive, but *de facto* actual and personal residence. (2.) That though not necessarily constant from day to day, yet it must be continuous, and where there were absences, they must, in order not to interrupt the continuity of the residence, be accidental or incidental to the residence, and their length would be of importance in such a question. (3.) That if a husband were *de facto* personally absent from the parish, unless accidentally or incidentally to his own residence in it, the residence of his wife and family in a house rented by him within the parish, would not preserve his own residence there, nor would it be preserved *animo revertendi*, or by any mental purpose or intent. (4.) That the personal absence of a husband on contracts of service outwith the parish would interrupt the residence, although he left his wife and family in his house within it. (5.) That where a party was absent, not accidentally or incidentally to his residence in a parish, that residence would be interrupted, though the party should not be acquiring any settlement elsewhere.

It was argued for South Leith, the parish of birth—That the absences of the sailor from North Leith were not such as to interrupt the continuity of his residence in the parish, because (1) they were occasioned by the necessity of following his ordinary occupation; (2) he was not, during his absence, residing in any other parish; (3) the absences were only temporary, and made with the full intention of returning each time; (4) they were incidental to his residence in a seaport. In every case in which absence had been held to interrupt residence, the absences were really departures from the original parish, the severing of the connection, and the formation of a new one. Here both *animo et facto* North Leith continued to be the sailor's home.

It was held by the whole Court (the Lord President and Lord

Benholme dissenting) that there had been, in the sense of the 76th section of the Act of 1845, continuous residence for five years in North Leith, and that that parish, therefore, as the residential settlement of the pauper, was liable in his support.

Observed by the Lord Ordinary (Kinloch), the grounds of whose opinion were concurred in by the Lord Justice-Clerk, and Lords Mure, Cowan, and Neaves—"It is trite that continuous residence does not mean, under the statute, residence unbroken by a single day's absence. An absence of some length, when it did not, in a sound sense, destroy residence, has been held ineffectual to interrupt the statutory continuity. There are many legitimate reasons which carry a man from home for a while, and yet cannot be legitimately said to change his residence. The great question is, whether, for any part of the time, the party can rightly be said to have taken up a residence elsewhere? In the apprehension of the Lord Ordinary, the absence of a sailor on a voyage cannot be said to destroy his residence in the port to which he invariably returns to his house and family. His locomotive inhabitancy of the ship cannot, in the Lord Ordinary's view, be legitimately said to import a residence elsewhere. He is then on a voyage, in the legal as well as the popular sense—an idea inconsistent with that of residence. There are analogous cases which may be figured. What is to be said to that of a commercial traveller, who maintains a house in a burgh where his wife and family reside uninterruptedly, and to which he always returns from his journeys, but who, for the best part of the year, is travelling the country in the characteristic gig? The Lord Ordinary cannot doubt that such an one would be held, in the sense of the statute, to reside continuously in the burgh. Other cases may be supposed. Perhaps there is none more appropriate for testing the meaning of the statute than that of the sailor now actually in question."

In dissenting from the judgment, the Lord President (Inglis) said—"I dissent from the judgment to be pronounced, first, because it involves a forced and unwarrantable construction of words, used in the statute in their ordinary meaning; and, second, because I could not adopt it without contradicting my own words in several cases, where I gave a deliberate judgment, in which I understood several of my brethren now in the majority to concur."

Note.—It will be observed that, in this case, there was no competing residence.

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55. Thomas Allan (Inspector of Cambusnethan) *v.* Robert Burton (Inspector of Dalmeny) and William Higgins (Inspector

of Shotts), February 8, 1868.—6 M. 358; 40 *Jur.* 183; 1 *P. L. M.* 320.

Acquisition of Residential Settlement—Absence—Onus on Parish of Birth.—The pauper's life, prior to 1852, was unsettled, but from July in that year till March 1857, and from September 1857 till March 1859, he resided in Shotts. It did not appear where he was from March till September 1857. Held that a residential settlement in Shotts had not been proved, and that the parish of birth was liable.

This was an action by the relieving parish against the parish of the pauper's birth, and also against the parish of his alleged residential settlement, the circumstances being as follows:—The pauper, who was of weak intellect, had, for some years previous to July 1852, haunted the Shotts' Iron Works, where he occasionally worked, but he subsisted mainly on the unsolicited benevolence of the workmen. He had no house, and occasionally slept at various places about the works, which are situated partly in Shotts Parish and partly in Cambusnethan, one of his sleeping places being in the neighbourhood of a "mealing kiln," which was in the latter parish. He was seldom absent for more than a week at a time. From July 1852 to March 1857 he was in regular employment in the iron works, and during that period of four years and eight months he lived in lodgings in Shotts. In March 1857 he was dismissed, but again obtained a situation in the iron works in September 1857, and remained in this employment till March 1859. During the period between March and September 1857, it was not proved that he was at any time within the parish of Shotts, but he was a portion of the time in England.

It was held (diss. Lord Benholme) that it was not proved that the pauper had acquired a residential settlement in Shotts, there being no presumption of residence there previous to 1852, and, further, that an absence of six months having been proved, it had not been shown by the parish of birth, on which the *onus* lay, that that absence was incidental to his residence in Shotts, and of such a nature as not to destroy the continuity of his residence there.

Observed by the Lord Justice-Clerk—"I hold the fact of actual absence from a parish during any portion of the five years necessary to infer a settlement, to lay upon the parish of birth the *onus* of proving circumstances, clearly showing that, though thus absent, the pauper continued to have such a connection with the parish of his alleged residence, during the whole of the absence, as may convert his actual absence into a constructive residence. The parish of birth can only show non-liability by

fixing the burden on another parish, and that can be done only by proof of actual or constructive residence for five years. Actual absence is *prima facie* opposed to the alleged residence of the absent party, The evidence may reconcile an apparent contradiction, but it requires evidence to do so. There are numerous avocations in which occasional absences must occur. Seamen, commercial travellers, persons employed in the military or naval service, are all necessarily absent from their homes for periods more or less considerable. When the absence, as it has been said, is incidental to a residence, absence is well explained. Where a person is absent for a single month or week, with no intention to return, and with employment in another parish, the absence will destroy the continuity of residence."

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56. John Innes (Inspector of Tullynessle) *v.* William Ironside (Inspector of Fyvie), June 5, 1868.—40 *Jur.* 631; 1 *P. L. M.* 531.

Right to Acquire Settlement.—Held that an able-bodied man may acquire a residential settlement by remaining in a parish for the statutory period, although, during the whole of that period, his wife has been receiving parochial aid from another parish, in which she lived, she and her husband having voluntarily separated.

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57. Laurence Moncrieff (Inspector of Tingwall, &c.) *v.* John Ross (Inspector of Bressay, &c.), January 5, 1869.—7 M. 331; 41. *Jur.* 196; 2 *P. L. M.* 343.

Continuity of Residence—Fisherman.—Where a fisherman had a house in the parish of A. for five years, and his family resided there during the whole period, and he himself also resided there, except during the fishing seasons in each year, when he was absent in another parish, on each occasion, for some months;—Held (Lord President diss.) that he had acquired a residential settlement in A. by continuous residence for five years.

This was an action of relief by the relieving parish against the birth parish, the defence being that the pauper had acquired a residential settlement in the relieving parish. The circumstances were as follows—The pauper was born in the parish of Bressay. He married in 1852, and at Whitsunday 1856 took a house in Scal-

loway, in the parish of Tingwall, where he continued to reside with his wife and family till 1862. He was a fisherman, and from 1856 to 1862 he was absent from Tingwall, during the fishing seasons, which occupied some months of each year, living during these absences with his father in Bressay, but this for the express and sole purpose of following out his trade as a fisherman at the regular fishing grounds, and during these periods he returned as often as he could to visit his wife in Tingwall. From 1856 to 1862 his only other absence from that parish was one of two months, when he was occupied bringing home a fishing smack from London. In January 1862 he became insane, and was apprehended by judicial warrant as a dangerous lunatic, and sent to an asylum. In these circumstances, it was held (Lord President diss.) that the pauper had acquired a residential settlement in Tingwall, by five years' continuous residence in the sense of the 76th section of the Act.

Observed by Lord Deas—"In my opinion, a little too much stress has been laid upon the case of Greig *v.* Miles, which may or may not have been a clear case in itself, but which depended almost entirely on its own circumstances. There was no principle of law involved in that case, any more than in other cases of the same class, beyond this, that while, on the one hand, personal presence in the parish is necessary to enable a party to acquire a settlement, that personal presence need not always be continuous. . . . But so soon as we get beyond that doctrine, the whole question comes to be one of circumstances, viz., whether the absence or employment in another parish is of such a kind and character as to be inconsistent with the supposition that personal residence still continues. . . . With respect to the periods during which we find him engaged in fishing in the parish of Bressay along with his father and brother, these are accounted for by the fact that the fishing could be better carried on there, and by the peculiarity of his mental condition, which made it expedient that he should be a good deal with his father and brother. But during the whole time he went backwards and forwards to his wife and family; he maintained them out of the produce of his industry; his relations all looked upon the house in Scalloway, where his wife and family lived, as his home, and there is no reason to doubt that he did so himself. That circumstance is by no means of such importance as it would be in a question of domicile, but it is not to be lost sight of in considering the character of the case."

Observed by Lord Ardmillan—"The next question to consider is the nature of the pauper's occupation while in Bressay. It is not quite correct to say that he went there to get employment as a fisherman. He got his employment as a fisherman in Scal-

loway, though the operation of fishing was to be executed in waters of the parish of Bressay; his employers had premises in Scalloway, and advanced part of what he earned to his wife, and kept a running account with her, and this seems to me to have impressed a character on the employment; just as if a shepherd on a farm in East Lothian is sent off to the Lammermuir Hills with his sheep for a certain portion of each year, but leaves his wife and family in his home in the low country till he returns. I humbly think he would not thereby lose his settlement in the parish where his master was, where his service was, and where he had his home."

Observed by Lord Kinloch—"I do not think it is an accurate way of solving the question merely to count the number of hours or days during which the pauper was respectively present and absent. . . . There are many conceivable cases in which a man may be absent for much longer periods than he is present in his home, *e.g.*, the case of a commercial traveller, who may possibly be with his family little more altogether than a few weeks in the year."

Observed by the Lord President, in stating the grounds of his dissent—"This case will, I think, establish a rule that constructive, as well as actual residence, and constructive residence even where the actual residence is in another parish, will be sufficient to constitute a settlement under the 76th section."

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58. Alexander Crosby (Inspector of Uphall) *v.* Neil Taylor (Inspector of Southdean) and George Greig (Inspector of City Parish, Edinburgh), October 21, 1869.—8 M. 39; 42 *Jur.* 9; 3 *P. L. M.* 112.

Continuity of Residence.—Held that a hawker who wandered about the country during the summer months with his family, making and selling baskets, but who always returned to Edinburgh for the winter, from which he was never absent more than six months, but where, when absent, he had no house, had not acquired a settlement in Edinburgh.

The facts were—The father of the pauper was born in Southdean in 1821, but removed with his parents in 1824 to Edinburgh, and at the time of his marriage, in 1845, had acquired a residential settlement in the City Parish. During the summer and autumn months he and his wife travelled about the country selling baskets; during the winter they lived in lodging-houses

in Edinburgh, from which they were never absent more than six months at a time.

It was held that he had lost his residential settlement in Edinburgh, and that, during his absences in the country, there was no constructive residence in Edinburgh.

Observed by Lord Cowan—"It has been suggested that the intention of the pauper to return to Edinburgh has an important bearing on this case. As to this I am not aware that it has ever been held that the acquisition of a settlement depends upon intention, or that the *animus revertendi* or *non-revertendi*—which is of so great importance in questions of domicile—can be viewed as materially, if at all, affecting the question. As to this, the opinion expressed by the Lord Justice-Clerk (Hope) in the case of Hutchison *v.* Fraser in 1858 is, I think, quite correct, that, towards the solution of the question of acquisition or retention of a settlemeat by residence, any inquiry into the intention of the pauper is irrelevant."

Observed by Lord Neaves—"It would be difficult to give a definition of the words 'continuous residence.' In each case a meaning must be given them in accordance with the ordinary course of human affairs. One thing is certain, personal presence is requisite; residence *animo* only will not do. But a man may be continuously resident in a parish without being constantly present. It is not easy to say what amount of absence will destroy the continuity of the residence."

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59. William Cochrane (Inspector of Liberton) *v.* David Kyd (Inspector of Barry) and George Gunn (Inspector of Cramond), June 16, 1871.—9 M. 836; 43 *Jur.* 457; 4 *P. L. M.* 547.

Computation of Time.—Held, where a pauper received relief on 4th January at mid-day for the following fortnight, that the fortnight included the 4th of January and ended at midnight of 17th January.

The facts were—A man, born in the parish of Barry, acquired a settlement in Cramond by residence there for five years prior to 1862, when, with his wife and children, he left that parish, and never afterwards returned to it. He afterwards received relief from the parish of North Leith from 30th August 1864 till 4th January 1865—the relief granted on the latter date being for the "ensuing fortnight." The advances made by North Leith were repaid by Cramond, on the ground that the pauper still re-

tained his residential settlement there. Thereafter, in 1866, he deserted his wife and children, who, on 18th January 1869, received relief from the parish of Liberton. In a question between Barry and Cramond, it was held that Barry, as the parish of birth, was bound to repay the advances made by Liberton, Cramond being liberated from responsibility, the residential settlement there having been lost or at least its retention being impossible, in respect that four complete years had expired between midnight of the 17th January 1865, when the relief granted by Cramond on 4th January—the day of granting being included in the fortnight—and the 18th January 1869, when Liberton administered relief.

Note.—It was expressly stated that this judgment was given without either impeaching or supporting the authority of Johnston *v.* Black (*supra*, p.293).

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60. John Milne (Inspector of Lumphanan) *v.* Samuel Ramsay (Inspector of Kincardine O'Neil), May 23, 1872.—10 M. 731; 44 *Jur.* 435; 5 *P. L. M.* 460.

Continuity of Residence.—Held that occasional absences during a residence in a parish of six years, during which absences the wife and family of the pauper continued to live in the parish maintained by him, did not interrupt the continuity of residence, and, therefore, did not prevent the acquisition of a residential settlement.

The facts were—The pauper, who was born in 1835 in Kincardine O'Neil, went, on 1st August 1863, with his wife and family to the parish of Lumphanan, where he worked as a journeyman shoemaker, and occasionally as a farm labourer, and in which parish he had a house in which his wife and family resided continuously down to 6th August 1869, when the pauper became chargeable. During this period, from 1863 to 1869, the pauper himself was occasionally absent from Lumphanan. In 1864 he worked for six months in Kincardine O'Neil, frequently remaining there all night, and frequently returning to his wife and family at Lumphanan. In 1866 he was absent for ten weeks on an engagement in a parish eighteen miles distant from Lumphanan, and, during that time, visited his wife only twice. In 1868 he worked for six months in Cluny, eight miles from Lumphanan, returning home for a night weekly or fortnightly, and he was absent in another parish a further period of some weeks during the harvest of 1868. In these circumstances, the question arose whether he had acquired a settlement by residence in Lumphanan. The Court held that he had.

Observed by the Lord Justice-Clerk—"When a man works in one parish, but has his house and his home in the next, he of course resides in the latter. But many occupations require periods of absence from home. But still, as long as the absence is temporary in its nature, and the intention to return coincides with the maintenance of the house and family in the other parish, the continuity of industrial residence is not interrupted. The principle of the law of settlement is, that the parish which has had the benefit of the pauper's industry and of the fruits of it, while he was able to support himself, should be charged with his aliment when he becomes unable to do so."

Observed by Lord Cowan—"The man's position, while absent, is of great importance in cases of interruption by absence. Where absence upon a special contract has been sustained as causing interruption, it was with regard to a servant going to a neighbouring parish for a year on an engagement. In such a case the continuity of his residence is certainly destroyed. But this was not an absence of that character. The man's business was that of a shoemaker. He entered into the engagement when trade was slack, but it was of a temporary character, and at its termination he returned to his wife and family, and resided where he had lived before."

Observed by Lord Neaves—"The basis of the argument for Lumphanan Parish is, that it is of no importance that the pauper's wife and children resided continuously in that parish. But that fact is clearly of vital importance. If the cases of the sailor and the fisherman, referred to in the argument, had been without that element, it would have been very difficult to sustain the plea that their families had acquired a residential settlement. The true question is, where was this man's home?—not, where was his domicile? In coming to a conclusion on that point, we must necessarily be influenced by the inquiry, where his wife and family resided, and where his earnings were remitted to and spent? Where men must, in consequence of the nature of their occupations—such as railway guards or commercial travellers—lead a migratory life, their true residence must be decided by the question of their *animus residendi*, and that parish must, in general, be liable in a pauper's relief in which the proceeds of his industry have been spent."

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61. George Campbell (Inspector of Old Monkland) *v.* Donald M'Lennan (Inspector of Contin) and Thomas Robertson (Inspector of Bathgate), November 12, 1872.—1 *P. L. M.* 89.

Acquisition of Residential Settlement.—A female pauper, born in

Contin, became chargeable to Old Monkland in 1871, the year in which her husband died. She had resided with her husband in Bathgate from 1863 to 1869, during the whole of which period their house was in that parish. There was a conflict of evidence as to where the husband worked for four months between October 1864 and February 1865. Held (by the Lord Ordinary—Gifford) that Bathgate was liable.

Observed by the Lord Ordinary—"Even if four months' absence at work in Airdrie had been proved, there would remain a delicate legal question, whether, in the circumstances, it was sufficient to interrupt the acquisition of a residential settlement, seeing that all the time the husband's only house and furniture were in Bathgate, and his wife remained there all the time. . . . The Lord Ordinary inclines to think that the absence of four months, in such circumstances, would not be suficient to interrupt, but he prefers to rest his judgment on the pure question of fact."

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62. William Jackson (Inspector of Abbotshall) *v.* William Robertson (Inspecfor of Leslie), January 7, 1874.—1 R. 342; 2 *P. L M.* 81.

Residence—Sailor.—A sailor, whose wife became insane, boarded his wife in the house of a friend, where, in the intervals of his voyages, he paid her occasional visits, on these occasions paying separately for his own board and lodging. He had no house or room in the parish himself, and did not pay in any way for accommodation for himself when absent from the parish. Held that, though this continued upwards of five years, it did not constitute continuous residence in the sense of the 76th section of the Act of 1845.

Observed by Lord Ardmillan—"I am still of the same opinion which I expressed in the cases of Greig and Moncrieff, but I think it would be most unfortunate if these decisions were misunderstood and misapplied in cases where the facts and circumstances are different. I still think that if a sailor has a house on shore, where his wife and children reside, and where they are maintained by him, it is quite possible for that sailor to have a residential settlement. The facts in this case are by no means of such a nature as to justify the application of the law enforced in these cases."

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63. S. D. Simpson (Inspector of South Leith) *v.* —— Reid (Inspector of St. Ninians), February 27, 1874.— 2 *P. L. M.* 193.

Residence in Charitable Institution.—A person, who had immediately before been on the roll of paupers in a parish, was admitted to an institution for the "reception, residence, and entertainment of indigent or reduced men of advanced age, who may be destitute of the means of subsistence, and incapable of procuring means of industry." The asylum was situated in the parish of A., where the pauper, who was a foreigner, remained for five and a-half years, supported in the establishment, not doing anything for his own maintenance, but not chargeable on the rates of the parish. He was ultimately dismissed from the asylum for misconduct, and became chargeable on B. Held (by the Sheriff-Substitute of Stirlingshire) that residence in the asylum situated in A. did not import a residential settlement in that parish.

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64. Thomas Allan (Inspector of Cambusnethan) *v.* John Shaw (Inspector of Kilbarchan) and James King (Inspector of Shotts), February 24, 1875.—2 R. 463; 3 *P. L. M.* 189.

Continuity of Residence—Interruption.—A miner, who lived in the parish of A. with his wife and family, in the house of his father-in-law, went to work in the neighbouring parish of M., and visited his wife on Saturdays only, but after about two months took a house in M., and removed there with his wife, and having remained in M. for a month, then returned to A.;—Held that the continuity of his residence in A. had been interrupted.

The facts were—In October 1871 Charles Hood, with his wife and children, became chargeable to the parish of Cambusnethan. Hood died on 30th October 1871, and his widow and children continued to be supported by the parish. Hood had been born in Kilbarchan, and he resided and worked as a miner in the parish of Shotts from July 1861 to December 1861. He then left Shotts for Gascadden, in the parish of Old Monkland, staying there only a fortnight, and returning thereafter to the parish of Shotts, where he resided until 9th July 1863, being in the meantime married in May 1862. After his marriage he resided in a room which he rented and furnished in his wife's

father's house in the parish of Shotts. In July 1863 Hood went to Rosehall, in the parish of Old Monkland, to work as a miner. While there he for some time returned to Shotts on Saturdays to visit his wife, who remained in her father's house in the room rented by her husband, but, after two months, he took a house in Rosehall to which he removed his wife and furniture. He remained at Rosehall until 2d October 1863, when he returned to Shotts, residing first in his father-in-law's house as before, and afterwards in houses rented by himself, until 25th October 1866, when he removed to Cambusnethan, and resided there until 24th July 1867. The question came to be, whether the pauper's residence in Old Monkland interrupted the continuity of his residence in Shotts, and prevented the acquisition of a settlement in that parish.

It was held that the continuity of his residence in Shotts had been interrupted.

Observed by Lord Neaves—"Whenever it is clear that a pauper had for some time, long or short, entirely given up his residence in a parish, it is of little importance how soon he may go back to it, for, in my opinion, the continuity, if once interrupted, cannot be restored; and when a person residing in one parish transports himself by a plain overt act into another, and there goes on working, as he did in the parish he had left, that, I think, should be held as a severance from the one parish and the adoption of the other."

Observed by Lord Ormidale—"Mere intention, as manifested by words only, and not carried into action, can have no effect in acquiring or losing a residential settlement."

Observed by Lord Gifford—"Speaking generally, I think continuous residence will be interrupted when the residence of the pauper in a parish has been so severed and put an end to, that he no longer belongs to that parish, but to a new parish. I do not think it turns so much on the mere duration of personal absence, although that may be an element. In the case of a man flitting with his family and furniture, and taking up a new residence and new employment in a different parish, there is almost as complete a severance the first day as after a lapse of time; at least, a very short time indeed will do. It is like cutting a chain; it does not matter how many links are taken out—the complete removal of one link will sever continuity as well as the removal of many, and so I rather look to the nature and character of the absence or non-residence than to its mere duration. And the change of residence is always of more importance than mere personal absence. Indeed, personal absence, even for a considerable time, will not interrupt continuity of residence, if the house

or residence is maintained, or if the absence is only incidental to the residence."

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65. Peter Beattie (Inspector of Barony Parish of Glasgow) *v.* A. L. Smith (Inspector of Hamilton) and W. S. Paterson (Inspector of Cardross), October 25, 1876.—4 R. 19; 4 *P. L. M.* 642.

Continuity of Residence—Interruption.—(1) Circumstances in which held that absence for a few months did not interrupt the continuity of residence; and (2) opinion that an element in such a question is, whether there has been any indication of intention to return, or not to return, to the disputed parish.

The main facts brought out in evidence appear in the opinion of Lord Deas. The Court held that, in the circumstances, continuity of residence was not interrupted.

Observed by Lord Deas—"Miller, who was by trade a mason, became a resident in the parish of Cardross in May 1862. In the end of 1866 he was still residing in that parish. He tenanted a house in Levenhaugh Street, Dennyston, which is in the parish of Cardross. The furniture was his own. In December 1866 or January 1867 he had a quarrel with his wife, and left her without money, and without informing her where he was going. In January he got a job at Arrochar from Mr. Duncan, builder, Dumbarton, who had been one of his usual employers in the execution of contracts in different parts of the country. Miller continued at that job in Arrochar till May. His wife remained, in the meantime, for about three weeks, in the house in Levenhaugh Street. At the end of that time she locked up the house and furniture, took the key with her, and went to Dumbarton, on the opposite side of the River Leven, and in a different parish, in order, apparently, to find the means of subsistence. She hired a furnished room in Quay Street, Dumbarton, where she supported herself by her labour till April, when she heard that her husband was in Arrochar, and forthwith joined him there. They remained together there for about six weeks, when, the job being finished, they returned to Dennyston. They could not resume possession of the house there, because their lease of it had just expired, and the furniture had been sequestrated for non-payment of the rent. They, consequently, went into lodgings in Dennyston. In the following September they paid some money to the factor, and came to an arrangement by which they got back their furniturne. Soon after they took another house in Bridgend, Dennyston, and it was not disputed that, unless the period of

absence in Arrochar fell to be deducted, the residential settlement was complete. . . . It can hardly be doubted that, according to the course of decisions, the intention of a man to retain or abandon his residence is to be held an element to be taken into account in such cases, and that the mere fact of his bodily absence, though for a considerable period, is not of itself conclusive that the continuity of the residence has been broken. I fully admit that the mere intention to return will not of itself preserve the continuity, and that, on the other hand, the length of absence may be such as in some cases to prove of itself that the continuity has been effectually broken. But, in the present case, I think the pauper retained his connection with the parish."

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66. George Alexander Cruickshank (Inspector of Lonmay) *v.* James Greig (Inspector of St. Fergus), January 10, 1877. —4 R. 267; 5 *P. L. M.* 153.

Continuity of Residence—Interruption.—Circumstances in which held that habitual working on half-yearly engagements in neighbouring parishes, and sleeping at the places of work, did not destroy a residential settlement previously acquired, a house and family being maintained by the pauper in the parish of residential settlement, and these being periodically visited by the pauper.

The facts were—The pauper, Gordon Webster, was born in Lonmay. He came to St. Fergus in 1842, and took a house there in 1847, and remained tenant of a house in that parish from that year to the date of chargeability. From 1847 to Whitsunday 1866 his personal residence in St. Fergus was constant and uninterrupted. From Whitsunday 1866 to the date of chargeability he was, with the exception of from Martinmas 1867 to Whitsunday 1868, Whitsunday to Martinmas 1871, and Martinmas 1874 to Whitsunday 1875, engaged as a farm labourer in neighbouring parishes on half-yearly engagements. During the three exceptional periods, Webster resided in his own house in St. Fergus. The farms on which he was engaged during the rest of the time were distant from St. Fergus from two to six miles, and it was his custom to go home regularly every fort-night, from Saturday night to Monday morning, and sometimes oftener. His first wife died in 1860, and his sister then took charge of the house and family in St. Fergus until 1873, when he married a second wife, who took charge of the household from that date to the period of chargeability.

The Court held that the settlement which the pauper had

acquired by actual personal residence in St. Fergus from 1847 to 1866 was not lost by his subsequent absences, and, therefore, that St. Fergus was liable in his support.

Observed by the Lord Justice-Clerk—"The constant personal presence of a man is not essential to the acquisition, and much less to the retention of a residential settlement, if the man's home was truly in the same place, as here beyond doubt it was."

Observed by Lord Gifford—"It will always be difficult to make out a breach of continuity of residence when the man has all along kept a house in the parish, and has had no other house anywhere else. His family is there, his *lares et penates* are there. This pauper never had another home, as one cannot call a bothy a home."

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67. William Watson (Inspector of Boharm) *v.* W. S. Caie (Inspector of Forglen) and James Macdonald (Inspector of Keith), November 19, 1878.—6 R. 202; 7 *P. L. M.* 148.

Industrial Settlement—Interruption.—A pauper had been deaf and dumb from her birth, and likewise suffered great bodily weakness, the result of an accident in childhood. She was, further, irritable in temper, and lazy in disposition, so as to be quite incapable of earning her livelihood, although she had been in service for a time. She had been an inmate of a deaf and dumb institution for some years, and had subsequently been taught dressmaking; she could answer, by means of a slate, questions put to her by the Sheriff, with fair intelligence. She resided with her aunt, her mother being at service. In order to prevent the acquisition of a settlement in the parish where the aunt resided, the chairman of the board, who was also factor for the aunt's landlord, suggested her removal to the house of a cousin in a neighbouring parish. She remained with the cousin for eleven months, and then returned to her aunt, where she became chargeable. Held (1) that her mental condition was not such as to render her legally incapable of acquiring a settlement by residence; and (2) that her absence for eleven months did not, in the circumstances, interrupt the continuity of her residence.

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68. James Roger (Inspector of Rhynie) *v.* James Harvey (Inspector of Gartly) and John Morison (Inspector of Clatt.)

Alexander Simpson (Inspector of Kincardine O'Neil) *v.* William Kennedy (Inspector of Coull), December 21, 1878.—6 R. 446; 7 *P. L. M.* 201.

Continuity of Residence—Where Pauper's Family resided in Parish different from that where Pauper worked.—A farm labourer took a house within a parish in which, and in neighbouring parishes, he worked for nearly thirty years. His wife and family continuously resided there, but he only returned home for the Saturday or Sunday, every two or three weeks. His engagements were never sufficiently long in the parish, where his house was, to found a settlement based upon personal residence, but he was at one time long enough engaged in another parish to give him such a settlement. Held that the circumstances of the case were not distinguishable from those of Cruickshank *v.* Greig, Jan. 10, 1877 (*supra*, p. 328), and that a residential settlement had been acquired in the parish where the pauper had his house.

Observed by the Lord Justice-Clerk—"It has been often said in these cases, and it cannot be too steadily kept in view, that these provisions in the Poor Law Act as to settlement, are provisions of positive law, and that they do not carry out any natural or moral obligation. There is no natural or moral obligation on a man, simply because he lives in a particular ecclesiastical division, to support another man who lives or was born in the same ecclesiastical division. It is in vain to look for any judicial principle in cases of settlement, the only legitimate question being, what has the statute provided? . . . Something like a principle has sometimes been evolved from the provisions of the Poor Law Act, viz., that the parish which has obtained the fruits of a pauper's earnings is liable for his support. I think the principle is somewhat fanciful, because, when we come to the case of a birth settlement, the liability of the parish of birth depends in no degree on any benefit derived from the pauper's industry, but is matter of positive enactment, and that solely because it is essential to have some law by which a radical and ultimate liability should be established. But it is plain that equity, if we are at liberty to take equitable considerations into view at all, is against the parish of residence. So far from thinking that the balance ought to be against the parish of birth, as has been sometimes contended, I should rather be inclined to lay down the contrary rule, viz., that the presumption ought to be

against the parish of residence. Looking to the common sense of the matter, the pauper, in each of the cases before us, has been the tenant and occupant of a house in a particular parish for upwards of twenty years. That looks very much as if he resided there. But it is contended that, because he worked outside that parish, the parish of his birth must be liable. Now, keeping in view the decisions in Greig *v.* Miles and Simpson, 5 M. 1132, and Cruickshank *v.* Greig, 4 R. 267, I do not think that contention can be successfully maintained. I think, that if a man maintains a house where his wife and family reside, and whither he himself returns when his avocations permit, that house is in general his residence in the sense of the Poor Law Act. I do not say that the case of a farm labourer is necessarily identical with that of a sailor, for a sailor, while at sea, cannot possibly acquire a settlement, if the house in which his wife and family reside is not to be regarded as his residence. In the case of a labourer it is perhaps more a question of circumstances, and less may suffice to retain a settlement than to acquire one. To hold that a man resides where his wife and family are, is, I think, the general rule, though there may be cases to which it does not apply. But I am clearly of opinion that the rule does apply to cases like the present, where the paupers have all along worked in neighbouring parishes, and returned to their homes at short intervals."

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69. Alex. Stark (Inspector of Denny) *v.* Peter Beattie (Inspector of Barony Parish, Glasgow), May 23, 1879.—7 *P. L. M.* 353.

Constructive Residence.—R. left B., his parish of residence, owing to ill health, in February 1872, and went to the parish of D. His wife, with her family, continued to live in B., in the husband's house, of which he took a new lease after he had himself left. He did not get regular work till the 6th of June 1872, when he undertook an employment different from that to which he had been bred. He himself never returned to B. In August 1872, his wife and family removed to D., where R. then took a house, where he continued to live till his death in April 1875. His wife received parochial aid from D. in April 1876. Held that R. was constructively resident in the parish of B. down at least to the 6th of June 1872, and that B. was therefore liable in payment of the relief advanced by D.

Observed by the Lord President—"There has been some con-

fusion in reading the cases which have occurred on the 76th section of the statute, arising from not distinguishing between the construction of two words in that section. There is a series of cases—the earlier of the two series well known to your Lordships—which turned upon the construction of the word 'continuously.' In these cases it was held that a man might be absent from a parish, and yet that that break of continuity might not be sufficient to prevent the acquisition of a settlement under the statute; and the principle upon which this opinion proceeded was, that the word 'continuously' must be read in a reasonable sense, according to the habits of human beings and ordinary life, because absolute continuity of residence can hardly be affirmed of any human being—that, during the absence of the person, he was not to be held as resident in the parish, but that his absence, being of an accidental and temporary character, ought not to be taken into account. It did not proceed on the ground that, although absent, he was to be considered as still resident; on the contrary, it assumed the opposite, that he was absent and therefore not resident. There is another class of cases, in which the word 'residence' is the word which was to be construed. In these cases, it was held that residence does not mean actual residence, but that there may be constructive residence; and, I presume, although the case has never occurred, that the residence may be constructive during the whole five years for anything there is in principle to the contrary. . . . It is said that all the length this interpretation of the statute has gone is, that in acquiring a new settlement, the residence may be constructive, but that the same rule does not apply to loss by non-residence. There is, perhaps, at first sight, some colour given to this view by the opinions of some of the Judges in Crawford and Petrie *v.* Beattie. I have not much sympathy with this opinion, because, as I observed in that case, and will now take the liberty to repeat, 'it would be against all the principles of construction to hold that the same term is used in different meanings in the same section, unless there be something in the scope and purpose of the section itself, or of the context, to manifest the intention of using it in different meanings. But so far from that being so, it is clear that it would be most unreasonable that residence, of the kind which is necessary for retaining a settlement, should be of a different kind from that which is necesary for acquiring a settlement. Five years are necessary to acquire a settlement, and residence for one year out of every succeeding five is necessary to retain a residential settlement; and the residence in the one case and in the other must be of the same kind."

XI.—ACTIONS AND JUDICIAL PROCEDURE.

1. William Paton *v.* Patrick Adamson, November 20, 1772.—M. 7669 and M. 10577.

Jurisdiction of Sheriff as to Amount of Aliment.—In an action before the Sheriff of Roxburgh between two parishes for the aliment of an indigent person, the Sheriff fixed, not only which of the two parishes was liable, but modified the amount of the aliment. The judgment of the Sheriff as to the liability of the parish of residence was acquiesced in, but a reduction having been brought of his judgment, *quoad ultra*;—Held that the Sheriff had exceeded his jurisdiction in fixing the amount of aliment, which, by statute, belonged to the ministers, elders, and heritors of the parish.

Note.—The same point was decided in the case of Jane Gray *v.* the Heritors of Lassuden, January 22, 1777; 5 Brown's Supplement 538.

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2. John Paton (Collector of the Poor's Funds, Greenock) *v.* John Jardine, July 1, 1794.—Bell's Cases 51.

Competency.—Held that a suspension of a charge by the collector of poor rates was not a competent form of process for trying the general question as to the right of levying the rates, and the mode of applying the fund so raised.

Note.—The ground of this judgment was, that the proper parties between whom the general question could be decided were not in the field.

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3. Robertson *v.* Heritors of Buncle, 1795.—Dunlop's Parochial Law, 395.

Competency.—Held that an advocation of a judgment of a Sheriff

awarding aliment was competent, though the sole ground of advocation was, that the sum awarded was inadequate.

Note.—This case cannot be regarded as of any authority, the point having been otherwise determined.

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4. Heritors of Abbey Parish of Paisley *v.* William Richmond and Others, November 29, 1821.—1 Sh. 177.

Jurisdiction of Sheriff.—A petition by 825 able-bodied men claiming relief as poor, "in respect of their situation, arising from the stagnation of manufacturing employment," having been refused by the heritors and kirk-session, to whom it was presented, and an application having been then made to the Sheriff of Renfrewshire to ordain the heritors and kirk-session to grant the prayer of the petition, the Sheriff sustained the jurisdiction, but in an advocation, the Court, by a majority, held that the Sheriff had no jurisdiction.

Note.—An opinion was indicated by several of the Judges that, if the heritors and kirk-session had refused to meet and to take the petition into consideration, a complaint to the Sheriff would have been competent to oblige them to do so, but the majority were agreed that he had no power to review their decision.

By the statute of 1845 it is obligatory upon the inspector and the parochial board to entertain, and dispose of, all applications for relief, whether from able-bodied persons or not; and a person refused relief upon any ground has right of appeal to the Sheriff.

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5. Luke Higgins *v.* Heritors and Kirk-Session of Barony Parish of Glasgow, July 9, 1824.—3 Sh. 239.

Review of Kirk-Session.—Held that although the proceedings of the heritors and kirk-session, whether regarded as a court or as a parliamentary board, could not be reviewed by any inferior judicature, they were subject to the control of the Supreme Court.

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6. Janet Telford *v.* Kirk-Session of Ancrum, March 10, 1826.—4 Sh. 545.

Competency.—Held that a petition and complaint to the Court of

Session, that the heritors and kirk-session had refused to give judgment on an application for aliment made to them by the petitioner, who was a pauper, was competent.

Note.—Appeal is now competent to the Sheriff alone in the first instance.

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7. J. Boyd *v.* J. Shaw (Collector of Falkirk), February 23, 1827.—5 Sh. 413.

Declarator—Competency.—The tenant of a farm in the parish of Falkirk, who had been assessed for poor rates on the rent of his farm, and afterwards decerned against for the amount of the rate, having raised an action against the collector of the parish, concluding (1) for reduction of the decree; and (2) for declarator "that the pursuer is not liable to be assessed for poor rates, conform to the said gross rent of his farm, as a standing rule of assessment; but that he is liable to be assessed for his proportion of poor rates, along with the haill inhabitants of the parish, according to their means and substance, wherever situated," and the defender having consented to decree of reduction, stating that he considered the mode of assessment unjust;—Held that the question in dispute was exhausted by the decree of reduction, and that there being no parties before the Court who had interest in the second conclusion, the action, so far as relating to it, fell to be dismissed.

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8. Heritors and Kirk-Session of Glassford *v.* R. Orr, July 10, 1827.—5 Sh. 921; July 9, 1831; 9 Sh. 928; 3 *Jur.* 605.

Powers of Sheriff.—An application having been made to the heritors and kirk-session for relief to a destitute child, and they not having taken it into consideration, or given any deliverance thereon;—Held (1) that the Sheriff had jurisdiction to ordain the heritors and kirk-session to meet and consider said application; and (2) in an application by a third party, in whose hands a child had been left destitute by its parents, to have the heritors and kirk-session ordained to take it off his hands, that the Sheriff had jurisdiction so to ordain, or failing the kirk-session doing so, to ordain them to pay a sufficient aliment; and (3) that

an action having been raised against the minister and certain heritors of a parish, as representing the heritors and kirk-session, and the heritors and kirk-session having appeared as parties, they were not afterwards entitled to object that they had not been properly called.

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9. Morrison, January 14, 1831.—9 Sh. 269.

Competency of Action.—Held that claim for aliment by a pauper against a kirk-session should be enforced in the Sheriff Court, and is not competent, in the first instance, before the Court of Session.

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10. Duchess Dowager of Roxburgh and Others *v.* The Magistrates of Dunbar, June 2, 1831.—9 Sh. 669; 3 *Jur.* 465.

Title to Sue.—Held (1) that any heritor had a title to pursue an action to have it declared that the Magistrates of a royal burgh were bound to maintain their own poor, or otherwise, that the burden of maintaining the poor should be laid equally on the whole inhabitants in burgh, and to landward, according to their substance; and (2) that it was sufficient, in such an action, to call as defenders the Magis- and Council of such royal burgh.

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11. Roderick Matheson *v.* Heritors and Kirk-Session of Fodderty, December 22, 1831.—10 Sh. 183; 4 *Jur.* 212.

Competency.—Held that an action of relief raised in his own name by a third party, in whose house an illegitimate infant had been left by the reputed father, who had absconded, against the mother and the heritors and kirk-session, was competently brought, in the first instance, in the Court of Session.

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12. Adam Calder *v.* John Trotter, June 8, 1833.—11 Sh. 694; 5 *Jur.* 420.

Jurisdiction.—Held that the Court of Session alone had power to

review or alter the judgment of the heritors and kirk-session in relation to assessment, and that the Sheriff has no such power.

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13. Morris Pollok *v.* William Robertson, November 12, 1833.—12 Sh. 14; 6 *Jur.* 44.

Jurisdiction—Sheriff.—Held that the Sheriff had no power to review an order by the heritors and kirk-session of a landward parish as to the principle upon which the assessment for the poor should be levied, his duty being purely ministerial, and that the decree of the Sheriff, enforcing the order of the heritors and kirk-session, was not subject to advocation.

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14. Alexander Anderson *v.* William Muir, November 29, 1834.—13 Sh. 108; 7 *Jur.* 74.

Competency of Petition.—A petition was presented to the kirk-session of Dysart, praying that body to relieve the petitioner of the burden of supporting a child whose mother died during the absence of the father, and whom the petitioner had since nursed. The kirk-session refused the application. Thereafter a second petition addressed to the heritors and kirk-session was sent to the session-clerk, and by him laid before the kirk-session, which body refused to receive it, on the ground that it was addressed to the heritors as well as the kirk-session. The session-clerk refused to receive a third petition addressed to the "kirk-session and heritors," and thereupon a petition was presented to the Court, to have it found that the session-clerk was bound to receive the petition and lay it before the kirk-session and heritors;—Held that the session was not entitled to call a meeting of kirk-session and heritors, that being the duty of the minister, and petition therefore dismissed.

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15. Thomas Currie and Others *v.* Sir Norman Macdonald Lockhart and Others, January 24, 1838.—16 Sh. 351; 10 *Jur.* 219.

Title to Sue.—Held that paupers who were in receipt of an

allowance from a royal burgh, of which they were inhabitants, had no title, as such inhabitants, to pursue an action of declarator for having it found that the roll of the poor, the assessment and whole administration in a parish, partly landward and partly burghal, must be single and undivided, and that a distinct administration for the burgh and landward district separately was illegal, the ground of judgment being that the paupers, as such, were exempt from liability to assessment, and had therefore no patrimonial interest.

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16. Rev. William Black and Others, March 8, 1839.—1 D. 676.

Factor loco tutoris.—On the petition of a quorum of the committee of management of the heritors and kirk-session of a parish, to which a child in pupilarity having an interest in a fund *in medio* in a multiplepoinding, had become chargeable, a factor *loco tutoris* was, after intimation to an uncle of the infant pauper, appointed.

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17. The Kirk-Session of North Berwick *v.* George Sime, November 14, 1839.—2 D. 23; 12 *Jur.* 162.

Title to Sue.—In action at the instance of a kirk-session, the summons should be raised in the name of the individual members of the session *nominatim* for themselves, and as composing the kirk-session, the kirk-session not being a corporation.

Note.—The 57th section of the Poor Law Act of 1845 obviates the necessity for this mode in the case of actions by parochial boards, by providing that actions by a parochial board may be brought in the name of the inspector as pursuer, and in actions against the board, the inspector may be called as defender on behalf of the board.

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18. Archibald Watt *v.* William Knox, July 16, 1842.—4 D. 1535; 14 *Jur.* 595.

Competency.—Held that a suspension was competent of a charge for payment of a sum of poors' assessment, decerned for by

the Sheriff in a small debt action, in which the defence was, that the lands assessed were not within the parish in which the assessment was made, and in which the Sheriff, after a proof, decerned mainly on the ground of the use and wont of rating the lands in said parish.

Note.—The Court indicated an opinion that the main question as to the true situation of the lands ought properly to form the subject of an action of declarator.

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19. Elspeth Pryde or Duncan *v.* Heritors and Kirk-Session of Ceres, February 14, 1843.—5 D. 552; 15 *Jur.* 287.

Review by Court of Session—Held (in conformity with the opinion of the majority of the whole Court) that the Court of Session could competently review the determination of the heritors and kirk-session of a parish, as to the amount of relief awarded to paupers.

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20. Isabella Gunn *v.* Heritors and Kirk-Session of St. Cuthbert's, March 6, 1847.—9 D. 865; 19 *Jur.* 390.

Advocation—Competency.—Before the statute of 1845 came into operation, the heritors and kirk-session of St. Cuthbert's issued a deliverance on a pauper's claim for relief;—Held that an advocation of that deliverance, brought after the passing of the Act, was competent, though no declaration that there was a just cause of action had been obtained from the Board of Supervision, in terms of the 74th and 75th sections of the Act.

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21. Richmond Willock *v.* Christina Spreull or Rice, June 9, 1848.—10 D. 1259; 20 *Jur.* 462.

Refusal of Relief.—Held that where there has been a refusal of relief, either express or implied, a petition to the Sheriff praying for relief is competent.

The facts were—An Irishwoman, the widow of an Irishman, resident in Glasgow, where, however, he had acquired no settlement, applied about a month after her husband's death to the parochial board of the City Parish of Glasgow, for relief for her

two children, aged respectively four years, and twenty-two months. She received interim relief in two successive weeks, but was told by the inspector, that if the application was renewed she would be sent back to Ireland, and in the inspector's books the words "to go home to Ireland" were appended to the entries of the first two amounts paid to the applicant. No relief was given on the third week, and on the fourth she was threatened with removal to Ireland. She presented a petition to the Sheriff, under the 73d section of the statute, praying for relief to her children, on the ground that relief had been refused. After a proof, the Sheriff granted the prayer of the petition, and in a suspension at the instance of the parochial board, the judgment of the Sheriff was confirmed, on the ground, that there had been such constructive refusal of relief as to render the petition competent and necessary.

Observed by the Lord President—"The real evidence before us shows that, instead of trying the respondent's right to make a claim of permanent relief, the suspender took another course, which came to this—We shall not try deliberately the question as to the right of your children to permanent relief, for we shall remove you to Ireland at once. But, on no fair construction of the Poor Law can a pauper be put on the inquiry, whether she has a right to relief in such a way, and on such terms. The course followed by the inspector derives no countenance from the Act of Parliament. If the right of these children to permanent relief is to be raised, it must be deliberately raised and tried; nor is the applicant to be threatened to be sent out of the country in this way. The mode proposed was a most summary way, indeed, of disposing of the claim. . . . This summary way of dealing with paupers cannot be permitted."

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22. Richard Watson *v.* Alexander M. Adams, M.D., and John Miller, July 7, 1849.—11 D. 1263; 21 *Jur.* 502.

Suspension.—In a suspension brought by a party whose goods had been poinded for non-payment of poor rates, on the ground that he was not liable to assessment, and in which the suspender offered to consign the amount of the assessment, but refused to pay it;—Note passed, but only on payment of the rate, the respondents undertaking to repay, in the event of the reasons of suspension being sustained.

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23. The Edinburgh and Glasgow Railway Company *v.* John Meek and Others, November 23, 1849.—12 D. 153; 22 *Jur.* 17.

Competency.—Held that an action of declarator by a railway company against the inspectors of poor in all the parishes through which the line of railway passed, for the purpose of having it found that a certain mode of assessment was illegal, and of ascertaining the assessable value of the railway, and the proportions payable to each parish, was a competent action.

This was an action at the instance of the Edinburgh and Glasgow Railway Company, directed against the inspectors of poor of the twenty-three parishes through which their line passed, the object of the action being the ascertainment of the assessable value of the railway, and the proportions of assessment payable to each parish, as well as to leave a certain mode of assessment found illegal. One of the defenders—the inspector of the Barony Parish of Glasgow—pleaded *in limine* that the action was incompetent, in respect *inter alia*, (1) more than six parties, totally unconnected with each other, were convened in one action; (2) the summons sought to confine the whole of the parishes to one mode of assessment, while the Act authorised three, and (3) that it was the duty of the parochial boards in each parish to determine in the first instance the mode and amount of assessment, that decision being subject to review, and that it was necessary in order competently to raise the question, to bring a seperate suspension or reduction of the assessment in each parish. The Court repelled these pleas, and sustained the competency of the action.

Observed by Lord Fullerton—"When the case of the defenders is put on the general principle of the incompetency of a Court of mere review entertaining an action, declaratory of what the proper Court, *in prima instantia*, ought to do in a particular circumstance, I think the analogy is defective in one essential particular. The parochial board, though vested with certain statutory powers, is not properly speaking a Court at all. It is a Parliamentary board, having the power to assess and raise funds for a particular purpose—the support of the poor. It is, *quoad* the persons assessed, and the persons who claim the benefit of the assessment, a party; and, accordingly, there is no doubt, that whether the one set of persons or the other feel aggrieved by its resolutions, the redress is obtained by proceedings directed against the parochial board itself—a situation in which a Court, with jurisdiction in the proper sense of the term, never could be

placed. . . . Such being the relation between the parochial board and the ratepayers, I really can see, in principle, no incompetency in the latter raising questions in the form of declarator, which they might confessedly raise in the way of review."

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24. John Ferguson *v.* John Malcolm and Others, February 14, 1850.—12 D. 732; 22 *Jur.* 252.

Competency.—An action of reduction of a warrant to levy a sum of poor rates, deposition of search by the constable employed to execute the warrant, certificate of non-payment by the collector, and warrant of imprisonment proceeding thereon, having been raised against the collector and the constable, on the ground that the pursuer had already paid his assessment, and no further assessment for that year had been or could be legally imposed upon him;—Held (1) that the action was not excluded by the 81st section of the Act of 1845; (2) that it was not incompetent, although there were no petitory conclusions, and although the pursuer had been tendered payment of the alleged illegal exaction of rates; and (3) that the action as against the constable was unnecessary and incompetent.

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25. The Inspector of Strathmiglo *v.* The Inspector of Ceres and the Inspector of Abernethy, July 19, 1850.—12 D. 1306; 22 *Jur.* 604.

Competent Witness.—Held that a person who is assessed for poor rates in a parish, is not thereby disqualified as a witness in an action of relief against that parish.

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26. The Glasgow, Paisley, Kilmarnock, and Ayr Railway Company *v.* The Parochial Board of the Abbey Parish of Paisley, December 12, 1850.—13 D. 304; 23 *Jur.* 127.

Process—Suspension.—Held, (in First Division) in a suspension of a threatened charge for arrears of poor rates, that it was within the discretion of the Court to fix the conditions on which the note of suspension should be passed, payment of the full sum claimed not being a necessary condition.

Note.—The same question was raised in the Second Division and though not settled, opposite views were indicated, in Glasgow, Barrhead, and Neilston Direct Railway Company *v.* Parochial Board of the Abbey of Paisley, December 12, 1850.—13 D. 314; 23 *Jur.* 127.

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27. George Leys *v.* James Riddell, February 8, 1851.—13 D. 630; 23 *Jur.* 281.

Process—Title to Sue.—Held (1) that the collector, and not the inspector, is the proper person to raise diligence for recovery of arrears of poor rates, the provision of the 57th section of the Act, that the parish may sue or be sued in name of the inspector, being held inapplicable to a charge for arrears, and (2) that where two interim joint collectors of assessment had been appointed, one of whom, on their appointment, was to attend to the details of the collection, "and to act as collector," and the other "to act as treasurer," it was not necessary that the diligence be in their joint names, but in the name of the former only.

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28. Andrew Wingate and Others *v.* John Meek (Inspector of Barony Parish of Glasgow), May 21, 1851.—13 D. 972; 23 *Jur.* 448.

Process—Reduction.—Held (1) that ratepayers who had raised an action of reduction of an assessment for poor rates, imposed on means and substance, on the ground that it had been unequally imposed, were entitled to demand production of the assessment roll, and (2) that a committee appointed by the parochial board to manage the whole affairs of the board, were not entitled to refuse the other members of the board access to the books.

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29. William and James Pollok *v.* Alexander Petrie, June 26, 1851.—13 D. 1234; 23 *Jur.* 581.

Suspension—Grounds of Refusal.—In a suspension of a charge for poor rates brought by the owner and tenant of certain lands, on the ground that the lands had been overvalued—the surcharge being 7d. in the £ on £25, the amount of the alleged overvaluation in all being 13s. 10d.—Suspension re-

fused on the ground that it was not alleged by the suspenders that the valuation adopted by the parochial board had proceeded on a wrong principle, or that a gross error in point of fact had been committed, in either of which cases the Court would give redress.

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30. John Ferguson *v.* Dougald M'Ewen and John Gillespie, February 7, 1852.—14 D. 457; 24 Jur. 225.

Assessment Roll—Notice of Action.—A mercantile firm was entered in the assessment roll, made up in terms of the Poor Law Amendment Act, as chargeable with a certain amount of poor rates. This amount not having been paid, the collector entered in the list of defaulters the names of the two partners of the firm as each liable individually for one-half of the assessment, and thereafter the collector obtained a warrant of imprisonment against one of the partners, until the sum entered against him individually should be paid. An action of damages for wrongous imprisonment was thereupon raised against the collector, the ground of action being that the sum for which diligence had been used was not the sum entered in the assessment roll;—Held (1) that the assessment roll was the only rule under the statute for the levy of the assessment; (2) that the collector was not entitled, in his application against defaulters, to depart from the actual terms of the assessment roll as to the parties liable, and the sums for which such parties are so assessed, and that therefore the application for the warrant, and the warrant itself, were irregular in point of form; but (3) that the irregularity committed by the collector was in the execution of his duty under the Act, and that therefore the cause of action came within the 86th section of the Act, which requires one month's notice before the action is raised, and that the notice had not been competently given, in respect it was posted on the 4th July and not received by the collector till 5th July, while the action was raised on 4th August. The action was accordingly dismissed.

Observed by the Lord Justice-Clerk—"In the collection of a rate or tax, there is no warrant whatever for any levy or mode of procedure which deviates one iota from the rules prescribed by

the statute, however inveterate or convenient the practice, or however unnecessary, so far as can be seen, the observance of the statutory rules. This is a principle of the highest importance and authority, not only because the statute must be implicitly obeyed by the Court, but still more on the constitutional and broad principle, that, by an assessment, you take from another a portion of his property, which you have not the power to touch in any way, or to any extent, except in exact and rigid compliance with the rules in the statute, which alone authorises you to levy the rate."

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31. Allan Gilmour *v.* John Craig and Others, February 18, 1852.—14 D. 521; 24 *Jur.* 261.

Suspension—Competency.—Held (1) that a heritor and ratepayer of a parish could competently interfere, by way of suspension and interdict, to prevent persons not possessed of the statutory qualifications, from acting as members of the parochial board of said parish; and (2) that in such a process, the interdict being granted, the suspender is entitled to expenses though he had suffered no personal injury.

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32. Robert Haswell (Inspector of Foulden) *v.* James Fortune (Inspector of Ayton), June 26, 1852; 24 *Jur.* 555.

Homologation—Acquiescence—Mora.—In 1846 an action was raised in the Sheriff Court by the parish of A. against the parish of B. for relief of certain sums advanced for support of a pauper, alleged to have a settlement in B. Decree in favour of the pursuer was pronounced in April 1848, and, thereafter, B. paid the bygone aliment, and supported the pauper, and, after his death, his widow and children, until April 1852, when an action of reduction of the Sheriff Court decree was raised, on the ground that the judgment was erroneous, and the pauper's settlement had not been in B. but in A;—Held that, in these circumstance, the action of reduction was not barred by *mora*, nor by acquiescence and homologation.

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33. Rev. Robert Reid Rae *v.* Rev. Walter M'Lay, July 8, 1852.—14 D. 988; 24 *Jur.* 661.

Slander—Privilege.—In an action of damages for slander, in which it was alleged that the defender had, at a meeting of the parochial board of which he and the pursuer were both members, spoken of the pursuer's conduct in reference to a claim by him then under consideration by the board, as "mean, dishonest, and despicable;"—Held that the defender was not entitled to insist on an issue of malice being taken by the pursuer.

Observed by the Lord President—"In the present case I do not think the pursuer admits what can entitle the defender to an issue of privilege. The observations of the defender, if they are to be privileged, must be pertinent to the matter before the board. But there was no pertinency here in commenting on the pursuer's conduct."

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34. John Hay (Inspector of City Parish of Edinburgh) *v.* Henry Jack (Inspector of Dundee), February 15, 1853.—15 D. 388; 25 *Jur.* 234.

Action of Relief—Expenses.—An action having been raised by a relieving parish against three parishes, concluding that either one or other of them was liable in relief, and one having been found liable;—*Opinion* expressed that the pursuer was right in calling the three parishes, but held that the parish ultimately found liable in relief was not liable in the expenses of the other two parishes which had been called as defenders.

Observed by Lord Wood—"I do not wish to say anything against the practice of calling all the parishes, and holding the parish that is ultimately found to be wrong liable in all the expenses. But this can only be done in a case which has been conducted in such a way that the pursuer, after bringing all the parties into Court, himself goes out of the process, and leaves the competing parishes—one of whom is certainly liable—to fight it out among themselves. This is not the course that has been followed here, the case having been conducted as between the pursuer and Dundee."

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35. John Hay (Inspector of City Parish of Edinburgh) *v.* William Murdoch (Inspector of Huntly), January 19, 1854.—16 D. 364; 26 *Jur.* 172.

Proof of Birth—Ex post facto entry in Register.—Held, in a question as to the settlement of a pauper, that an entry in a parochial register, made by a session-clerk, who was not appointed until twenty-one years after the date of entry, was sufficient evidence of the fact of birth, being combined with a belief on the part of the pauper himself, and an independent statement by him that the entry had been made when he was about thirty years or age.

Observed by the Lord Justice-Clerk—"If it had been proposed by such an entry to establish a case of propinquity, to prove that a party was there and then born, and was the father of the person founding upon it, it probably would not be received, but for this particular case, I think we may think it sufficient."

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36. John Hay (Inspector of City Parish of Edinburgh) *v.* John Thomson (Inspector of St. Cuthbert's) and Charles Manson (Inspector of Thurso), June 23, 1854.—16 D. 994; 26 *Jur.* 541.

Action of Relief—Expenses.—An action of relief was raised against two parishes, the sole question being which of the two was liable. Judgment having been pronounced against one of these parishes, a reclaiming note was lodged, which was served upon the pursuer as well as the other defender. The pursuer attended the debate in the Inner House, but took no part in it. The Court having adhered, a motion by the pursuer for the expenses of the debate was refused upon the ground that the pursuers' appearance in the Inner House was unnecessary, the question at issue being between the defenders only.

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37. Alexander Gordon Garrow and Duncan Lamont *v.* Duncan Graham (Inspector of Kilfinichen and Kilvickeon), December 14, 1854.—17 D. 200; 27 *Jur.* 96.

Competency of Action.—A ratepayer, five months after the imposition of the assessment for the poor, raised an action of

reduction of the minute of the parochial board imposing the assessment, on the ground that the greater portion was imposed illegally for the liquidation of old debts, and also concluding for relief of so much of the assessment as was not required for the support of the poor. In defence it was pleaded that the action was incompetent in respect it fell within the provisions of the 86th section of the Act of 1845. This defence was repelled, and it was held that the minute sought to be reduced had not been passed "in execution of the Act," so as to exclude the reduction.

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38. The Advocate General *v.* Peter Beattie (Inspector of Canongate), January 29, 1856.—18 D. 378.

Jurisdiction—Crown.—The Advocate General raised proceedings in the Exchequer for the purpose of calling on the inspector of Canongate to show cause why an assessment imposed upon the master gunner in Edinburgh Castle, in respect of a dwelling-house occupied by him within the fortress, should not be set aside as incompetent and illegal in respect the said house was occupied for behoof of Her Majesty. The premises assessed were within the Castle of Edinburgh, which is a part of the annexed property of the Crown, and they were occupied by the master gunner, not for the purpose of public duty, but as his private residence;—Held in these circumstances that the assessment was imposed in respect of beneficial occupancy by an individual, and that the jurisdiction of the Court of Exchequer was excluded in respect Her Majesty's revenues were not affected, and that the proper way of testing the validity of the assessment was by process in the ordinary civil court, at the instance of the person from whom the assessment was sought to be levied.

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39. Alexander M'Laren *v.* Alexander Steele and Others, November 13, 1857.—20 D. 48; 30 *Jur.* 27.

Jurisdiction—Competency.—An action having been raised against the inspector of poor and the members of a parochial board as individuals for reduction of entries, of the entries in the assessment roll of the parish, so far as relating to the pur-

suer, and of subsequent proceedings to enforce payment of assessment and of a warrant of imprisonment, and further for damages for wrongous imprisonment, and the reductive conclusion not being opposed;—Held that the action so far as it concluded for damages was, in terms of the 86th section of the Act of 1845, competent only in the Sheriff Court, being founded "on acts done in execution of the statute," and that, though the summons contained reductive conclusions, which were alleged to be necessary in order to let in the conclusion for damages, this did not make the action competent, and that the proper course, in cases where reduction is necessary, is to sist procedure in the Sheriff Court to enable a reduction to be proceeded with in the Supreme Court.

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40. Colin Munro *v.* Daniel Graham, November 21, 1857.—20 D. 72; 30 *Jur.* 49.

Prescription—Illiquid Claim—Process.—A suspension having been brought of a threatened charge for payment of assessment, the suspender pleaded the triennial prescription and also compensation alleged to be due to him by the parochial board;—Held (1) that the statute 1579, c. 83, establishing triennial prescription did not apply to poor rates, these being wholly unlike the debts therein enumerated, and (2) that counter claims pleaded by way of compensation being *illiquid* and disputed, could not be given effect to.

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41. John Hay (Inspector of City Parish of Edinburgh), *v.* George Croll (Inspector of Perth) and Peter Beattie (Inspector of Canongate), February 5, 1858.—20 D. 507; 30 *Jur.* 272.

Action of Relief—Expenses.—In action of relief for aliment given at two distinct periods, the parishes of Perth and Canongate were called as defenders. The Lord Ordinary found Canongate liable for the first period and Perth for the second. Both defenders reclaimed against this judgment so far as adverse. The pursuer also reclaimed, and craved that if the Court relieved Perth, Canongate should be found liable for the second period also, and in this the pursuer was successful. In the question of expenses;—Held that the pursuer was

entitled to expenses only to the date of the Lord Ordinary's interlocutor.

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42. Edinburgh and Glasgow Railway Company *v.* Alexander Arthur (Inspector of Bathgate); Thomas Hislop (Inspector of Uphall); James A. Lewis (Inspector of Livingstone); and Thomas Hutton (Inspector of Kirkliston), February 24, 1858.—20 D. 677; 30 *Jur.* 344.

Action of Relief—Expenses.—In an action in which four defenders had the same ground of defence, but had lodged separate defences in which they were ultimately successful;—Held that the pursuers were liable only in one account of expenses, and the expense of a consultation between the defenders at the commencement of the action.

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43. The Magistrates of Glasgow, &c. *v.* The Forth and Clyde Navigation and the Assessor of Railways and Canals, November 30, 1858.—1 *P. L. M.* 282.

Appeal under Valuation Act—Procedure.—In an appeal against the valuation of the assessor of railways and canals;—Held that the appellants were not entitled to a proof of their averments of under-valuation; but a remit made to men of skill, selected by the Court, to inquire into and report on the matters in dispute.

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44. Angus Hugh Mackay *v.* John Chalmers and Others, February 5, 1859.—21 D. 443; 31 *Jur.* 243; 1 *P. L. M.* 399.

Limitation of Actions—Jurisdiction.—An action of damages having been raised by a former governor of a poorhouse against a committee of a parochial board, on the ground that in a report on the consumption and expenditure of the poorhouse, given in to the board by the committee, the pursuer was maliciously slandered;—Held that, even if the defenders had acted maliciously and without probable cause, the action was incompetent in the Court of Session, and that it fell within the limitation contained in the 86th section of the Act of 1845.

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45. Alexander Petrie (Inspector of Mearns) *v.* Charles Stewart Meek (Inspector of Barony Parish of Glasgow) and George Hunter (Inspector of Carmunnock), March 4, 1859.—21 D. 614; 31 *Jur.* 334; 1 *P. L. M.* 477.

Action of Relief—Expenses.—In an action of relief raised in the Sheriff Court by one parish against other two parishes, it being admitted that the pauper fell to be supported by one or other of the defenders, one of the defenders having been assoilzied by the Sheriff, the other advocated the cause, and the pursuer also brought an advocation of the cause so far as it was in favour of the other defender. The Court altered the decision of the Sheriff;—Held that the pursuer was not entitled to expenses in the Court of Session, on the ground that his advocation was unnecessary.

Observed by the Lord Justice-Clerk—"This is a point of practice of some consequence, because, if we were to give effect to the argument of the pursuer, the necessary consequence would be, that we could not decide almost any one of these poor law cases, without the appearance of three parties. The only question in this case was, which of the two defenders was liable? The only judgment the Sheriff could pronounce must be absolvitor of the one, and condemnator of the other. If we alter his judgment, we reverse the position of the defenders. If we adhere, they remain in the same position. I do not see any use, in these circumstances, of the pursuer being here at all."

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46. John Hay (Inspector of City Parish of Edinburgh) *v.* Peter Beattie (Inspector of Canongate) and George Hardie (Inspector of Linlithgow), July 12, 1859.—2 *P. L. M.* 82.

Action of Relief—Expenses—Co-Defenders.—One of two defenders was found liable in expenses to the pursuer, and to his co-defender;—Held (by the Lord Ordinary—Neaves) that, although the co-defender's interest was subsidiary, he was entitled to the expenses of attending the general debate before the Lord Ordinary, with the view of arranging the course of procedure; that he was not entitled to the expense of attending a proof on a question between the pursuer and the other defender, but was entitled to the expense of attending, when the proof and whole cause were debated before the Lord Ordinary; and, further, that

he was not entitled to the expense of attending a debate in the Inner House, on a reclaiming note against the Lord Ordinary's judgment on the proof alone.

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47. George Robertson (Inspector of Blairgowrie) *v.* David Melville (Inspector of Bendochy), February 24, 1860.—22 D 893; 32 *Jur.* 375; 2 *P. L. M.* 526.

Res Judicata—Small Debt—Decree.—The parish of A. raised an action in the Small Debt Court against the parish of B., for repayment of the aliment supplied to a pauper and her bastard child. B. was assoilzied. Some years afterwards, A. raised another action in the Sheriff Court against B., concluding for repayment of aliment for the same pauper and two additional illegitimate children, and for relief of future aliment;—Held, that the second action was not barred by the plea of *res judicata.*

Observed by Lord Deas—"The point of delicacy here is the alleged *res judicata.* If the first action had been an ordinary action in the Sheriff Court, concluding not only for past aliment to the pauper, but for relief from aliment in all time coming, I should have had great difficulty in saying that the judgment in that action was not *res judicata.* No distinction was taken in the argument, but I think it right to draw the distinction between an action of aliment brought in the Ordinary Sheriff Court, and an action of the same kind in the Small Debt Court. The latter decides nothing beyond the pecuniary claim of limited amount; whereas, in the Ordinary Sheriff Court action, the whole future aliment may be concluded for. The first summons here was brought by the one parish to be relieved by the other of past aliment to the pauper on the ground, of course, that she had a settlement in the defender's parish. In the second summons, conclusions are introduced for relief from future aliment. If the first summons had been of the same kind, I am not prepared to say that the objection would have been got rid of by introducing into the second summons a claim for the maintenance and support of the woman and her twin children, since born; because, although the children may be an aggravation of her poverty, entitling her to a higher aliment, it is the mother who is all along the pauper. I do not think it would be a safe distinction to say that the one summons was different from the other, because, in the one, something was said about the children, and in the other not. If both summonses had competently concluded for the aliment of the pauper in all time coming, I would have hesitated very much

before saying that the first action did not settle once and for all where the settlement of the pauper was, so long as she was a pauper. The ground, however, on which I think there is no *res judicata* is, that the first summons did not raise what may be called the question of *right*, the question of settlement. No doubt it was incidentally included; but the summons was expressly limited to £7, 0s. 2d., being advances made to the pauper during a certain period. The summons was brought under the summary jurisdiction of the Sheriff Court, which is limited to actions of a certain kind. It is competent under that jurisdiction to bring an action for aliment of a bastard child; but could decree in such an action fix the paternity on the father, and bind him to aliment the child in all time coming? I am not at all prepared to affirm that proposition. . . . The first summons was not brought in the Ordinary Sheriff Court for the past aliment, and for relief of future liability. The second action is of that nature, and I therefore hold that the decree in the first action is not *res judicata*."

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48. John Hay (Inspector of City Parish of Edinburgh) *v.* Peter Beattie (Inspector of Barony Parish of Glasgow), James Dunlop Kirkwood (Inspector of Govan), and George Greig (Inspector of St. Cuthbert's), March 15, 1860.—22 D. 987; 32 *Jur.* 420; 2 *P. L. M.* 596.

Action of Relief—Expenses.—In an action of relief, two parishes were called as defenders, and a third was called in a supplementary action. The first of the defenders of the original action was assoilzied, and found entitled to expenses as against the second defender, and after a proof between the unsuccessful defender in the original action, and the defender in the supplementary action, the latter admitted liability;—Held that the defender of the supplementary action was liable to the second of the defenders in the original action for the whole expenses of process, and to the pursuer for the expenses of the supplementary action, and of the conjoined process, but not for his expenses in the original action, neither of the defenders in which had been found liable, and, therefore, should not have been called.

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49. Alexander Grant (Inspector of Leuchars) *v.* Benjamin Reid (Inspector of Kincardine O'Neil) and James Miller (Inspector of Kilmallie), May 25, 1860.—22 D. 1110; 2 *P. L. M.* 628, and 3 *P. L. M.* 12.

Action of Relief—Expenses.—A relieving parish having raised an action against the alleged parish of a pauper's settlement, and thereafter a supplementary action against another parish which was ultimately found liable;—Held in a question of expenses, that the defender in the supplementary action was liable in expenses to the pursuer, and that the pursuer was liable in expenses to the successful defender in the original action.

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50. Angus Hugh Mackay *v.* Peter Beattie (Inspector of Barony Parish, Glasgow), July 19, 1860.—22 D. 1486; 32 *Jur.* 677; 3 *P. L. M.* 228.

Limitation of Actions—It is provided by the 86th section of the Act of 1845, "that all actions on account of anything done in the execution of this Act shall be brought before the Sheriff Court," and "within three calendar months from the fact committed." An action of declarator having been raised to have it found that the pursuer was governor of a poorhouse, and concluding for decree for salary and allowances;—Held that the statutory limitation of action did not apply.

Note.—The principle on which this decision proceeded was—that the limitation of actions provided by the 86th section, had no application to cases on contract, arising between an individual and the parochial board as such, but was meant to apply to cases in which wrong has been done by individuals, one or more, in the execution of the Act, such as might form the foundation of an action of reparation.

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51. Peter Beattie (Inspector of Barony Parish, Glasgow) *v.* John Gemmell (Procurator-Fiscal of the Lower Ward of Lanarkshire), January 24, 1861.—23 D. 386; 33 *Jur.* 191; 3 *P. L. M.* 333.

Lunatic—Sheriff—Jurisdiction.—In an application for commitment of a dangerous lunatic, under the 85th section of the

Lunacy Act;—Held that it was incompetent for the Sheriff, in granting the warrant of commitment, to find that the parish where the lunatic was apprehended, was liable *ad interim* for the lunatic's maintenance, or to decern against that parish for the expenses incurred under the application; but that his jurisdiction is confined to pronouncing an order of commitment in terms of schedule E. of the Lunacy Act, and that the liability of persons or parishes for the lunatic's maintenance, and for the expense of his apprehension, can only be determined in the ordinary tribunals, to whose common law jurisdiction such parties are subject.

Observed by the Lord Justice-Clerk, in dealing with the point raised as to the recovery of his expenses by the Procurator-Fiscal—"If a department of government resolves that what a statute says may be done by its officials shall be done by them, then that department of government must furnish the necessary funds. I have no doubt, that if the Lord Advocate thinks it expedient to instruct procurators-fiscal to apply for the commitment of dangerous lunatics, he will (as he undoubtedly is entitled to do) supply them with the necessary funds.

Note.—By section 15 of the Lunacy Act of 1867, such expenses are now chargeable against the parochial board.

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52. The Clyde Trustees *v.* Peter Beattie (Inspector of the Barony Parish, Glasgow), February 8, 1861.—3 *P. L. M.* 408.

Suspension—Obligation to Repeat—Expenses.—In a suspension of a poinding threatened by the collector of poor rates, the Lord Ordinary held the collector entitled to enforce payment without granting any obligation to repeat, in the event of the ultimate judgment of the Court being adverse to him, but the collector having, when the case reached the Inner House, tendered such an obligation, neither party was found entitled to expenses, in respect the conduct of each had been unreasonable.

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53. Peter Beattie (Inspector of Barony Parish of Glasgow) *v.* James Dunlop Kirkwood (Inspector of Govan) and Ebenezer Adamson (Inspector of City Parish of Glasgow), May 30, 1861.—23 D. 915.

Action of Relief—Expenses.—In an action by a relieving parish against two other parishes, in which one of the defenders had pleaded *mora*, which plea had not been withdrawn when the case was discussed on the merits in the Inner House;—Held that the pursuer had an interest to appear at the discussion in the Inner House, and expenses, modified at £5, 5s., awarded to him.

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54. David Fulton *v.* Alexander Dunlop and Others, May 31, 1862.—24 D. 1027; 34 *Jur.* 512; 4 *P. L. M.* 534.

Burial Grounds—Parochial Board—Interdict.—A petition having been presented to the Sheriff by certain persons who designed themselves members of the parochial board of the parish, praying the Sheriff under sections 9 and 10 of the Burial Grounds Act to designate a new burial ground, and setting forth as the ground of said application that the parochial board had on 23d November 1855, resolved that a new burial ground was necessary, but that they had taken no steps to provide one from that date down to the presentation of the petition, (February 1862). The parochial board alleged that a new burial ground had been provided, and therefore pleaded that the above sections of the Act did not apply, and consequently that the petition was incompetent. The Sheriff held the petition competent, whereupon the inspector of poor presented a note of suspension of the proceedings in the petition, and interdict against further procedure. The note was refused on the ground that the petition to the Sheriff was *ex facie* competent, and that nothing had been established showing its incompetency.

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55. John Baillie (Collector of Old Monkland) *v.* James Thomson. Glasgow Autumn Circuit, 1862.—5 *P. L. M.* 119.

General Warrant—Small Debt Jurisdiction.—The collector of poor rates for a parochial board, having brought a small debt

action against a ratepayer in arrear, the Sheriff-Substitute of Lanarkshire in giving decree for the amount of the assessment, refused to award the pursuer his expenses, on the ground that he disapproved of the course followed by the parochial board, in adopting the remedy of small debt actions, instead of a general warrant for recovery of arrears of assessment, and at the same time stated that he had laid down a general rule to this effect, which he would follow in all subsequent cases. This decision being appealed to the Circuit Court, it was held (by Lord Ardmillan) that the Sheriff-Substitute had thereby declined to exercise the jurisdiction with which the Small Debt Act had vested him, and that hence an appeal against his judgment to the Circuit Court of Justiciary was competent; and on the merits of the appeal, it was held that the Sheriff-Substitute was not entitled to interfere with the right of a parochial board to select either of the alternative remedies for recovery of arrears of assessment provided by the Poor Law statute, and, therefore, appeal sustained.

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56. Peter Beattie (Inspector of Barony Parish of Glasgow) *v.* John Baird (Inspector of Sorn), January 16, 1863.—1 M. 273; 35 *Jur.* 183; 5 *P. L. M.* 318.

Husband and Wife—Proof of Marriage.—In an action of the relieving parish against the parish of birth for advances made to a female pauper, the defence was that the pauper was a married woman, and that the parish of the husband's settlement was therefore liable. The marriage being denied, a proof was allowed, in which the pauper and her alleged husband both deponed that they had mutually accepted of each other as husband and wife, and had since co-habited as such;—Held that the marriage was not duly instructed, the depositions of the pauper and her alleged husband being contradicted by the rest of the evidence.

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57. Peter Beattie (Inspector of Barony Parish of Glasgow) *v.* David Leighton (Inspector of Polmont) and James Mitchell (Inspector of Larbert), February 20, 1863.—1 M. 434; 35 *Jur.* 260; 5 *P. L. M.* 372.

Action of Relief—Co-Defenders.—The parish of chargeability

brought an action against two parishes, alleging that either of them was the birth parish of the pauper, and liable as the parish of his settlement. Both defenders denied the birth, and alleged a residential settlement elsewhere. They refused to admit that either of them was bound to relieve the pursuer. They failed to prove the residential settlement. One of the parishes having been found to be the parish of settlement;—Held that the pursuer was entitled to decree for expenses against both defenders, and that the defender assoilzied was entitled to his expenses against the other defender, except the expenses incurred in the proof as to the alleged residential settlement.

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58. Thomas Neill *v.* James Y. Hamilton (Inspector of Gorbals), May 18, 1864.—2 M. 1081; 36 *Jur.* 529; 7 *P. L. M.* 16.

Inspector—Collector—Title to Sue.—Held (by the Lord Ordinary, Barcaple) that the collector, and not the inspector, is the proper party to levy assessments, and has the title to sue therefor.

Note.—Cases in reference to the general question of modes of levying &c., are properly raised by or against the inspector.

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59. James Sharp Tague *v.* Walter Smith, June 10, 1865.—5 Irvine 192; 38 *Jur.* 7.

Summary Procedure.—By the 80th section of the Poor Law Amendment Act of 1845, it is provided that certain persons therein specified may be prosecuted criminally before the Sheriff, and "shall, upon conviction, be punishable by fine or imprisonment, with or without hard labour, at the discretion of the said Sheriff." Held (in the High Court of Justiciary) (1) that in a complaint under said statutory provision, it is competent for the prosecutor to conclude for a limited penalty, so as to enable the case to be disposed of summarily; and (2) that he is not bound to conclude for "hard labour."

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60. John M'William (Inspector of Colmonell) *v.* John M'Bride (Inspector of Kirkmaiden), June 27, 1865.—9 *P. L. M.* 133.

Res Judicata—Recourse.—The parish of C. brought an action in

the Sheriff Court against the parish of K., for repayment of sums advanced to a pauper. K. was assoilzied, and the judgment of the Sheriff became final. The pauper afterwards again applied for and obtained relief from C. C. thereupon raised an action of relief in the Court of Session against K., concluding for payment of the sums advanced under the second chargeability, and for relief in future. Held (by the Lord Ordinary—Jerviswoode) (1) that this action was not barred by the previous decision in the Sheriff Court, and the plea of *res judicata* was therefore repelled; and (2) that an action of relief by one parish against another, is not excluded by the fact that the pursuing parish has not prosecuted the husband and father of the paupers.

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61. John Grozier (Inspector of Cathcart) *v.* James D. Kirkwood (Inspector of Govan), February 11, 1864, and December 12, 1865.—9 *P. L. M.* 239.

Parish Boundary—Title to Sue—Ratepayers.—An action was brought by the parochial board of one parish against the parochial board of another parish, for declarator that certain lands were situated within the pursuer's parish, and not within the defender's. It was held by Lord Ormidale that such an action was incompetent, and it was therefore dismissed. When the case came by reclaiming note before the Inner House, the Court, in order to obviate the objection, allowed the pursuer to call the ratepayers of the disputed territory by a supplementary action, and, on that being done, and the actions conjoined, the defender's plea of incompetency was repelled, but on payment of their expenses. On a proof being led, it was afterwards held by the Lord Ordinary, and acquiesced in, that the pursuer had failed to prove his averments, and the defender was assoilzied with expenses.

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62. Love and Others *v.* Campbell, February 6, 1867.—3 S. L. R. 214.

Suspension—Exemptions.—A suspension to interdict the collection of poor rates was raised by certain ratepayers against the parochial board of the parish, on the ground that the board

had resolved to grant exemption in a manner said to be illegal. The suspenders offered neither caution nor consignation, and the exemptions complained of had been allowed for several years without objection. The suspension was refused in the Bill Chamber, the Lord Ordinary (Mure) being doubtful of the title of the suspenders to try the question, at least in a suspension, and further holding that the note should not be passed, as neither caution nor consignation had been offered.

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63. George Greig (Inspector of City Parish of Edinburgh) *v.* James Miles (Inspector of North Leith) and Andrew Craig Simpson (Inspector of South Leith), July 19, 1867. —5 M. 1132; 39 *Jur.* 617.

Action of Relief—Expenses.—An action of relief having been raised against two parishes, the sole question in dispute being which of the two was liable in the pauper's support, and the Lord Ordinary having found one parish liable, and that parish having reclaimed;—Held that the pursuer was not entitled to the expense of attending the discussion in the Inner House.

Note.—The same point was decided in the case of Allan *v.* Burton and Higgins, February 8, 1868; 6 M. 358; 40 *Jur.* 188; 1 *P. L. M.* 320.

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64. Richard Banner Oakeley *v.* Colin Campbell (Collector of Ardchattan) and Others, November 6, 1867.—6 M. 12; 40 *Jur.* 10; 1 *P. L. M.* 263.

Warrant—Diligence—Justice of the Peace.—Held that a warrant for recovery of poor rates, granted in virtue of the 88th section of the Poor Law Act of 1845, and of 52 Geo. III. cap. 95, was effectual, and not subject to reduction on the ground (1) that it was signed by one Justice of the Peace only; or (2) that in the warrant the Act of George was referred to as cap. 93, instead of cap. 95, the reference to the Act not being necessary, and the mistake consequently immaterial.

By the 88th section of the Act of 1845 it is provided "that the whole powers and right of issuing summary warrants and pro-

ceedings, and all remedies and provisions enacted for collecting, levying, and recovering the land and assessed taxes, or either of them, and other public taxes, shall be held to be applicable to assessments imposed for relief of the poor, and the Sheriffs, Magistrates, Justices of the Peace, and other judges may grant the like warrants for the recovery of such assessments in the same form, and under the same penalties as is provided in regard to such land and assessed taxes and other public taxes," and the interpretation clause of the same statute provides that every word importing the plural shall be applied to one person or thing as well as several persons or things.

By the 13th section of the Act of 52 Geo. III. c. 95, it is enacted, that "in case any person or persons shall not pay the several sums charged upon him, it shall be lawful to or for the commissioners aforesaid, or for the Sheriff-Depute or Substitute for each shire or stewartry, and they are hereby required respectively, under the penalty of ten pounds sterling, upon certificate made to them by the sub-collector. . . . that such duties are resting owing, and not duly paid, to issue and grant a warrant under their hands for the said sub-collector recovering said duties by poinding and distraining the goods and effects of any person mentioned in said certificate." The collector of Ardchattan obtained a warrant against a ratepayer who had failed to pay, the warrant being signed by one Justice of Peace only, and containing an inaccurate reference to the Act of George III. Under this warrant some of the ratepayer's property was sold, and thereafter an action of reduction of the warrant and execution and for damages was raised.

It was held (1) that a warrant for recovery of poor rates proceeding under the foregoing provisions was valid, though signed by only one Justice of the Peace; and (2) that an error in the warrant in the reference to one of the statutes founded on was immaterial, such reference being unnecessary.

Observed by Lord Cowan—"With regard to the first objection, that Justices of the Peace are not entitled to sign such a warrant as that with which we are dealing, is, in my opinion, a plain misconstruction of section 88 of the Poor Law Act. That enactment was intended to enlarge the class or number of Magistrates by whom warrants for recovery of poor rates might be issued. As to the second objection—viz., that the signature of a single Justice is insufficient—I may refer to a case that lately came before the Justiciary Court, where a very similar question arose. In the case to which I refer—M'Creadie *v.* Murray, 22d March 1862, 4 Irvine 176—we held that a warrant of citation obtained under an Act which provided that the penalties incurred under it should be 'recoverable' before two or more Justices, might competently be signed by one Justice only. The

plain ground of our decision was, that the granting of a warrant was a purely ministerial act; and this is the character of the duty which, in granting the warrant before us, the Magistrate who signed it was called on to discharge. He had not to exercise any judicial function whatever."

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65. George Gillanders (Inspector and Collector of Rosemarkie) *v.* Sarah M'Leman or Cameron and Others.—February 17, 1869.—2 *P. L. M.* 458.

Competency — Adjudication. — Held (by the Lord Ordinary—Manor) that it is incompetent to sue in the Sheriff Ordinary Court for poor rates past due; and, further, an opinion indicated that adjudication is a form of diligence which cannot be resorted to for the purpose of satisfying a decree for arrears of poor rates.

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66. James Craig (Inspector of St. Cuthbert's, Edinburgh) *v.* Andrew Craig Simpson (Inspector of South Leith), July 7, 1869.—3 *P. L. M.* 15.

Witness—Competency.—In an action in which the question of settlement depended upon the proof of marriage by cohabitation and habit and repute;—Held (by the Lord Ordinary —Barcaple) that the alleged wife was a competent witness.

An action was raised by the inspector of St. Cuthbert's, Edinburgh, against the inspector of South Leith for recovery of advances to a female pauper. The question of fact upon which the case turned was, whether the pauper was or was not married, the marriage, upon which the defender relied, being alleged to have been constituted by cohabitation and habit and repute. A proof having been allowed, the first witness tendered was the pauper. She was objected to as an incompetent witness under the Act 16 and 17 Vict., cap. 20, which declares an alleged wife an incompetent witness in certain cases. It was answered that the exclusion of the wife as a witness by that statute applied only to consistorial causes. The Lord Ordinary repelled the objection, and admitted the witness, on the ground that the object of the action was primarily to determine a question of settlement, and not for the purpose of declaring a marriage.

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67. Andrew Steuart *v.* The ParochialBoard of Keith, October 16, 1869.—8 M. 26 ; 42 *Jur.* 2 ; 3 *P. & M.* 55.

Suspension—Declarator—Competency.—Held that an action of declarator by a single ratepayer to have the mode in which the parochial board shall make the deduction allowed by the 37th section of the Act of 1845 fixed is an incompetent form of process, the remedy of the ratepayer, who has been overcharged, being by suspension of the charge for payment.

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68. Henry M'Lachlan (Collector of Old Monkland) *v.* William Tennant, May 4, 1871.—2 Couper 45 ; 4 *P. L. M.* 455.

Valuation Roll—Competency.—In an action in the Small-Debt Court at the instance of a Collector of poor rates, the rent of the premises assessed upon being disputed, the pursuer produced the valuation roll as proof of the amount of rent, but the Sheriff-Substitute held that the defender could competently adduce evidence to show that the valuation roll was incorrect. In an appeal, it was held that, by the 33d section of the Valuation of Lands Act, the valuation roll was absolute and conclusive, and that therefore it was incompetent to adduce evidence to contradict it.

Observed by the Lord Justice-Clerk—"When it is already settled who are entitled to impose the assessment, on whom it is to be imposed, and the principles of the imposition, then the 33d section made it clear that the valuation roll is absolute and conclusive. I hold that, unless that were the case, the valuation roll, for its main purposes, namely, providing a specific and uniform value upon which all assessments should be taken up, would be entirely nugatory. It seems to me that the words of the 33d section were chosen for that purpose, and, therefore, it was entirely out of the power of the Sheriff-Substitute to go back upon the valuation roll when the assessment has once been legally imposed in terms of the money value found on the roll. If a party were improperly assessed under the Valuation Act, he had a specific remedy under the other clauses of the Poor Law Acts."

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69. James Donaldson (Trustee on the Sequestrated Estate of William Dickie & Sons) *v.* James White (Inspector and

Collector of Ferry-Port-on-Craig), September 8, 1871.—5 *P. L. M.* 25.

Bankruptcy—Trustee.—Held (at Perth Circuit by the Lord Justice-Clerk and Lord Deas) that it was incompetent for a collector of poor rates to sue the trustee on a sequestrated estate for the poor rates due by the bankrupts before their bankruptcy, the proper course being for the collector to rank on the estate as a creditor, and claim the rates as a preferable debt.

Observed by Lord Deas—"The bankruptcy statute was very plain in its provisions and in its object. The trustee had vested in him the whole estate, superseding all other diligence against it, and he was to divide it among the creditors who claimed, whether their claim was for a preference or a ranking as ordinary creditors for an equal dividend, and this arrangment was evidently made that creditors might not waste the estate by separate proceedings. Here the very opposite course was taken. . . . Was the defender (the trustee) to pay out of his own personal means? That could not be contended. Was he to pay out of the estate? If so, then any creditor could bring his action against the trustee; and instead of the estate being administered economically, it would be frittered away in expenses at the instance of each of the creditors. The trustee would be superseded in his duty of deciding upon the claims, would be constantly engaged defending actions, and nothing would be left in his hands to divide. . . . It was urged that this was a preferable claim; but there was, if possible, less reason for recovering a preference by action from the trustee. The trustee was bound to meet it out of the first of the funds set aside for division. . . . If a claim had been lodged, the trustee was bound to have adjudicated upon it, and if he sustained it, must have paid it at the first division of funds. If he had rejected it, the respondent (the collector) could then have properly resorted to the Sheriff by appeal in the mode prescribed by the bankruptcy statute. If the trustee had done nothing with the claim, then he was liable, on a petition and complaint, to be removed from office."

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70. Joseph Thomson *v.* The Parochial Board of Inveresk and John George Muir, November 30, 1871.—10 M. 178; 44 *Jur.* 107; 5 *P. L. M.* 136.

Jurisdiction.—Held (by the Lord Ordinary—Mackenzie) that the provision of the 86th section of the Poor Law Act that

"all actions on account of anything done in the execution of this Act shall be brought before the Sheriff Court, and every such action shall be commenced within three calendar months after the fact committed" did not apply to an action of reduction of the election of inspector of the poor, which was competently brought in the Court of Session.

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71. John Palmer (Inspector of Stirling) *v.* John Russell (Inspector of Dunoon), Alexander Ross (Inspector of Lochbroom), Murdoch M'Donald (Inspector of Portree), and Donald Nicolson (Inspector of Bracadale), December 1, 1871.—10 M. 185; 5 *P. L. M.* 182.

Action of Relief—Expenses in Inner House.—Held that, when one of several parties to an action acquiesces in the judgment of the Lord Ordinary, he is not entitled to the expense of attending by council a debate in the Inner House upon a reclaiming note presented by another party, unless he has satisfied himself that the other parties will not consent to allow the judgment to stand as regards him.

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72. Andrew Steuart of Auchlunkart *v.* The Rev. Thomas Fraser (Inspector of Boharm), May 20, 1873.—1 *P. L. M.* 409.

Surcharge—Suspension.—A ratepayer suspended a charge for his share of the assessment on the ground that certain deductions, including a deduction for income-tax, had been irregularly and improperly allowed. Suspension was refused in respect the complainer did not allege a surcharge against him.

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73. Peter Chisholm *v.* James Marshall, January 17, 1874.—1 R. 388; 2 *P. L. M.* 139.

Title to Sue.—Held that the inspector of a parochial board of a parish which formerly was part of, and which represented a combination (now dissolved) of three parishes, had a title to sue for a debt due to the combined parishes.

74. Sarah Hepburn *v.* Alexander Tait, May 12, 1874.—1 R. 875; 2 *P. L. M.* 371.

Mandate—Dominus Litis.—An action for aliment having been raised in the name of the mother of an illegitimate child, both of whom were paupers in receipt of relief, against the reputed father, the defender pleaded that the Parochial Board of Ballantrae were in reality the pursuers, and that the action had not been authorised by the pursuer, who was further alleged to be insane. No proof of insanity was led, and no mandate was produced in the Sheriff Court, but one was put in during the progress of the discussion in the Court of Session;—Held that the pursuer was entitled to insist in the action, without the parochial board being sisted, but all questions as to the liability of the board, as *dominus litis*, for the expenses of the action, were reserved till the final issue of the cause.

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75. Jane Campbell or Smith *v.* Alexander Smith, June 11, 1874.—1 R. 1010.

Jurisdiction—Sheriff.—Held that an action by a wife, who was living separate from her husband, against him for aliment, until the rights of parties were permanently fixed by a consistorial action in the Supreme Court, was competently brought in the Sheriff Court.

Note.—In M'Donald *v.* M'Donald, 25th May 1875.—2 R. 705, a similar action was held to be incompetent, as it appeared that at the date of the action, and until a few days before the proof, the wife was living in her husband's house.

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76. Glasgow Tramways Co. *v.* George Dods, September 22, 1874.—2 *P. L. M.* 632.

Valuation—Appeal—Right to Object—Held (in the Bill Chamber by Lord Ormidale) that without an appeal a parochial board is not entitled, under section 25 of the Valuation Act, to be heard even to the limited effect of maintaining that the valuation of the assessor should not be reduced at the in-

stance of the promoters of an undertaking who complained that the valuation was excessive, and had appealed.

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77. W. Graham (Inspector of Hoddam) *v.* C. Borthwick (Inspector of Middlebie) and D. Clapperton (Inspector of Annan), November 20, 1874.—12 S. L. R. 114; 3 *P. L. M.* 78.

Course of Procedure in Action of Relief—Proof—The Inspector of poor of A. brought an action against B. and C. for payment of the expense of maintaining a pauper, the ground of action being that the pauper had a birth settlement in one or other of these parishes. B. alleged that there was a residential settlement in A., and C. simply denied liability. A's. answer to the averment of a residential settlement was "not admitted";—Held that the proper course of procedure to follow in these circumstances was to allow B. a proof, and A. a conjunct probation.

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78. Petition—George Greig (Inspector of City Parish of Edinburgh), July 4, 1875.—3 *P. L. M.* 427.

Lunatic—Curator Bonis.—A *curator bonis* was appointed on the petition of the inspector of poor to a person with no known relatives, and who had become chargeable to the parish as a lunatic. The application was granted after service on the pauper, and although appearance was made by a creditor who objected to the appointment on the ground that the lunatic's board in the asylum had been paid for the current quarter, and that the petitioner had no interest in, and separately, was not entitled to have the appointment granted.

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79. David Caldwell (Inspector of Ayr) *v.* John Collins, September 1, 1875.—3 *P. L. M.* 530.

Sheriff—Jurisdiction—Small Debt Court.—Held that an action by an inspector of poor for relief of advances made to the defender's mother, who was a pauper, was competent in the Small Debt Court, the sum sued for being under £12.

The Sheriff-Substitute having held that the action was incom-

petent in the Small Debt Court, an appeal was taken to the Circuit Court of Justiciary. The ground upon which the incompetency was maintained was, that the action was substantially one for aliment, and, therefore, could not be entertained in the Small Debt Court. The appeal was sustained on the ground (as stated by the Lord Justice-Clerk) "that the action was a specific action for a specific sum, and that no question arose but the defender's liability for that sum."

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80. John M'Tavish (Collector of North Knapdale) *v.* The Commissioners of the Caledonian Canal, February 3, 1876.—3 R. 412; 4 *P. L. M.* 202.

Sheriff—Jurisdiction.—Held that in an action in the Ordinary Sheriff Court for recovery of assessments for poor rates, the function of the Sheriff is not merely ministerial, but that he has jurisdiction to consider the merits of the cause, and to determine questions as to the legality of the assessment.

The authorities relied upon in support of the view that the Sheriff's functions in such actions were purely ministerial and not judicial, were the cases of Calder *v.* Trotter, 11 Sh. 694; 5 *Jur.* 420 (*supra*, p. 336), and Pollok *v.* Robertson, 12 Sh. 14; 6 *Jur.* 44 (*supra*, p. 337).

Observed by Lord Deas (who delivered the leading opinion—"It becomes necessary to inquire into the grounds of judgment in these two cases of Calder and Pollok, and whether that ground of judgment still remains applicable. Now, the ground of these decisions, I think, was simply this—that the heritors and kirk-session, in administering the poor law, as it then existed, were substantially acting as a court. They had a judicial jurisdiction as well as a ministerial function. There was no statutory power conferred on the Sheriff to review their decisions, and as, in the ordinary case, no inferior court can review the decisions of another inferior court, it followed that in the supreme court alone could that review be competently obtained. That, I think, is the explanation of the decisions in the cases of Calder and Pollok, and, looking to the position in which the heritors and kirk-session then stood, I think it was a sound ground of decision. . . . That being so, the next question is, whether the parochial board have been placed by the Poor Law Amendment Act of 1845, in the same judicial position which was previously occupied by the heritors and kirk-session? There is no presumption in favour of that view. It is one thing to say that

the Sheriff is not to review the decisions of another inferior court, and quite another thing to say that he is not to review what has been erroneously done by a popular board, chosen, to a great extent, from among the general body of ratepayers, under a new and totally different code of laws. There are some matters expressly provided for in the Act to be dealt with by the Sheriff, and others to be dealt with by the Board of Supervision; and it may very well be that in the exercise of certain discretionary powers, the parochial board may be subject to no review at all. But that is quite a different question from whether the parochial board is a court of law, whose decisions cannot, for that reason, be reviewed elsewhere than in the Court of Session." After pointing out that the 88th section of the Act of 1845 was mainly relied on in argument by the parochial board, his Lordship proceeds—"The 88th section of the Act, in place of excluding the Sheriff's jurisdiction when appealed to, as it was here by the parochial board, in an ordinary action is, when the proviso is attended to, strongly the other way. The proviso, referring back to the power conferred of obtaining summary warrants, bears that 'it shall nevertheless be competent to prosecute for and recover such assessments by action in the Sheriff's Small Debt Court.' It cannot be contended that, under this proviso, an action could be brought in the Small Debt Court for a sum exceeding the very limited amount to which the jurisdiction of that court is confined. . . . A small debt action may, however, in all cases be remitted by the Sheriff to his ordinary roll, which strongly implies that it is the statutory limitation of amount, and not the nature of the claim which prevents it from originally coming into that roll. The natural construction of the proviso is that common law procedure in the ordinary courts for recovery of the poor rates not being excluded by the special powers of recovery conferred by the Act, the like procedure shall be competent where the sum is limited to the statutory amount in the Small Debt Court, notwithstanding the peculiar nature of the claim and the other and more stringent remedies which might be resorted to. . . . The only thing which excluded, or rather sopited the Sheriff's jurisdiction prior to the Act of 1845 was that jurisdiction had been committed to another court, namely, the heritors and kirk-session, whose decisions he could not review. But when that court ceased to exist, his ordinary jurisdiction came into play without any enactment to that effect being required."

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81. George Greig (Inspector of City Parish of Edinburgh) *v.* John Reid (Inspector of Kilmarnock) and Walter James Jones (Inspector of Newbattle), May 26, 1876.—4 *P. L. M.* 329.

Prior Correspondence—Expenses.—A correspondence took place

between the inspectors of several parishes in connection with a claim of aliment to a pauper. The inspector of K. denied birth in his parish, but added that, if he were brought into Court, one of his pleas would be that N. had once admitted liability for the pauper on the ground of its being the place of birth. E. thereupon convened both K. and N. in an action in the Court of Session. K. was ultimately found liable in the suit;—Held that E. had followed the right course in convening both K. and N., and that K. must pay the whole expenses of the action.

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82. David Caldwell (Inspector of Ayr) *v.* Henry Nixon (Inspector of Port-Glasgow) June 1, 1876.—3 R. 31; 4 *P. L. M.* 255 and 370.

Sheriff—Jurisdiction—Small Debt Court.—Held (in the High Court of Justiciary) that an action to recover aliment not exceeding £12, granted to a pauper, was competent in the Small Debt Court, although it was necessary to determine incidentally the question of the pauper's settlement.

This was an appeal of a judgment pronounced in the Small Debt Court upon the ground that the action was incompetent in that Court, as it involved the question of the pauper's settlement, and consequent continuous chargeability.

Observed by the Lord Justice-Clerk—I cannot think that the competency of any action can depend on what the defender states in defence to that action, although, of course, the judge, being competent to entertain the action, may yet give effect to the defence, and dismiss the action. If in this case the defender had admitted the pauper's settlement, but disputed the amount due, or maintained that the relief ought not to have been given, there would have been little doubt as to the competency of the action. If the Sheriff has jurisdiction over the process, is not that conclusive, whatever may be stated in defence? . . . If the defender is not satisfied with the decision of the Sheriff on the question of settlement which he has raised, and if he thinks the matter of sufficient importance to justify the course, the Supreme Court is always open to him, and he may come with a declarator.

Observed by Lord Young—"On the face of the summons the Sheriff has jurisdiction. The cause is a civil cause. The debt

sued for does not exceed £12. The ground on which the debt is demanded may apply to other demands which are future or contingent, and may be conclusive of them so far as the Sheriff Small Debt Court is concerned; but nevertheless the debt sued for is under £12, and the Sheriff, *prima facie* at least, has jurisdiction. The question is, whether, when it appears from the nature of the defence that he is asked to determine a question which might involve continuing liability, and might go a certain length to establish it, the Sheriff's jurisdiction ceases? One can conceive many cases in which it would be very proper for the Sheriff to supersede consideration of a small debt case, and refuse to apply himself to the consideration of an important question incidentally raised, and having a wide application, but necessary to be determined for the decision of the case before him. For instance, were it answered to a summons against a man for necessary furnishings made to his wife, that the woman in question was not his wife, I can conceive that the Sheriff, if he believed the defence to be seriously stated and insisted upon, might very properly sist procedure until the question was determined in an appropriate action. But all that does not touch the question of jurisdiction, but only the propriety and expediency of its exercise in a particular case, before something else is done; and even so the Sheriff must always be on his guard against such defence being stated for the mere purpose of temporarily avoiding his jurisdiction. But though the Sheriff has this power in his discretion to supersede consideration of a cause, it does not follow that he is not at liberty to proceed in a cause within his jurisdiction, if he considers that he can do complete justice in it without waiting for the determination of any point raised, in a more deliberate manner; of that matter he is the sole judge, and with his discretion we cannot interfere. If he has competent jurisdiction our review is excluded."

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83. Kay *v.* The Local Authority of Kelso, June 30, 1876.—3 Couper 305; 4 *P. L. M.* 494.

Conviction—Appeal.—The 9th section of the Summary Prosecutions Appeals (Scotland) Act 1875, provides that "any person who shall appeal under the provisions of this Act from any determination of an inferior judge from which he is by law entitled to appeal in any other manner of way to any superior or other Court, shall be taken to have abandoned such title to appeal in any such other manner of way as aforesaid." A person convicted of an offence under the Public Health Act 1867 applied to the Sheriff to state a case

for appeal under the provisions of the above section of the Summary Prosecutions Appeals Act, but, before the case was signed, withdrew from the prosecution of his appeal under that Act;—Held that the appeal was not taken till the case was actually signed, and that, in the circumstances, appeal in another way was competent.

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84. Peter Beattie (Inspector of Barony Parish, Glasgow) *v.* James Nish (Inspector of Old Luce) March 19, 1878.—5 R. 775; 6 *P. L. M.* 234.

Birth Parish—Proof of Birth.—In a question, raised in 1878, as to the settlement of a person born in 1831;—Held (diss. Lord Shand) that an entry in the register of baptisms of the parish of A. that an illegitimate child was born in the parish of B. on 10th August 1831, and was baptized on 31st January 1832 in the parish of A., together with an entry in a University register referring to his birth in B. was not sufficient to prove the birth of the child in B.

Observed by the Lord President, with reference to the extract from the register of baptisms—"It is very good evidence that Mackenzie (the illegitimate child) was baptised, and baptised in Portpatrick, on 31st January 1832. But I am not aware that the register of baptisms is good evidence of anything else which it may contain. The fact of baptism, and that alone, is the fact of which that register is authentic evidence."

XII.—CASES UNDER THE LANDS VALUATION ACTS (17 and 18 Vict., c. 91; 20 and 21 Vict., c. 58; and 30 and 31 Vict., c. 80, sec. 5).

1. F. S. Allan (Assessor for the Stewartry of Kirkcudbright) *v.* Mrs. Eliza Esther Murray Dunlop and Husband, October 9, 1858.—20 D. 1354; 1 *P. L. M.* 219, and 5 *P. L. M.* 269.

Wood—Copse—Underwood.—Held that lands, on which are growing woods, are to be valued as pasture or grazing lands, although no immediate revenue is derived therefrom.

Observed by Lord Benholme—"It is not said that this wood is absolutely worthless, and will never in any future year yield anything. I must presume that it is a subject that will yield hereafter a substantial return. Well then, revenue will be derived from it, and may be said "is derived from it;" because the return which in a future year will be made, is partly the result of the growth of the present year."

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2. F. S. Allan (Assessor for the Stewartry of Kirkcudbright) *v.* The Honourable H. C. Maxwell, October 9, 1858.—20 D. 1355; 5 *P. L. M.* 271.

Farm—Interest of Money Expended on Improvements..—Subsequent to entering on the lease of a farm, the proprietor expended money on improvements, for which the tenant was to pay interest. The lease contained no obligation on the subject, on either side;—Held that the sum to be entered in the Valuation Roll was the rent under the lease, *plus* the interest payable by the tenant on improvement expenditure.

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3. Officer of Inland Revenue *v.* Mrs. Eliza Esther Murray Dunlop and Husband, October 9. 1858.—20 D. 1355; 1 *P. L. M.* 218, and 5 *P. L. M.* 272.

Farm—Interest on Money Expended on Improvements—Permanent

and not Permanent.—Where the tenant pays interest on improvement expenditure, the sum to be entered in the Valuation Roll is the rent under the lease, *plus* the interest payable on permanent improvements, but the interest on improvements which are not permanent, *e.g.* sheep drains and lime, is not to be included.

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4. F. S. Allan (Assessor for the Stewartry of Kirkcudbright) *v.* David Maitland and Thomas Campbell, October 9, 1858. —20 D. 1356; 1 *P. E. M.* 220, and 6 *P. L. M.* 134.

Farm—Value of Land—Rent of Grazings.—Held that parks laid down in grass, and let as pasture to tenants for several months in the year, are not to be valued at the rate paid for the pasture, but only at the rent at which, one year with another, they might reasonably be expected to bring, if let for ordinary agricultural purposes.

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5. Sir Charles Forbes and J. and H. Kellas, October 9, 1858.—24 D. 1449; 5 *P. L. M.* 206.

Farm—Lease—Term of Entry.—Where a lease expired at Whitsunday 1858, but where the out-going tenant retained possession of part of the land under grain and sown grass crops, until the reaping and separation of the grain crops from the ground, and of the rest till the term of Michaelmas, these crops remaining his property;—Held that the in-coming, and not the out-going tenant, was the occupant of the farm for the year from Whitsunday 1858 to Whitsunday 1859, aud that the rent payable by the in-coming tenant fell to be entered in the Valuation Roll.

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6. A. T. T. Fraser, October 9, 1858.—24 D. 1452.; 5 *P. L. M.* 213.

Furnished House—Shootings and Fishings.—Where shootings and fishings are let, along with furnished houses or lodges;—Held that in fixing the annual value, there is to be deducted from the total rent payable by the tenant a reasonable allowance as interest on the value of the furniture.

7. William Hunter of Thurston, December 15, 1859.—24 D. 1449; 1 *P. L. M.* 198 (1867).

Farm—Out-going and In-coming Tenant.—An out-going tenant's lease of a farm expired at Whitsunday 1859, as to houses, grass, and fallow, and as to arable land, at the separation of crop of 1859. He had to pay the whole rent for crop of 1859; partly a money rent payable at Candlemas 1860, and partly a grain rent (convertible according to the fiar's prices for 1859, which are not struck till March 1860) payable at Lammas, 1860. The farm was relet at an advance both on the money and on the grain rent; the in-coming tenant's possession commenced when that of the out-going ceased, and the rent of each crop being payable at Candlemas and Lammas of the following year, as in the case of the out-going tenant. Held that the in-coming tenant should be placed on the Valuation Roll for the year from Whitsunday 1859 to Whitsunday 1860, and that the rent for that year was the mean of the rents payable by both out-going and in-coming tenants, the grain rent being converted according to the fiars of crop 1858.

Note.—For application of a similar principle, see the cases of Lord Blantyre, December 15, 1859; and Duke of Richmond, January 24, 1861; 24 D. 1449 and 1450.

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8. Sir George Macpherson Grant, December 15, 1859.—24 D. 1450; 9 *P. L. M.* 480.

Value of Farm when Lease extended and Meliorations allowed to Tenant.—The duration of a lease was extended by minute, whereby it was also agreed that at the expiry of the extended lease, the tenant should, at removal, receive a sum of money in consideration of a house which he had built on the farm. The assessor added to the rent five per cent. on the sum which the tenant was to receive as melioration;—Held that the subjects should be valued as they existed, and irrespective of the lease.

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9. Sir Norman M'Donald Lockhart, October 9, 1858.—24 D. 1451.

Farm—Drainage—Rent-charge—Interest on Improvement Money.

—Held (1) that where, during the currency of a lease, a loan was obtained from government for the drainage of the land, and the tenant agreed to pay the rent-charge for it, though there was no obligation in the lease to that effect, the value of the farm to be entered in the roll was the rent in the lease, *plus* the rent-charge payable by the tenant; (2) that where by arrangement made during the currency of lease, or by a provision thereof, the landlord advanced sums for the improvement of the farm, the tenant paying, along with his rent, 6½ per cent. of interest on the outlay, the interest so payable, and not merely the excess of the stipulated rate of interest over the current rate, fell to be added to the rent fixed in the lease.

Note.—A similar decision was given in the case of David Milne Home, 9th October 1858, 24 D. 1451, where, however, the the assessor did not add to the rent interest on money expended by the landlord on lime.

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10. James Morrison, December 15, 1859.—24 D. 1452; 9 *P. L. M.* 479, and 1 *P. L. M.* 214 (1867).

Farm—House built by Tenant.—The tenant of a croft, held under a nineteen years' lease at a rent of £8, 10s., built a house upon it at his own expense, there being no house previously upon it. The assessor entered the tenant of the croft as "proprietor" of the house, which was valued at a rent of £8;—Held that this entry could not be sustained. The following year, the assessor entered the subject as a "croft and house," with the landlord as "proprietor," and the tenant as "tenant-occupier," at a rent of £14, 10s. The commissioners held that £8, 10s. (the rent under the lease) must be taken as the yearly rent or value of the subjects, and on appeal it was held that this decision was right.

Note.—In the case of John Grant, 9th October 1858, 24 D. 1452, and 5 *P. L. M.* 212, it was held that a sub-tenant, who had no title from the landlord, and who had built a house on the ground, was not to be entered in the roll as "proprietor" and "occupant" of the house.

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11. John Wilson, December 15, 1859.—9 *P. L. M.* 481.

Steam-Engine—Boiler.—Held that the annual value of a steam-

engine and boiler used in a mill, must be included in the valuation as being of the description of machinery embraced in the Act.

Note.—The ground maintained by the appellent was, that to entitle the assessor to include the engine and boiler in the valuation, it was necessary that the machinery in question should be attached to the mill in such a way as to render it part of the heritable subject, and that such was not the case in the present instance, as the engine was not the original and proper moving power of the mill, but only a power in aid of the water power, and that it could, like any other moveable subject, be removed or applied to a different purpose.

A similar result was arrived at in the case of William Chalmers, 28th January 1871, 11 M. 983, where it was held that the machinery, consisting of stones, elevators, dust-screens, &c., of a grain mill fell to be included in the valuation, as forming, along with the building, one subject.

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12. The Company of Proprietors of the Forth and Clyde Navigation Canal, December 15, 1859.—24 D. 1453; 9 *P. L. M.* 483.

Valuation of Property of Canal Company, which has Ceased to be Used for its Original Purposes.—Houses, which had been acquired by a canal company for the accommodation of their servants, were afterwards let by the company to strangers, on the ordinary footing of landlord and tenant, and the rents were included in the railway and canal assessor's valuation of the company's undertaking;—Held that they ought not to appear in the valuation roll for the county.

Note.—The ground of this decision was, that the subjects in question, although temporarily not in use for canal purposes, were still part and parcel of the company's undertaking, and and therefore fell to be taken into account by the railway and canal assessor.

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13. Addie and Rankin, December 15, 1859.—24 D. 1454; 9 *P. L. M.* 485.

Feuar—Way-leave—Railway.—By feu contract, the perpetual servitude and privilege of using a railway was granted to the feuars, who were taken bound to maintain the railway.

For this right of use, a yearly rent of £50 was payable, which rent was, however, subject to reduction, in the event of the superior, or his tenants, making use of the railway;—Held that the railway was assessable, the superior being the proprietor, and the feuars the occupiers.

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14. Misses Hope, January 21, 1860.—21, 1860.—24 D. 1453; 9 *P. L. M.* 490.

Valuation of Houses.—The assessor entered a house at £20, the actual rent of which, payable by the tenants, was £19, 19s. On appeal, it was held that £19, 19s. was the proper entry, in respect it was admittedly the actual rental, there being no grassum or other consideration, and no evidence of any want of *bona fides* in the set.

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15. Sir James Dalrymple Hay, January 24, 1861.—24 D. 1451; 1 *P. L. M.* 207 (1867).

Farm Rent.—The rent of a farm was dependent on the fiars' prices, it being stipulated that, in the event of it exceeding a specified amount, the excess should not be paid to the landlord, but expended on such improvements as should be approved by the landlord;—Held that when this stipulation became operative, the value to be entered in the roll was the whole grain rent, and not merely the sum payable to the landlord.

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16. Hercules Scott, January 24, 1861.—24 D. 1455; 1 *P. L. M.* 205 (1867).

Salmon-Fishings—Tacksman—Sub-lease at Higher Rent.—The appellant objected to being entered in the valuation roll as proprietor of salmon-fishings at a rent of £25, on the ground that the actual owners were the Commissioners of Woods and Forests, to whom he paid a rent of £14, he himself subletting the fishings at £25;—Held that £25 was the rent at which the fishings fell to be entered, and that the Commissioners of Woods and Forests were to be entered as proprietors.

17. The Ministers and Heritors of Kirkmabreck and the Presbytery of Wigtown, March 25, 1861.—24 D. 1456; 1 *P. L. M.* 209 (1867).

Glebe—Quarry.—Held that a quarry which formed part of a glebe was properly entered at the actual sum received as tonnage or lordship from the tenants, although a part only was paid to the minister, the balance being accumulated for the benefit of the benefice, the proprietors being entered as "The Heritors of Kirkmabreck and Presbytery of Wigtown as holding in trust for the benefice of Kirkmabreck."

Note.—The ground maintained by the appellants was, that the quarry should not be valued at all, in respect it formed part of a glebe, which is an inalienable subject, and the tonnage or lordship paid by the tenants was nothing more than the price paid for a portion of the glebe carried away; and, further, that if valued at all, the quarry should be entered at no more than the amount which the minister actually received.

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18. John Robertson, November 26, 1861.—24 D. 1452.

Farm—Lease for fourteen years and a life.—Held that the tenant of a farm under a lease, the endurance of which was fourteen years and a life, and who had been in possession under the lease for upwards of twenty-six, did not fall to be entered as proprietor, but that the actual proprietor should be so entered.

Note.—The ground upon which it was attempted to enter the tenant as proprietor was, that the stipulated endurance of the lease was above twenty-one years, or, alternatively, that the lessee was liferenter.

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19. James Baird, November 26, 1861.—24 D. 1456.

Salmon-Fishings.—Held that salmon-fishings, which were not let, and from which no revenue was derived, fell to be entered in the valuation roll at the rent at which they might reasonably be expected to let.

Note.—The Assessor stated that the fishings in question had, as matter of fact, been let to a tenant some years previously, and had also been let along with shootings on the estate.

20. Sir Archibald Islay Campbell, November 36, 1861.—24 D. 1457.

Mineral Lease—Sub-let for Increased Rent.—Certain minerals were let for a period of twenty-one years at a fixed rent, and were afterwards sub-let by the tenant at a large increase of rent;—Held that the rent under the original lease, and not the sub-rent, was the criterion of yearly value.

Note.—It was observed that the principal tenant ought to be taxed on the difference between the rent and the sub-rent; but for this there was no provision in the statute, excepting in the cases of leases of upwards of thirty-one years; and, consequently, in the case of leases of ordinary duration, surplus rent actually paid is lost for assessable purposes.

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21. Messrs. Pollock, November 26, 1861.—24 D. 1457.

Mills and Factories—Mansion-houses.—The owners of a silk factory at Govan, valued by the Assessor at £497, appealed to the Commissioners, on the ground that the principle applied in the valuation of mills was different from that applied to mansion-houses. The Commissioners sustained the Assessor's valuation, and the Court found the Commissioners right.

Note.—The ground maintained by the appellants was, that if the mills were valued on the same principle as the Assessor valued mansion-houses—which principle was, what they would let at from year to year—such mills as theirs would be entered at nothing, as no one would fit up machinery upon a letting from year to year. The principle applied by the Assessor to mills was, to charge a certain per-centage on the cost, which the appellants objected to, unless mansion-houses were assessed on the same principle. The Assessor maintained that it was not competent for the Commissioners to entertain the appellant's objection to the valuation of their mill, which was not that it was too high, but that other kinds of heritage in other parts of the country were valued at too low a rate.

The Commissioners (and the Court) were of opinion that the valuation was not beyond the fair annual value of the subjects.

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22. Lord Forbes, November 26, 1861.—24 D. 1458.

Woods—Value when Let for Shooting.—A proprietor having let his mansion-house, "together with the woods and grounds," &c., "together with the exclusive right and liberty to the tenant and his friends, &c., of hunting and shooting over and upon the whole subjects hereby let, as well as over the whole farms and plantations of," &c., "declaring that the said plantations and moor grounds shall not be let to tenants for pasture, nor shall grass-cutting be allowed therein;"—Held that the proprietor was properly entered in the valuation roll as proprietor and occupier of the woods and plantations, but that, as he was not sole beneficial occupant, he should only be charged two-thirds of the value of the subjects.

Note.—The ground upon which the proprietor maintained that he should not be so entered was—that the value of the ground as pasture was included in the rent for the shootings, as he had to abandon the right to let for pasture in order to get a higher shooting rent.

The assessor maintained his entry on the ground that there are two distinct subjects charged by the Act—woods according to their value for grazing in their natural state, and shootings when let. Both subjects and values existed in the present case. The shooting rent is in addition to the grazing value of the subjects, as in the case of agricultural rents, where the shooting rent, when the shootings are let, is added to the agricultural rent.

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23. Walter M'Culloch, January 23, 1863.—1 M. 1196.

Farm—Fair Annual Value—Grassum.—A proprietor was offered a rent of £140 for a farm on his estate. He refused the offer, improved the farm, and gave a lease of it for ninteen years for £140 to his brother, he expending a sum in building a dwelling-house, &c., equal to the sum expended by the proprietor on drains. They each expended about £1000. The assessor obtained a valuation by a practical valuator, that the farm might reasonably be expected to let at £280. The commissioners held that the farm was let at the fair annual value, without grassum or consideration, and reduced the valuation to £140. The Court, however, found

that this determination was wrong, and held that the sum agreed to be expended by the tenant was a consideration other than the rent; and, therefore, that the assessor was not bound to take the rent in the lease as the annual value.

Note.—Wherever it appears that the rent in a lease was not conditioned as the fair annual value of the subjects, it ceases to be the criterion of value. This is illustrated in the case of Alexander Kerr's Trustees, January 28, 1871.—11 M. 983.

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24. The Duke of Montrose, January 23, 1863.—1 M. 1197.

Shootings—Fair Annual Value—Grassum.—Shootings were let at £50 per annum. The tenant agreed to repair the lodge or build a new one, if secured in possession of the subjects for nineteen years at the same rent. The proprietor agreed to this, and the tenant thereupon expended £300 on a new lodge. The assessor added £35 to the rent of £50, as the value of the lodge, holding that the tenant being bound to build a new lodge or repair the old one, this was a "consideration other than the rent." The Court found that this view was right, but were of opinion that the description of the subjects should be corrected to "shootings with buildings attached thereto."

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25. The Scottish Central Railway Company, January 23, 1863.—1 M. 1198.

Pier and Landing-place—Ferry—Proprietor—Occupier—Value.—The pier and landing-place within the burgh of Dundee were entered in the roll at the value of £200, the Scottish Central Railway Company being entered as proprietors and occupiers. The railway company appealed against the assessment of the subjects, on the ground that the pier, &c., were adjuncts of the Tay ferries, and should not be charged separately, and the ferries themselves, being public, were not chargeable; and they further appealed against being entered as "proprietors and occupiers," on the ground that the proprietors were the official and other trustees of the Tay ferries; and further, they maintained that £200 was beyond the rentable value of the subjects. The commis-

sioners refused the appeal, and the Court sustained their determination.

The ground relied upon by the assessor as to whether the railway company should be entered as proprietors was, the company had admittedly acquired certain mortgages or bonds granted by the ferry trustees under the powers conferred by statute, and in this way were in the position of wadsetters. By the interpretation clause of the Valuation Act of 1854, it is provided that the word "proprietor" shall apply to liferenters as well as fiars, and to factors, curators, commissioners, trustees, adjudgers, wadsetters, or other persons who shall be in the actual receipt of the rents and profits of the lands and heritages. The railway company were, under their right to the foresaid mortgages or bonds, in receipt of the rents and profits, and therefore fell within the description above given.

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26. Thomas Walton Campbell, May 11, 1864.—4 M. 1132.

Multures.—Held that multures commuted into an annual payment were embraced under the terms "lands and heritages," and therefore were, as such, properly entered in the valuation roll.

Note.—The ground unsuccessfully maintained by the pro prietor was, that multures were not "lands and heritages," as they were originally payments to the miller for grinding grain, and the commuting them into annual payments did not alter their nature. It has, however, been held that multures are heritable, and therefore fall under the general description of "lands and heritages" in the cases of the Duchess of Sutherland and M'Leod (*infra*, p. 392).

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27. Carron Company, July 30, 1864.—4 M. 1133.

Coal Work—Machinery.—The Commissioners fixed the value of certain coal works, let to the Carron Company for periods of upwards of thirty-one years, at sixpence per ton upon the output, stating in the appeal that the said royalty was intended to include the value of the machinery, railways, and pithead buildings. In addition to the entry of the coal work at this value, the assessor proposed to enter in the valuation roll the machinery, pithead buildings, and railways. An appeal was thereupon taken by the company against this pro-

posal of the assessor, which the Commissioners, and afterwards the Court, sustained.

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28. Falkirk Joint Stock Gas Coy. (Limited), May 11, 1864.—4 M. 1133.

Gas-pipes—Meters.—Held that gas-pipes laid along the public highways, and in the properties of the consumers, by a private company, who had no statutory powers to break open roads or other property, were "heritages" within the meaning of the Valuation Act, and therefore fell to be entered as such in the valuation roll, but that meters placed in the houses of consumers were not.

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29. The Right Hon. Lord Blantyre, February 20, 1865.—4 M. 1135.

In-coming and Out-going Tenant.—A tenant of Lord Blantyre entered, according to his lease, on 1st March 1864 to one-seventh in fallow; at Whitsunday 1864 to the houses, except the barn and cot-houses, and to two-sevenths of the land in grass; at the removal of crop 1864 to the rest of the lands; and at Whitsunday 1865 to the barn and cot-houses. He paid the out-going tenant for the fallow-break entered to on 1st March 1864, and for one-seventh of the grass. The landlord maintained that entry was only at Whitsunday 1864 to the houses, except the barn and cot-houses, and one-seventh of the grass, and accordingly that the entry in the valuation roll for the year 1864-65 should be one-seventh of the new rent and six-sevenths of the old;—Held, sustaining the valuation of the assessor, that the new tenant had occupation of three-seventh parts of the farm from 1st March to Whitsunday 1864, and of the remaining four-sevenths from September 1864, equal to at least one-half of the whole farm during the year of valuation, and therefore that the new and increased rent of the incoming tenant applied to the year of assessment equally with the old and lesser rent of the out-going tenant.

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30. Renfrewshire Prison Board, February 20, 1865.—4 M. 1137.

Prison.—Held that a prison falls within the term "lands and heritages," and that the prison board are tenants and occupiers in the sense of the Lands Valuation Act.

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31. Trustees of Harbour of Stonehaven, February 20, 1865.—4 M. 1139.

Harbour—Piers.—Held that the piers, quays, &c., of a public harbour, vested in trustees, are liable to assessment, although the dues levied at the harbour were not sufficient to defray the expenses of its superintendence and maintenance.

Note.—It was contended for the trustees of the harbour that the revenue of the harbour was in the same position as the revenue of turnpike roads, which is not entered in the valuation roll; that the harbour was merely an accessory to the streets leading to it, and the one should not be valued any more than the other; and further, that the harbour being entirely for public advantage, and not for the benefit of any individual or body, should not be entered in the valuation roll. This view was sustained by the Commissioners, but was reversed by the Court on appeal.

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32. Mrs. J. F. Murdoch, February 21, 1865, 4 M. 1135.

Farm—Sub-Tenant.—A farm having been let on a lease for a period of less than twenty-one years at a rent which was the full annual value at the time, was afterwards sub-let at an increased rent, which was received by the original tenant; —Held that the original rent payable by the principal tenant was the annual value, and should alone be entered in the valuation roll.

Note.—The view maintained by the assessor was that there should be two entries—1st, the lands at the rent under the original lease, and 2d, with the surplus rent—his argument being that the circumstance of the sub-let at a surplus rent took the case out of the 6th section of the Act, which provides that the yearly rent of lands let for a period not exceeding twenty-one years, was to be deemed and taken as the annual value.

33. The British Sea-Weed Company, February 5, 1866.—4 M. 1139.

Sea-ware.—A limited company had right, in terms of their lease, to gather and cut sea-weed from the shores and rocks above and below high water-mark in the parish of North Uist, which sea-weed they manufactured into kelp, iodine, and other substances, but their right was not exclusive of the landlord's tenants having also the right of gathering and cutting sea-weed for manuring their lands;—Held that kelp shores were included within "lands and heritages" in the sense of Lands Valuation Act, and fell to be entered in the valuation roll.

Note.—It was contended for the company that they were not tenants of the kelp shores, the land tenants being the tenants of these shores, and that the right to gather kelp or sea-weed had not in practice been assessed. The view sustained by the Court was, that kelp shores formed pendicles or pertinents of the estate, and must, therefore, be deemed "heritage."

The same point was held in the case of John Gordon of Cluny, 5th February 1866; 4 M. 1141.

34.—A. M. Mitchell, February 5, 1866.—4 M. 1142.

Free Railway Ticket.—A tenant of a house in the parish of Cadder paid a yearly rent of £57, but had transferred to him for a consideration of an annual payment of £10 a free railway ticket, which the railway company had granted to the builder of the house, in order to encourage building along the line, and which ticket was transferable to the tenant. The annual sum payable by the tenant, in respect of the ticket, was reduced from £10 to £9, 6s., the railway company having reduced their rates;—Held that the privilege of the free ticket did not fall to be included in the value of the subjects, and that the rent of £57, actually paid by the tenant, was the proper entry to be put in the valuation roll.

Note.—The tenant, whose view was, on appeal, adopted by the Court, maintained that the railway ticket was a separate concern, and that his yearly expenditure for travelling did not form rent. The assessor argued that the free railway ticket was an appendage of the subjects, and part of their value in the market.

35.—Mrs. Elizabeth Bell, February 5, 1866.—4 M. 1143.

Actual Rent.—A house was let at a yearly rent of £19, 19s., in order to avoid payment of house-duty, to which it would have been liable had the rent been £20. The house had long been in the market, and the only other offer the factor had got for it was £15;—Held that the actual rent payable by the tenant was the sum to be entered in the valuation roll.

36.—The Clyde Navigation Trustees, July 25, 1866.—4 M. 1143.

Harbour of Glasgow—Water-way.—The assessor entered Mavisbank Quay, part of the harbour of Glasgow, at the value of £4061, arriving at this value by taking one-half of the total revenue of the harbour, allowing the other half for water-way, and adding all the crane and transit shed dues, &c., and then deducting the expense of the harbour master's department, lamps, and police, and a proportion of the general expenses, and, in addition to these, he deducted 20 per cent. for tenant's profits. The balance he apportioned to the quays, wharves, &c., according to their length. The harbour of Glasgow is by statute under the management of the Clyde Navigation Trustees, and consists of eighteen and a-half miles of the river Clyde, from Stockwell Bridge to the Castle of Newark. It is by statute divided into three stages. The first stage consists of the part of the river above the Old Ferry of Renfrew, five and three-eighth miles, and includes the harbour and the whole quays and wharves; the second stage, from the Old Ferry of Renfrew to the mouth of the Dalmuir Burn, three and one-eighth miles; and the third stage, from the mouth of the Dalmuir Burn to the Castle of Newark, ten miles. The second and third stages are in the counties of Renfrew and Dumbarton. The statute provides that two-thirds of the rates shall be payable for the first stage, and one-sixth for each of the other stages, and, by decision of the House of Lords (in Adamson *v.* Clyde Navigation Trustees, *supra*, p. 71), it was held that the dues payable in respect of the water-way of the harbour and river were not to be taken into account in valuing the quays, "but only such

part of the rates and duties as can be shown to be payable, in whole or in part, in return for the use and accommodation afforded by the quay." The commissioners having concurred in the view of the assessor, the Court, on appeal, reduced the value of Mavisbank to £3470; adding a note, that only the proportion of the dues (two-thirds) applicable to the first stage is to be taken into account; and as the water-way of this portion was not assessable, they abated or deducted one-third as being fairly assignable to that portion.

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37. Urquhart Fraser, March 14, 1867.—11 M. 976.

Farm—Renewed Lease—Sub-lease—Surplus Rent.—The appellant's father had a lease of 200 acres of land at a rent of £5. The appellant succeeded his father in 1848, and in 1849 got a new lease for nineteen years, at a rent of £11. He proceeded to make improvements, and, in 1856, had reclaimed a hundred acres, and erected new buildings, his expenditure amounting to about £850. At Whitsunday 1856, having renounced the old, he obtained a new lease at a rent of £15; and thereafter erected further buildings, and sub-let a portion of the land. The assessor entered the landlord as proprietor of the whole, and the appellant as occupier of one portion at a rent of £50, and the sub-tenant as occupier of the other at a rent of £55, these, taken together, being alleged to be the fair annual value of the subjects. The commissioners reduced the valuation to £15, and directed the entry of the sub-tenants to be deleted, and the Court found that the commissioners were right in the special circumstances of the case, and more especially considering that the existing lease had been granted on a renunciation of the previous one, which would otherwise have been still in subsistence.

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38. W. A. Skene, March 14, 1867.—11 M. 976.

Farm—Consideration other than Rent.—Where the tenant of a farm, let on a nineteen years lease, was bound to erect a dwelling house and offices, receiving from the landlord, at the finishing of the building, a portion of the price, and at the end of the lease a further sum, and where it was further

agreed to postpone to the end of the lease a claim of the tenant's father, who was the preceding tenant, for the value of certain buildings;—Held that the value to be entered in the roll was the sum made up (1) of the rent stipulated; and (2) interest on the sums payable at the end of the lease by the landlord.

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39. Annandale and Son, March 14, 1867.—11 M. 977.

Paper Mills—Annual Value.—Held that the value of paper mills is not to be ruled exclusively either by the amount of actual out-turn, or by a per-centage on the cost of erection, but is to be estimated according to the rent at which, one year with another, the premises might in their actual state be reasonably expected to let from year to year, having regard to the rent or annual value as assessed of other works of the like description, and taking into account the peculiar advantages or disadvantages of the works under valuation.

Note.—This case was referred to by the Judges in the later case, William Stirling and Sons, July 12, 1869.—11 M. 981, as laying down the correct principles of assessment in such cases, and while Stirling's case was decided upon its special circumstances, it was stated that it would be open to the assessor to proceed in the future on the principle of Annandale's case.

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40. Drumgray Coal Company, April 8, 1867.—11 M. 977.

Oil-Works.—A coal company who were entered as proprietors and occupiers of oil-works, the yearly value of which was fixed on the principle of taking 15 per cent. on the original cost, as a rate which would reimburse the proprietor for erecting the works and keeping them in repair, objected to the assessment, on the ground that the oil-works were not of the nature of subjects comprehended under the Valuation Act, that they were part of the coal field, and the rent paid for it depended on the facilities for working up the minerals in the oil-works; and that 15 per cent. on the original cost is not a proper and fair value, in respect the original cost does not afford a criterion for annual value;—Held that the oil-works were properly entered by the assessor, and at the fair annual value.

41. The Duke of Richmond, April 8, 1867.—11 M. 978.

Rent—Deduction for Furniture and keeping up Gardens.—Held that the proprietor of a furnished house, which he let to a tenant, with an undertaking by the proprietor to keep up the gardens to a certain extent, was entitled to have the subjects entered, not at the rent fixed by the lease, but under deduction of a sum for interest on the value of the furniture, and also of a sum in name of the expense of upholding the gardens.

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42. The Duke of Richmond, February 8, 1868.—11 M. 978.

Croft—House Built by Crofter—Rent or Value.—In the roll of 1867, the landlord was entered as proprietor, and the tenant as occupier of a croft, of the rent or value of £8; and the landlord, or the tenant, or either, was entered as proprietor and the tenant as occupier of house and shop built by the tenant on the croft, at the value of £6. The tenant had agreed with the landlord to enter to the croft at Whitsunday 1860, to occupy from year to year, but to have no lease, and to cultivate the croft in a certain manner. The tenant afterwards agreed to build, and did build a house, the landlord supplying the wood, and paying for the slating and ridge stones, and receiving £8 of rent;—Held that the entry of £8 covered the whole subjects, there being no evidence that that sum was below an adequate rent for the combined subjects.

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43. John Bruce, February 8, 1868.—11 M. 978.

Father Proprietor—Son Tenant—Rent—Fair Annual Value.—A proprietor let to his son for six years from 1859 his whole estate, which comprised, *inter alia*, upwards of a hundred small farms, under sub-tenancy, the son being restricted from raising the rents of the sub-tenants. In 1865 the lease was renewed at an increased rent, but with the privilege of raising the sub-tenants' rents, which the tenant thereupon increased to a considerably greater extent than the increased rent in his own lease. The assessor having entered in the roll the increased rents, on the ground that

they showed the fair annual value;—Held that the rent payable under the lease to the proprietor, and not the value of the subjects as in their present condition, should be entered in the roll.

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44. The Burgh of Renfrew and the Clyde Navigation Trustees, February 8, 1868.—11 M. 979.

Compensation for Injury.—Certain salmon-fishings belonging to the burgh of Renfrew having been injured by the operations of the Clyde Navigation Trustees, the trustees agreed to pay in each year, as compensation, the difference between the actual rent received by the burgh, and the average received previous to the operations complained of;—Held that the trustees not being occupiers or tenants of the fishings should not be entered as such in the valuation roll.

Note.—The ground upon which the assessor supported the entry of the trustees as occupiers and tenants was, that the fishings were an existing subject, yielding revenue to the burgh, of which the sum payable by the trustees formed a part.

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45. Robert Addie, February 8, 1868.—11 M. 979.

Ironwork—Furnaces out of Blast.—Held that the proprietor of ironworks was not entitled to obtain a reduction of the valuation, on the ground that all his furnaces were not in blast.

Note—A similar decision was given on the same day in the case of Merry and Cunningham. In Addie's case, the assessor had, under the heading of "observations," put a note on the roll, showing the number of furnaces in blast and out of blast at the date of his inspection. This had been done at the desire of the owners of the works, who had, by means of these notes, obtained abatement from some local assessments. The Commissioners were of opinion that the practice of making such notes should be discontinued. They form no part of the information required by law to be given in the roll.

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46. Clyde Navigation Trustees, March 31, 1868.—11 M. 979.

Bowling Harbour—River Clyde—Annual Value.—Held that the

harbour of Bowling fell to be entered in the roll at the annual income derived therefrom, less an allowance of 20 per cent. for tenants profits, and a further deduction of 20 per cent. for charges of maintenance and expense of collection.

Note.—In the later case of the Nith Navigation Commissioners, 29th May 1873, 11 M. 991, it was found that a harbour on the Nith at Carsethorn, did not fall within the rule laid down in the Bowling case, in respect there was no evidence to instruct that the Nith Navigation Commissioners owned or occupied the harbour.

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47. The Duchess of Sutherland and R. B. Æ. M'Leod, April 13, 1869.—11 M. 980.

Mill Multures—Commuted Thirlage.—Held that payments in commutation of thirlage were not "lands and heritages" within the meaning of the Lands Valuation Act.

Note.—The ground of this decision was, that the entry of "multures" in the valuation roll was not a true discription of the subjects entered; that these subjects were payments in commutation of rights of thirlage, which have been regularly discharged and extinguished; that they were not conditional on the existence of, nor do they form an element of value in any mill, and that therefore they do not fall under the denomination of "lands and heritages." The argument on the other side was, that the commutation was part and pertinent of the dominant tenement.

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48. Duke of Richmond, April 13, 1869.—11 M. 981.

Occupier Contrary to Provisions of Lease.—The tenants, under a lease which expressly excluded assignees, voluntary or legal, and all sub-tenants, sub-let the subjects to two persons, it being a provision of the sub-lease, that if the landlord objected, it should cease and determine. Held that the sub-tenants should be entered as joint-occupiers, and the lessees as tenants.

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49. Hay and Company, July 12, 1869.—11 M. 983.

Sub-Tenant and Occupier—Sub-Tenant's Rent—Voters Act.—A

firm of fish-curers were lessees, for seven years, at a fixed rent, of two islands, the farms and houses on which they sub-let to their fishermen at small rents, varying from 10s, to £8, 7s.; the *cumulo* amount exceeding the rent payable by them to the proprietor. Held that the value which fell to be entered was the rent fixed by the lease, but the commissioners suggested that the rents paid by the occupiers might also be entered, as a guide to the assessor in making up the roll of voters, it being provided by the 8th section of the Voter's Act, that the entry in the valuation roll of the person occupying a subject of the requisite value, is the authority for registering the voter; and by the Representation of the People Act, 1868, actual personal occupation of the subjects is the title to be registered as a voter.

Note—A similar decision was given in the case of Colonel D. C. R. C. Buchanan, 3d June 1874, 1 R. 1145.

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50. Banffshire District Lunacy Board, July 2, 1870.—11 M. 982.

Lunatic Asylum—Exemption from Taxation.—Held, that although it was alleged that the property was not liable for any tax, a district lunatic asylum, which had been erected under compulsory statutory provisions, and supported by assessments or rates levied on the parishes of the district, ought to be entered in the Valuation Roll.

Note.—The Valuation Roll should be made up without reference to any questions of the liability or non-liability to rates and taxes of the lands and heritages contained in it. This principle was given effect to in the case of The University and College of Glasgow, 24th December 1870, 11 M. 982, as to the new buildings belonging to the University at Gilmorehill; in The Heritors of Old Monkland 21st March 1872, 11 M. 986, as to a parish church and school; and in Sir Robert Menzies, 29th March 1873, 11 M. 989, as to an Episcopal Church at Weem.

As to parish churches the rule has been changed since the decisions in the cases of The Heritors of Kingoldrum and The Heritors of Kirriemuir, 2d April 1877, 4 R. 1149, by which the rule is laid down that parish churches, while such, do not fall within the terms of the statute, as they cannot be made the subject of lease; and therefore should not be entered in the Valuation Roll.

51. Graham Brothers, January 28, 1871.—11 M. 982.

Shipbuilding Yard—Value of Erections.—Ground had been leased for a shipbuilding yard by the city of Perth many years ago, and the tenants had erected thereon sawmills, sheds, and engines. In 1860 the current lease was resigned, and a new lease for twenty-one years granted to the original tenant's successors. The new tenants acquired right to the erections put up by the former tenant, who had right under the original lease to dispose of or remove them. The rent payable by the new tenant did not include the erections;—Held that a sum in respect of said erections was properly entered in the Roll, as forming, along with the stipulated rent, the fair annual value of the whole subjects.

Note.—The same rule was applied in the case of The City of Perth, decided on the same day.

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52. The Burgh of Dumfries February 4, 1871.—11 M. 984.

Bridge—Dues.—The Burgh of Dumfries, as proprietors, holding under Crown Charters, of the bridge over the Nith, let the bridge dues, which were collected at the end of the bridge nearest to, and within, the burgh of Dumfries, to a tenant;—Held that the bridge came under "Lands and Heritages," and that the rent paid by the tenant must be taken as its annual value.

Note.—The ground on which the Burgh of Dumfries claimed that the bridge should not be entered in the Roll at all was, that the bridge was not let, the right to levy dues being alone let; there was no pontage in the proper sense of the word, and the dues formed a large portion of the revenue of the burgh, the maintenance of the bridge requiring only a small portion of them.

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53. Nisbet Thomson, March 11, 1871.—11 M. 984.

Grain Mill—Per-centage on Price.—Held that the fair annual value of a grain mill, the owner of which occupied it himself, and which had three pairs of stones, was to be taken at

8½ per cent. on the price paid by the proprietors, there having been no addition or repairs made since the purchase.

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54. George Henderson, March 11, 1871.—11 M. 985.

House, Garden, &c., and Farm separately Entered.—Held that the assessor was not entitled to enter the house, garden, and offices of a farm separately from the farm itself.

Note.—The ground of this decision was that the house, like the farm steading, was a necessary adjunct to the farm; that the two could not be disconnected. In this case, the effect of the separation would have been to render the proprietor and occupier of the farm liable to be assessed for poor rates at the highest rate of assessment in respect of his dwelling-house and offices, instead of at the lowest rate, applicable in the parish in which the farm was situated to agricultural subject.

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55. John Henry Udny, March 21, 1872.—11 M. 987.

Farm—Rent—Deductions.—A farm was let for nineteen years at a specified rent, from which deductions were to be allowed of £60 for the first year, and £50 yearly for the next ten years, for the drainage of the farm, to be executed by the tenant to the satisfaction of the proprietor;—Held that the farm was properly entered in the roll at the full rent payable under the lease, without any deduction.

Note.—The proprietor maintained that the deduction was allowed for the first period of the lease, in order to get the higher rent for the remainder of the nineteen years of the lease, and that but for this the higher rent would not have been got. The annual value of the farm should therefore be entered at the rent less the deduction. The assessor entered the full rent, on the ground that the annual expenditure in drainage was a condition of the lease, and was part of the consideration for the use of the subjects. The commissioners were of opinion that the money expended on drainage was spent on permanent improvements by the tenant, as trustee for the landlord, and sustained the assessor's valuation.

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56. Robert Glass, March 21, 1872.—11 M. 988.

Entries on Roll—Lands in one Parish and House in Another.—

Held that the proprietor of lands in one parish, and of a mansion-house in another, both being in his own occupation, and only separated by an intervening farm belonging to another proprietor, was not entitled to have the subjects conjoined in the roll, so as to give him the benefit of having the mansion-house valued along with the lands as regards the assessment for poor rates.

Note.—The commissioners added a note to the case, which was sent to the Judges, to the effect that a case to the Judges was only competent in a matter of valuation, and the question whether certain subjects were to be entered in the valuation roll in two or more entries, or in one entry, was, in their opinion, left to the discretion of the commissioners, and their decision was final.

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57. Caledonian Railway Company, May 28, 1872.—11 M. 988.

Dwelling-houses Outside the Railway Fence—Occupiers—Employés of Railway Company.—Dwelling-houses belonging to the Caledonian Railway Company in the parishes of Dalziel and Bothwell, situated beyond the railway fence, and occupied by servants of the company during their period of service, they being bound to pay rent, and on leaving the service, to vacate the houses without notice, were entered in the county lands valuation roll, with the company as proprietors, and the servants as occupiers;—Held that the houses were properly entered, and did not fall within the description of "stations, wharfs, docks, depots, counting-houses, and other houses, and places of business" in sec. 21 of 17 and 18 Vict., cap. 91, which are to be valued by the assessor of railways.

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58. The Glasgow Iron Company and Samuel H. Campbell, March 24, 1873.—11 M. 989.

Goodwill of Shop or Store—Rent.—Where a tenant of a store offered £90 as rent of the subjects, and £60 for the goodwill of the business;—Held that the value which fell to be entered in the roll was £150.

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59. John Grant, March 29, 1873.—11 M. 989.

Tenant Purchasing Subjects before Expiry of his Lease.—Where a

tenant, holding under a lease for twenty-one years, purchased the subjects before the expiry of the lease, and increased their value by making considerable improvements; —Held that the subjects should not be entered in the roll at the rent stated in the lease, but at their fair annual value after the improvements were made.

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60. The Renton Gas Light Company, March 29, 1873.—11 M. 989.

Gas Works—Tenant's Profits—Value.—Held that in valuing gas works, the proper mode was to take the profit made by the gas company, and to deduct therefrom (1) the average cost of repairs, and renewals of mains and apparatus, and (2) a sum for tenant's remuneration for trouble and risk.

Note.—In the case of the Leven Gas Light Company, decided on the same day, the Court fixed the annual value at the average sum divided among the shareholders for several preceding years.

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61. The Bank of Scotland, June 9, 1873.—11 M. 991.

Bank Offices—Value—Mode of stating Case.—The offices of the Bank of Scotland in Dundee, were entered in the roll at £468. The bank appealed, submitting that the value should be entered at £280. Evidence was led before the commissioners, and a printed copy thereof, taken by a shorthand writer, was agreed to be held as the proof for both parties, and it, and certain documents referred to in the evidence, were referred to, and signed as part of the case. The commissioners by a majority sustained the valuation, but the Court returned the following deliverance;—"The judges, in respect this is not a special case stated in the terms required by the statute 20 and 21 Vict. cap. 58, sec. 2, cannot entertain it to any effect. It is therefore dismissed."

The same was held in the cases of the British Linen Company, and National Bank of Scotland, 9th June 1873.

Note.—By section 8 of The Valuation of Lands (Scotland) Amendment Act of 1879 it is provided that either party to an appeal or complaint to the Commissioners of Supply or Magistrates of a burgh may at the hearing require the evidence to be taken in shorthand at his expense.

62. Duncan M'Gregor and Others, June 3, 1874.—4 R. 1144.

Over-valuation—Locus Standi of Objectors.—Certain villagers in Aberfeldy, whose names were not on the roll, appealed against the entry of Joseph Ewing, Sir Robert Menzies' gardener, as tenant of a house at a rent of £14. They produced evidence that the value was under this sum, and also, that while the gardener's wages were formerly £50, with a free house, they were now £64, £14 being retained by Sir Robert for the rent, which was fixed so as to give the gardener a vote in the county. A lease was produced for a year, and thereafter until either party gave six months written notice, at the rent of £14, and two witnesses stated the value at £16. The commissioners repelled an objection to the *locus standi* of the objectors, and fixed the annual value at £10;—Held that the decision of the commissioners was right, the lease not being such a lease as is conclusive of value under section 6 of the statute.

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63. The Burgh of Inverness, June 3, 1874.—4 R. 1144.

Market Dues.—The right of levying the market dues of the town of Inverness was let to a tenant, and the whole sum payable by him was entered in the roll, the subjects being described as "shops, stalls, &c." The shops and stalls were let by the year, and were separately entered;—Held that this was the proper mode of entry.

Note.—In the later case, The Aberdeen City Treasurer, 2d April 1877, 4 R. 1149, a somewhat similar question arose. The public market in Aberdeen is held every Friday, and the space in Castle Street round the Cross is occupied by butchers with their stands, for each of which, with a few exceptions, a rent is payable. The right to collect these rents was let to a tacksman. It was held that the stances should not be entered in the roll; the ground of this decision being that what was let to the tacksman could not be the subject of a lease, the market being held on an ancient highway through the burgh, of which there could be no legal private appropriation. What the tacksman possessed was a moveable right—a *jus exigendi* to collect burgh customs. The payments by the hucksters were made on the fiction that the stands were supplied by the town, and that hire was paid for their use.

64. John Shields and Another, May 25, 1875.—4 R. 1146.

Value of Buildings and Steam Power—Per-centage for Annual Value.—In assessing the annual value of a linen manufactory at Perth, the assessor arrived at the sum entered in the roll, by taking the sum contained in the estimates for the buildings, and adding 10 per cent. for extras, then adding the value of the steam power at the rate of £45 per horse-power. Of the sum so brought out, he took 7½ per cent., to which was added the value of the ground at the rate of 2s. per pole. The result was the amount entered in the roll. It appeared that the rate of 7½ per cent. had been adopted for such cases by the Magistrates of Dundee in 1866, and was arrived at on the principle that money so invested should yield 5 per cent. clear, the 2½ per cent. additional being for taxes, &c. The Magistrates and Council of Perth dismissed an appeal against this valuation, but the Court altered and modified the 10 per cent. added for extras to the estimate for erecting the buildings, and also the 2½ per cent. in addition to the 5 per cent. for taxes, &c.—on the footing that the landlord's taxes, &c., in Perth, might not be so high as in Dundee.

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65. Summerlee Iron Company, May 26, 1875.—4. R. 1146.

Mineral Lease for Thirty Years—Pit-mouth Buildings and Engine erected by Tenants.—Where the tenants of minerals under a thirty years' lease, were entered in the roll at the rent payable under the lease;—Held that pit-mouth buildings and engines, erected by the tenants at the beginning of the lease, and indispensable for the working of the minerals, did not fall to be valued and entered independently of the minerals, but were covered by the entry of the minerals at the rent payable under the lease.

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66. Alexander Mitchell Innes, May 26, 1875.—4 R. 1147.

Farm—Land Resumed by Landlord under Provision of the Lease.—A landlord had right to resume for planting a portion of a farm, rented at a certain rate per acre, paying to the tenant a specified sum for each acre so resumed, which was de-

ducted from his rent;—Held that the farm fell to be entered at the rent actually paid by the tenant, and the land resumed to be entered as woodland, at the rate per acre which would have been payable by the tenant if it had remained part of the farm.

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67. Burgh of Inverurie, May 26, 1875.—4 R. 1147.

Market Stance—Market Customs of Burgh.—A burgh, having right under royal charter to erect a market cross, to hold markets on certain days, and to levy tolls, customs, duties, and liberties pertaining to free markets, let the right to levy the market customs for a yearly rent ;—Held that the "market stance" fell to be entered in the valuation roll, with the magistrates as proprietors, and the tenant as occupier, at the rent payable by the tenant.

Note.—The ground unsuccessfully maintained by the Magistrates of the burgh was, that what was let to the tenant was the right of levying the market customs of the burgh, and this was a source of income to the corporation, apart from their lands, and the customs were not pertinents of the market stance. The customs were levied not at the market stance, but at the burgh boundaries, upon all goods coming into the burgh for sale on market day, whether they went to the stance or not. The interpretation clause of the Valuation Act did not specify market customs or subjects akin to them. The view of the assessor, which was sustained, was, that the customs were pertinents of the burgh lands, and therefore came under the denomination of "lands and heritages."

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68. Mrs. Emma Jerdan, May 25, 1876.—4 R. 1148.

Rent of Inn.—Premises belonging to a firm of brewers, used as an inn, were verbally let at a rent of £14, the tenant being bound to purchase from the proprietors all the beer and ales she required, receiving a discount of 4 per cent. only, the usual trade discount being from 15 to 20 per cent. The average amount of the tenant's purchases was £130 ;—Held that the premises were properly entered in the roll by the assessor as of the annual value of £20.

69. Sir David Kinloch, June 1, 1876.—4 R. 1148.

Rent in Lease—Abatement—Improvements.—A farm was let under lease for nineteen years, at a rent of £700 in money, and the value of 280 quarters of wheat, at fiar's prices. The lease provided that there were to be abatements for the first four years of £200, £150, £100, and £50 respectively, but did not state the reason of the abatements, nor that the farm was not in good condition. The assessor entered the farm in the roll without giving effect to the abatements, on the ground that it was reasonable to assume, in absence of explanation in the lease, that the abatements were to be expended in improvements having a permanent character, and were thus, to all intents and purposes, rent. The assessor's view was confirmed.

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70. Sir Thomas Buchan Hepburn, June 1, 1876.—4 R. 1148.

Rent in Lease—Reduction in first Two Years.—A farm was let under lease for nineteen years, at a rent of £187, 17s. 6d. for the first two years of the lease, and £375, 15s. for the remaining seventeen years. It was stated that the farm was in bad order, and the rent was arranged to enable the tenant to put it in good condition. There was no stipulation in the lease as to repairs or improvements to be done by the tenant. Held that for the first two years the farm fell to be entered in the roll at the rent actually payable by the tenant under the lease.

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71. The Barony Parochial Board, April 2, 1877.—4 R. 1149.

Lunatic Asylum—Basis of Value.—The lunatic asylum belonging to the Barony Parochial Board, situated in the parish of Kirkintilloch, was entered in the roll as of the annual value of £1600. The Barony parochial Board claimed to have the valuation reduced to £1000, while the Kirkintilloch Parochial Board claimed to have it raised to £2500. The asylum was licensed for 400 patients, so that the valuation amounted to £4 per bed. The Barony board contended that, as compared with other asylums and with poorhouses, this valuation per bed was excessive. The Kirkintilloch board, on the

other hand, contended that the valuation per bed of poor-houses did not form a criterion for the valuation of lunatic asylums, the accommodation per bed being greater in the latter, and urged that two per cent. on the cost of erection, yielding in the present case £2500, would be a reasonable valuation. £1600 was held to be a moderate and fair valuation.

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72. Lord Blantyre, April 2, 1877.—4 R. 1150.

Ferry.—The ferry of Erskine, on the Clyde, is a pertinent of the barony of Erskine, which is wholly situated in the county of Renfrew. The Clyde at Erskine divides the counties of Renfrew and Dumbarton, and there are landing-places for the use of the ferry in both counties. It was held that the ferry fell to be entered in the valuation rolls of both counties, the actual rent of £100 payable for the ferry being allocated in the proportion of £80 to Renfrew and £20 to Dumbarton; the larger portion being entered in the county of Renfrew on account of an hotel and ferry-house, which were included in the rent, being situated on the Renfrew side of the ferry.

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73. William and John Scott, March 7, 1876.

Consideration other than Rent.—A farm was let in 1869 for twenty-five years, at a rent of £1808, 6s. 8d. This lease was renounced, and a new lease granted for nineteen years from Whitsunday 1877, the rent being £1850. Prior to the new lease the tenants had expended large sums on drainage and other permanent improvements, and had reclaimed large tracts of moorland. It was held that the expenditure on improvements and reclamations under the twenty-five years lease were considerations other than the rent, and therefore that the farm was not to be entered at the rent actually payable under the lease, but at a sum (£2250) which represented its fair annual value.

XIII.—CASES UNDER THE PUBLIC HEALTH ACTS, (30 and 31 Vict., c. 101; 34 and 35 Vict., c. 38; 38 and 39 Vict., c. 74; and 42 and 43 Vict., c. 15).

1. Thomas M'Culloch *v.* The Parochial Board of Alva, September 10, 1868.—2 *P. L. M.* 64.

Water Supply.—Held (in the Sheriff Court of Stirlingshire) that a parochial board, being the local authority under the Public Health Act, has power to form a water district, although a private committee exists for the purpose of obtaining a proper water supply.

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2. The Local Authority of the Burgh of Airdrie *v.* Andrew Ferrier (Inspector of New Monkland), May, 1871.—4 *P. L. M.* 398.

Right of Local Authority to Recover from Parochial Board Advances to Fever Patients.—Held (in the Sheriff Court of Lanarkshire) that in cases of persons attacked by infectious or contagious disease, the burden of providing for them, while ill, falls upon the local authority, and that the local authority has no claim against the parochial board for recovery of any advances.

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3. William Steel and Others *v.* The Commissioners of the Burgh of Gourock, July 11, 1872.—10 M. 954; 1 *P. L. M.* 84.

Nuisance—Interdict.—Three proprietors within a burgh presented a petition to the Sheriff to interdict the local authority of the burgh, acting under the Public Health Act, 1867, from carrying out a system of drainage for the burgh, on which they had determined. The petitioners averred, incidentally, that the intended operations would be injurious to their persons and properties; but their allegations con-

sisted chiefly of statements that the intended system of drainage was a bad one for the interests of the burgh generally. The petition was dismissed, as it contained no relevant averments to justify the interference of the Sheriff, and as being an attempt to control the resolutions of the local authority.

Observed by the Lord President;—"This is an application to us, at common law, to interdict the local authority from carrying their resolutions into effect. If it were made out, or relevantly averred, that the local authority were about to violate the statute, this course would be justified. But the allegations do not amount to more than that the proposed system of drainage is a bad one for the interests of the burgh—not for the interests of the individual petitioners, as distinguished from the general interests. It is really an application to the Sheriff to consider the question how the burgh of Gourock should be drained. I do not say that the Sheriff has no jurisdiction to entertain this petition; but the spirit of the statute certainly excludes him from anything like a review of the resolutions of the local authority. If a nuisance was actually created, there is no doubt that those affected by it would have a right to complain."

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4. The Crieff Hydropathic Company (Limited) *v.* The Commissioners of Police of Crieff, August 1872.—5 *P. L. M.* 580.

Special Water Supply District.—Held (in the Sheriff Court of Perthshire) that where a local authority has provided, in terms of the Public Health Act, a supply of water for the district under their control, it is incompetent to create a part of that district into a separate water supply district.

Note.—The question of the liability of the Hydropathic Company (who had at great expense obtained a special water supply for themselves) for assessments imposed by the local authority of Crieff in connection with the supply of that burgh with water, was raised in a separate action, and the Hydropathic Company were found not exempt from liability. (24th April 1878.—6 *P. L. M.* 316.)

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5. The Board of Supervision *v.* The Local Authority of Montrose, December 3, 1872.—11 M. 170.

Title to Insist—Sewerage.—Held that, under section 97 of the

Public Health Act, the Board of Supervision have right and title to present a petition and complaint to have a local authority ordained to provide a necessary system of drainage, which they had refused or neglected to construct, and reasonable time allowed to the local authority to discover and have executed the most suitable system of drainage.

Observed by Lord Cowan—"Neglect is sufficient to entitle the board to come forward."

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6. Andrew Ferrier (Clerk to Local Authority of New Monkland) *v.* Thomas King, November 4, 1873.—2 *P. L. M.* 33.

Public Health Act, sec. 49—*Contravention.*—Circumstances in which held (in the Sheriff Court of Lanarkshire), that by exposure of an infected person in a public conveyance, a contravention of sec. 49 of the Public Health Act had been committed.

The facts were—A female servant of the respondent was, by his directions, placed in a hackney carriage got from a cab proprietor at Motherwell, on Sunday 20th June 1873, and driven from Motherwell to Ardrie, no notification having been made by the respondent that she was suffering from small-pox. The respondent alleged that he did not know that she was so suffering, but it was proved that there was an epidemic of small-pox at Motherwell at the time; that there was a case of small-pox in a house adjoining the respondent's; that the symptoms shown by the servant were severe; and that the medical man who was called in, informed the respondent's wife that he was afraid it was, or would turn out to be, small-pox, and also informed the respondent himself that as it might turn out to be small-pox, he had better get the girl out of the road. In these circumstances, the local authority of New Monkland, into whose district, then free from infection, the girl was taken, brought a complaint against the respondent, and the Sheriff-Substitute held that the respondent had contravened the 49th section of the Public Health Act, and subjected him in a modified fine of £2, 10s. with £9, 3s. 9d. of expenses.

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7. Lord Provost, Magistrates, and Town Council as Local Authority of Edinburgh *v.* The Kirk-Session and Parochial Board of St. Cuthbert's, March 23, 1874.—2 *P. L. M.* 203.

Cemetery—Nuisance.—In an application for the removal of a

nuisance under the 16th section of the Public Health Act; —Held that a churchyard was a nuisance within the meaning of the statute, it being established as matter of fact that its use could not be regulated without danger to the public health, and an order therefore made that it should be closed as a place of interment.

Note.—A similar decision was given in The Local Authority of Gourock, 24th September, 1875; 4 *P. L. M.* 86.

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8. The Board of Supervision *v.* The Local Authority of Pittenweem, July 8, 1874.—1 R. 1124; 2 *P. L. M.* 402.

Local Authority—Expense of Complaint.—The Board of Supervision having, with the concurrence of the Lord Advocate, presented a complaint to the Court of Session to have the local authority of Pittenweem ordained to procure an adequate supply of wholesome water for the burgh, the ground of complaint being that the water supply was defective, unfit for domestic use, and a source of danger to the inhabitants of the burgh; and the local authority having lodged answers that they were in course of providing a sufficient supply of water, and having rendered further procedure in the complaint unnecessary by obtaining an adequate supply;—Held that the Board of Supervision, having acted in the public interest, were entitled to expenses.

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9. The Board of Supervision *v.* The Local Authority of Galashiels, December 5, 1874.—12 S. L. R. 111; 3 *P. L. M.* 37.

Petition and Complaint—Local Authority.—The Board of Supervision having presented a petition and complaint against the local authority of a burgh, under the Public Health Act calling upon them to introduce a proper system of drainage; —Held that such a petition was the proper ultimate remedy under the Act; and time given for maturing a scheme of drainage.

Note.—The statutory provisions bearing on this question are sections 3, 73, 89, 94, 97 of the Public Health Act (30 and 31 Vict., c. 101), and sect. 19 of the General Police and Improvement Act (25 and 26 Vict., c. 101).

10. G. H. M. Binning Home *v.* The Local Authority of Kelso, March 17, 1876.—3 Couper 239.

Overcrowding Dwelling-House—Landlord and Tenant.—A landlord let, along with a farm, a cottage, which contained sufficient accommodation for six persons. The tenant put a hind and his family, consisting in all of nine persons, in possession of the cottage. The Sheriff, upon a petition presented under section 16, subsection F. of the Public Health Act, by the local authority of the parish, convicted and fined both landlord and tenant of overcrowding the cottage. In an appeal by the landlord;—Held that he was not, in the sense of the statute, the author of the nuisance, the cottage not being under his control, but under that of his tenant, and therefore that the landlord was not responsible for the fault of his tenant.

Observed by the Lord Justice-Clerk—"The landlord can only be held responsible if by his act or default he causes what in terms of the statute amounts to the nuisance, that is, in this case, the overcrowding of the house by putting the hind and his family into it. The question is, who is responsible for that? Clearly, I think, the person who gave the hind permission so to occupy the house. The proprietor had no right to, and could not interfere in the matter. The tenant got the farm with the house in question, to occupy in any way he pleased, and nobody but the tenant had any power to control the manner in which it was occupied. At the same time, I do not wish to indicate that a person who has the control of the subject upon which a nuisance exists, and who refuses to exercise it on account of some one else having also a power of controlling the nuisance, will not be responsible."

Observed by Lord Young—"It is not the contravention of what is declared in the statute to amount to the nuisance that constitutes the offence under the statute. In terms of the statute, the local authority may go and suggest by petition that the nuisance exists, and if, on inquiry, it is found to exist, the Sheriff may order it to be abated, but the offence, if any, is committed on failure to obey the order, when also the penalties in the statute are incurred."

11. The Local Authority of Selkirk *v.* John Brodie, March 16, 1877.—3 Couper 400; 5 *P. L. M.* 324.

Appeal—Competency—Jurisdiction.—Held (diss. Lord Young) that a summary petition for recovery of sums becoming due to a local authority, brought under the 105th section of the Public Health Act, 1867, was a "cause" within the meaning of the Summary Prosecutions Appeals (Scotland) Act, 1875, sec. 2, and was therefore appealable on case stated to the Court of Justiciary.

Observed by the Lord Justice-Clerk—"The proceedings in the Court below were founded on section 24 of the Public Health Act of 1867, which empowers the local authority to assess the owners of premises affected by the operations authorised by the section for payment of the expenses, and to levy and collect the sums so assessed, with the same remedies in case of default of payment 'as are hereinafter provided with reference to the general charge and expenses incurred by the local authority under this Act.' The question therefore is, how these expenses are to be recovered. It is said the case is covered by section 105, which provides that the Sheriff may, without prejudice to diligence by poinding or arrestment, grant warrant for the imprisonment of the person convicted or found liable in a penalty or sum of money, unless he shall pay the whole sums found due within a specified time, until the same be paid, such imprisonment not to exceed a specified time. Now, the powers of this section are not confined to matters of penalty, but they extend to 'sums of money becoming due,' and it is provided that the imprisonment shall not exceed a term specified. The next point is, whether this is a cause under the recent Appeals Act, and that seems to depend upon the question whether it might have been brought under the Summary Procedure Act. Section 28 of that Act provides, that a proceeding by way of complaint, 'shall be deemed and taken to be of a criminal nature, where, in pursuance of a conviction or judgment upon such complaint, or as part of such conviction or judgment, the Court shall be required or be authorised to pronounce sentence of imprisonment against the respondent, or shall be authorised or required, in case of default of payment, or recovery of a penalty or expenses, or in case of disobedience to their order, to grant warrant for the imprisonment of the respondent for a period limited to a certain time.' The mode of recovery settles that the civil debt here sued for is of the nature of a penalty. The only remaining point is, whether the case is not one of those 'not herein otherwise provided for' in the sense of the 105th section. I think that sections 94 and 95

relate to the recovery of general assessments, not to claims against individual ratepayers, or to the recovery of new assessments imposed upon the whole community. I think, moreover, that it was the policy of this statute to provide rapid and stringent remedies for the current requirements of the local authority."

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12. United Kingdom Temperance and General Provident Institution, and John Lang, and Murdoch and Rodger *v.* The Parochial board of Cadder, June 14, 1877.—3 Couper 447; 5 *P. L. M.* 480.

Procedure under Public Health Act.—The parochial board of Cadder, as the local authority of the parish, presented a petition to the Sheriff of Lanarkshire, under sections 18 to 22 of the Public Health Act, against the owners of a property through which ran a foul ditch or water-course, which was complained of as a nuisance, the prayer of the petition being for removal of the nuisance, and alternatively for a penalty. The Sheriff-Substitute made no order upon the respondents to remove the nuisance, but, in respect the question of who was the author of the nuisance could not be determined without protracted inquiry, he ordained the petitioner to execute the necessary works, in the cost of which he afterwards found the respondents liable. The respondents having appealed to the Court of Justiciary;—Held that the Sheriff was not entitled, under section 22 of the statute, to decern against the respondents for the expense incurred, not having given them an opportunity of abating the nuisance.

Observed by Lord Young—"The Sheriff was satisfied on very moderate inquiry that the ditch was a nuisance. But at the same time he was of opinion that he could not satisfactorily ascertain in the petitions before him who were the authors of the nuisance, and that therefore he was not in a position to make an order upon any one in particular to abate the nuisance. Accordingly, under section 22 of the statute, which is applicable to that state of circumstances, he ordained the local authority to do what was necessary. But then, after the nuisance was remedied by the local authority under this order, the Sheriff was moved in the same proceeding to find the very parties of whom he has said that he could not ascertain whether they or any of them were the authors of the nuisance, liable in the expenses incurred, just as if they were the authors of the nuisance, and the Sheriff

pronounced a finding accordingly. Now, that was a totally inept proceeding. Had the Sheriff been able to ascertain who was the author of the nuisance, his proper course would have been to order him to do what was necessary to remove it, and to specify a time after which, failing compliance, the statutory penalty would begin to run. If he failed in compliance, then the Sheriff might have granted warrant to perform the necessary operations at his expense. But finding that the author of the nuisance could not be ascertained, and ordering the local authority to perform the necessary operations on that footing under the 22d section of the Act, it was quite incompetent for the Sheriff thereafter to order the parties against whom the petition was presented to defray the expense to which the local authority had been put. It must not, however, be understood that the local authority is without remedy. They may make up their minds as to who are really the authors of the nuisance, and therefore liable to them, and in a proper proceeding obtain decree against him or them for the amount of their disbursements. Or they may proceed under the 24th section, which, I must say, appears to me to be the one most applicable to the state of matters as disclosed to us in this case, and having completed the necessary works, assess the cost upon the owners of all premises polluting the water-run in question."

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13. The Local Authority of Cadder *v.* John Lang, July 11, 1879. 7 *P. L. M.* 532.

Procedure to make Author of Nuisance Liable in Cost of Removal.—Held that under sections 16, 18, 19, and 22 of the Public Health Act, in order that the local authority may recover from the "author of a nuisance" the cost of removing it, it is necessary either that the Sheriff should have ordained him to execute the removal himself, and on his failure have then ordained the local authority to do so, or that at the date of the order on the local authority it should have appeared that the author of the nuisance was unknown.

Observed by the Lord President—"When a complaint is made of the existence of a nuisance, the remedy is that the Sheriff shall order the author of the nuisance to provide for its removal. The Sheriff is directed to proceed in a variety of ways, according to the nature of the nuisance, but in the whole of them he is to order the author of the nuisance or owner of the premises to execute the necessary remedy. That is the first step. But if the order of the Sheriff is not complied with, then the provision in section 22 of the Act comes into operation, which is, that

in case of non-compliance with any decree of the Sheriff, he may, 'on application by the local authority, grant warrant to such person or persons as he may deem right to enter the premises to which such decree relates, and remove or remedy the nuisance thereby condemned or interdicted, and do whatever may be necessary in execution of such decree.' Now, that makes it very clear that in every case the author of the nuisance is opposed to the local authority, and it is very reasonable that it should be so. He may be able to execute the necessary works at a much cheaper rate than anyone else. It is obvious that he has means of doing this which no outsider can have. But it is needless to inquire into the policy of the Act; it is enough to say that it distinctly provides that the author of the nuisance is to have an opportunity of himself remedying the nuisance, and if the Sheriff orders or empowers the local authority to proceed without giving the author of the nuisance this opportunity, he is going outside the statute. No doubt the 22d section provides that 'if in the original application it appears to the satisfaction of the Sheriff that the author of the nuisance is not known or cannot be found, then his decree may at once ordain the local authority to execute the works thereby directed, and all expenses incurred by the local authority in executing the works may be recovered from the author of the nuisance, or the owner of the premises.' But it is abundantly clear that this provision can only be intended to apply to cases in which the author of the nuisance cannot be discovered."

XIV.—CASES UNDER THE EDUCATION (SCOTLAND) ACTS (35 and 36 Vict., c. 62, and 41 and 42 Vict., c. 78).*

1. John Hay and Others *v.* Thomas Linton (Superintendent of Police of Edinburgh) December 15, 1855.—28 *Jur.* 109.

Reformatory Schools Act, (17 *and* 18 *Vict., cap.* 74)—*Caution.*—Where proceedings are taken under section 1 of the Reformatory Schools Act, and an investigation takes place before a magistrate;—Held (1) that it is illegal to confine the child, who is the subject of investigation, in the police cell during the preliminary inquiry; and (2) that the inspector of poor is, under the provisions of the said section, entitled to offer the caution required by the Act.

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2. Alexander M'Gregor *v.* Robert Caldwell, October 22, 1873.—1 R. 15.

Burgh Franchise—Schoolmaster—Defeasible Title.—A schoolmaster was appointed by the school board to hold office "during the pleasure of the board, with a fixed salary besides the dwelling-house at present occupied by him." He had lived in the dwelling-house for several years, and was on the register of voters as tenant and occupant thereof. The dwelling-house had not been transferred to the school board, though negotiations for a transfer were in progress;—Held that the schoolmaster's tenure of the dwelling-house was not defeasible, and that he was therefore entitled as tenant and occupant thereof to the franchise.

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3. The School Board of the Parish of Peebles *v.* The Magistrates and Town Council of the Royal Burgh of Peebles, February 28, 1874.—1 R. 686.

Burgh—Burgh School—Section 46 *of Act of* 1872.—Where, under

* A few cases under the Reformatory Schools Act (17 and 18 Vict., c. 74), and the Industrial Schools Act (29 and 30 Vict., c. 118), are also given.

the provisions of the 11th section of the Education Act, a burgh (having less than 3000 inhabitants) is dealt with as part of the parish in which it is situated, and a school board is elected for the whole parish, including the burgh ;—Held that the burgh schools, which had been erected, maintained, and managed by the magistrates of the burgh, became vested in the school board of the parish, and that the magistrates, who had been in use to make a payment to the schools of £100 a-year from the common good, were bound, in pursuance of the 46th section of the Act, to pay that sum annually to the school board, to be applied for the purpose of promoting higher education.

Observed by the Lord Justice-Clerk—"The effect of this (the order under the 11th section) is that the school board of such a parish possesses all the powers of a parish school board, and all the powers of a burgh school board within such limits."

Note.—In the later case of The School Board of the Royal Burgh of Dunbar *v.* The Provost, Magistrates, and Town Council of Dunbar, 18th March 1876, 3 R. 631, it was held that where the burgh had, prior to the Education Act of 1872, maintained the burgh school, the amount which fell to be paid out of the common good to the school board, in whom the school now vested, was to be as nearly as possible what the school had actually cost the town; and that, in fixing this amount, retiring allowances, and expenditure for repairs and cleaning were to be taken into account. And in the case of The School Board of Perth *v.* The Magistrates and Town Council of Perth, 19th October 1878, 6 R. 45, it held that the 46th section of the Act applied in all cases where a sum was in use to be paid, although the sum was not invariable in amount, and although there was no legal obligation to make the payment, and further, that a period much short of forty years is sufficient to establish a "custom" in the sense of the statute. A further illustration of the operation of the 46th section will be found in The School Board of the burgh of Dunfermline *v.* The Magistrates of Dunfermline, 19th October 1878, 6 R. 51. But it has been held in the Outer House (by Lord Young) in The School Board of Salton *v.* Bishop Burnet's Trustees, 23d March 1876, that while a sum appointed by a truster to be paid in addition to the schoolmaster's allowance fell under the operation of section 46, yet that income arising from the trust funds, which were directed to be applied to the education of poor children, and which, down to 1872, had been expended in placing the children in the parish school, did not fall under section 46, and did not constitute a trust for behoof of the parish school.

4. William Wilson *v.* James Stirling, Chief Constable of Nairnshire, and interim Procurator-Fiscal of Court, March 9, 1874.—1 R. 8; 2 *P. L. M.* 182.

Industrial Schools Act (29 *and* 30 *Vict., c.* 118)—*Illegitimate Child.*—Held that it was illegal under the Industrial Schools Act to apprehend and deal with a child without notice given to the mother, and sentence remitting to a reformatory quashed.

Note.—See observations of the Lord President on the subject of notice to the parent in Lord Advocate *v.* Brown (*infra* p. 420).

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5. Rev. William Whyte *v.* The School Board of Haddington, July 9, 1874.—1 R. 1124; 2 *P. L. M.* 543.

Schoolmasters—Burgh School—Teacher's House—Ejectment.—In a burgh school the dwelling house of the teacher and the classroom formed one tenement;—Held that the whole building vested in the school board under the 24th section of the Education Act of 1872, and that the schoolmaster, on being dismissed by the school board as "inefficient, unfit, and incompetent," was liable to be ejected from the dwelling-house.

Observed by the Lord President—"The complainer says he could not be ejected from his dwelling-house, because the school board have no title to that house. . . . I am of opinion that the objection is bad on its merits. No doubt the wording of the statute varies in the 23d and 24th sections. The 23d section provides:—'The parish and other schools which have been established, and now exist in any parish under the recited Acts, or any of them, together with teacher's house and land attached thereto, shall be vested in, and be under the management of, the school board of such parish, or, if situated in a burgh, then of the school board of such burgh.' Then in the 24th section it is provided:—'Every burgh school shall be vested in, and be under the management of, the school board of the burgh in which the same is situated, from and after the election of such school board,' &c. Now, in the first of these sections, the teacher's house is mentioned, and in the second it is not; but in both cases the term 'school' undoubtedly means, among other things, the school buildings. In regard to parish schools, which depend upon a series of statutes, it is a statutory requirement that there shall be

a teacher's house, and it is therefore natural that the 23d clause should distinctly say that the teacher's house, as well as the school, shall be vested in the school board. In regard to burgh schools the position of the teacher's house is different, for there is no statutory enactment that in the case of burgh schools a teacher's house should be provided at all. It is thus not surprising that there should be no express mention of the teacher's house in the 24th section. But, coming to the facts of the case we are now considering, I observe that the school-house and the teacher's house are embraced in the same tenement. Now, from the nature of the case, I think it obvious that they cannot be separated. The whole tenement is one which has been dedicated to one purpose from time immemorial. Taking a fair construction of the 24th section of the Act, I think that it does include a tenement of this description, and that the fact that part of the tenement is a teacher's house does not prevent the whole tenement falling under the description of 'school.' If there had been a separate and distinct schoolmaster's house, that would have been a different, and might have been a delicate, question. But where the school house and the teacher's house are one tenement, and are not separable, I cannot but hold that the whole falls under the term 'school.'"

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6. The School Board of Kelso *v.* George Duncan Hunter, December 18, 1874.—2 R. 228; 3 *P. L. M.* 135.

Right of School Board to Visit School.—Held that the right of a school board under the Education Act to pay visits to a public school, during teaching hours, by deputation of their members, especially having regard to the duties imposed by the statute on the government inspector, was not so clear as to entitle them to interdict against the schoolmaster, in respect of his refusal to admit the members of the board, or to permit visitation of the school, without previous notice.

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7. Alexander Robb *v.* The School Board of Logiealmond, February 5, and May 21, 1875.—2 R. 417 and 698; 3 *P. L. M.* 248.

Dismissal of Schoolmaster—Retiring Allowance.—Held that, under section 19 of the Parochial and Burgh Schoolmasters Act of 1861, a schoolmaster was entitled to a retiring allowance if not removed through his own fault, and a schoolmaster, appointed prior to the Education Act of 1872, having been re-

moved by the school board on a report from the inspector certifying that the school had "not been efficiently conducted," and that the schoolmaster, "however he might succeed elsewhere, is unfit for the post of schoolmaster in the said school," the Court allowed the schoolmaster, who had raised an action against the school board, to amend his record with the view of enabling him to show that the cause of dismissal was not his own fault, and in afterwards deciding that his averments were not relevant, it was observed that, when a school board refuse a retiring allowance, they should state their reasons.

Note.—In Marshall *v.* The School Board of Ardrossan, December 1878, a question of a similar nature was raised. The pursuer claimed a retiring allowance, or, alternatively, damages in respect of wrongful refusal to grant such allowance, and averred (1) old age, and (2) that the inspector's report, which was the warrant of dismissal, was based on occurrences not due to the teacher's fault, but arising to a considerable extent from the oppression of the Board. After being heard before seven judges, it was remitted to the school board to reconsider their refusal of a retiring allowance, and an allowance having ultimately been given by the board, no decision was pronounced upon the questions raised in the action.

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8. George Duncan Hunter *v.* The School Board of Kelso, March 5, 1875.—2 R. 520; 3 *P. L. M.* 360.

Power of School Board.—Held that it was competent for a school board, against the protest of the schoolmaster, to combine two departments of a school which had formerly been kept separate, and to provide that only elementary education should thereafter be given; the claim of the schoolmaster for any peculiar damage which he might suffer by the change being reserved.

Observed by Lord Young—"The policy or expediency, with reference to the efficiency of the school and the educational requirements of the parish, of the change directed to be made in the conduct of the school, is a question on which there may be difference of opinion. But it is a question for the determination of the school board as a board of management elected by the whole rate-paying population of the parish, and they having determined it, this Court has no authority whatever to interfere with their judgment. Such interference would imply a power

and therefore a duty on the part of this Court to assume a supervising or controlling power with respect to the management of all the public schools in the country, than which nothing could be more at variance with the Act of Parliament, which conferred the management on the people at large through the medium of boards popularly elected at short intervals, without a suggestion of any supervision or control by this Court. . . . A schoolmaster held or had 'tenure' of his office *ad vitam aut culpam;* but a change in the mode of conducting the school, or in the branches taught, whether by reduction or addition, made by the managers of the school (the minister and heritors) in the due course of management, was certainly not objectionable as a change of his 'tenure' of office. It was, on the contrary, implied in the appointment of every parish schoolmaster that he should submit and conform himself to the lawful management of the managers, and I should greatly doubt whether an express contract, whereby the managers bound themselves to make no change of management, however expedient or even necessary in the interests of the parish, would have been lawful or binding. A public body is not entitled so to tie itself by contract as that it shall be incapable of duly performing its public duty. But there is here no express contract, and the pursuer's case is therefore this—that the conduct and management of the school, as subsisting at the time of his appointment, must continue during his tenure of office, unless he shall consent to a change. I think the proposition is unreasonable and untenable, for it would paralyse the action of the managing body; and certainly no such intention is expressed or implied by the language of section 55 of the statute."

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9. The School Board of the Parish of Selkirk *v.* The School Board of the Burgh of Selkirk, June 5, 1875.—2 R. 761.

Operation of 23d Section of Education Act of 1872.—Prior to the Education Act of 1872, the parish of Selkirk was partly landward and partly burghal, and included the royal burgh of Selkirk. The parish schoolhouse was situated within the burgh. Separate school boards were elected under the Education Act for the landward district of the parish, and for the burgh;—Held that the schoolhouse, though situated within burgh, became vested in the school board of the landward district.

Observed by the Lord Justice-Clerk—"The present question depends mainly upon the construction to be put upon the 23d

section of the Education Act, 1872. . . . To bring a school within the exception in clause 23, it is necessary—1st, that it be situated within a burgh; 2d, that prior to the passing of the Act it was the parish school of a parish partly landward and partly burghal; 3d, that it be the parish school of the landward district of such parish when the Act came into operation; and 4th, that it be the school of a district, which, under the Act of 1872, comes to be managed by a school board distinct from the burgh school board. Now, the school in question appears to fulfil all these requirements. . . . It was indeed maintained in argument that if this was the meaning of the exception, there was no meaning left for the principal enactment, and that the construction which we are inclined to put upon the exception would have the effect of rendering the rule nugatory, for there would be no school which could fall under it. The exception would swallow up the rule. But that argument neglects to keep in view the definition of the term 'burgh' in the interpretation clause of the Education Act. Several cases may be figured in which schools would fall under the rule in section 23, and not under the exception. For instance, where a school is the school of a parish lying outside a royal burgh, but wholly within the municipal or parliamentary boundary of the burgh, or where it is the school of a parish consisting wholly of a parliamentary burgh or part thereof, or of a parish lying wholly within one of the populous places enumerated in schedule A."

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10. Thomas R. Buchanan *v.* The School Board of Tulliallan, June 11, 1875.—2 R. 793.

Collection of School Fees.—Held by a majority of seven Judges—(diss. Lord Deas) that in the case of a schoolmaster appointed before the Act of 1872, the duty of collecting the fees rested with the schoolmaster, in accordance with the usage prior to the said Act.

Observed by the Lord President—"Beyond all dispute, prior to the Act of 1872, parish schoolmasters were in use to collect the fees, and that for a plain reason. The fees belonged to themselves. They had the greatest, indeed the only direct interest in collecting them, and, therefore, they were the proper parties to be entrusted with that duty. They had also opportunities and facilities for performing it which no other person could possibly possess. Under the provisions of the Act of 1872 it appears to me that schoolmasters then in office in parish schools were left in the full enjoyment of the school fees as part of their emoluments, and, if so, it would seem to follow that they were the

proper persons to collect them. No change was made as regards these old schoolmasters and their right to the fees, and, as they retained the exclusive right to them, the same reasons which operated previously to make them the proper collectors remained undisturbed.

Observed by the Lord Justice-Clerk—"If there be one thing clear in this important Act of Parliament it is that the school boards are entrusted with a general right and duty of administration over the whole of the educational machinery provided by the statute. They are to ascertain the amount of school accommodation—they are bound to maintain a school in each parish, and keep it efficient—to provide what additional accommodation they may consider to be necessary—to clear out incompetent and inefficient schoolmasters—and they have all the general powers necessary for the performance of these duties, and for the greater part their power and discretion is without control. . . . Schoolmasters generally are simply the servants of the ratepayers, represented by the school board, and are necessarily subject to the administration of those for whom they act, and by whom they are appointed and paid."

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11. Duncan Malcolm Macfarlane *v.* The School Board of Mochrum and the Board of Education for Scotland, November 9, 1875.—3 R. 88.

Jurisdiction of Court of Session—Averments of malice against School Board.—Held (1) that the Court of Session had no power to review on the merits a decision of a school board, but had jurisdiction to inquire into relevant averments of deviations from the statutory procedure, and (2) that averments of malice on the part of a school board in forming their judgment on an inspector's report were irrelevant.

Observed by the Lord President—"I have great difficulty in seeing how malice can be any ground, or even any element in a ground, for setting aside such a resolution as this (removing a schoolmaster), passed by the school board, and confirmed by the Board of Education. If this teacher was inefficient, and was reported to be inefficient by Her Majesty's Inspector, then it was the duty of the school board to remove him, and it was the duty of the Board of Education to confirm that resolution. But it is quite possible, and not a thing by any means unknown in practice, that parties should perform an unpleasant duty of that kind, or what would be an unpleasant duty to impartial persons with

a great zest and liking for the duty, or, in other words, maliciously. They may have been gratifying their own private malice at the same time that they were performing an obvious act of public duty. But will that invalidate the act of public duty? Most certainly not. If the thing ought to be done, the circumstance that the person who did it has the greatest rancour and hatred against the object of that resolution will not make the resolution invalid, if it was well founded in itself. And therefore I dismiss from consideration altogether the allegations of malice in this case. . . . Whether a case of oppression could be made out, as distinguished from malice altogether, against a public board in the execution of a statutory duty, I give no opinion."

Note.—A similar decision as to a resolution of a school board dismissing a schoolmaster on the ground of fault not being subject to review was given in James Morison *v.* Glenshiel School Board, May 28, 1875.—2 R. 715.

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12. The Lord Advocate *v.* Thomas Brown (Inspector of Liff and Benvie), December 10, 1875.—3 R. 188; 4 *P. L. M.* 75.

Industrial Schools Act, 1866 (29 *and* 30 *Vict.*, *c.* 118), *Warrant of Commitment.*—Held that a warrant of commitment of a boy to a certified industrial school being *ex facie* regular, the industrial school directors were entitled to act upon it, and the Commissioners of the Treasury to advance moneys on the faith of it.

Notice to Inspector of Poor.—Circumstances in which held that an inspector of poor must be dealt with as cognisant of a dependent pauper having fallen within the provisions of the Industrial Schools Act, though receiving no notice of the proceedings which resulted in commitment.

This was an action to have it declared that the parochial board was liable for the maintenance of James Mackay, detained in the Dundee Industrial School, under the Industrial Schools Act, and for payment of the sums expended in his support up to the date of the action, at the rate of 5s. per week. The circumstances were—Mackay was, by warrant of one of the Magistrates of Dundee, dated 8th May 1871, granted on the application of the boy's mother, ordered to be sent to the Dundee Industrial School, and there detained until he should attain the age of fifteen years. The order was in the form (A) of the second

schedule to the Industrial Schools Act, 1866, and bore to be in pursuance of that statute, and it described the said James Mackay as "now or lately residing in Perth Road, Dundee, apparently of the age of eleven years (whose religious persuasion appears to me, after inquiring, to be Protestant), being a child subject to the provisions of section 14 of the said Act." The boy was sent to the Dundee Industrial School, which was a certified industrial school under the Act, under this order, and maintained there at the expense of the Treasury. The boy's father, who died in 1869, had at his death an industrial residential settlement in the parish of Liff and Benvie, and his widow, who was left with four pupil children, received parochial relief from that parish, from the time of her husband's death, at rates varying according to circumstances, until July 1871, when further relief was refused. The sections of the statute regarding the detention of children in industrial schools are the 14th, 18th, 22d, 24th, 35th, 38th, and 51st. The defender, as representing the parochial board, resisted the action on the ground that the original warrant was *ab initio* null and void, and that the provisions of the statute had not been complied with. He averred, *inter alia*, that the warrant had been obtained on the mere verbal application of the mother, who did not claim that her boy fell under any of the descriptions specified in the 14th section of the Act, and the order did not state that he fell under any of these descriptions; that neither the defender nor the board were parties to, nor had they received intimation of, any application regarding the boy, nor of his detention, nor the rate of his maintenance, until a demand for repayment was made. The defender afterwards brought an action of reduction of the order of the Magistrate. The judgment of the Court was in favour of the Treasury on the leading question of the liability of the parochial board, as long as the mother was chargeable as a pauper.

Observed by the Lord President—"A number of defences have been stated by the parochial board against the validity of the warrant of commitment, and these are all objections which do not appear on its face. The industrial school directors, therefore, on receiving the warrant, saw that *ex facie* it was all correct, and, in my humble opinion, they were entitled to act upon it, and keep the boy in terms of it. So, too, the Treasury Commissioners, finding the boy in the school under a warrant *ex facie* regular and valid, were entitled to advance money on the faith of these facts, and are now entitled to recover it, if they can bring the case within the 38th section of the statute. All the defences stated I hold to be utterly irrelevant. Above all, the objection that is taken by the board, that they were not parties to the proceedings which terminated in the issuing of a warrant is totally untenable. When an application is made by the Procurator-

Fiscal to have a child sent to an industrial school, it is no doubt indispensable to call the party, if there be any one, whom it is intended to make primarily liable for the expenses of maintenance and education. The proper person to call and hold liable is the father or mother or other guardian of the child, with whom it may be living. Here is a case where the mother was present when the order was granted; she was quite unable to maintain her child; she was a pauper; and it was altogether useless to bring her into the field and charge her with the maintenance of the child. The mother being a party, it was unnecessary to call any one else. The parochial board say that they should have been cited, because they would then have had an opportunity of getting the warrant set aside or suspended, on the grounds on which they now allege it to be incompetent. It appears to me that the poor inspector must know where the paupers on the roll live, how they are situated, and what are the individual circumstances of each. Here is a woman with several children receiving relief from the parochial board, the amount of which it seems varied at different times according to the change in her circumstances. Thus, it was reduced when her eldest daughter had grown up, and was able to help her, and we see that it was discontinued after she was freed of the maintenance of this boy by his being sent to the industrial school. It is the duty of a public body who administer funds for the relief of the poor, not to expend these funds except in the full knowledge of the circumstances of each pauper, and after proper consideration. The child of a pauper cannot be sent away to the keeping of another without its being known to the inspector. Such a circumstance is enough to vary the allowance which the board makes, and not a shilling of the ratepayers' money should be spent without full cognisance of the facts of the particular case. Such knowledge ought, in the present instance, to have put the parochial board of Liff and Benvie in the position that, if they had an objection to make to the magistrates' order, they should have applied for a recall thereof, or should have set it aside in a suspension. They knew that the child being that of a pauper, they would be bound to pay for its maintenance under the Industrial Schools Act. They omitted to take the course that was open to them, and it is quite out of the question to allow them to do so now."

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13. The School Board of Caerlaverock *v.* Hutton's Trustees, February 4, 1876.—Sellar's Manual of Education Acts, p. 172.

School rebuilt and maintained by Trustees of a Charity.—The trustees of a private charitable trust rebuilt and subsequently

maintained the only school within the parish, and also out of the trust funds assisted the heritors in paying the schoolmaster, in whose appointment the trustees had a voice;—Held (by the Lord Ordinary—Young) that, in these circumstances, the school buildings were vested in the school board under the 23d section of the Education Act of 1872.

Note.—In the case of Stewart *v.* The School Board of Little Dunkeld, 10th July 1877, it was held (by the Lord Ordinary—Rutherfurd Clark) that a school, built on an entailed estate, the heir in possession of which appointed the teacher, and named a committee of management among the heritors, who supported the school, there being, however, no assessment, and no agreement to substitute the school for the parish school, the use of which had been discontinued, did not vest in the school board, but continued the private property of the heir of entail.

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14. The Lord Advocate *v.* The School Board of Stow, February 19, 1876.—3 R. 469.

Requisition of Board of Education enforced by Court of Session.—A resolution by a school board to provide additional school accommodation by erecting certain new buildings, was duly confirmed by the Board of Education; but the resolution was not acted upon, as the school board obtained interim accommodation, which they considered sufficient. A requisition to carry out the resolution was made by the Board of Education, but the school board refused compliance. Thereupon the Lord Advocate presented a petition and complaint to the Court, under section 36 of the Education Act of 1872, and the Court ordained the school board to comply with the requisition of the Board of Education.

Observed by the Lord President—"Looking to the terms of the Education Act 1872, and particularly to those of the 28th and 36th sections, it appears to me that we have no power to interfere with the action of the Board of Education in a matter of the kind now in dispute, except in two cases—first, if it were plain that the board had refused or failed to apply their minds to the question of school accommodation in the particular parish, so as to come to an intelligent resolution on the subject, we might interfere to correct that abuse; or second, if the board had gone contrary to or outwith the statute, we might, in that case, also interfere to set them right. . . . It is true the Board of Edu-

cation cannot enforce their own resolution. But that is simply because they have no judicial authority. The courts of law are alone vested with the power of the sword. The Board of Education must come, through the Lord Advocate, to the Court of Session for compulsory powers."

Note.—Similar views were expressed by the Bench in the cases of The Lord Advocate *v.* The School Board of Strathmiglo, 18th November 1876, 14 S. L. R. 108; and The School Board of the Burgh of Renfrew *v.* The School Board of the Parish of Renfrew, 15th November 1877, 5 R. 142; and in The Lochgilphead School Board *v.* The South Knapdale School Board, 30th January 1877, 4 R. 389, the deliverance of the Education Board was held not to be final, because, in that case, it had been issued without hearing the parties interested; but the Court, though so finding, also held that a decision on the merits of the question at issue could not be competently given by the Court.

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15. Andrew Steuart *v.* John Charles, Earl of Seafield, March 1, 1876.—3 R. 518.

School Rate—Clause of Relief.—Held that an obligation by the granter of a disposition dated prior to 1872, to free and relieve the disponee of "all schoolmaster's salary payable for the lands and others hereby disponed, from henceforth and in all time coming," did not apply to school rates imposed under the Education Act of 1872.

Note.—The ground of this decision was, that the rates levied under the Education Act of 1872, differed both in incidence and in purpose from the old tax, to which the obligation in the disposition applied. There was now no schoolmaster of the parish. The cases under the Poor Law Amendment Act of 1845 do not apply, because the rates imposed under that Act were not only applied to the same purpose as the tax prior to 1845, but continued to be imposed on heritable subjects.

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16. William Morrison *v.* The School Board of Abernethy, July 3, 1876.—3 R. 945; 4 *P. L. M.* 532, 591.

Dismissal of Schoolmaster—Notice.—A master was engaged by a school board for the public school under their charge; he remained in office upwards of a year, receiving payment of his salary quarterly, and occupying a free house with garden.

Soon after the commencement of the second year he was dismissed, without any cause being assigned, the board paying his salary to the end of the then current quarter only;—Held (diss. Lords Neaves and Ormidale) that the 15th clause of the 55th section of the Education Act, while providing that every appointment should be at the pleasure of the board, did not entitle them to dismiss without cause assigned, unless upon giving reasonable notice, and that damages were due for dismissal without such notice.

Observed by Lord Gifford—"I think that the true meaning and effect of section 55 of the Education Act of 1872 is, that every schoolmaster appointed under the Act shall hold his office simply at the pleasure of the school board, and not either for life or for any fixed period. I think it quite impossible to read the enactment as providing that the school boards may fix 'at their pleasure' any definite time during which the schoolmaster shall have a right to hold office—in short, that the school board shall have liberty to contract according to circumstances. On the contrary, I think the statute deprives the school board of all power in the matter, and prevents them from making any time engagement whatever with the teachers whom they may appoint. The statute appears to me to be imperative in its terms, and to fix in all cases the character of the employment and appointment. The words are—'Every appointment shall be during the pleasure of the school board.' It is not for such period as the school board may fix; it leaves the school board no discretion. They cannot elect for life, or *ad vitam aut culpam*, or for a period of years, but only 'during pleasure.' The school board is a varying body, and the board of any particular date cannot bind its successors or even itself for any time. The enactment seems to be that the office of teacher shall be precarious, at the pleasure of the respective boards. . . . It does not follow that because an engagement is terminable 'at pleasure,' that either party may terminate it without notice to the other. On the contrary, I think that wherever an office or employment is in itself of a permanent nature, that is, implying endurance or continuance for a considerable period of time, reasonable notice must be given by either party desirous of terminating it. The notice may be long or short, according to circumstances, but even a labourer hired by the day is entitled at least to notice the previous day of his intended discharge. . . . There seems no reason why this rule should not apply to the case of a schoolmaster holding his office during pleasure. Undoubtedly the office is of a permanent nature, that is, it contemplates an endurance for some considerable time. . . . The only other question, What is reasonable notice? and on this point, and looking to the

whole circumstances in which a schoolmaster, such as the present pursuer, is placed, I agree with the majority of your Lordships, that three months notice, or three months salary in lieu of notice, is a reasonable and suitable arrangement."

Note.—In Macfarlane *v.* The School Board of Mochrum, 27th May 1875, 12 S. L. R. 457, it was held, where a school board had by resolution fixed the salary of the parish schoolmaster at a fixed sum per annum, that this formed a binding contract for a year at least from the date of the resolution.

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17. John M'Culloch and Others *v.* The Kirk-Session and Heritors of Dalry, and the School Board of Dalry, July 20, 1876.—3 R. 1182.

Transfer of School to School Board—Lease to School Board.—Funds were bequeathed in the seventeenth century "for the erection of a free grammar school, and maintenance of poor scholars, with a sufficient learned able schoolmaster that can fit them for the several universities and colleges," the school to be in or near Dalry. The funds were found insufficient to carry out the testator's intentions fully, and for time immemorial before the passing of the Education Act of 1872, the income of the trust was applied to the maintenance of a school in Dalry, where no fees were paid. When the Education Act came into force, the school board of Dalry appointed a schoolmaster, and the trustees of the fund thereupon came to an arrangement with the board by which their school and schoolmaster's house were let on lease for a term of years to the board, the trustees contributing towards the salary of the schoolmaster a sum nearly equal to the income of the trust, it being stipulated that the higher branches should be taught in the school, and that poor children, or those whom the parochial board of Dalry might nominate, should pay no fees;—Held (1) that it was not illegal to grant a lease to the school board of the school, &c., in question, and that the provisions of the Act which forbid the acquisition by a school board by purchase or lease of a school "erected or acquired, or maintained, or partly maintained, with funds derived from contributions or donations (whether by the members of a particular church or religious body or not) for the purpose, or authorised by the contributors or donors, to be applied

for the purpose of promoting education," apply only to "subscription" schools; and (2) that as the testator's wishes could not be complied with literally, that the arrangement between the trustees and the school board was competent and within the discretion of the trustees, with this variation, that the right to nominate children who were to have the benefit of the endowment, could not be transferred to the parochial board, but must remain with the trustees.

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18. Mary Callachan *v.* John Paterson (Inspector of Stirling), September 2, 1876.—3 Couper 327; 4 *P. L. M.* 548.

Inability of Parent—Parochial Board—Review.—Held, that the determination of the parochial board as to the ability or inability of a parent to pay the school fees of children, is not subject to review.

This was an action raised in the Small Debt Court on behalf of the managers of St. Mary's Roman Catholic School, Stirling, against the parochial board of Stirling, concluding for payment of the school fees of a child, whose mother had been deserted by her husband, and who by reason of poverty was unable to pay the fees. The ground of action set forth was that the parochial board was liable, in terms of the Education Act 1872, to pay out of the poors' fund the school fees for any child, "in the event of such board being satisfied of the inability of the parent to pay such fees." The parochial board had refused to pay, alleging that they were not satisfied of the parent's inability to pay, and they resisted the action on the ground that their decision was not subject to review, and this defence was sustained by the Sheriff-Substitute. An appeal was taken by the pursuer to the Circuit Court of Justiciary, but was dismissed by the presiding Judge (Lord Deas).

Observed by Lord Deas—"If the duty laid on the parochial board by section 69 of the Education (Scotland) Act, 35th and 36th Vict., c. 62, to pay for the elementary education of every child, whose parent was unable, from poverty, to do so, could be held to be a mere additional duty to that imposed by the Poor Law Act, 8th and 9th Vict., c. 83, to provide parochial relief for the poor, and was to be dealt with in the same way, it might follow that the Sheriff, in such a case as the present, could competently order the parochial board to provide the means of educating the child in question, although the Board of Supervision could alone deal with any question of disputed amount. But

the Poor Law Act is not one of the Acts recited in the preamble of the Education Act, and I can find no sufficient grounds for giving effect to the present appeal upon that view of the case. The more plausible argument is that the action against the parochial board is to be regarded as an action for debt, and that the alleged debtors must be subject, like all other debtors, to the ordinary jurisdiction of the Sheriff, unless that jurisdiction has been expressly excluded. But the peculiarity here is, that it is only in the event of the parochial board 'being satisfied of the inability of the parent to pay' the fees, that the duty of paying them out of the poors' fund is laid on the board by the enactment founded on (35 and 36 Vict., c. 62, section 69); and it is very difficult to suppose that it was intended to allow an investigation in every instance into a question of that kind before the Sheriff, although there was no allegation that the parochial board had failed to make proper inquiry into the fact, and to give their deliverance upon it to the best of their judgment. If it had been distinctly averred that the parochial board had taken no means of ascertaining the disputed fact, but had altogether failed to apply their minds to the subject, I should have been disposed to think there was no incompetency in remitting to them to do so. But there is no allegation of that kind here. The case of the Lord Advocate *v.* The School Board of Stow, 19th February 1876, 3 R. 469, was different from this, but I am inclined to regard the principles recognised in that case as not altogether inapplicable here."

Note.—The procedure where the parochial board refuse to pay school fees for children whose parents are, from poverty, unable to do so, is now regulated by sect. 22 of 41 and 42 Vict., c. 78, Education (Scotland) Act 1878, which provides for an application being made to the Sheriff, who may, if he think fit, grant an order on the parochial board for payment of the fees, and dispose in the order of all questions of expense.

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19. Archibald Campbell *v.* Melville Jameson (Procurator-Fiscal of the County of Perth), February 23, 1877.—4 R. 17; 3 Couper 391; 5 *P. L. M.* 256.

Compulsory Education.—Held that a Highland ghillie who did not send to school his two daughters, aged respectively five and nine, the nearest school being distant three and a half miles from his house, had not failed grossly and without reasonable excuse to provide elementary education for his children, within the meaning of the 70th section of the Education Act of 1872.

20. —— Marshall *v.* The School Board of Ardrossan, March 17, 1877.—Sellar's Manual of Education Acts, p. 211.

Teacher's House.—Held (by the Lord Ordinary—Curriehill) that a school board is not bound to rebuild a schoolmaster's house which had been destroyed by fire, but might, if they so elected, pay the teacher an equivalent in name of rent.

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21. John Fraser *v.* The School Board of Carluke, June 14, 1877.—4 R. 892.

Emoluments of Schoolmaster.—Where, at the date of the passing of the Act of 1872, a schoolmaster received a fixed salary, and the fees of the school;—Held that, under the 55th section of the Act, he was entitled, after said date, (1) to payment of the same amount of salary, although he had previously voluntarily employed, and himself paid, an assistant, the school board afterwards paying a regular assistant; and (2) to the whole school fees actually paid in each year, that the school remained on the same footing, and not merely to the average amount of fees received as at the passing of the Act.

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22. George France *v.* James Anderson, June 29, 1877.—3 Couper 460.

Certificate of School Board necessary as Warrant for Prosecution.—It is provided by section 70 of the Act of 1872 that before any parent is prosecuted for failure to provide education for his children, the school board shall "certify in writing that he has been, and is, grossly, and without reasonable excuse, failing to discharge the duty of providing elementary education for his child or children," and that this certificate is to be sent to the procurator-fiscal;—Held that a conviction under section 70 of the Act was bad, and should be set aside, in respect (1) the school board had not inquired into the grounds of excuse stated by the parent; and (2) no certificate in writing had been granted by the board, as required by the Act.

Observed by Lord Young—"There are three things of which the school board must be satisfied before it can conscientiously

grant the requisite certificate. There must be failure; that failure must be without reasonable excuse; and, moreover, it must be gross. These terms are unusual in combination in a statute or elsewhere. They are meant to call the attention of the board, in the first instance, to the fact that it is not what they shall consider failure that they must be prepared to certify. But they must be prepared to characterise that failure as gross, and without reasonable excuse. Now, we have here no such certificate, and, moreover, no evidence that the school board applied their minds to the case, so that they could conscientiously have given such a certificate. The prosecution without that certificate could not proceed."

Note.—A further question was raised, but not decided, viz., whether it was competent to examine the parent who was being prosecuted, as a witness in defence? The Sheriff-Substitute of Inverness refused to allow the parent to be examined, on the ground that the proceeding was a criminal one. Lord Young inclined to the view that the parent's evidence was admissible. The Lord Justice-Clerk and Lord Craighill reserved their opinion on the point.

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23. William Kilgour *v.* William Hally, November 2, 1877.—5 R. 3.

County Franchise—Schoolmaster.—Held that a schoolmaster appointed by a school board, and holding office during the pleasure of the board, is not entitled to the county franchise, as tenant and occupant of the house and garden attached to the office.

Note.—The same was ruled in another case—Mitchell *v.* M'Nicol, 2d November 1877, 5 R. 7, the only distinction between the cases being that in Mitchell *v.* M'Nicol the schoolmaster was, under his contract, entitled to two months' notice from the school board of the termination of his tenure of office.

This state of matters has been remedied by the 24th section of the Education (Scotland) Act 1878 (41 and 42 Vict., cap. 78), and schoolmasters holding a house as part of their emoluments, and at the pleasure of the board, are now entitled to vote, provided the house be of sufficient annual value to qualify a voter. See Murray *v.* Morton, 9th November 1878, 6 R., applying sec. 24 of the Act of 1878.

24. School Board of Fordoun *v.* Mrs. Susan Brown or Petrie, July 2, 1879.—7 *P. L. M.* 475.

School Fees—Inability to Pay.—Held (in the Sheriff Court of Kincardine) that a widow keeping the child of another person at a rate inadequate to allow her to provide the fees necessary for its education, could not plead "poverty" within the meaning of the Education Act of 1872, and thereby cast the burden on the parochial board.

Observed by the Sheriff-Substitute (Dove Wilson)—"It was clear that it was not the defender's poverty which was the main cause of her inability to pay. If the defender's poverty had free scope to take its natural course, it would follow that she would not keep the child at all, because of her inability to pay for his education; but in this case the defender chose to keep the child of another person upon such terms as would not allow her to pay its school fees. It was perfectly within her liberty to refuse to do so, unless the parent paid its school fees; and if she chose, having that in her power, to keep the child, she could not be allowed to plead her own poverty as a ground for refusing to pay the fees. Seeing it was not her own poverty that had brought her into her present difficulty, it would plainly be an injustice to parochial boards to decide in her favour, because it would give parents of illegitimate children the power to select the parish which they would make liable for the education of their children, and the accident of a parent preferring to keep a child in a particular parish, might make that parish responsible for its education; while, according to well ascertained law, parishes were liable only on well established laws of settlement."

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25. —— Anderson (Collector of Auchtermuchty) *v.* The Rev. D. N. Hogg (Parish Minister of Auchtermuchty), September 16, 1879.—7 *P. L. M.* 540.

Liability of Parish Minister for School Rates.—Held (in the Sheriff Court of Fifeshire) that a parish minister is not exempt from payment of school rate imposed under the provisions of the Education Act of 1872.

The question raised in this case has been the subject of conflicting decision in the Sheriff Courts of various counties, but has not yet been determined in the Court of Session. The ground upon which the Sheriff of Fifeshire (Crichton) proceeded in hold-

ing that parish ministers are not exempt from liability for school rates, is thus stated in his note—"The 44th section of the Education Act does not contain words which can be held to exempt clergymen from payment of the school rate. That section provides that the school rate is to be laid on and assessed 'one half upon the owners and the other half upon the occupiers of all lands and heritages.' It was not disputed that these words would include ministers as the owners and occupiers of their manses and glebes. But it was said that the words at the end of the section, providing that 'the laws applicable for the time to the imposition, collection, and recovery of poor assessment shall be applicable to the school rate,' were meant to exempt ministers from payment. The Sheriff is of opinion that these words do not contain the exemption contended for, and that on the ground stated by Lord Rutherfurd Clark in the opinion given by him when Dean of Faculty. The school rate is a new tax, and exemption from payment must be very clearly expressed. The ground upon which ministers are exempt from payment of poor rates is in consequence of inveterate usage, and this plea of usage of exemption cannot, in the opinion of the Sheriff, be extended from poor rates to school rates."

The same view was taken in the Maxwelltown and Brydekirk cases, decided in the Sheriff Courts of Kirkcudbright and Dumfries, and is also the opinion given by Lord Rutherfurd Clark, when Dean of Faculty, in which he relies as confirming his view on the case of Cowan *v.* Gordon, 10th July 1868, 6 M. 619, where it was held that, in the absence of prior exemption, parish ministers were liable in assessment under the Kirkcudbright Roads Act 1864, in respect of their manses and glebes. The opposite view, viz., that parish ministers are exempt from school rates, has been taken in the Sheriff Court of Ayr, in Lindsay *v.* Inglis, 21st May 1874; in the Sheriff Court of Perth, in M'Laren *v.* Mackenzie, 9th September 1875; in the Sheriff Court of Forfar, in Fraser *v.* Robb, 24th December 1875; and in the Sheriff Court of Orkney and Shetland, in Anderson *v.* Smith, 9th April 1877. The ground of these decisions was that the provisions of the 44th section of the Education Act are inconsistent with the liability for school rates of persons who are exempt from payment of poor rates.

APPENDIX.

STATUTES.

No. I.—Act 8 & 9 Vict., c. 83, 4th August 1845.

For the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland.

Interpretation of Words and Expressions used in the Act: "*Burgh*"—"*Sheriff*"—"*Lands and Heritages*"—"*Oath*"—"*Owner*"—"*Persons.*"

Whereas it is expedient that the laws relating to the relief of the poor in Scotland should be amended, and that provision should be made for the better administration thereof: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That the following words and expressions, when used in this Act, shall in the construction thereof be interpreted as follows, except where the nature of the provision or the context of the Act shall exclude or be repugnant to such construction. (That is to say), The word "burgh" shall include and apply to cities, burghs, and towns which are royal burghs, or which send or contribute to send a member to Parliament; "Sheriff" shall include and apply to Sheriff-Substitute and Stewart-Substitute; the words "lands and heritages" shall extend to and include all lands, fishings, fresh waters, ferries, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coal works, lime works, brick works, iron works, gas works, factories, and manufacturing establishments, houses, tenements, shops, warehouses, mills, cellars, stalls, stables, gardens, yards, and all buildings and pertinents thereof; the word "oath" shall include the affirmation of a Quaker, Separatist, or Moravian; "owner" shall apply to liferenters as well as fiars, and to tutors, curators, commissioners, trustees, adjudgers, wadsetters, or other persons who shall be in the actual receipt of the rents and profits of lands and heritages; "persons" shall extend to a body politic, corporate, or collegiate; and every word importing the singular only

shall extend to several persons or things as well as one person or thing; and every word importing the plural shall be applied to one person or thing as well as several persons or things; and every word importing the masculine gender shall extend to a female as well as a male.

Board of Supervision for Relief of the Poor established.

II. And be it enacted, That a Board of Supervision shall be and is hereby established for the purposes of this Act, and the said Board shall consist of the following persons (*videlicet*): the Lord Provost of Edinburgh, the Lord Provost of Glasgow, the Solicitor-General of Scotland, the Sheriff-Depute of the county of Perth, the Sheriff-Depute of the county of Renfrew, the Sheriff-Depute of the county of Ross and Cromarty, all for the time being, together with three other persons, whom it shall be lawful for Her Majesty, her heirs and successors, by warrant under the sign-manual, to appoint; and it shall also be lawful for Her Majesty, her heirs and successors, to supply any vacancy which may occur in the said board by removal, by death, or otherwise, of any of the said three persons; and the said board shall be styled "The Board of Supervision for Relief of the Poor in Scotland;" and the said board may sit from time to time and at such places as they shall deem expedient.

Members of Board to derive no Emolument—Their Expenses to be paid.

III. And be it enacted, That the members of the said board shall derive no profit or emolument for the discharge of the duties of their office, except as hereinafter mentioned, and shall not be personally responsible for any thing done *bona fide* in the execution of this Act, or in the exercise of the powers therein contained: Provided always, that any necessary expenses incurred by the board or by members thereof, or committees or commissioners authorised or appointed by the board as hereinafter provided, shall be deemed as part of the incidental expenses attending the execution of this Act, and be paid accordingly; and an account of all expenses of the said board shall be annually laid before Parliament.

One paid Member and Secretary to the Board.

IV. And be it enacted, That it shall be lawful for Her Majesty, her heirs and successors, to nominate one of the three members of the said Board of Supervision to be appointed by Her Majesty as aforesaid, who shall be paid, and also to appoint a fit person to be secretary to the said board, who shall also be paid, and to supply any vacancy which may occur in the said office of secre-

tary; and such paid member of the Board of Supervision and such secretary shall each receive an adequate salary of such amount as shall from time to time be regulated and approved by the Lord High Treasurer or the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland, or any three or more of them; and such secretary shall find sufficient security for his intromissions and management to the satisfaction of the said board, and shall be liable to be removed by Her Majesty on the recommendation of the said board; and the Sheriffs of the said three sheriffdoms of Perth, Renfrew, and Ross and Cromarty shall each receive the sum of one hundred pounds sterling per annum, in addition to their present salaries, so long as they continue to act as members of the said board.

Meetings of the Board—Paid Member of Board of Supervision to attend regularly.

V. And be it enacted, That the said Board of Supervision shall meet at Edinburgh in the Court-room of the First Division of the Court of Session, upon the twentieth day of August next, or upon the first convenient day within ten days thereafter, of which due notice shall be given by the secretary to each of the members, and shall thereafter hold two general meetings in each year, one upon the first Wednesday in February, and the other upon the first Wednesday in August; and at such first meeting, and at all other meetings to be held in pursuance of this Act, three shall be sufficient to act; and the said board shall have power to adjourn for such time and to such place as they shall see fit; and it shall be lawful for the said board to hold special or *pro re nata* meetings, which may be called by the secretary, provided that such notice shall be given in writing by the secretary, as the board shall direct; and that all notices of special or *pro re nata* meetings shall specify the business or matter on which such meetings are called; and it shall be the duty of the paid member of the said board not only to attend at the general and the special or adjourned meetings, but to give regular attendance for the purpose of conducting the business of the said board; and the board shall have chambers in Edinburgh at which the ordinary business of the board shall be conducted, and at which the meetings of the board may be held.

Board may name Committees.

VI. And be it enacted, That the said board shall have power, as often as they may deem fit, to appoint any two or more of their number as a committee for the purposes of this Act, and if more than two, to fix the number of such committee that shall be sufficient to transact business; and it shall be lawful for such

committee, in transacting the business committed to them, to exercise all the powers necessary for that purpose which are by this Act given to the Board of Supervision; and such committee shall be bound to report to the board at such time or times as the board shall direct, and failing such direction, shall report to the said board at its next general statutory meeting.

Board may make General Rules.

VII. And be it enacted, That it shall be lawful for the said board from time to time, as they shall see occasion, to make general rules and regulations for conducting the business of the said board, and for exercising the powers and authorities thereof, and to alter such rules and regulations: Provided always, that such rules and regulations and alterations, or a copy thereof, shall be transmitted to one of Her Majesty's principal secretaries of state for his sanction and approval, and for such additions or alterations as he may deem necessary; and no rules or regulations or alterations as aforesaid shall be effectual, except such as shall have been approved of by the said secretary of state, who shall be understood to have approved of all such rules and regulations and alterations aforesaid as shall have been transmitted for his sanction and approval, if no intimation to the contrary be made to the Board of Supervision within twenty-one days from the date of such transmission; and a copy, signed and certified by the secretary of the Board of Supervision, of the rules and regulations and alterations approved as aforesaid, shall be evidence of such rules, regulations, and alterations in any court of law or justice.

Board to record their Proceedings, and make annual Reports on the State of the Poor.

VIII. And be it enacted, That the said Board of Supervision shall make a record of their proceedings, in which shall be entered minutes of all meetings held by them, or any committee appointed by them, and all resolutions passed and orders made by them, and all other matters which the board may judge proper; and the said board shall once in every year submit to one of Her Majesty's principal secretaries of state a general report of their proceedings, which report shall contain in particular a full statement as to the condition and management of the poor throughout Scotland, and the funds raised for their relief; and every such report shall be laid before both Houses of Parliament within six weeks after the receipt of the same by such principal secretary of state, if Parliament be then sitting, or if Parliament be not sitting, then within six weeks of the next meeting thereof.

Powers of the Board of Supervision to require Returns and examine Witnesses.

IX. And be it enacted, That it shall be lawful for the said Board of Supervision to inquire into the management of the poor in every parish or burgh in Scotland; and for this purpose the said board is hereby empowered to make inquiries, and require answers or returns to be made to the said board, upon any question or matter connected with or relating to the relief of the poor, and also by a summons, signed by one of their number, or by the secretary, to require the attendance of all such persons as they may think fit to call before them upon any such question or matter, and to administer oaths to and examine upon oath all such persons, and to require and enforce the production, upon oath, of all books, contracts, agreements, accounts, and writings, or copies thereof respectively, in anywise relating to any such question or matter; or in lieu of requiring such oath as aforesaid, the said board may, if they think fit, require any such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined.

Board may authorise Special Inquiries to be made.

X. And be it enacted, That it shall and may be lawful for the said board, whenever it may seem fitting to them, to authorise and empower for a limited time one of the members thereof to conduct any special inquiry in any part of Scotland, and to report thereon to the board; and such member, so authorised and empowered, shall be entitled to summon and examine on oath witnesses and havers, and to exercise all such other of the powers by this Act given to the Board of Supervision as may be necessary for conducting such inquiry; and such member shall be reimbursed by the said board of all expenses necessarily incurred by him in conducting such inquiry, and such expenses shall be deemed part of the expenses attending the execution of this Act, and be paid accordingly.

Board may appoint Commissioners for conducting Special Inquiries.

XI. And be it enacted, That it shall and may be lawful for the said Board of Supervision, whenever it may seem fitting to them, with the consent of one of Her Majesty's principal secretaries of state, or of Her Majesty's advocate for Scotland, or whenever the said board may be thereunto required by one of Her Majesty's said secretaries of state, or Her Majesty's said advocate, to appoint some person, not being a member of the board, but

being a member of the Faculty of Advocates, or a duly qualified medical practitioner, or an architect or surveyor, or two or more of such persons, to act as a commissioner or commissioners for the purpose of conducting any special inquiry for a period not exceeding forty days, and to report thereon; and the said board shall delegate to every person so appointed for the purpose of conducting such inquiry, all such of the powers of the said board as they may deem necessary or expedient for summoning or examining witnesses and havers, and otherwise conducting such inquiry; and every such appointment shall be subject to the approval of one of Her Majesty's said secretaries of state, or of Her Majesty's said advocate; and every person so appointed as aforesaid to conduct any special inquiry, shall, before he enter on the execution of his duties, take an oath *de fideli administratione officii*, which oath may be administered to him by any member of the board, or any one of the judges of the Court of Session, or the sheriff of any county; and it shall not be necessary to notify the appointment of any such commissioner otherwise than by intimating the same by letter under the hand of the secretary, or of any member of the board, to the sheriff of the county within which the inquiry in question is to be made; and every such commissioner shall be reimbursed by the said board for all expenses necessarily incurred by him in conducting such inquiry, and shall also receive such reasonable remuneration for his time and trouble as may have been agreed upon between him and the said board, and approved of by Her Majesty's said secretary of state or advocate; and failing of any such agreement, the amount of the remuneration shall be fixed by the Lord High Treasurer, or the Commissioners of Her Majesty's Treasury, or by such person or persons as he or they shall name.

Board may allow Expenses of Witnesses, etc.

XII. And be it enacted, That it shall be lawful for the said Board of Supervision, in any case where they see fit, to order and allow such expenses of witnesses, and such expenses of or concerning the production of any books, contracts, agreements, accounts or writings, or copies thereof, to or before the said board or committee thereof or commissioner, as such board may deem reasonable; and such expenses so ordered and allowed shall be deemed part of the incidental expenses attending the execution of this Act, and be paid accordingly.

Penalties on Parties giving false Evidence, or refusing to obey Summons of the Board.

XIII. And be it enacted, That if any person, upon any examination on oath under the authority of this Act, shall wilfully give false evidence, he shall be deemed guilty of perjury, and

shall be liable to the pains and penalties thereof; and in case any person shall wilfully refuse to attend in obedience to any summons of the said Board of Supervision or committee thereof, or member or commissioner authorised or appointed by the board as aforesaid, or to give evidence, or shall wilfully refuse to produce any books, contracts, agreements, accounts, and writings, or copies of the same, which may be required to be produced before the said board or committee, or member or commissioner, or shall wilfully neglect or disobey any of the orders of the said board or committee, or member or commissioner, or be guilty of any contempt of the said board or committee, or member or commissioner, such person being thereof lawfully convicted, shall forfeit and pay, for the first offence, any sum not exceeding five pounds; for the second and every subsequent offence, any sum not exceeding twenty pounds, nor less than five pounds.

Power of Board to appoint Clerks, etc.

XIV. And be it enacted, That the said Board of Supervision shall be and is hereby empowered, from time to time, to appoint all such clerks, messengers, and officers, as they shall deem necessary, and from time to time, at the discretion of the said board, to remove such clerks, messengers, and officers, or any of them, and to appoint others in their stead, provided that the amount of the salaries of such clerks, messengers, and officers shall, from time to time, be regulated by the Lord High Treasurer, or the Commissioners of Her Majesty's Treasury, or any three or more of them; and the name of every person so appointed or removed as aforesaid shall forthwith be intimated to one of Her Majesty's principal secretaries of state for his approval, who shall be understood to approve of such appointment or removal, if no notice to the contrary be received by the said board within twenty-one days from the day of the date of such intimation.

Members of Board of Supervision may attend Meetings of Parochial Board.

XV. And be it enacted, That it shall be lawful for any of the members or the secretary of the said Board of Supervision, or for any clerk or officer of the said board, provided that such clerk or officer shall be duly authorised by a writing signed by two at least of the members of said Board of Supervision, to attend and be present at the meetings of any Parochial Board for the management of the poor, and to take part in the discussions, but not to vote at such board.

Parishes may be combined—Board of Supervision may add other Parishes.

XVI. And be it enacted, That in every case in which it may appear to the Board of Supervision, on application by the Parochial Boards of any one or more adjoining parishes, or from a regard to the relative situation of two or more such parishes, or from any other circumstances, that the administration of the affairs of the poor therein might be carried on with greater advantage to the said parishes, and to the poor therein, by the said parishes being combined for the purposes of this Act, then the Parochial Boards of such parishes shall meet, on requisition to that effect by the Board of Supervision, for the purpose of considering the proposed combination; and in every case where the Parochial Boards of two or more such parishes shall resolve that it is expedient and proper that such parishes shall be combined for all purposes connected with the management of the poor, and the administration of the laws relating to their relief, and for the purposes of raising the necessary funds for the relief and support of the poor, and also for the purposes of settlement, and where it shall be established to the satisfaction of the Board of Supervision, that it is expedient and proper that such parishes shall be so combined, it shall be lawful for the said Board of Supervision to resolve and declare that such parishes shall thenceforward be combined for the purposes aforesaid, and shall be considered as one parish so far as regards the support and management of the poor, and all matters connected therewith; and all expenditure in respect to the poor belonging to such combination of parishes shall be deemed and held to be the common expenditure of such combination of parishes, and be charged upon and paid out of the common and general fund to be raised for the relief of the poor over the whole of such parishes: Provided always, that, upon application by the Parochial Board of any parish adjacent to any such combination, it shall be lawful for the said Board of Supervision, if they see fit, due regard being had to the circumstances of the case, to resolve and declare that such parish shall be for the purposes of this Act added to such combination from and after a date to be signified in the resolution of the said Board of Supervision; and such parish shall, from and after such date, be held in law to be a part of such combination in all matters relative to the relief of the poor, and subject in every respect to the provisions and regulations hereby made and provided in relation to combinations of parishes; and such resolution shall be forthwith published in such manner as the said Board of Supervision shall direct.

Parochial Board of Managers of the Poor in Burghal Parishes or Combinations.

XVII. And be it enacted, That in every burghal parish or combination of parishes there shall be a Parochial Board of managers of the poor; and the whole administration of the laws for the relief of the poor shall be under the direction and control of such Parochial Board, on whom shall devolve all the powers and authorities hitherto exercised by or vested in the magistrates of burghs in that behalf, or any other body or persons administering, or entitled to administer, the laws for the relief of the poor in any burgh or burghal parish; and until it shall have been resolved to raise the funds requisite for the relief of the poor by assessment, the board shall, in the case of a burghal parish, where there is no combination of parishes, consist of the persons who, if this Act had not been passed, would have been entitled to administer the laws for the relief of the poor in such parish, and shall, in the case of a combination of parishes, consist of persons who, if this Act had not been passed, would have been entitled to administer the laws for the relief of the poor in the several parishes of which the combination is composed, or of such committees of their number as they may think proper to appoint; and when in any burghal parish or combination in which it shall have been resolved, as hereinafter provided, to raise the funds requisite for the relief of the poor by assessment, the Parochial Board of such parish or combination shall be constituted and chosen as follows: (that is to say) the persons assessed for the support of the poor within the parish or combination shall elect, in manner after mentioned, to be members of the Parochial Board, such number of managers, not being more than thirty, as the said Board of Supervision, having due regard to the population and other circumstances of every such parish or combination, may from time to time fix, and possessing such qualification by the ownership or occupancy of lands and heritages of a certain annual value within the parish or combination as the said Board of Supervision, having due regard to the population and other circumstances of every such parish or combination, may from time to time fix, such qualification being in no case fixed at a higher annual value than fifty pounds, to be ascertained in manner hereinafter provided in regard to the qualification of voters; and the magistrates of the burgh shall nominate four persons to be members of the Parochial Board, and the kirk-session of each parish shall nominate not exceeding four members of such kirk-sessions to be members of the Parochial Board: Provided always that, those parishes only shall be held to be separate parishes which at the date of this Act are separate parishes for the purposes of settlement and relief of the

poor; and that where there shall be in any such parish two or more kirk-sessions, the members of such several kirk-sessions shall meet together and nominate not exceeding four of their number to be members of the Parochial Board.

Board of Supervision to fix the Day for the first Election of Managers.

XVIII. And be it enacted, That where in any burghal parish or combination it shall have been so resolved to raise the funds requisite for the relief of the poor by assessment, and where the persons from whom such assessment is to be levied, and the amount payable by each, shall have been ascertained or determined as hereinafter provided, the Board of Supervision shall fix a day for the persons so assessed to elect such number of managers, duly qualified, to be members of the Parochial Board, as shall be regulated by the Board of Supervision as aforesaid, and shall also fix a day or days for the magistrates and the kirk-session or kirk-sessions to nominate the persons to be by them respectively nominated to be members of the Parochial Board; and such managers and members, being elected or nominated, shall be entitled to act for the period of one year, and may be re-elected or re-appointed.

Mode of Voting in Burghal Parishes or Combinations.

XIX. And be it enacted, That in all cases of the election of managers for the poor of any burghal parish or combination under this Act, the votes shall be given or taken, collected and returned, in such manner and under such regulations as the Board of Supervision shall direct; and in every such election every person assessed for the support of the poor in such parish or combination shall be entitled to vote, whether such assessment be made in respect of ownership or occupancy of lands and heritages; and it is hereby declared, that the owners of lands and heritages, the annual value of which shall be under twenty pounds, shall have each one vote; the owners of lands and heritages, the annual value of which shall be twenty pounds but under forty pounds, two votes; the owners of lands and heritages, the annual value of which shall be forty pounds but under sixty pounds, three votes; the owners of lands and heritages, the annual value of which shall be sixty pounds but under one hundred pounds, four votes; the owners of lands and heritages, the annual value of which shall be one hundred pounds but under five hundred pounds, five votes; the owners of lands and heritages the annual value of which shall be five hundred pounds and upwards, six votes; and that all persons assessed as the occupants of lands and heritages shall each have the same number of votes as an owner of lands and heritages assessed to the same amount for the support of the poor would

have; and when any occupant shall also be the owner of lands and heritages, and assessed in both capacities, he shall be entitled to vote as well in respect of his ownership as of his occupancy; who is assessed on his means and substance shall also be an owner of lands and heritages, and assessed as such, he shall be entitled to vote as well in respect of his ownership as of his means and substance: Provided always, that no person shall for himself have more than six votes in all, and that no person shall be entitled to vote who shall have been exempted from payment of his rates or assessment for relief of the poor on the ground of inability to pay, or who shall not have paid all such rates and assessments assessed upon and due from him at the time of so voting.

Board of Supervision may divide Burghal Parishes or Combinations into Wards or Divisions for Elections.

XX. And be it enacted, That for the purpose of conducting the election of managers of the poor, it shall be lawful for the Board of Supervision to divide any burghal parish or combination into such and so many wards or divisions as they may deem expedient, and to determine and apportion the number of managers to be elected by every such ward or division, having due regard to the population and the value of property therein: Provided always, that no person shall be entitled to vote for the managers of the poor in any such ward or division unless he reside therein, or have a right to vote in respect of his ownership or occupancy of lands and heritages within such ward or division; nor shall any person give in any one ward or division, in respect of ownership or occupancy of lands and heritages, a greater number of votes than he is entitled to in respect of lands and heritages in such ward or division; nor shall any person give in the whole of the wards or divisions into which a parish may be divided a greater number of votes than he would be entitled to have given, if the parish had not been so divided.

Right of Voting—how to be ascertained.

XXI. And be it enacted, That, for the purpose of ascertaining the number of votes to which each person is entitled, the books of the collector of the assessment for the poor shall be taken as the evidence of the annual value of the lands and heritages assessed, and of the amount for which each person is assessed.

Parochial Board in Parishes not Burghal or Combined.

XXII. And be it enacted, That in every parish not being a burghal parish, and not being part of any combination as aforesaid, there shall be in like manner a Parochial Board for the

management of the poor of such parish, and the whole administration of the laws for the relief of the poor shall be under the direction and control of such Parochial Board, who shall have and exercise all the powers and authorities hitherto exercised by or vested in the heritors and kirk-session, or in the heritors, kirk-session, and magistrates, or any other body or persons administering or entitled to administer the laws for the relief of the poor in such parish, by virtue of any law or usage; and such Parochial Board shall be constituted as follows: (that is to say), in every such parish as aforesaid in which the funds requisite for the relief of the poor shall be provided without assessment, the Parochial Board shall consist of the persons who, if this Act had not been passed, would have been entitled to administer the laws for the relief of the poor in such parish; and in every such parish as aforesaid, in which it shall have been resolved, as hereinafter provided, to raise the funds requisite for the relief of the poor by assessment, the Parochial Board shall consist of the owners of lands and heritages of the yearly value of twenty pounds and upwards, and of the provost and bailies of any royal burgh, if any, in such parish, and of the kirk-session of such parish and of such number of elected members, to be elected in manner after mentioned, as shall be fixed by the Board of Supervision: Provided always, that no provost or bailie or elder of the kirk-session shall, as such, be a member of such Parochial Board, unless he is assessed for the poor; and provided also, that not more than six members of the kirk-session shall, as such, be members of such Parochial Board; and if the kirk-session shall consist of more than six members, it shall be lawful for such kirk-session from time to time to nominate six of its members to be members of the Parochial Board, for such time as to the kirk-session shall seem fit; and it shall be competent for any heritor, being a member of the Parochial Board, to appoint, as heretofore, by a writing under his hand, any other person to be his agent or mandatory to act and vote for him at such Board; and such appointment shall remain in force till recalled; and such writing of appointment is hereby declared to be valid and lawful, although the paper whereon it is written should not be stamped.

Elected Members.

XXIII. And be it enacted, That in every such parish as aforesaid in which it shall have been resolved to raise the funds for relief of the poor by assessment, and in which the persons from whom such assessment is to be levied, and the amount payable by each, have been ascertained or determined as hereinafter provided, it shall and may be lawful for the persons so assessed, not being owners of lands and heritages of the yearly value of twenty pounds, or provost or bailies of any royal burgh in such parish,

or members of the kirk-session, and, as such, members of the Parochial Board, to elect so many of their own number to be members of the Parochial Board of such parish as shall be regulated and fixed from time to time by the Board of Supervision, due regard being had to the amount of the population, the number and residence of the other members of the Parochial Board, and the special wants and circumstances of each particular parish; and the said Board of Supervision shall also fix a day for the said persons to meet and choose such number of elected members of the Parochial Board as shall have been fixed by the Board of Supervision as aforesaid; and such elected members being so appointed, shall be entitled to act for the period of one year and may be re-elected: Provided always that no person shall be entitled to act as an elected member unless he be assessed to the poor, and pay assessment to the parish.

Elected Members—how to be appointed.

XXIV. And be it enacted, That on the day so to be fixed by the Board of Supervision as aforesaid, and on the same day in each succeeding year, or on a day as soon thereafter as may be, to be fixed by the Board of Supervision, the persons assessed as aforesaid shall meet for the purpose of appointing elected members of the Parochial Board; and if they shall not agree in the choice of elected members, then it shall and may be lawful for the inspector of the poor, appointed in manner after mentioned, or in case of his absence or inability, for any person appointed by the Parochial Board to act for the occasion, to take in writing and collect the votes of the persons entitled to vote at such meeting, and to declare (according to the number prescribed by the Board of Supervision) those persons to be elected members who shall appear to have the majority of votes, and in the event of an equality, the person paying the largest amount of assessment shall be preferred; and at every such meeting, owners of lands and heritages within the parish under twenty pounds of yearly value, shall each have one vote, and tenants or occupants of lands and heritages, and persons assessed upon means and substance, if assessed to an amount less than is assessed upon an owner of lands and heritages of the yearly value of twenty pounds, shall each have one vote; and if assessed to an amount equal to that assessed upon an owner of lands and heritages of the yearly value of twenty pounds, but under forty pounds, shall each have two votes; and if equal to that assessed on an owner of lands and heritages of the yearly value of forty pounds, but under sixty pounds, shall each have three votes; and if equal to that assessed on an owner of lands and heritages of the yearly value of sixty pounds, but under one hundred pounds, shall each have four votes; and if equal to that assessed on an owner of

lands and heritages of the yearly value of one hundred pounds, but under five hundred pounds, shall each have five votes; and if equal to that assessed on an owner of lands and heritages of the yearly value of five hundred pounds or more, shall each have six votes; and the books of the collector of the assessment in each parish shall be binding and conclusive for the purpose of ascertaining the number of votes to which any person shall be entitled in respect of the ownership, occupancy, or means and substance upon which he is assessed; and where any person who is assessed as owner is assessed also as occupier, or on means and substance, he shall be entitled to vote as well in respect of such occupancy, or means and substance, as of his being such owner: Provided always that no person shall have more than six votes, and that no owner of lands and heritages of the yearly value of twenty pounds or upwards, and no provost, bailie, or member of the kirk-session, being a member of the Parochial Board, and no person who shall have been exempted from the payment of his rates or assessments for the relief of the poor on the ground of inability to pay, or who shall not have paid all such rates and assessments assessed upon and due from him, shall be entitled to vote; and for the purpose of conducting the election, it shall be lawful for the Board of Supervision to divide any parish into such and so many districts or divisions as they may deem expedient, and to determine and apportion the number of elected members to be elected by every such district or division, subject to the like conditions and restrictions as are hereinbefore provided in regard to the election of managers in burghal parishes or combinations.

In Cases of Corporations or Joint Stock Companies, who are entitled to vote.

XXV. And be it enacted, That in cases of lands and heritages being owned or occupied by any corporation, or any joint stock or other company, or by joint owners or joint occupants, no member of such corporation, or proprietor of or interested in such joint stock or other company, and no such joint owner or joint occupant shall, as such, be entitled to vote at the election of any member of a Parochial Board of any parish or combination; but any member or officer of such corporation, joint stock or other company, or any one of such joint owners or joint occupants whose name shall be entered by order of such corporation or company, or the governing body thereof, or of such joint owners or joint occupants, in the books of the parish or combination, in the manner that may be directed by the Board of Supervision, and who shall have complied with the regulations regarding voting, shall be entitled to vote in the same manner as if he were the owner or occupant of such lands and heritages.

Husbands may vote in right of their Wives.

XXVI. And be it enacted, That in all meetings and matters under this Act, the husbands of owners of lands and heritages shall be entitled to vote and act in right of their wives.

Disputes as to Elections—how to be determined.

XXVII. And be it enacted, That any dispute which may arise as to the validity of the election of any person to be a member of the Parochial Board of any parish or combination, shall be determined by the sheriff of the county in which such parish or combination, or the greater portion of them, may be situate, upon petition in a summary manner; and the said sheriff shall hear the parties, and investigate the matter in such a way as he may think proper, and shall have power to call for such evidence, and for the production of such documents, as he may think necessary, provided that no written pleadings shall be allowed, and no record shall be made of the proceedings; and the decision by the said sheriff shall be final, and shall not be liable to appeal, or to suspension, advocation, or reduction, or any other form of review; and it shall be lawful for the said sheriff to order the expenses of all such proceedings to be paid by such parties and in such manner as to him may seem equitable: Provided always, that it shall not be lawful for any person to question the validity of any election under this Act, unless a notice in writing of his intention so to do be served on the returning officer at the time of making the return, or within forty-eight hours from the time when such return shall have been made.

Party returned may act in the meantime.

XXVIII. And be it enacted, That in the event of any disputed election of any Parochial Board, or of any member or members of any Parochial Board, the persons whose names are returned by the returning officer as having the majority of votes shall be entitled to sit and act as elected members of such board in the meantime, and until the question regarding the validity of their election shall have been tried and determined; and all acts and deeds done by them in their character of members of such board or managers for the poor shall be valid and effectual; and no defect in the qualification, election, or appointment of any person acting in the character of a member of a Parochial Board shall vitiate or make void any proceedings of such board in which he may have taken a part.

Penalty on Officer making false Returns.

XXIX. And be it enacted, That if any returning officer be guilty of wilfully making a false return, he shall be liable to a penalty of fifty pounds, to be recoverable by action in the Court of Session, and payable to the party or parties aggrieved by such false return.

Meetings of Parochial Boards and Committees.

XXX. And be it enacted, That it shall be lawful for every Parochial Board to fix certain days and places on and at which the general meetings of the board shall be held, and to adjourn such meetings from time to time, and to such places as they shall see fit: Provided always, that every Parochial Board shall be bound to hold at least two general meetings in every year, one on the first Tuesday of February, or as soon thereafter as may be, and the other on the first Tuesday of August, or as soon thereafter as may be, or at such other stated times as may be approved of by the Board of Supervision, and at such meetings to revise and adjust the roll of paupers and their allowances; and it shall also be lawful for every Parochial Board to hold special meetings as occasion may require, upon summonses to be issued by the inspector of the poor or by the chairman of the board; and it shall be lawful for every Parochial Board to nominate and appoint committees to act on behalf of the whole board; and such committees, in transacting the business committed to them, shall exercise all the powers necessary for that purpose which belong to the Parochial Board.

Parochial Board to elect a Chairman annually.

XXXI. And be it enacted, That every Parochial Board shall annually elect one of their number to be chairman for the year ensuing, and such chairman shall preside at all meetings of the board, and shall have both an original and a casting vote in case of equality; and in event of the absence of the chairman of the board at any meeting, the members present shall elect a chairman *pro tempore*, who shall act as chairman of the meeting, and such chairman shall have a casting as well as an original vote.

Parochial Boards to meet and make up Roll of the Poor, and appoint an Inspector of the Poor.

XXXII. And be it enacted, That each Parochial Board shall, on the third Tuesday of September in this present year, or on such day thereafter as may be fixed by the Board of Supervision, meet for the purpose of making up, or causing to be made up, a roll of the poor persons claiming and by law entitled to relief

from the parish or combination, and of the amount of relief given or to be given to each of such persons, and for the purpose of appointing an inspector or inspectors of the poor in such parish or combination, and fixing the amount of remuneration to be given to every such inspector; and such meeting shall make up, or cause to be made up, such roll as aforesaid with the least possible delay, and shall nominate and appoint a fit and qualified person or persons to be inspector or inspectors of the poor in such parish or combination, and shall fix the amount of the remuneration to be given to every such inspector, and shall forthwith report to the Board of Supervision the name and address of such inspector, and the amount of the remuneration to be given to him, and shall at the same or at another meeting, to be held on a day not more than fourteen days thereafter, consider and determine as to the mode of raising the funds requisite for the relief of the poor in the parish or combination.

Parochial Boards may resolve that the Funds shall be raised by Assessment.

XXXIII. And be it enacted, That it shall be lawful for the Parochial Board of any parish or combination assembled at such meeting, or at any adjournment thereof, or for the Parochial Board of any parish or combination at any meeting of such board called for that purpose, and of which due notice shall have been given, by letter, advertisement, or otherwise, to all the persons entitled to attend, to resolve that the funds requisite for the relief of the poor persons entitled to relief from the parish or combination, including the expenses connected with the management and administration thereof, shall be raised by assessment; and if the majority of such meeting shall resolve that the funds shall be raised by assessment, such resolution shall be final, and shall be forthwith reported to the Board of Supervision; and it shall not be lawful to alter or depart from such resolution without the consent and authority of the Board of Supervision, previously had and obtained.

Modes of imposing Assessment.

XXXIV. And be it enacted, That when the Parochial Board of any parish or combination shall have resolved to raise by assessment the funds requisite, such board shall, either at the same meeting, or at an adjournment thereof, or at a meeting to be called for the purpose, resolve as to the manner in which the assessment is to be imposed; and it shall be lawful for any such board to resolve that one half of such assessment shall be imposed upon the owners, and the other half upon the tenants or occupants of all lands and heritages within the parish or combination, rateably according to the annual value of such lands and

heritages; or to resolve that one half of such assessment shall be imposed upon the owners of all lands and heritages within the parish or combination, according to the annual value of such lands and heritages, and the other half upon the whole inhabitants, according to their means and substance, other than lands and heritages situated in Great Britain or Ireland; or to resolve that such assessment shall be imposed as an equal percentage upon the annual value of all lands and heritages within the parish or combination, and upon the estimated annual income of the whole inhabitants from means and substance, other than lands and heritages situate in Great Britain or Ireland;* and when the Parochial Board shall have resolved on the manner in which the assessment is to be imposed, such resolution shall be forthwith reported to the Board of Supervision for approval; and if the manner of assessment so resolved upon shall be approved by the Board of Supervision, the same shall be adopted and acted upon in such parish or combination, and shall not be altered or departed from without the sanction of the Board of Supervision; and if the Board of Supervision shall disapprove of the manner of assessment so resolved upon as aforesaid, the Parochial Board shall, upon such disapproval being intimated, forthwith meet and resolve upon another mode of imposing the assessment consistent with law, and shall report such resolution to the Board of Supervision; and the manner of imposing the assessment so resolved upon shall be adopted and acted upon in such parish or combination, and shall not be altered or departed from without the sanction of the Board of Supervision.

Assessment may be imposed according to local Act or Established Usage.

XXXV. And be it enacted, That if at the date of this Act an assessment for the poor shall in any parish or parishes be imposed according to the provisions of any local act, or according to any established usage, it shall be lawful for the Parochial Board or Boards of such parish or parishes to resolve that the assessment in such parish or parishes shall be imposed according to the rule established by such local act or usage; and such resolution, if approved of by the Board of Supervision, shall continue to be acted upon in such parish or parishes, and shall not be altered or departed from without the sanction of the Board of Supervision.

Parochial Boards may classify Lands.

XXXVI. And be it enacted, That where the one half of any assessment is imposed on the owners, and the other half on

* The provision as to assessment on means and substance is repealed by 24 & 25 Vict., cap. 37.

the tenants or occupants of lands and heritages, it shall be lawful for the Parochial Board, with the concurrence of the Board of Supervision, to determine and direct that the lands and heritages may be distinguished into two or more separate classes, according to the purposes for which such lands are used and occupied, and to fix such rate of assessment upon the tenants or occupants of each class respectively, as to such boards may seem just and equitable.

Annual Value defined.

XXXVII. And be it enacted, That in estimating the annual value of lands and heritages, the same shall be taken to be the rent at which one year with another such lands and heritages might, in their actual state, be reasonably expected to let from year to year, under deduction of the probable annual average cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state, and all rates, taxes, and public charges payable in respect of the same: Provided always, that no mine or quarry shall be assessed, unless it has been worked during some part of the year preceding the day on which the assessment may be ordered to be levied.

Roll of Persons liable to Assessment to be made up.

XXXVIII. And be it enacted, That when the Parochial Board of any parish or combination shall have resolved as aforesaid to raise by assessment the funds requisite, and when the manner in which the assessment is to be imposed shall have been fixed, and the sum to be raised for the year or half-year then ensuing shall have been ascertained, such Parochial Board shall make up, or cause to be forthwith made up, a book containing a roll of the persons liable in payment of such assessment, and of the sums to be levied from each of such persons, distinguishing the sums assessed in respect of ownership or occupancy, or means and substance; and the book or roll so made up shall be the rule for levying the assessment for the year or half-year then ensuing; and the Parochial Board shall appoint one or more fit and qualified persons to be collector or collectors of the assessment, and shall fix the amount of remuneration to be given to every such collector; and it shall be competent to nominate and appoint the same person who is an inspector of the poor to be collector of the assessment, and to fix the amount of remuneration to be given to such person for the performance of the additional duties of collector of the assessment.

Amount of Assessment payable by each Person to be intimated.

XXXIX. And be it enacted, That as soon as may be after such book or roll is made up as aforesaid, the collector shall intimate

to each person the amount of the sum to be levied from him, and the time when the same is payable.

Parochial Boards to fix annually the Amount of Assessment, and make up Roll of Ratepayers—Power to correct Errors.

XL. And be it enacted, That before the expiration of one year from the date at which the first assessment under the provisions of this Act shall have been imposed as aforesaid in any parish or combination, and yearly or half-yearly thereafter, the Parochial Board of every such parish or combination shall fix and determine the amount of assessment for the year or half-year then next ensuing, and shall make up, or cause to be made up, a book containing a roll of the persons liable in payment of such assessment, and of the sums to be levied from each of such persons; and the roll so made up shall be the rule for levying the assessment for the year or half-year then next ensuing; and the collector shall forthwith intimate to each person the amount of the sum to be levied from him, and the time when the same is payable: Provided always, that it shall be lawful for the Parochial Board of any such parish or combination, if there shall have been found to exist any error in the sum or sums to be levied by way of assessment, or any omissions or surcharges in respect of the persons liable to pay the same, to cause such error, omission, or surcharge to be corrected at their next or any subsequent meeting after such error, omission, or surcharge shall have been discovered; Provided also, that nothing herein contained shall preclude any person who considers himself aggrieved by such assessment from his remedy by law, in the like form and on the same grounds as, at the date of the passing of this Act, was competent to any party who considered himself aggrieved by assessment imposed under the statutes then in force for relief of the poor, but to the extent and effect only of exempting himself from payment of any surcharge which may have been made upon him.

Power to impose additional Assessments.

XLI. And be it enacted, That if the assessment imposed for any year or half-year shall, from any unforseen or other circumstances, prove insufficient, it shall be lawful for the Parochial Board of such parish or combination to meet and impose such further and additional assessment as may be sufficient to raise the sum required.

Power to Parochial Boards to exempt on the ground of Inability.

XLII. And be it enacted, That it shall be lawful for the Parochial Board of any parish or combination to exempt from pay-

ment of the assessment or any part thereof, to such an extent as may seem proper and reasonable, any persons or class of persons, on the ground of inability to pay.

Power to levy from Tenants the Assessment on Owners.

XLIII. And be it enacted, That where the one half of any assessment is imposed on the owners, and the other half on the tenants or occupants, of lands and heritages, it shall be competent for the collector of such assessment to levy the whole thereof from the tenants or occupants, who shall be entitled to recover one half thereof from the owners, or to retain the same out of their rents, on production of a receipt granted by the collector of such assessment.

Long Leaseholders to be considered Owners.

XLIV. And be it enacted, That in all landward as well as all burghal parishes and combinations where houses have been or shall be built by the tenant of any land held under a building lease upon such land, the tenant and his heirs and assignees in such lease shall, for the purposes of this Act, be deemed and taken to be the owners of such houses.

Canals and Railways—how to be assessed.

XLV. And be it enacted, That in cases where any canal or railway shall pass through or be situate in more than one parish or combination, the proportion of the annual value thereof on which such assessment shall be made for each such parish or combination, shall be, according to the number of miles or distance which such canal or railway passes through or is situate in each parish or combination, in proportion to the whole length.

The same Property not to be assessed in Two Parishes.

XLVI. And be it enacted, That the owners and occupiers of lands and heritages shall not be liable to be assessed in respect of such lands and heritages for the relief of the poor in more than one parish or combination.

Companies or Individuals to be assessed in certain cases—Means and Substance not to be assessed in more than one Parish.

XLVII. And be it enacted, That if in any parish or combination in which an assessment is imposed on means and substance, any company or any individual shall occupy any lands and heritages, or shall carry on any trade or business in any premises within such parish or combination, such company and the partners thereof, and such individual, shall be liable to be assessed

in such parish or combination on their or his means and substance derived from or relating to such occupancy, trade, or business, although none of the partners of such company, nor such individual, should be actually resident in such parish or combination; and such company and partners, and such individual, shall not be liable to be assessed on the same means and substance, in any other parish or combination; and if any person shall be assessed in any parish or combination upon his means and substance, other than means and substance derived from or relating to the occupancy of lands and heritages within such parish or combination, or the carrying on of trade or business in premises within such parish or combination, such person shall not be assessed upon the same means and substance in any other parish or combination; and if any person shall reside in and be liable to be assessed as an inhabitant of more than one parish, it shall be optional to such person to determine in which of such parishes he shall be assessed on his means and substance, other than means and substance derived from and relating to the occupancy of lands and heritages, or the carrying on of trade or business in premises within any particular parish.

Means and Substance under £30 not to be assessed.

XLVIII. And be it enacted, That no person shall be liable to be assessed in any parish or combination on his means and substance, unless the estimated annual value thereof in whole shall exceed thirty pounds.

Stipends may be assessed.

XLIX. And be it enacted, That clergymen shall be liable to be assessed for the poor in respect of their stipends.

Certain Privileges of Exemption to cease.

L. And be it enacted and declared, That the privileges of exemption from payment of assessment in the city of Edinburgh, possessed and enjoyed by members of the College of Justice and officers of the Queen's household, shall not be applicable to assessments imposed and levied for the relief of the poor under the authority of this Act.

Assessment not to be void from Error or Misnomer.

LI. And be it enacted, That where any assessment shall have been imposed by the Parochial Board of any parish or combination, such assessment shall be payable at the time or times, and in the proportions, to be appointed by the Parochial Board; and no assessment shall be rendered void or affected by reason of any mistake or variance in the Christian or surname or designation

of any person chargeable therewith, but all assessments shall be valid and effectual against the person intended to be charged, and *bona fide* liable in payment of the same.

Parish Property vested in new Parochial Boards.

LII. And be it enacted, That where any property whatsoever, whether heritable or moveable, or any revenues, shall at the time of the passing of this Act, belong to or be vested in the heritors and kirk-session of any parish, or the magistrates, or magistrates and town council of any burgh, or commissioners, trustees, or other persons on behalf of the said heritors and kirk-session, or magistrates, or magistrates and town council, under any Act of Parliament, or under any law or usage, or in virtue of gift, grant, bequest, or otherwise, for the use or benefit of the poor of such parish or burgh, it shall, from and after a time to be fixed by the Board of Supervision, be lawful for the Parochial Board of each such parish, or of the combination in which such parish or burgh may be respectively, to receive and administer such property and revenues, and the right thereto shall be vested in such Parochial Board; and the said heritors and kirk-session, magistrates, town council, commissioners, trustees, or other persons, are hereby authorised and required either to continue to hold all such property and revenues for the behoof of such Parochial Board, or to make, grant, subscribe, and deliver such dispositions, assignations, and conveyances of all such property and revenues as may be necessary to enable such Parochial Board to administer the same for behoof of the poor of such parish or combination.

Funds to be invested.

LIII. And be it enacted, That all and every sums or sum of money or other funds which have been or may hereafter be given, mortified, or bequeathed for the use of the poor, and which shall become vested in the Parochial Board of any parish or combination, and whereof the annual proceeds are to be applied for behoof of the poor, shall, if not specially directed to be otherwise invested, be, without delay, either lodged in a chartered bank, or placed at interest on Government or heritable security, or in the stock of one or more of the chartered banks in Edinburgh; and the Board of Supervision is hereby authorised and empowered to require returns to be made to them from time to time, as they shall deem expedient, as to all such money or funds.

Church Collections in assessed Parishes.

LIV. And be it enacted, That in all parishes in which it has been agreed that an assessment should be levied for the relief of the poor, all monies arising from the ordinary church collections

shall, from and after the date on which such assessment shall have been imposed, belong to and be at the disposal of the kirk-session of each parish: Provided always, that nothing herein contained shall be held to authorise the kirk-session of any parish to apply the proceeds of such church collections to purposes other than those to which the same are now in whole or in part legally applicable, or to deprive the heritors of their right to examine the accounts of the kirk-session, and to inquire into the manner in which the funds have been applied; Provided also, that the session-clerk or other officer to be appointed by the kirk-session shall be bound to report annually, or oftener if required, to the Board of Supervision, as to the application of the monies arising from church collections; and if such session-clerk or other officer shall refuse to make such report when required, he shall be liable to a penalty not exceeding five pounds.

Duties of Inspector of the Poor—Assistant Inspectors in populous Parishes.

LV. And be it enacted, That the inspector of the poor in each parish or division of a parish for which he may be appointed shall have the custody of and be responsible for all books, writings, accounts, and other documents whatsoever relating to the management or relief of the poor in such parish or division of a parish; and it shall be the duty of the said inspector to inquire into and make himself acquainted with the particular circumstances of the case of each individual poor person receiving relief from the poor funds, and to keep a register of all such persons, and of the sums paid to them, and of all persons who have applied for and been refused relief, and the grounds of refusal, and to visit and inspect personally, at least twice in the year, or oftener if required by the Parochial Board or Board of Supervision, at their places of residence, all the poor persons belonging to the parish or division of the parish in receipt of parochial relief, provided that such poor persons be resident within five miles of any part of such parish or division of a parish, and to report to the Parochial Board and to the Board of Supervision upon all matters connected with the management of the poor, in conformity with the instructions which he may receive from the said boards respectively, and to perform such other duties as the said boards may direct: Provided always, that in populous and extensive parishes or divisions of parishes the duties of inspecting and visiting the poor may be performed by assistant inspectors or other competent persons, to be appointed and paid by the Parochial Board for these duties, and for whose conduct and accuracy the inspector of poor shall be responsible to the Board of Supervision.

Board of Supervision may dismiss or suspend Inspectors.

LVI. And be it enacted, That if any inspector of the poor shall fail or neglect or refuse to perform the duties of his office, or shall, in the opinion of the Board of Supervision, be unfit or incompetent to discharge the duties of his office, then it shall and may be lawful for the said Board of Supervision, by a minute or order, to suspend or dismiss such inspector; and the Parochial Board of the parish or combination for which such person is inspector shall forthwith proceed to appoint another person to perform the duties of inspector of the poor in the room of the inspector so suspended or dismissed.

Inspectors may pursue and defend Actions.

LVII. And be it enacted, That in case it shall be necessary to commence or institute any action by or on behalf of any parish or combination, or Parochial Board for the relief of the poor, such action may be brought in the name of any inspector of the poor of such parish or combination as pursuer; and in any action to be brought against any Parochial Board it shall not be necessary to call the individual members of the Parochial Board as defenders, but it shall be lawful for the pursuer in such action to call any inspector of the poor of any such parish or combination, and such inspector shall be bound to appear and answer on behalf of the Parochial Board; and all summonses, notices, diligences, decrees, or other proceedings served or obtained or had against any inspector of the poor, shall be binding on and conclusive against the Parochial Board of the parish or combination for which he is an inspector; and the Parochial Board shall have the entire direction and control of every such action, although the same may be carried on in name of the inspector.

Actions transferred.

LVIII. And be it enacted, That all actions brought by or against any inspector of the poor in his official character shall be continued by or against his successors in office, notwithstanding the death, resignation, suspension, or removal of such inspector, upon notice given to such successor, without any action of transference.

Lunatic Paupers to be placed in Asylums—Board of Supervision may direct Removal in Certain Cases.

LIX. And be it enacted, That in every case in which any poor person who shall have become chargeable in any parish or combination shall be insane or fatuous, the Parochial Board of such

parish or combination shall, within fourteen days from the time when such person is declared or known to be insane or fatuous, provide that such insane or fatuous person be conveyed to and lodged in an asylum or establishment legally authorised to receive lunatic patients; and the inspectors of the poor in every parish or combination shall and are hereby required to report without delay to the Board of Supervision all cases of insane or fatuous persons chargeable as paupers in their respective parishes; and the said Board of Supervision is hereby authorised and empowered, on any Parochial Board refusing or neglecting to provide for the removal of an insane or fatuous poor person to an asylum or establishment as aforesaid within the time hereinbefore specified, to take such measures as may be necessary for removing such insane or fatuous poor person to a lunatic asylum or establishment; and the whole expense of such removal and all subsequent expenses shall be recoverable from and defrayed by such Parochial Board: Provided always, that under special circumstances in particular cases it shall be lawful for the Parochial Board, with the consent of the Board of Supervision, to dispense with the removal of insane or fatuous poor persons to a lunatic asylum or establishment, and to provide for them in such other manner and under such regulations, as to inspection and otherwise, as shall be sanctioned by the Board of Supervision.

Provision as to Poorhouses.

LX. And whereas, for more effectually administering to the wants of the aged and other friendless impotent poor, and also for providing for those poor persons who, from weakness or facility of mind, or by reason of dissipated and improvident habits, are unable or unfit to take charge of their own affairs, it is expedient that poorhouses should be erected in populous parishes; be it enacted, That in every case in which a parish or combination of parishes contains more than five thousand inhabitants, according to the enumeration of the population then last published by authority of Parliament, it shall be lawful for the Parochial Board of any such parish or combination to take into consideration the propriety of erecting a poorhouse for such parish or combination, or of altering or enlarging any existing poorhouse; and if, after full time and opportunity given for deliberate consideration, the said Parochial Board shall be satisfied of the propriety of erecting a poorhouse, or of enlarging any existing poorhouse, and shall come to a resolution to that effect, such resolution shall be forthwith reported to the Board of Supervision; and if approved of by the Board of Supervision, the same shall be carried into execution by the said Parochial Board.

Parishes may unite for the purpose of building Poorhouses.

LXI. And be it enacted, That, with the concurrence of the Board of Supervision had and obtained thereto, it shall be lawful for the Parochial Boards of any two or more contiguous parishes to agree to build a common poorhouse for such two or more parishes; and the expense of maintaining and erecting such poorhouse shall be borne by such parishes in such proportions as shall be agreed on by the Parochial Boards of the said parishes respectively: Provided always, that if any such agreement for the purpose of building a poorhouse has once been effected, it shall not be lawful for any one or more of the parishes to withdraw from such agreement, without the consent of the Board of Supervision previously had and obtained.

Power to borrow Money for building Poorhouses.

LXII. And be it enacted, That for the purpose of erecting new poorhouses, and for enlarging, altering, or repairing any existing poorhouse, the Parochial Board in any parish or combination is hereby authorised and empowered to borrow money; and for the more effectually securing the repayment of the sum borrowed, with interest, it shall be lawful for the said Parochial Board to burden or charge the future assessments for the poor in such parish or combination with the amount of the money so borrowed: Provided always, that the principal sum so borrowed shall in no case exceed three times the amount of the assessment raised for the relief of the poor during the year immediately preceding that in which the money is borrowed; and that any loan of money borrowed for the purposes aforesaid shall be repaid by annual instalments of not less in any one year than one-tenth of the sum borrowed, exclusive of the payment of the interest on the same: Provided also, that no further or other sum shall be borrowed or chargeable on the poor assessment for the purposes aforesaid until the whole of the money last borrowed, with interest on the same, shall have been paid off.

Plans for Poorhouses to be approved by Board of Supervision.

LXIII. And be it enacted, That from and after the passing of this Act no new poorhouse shall be built, nor shall any existing poorhouse be enlarged or altered, nor shall it be lawful to impose an assessment or borrow money for such purposes, unless the plan of such new poorhouse, or of such proposed enlargements or alterations, shall have been submitted to and approved by the Board of Supervision, and signed, subscribed, or endorsed by at least three of the members of the said board in attestation of their approval.

Parochial Boards to frame Rules for Regulation of Poorhouses.

LXIV. And be it enacted, That in every case in which a poorhouse already exists, or shall be built or enlarged, or altered under the provisions of this Act, the Parochial Board or Boards shall frame rules and regulations for the management of such poorhouse, and for the discipline and treatment of the inmates thereof, and for the admission of any known minister of the religious persuasion of any inmate of such poorhouse at all reasonable times, on the request of such inmate, for the purpose of affording religious assistance to such inmate, and shall submit such rules and regulations to the Board of Supervision for approval; and no rules or regulations shall be effectual, or shall be acted upon, except such as shall have been approved by the Board of Supervision.

Poor Persons from other Parishes may be received into Poorhouses.

LXV. And be it enacted, That it shall be lawful for the Parochial Board of any parish or combination in which a poorhouse has been or shall hereafter be erected, to receive and accommodate in such poorhouse poor persons belonging to any other parish, and to charge such rates for the maintenance of such poor persons as shall be approved by the Board of Supervision; and such poor persons shall be in all respects subject to the same discipline and treatment as the other inmates of the poorhouse in which they are so accommodated.

Medical Attendance in Poorhouses.

LXVI. And be it enacted, That in all cases in which poorhouses shall be erected or enlarged or altered, under the provisions of this Act, there shall be proper and sufficient arrangements made for dispensing and supplying medicines to the sick poor, under such regulations as the Parochial Board shall make, and the Board of Supervision shall approve; and there shall be provided by the Parochial Board proper medical attendance for the inmates of every such poorhouse, and for that purpose it shall be lawful for the Parochial Board to nominate and appoint a properly qualified medical man, who shall give regular attendance at such poorhouse, and to fix a reasonable remuneration, to be paid to him by such Parochial Board: Provided always, that if it shall appear to the Board of Supervision that such medical man is unfit or incompetent, or neglects his duty, it shall be lawful for the Board of Supervision to suspend or remove such medical man from his appointment and attendance.

Parishes may subscribe to Hospitals, etc.

LXVII. And be it enacted, That it shall be lawful for the Parochial Board in any parish or combination, for the benefit of the poor of such parish or combination, to contribute annually, or otherwise, such sums of money as to them may seem reasonable and expedient, from the funds raised for the relief of the poor, to any public infirmary, dispensary, or lying-in hospital, or to any lunatic asylum, or asylum for the blind or deaf and dumb.

Sums raised by Assessment applicable to the relief of Occasional Poor.

LXVIII. And be it enacted, That from and after the passing of this Act, all assessments imposed and levied for the relief of the poor shall extend and be applicable to the relief of occasional as well as permanent poor: Provided always, that nothing herein contained shall be held to confer a right to demand relief on able-bodied persons out of employment.

Medical Relief, Clothing, and Education.

LXIX. And be it enacted, That in every parish or combination it shall and may be lawful for the Parochial Board, and they are hereby required, out of the funds raised for the relief of the poor, to provide for medicines, medical attendance, nutritious diet, cordials, and clothing for such poor, in such manner and to such extent as may seem equitable and expedient; and it shall be lawful for the Parochial Board to make provision for the education of poor children who are themselves or whose parents are objects of parochial relief.

Destitute Persons to be relieved, although having no settlement in the Parish to which they apply.

LXX. And be it enacted, That in every case in which a poor person in any parish or combination shall apply for parochial relief, the inspector of the poor or other officer of such parish or combination whose duty it shall be to attend to such applications, shall be bound to make enquiry forthwith into the circumstances of the applicant, and shall, notwithstanding such poor person may not have a settlement in the parish or combination, if he be in other respects legally entitled to parochial relief, be bound to furnish him with sufficient means of subsistence until the next meeting of the Parochial Board; and such board shall continue to afford to such poor person such interim maintenance as may be adjudged necessary until the parish or combination to which such poor person belongs be ascertained, and his claim

upon such parish or combination admitted or otherwise determined, or until he shall be removed; and every inspector of the poor, or other officer to whom application shall be made by or on behalf of any poor person for parochial relief, shall be bound to return an answer to such application within twenty-four hours from the time when it was made: Provided always, that if the necessary means of support are afforded to the applicant in the meantime, such inspector or other officer may delay giving a final answer to such application for any period which to him may seem necessary for prosecuting his enquiries: Provided also, that such poor person shall be bound to give to the inspector and Parochial Board of the parish or combination to which he has applied for relief all information and assistance which it is in his power to give, for the purpose of ascertaining the parish or combination to which he belongs, and every other matter regarding his case which the inspector may desire to ascertain, and shall be bound to answer upon oath, if required, all such questions as may be put to him before any justice of the peace or magistrate, and in case of false swearing, shall be liable to be prosecuted for perjury.

Expenses may be recovered from Parish of Settlement.

LXXI. And be it enacted, That where in any case relief shall be afforded to a poor person found destitute in a parish or combination, it shall be lawful for the Parochial Board of such parish or combination to recover the monies expended in behalf of such poor person from any parish or combination within Scotland to which he may ultimately be found to belong, or from his parents or other persons who may be legally bound to maintain him: Provided always, that in all cases in which relief shall be afforded by one parish or combination to a poor person having a settlement in another parish or combination, written notice of such poor person having become chargeable shall be given to the inspector of the poor of the parish or combination to which such poor person belongs; and the parish or combination affording relief shall not be entitled to recover for any charges or expenses incurred in respect of such poor person, except from and after the date of such notice.

Where Parishes do not provide for Removal of their Poor from other Parishes after Notice.

LXXII. And be it enacted, That if within a reasonable time after notice, the parish or combination to which such poor person shall as aforesaid have been ascertained to belong shall not remove such poor person, or shall not make provision to the satisfaction of the parish or combination which has given the notice for the constant weekly subsistence of such poor person, it shall be lawful for the parish or combination which has given the notice,

to cause such poor person to be removed to the parish or combination to which he belongs, at the expense of such last-mentioned parish or combination, unless such poor person shall, owing to sickness or infirmity, be incapable of being removed; in which case the parish or combination in which he is shall be bound to relieve him, and shall be entitled to recover from the parish or combination to which he belongs the amount so expended, provided that such amount does not exceed the rate expended for relief of other poor persons in the parish so relieving such poor person.

Party refused may apply to Sheriff.

LXXIII. And be it enacted, That if relief shall be refused to any poor person who shall have made application for relief, it shall and may be lawful for such poor person to apply to the sheriff of the county in which the parish or combination from which such poor person has claimed relief, or any portion of such parish or combination, is situate, and the said sheriff shall forthwith, if he be of opinion that such poor person is, upon the facts stated, legally entitled to relief, make an order upon the inspector of the poor, or other officer of such parish or combination, directing him to afford relief to such poor person in the meantime until such inspector or other officer shall, on or before a day to be appointed by the said sheriff, and to be intimated in the same order, give in a statement in writing, showing the reasons why the application of such poor person for relief was refused, which statement the said sheriff shall afterwards appoint to be answered, and shall, if required, nominate an agent to appear and answer on behalf of such poor person, and shall further, if necessary, direct a record to be made up, and a proof to be led by both parties; and it shall be lawful for the sheriff, if he shall see fit, to direct the interim support to such poor person to be continued, until a final judgment shall have been pronounced on the merits of the case: Provided always, that nothing herein contained shall be construed to enable the said sheriff to determine on the adequacy of the relief which may be afforded, or to interfere in respect of the amount of relief to be given in any individual case.

Proceedings when Amount of Relief considered inadequate.

LXXIV. And be it enacted, That in every case in which any poor person shall consider the relief granted him to be inadequate, such poor person shall lodge, or cause to be lodged, a complaint with the Board of Supervision, which board shall and is hereby required, without delay, to investigate the nature and grounds of the complaint; and if, upon inquiry, it shall appear that the

grounds of such complaint are well founded, and if the same shall not be removed, then the said board shall by a minute declare, that in the opinion of the board such poor person has a just cause of action against the parish or combination from which he claims relief, and a copy of such minute, certified and signified by the secretary, shall, if required, be delivered to such poor person, and upon the production or exhibition of such minute or certified copy thereof such poor person shall forthwith, and without any further proceedings, be entitled to the benefit of the poor's roll in the Court of Session; and it shall be lawful for the Board of Supervision, after any action has actually been commenced by or on behalf of such poor person, to award to him such interim aliment as to the said board shall seem just, during the dependency of such action, which award the Parochial Board of every such parish or combination shall be bound to obey.

No Action to lie relative to Relief, unless by consent of the Board of Supervision.

LXXV. Provided always, and be it enacted, That it shall not be competent for any court of law to entertain or decide any action relative to the amount of relief granted by Parochial Boards, unless the Board of Supervision shall previously have declared that there is a just cause of action as hereinbefore provided.

Settlement by Residence of Five Years.

LXXVI. And be it enacted, That from and after the passing of this Act, no person shall be held to have acquired a settlement in any parish or combination by residence therein, unless such person shall have resided for five years continuously in such parish or combination, and shall have maintained himself without having recourse to common begging, either by himself or his family, and without having received or applied for parochial relief; and no person who shall have acquired a settlement by residence in any parish or combination shall be held to have retained such settlement if, during any subsequent period of five years, he shall not have resided in such parish or combination continuously for at least one year: Provided always, that nothing herein contained shall be held to affect those persons who, previous to the passing of this Act, shall have acquired a settlement by virtue of a residence of three years, and shall have become proper objects of parochial relief.

Removal of English and Irish Paupers.

LXXVII. And be it enacted, That if any poor person born in England, Ireland, or the Isle of Man, and not having acquired a

settlement in any parish or combination in Scotland, shall be in the course of receiving parochial relief in any parish or combination in Scotland, then and in such case it shall be lawful for the sheriff or any two justices of the peace of the county in which such parish or any portion thereof is situate, and they are hereby authorised and required upon complaint made by the inspector of the poor, or other officer appointed by the Parochial Board of such parish or combination, that such poor person has become chargeable to such parish or combination by himself or his family, to cause such person to be brought before them, and to examine such person or any witness, on oath, touching the place of the birth or last legal settlement of such person, and to take such other evidence or other measures as may by them be deemed necessary for ascertaining whether he has gained any settlement in Scotland; and if it shall be found by such sheriff or justices that the person so brought before them was born either in England, or Ireland, or the Isle of Man, and has not gained any settlement in Scotland, and has actually become chargeable to the complaining parish or combination by himself or his family, then such sheriff or justices shall, and they are hereby empowered, by an order of removal under their hands, which order may be drawn up in the form of the Schedule (A) hereunto annexed, to cause such poor person, his wife, and such of his children as may not have gained a settlement in Scotland, to be removed by sea or land, by and at the expense of the complaining parish, to England, or Ireland, or the Isle of Man respectively, according as such poor person shall belong to England, Ireland, or the Isle of Man: Provided always, that no person shall be so removed until there has been obtained a certificate, on soul and conscience, by a regular medical practitioner, setting forth that the health of such person, his wife and children as aforesaid, is such as to admit of such removal: Provided also, that nothing herein contained shall prevent any Parochial Board or their inspector from making arrangements for the due and proper removal of such poor persons either by land or water, provided the arrangement be made with the consent of such poor persons themselves.

Removing Officer to have Powers of a Constable.

LXXVIII. And be it enacted, That every officer, constable, or other person to whom any such order of removal shall be delivered, for the purpose of being carried into execution, shall, and may by virtue thereof, detain, and hold in safe custody, every poor person mentioned in any such order, until such poor person shall have arrived at the place to which he is ordered to be removed, and shall and may for that purpose, in every county and place through which he shall pass in the due execution of such order, have and exercise the powers with which a constable is by law

invested, notwithstanding such person may not otherwise be empowered to act as a constable for the county or place respectively through which he may have occasion to pass, in carrying such order into execution, and although such order may not have been granted or backed by any judge or magistrate of such county or place.

Persons again becoming Chargeable to be Punished—1579, *c.* 74.

LXXIX. And be it enacted, That if any person who has been removed to England, or Ireland, or the Isle of Man, from any parish or combination in Scotland, under any order of removal, shall afterwards return to Scotland and apply for relief, or again become chargeable by himself or his family to the same parish or combination without having obtained a settlement therein, such person shall be deemed to be a vagabond under the provisions of an Act of the Scottish Parliament passed in the year one thousand five hundred and seventy-nine, intituled An Act for punishment of strange and idle beggars, and Relief of the pure and impotent, and may be apprehended and prosecuted criminally before the sheriff of the county in which such parish or any portion thereof is situate, at the instance of the inspector of the poor of the parish to which he shall have so applied for relief or become chargeable, and shall, upon conviction, be punishable by imprisonment, with or without hard labour, for such a period as the said sheriff shall think proper, not exceeding two months.

Punishment for Desertion of Wives, and Refusal to maintain Illegitimate Children—1579, *c.* 74.

LXXX. And be it enacted, That every husband or father who shall desert or neglect to maintain his wife or children, being able so to do, and every mother and every putative father of an illegitimate child, after the paternity has been admitted or otherwise established, who shall refuse or neglect to maintain such child, being able so to do, whereby such wife or children or child shall become chargeable to any parish or combination, shall be deemed to be a vagabond under the provisions of the aforesaid Act of the Scottish Parliament passed in the year One thousand five hundred and seventy-nine, and may be prosecuted criminally before the sheriff of the county in which such parish or combination, or any portion thereof, is situate, at the instance of the inspector of the poor of such parish or combination; and shall, upon conviction, be punishable by fine or imprisonment, with or without hard labour, at the discretion of the said sheriff.

Penalties—how to be recovered.

LXXXI. And be it enacted, That every penalty or forfeiture imposed by this Act, the recovery of which is not otherwise pro-

vided for, may be recovered by summary proceeding, upon complaint in writing made in the name of the secretary to the Board of Supervision, or of any agent to be appointed by a minute of the said board, to the sheriff of the county in which the offence shall have been committed, or to the sheriff of any county in which the offender may be found; and on such complaint being made, such sheriff shall issue a warrant for bringing the party complained against before him, or shall issue an order requiring the party complained against to appear on a day and at a time and place to be named in such order; and every such order shall be served on the party offending, either in person, or by leaving with some inmate at his usual place of abode a copy of such order, and of the complaint whereupon the same has proceeded; and either upon the appearance or upon the default to appear of the party offending, it shall be lawful for the sheriff to proceed to the hearing of the complaint, and, upon proof of the offence, either by the confession of the party complained against, or other legal evidence, and without any written pleadings or record of evidence, to convict the offender, and upon such conviction, to decern and adjudge the offender to pay the penalty or forfeiture incurred, as well as such expenses as the sheriff shall think fit, and to grant warrant for imprisoning the offender until such penalty or forfeiture and expenses shall be paid: Provided always, that such warrant shall specify the amount of such penalty or forfeiture and expenses, and shall also specify a period at the expiration of which the party shall be discharged, notwithstanding such penalty or forfeiture or expenses shall not have been paid, and shall in no case exceed three calendar months.

Application of Penalties—To be prosecuted for within Six Months.

LXXXII. And be it enacted, That the sheriff by whom any penalty or forfeiture shall be imposed by virtue of this Act, the application whereof is not herein otherwise provided for, shall award such penalty or forfeiture to the poor of the parish or combination in which the offence shall have been committed, and shall order the same to be paid over to the inspector of the poor or other officer for that purpose, provided that no person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this Act, unless such penalty or forfeiture shall have been prosecuted for within six months after the commission of the offence for which it has been incurred.

Ratepayers competent Witnesses.

LXXXIII. And be it enacted, That no inhabitant or other person liable to be assessed for the relief of the poor in any

parish shall be deemed an incompetent witness in any proceeding for the recovery of any penalty or forfeiture inflicted or imposed for any offence against this Act, notwithstanding such penalty, when recovered, shall be applicable as aforesaid.

Penalty on Witnesses making default.

LXXXIV. And be it enacted, That if any person who shall be summoned as a witness to give evidence before any sheriff in any matter in which such sheriff shall have jurisdiction under the provisions of this Act, shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, or appearing shall refuse to be examined upon oath, or to give evidence before such sheriff, every such person shall forfeit a sum not exceeding five pounds for every such offence, over and above any other punishment to which such person may by law be liable for every such refusal.

Informalities.

LXXXV. And be it enacted, That no proceeding for the recovery of penalties or forfeitures in pursuance of this Act shall be set aside for want of form, or on the ground of no record having been made, nor shall the same be removed by suspension, advocation, appeal, or otherwise into or be in any manner subject to review or reduction by any superior court.

Limitation of Actions—Tenders of Amends.

LXXXVI. And be it enacted, That all actions on account of anything done in the execution of this Act shall be brought before the Sheriff Court, and every such action shall be commenced within three calendar months after the fact committed, and notice in writing of such action, and of the cause thereof, shall be given to the defender one calendar month at least before the commencement of the action; and no pursuer shall recover in any action for irregularity or wrongful proceedings, if tender of sufficient amends shall be made by or on behalf of the party who shall have committed or caused to be committed any such irregularity or wrongful proceedings before such action shall have been brought; or if, during the dependence of such action, a tender shall be made of sufficient amends, and of all charges and expenses which the pursuer may already, at the time of such tender being made, have incurred in prosecuting such action.

Provision for Refusal or Neglect of Parochial Boards.

LXXXVII. And be it enacted, That in case any Parochial Board shall refuse or neglect to do what is herein or otherwise by law required of them, or in case any obstruction shall arise in the

execution of this Act, it shall be lawful for the said Board of Supervision to apply by summary petition to the Court of Session, or, during the vacation of the said Court, to the Lord Ordinary on the Bills, which Court and Lord Ordinary are hereby authorised and directed in such case to do therein as to such Court or Lord Ordinary shall seem just and necessary.

Assessments for the Poor may be recovered summarily as Land and Assessed Taxes.

LXXXVIII. And be it enacted, That the whole powers and right of issuing summary warrants and proceedings, and all remedies and provisions enacted for collecting, levying, and recovering the land and assessed taxes, or either of them, and other public taxes, shall be held to be applicable to assessments imposed for the relief of the poor; and the sheriffs, magistrates, justices of the peace, and other judges, may grant the like warrants for the recovery of all such assessments in the same form and under the same penalties as is provided in regard to such land and assessed taxes and other public taxes: Provided always, that it shall nevertheless be competent to prosecute for and recover such assessments by action in the Sheriff's Small-Debt Court; and all assessments for the relief of the poor shall, in case of bankruptcy or insolvency, be paid out of the first proceeds of the estate, and shall be preferable to all other debts of a private nature due by the parties assessed.*

Parochial Board may borrow Money on Security of Assessment remaining due.

LXXXIX. And be it enacted, That if the Parochial Board of any parish or combination shall find it necessary in any year or half-year to make disbursements for the relief of the poor beyond the amount received of the assessment applicable to the expenditure of such year or half-year, it shall be competent for such board to borrow money on the security of such part of the assessment as is still due and unreceived, but not to an amount greater than one half of such part of such assessment; and when any money has been so borrowed as aforesaid on the security of assessments, it shall not be competent to borrow on the security of any future assessment, until the money borrowed as aforesaid shall have been paid off.

Notices—how to be given.

XC. And be it enacted, That in all cases in which, by the provisions of this Act, notice or intimation is required to be given without prescribing the particular form of the notice, or the

* See 52 Geo. III. c. 95, sec. 13 & 14; 25 and 26 Vict., c. 82.

manner in which the same is to be given, it shall be lawful for the Board of Supervision, from time to time, to fix the form of such notice or intimation, and the manner in which the same is to be given.

Former Acts repealed which are at variance with this Act.—
7 & 8 Vict., c. 6.

XCI. And be it enacted, That all laws, statutes, and usages shall be and the same are hereby repealed, in so far as they are at variance or inconsistent with the provisions of this Act: Provided always, that the same shall continue in force in all other respects: Provided also, that nothing herein contained shall be held to affect or repeal an Act passed in the seventh year of her present Majesty, intituled 'An Act for the Liquidation of the Debt owing by the Charity Workhouse of the City of Edinburgh,' in so far as such Act relates to that debt, and the powers thereby conferred for paying off the same.

Alteration of Act.

XCII. And be it enacted, That this Act may be amended or repealed by any Act to be passed during the present session of Parliament.

SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

SCHEDULE (A).

Order for removal to England, etc.

I, A. B., the Sheriff [*or* We, C. D. and E. F., Two of the Justices of the Peace] of the County of do hereby order and adjudge G. H., who has become and is now actually chargeable to the Parish of to be removed with J. H. his Wife, and K. L. M. his Children, and conveyed to England, etc., in pursuance of the Provisions of an Act made and passed in the Eighth and Ninth Years of the Reign of Queen Victoria, intituled [*Title of this Act*].

Signed.

No. II.—ACT 19 & 20 VICT., c. 117, 29th July 1856,

To Amend the Law relating to the Relief of the Poor in Scotland.

WHEREAS an Act was passed in the eighth and ninth years of the reign of her present Majesty, intituled "An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland," and it is expedient that the said

Act should be amended: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Power to Board of Supervision to appoint two General Superintendents to assist in Execution of Act.

I. It shall be lawful for the Board of Supervision acting in the execution of the recited Act, with the consent of Her Majesty's Principal Secretary of State for the Home Department, to appoint by their order in writing two fit persons to be general superintendents of the poor in Scotland, to assist in the execution of the said Act, or of any other Act which shall hereafter be in force for the relief of the poor in Scotland; and such general superintendents shall, upon their appointment, severally take an oath *de fideli administratione officii*, which may be administered by any member of the Board of Supervision, or any one of the judges of the Court of Session, or the sheriff of the county; and it shall be lawful for the Board of Supervision, with the consent of the Secretary of State, to assign to such general superintendents the superintendence of any district or districts in Scotland, and also the execution and performance of all such duties under the recited Act as the Board of Supervision may, with such consent as aforesaid, think fit, and the board may with such consent remove such general superintendents or either of them, and appoint another or others in his or their stead, and there shall be paid to such general superintendents severally such salary as, upon the recommendation of the Board of Supervision, the Commissioners of Her Majesty's Treasury shall from time to time regulate and allow, such salary not to be less than three nor more than four hundred pounds *per annum*, and to be paid out of any monies to be hereafter voted for that purpose by Parliament.

Powers and Duties of General Superintendents.

II. The general superintendents and each of them shall be entitled to execute all the powers which are by the recited Act conferred upon the commissioners thereby authorised or directed to be appointed.

Annual Instalments of Money borrowed under recited Act need not exceed One Thirtieth of Sum borrowed.

III. And whereas by the 62d section of the said recited Act it is provided, that any loan of money borrowed for the purposes therein mentioned shall be repaid by annual instalments of not less in any one year than one-tenth of the sum borrowed, exclu-

sive of the payment of interest on the same: Be it enacted, That after the passing of this Act such annual instalments shall not of necessity exceed one-thirtieth of the sum so borrowed, exclusive of the said interest.

This and recited Act to be construed as one.

IV. This Act and the recited Act shall, as far as is necessary for the purposes of this Act, be construed as one Act.

No. III.—Act 24 & 25 Vict., c. 18, 7th June 1861,

To make Provision for the Dissolution of Combinations of Parishes in Scotland as to the Management of the Poor.

Whereas by an Act passed in the eighth and ninth years of the reign of Her Majesty Queen Victoria, intituled "An Act for the Amendment and Administration of the Laws relating to the Relief of the Poor in Scotland," it was provided, in the 16th section thereof, that the Board of Supervision thereby established, if satisfied that the administration of the affairs of the poor in any two or more parishes "might be carried on with greater advantage to the said parishes and to the poor therein, by the said parishes being combined for the purposes" of the said Act, to resolve and declare that such parishes should thenceforward be combined for the purposes of the said Act: And whereas no power is by the said Act conferred on the Board of Supervision, or on any other tribunal, to dissolve, under any circumstances, a combination of parishes once effected under authority of the said Act: And whereas it is expedient that power should be conferred on the said board, in the cases and subject to the provisions after mentioned, to dissolve such combinations of parishes: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Parochial Board of Combination may appoint Special Meeting for Application for Dissolution.

I. It shall be lawful for the Parochial Board of any combination of parishes which may have been combined under the provisions of the said recited Act, at one of its fixed general meetings, to resolve that it is expedient that the combination should, as to all or as to certain of the parishes thereof, be dissolved, and thereupon to appoint a special meeting of the board, for the purpose of considering whether an application should be made to the Board of

Supervision, craving the said Board of Supervision so as to dissolve such combination: Provided always, that notice shall have been given by the member or members of the Parochial Board intending at such meeting to propose such resolution, of his or their intention then to propose the same, to every other member thereof, by letter addressed to each such member at his ordinary place of residence, and put into the post office at least one month prior to such general meeting; and the special meeting, if resolved to be appointed, shall be appointed to be held on a day not sooner than three weeks nor later than six weeks after the date of such resolution.

Intimation of Special Meeting.

II. Intimation shall be given of the special meeting appointed as aforesaid by letters addressed by the inspector of the poor to every member of the Parochial Board at his usual place of residence, and put into the post office at least one fortnight before the day of meeting, and specifying the time and place of meeting, and the purpose for which such meeting has been appointed to be held.

Special Meeting may authorise Application to Board of Supervision.

III. At such special meeting, if the Parochial Board shall unanimously, or by a majority of at least two thirds, agree to the proposed application being made, but not otherwise, it shall be lawful for the Parochial Board to authorise an application, in their name, to be transmitted to the Board of Supervision, praying such Board of Supervision to dissolve the combination as to all or any of the parishes thereof, and the chairman of the Parochial Board shall thereupon sign and forthwith transmit to the Board of Supervision such application accordingly; and the said Parochial Board may also transmit to the Board of Supervision a statement of their reasons in support of such application; and any members of the Parochial Board who may dissent from the resolution to make such application may, within ten days after the date of such resolution, give in to the chairman a statement of their reasons of dissent, which statement the chairman shall forthwith transmit to the Board of Supervision.

Board of Supervision may thereupon dissolve Combination.

IV. The Board of Supervision, on receiving any such application, shall make such inquiry as to them shall seem necessary and proper; and the said Board of Supervision, after such inquiry, shall have power—if satisfied, from any change in the condition and state of the parishes, or on consideration of the results of

the experience already had of the administration of the poor since the parishes were combined, that it is not for the advantage of the parishes, or of the poor thereof, that the administration of the affairs of the poor should be continued in these parishes in a state of combination—to dissolve the combination as to all or any of the parishes thereof in terms of the prayer of the application, or they may, if they see cause, refuse such application.

And decide all Questions between the Parishes.

V. If the Board of Supervision shall dissolve any such combination as aforesaid, they shall further, after such inquiry as they shall deem necessary and proper, determine all questions as to the liability of the several parishes which had constituted the combination to support particular paupers in time to come, and as to the obligations incumbent on the combination, and the shares thenceforward to be borne by the several parishes thereof, and as to any property belonging to the combination, and the division or destination to be thereafter made of it, and any claims of compensation thence arising; and generally they shall have power to dispose of all questions and claims between the several parishes in reference to the affairs of the poor in so far as affected by the dissolution as aforesaid; and all decisions and determinations by the Board of Supervision shall be final and conclusive, and shall not be subject to review by any court, whether by appeal, advocation, suspension, reduction, or otherwise.

After Dissolution, Management of Poor to proceed as if Parishes never combined.

VI. On any such dissolution taking place as aforesaid, the management of the poor in every parish which shall, in consequence, have ceased to form part of a combination of parishes, and the administration of the laws relating to the relief of the poor in such parish and to the raising the necessary funds for their relief shall, from and after a day to be named by the Board of Supervision, as the date at which the dissolution shall take effect, and subject to the decisions and determinations of the said board hereinbefore mentioned, be carried on in every such parish as if no such combination had ever been formed.

If Application refused, not to be renewed till after lapse of Five Years.

VII. If the Board of Supervision shall refuse any such application for dissolution as aforesaid, it shall not be lawful for the Parochial Board whose application has been refused, to renew such application till after the lapse of five years from the date at which it was so refused.

No. IV.—ACT 24 & 25 VICT., c. 37, 22d July 1861,

To simplify the Mode of raising the Assessment for the Poor in Scotland.

WHEREAS it is expedient to simplify the mode of imposing the assessment for raising the funds for the relief of the poor in *Scotland:* Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

So much of Sec. 34 *of* 8 *&* 9 *Vict., c.* 83 *as relates to Means and Substance Mode of Assessment abolished.*

I. From and after the first day of *January* One thousand eight hundred and sixty-two, so much of section thirty-four of the Act of the eighth and ninth years of Her Majesty, intituled "An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland," as makes it lawful for any Parochial Board of any parish or combination of parishes in *Scotland* to raise one half of the funds requisite for the relief of the poor persons entitled to relief from the parish or combination by assessment upon the owners of all lands and heritages within the parish or combination, according to the annual value of such lands and heritages, and the other half upon the whole inhabitants, according to their means and substance, other than lands and heritages situated in *Great Britain* and *Ireland,* or to raise such funds by assessment imposed as an equal percentage upon the annual value of lands and heritages, within the parish or combination, and upon the estimated annual income of the whole inhabitants from means and substance other than lands and heritages situated in *Great Britain* or *Ireland,* is hereby repealed; and every Parochial Board of any parish or combination of parishes now raising such funds in terms of the parts of the said recited Act, which are hereby repealed as aforesaid, shall, before ceasing to raise such funds, and within two months after the passing of this Act, resolve to adopt the first mode of assessment specified in section thirty-four of recited Act, and to classify lands and heritages equitably in terms of the thirty-sixth section of the said recited Act, and shall forthwith report such resolution to the Board of Supervision, which is hereby authorised and required to determine whether or not the classification so resolved on is equitable; and in the event of their considering the classification thereby made as not equitable, to vary or alter the same as to them shall seem just; and until the said first mode of assessment so resolved on, with relative classification, shall have

been approved of by the Board of Supervision, the assessment for relief of the poor in any parish where the classification may not be approved of shall continue to be raised according to the mode now in operation in such parish; and after the proposed classification in any parish shall have been approved of by the Board of Supervision, it shall not be altered or departed from without the sanction of the said board: Provided always, that nothing in this Act shall be construed to prevent the Parochial Board of any parish or combination of parishes from collecting any such assessment actually imposed prior to the first day of *January* One thousand eight hundred and sixty-two, according to the mode legally in force in the parish or combination at the date when such assessments were imposed.

No. V.—Act 25 & 26 Vict., c. 82, 7th August 1862,

For the more Economical Recovery of Poor Rates and other Local Rates and Taxes.

Whereas it is expedient to provide for the more economical recovery of poor rates and other local rates and taxes: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Consolidation of Proceedings for the Recovery of Rates.

I. Where any number of local rates and taxes, whether of the same or of different kinds, are due from the same person, the rates and taxes so due may be included in the same information, complaint, summons, order, warrant, or other document required by law to be laid before justices or to be issued by justices, and every such document as aforesaid shall, as respects each rate or tax comprised in it, be construed as a separate document, and its invalidity as respects any one rate or tax shall not affect its validity as respects any other rate or tax comprised in it.

No costs shall be allowed in respect of several informations, complaints, summonses, orders, warrants, or other such documents as aforesaid, in cases where, in the opinion of the justices or court having jurisdiction over the said costs, one information, complaint, summons, order, warrant, or other document as aforesaid might have sufficed, regard being had to the provisions of this Act.

No. VI.—ACT 25 & 26 VICT., c. 113, 7th August 1862,

To amend the Law relating to the Removal of Poor Persons from England to Scotland and from Scotland to England and Ireland.

WHEREAS it is expedient that better means should be provided for the safe conveyance to the place of their destination in England, Ireland, or Scotland, of poor persons who may be removed in pursuance of the Acts passed in the eighth and ninth years of the reign of Her present Majesty, chapter eighty-three, and chapter one hundred and seventeen, and in the tenth and eleventh years of the reign of Her present Majesty, chapter thirty-three: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same:—

Warrant of Removal to Scotland to be signed by two Justices or a Magistrate, and to England or Ireland by the Sheriff or two Justices.

I. No application for a warrant ordering the removal from any place in England to Scotland, or in Scotland to England or Ireland, of any poor person who shall have become chargeable in such place, shall be heard and determined in England, except by two or more justices in petty sessions assembled, or by a stipendiary magistrate or metropolitan police magistrate sitting in his court; and in Scotland, except by the sheriff or any two justices of the peace of the county in which the parish is situated to which such poor person may have become chargeable, which justices or magistrates, and sheriff or justices (as the case may be), shall see such poor person, or the person who is the head of the family proposed to be removed, and shall be satisfied that every person who is proposed to be removed by the warrant is in such a state of health as not to be liable to suffer bodily or mental injury by the removal.

Warrant to contain Name and Age of every Person to be removed, and other Particulars.

II. Such warrant of removal shall be granted in England only on the application of the relieving officer, or other officer of the guardians of the union or parish, and in Scotland only on the application of the inspector of the poor of the parish or combination, or other officer appointed by the Parochial Board of such parish or combination, where such poor person shall have become chargeable, and shall contain the name and reputed age of every person ordered to be removed by virtue of the same, and the name

of the place in Scotland or England or Ireland (as the case may be) where the justices or magistrate, or sheriff or justices, shall find such person to have been born, or to have last resided for the space of five years in the case of a poor person to be removed to Scotland, and three years in the case of a poor person to be removed to England or Ireland, and a statement of such examination having been made as to the state of health of every person ordered to be removed as aforesaid; and such warrant shall be addressed to the party applying for the same, and in the case of a removal to Scotland, to the Parochial Board or inspector of the poor of the parish or combination to which such poor person is to be removed, and in the case of a removal to England or Ireland (as the case may be), to the guardians of the union or parish to which such person is to be removed, and a copy shall be given by and at the cost of the person applying for such warrant to the person or the head of the family about to be removed by virtue of it; provided that in the case of any native of England, Ireland, or Scotland where the justices or magistrate, or sheriff or justices (as the case may be), shall not be able to ascertain, upon the evidence before them, the place of birth or of such continued residence as aforesaid, they shall order the pauper to be removed to the port or union or parish in England or Ireland (as the case may be), or port or parish in Scotland, which shall, in the judgment of such justices or magistrate, or sheriff or justices (as the case may be), under the circumstances of the case, be most expedient.

Copy of Warrant to be sent to Parish to which removal is to be made.

III. The person obtaining the warrant shall, at least twelve hours before the removal, send a copy of it by post to the inspector of the poor of the parish or combination in Scotland, and to the clerk of the Board of Guardians of the union or parish in England or Ireland (as the case may be) to which such poor person shall be ordered to be removed, and also a copy of the depositions taken in the case, if the same shall, at any time within three months from the date of the warrant, be required by any such Board of Guardians or Parochial Board.

Warrants shall order poor Persons to be conveyed to the Place mentioned in the Warrant.

IV. Such warrant shall order the removal of the poor person to be made to the place mentioned therein as aforesaid, and shall order the persons charged with the execution thereof to cause such poor person with his family (if any) to be safely conveyed to such place in England, Ireland, or Scotland (as the case may be); to be delivered, in the case of a removal to Scotland, to the

inspector of the poor of the parish or combination, and in the case of a removal to England or Ireland, at the workhouse of such place or of the union or parish containing the port or place nearest to the place mentioned in the warrant as the place of the pauper's ultimate destination.

Relieving Officers and Inspectors of Poor to receive poor Persons named in Warrants, under Penalty of Ten Pounds.

V. The master of the workhouse of the union or parish in England or Ireland, and the inspector of the poor of the parish or combination in Scotland, to which (as the case may be) such warrant is addressed, shall be bound to receive delivery of the poor person named in such warrant, under a penalty of ten pounds for each case of refusal, which penalty may be recovered by the person applying for such warrant by an action in any county court in England, or court of quarter sessions in Ireland, or sheriff court in Scotland, or other competent court having jurisdiction in the place where such master or inspector is resident at the time when such action is brought.

Parochial Boards and Guardians may forward the Pauper to the Place of Destination and recover the Costs.

VI. If by reason of default of the guardians, inspector of the poor, or other person having charge of such warrant, or otherwise, the poor person named therein shall not be removed to the place of ultimate destination, the guardians of the union or parish in England or Ireland, or Parochial Board of the parish or combination in Scotland (as the case may be) to which he has been removed, may, if they think fit, cause the pauper to be removed forthwith to the place mentioned in the warrant, and shall be entitled to be reimbursed the costs incurred in such removal by the guardians or Parochial Board (as the case may be), or other person on whose application the warrant was obtained, such costs being the actual expense incurred in and about the conveyance and maintenance of each person so removed, which cost may, if not paid on demand, be recovered by an action in any county court in England or Ireland, or sheriff court in Scotland, or other competent court having jurisdiction in the place from whence the removal shall have taken place.

Persons not to be removed as Deck Passengers during the Winter.

VII. It shall be unlawful to remove any woman, or any child under the age of fourteen, as a deck passenger in any vessel from England to Scotland, or from Scotland to England or Ireland, during the period from the first of October to the thirty-first of March following, and no regulation of any sheriff, magistrate, or justices authorising such removal shall be henceforth legal.

Part of 8 & 9 *Vict., c.* 83 *repealed.*

VIII. Section seventy-seven of the Act eighth and ninth Victoria, chapter eighty-three, in so far as inconsistent with the provisions of this Act, is hereby repealed.

Construction of this Act.

IX. Except so far as this Act shall alter the provisions of the said Acts, this Act shall be construed as part of the same.

No. VII.—Act 28 & 29 Vict., c. 62, 29th June 1865,

To provide for the Exemption of Churches and Chapels in Scotland for Poor Rates.

Whereas by the Act third and fourth William the Fourth, chapter thirty, it is provided that no person shall be liable to be rated for or to pay church or poor rates for or in respect of any churches, district churches, chapels, meeting-houses, or premises exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provision of any Act then in force; and that no person shall be liable to such rates, because such churches, chapels, meeting-houses, or other premises, or any vestry rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor: And whereas, according to the general practice in Scotland, churches and chapels are exempted from poor rates, but doubts have been entertained whether the recited Act extends to Scotland: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Places exclusively appropriated to Public Religious Worship in Scotland not liable for Poor Rates.

I. No person shall be rated or be liable to be rated for or to pay any poor rates for or in respect of any church, chapel, meeting-house, or premises in Scotland exclusively appropriated to public religious worship; and no person shall be liable to any such rates because such church, chapel, meeting-house, or other premises, or any room belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor.

LUNACY ACTS.

No. I.—Act 20 & 21 Vict., c. 71, 25th August 1857,

For the Regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums in Scotland.

Whereas an Act was passed in the fifty-fifth year of the reign of King George the Third, intituled "An Act to regulate Madhouses in Scotland;" and another Act was passed in the ninth year of the reign of King George the Fourth, intituled "An Act for altering and amending an Act passed in the fifty-fifth year of the reign of His late Majesty, intituled 'An Act to regulate Madhouses in Scotland;'" and another Act was passed in the session of Parliament holden in the fourth and fifth years of the reign of Her Majesty, intituled "An Act to alter and amend certain Acts regulating Madhouses in Scotland, and to provide for the Custody of dangerous Lunatics;" and it is expedient that the said recited Acts be repealed, and that more efficient provision be made for the care and treatment of lunatics, and for the provision, maintenance, and regulation of lunatic asylums in Scotland: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

On January 1, 1858, *recited Acts repealed.*

I. From and after the first day of January One thousand eight hundred and fifty-eight, the recited Acts shall be and are hereby repealed.

Officers to continue till recalled, and Orders made under the repealed Acts to be good.

II. The inspectors, medical officers, and all other officers or servants appointed under or in virtue of the recited Acts, or any of them, shall continue to discharge the duties of their respective offices until they shall be re-appointed, or superseded by the appointment of other persons, officers, and servants to discharge the

duties now performed by them; and all licences heretofore granted under the recited Acts or any of them, shall remain in force until the expiration of the periods for which they were respectively granted, or until they are revoked under the powers of this Act; and all orders, matters, and things granted, made, done, or directed to be done in pursuance of the recited Acts, or any of them, shall be and remain as good, valid, and effectual, to all intents and purposes, as if the said Acts had not been repealed, excepting in so far as such orders, matters, or things are expressly made void or affected by this Act; and all fees, charges, liabilities, and expenses due, payable, or prestable under the said Acts, or any of them, shall be payable and prestable from the same funds and sources as would have been applicable to such payments, and otherwise in the like manner as if the said Acts had not been repealed.

Interpretation of terms.

III. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say), the words "the board" shall mean the board to be appointed under the authority of this Act for the superintendence and care of asylums and lunatics; the words "public asylum" shall mean and include all such hospitals, madhouses, or asylums as are or shall be established for the custody of lunatics by Act of Parliament or Royal Charter, or under any deed or mortification by which the maker thereof has directed the appropriation of funds to the establishing and maintaining any lunatic asylum or hospital, or any establishment administering funds for charitable purposes, without any view to any pecuniary gain or profit arising to the establishment or to the estate or funds of the trust or charity, and also all hospitals, madhouses, or asylums other than district asylums, into which lunatics committed by order and certificate, as hereinafter provided, cannot be refused access or reception, without special cause shown; the words "private asylum" shall mean and include all such licensed madhouses or asylums as are established for the reception of more than one lunatic under the provisions of this Act, and kept for the pecuniary gain or profit of the proprietors or superintendents thereof or others interested therein, and into which the admission of lunatics is a matter of arrangement between the superintendent thereof and the party seeking or promoting the reception of the lunatic therein; the words "district asylum" shall mean an asylum, in terms of this Act, of one of the districts described in the schedule (H) hereunto annexed; the word "house" shall mean any house in which a single lunatic is kept under an order of the sheriff; the word

"superintendent" shall mean the person or persons having the management or charge of any asylum, and shall include the proprietor and all persons having any pecuniary interest therein, or in the profits to be derived therefrom; the words "medical person" shall mean any person being a member or licentiate of one or other of the Royal Colleges of Physicians or Surgeons in Edinburgh or London, or holding a diploma from the Faculty of Physicians and Surgeons of Glasgow, or being a fellow or licentiate of the King and Queen's College of Physicians in Dublin, or of the College of Surgeons in Dublin, or holding the degree of Doctor of Medicine from one of the universities of Scotland, England, or Ireland, or having a right to practice medicine or surgery from having served in the Army or Navy, and being in actual practice as such physician, surgeon, or otherwise as aforesaid; the word "lunatic" shall mean and include any mad or furious or fatuous person, or person so diseased or affected in mind as to render him unfit in the opinion of competent medical persons to be at large, either as regards his own personal safety and conduct, or the safety of the persons and property of others or of the public; the word "burgh" shall include and apply to the cities, burghs, and towns which are royal burghs, or which send, or contribute as burghs to send, a member to Parliament; the words "magistrates of burghs" shall include the Lord Provost, or Provost or Chief Magistrate, and the Magistrates and Council of Burghs; the expression "landward part of a county" shall include and apply to a county exclusive of the burghs situated therein; the word "secretary" shall mean the secretary to be appointed under this Act; the expression "judicial factor" shall mean and include any person having charge of property of a lunatic, whether as judicial factor, factor *loco tutoris*, factor *loco absentis*, curator bonis, or tutor dative, or by reason of service as tutor-at-law, or as curator; the word "sheriff" shall mean the sheriff of and acting in the county of which he is sheriff, and shall include the sheriffs-substitute; the word "sheriff-clerk" shall mean the sheriff-clerk and sheriff-clerk depute of the county of which he is sheriff-clerk, and shall include steward-clerk and steward-clerk depute; the word "person" and the word "owner" shall extend to trustees and to bodies politic or corporate as well as to individuals; and the word "month" shall mean calendar month.

Constitution of Board.

IV. There shall be constituted, for the purposes of this Act, a board to be called the General Board of Commissioners in Lunacy for Scotland, in manner following:—

1. Three persons shall be appointed by Her Majesty, one of whom shall be an unpaid commissioner and chairman of the board, and two of whom shall be paid commissioners,

and shall receive such salary, not exceeding one thousand two hundred pounds each per annum, as shall be fixed by the Commissioners of Her Majesty's Treasury:

2. It shall be lawful to Her Majesty, as often as shall seem expedient, by warrant under the hand of one of Her Majesty's Principal Secretaries of State, to appoint not more than three persons in all at one time to be unpaid commissioners in lunacy, for such period as may be specified in such warrant:
3. All vacancies in the board may be supplied in like manner from time to time as they occur.

Meetings of the Board.

V. The board shall have an office at Edinburgh for the transaction of their business, and shall meet there, or at such temporary place as shall be fixed for the purpose, upon the first day of November next, or upon the first convenient day within ten days thereafter (of which due notice shall be given by the secretary to each of the members of the board), and shall thereafter hold two general meetings in each year, one upon the first Wednesday in March, and the other upon the first Wednesday in November; and at such first meeting, and at all other meetings of the board, three of the members shall be a quorum, with power to act in all the matters hereby committed to the board; and the board shall have power to adjourn for such time and to such place as they shall see fit, and to hold special or *pro re nata* meetings, which may be called by the secretary in such manner as the board shall direct; and at all meetings of the board the chairman shall have both an original and a casting vote.

Power to Board to name Committees.

VI. It shall be lawful to the board, as often as they deem fit, to appoint any two or more of their number as a committee for the purposes of this Act, or for any part of such purposes as the board may direct, and if more than two, to fix the number of such committee that shall be sufficient to transact business; and it shall be lawful for such committee, in transacting the business committed to them, to exercise all the powers necessary for that purpose which are by this Act given to the board; and such committee shall report to the board at such time or times as the board shall direct, and failing such direction shall report to the board at its next general statutory meeting.

Commissioners, before acting, to take the following oath.

VII. Every commissioner shall, before he acts in the execution of his duty, take an oath, to the following effect; (that is to say),

"I *A. B.* do swear, That I will discreetly, impartially, and faithfully execute all the trusts and powers committed to me by virtue of an Act of Parliament passed in the twenty-first year of the reign of Her Majesty Queen Victoria, intituled [*here insert the Title of this Act*], and that I will keep secret all such matters as shall come to my knowledge in the execution of my office, except when required to divulge the same by legal authority, or so far as I shall feel myself called upon to do so, for the better execution of the duty imposed upon me by the said Act.

"So help me God."

Which oath it shall be lawful for the Lord Justice-General of Scotland to administer.

Commissioners not to derive Profit for discharging the Duties of their Office.

VIII. The commissioners shall not derive any profit or emolument for the discharge of the duties of their office, excepting as herein mentioned, nor shall they be personally responsible for anything done *bona fide* in the execution of this Act, or in the exercise of the powers herein contained, and the paid commissioners shall devote their whole time to the duties of the said office.

Powers of Commissioners.

IX. The board, over and above the powers hereby specially committed to them, shall have the superintendence, management, direction, and regulation of all matters arising under this Act in relation to lunatics, and to public, private, and district asylums, and to every house in which a lunatic is kept or detained under an order of the sheriff, as hereinafter provided, and shall have the power of granting or refusing licences to the proprietors of private asylums, and of renewing or transferring any such licences, and of recalling or suspending the same; and it shall be lawful for the board from time to time to make and establish such rules and regulations as they may deem necessary towards the good order and management of all private and district asylums, and the conduct and duties of the superintendents, officers, and servants thereof, and of the inspectors, secretary, clerk, officers, and servants appointed under the authority of this Act, and to enforce such rules and regulations, by forfeiture of the licence of any party not observing the same, and by recovery of the penalties authorised by this Act: Provided always, that all such rules and regulations shall, before being put into execution, be approved of by one of Her Majesty's Principal Secretaries of State, and such rules and regulations shall also be submitted to both Houses of Parliament, if Parliament be then

* Extended by 29 & 30 Vict., c. 51, sec. 18.

sitting, and if Parliament be not sitting, then within fourteen days after the meeting of the next Session of Parliament: Provided also, that nothing in this Act contained, unless where otherwise specially provided, shall be construed to extend to any public asylum existing or in course of erection at the passing of this Act, further than to enable the board to authorise and regulate the inspection and visitation of such asylums, and to make and enforce such rules and regulations as they shall think necessary in relation to the books or minutes to be kept or made, and the returns of the entries therefrom to be made to the board by the persons having the management and care of such asylums.

Public Asylums founded after passing of this Act to be subject to it.

X. Provided further, That all such public asylums as may be endowed, founded, or established after the passing of this Act, and all additions to any existing public asylum to be hereafter made, shall be under and subject to such and the like powers and provisions as existing public asylums are by this Act made subject to.

Commissioners may institute Inquiries, and summon Witnesses, and examine them on Oath.

XI. It shall be lawful for the board to institute, in such manner as they shall think fit, an investigation or inquiry into any case falling under the provisions of this Act which they shall think it necessary or proper to inquire into; and in any case in which it shall be necessary to obtain evidence, it shall be lawful for the board, from time to time, as they shall see occasion, with the concurrence of the Lord Advocate of Scotland for the time being, or the Solicitor-General for Scotland for the time being acting for and in the name of the Lord Advocate, to require, by summons, according to the form, as nearly as may be, of Schedule (A) hereunto annexed, and which summons, as well as the execution and service copy thereof, may be either printed or written, or partly printed and partly written, any person to appear before them, to testify on oath touching any matter respecting which they are by this Act authorised to inquire, which oath the chairman of the board is hereby authorised to administer; and such summons shall contain a warrant to messengers-at-arms and sheriff-officers to serve the same; and it shall be lawful for any messenger-at-arms or sheriff-officer to serve such summons personally, or at the dwelling-place of the person named therein, in the same form and manner as summonses and citations may be served according to the law of Scotland; and any person who shall not appear before the board pursuant to such summons, or shall not assign some reasonable excuse for

not appearing, or shall appear and refuse to take the oath, or to be examined, shall, on being convicted thereof before the sheriff, or before a justice of the peace of the county or magistrate of the burgh within which such person has his ordinary residence, or of the county or burgh within which such person shall have been by such summons required to appear and give evidence, for every such neglect or refusal, forfeit a sum not exceeding thirty pounds.

Payment of Expenses of Witnesses.

XII. It shall be lawful for the board to direct the secretary to pay to any witness summoned as aforesaid the reasonable expenses of his appearance and attendance in pursuance of such summons, and the same shall be deemed to be expenses incurred by the board in the execution of this Act, and be taken into account, and paid accordingly.

Power to Her Majesty to appoint a Secretary.

XIII. It shall be lawful for Her Majesty to appoint a fit person to be secretary to the board, to whom there shall be paid such salary, not exceeding five hundred pounds per annum, as shall be fixed by the Commissioners of Her Majesty's Treasury; and such secretary, and every secretary to be hereafter appointed, shall be removable from his office by her Majesty, on the application of the board; and upon the death, resignation, or removal of any such secretary, Her Majesty, and her heirs and successors, shall appoint a secretary in the room of the secretary so dying, resigning, or being removed; and the secretary shall perform such duties in the execution of this Act as the board shall direct, and shall in all respects be subject to the inspection, direction, and control of the board; and each secretary shall find sufficient security for his intromissions and management to the satisfaction of the board.

Secretary to make Annual Returns.

XIV. The secretary shall annually transmit to the Commissioners of Her Majesty's Treasury, and there shall be annually laid before both Houses of Parliament, a return exhibiting the number of orders granted by the sheriffs for admission of lunatics into any public, private, or district asylum or house, stating the asylum or house to which such order was sent, also the number of licences granted by the board for the continuance, establishment, or renewal of private asylums, and the transfer of any such licence from any one asylum to another, and describing such public, private, and district asylums by their respective localities, and stating the names of the superintendents of each asylum,

and showing also the number of patients, male and female, received into and discharged from each asylum, or removed or transferred from any one house to another, classifying those discharged into three divisions of "Cured," "Relieved," and "Unaffected by Treatment," during the preceding year.

Secretary to keep Books, Minutes, and Accounts, and Accounts to be annually furnished to the Commissioners of the Treasury, etc.

XV. The secretary shall, under the directions of the board, keep regular books and minutes of all the proceedings of the board, and accurate accounts of all monies received and paid by the board or secretary, and of all charges and expenses incurred under or by virtue of or in the execution of this Act; and such account shall be made up to the first day of August in each year, and shall be signed by the chairman of the board and by one of the paid commissioners, and shall specify the several heads of charge and expenditure, and be transmitted to the Commissioners of Her Majesty's Treasury, who shall thereupon audit such account, and may, if they shall deem it expedient, and where not inconsistent with any other provision of this Act, direct the balance (if any) to be paid into the Exchequer to the account of the Consolidated Fund; and an abstract of such accounts shall be laid before Parliament on or before the twenty-fifth day of March in each year, if Parliament be then sitting, or if Parliament be not then sitting, then within one month after the next sitting of Parliament.

Power to Board to appoint a Clerk.

XVI. It shall be lawful for the board to appoint a clerk, to whom there shall be paid a salary not exceeding one hundred and fifty pounds per annum, and such clerk shall be removable from his office by the board; and upon the death, resignation, or removal of any such clerk, the board shall appoint a clerk in his room; and every such clerk shall perform such duties in the execution of this Act as the board shall require of him, and shall, in the performance of his duties, and in all respects, be subject to the inspection, direction, and control of the board; and each clerk shall, when so required by the board, find sufficient security for his intromissions and management to the satisfaction of the board.

Duties of Commissioners.

XVII. The board shall, as soon after their first meeting as may be convenient, make general rules for the inspection and visitation of public, private, and district asylums; and it shall be the duty of the two paid commissioners to visit and inspect, at least twice in each year, all the public and private and district asylums,

and every outhouse, place, or building thereto belonging, and every house in which any lunatic is detained under any order of a sheriff; and at each such visitation they shall examine and inquire into the condition of the lunatics then confined in such asylum or house, and also whether any coercion or restraint has been imposed on any such lunatics, and shall record in the patients book of such asylum the state of the health generally, as well mental as bodily, of such lunatics, and what coercion or restraint has been imposed upon any such lunatics, and the cause thereof, and specially such particular cases as may appear to them to require remark; and they shall also inquire into the particulars of the management and the condition of each asylum as to its state of repair, heating, ventilation, cleanliness, supply of water, diet, and otherwise, and shall see that the number of patients, of whom a correct list shall be furnished to them by the superintendent of each asylum, does not exceed the number for which the asylum is licensed, and that the books or registers hereby directed to be kept in each asylum are regularly and correctly kept; and each individual in the management of any such asylum or house, or connected therewith, shall disclose to the said commissioners or either of them every particular in relation to the keeping and management thereof, and the care of the lunatics therein, into which they shall think fit to inquire; and the said commissioners shall record in a book, to be kept by them, all inspections, stated and occasional, made by them, and the particulars thereof, and shall communicate the same from time to time to the board, for their information; and, in addition to the stated inspections before mentioned, the said commissioners shall on all occasions make any particular visitation or inquiry which they may think fit into the condition of any public, private, or district asylum or house, or any special circumstance therewith connected, and shall also be entitled, by night or by day, to visit any such asylum or house, and to report to the board the condition thereof; and a copy of all entries of the said paid commissioners, of the sheriff and justices of the peace, and of the medical inspectors hereinafter appointed under this Act, in the patients book of such asylum, shall be transmitted to the board by the superintendent of such asylum within eight days after such entries respectively are made, under a penalty not exceeding ten pounds for each offence, in case of failure.

Commissioners to visit Lunatics in Prisons.

XVIII. The commissioners shall and may, once or oftener in each year, on such day or days, and at such hours in the day or night, and for such length of time as they shall think fit, visit any prison in which there shall be, or be alleged or supposed to be, any lunatic, and shall make all such inquiries as to the

lunatics in such prison as they shall deem proper, or as the board may direct.

Commissioners to visit Poorhouses.

XIX. The commissioners shall and may, on such day or days, and at such hours in the day or night, and for such length of time as they shall think fit, visit all poorhouses in which there shall be, or be alleged or supposed to be, any lunatic, and shall inquire whether the provisions of the law as to lunatics have been carried out in the parish in which any such poorhouse shall be situate, and also as to the dietary, accommodation, and treatment of the lunatics in each such poorhouse, and shall report in writing thereon to the board.

Commissioners may take Assistance of Medical Persons.

XX. It shall be lawful for the board, where they shall deem it necessary for the beneficial execution of the purposes of this Act, to take the assistance of such medical persons as may be required, and the expense attending such assistance shall be defrayed in the manner in which the allowance of medical persons to be employed by the board and the sheriff are hereinafter directed to be defrayed.

Secretary of State may appoint one or two Medical Persons to be Deputy Commissioners.

XXI. If it shall appear to one of Her Majesty's Principal Secretaries of State to be necessary for the discharge of the duties imposed by this Act, he shall have power to appoint, for such period as he shall think fit, one or more medical persons, not exceeding two in all, to be deputy commissioners under this Act, and shall take the oath prescribed to be taken by the commissioners, and such deputy commissioners shall have such of the powers of the commissioners, and shall perform such duties as the board may direct; and such deputy commissioners shall receive a salary not exceeding five hundred pounds per annum each, to be paid in like manner, and out of the like fund, as the other salaries payable under this Act; provided always, that no such appointment shall subsist after the expiration of five years from the passing of this Act.

Board to Cease after Five Years, and the Paid Commissioners to be the Inspectors-General in Lunacy.

XXII.* The General Board of Commissioners in Lunacy for Scotland appointed by this Act shall exist for five years from

* Repealed by 25 & 26 Vict., c. 54, sec. 24.

and after the first day of January one thousand eight hundred and fifty-eight, and no longer; and from and after the expiration of said period of five years, the two paid commissioners then acting under this Act shall become inspectors-general in lunacy for Scotland, subject to the orders and direction of one of Her Majesty's Principal Secretaries of State; and the said inspectors-general shall have all the like powers and duties of visitation and inspection of public, private, and district asylums, and houses, in terms of this Act, and of prisons and poorhouses, and generally of all houses and places in which any lunatic is kept, which are by this Act conferred upon the board, and shall do and perform all duties in connection with the objects of this Act which may be prescribed to them from time to time by such Secretary of State; and all notices required by this Act to be given to the board or to the paid commissioners shall thenceforward be given to the said inspectors-general, and they shall be paid for the performance of their said office of inspectors-general under this Act such salary, not exceeding one thousand pounds per annum, as shall be fixed by the Commissioners of Her Majesty's Treasury; and on the occurrence of any vacancy in any such office of inspector-general, the same shall be filled up by Her Majesty and her heirs and successors; and every such inspector-general so to be appointed shall take such oath as is by this Act directed to be taken by the commissioners under this Act, which oath it shall be lawful for the Lord Justice-General of Scotland to administer.

After Five Years Secretary of State may empower the Inspector-General to exercise Powers of the Board.

XXIII.* From and after the expiration of the said period of five years, it shall be lawful to one of Her Majesty's Principal Secretaries of State from time to time to empower the inspectors-general to exercise, in any case in which he shall consider it necessary, the powers of the board in regard to enforcing any general regulations made by the board, or in regard to providing the requisite accommodation for lunatics in any district, or in regard to the citation and examination of witnesses, and generally any of the special powers of the board which the circumstances of the particular case may seem to require; and from and after the same period of five years the power of granting licences under this Act shall be vested in the sheriff, who shall exercise all the powers of the board in that matter: Provided always, that no licence shall be granted without a certificate from the inspectors-general that it should be granted; and no licence shall be continued if the inspectors-general report to the sheriff that it ought to be discontinued; and the sheriff-clerk shall receive and account in

* Repealed by 25 & 26 Vict., c. 54, sec. 24.

Exchequer for all the fees and duties hereinbefore provided in respect of licence.

Oath to be taken by Officers before Acting.

XXIV. Every person appointed to be secretary, clerk, or medical or district inspector under this Act shall, before he acts in the execution of his duty as such secretary, clerk, or inspector, take an oath to the following effect; (that is to say),

I *A. B.* do swear, That I will faithfully execute all such trusts and duties as shall be committed to my charge as secretary [*or* as clerk, *or* as medical *or* district inspector, *as the case may be*] to the Board of Lunacy for Scotland, and that I will keep secret all such matters as shall come to my knowledge in the execution of the duties of the said office (except when required by legal authority to divulge the same).

"So help me God."

And which oath it shall be lawful for the chairman of the board to administer.

Sheriff to visit and inspect Asylums.

XXV. It shall be lawful for the sheriff at all times to visit and inspect, either alone or with some medical person, every public, private, and district asylum and house within his jurisdiction in which any lunatic is kept or detained under any order of the sheriff, and to institute inquiry into the care and management of such asylums and houses, and into the conduct of the superintendents, medical persons, officers, and servants therein or connected therewith, and he shall insert in the patient book of such asylum or house any observations which he may deem necessary.

Justices of the Peace to visit and inspect Asylums.

XXVI. It shall be lawful for the justices of the peace of every county to appoint, at a quarter-sessions of the peace, to be held annually on the same day on which the Michaelmas meeting of the Commissioners of Supply takes place, any three of their number to visit and inspect any public, private, or district asylum situated in such county, and insert in the patients book of such asylum such observations as they may deem necessary.

Licences for Private Asylums, and Orders, and Certificates.

And with respect to the licensing of private asylums, and to orders for the reception of lunatics, and medical certificates, under this Act, be it enacted:

On Application for Licence, Plan of the House to be exhibited.

XXVII. All private asylums shall be licensed by the board, such licences being granted to the superintendent of the asylum; and all applications for licences to keep private asylums, and applications for leave to transfer any licence from any one house or asylum to another, shall be made to the board; and with the application there shall be laid before them a statement of the name and qualification of the superintendent, with a plan, upon such scale as the board shall direct, of any house used, or proposed to be used, as a private asylum, showing accurately the number and dimensions of the appartments, and offices, and airing places, and the courts, gardens, and other accommodations, with a statement as to the supply of water, and all further particulars which the board may require to be communicated; and such application shall state also the greatest number of lunatics of each sex proposed to be received into such house; and if any alteration shall at any time be made on any such house and premises between the first granting of any licence for the same and the subsequent renewals of such licence, such alterations shall be fully and distinctly stated and exhibited upon a plan when the application for the renewal is made.

Licences to be granted by the Board according to Form in Schedule (B).

XXVIII. Every licence to be granted by the board shall be according to the form in the Schedule (B) hereunto annexed, or as near thereto as conveniently may be, and shall bear a stamp denoting a duty of ten shillings, and shall be granted for such period, not exceeding thirteen months, as the board shall think fit; and for every licence to be so granted (exclusive of the sum to be paid for the stamp) there shall be paid to the secretary the sum of ten shillings, and no more, for every patient, not being a pauper, and the sum of two shillings and sixpence, and no more, for every patient, being a pauper, proposed to be received into such house; and if the total amount of such sums payable to the secretary shall not amount to the sum of fifteen pounds, then so much more for each patient in proportion to the above charges of ten shillings and two shillings and sixpence as will make up the sum of fifteen pounds; and no such licence shall be delivered until the sum of fifteen pounds at least shall be paid for the same: Provided always, that if the period for which the licence is granted shall be less than thirteen months, it shall be lawful for the board to reduce the payment proportionably as they shall think just, and the said duty of ten shillings shall be under the care and management of the Commissioners of Inland Revenue, and be subject to all the rules and regulations applicable to stamp duties.

In case of Refusal to renew Licence, existing Licence may be continued for a time.

XXIX. In any case in which the board shall refuse to grant renewal of a licence, the board may continue, without any further payment, such existing licence for a period not exceeding three months from the date at which the same would expire; and during the period of such continuation the asylum in respect of which the application is made, and the superintendent, medical persons, officers, and servants thereof, shall be under and subject to all the regulations imposed upon such asylums by this Act in the same manner as if the existing licence had been renewed.

Licence and Patients may be transferred.

XXX. If any person to whom any licence shall have been granted under this or the said recited Acts shall become incapable of keeping, or be desirous to discontinue keeping, the asylum in respect of which such licence was granted, or shall die, it shall be lawful to the board, on application to that effect, to transfer such licence, if the board shall think fit, for the term then unexpired of such licence, to such person as the board shall in writing approve, and such licence shall be held to be unexpired and good and efficient from its original date; and in case of a licence granted to two or more persons, such licence, in the event of the death of any one or more of such persons, shall, subject to the provisions of this Act, remain in force to the survivors or survivor of such persons until the expiration thereof.

Sums to be paid for Orders of Admission to Public Asylums.

XXXI. For every order to be granted by the sheriff for the admission of a patient, not being a pauper, into any public asylum, there shall be paid for the general purposes of this Act the sum of five shillings; and for every such order for the admission of a pauper patient there shall be paid for the like purpose the sum of two shillings and sixpence; and such sums shall be paid to the sheriff-clerk, and shall, from time to time, as the board shall direct, be remitted by the sheriff-clerk to the secretary; and every sheriff-clerk failing to make such remittance shall be subject to a penalty not exceeding ten pounds for each offence.

Monies received for Licences, etc., to be applied in Payment of Salaries and other Expenses of Act.

XXXII. All monies received for licences, and for orders of admission, and for searches to be made in pursuance of this Act, as after mentioned, shall be retained by the secretary, and be

applied by him in or towards defraying the salaries and also the travelling and other reasonable expenses of the commissioners, and the salaries and allowances of the secretary and clerk, and of the inspectors and medical persons employed by the board or by the sheriff in examining and visiting lunatics, or persons supposed to be lunatics, as well before as after their detention, and the expenses attending the same, and the expense of providing a place for the office of the board, and for the necessary accommodation of them, and the secretary, officers, and servants of the establishment, and also stationery, postages, and other office expenses; and in the event of there being in any year any surplus of such monies, after providing for the salaries and expenses aforesaid, such surplus shall be paid to and divided among the district boards, for the purposes of this Act, in the proportion of the sums raised by each such district board for the purposes of this Act in the year in which such surplus arises; and all monies payable and that shall be paid under this Act to the board or the secretary shall be lodged in an account, to be opened in one of the banks of issue in Scotland, and the payments thereout shall be made by orders which shall be signed by the board; provided that the accounts for all such expenditure shall be audited, passed, and authenticated as the board may direct.

Balance of Payments over Receipts may be paid out of Monies to be voted by Parliament.

XXXIII. It shall be lawful for the Commissioners of Her Majesty's Treasury, and they are hereby directed and empowered, from time to time, on application to them by the board, to cause to be issued and paid to the secretary, out of monies to be voted for that purpose by Parliament, such a sum of money as the board shall in such application have certified to be requisite to pay and discharge so much of the salaries, costs, charges, and expenses hereinbefore directed to be paid out of the monies received for licences, and otherwise as aforesaid, as such monies shall in each or any year be inadequate to pay, and the secretary shall thereupon apply such money, under the directions of the board, in or towards the payment or discharge of such salaries, costs, charges, and expenses respectively; and it shall be lawful for the Commissioners of Her Majesty's Treasury, from time to time, on the recommendation of the board, to advance, by way of imprest, to the secretary such sum or sums of money as to such Commissioners of Her Majesty's Treasury may appear requisite and reasonable for or towards the payment or discharge of all or any such salaries, costs, charges, or expenses as aforesaid, such sum or sums to be accounted for in the then next account to be furnished to the said Commissioners of Her Majesty's Treasury under this Act.

Lunatic to be admitted by Order of Sheriff, and on Medical Certificates.

XXXIV.* It shall be lawful for the sheriff to grant orders for the reception of lunatics into any public, private, or district asylum or house in terms of this Act; but no such order shall be granted, unless upon a petition subscribed by the party applying for the same, accompanied by a statement of particulars in the form of Schedule (C) hereunto annexed, and also accompanied by certificates in the form of Schedule (D) hereunto annexed, bearing date within fourteen clear days next preceding the date of the petition, under the hands of two medical persons, one of whom may be the medical superintendent or consulting physician of a public or district asylum; and such orders shall be in the form of Schedule (E) hereunto annexed; and no superintendent of any such public, private, or district asylum or house shall receive or detain any person as a lunatic therein, unless there shall be produced to and left with such superintendent such order by the sheriff, dated within fourteen days prior to the reception of such lunatic, or, if such order be granted by the sheriff of Orkney and Shetland, within twenty-one days prior thereto; provided that the superintendent of any such public, private or district asylum or house may receive and detain therein, for any period not exceeding twenty-four hours, any person as a lunatic whose case is duly certified by one medical person to be a case of emergency.

Medical Certificate to specify Facts on which Opinion of Insanity has been formed.

XXXV. Every medical person signing any certificate under or for the purposes of this Act, shall specify therein the facts upon which he has formed his opinion that the person to whom such certificate relates is an insane person, an idiot, or a person of unsound mind, and distinguish in such certificates facts observed by himself from facts communicated to him by others; and no person shall be received into any asylum or house in terms of this Act under any certificate which purports to be founded only upon facts communicated by others.

Orders and Medical Certificates may be amended.

XXXVI.† If, after the reception of any lunatic, it appear that any order or medical certificate upon which he was received is in any respect incorrect or defective, such order or medical certificate may be amended by the person signing the same, at any time

* Repealed by 25 & 26 Vict. c. 54, sec. 14.
† Repealed by 29 & 30 Vict. c. 51, sec. 5.

within fourteen days after the reception of such lunatic; provided, nevertheless, that no such amendment shall have any force or effect, unless the same shall receive the sanction of the board.

Copies of Orders, Medical Certificates, etc., to be sent to the Board.

XXXVII. The superintendent of every public, private, or district asylum or house in terms of this Act shall, after two clear days and before the expiration of fourteen clear days from the day on which any patient shall have been received, transmit to the board, along with a copy of the order, and medical certificates, and petition, and statement accompanying the same, on which such person shall have been received, a notice of such admission, and a report, signed by the medical attendant of such asylum, or by the medical attendant of the lunatic in such house, according to the form in Schedule (F) hereunto annexed; and every superintendent of any such asylum or house who shall neglect to transmit as aforesaid such copy, notice, and report, shall be guilty of an offence, and shall for every such offence be liable in a penalty not exceeding twenty pounds; and the sheriff-clerk shall, within seven days after any such order shall have been granted, send to the board a notice, stating the party by whom the application was made, and the party to whom the order applied, the medical persons granting the certificates, the sheriff by whom the order was granted, and the asylum or house to which it was addressed; and any sheriff-clerk failing to send such notice within such time, shall for every such neglect forfeit a sum not exceeding ten pounds.

No Certificate to be granted without Examination—Penalty on granting false Certificate.

XXXVIII. If any person shall grant any such certificate or statement as aforesaid without having seen and carefully examined the person to whom it relates, at the time and in the manner specified in such certificate, with a view to ascertain the condition of such person to the best of his knowledge and power, he shall be guilty of an offence, and shall for every such offence be liable in a penalty not exceeding fifty pounds; and if any person shall wilfully and falsely grant any such certificate to the effect of any person being a lunatic, the person so granting such certificate shall be guilty of an offence, and for every such offence be liable in a penalty not exceeding three hundred pounds, or be liable to imprisonment for any period not exceeding twelve months.

Penalty for receiving Lunatics in Unlicensed Houses or without the required Order.

XXXIX. Any person who shall be convicted of receiving, con-

cealing, detaining, or harbouring any lunatic, or any person as such, in any asylum or house kept for the reception and care of lunatics requiring to be licensed in terms of this Act, but which shall not be so licensed, and any person who shall be convicted of sending or delivering any lunatic, or person as such, for custody in any such asylum or house, knowing the same not to be so licensed, and any person who shall be convicted of receiving, detaining, or harbouring any lunatic, or person as such, in any public, or private, or district asylum or house, without an order, where such order is by this Act required, or notwithstanding an order to liberate in terms of this Act, and any person who shall be convicted of sending or delivering any lunatic, or any person as such, for custody in any public, private, or district asylum or house, without an order, where such order is by this Act required, shall severally be guilty of an offence, and shall, for every such offence, be liable in a penalty not exceeding one hundred pounds, or to be imprisoned for any space not exceeding twelve months.

Board may grant an Order for Search of Records as to whether any particular Person has been confined as a Lunatic within Twelve Months.

XL. If any person shall apply to the board in order to be informed whether any particular person is confined in any asylum or house by this Act made subject to the visitation of the board, the board, if they shall think it reasonable to permit such inquiry to be made, shall issue an order to the secretary, and the secretary shall, on receipt of such order, and on payment to him of a sum not exceeding seven shillings (to be applied for the purposes of this Act), make search amongst the returns made in pursuance of this Act, whether the person inquired after is or has been within the last twelve calendar months confined in any such asylum or house; and if it shall appear that such person is or has been so confined, the secretary shall deliver to the person so applying a statement in writing specifying the situation of the asylum or house in which the person so inquired after appears to be or to have been confined, and also (so far as the secretary can ascertain from any register or return in his possession) the name of the superintendent or principal officer of such asylum or house, and the date of the admission of such person into such asylum or house, and (in case of his having been removed or discharged) the date of his removal or discharge therefrom.

As to Lunatic received into any Private House.

XLI.* No person shall receive or keep any one lunatic, or

* Repealed by 29 & 30 Vict., c. 51, sec. 13.

person alleged to be a lunatic, in any private house in which not more than one lunatic is kept, without the like order by the sheriff and medical certificates as are required in respect of the reception of a lunatic into a private asylum, unless such house shall be the dwelling-place or temporary private lodging of such lunatic; and any person who shall so receive any lunatic shall, within seven clear days thereafter, transmit to the board a copy of the order and medical certificates, and petition and statement accompanying the same, on which such lunatic shall have been received, stating the date of reception, the situation of the house, and the christian name and surname of the owner and occupier thereof, and of the medical person attending upon such patient, and shall also, upon the first day of January in every year, or within seven days thereafter, transmit to the board a certificate, signed by a medical person, describing the state of the health, mental and bodily, of the lunatic; and every such lunatic shall be visited at least once in every fortnight, unless the board shall otherwise regulate such visits, by a medical person, who shall enter in a book to be kept at such house the date of each visit, and the condition of the mental and bodily health of the lunatic at each such visit; and it shall be in the power of the board to order such inspection and visitation of every such house from time to time as to them shall seem proper; provided that this enactment shall not apply to any case where the party so received and kept has been sent to any such house for the purpose of temporary residence only, not exceeding six months, and under the certificate of a medical person, which certificate shall be in the form of Schedule (G) hereunto annexed; and every person who shall receive and keep in any unlicensed house, excepting as before mentioned, any lunatic, or person alleged to be a lunatic, without such order and medical certificates, or who, having so received and kept such lunatic, shall not transmit to the board such copies and statements as aforesaid, or shall fail to cause or permit such lunatic to be visited as aforesaid and such book to be kept, and every medical person who shall knowingly make a false entry in such book, shall severally be guilty of an offence, and shall be liable in a penalty not exceeding fifty pounds, or be liable to be imprisoned for any period not exceeding three months.

House where Lunatic detained under order of the Sheriff may be visited by the Board.

XLII. It shall be in the power of the board to order such visitation and inspection, as they may deem proper, of every house in which any lunatic is detained by order of the sheriff, though not a public, private, or district asylum, and, if the board shall see cause, by reason of improper treatment of such lunatic, to transfer such lunatic to any other such house, or to any public,

private, or district asylum, as may be deemed most expedient; and the expense of maintaining such lunatic in such other house, or public, private, or district asylum, shall be chargeable on the property of such lunatic (if he any have), or on the party or parish legally bound for his maintenance and support.

Board may order Examination of Lunatics in Private Houses.

XLIII.* If any occupier or inmate of any private house shall keep or detain therein, without an order by the sheriff, any person as a lunatic, although one of the family or a relative of such occupier or inmate, beyond the period of a year after the malady becoming apparent and confirmed, and where it has been such as to require during any part of such period coercion or restraint, such occupier or inmate, or the medical person attending such lunatic or person so detained, shall intimate such detention to the board, and shall transmit to the board a written certificate, signed by one medical person, of the condition of the person so detained, and shall state to the board the reasons which render it desirable that such person should remain under private care; and if the board shall have reason to believe or suspect that any lunatic, or any person treated as a lunatic, of whose condition no such intimation shall have been made, is detained or kept or is dwelling in any private house, and that the malady of such person has endured for any period beyond a year after the same has become apparent and confirmed, and is such as to have required coercion or restraint, or if such intimation shall have been made, and the reasons stated appear to the board to be insufficient, and they shall be of opinion that it is necessary that inquiry should be made into the case, they shall apply to the sheriff, who shall have power to make such inquiry as he thinks fit; and if upon such inquiry it shall appear that such person is a lunatic, and has been so for a space exceeding a year after the malady shall have become apparent and confirmed, and such as to have required coercion or restraint, and that there are circumstances rendering the removal of such lunatic to the care of an asylum necessary or expedient, it shall be lawful for the sheriff to grant warrant for the removal of such lunatic to an asylum, and the order of the sheriff shall be sufficient authority to the proprietor or the keeper of any public or other asylum to which the lunatic shall be sent to receive and detain such lunatic accordingly; and any person who shall, in the contrary hereof, keep, harbour, or conceal, or be aiding in the keeping, harbouring, or concealing of any person as a lunatic, without such intimation thereof to the board as aforesaid, or otherwise than under the authority of this Act, and any medical person attending on such person confined as a lunatic beyond such period who shall wilfully neglect

* Repealed by 29 & 30 Vict., c. 51, sec. 14.

to disclose the condition of such person so confined to the board, shall severally be guilty of an offence, and shall for every such offence be liable in a penalty not exceeding two hundred pounds, or to be imprisoned for any period not exceeding three months.

Patients may be transferred.

XLIV. If the superintendent of any asylum shall have obtained leave to transfer the licence granted to such superintendent from one house or building to another house or building, and shall be desirous on that account, or for other good cause, to be submitted to the board, and of which they shall judge, to transfer the patients under the care of such superintendent to such other house or building, and shall make application to the board to that effect, it shall be lawful for the board, on being satisfied that due notice has been given of such application to the persons respectively on whose application the several patients proposed to be transferred were confined, to grant written authority for the transfer of such patients accordingly, without any new or additional order from the sheriff, or new or additional medical certificates; and such superintendent shall, within eight days after such transfer, transmit to the commissioner a list of the patients transferred, and in case of failure so to do shall be guilty of an offence, and shall be liable in a penalty not exceeding fifty pounds.

Medical Attendance upon Asylums.

XLV. In every asylum licensed for one hundred patients or more, there shall be a medical person resident therein as the medical attendant thereof; and every asylum licensed for more than fifty and less than one hundred patients, in case there shall be no resident medical person therein, shall be visited daily by a medical person; and every such asylum licensed for fifty or less than fifty patients, in case there shall be no resident medical person therein, shall be visited at least twice in every week by a medical person: Provided always, that it shall be lawful for the board to decide that any asylum shall be visited by a medical person at any other times not being oftener than once a day; provided also, that the board shall be entitled, if they shall see cause, to require that a resident medical person shall be appointed to any asylum licensed for more than fifty patients.

Board, where Licence is for less than eleven Persons, may lessen the number of Medical Visits.

XLVI. Provided further, That where any asylum is licensed to receive less than eleven lunatics, it shall be lawful for the board, by written authority, to permit that such house shall be

visited by a medical person at such intervals, more distant than twice in every week, as the board shall appoint, but not at a greater interval than once in every two weeks.

Access of Friends and others to Lunatics—Power to Ministers and Friends of Patients to visit them, subject to regulations of Asylum.

And with respect to the access of friends and others to lunatics, be it enacted:

XLVII. The minister of any parish wherein any public, private, or district asylum or house, in terms of this Act, is situated, or the minister of the congregation of any denomination of Christians to which any patient detained in any such asylum or house belongs, or any relative of any such patient, or when such patient is a pauper, any member of the Parochial Board liable to maintain such patient, shall, subject to such general conditions or regulations as the superintendent and medical attendant of such asylum or house may, with the sanction of the board, think it proper to impose, have liberty to visit any patient in any such asylum or house: Provided always, that such superintendent and medical attendant may, where any special circumstances of the case may render it proper and expedient, refuse to admit such minister, relative, or other person, or may accompany the permission to visit any patient with such conditions and regulations as the circumstances may require; provided that in every such case where such refusal is complained of by the person or persons interested, he shall intimate such refusal, and the grounds of it, to the board; and the decision of the board therein, after consideration of the matter, shall be final and conclusive; and an entry of every such refusal, and of the proceedings had thereon, shall be forthwith made in the register of such asylum or house; and a copy of every such entry shall, within two days after the same is made, be transmitted to the board.

Power to Board to grant Orders for Access to Patients.

XLVIII. It shall be lawful for the board at any time to give an order in writing for the admission to any patient confined in any house or asylum of any relation or friend of such patient (or of any medical or other person whom any relation or friend of such patient shall desire to be admitted to him), and such order of admission may be either for a single admission, or for an admission for any limited number of times, or for admission generally at all reasonable times, and either with or without any restriction as to such admission or admissions being in the presence of a keeper or not, or otherwise; and if the superintendent or keeper of any such asylum or house shall refuse admission to or shall prevent or obstruct the admission to any patient of any relation, friend, or other person, who shall produce

such order of admission as aforesaid, he shall be guilty of an offence, and shall, for every such offence, be liable in a penalty not exceeding twenty pounds.

District Asylums—Districts fixed.

And with respect to district asylums, be it enacted:

XLIX. With a view to the erection of asylums for the reception and care of pauper lunatics, and for the purposes of this Act, Scotland shall be divided into such districts or divisions as are set forth and described in the Schedule (H) hereunto annexed: Provided always that the board shall have the power, on the application of the Prison Board of any county interested, to alter or vary the said districts, either by combining counties or parts of counties, or dividing counties, or otherwise, as they may think fit.

District Boards to be appointed—2 & 3 Vict., c. 42.

L. Within six months after the passing of this Act, and thereafter at the first meeting of the Prison Board in each year, there shall be chosen, for each district respectively, out of the commissioners of supply and magistrates of burghs in each county respectively, by the members of the County Prison Boards of the counties included in such district acting under the Act of the second and third of Her Majesty, chapter forty-two, a board, to be called "The District Board," the number of the members whereof shall be fixed by the board, who shall also fix the number of the members of each district board to be elected by each County Prison Board respectively, and such number shall be proportioned as nearly as may be to the real rent of the property situated in each county, as the same is directed to be ascertained and estimated, according to the real annual value thereof in reference to the assessments authorised to be levied under the said last-mentioned Act; and in the event of the decease, or permanent absence or incapacity, of any of the members of the district board, the vacancy thereby occasioned shall be filled up at the first meeting, after the occurrence of such vacancy, of the County Prison Board of the county from which the member occasioning such vacancy was elected; and such district board shall meet at such times and places as shall be fixed by the board from time to time, and shall have power to adjourn, and also appoint committees of their number, to whom may be delegated all or any part of the powers hereby committed to such district boards; provided always, that the meetings of such district board shall be called and conducted in all respects as meetings of a Prison Board are in use to be called and conducted.

Board to inquire into the necessities of the Districts, and require Asylums to be provided.

LI. The board shall, as soon as may be, make investigation into the population and necessities, as regards accommodation for the pauper lunatics, of the several districts hereby established, and into the accommodation for the care of such pauper lunatics (if any) already existing for such districts; and, upon consideration of the result of such investigation, it shall be lawful for the board to determine, either that the existing accommodation for the district, with or without additional accommodation, is sufficient, or that a district asylum for pauper lunatics shall be provided for the district, and the board shall communicate the result of such investigation to the district board of such district, and may require the district board to order plans of the district asylum to be prepared, together with specifications and estimates of the probable expense of erecting and completing the same, or of altering or enlarging and adapting any existing asylum, house, or accommodation to the purposes of a district asylum under this Act, and to report the same, and also their opinion of an eligible site for such district asylum, where a new one is to be provided, to the board.

Board to require the District Boards to provide District Asylums —Provisions of 2 & 3 Vict., c. 42, applied to this Act.

LII. If and when the board shall have approved of the plan, specification, estimate, and site proposed in the report to be so made by the district board, it shall be lawful for them to require the district board, as soon as practicable thereafter, and within a period not exceeding two years after being so required by the board in writing, to erect and provide a suitable district asylum, with all the accommodation, upfitting, and furniture necessary for the reception, confinement, and care therein of the pauper lunatics of the district; and all the powers and provisions of the said last-mentioned Act relative to acquiring and holding lands and heritages shall be applicable to and be construed along with and as part of this Act, and shall be of the like force and effect for enabling the district board to acquire and hold lands and heritages for the purposes of this Act, as for enabling County Prison Boards to acquire and hold lands and heritages for the purposes of the said last-mentioned Act.

District Asylums vested in District Boards.

LIII. All the district asylums not otherwise vested by the constitution or endowment thereof, shall, subject to the use of the same for the purposes of this Act, as herein provided, together

with the whole moveable property, goods, and effects in such district asylums, subject to the like use, be vested in the district boards of the district, who shall be entitled to acquire, hold, and administer the same as aforesaid; and if, from any change of circumstances in a district, the accommodation for the lunatics of such district shall have become insufficient, it shall be lawful for the board to call upon the district board of such district to provide such further accommodation as is required, and where enlargement or alteration is required, to add to or alter any existing asylum in such manner and to such extent as shall be necessary for the wants of the district, and where a new district asylum shall be necessary, to provide and erect such new district asylum; and it shall be lawful for the district boards to sell or dispose of the old district asylum, and to apply the price to be obtained for the same towards payment of the expense of providing and completing the new district asylum; and the expense of providing such new district asylum, or such part thereof as may be necessary, shall be raised and levied in such and the like manner as the expense of providing the original district asylum is herein directed to be raised and levied.

Assessments—Expense of District Asylum, how to be raised.

And with respect to assessments for the purposes of this Act, be it enacted:

LIV. The expense of providing, building, altering, enlarging, and repairing, and fitting up and furnishing district asylums, and the whole expense of maintaining the establishment for the first year after the opening of the same, and also the after expense of altering, repairing, and keeping in repair, such district asylums, and of the surveys, plans, and investigations in relation thereto, shall be ascertained by the board from the estimates or reports to be made thereof by the district boards; and the gross amount of such expense shall be apportioned by the board upon the landward parts of counties and upon the burghs respectively, within such districts, according to the real rent of the lands and heritages, in terms of the Act of the seventeenth and eighteenth of Her Majesty, chapter ninety-one, within such landward parts of counties and burghs respectively; and the board shall give notice to the convener of the commissioners of supply of each county respectively, for such county, and to the chief magistrate or administrator of the affairs of each burgh, for such burgh, of the whole sum or proportion to be levied on such burgh and the landward part of such county respectively; and the portion of the gross amount of such expense which shall be apportioned as aforesaid on the several landward parts of counties shall, together with such further sum as may be necessary to cover expenses of assessment, collection, and remittance, and any arrears where

such shall occur of preceding years, be assessed, laid on, and collected by or under the authority of the commissioners of supply of each county respectively; and the portion thereof which shall be apportioned as aforesaid on the several burghs, shall, together with such further sum as may be necessary to cover expenses of assessment, collection, and remittance, and any arrears where such shall occur of preceding years, be assessed, laid on, and collected by or under the authority of the magistrates of each burgh respectively, in the same way and manner in all respects, and upon such and the like property, according to the real rent of such property, and from such persons, and by such and the like process and means of recovery, and under the like deductions and exemptions, and with and under the same powers and provisions as to any disputed matter and otherwise, and generally in all respects as if such portions of the said gross amount apportioned under this Act were portions of a gross amount of sums estimated in terms of the fortieth section of the said Act of the second and third years of Her Majesty, chapter forty-two, and directed by that Act to be assessed on the said counties and burghs respectively; and the said last-mentioned Act shall, in so far as the same is hereby made applicable to the raising assessments for the purposes of this Act, be construed herewith as if the same were a part of this Act; and the collectors or other persons employed in reference to assessments under the last-mentioned Act, or any other Act, may be employed, and shall be bound to act, in the like capacity under this Act; and the assessments under this Act may, if thought proper by the said commissioners of supply and magistrates of burghs respectively, be assessed, laid on, and collected along with any assessments under the said last-mentioned Act, or along with any assessments under any other Act.

Expense of Asylums to be defrayed out of Assessment.

LV. The commissioners of supply in each county, or their convener or collector, and the magistrates in each burgh, or their collector, shall, at their risk, and free of all expenses, remit the whole sum apportioned on such county and burgh respectively, within eight months after notice by the commissioners aforesaid, and in the manner directed by the said last-mentioned Act, to or on account of the district board, who shall apply the same in defraying the expense to be incurred in erecting and providing such district asylums, and fitting up and furnishing the same, and also in defraying the expense, for a period not exceeding one year after the opening of such asylum, of the superintendent, clerk, officers, or servants, and of the medical attendants to be employed therein; provided that the expenses of the superintendent and other officers and servants shall not be so defrayed for

such period, if the amount of the monies to be received as hereinafter provided shall be adequate to defray the same, or longer than while such monies shall be inadequate so to do.

Special Arrangements—Property or Money held in Trust for Establishment of an Asylum may be contributed in lieu of Assessment.

And with respect to special arrangements, be it enacted:

LVI. Where any property or money is or shall be mortified, conveyed, or made over, in trust or otherwise, for the erection or establishment of any asylum or hospital for lunatics, for the use of any county or counties, or parish or parishes, and such property or money shall be vested, in whole or in part, in the hands of the trustees of such trust or others, they shall be entitled to apply such money or proceeds of such property in payment of the assessments leviable for the purposes of this Act upon such county or counties, or parish or parishes, or to apply the same towards the trust purposes of the mortification or endowment, in the erection of the asylum, hospital, or other establishment thereby prescribed; and in such last case such asylum, hospital, or other establishment may be transferred, made over, or be otherwise made available to the district board in which the same is situated, for the purposes of this Act, in such and the like manner as is herein provided in respect of any existing asylum, hospital, or available accommodation in any district; and such county or counties, or parish or parishes, shall thereupon be relieved to the extent of the payment made from such assessment, or to the extent of the value of the asylum, hospital, or accommodation, or part thereof transferred, made over or made available to the district board, such value to be fixed by the board.

County making over Asylum to the District Board to have deduction from Amount of Assessment.

LVII. If in any county or counties, or parish or parishes, there shall be any asylum or hospital or other available accommodation for lunatics provided for such county or counties, or parish or parishes, or part thereof, the use whereof can be validly transferred or made over, or can be made effectually available to the district board of any district, for their exclusive use, for the reception and confinement of pauper lunatics therein, under the provisions of this Act, such county or counties, or parish or parishes, or part thereof, by which any such asylum or hospital or accommodation shall be so transferred, made over, or be made available to the district board, shall be entitled to deduction from the amount of the assessments leviable upon such county or counties, or parish or parishes, or part thereof, to the extent of the value of the asylum or hospital or accommodation to be there-

by made over to the district board of such district, such value to be fixed by the board.

Right of Accommodation may be bought up.

LVIII. If in any district there shall be any public asylum wherein any other district, or any parish or parishes or others within any other district, have any right to accommodation, it shall be lawful for the district board of the district in which such asylum is situated, to apply so much of the assessment leviable in such district under this Act as may be necessary towards the purchasing up such right of accommodation, by payment of the value thereof to the district board of the district which has such right, or in which any parish or parishes having such right is or are situated; and the district board receiving the same shall apply the amount towards the procuring accommodation for the pauper lunatics of the district of the district board making such payment; and the parish or parishes, or others in whom such right is vested, shall be entitled to deduction from any assessment to be levied for the purposes of this Act upon such parish or parishes, or others, to the extent of the sum to be paid as the value of their respective rights of accommodation to be so purchased.

District Boards may agree with existing Asylums for the Reception of Pauper Lunatics.

LIX. In case there shall be any asylum established in any district which shall have sufficient accommodation for the reception of the pauper lunatics of such district, or can be easily rendered adequate to the reception of such pauper lunatics, or any portion of them, the district board of such district shall, before proceeding to assess for or erect any district asylum, contract with the proprietors or parties interested in any such asylum for the use of the whole or any part of the same, or for the reception and maintenance of the pauper lunatics of such district, or any portion of them, upon such terms as shall be arranged between the district board and such proprietors or parties interested; and in case of difference between the district board and proprietors or parties interested relative thereto, such difference shall be subject to the decision of the board; and where any such agreement shall be completed with a public asylum, the portion of such asylum which shall, in terms thereof, be appropriated to the reception of such pauper lunatics, shall be and remain under the care and management of the proprietors or parties interested therein, subject to the power of inspection and visitation, and power of making regulations hereinbefore conferred upon the board.

As to Pauper Lunatics to be received into the Crichton Institution at Dumfries, or the Southern Counties Asylum.

LX. The trustees and directors of the Crichton Royal Institution for lunatics at Dumfries shall be obliged to receive in such asylum, or in the Southern Counties Asylum, the pauper lunatics who shall be sent thereto by the Parochial Boards of the counties of Dumfries and Wigtown and the stewartry of Kirkcudbright, upon the conditions herein provided and prescribed in respect of pauper lunatics sent to the district asylums to be established in virtue of this Act; and the monies to be received by the said trustees and directors shall be paid and applied towards the expense of keeping and maintaining the said Crichton Royal Institution or the Southern Counties Asylum: Provided always, that if any difference shall arise between the said trustees and directors and Parochial Boards, the same shall be decided by the board.

Borrowing Money—Power to borrow Money on security of Assessments.

And with respect to the borrowing of money for the purposes of this Act, be it enacted:

LXI. It shall be lawful for any district board, from time to time, to borrow, on the security of the assessments to be levied under this Act in and for such district, or any part thereof, all or any of the monies required in such district, or in any county or burgh within the same, for the purposes of this Act; and such money may be so borrowed at any rate of interest not exceeding five pounds *per centum per annum*; and every such security may be by assignation in security in the form contained in the Schedule (K, No. 1) to this Act annexed, or to that or to the like effect, and shall be duly executed if signed by three or more members of the district board; and every such deed of security shall be effectual for securing to the person advancing the sum of money in such deed expressed to be advanced, and to his heirs, executors, and assignees, the repayment thereof, with interest for the same, after such rate and at such time and in such manner as in such deed of security provided; and the said deeds of security shall be numbered in the order of succession in which they are granted; and a copy of each such deed of security shall be transmitted to the secretary appointed under this Act; and a memorandum of each such deed shall be entered by the secretary in a book to be called the "Register of Securities," to be kept by him for that purpose; and every such deed of security, and the monies secured thereby, shall be deemed to be personal property, and may and shall pass as such property passes by the law of Scotland, and shall be validly transferred by simple endorsation

on such deed of security by the party entitled thereto for the time being of a transfer in the form of the Schedule (K, No. 2) hereunto annexed; and the parties in right of such deeds of security shall be creditors upon the assessments thereby expressed to be assigned in security in an equal degree one with another, and shall not have any preference or priority other than is provided in such deeds of security under the powers of this Act.

Power to Public Works Loan Commissioners to lend Money for purposes of the Act.

LXII. It shall be lawful for any district board to make application for any advance of any sum for the purposes of this Act to the commissioners acting in the execution of the Act of the fourteenth and fifteenth years of Her Majesty, chapter twenty-three, and any Act or Acts amending or continuing the same; and the said commissioners are hereby empowered, if they think fit, to make such advance upon the security of any such assignation in security as aforesaid.

Provision for Payment of the Interest on borrowed Monies and a portion of the Principal in each Year.

LXIII. Every district board by whom any such assignation in security as aforesaid shall be granted shall annually make payment, out of the monies coming to its hands under this Act, of all interest due for the time on the sums contained in any such assignations in security, and also of a further sum to account of the principal sums contained in such asignations in security, being not less than one thirtieth part of the whole sums contained in and due by the whole assignations in security granted by such district board at the time such assignations in security were made, until the whole principal sums for which such assignations in security shall have been granted, and the interest thereof, shall be fully paid and discharged; and the said district board shall, by agreement with the persons advancing any money for the purposes of this Act, determine the order and priority in which the several sums advanced shall be respectively discharged; and every district board so borrowing money is hereby required to appoint a proper person to keep an exact and regular account of all receipts and payments in respect of principal monies borrowed as aforesaid, and the interest thereof, in a book or books, separate and apart from all other accounts; and the district board is hereby required carefully to inspect all such accounts, and to make such orders for carrying the several purposes aforesaid into execution as to them shall seem meet.

Provision for Money borrowed being paid off within Thirty Years

LXIV. Every district board borrowing money as aforesaid shall make provision that the whole principal money to be so borrowed and all interest for the same, shall be fully paid and discharged within a time to be limited by such board, not exceeding thirty years from the time of borrowing the same.

Persons lending Money on security of Assessments protected against Omissions to comply with provisions of this Act.

LXV. No person lending money to any district board, and taking an assignation in security for securing repayment of the same, executed in manner directed or allowed by this Act, and purporting to be made under the authority of this Act, shall be bound to require proof that the several provisions of this Act have been duly complied with; and it shall not be competent to any ratepayer or other person to question the validity of any such assignation in security, on the ground that such provisions have not been complied with.

Power to raise Money to pay off Sums already borrowed.

LXVI. In every case where monies shall have been borrowed under the powers of this Act, it shall be lawful for the district board by which such monies shall have been borrowed (with the consent of the parties to whom the same shall be owing) to pay off the monies so borrowed, and to raise and borrow the monies necessary for that purpose, and also to repay the said last-mentioned monies, and the interest thereof, under the powers of this Act, as if such monies were borrowed under the powers herein contained, but so, nevertheless, that all monies borrowed shall be discharged within thirty years from the time of first borrowing the same.

District Boards to furnish Annual Statements.

LXVII. Every district board shall annually, and whenever required by the board, transmit to them a full and detailed report and statement of all sums falling to be paid by the district board, whether for principal or interest, to the holders of assignations in security granted by the district board under this Act; and the board shall, in each year, in their ascertainment of the amount necessary to be raised within such district for the purposes of this Act, take care to include and provide for the whole sums so falling to be paid as aforesaid.

District Board to take charge of Asylum when finished.

LXVIII. Excepting in the case of public asylums, with which agreements shall have been made by the district boards in terms of this Act, when any district asylum shall be ready for the reception of lunatics, and shall have been approved of and adopted by the board as a district asylum, the district board is hereby required to assume the charge of the district asylum, and it shall be the duty of such district board to appoint any necessary officers and servants, and also a clerk, if necessary, to the said district board, whom, or any of them, they shall have power to suspend or remove; and they shall also have power to fix the amount of the salary or remuneration to be paid to such clerk, officers, and servants respectively; and the management and superintendence of such district asylums, and the well-ordering and discipline of the same, shall thereafter be under the care of such district board.

Notice of the District Asylum being ready for the Reception of Patients to be given.

LXIX. Upon the completion and approbation and adoption of any district asylum for pauper lunatics, the district board shall forthwith cause notice of the day on which such district asylum will be open for the reception of lunatics, to be given once in the *Edinburgh Gazette;* and the day on which the asylum is to be opened as aforesaid shall be not less than one week subsequent to the publication of such notice.

District Inspectors to be appointed, and their duty.

LXX. It shall be lawful for the district board, in each of the several districts constituted by this Act, to appoint medical persons, one or more, as may from time to time be sanctioned by the board, to be the inspector or inspectors of such district, and such inspector or inspectors, shall hold their offices respectively at the discretion of the district board, and shall be paid such fees as the district board, with the sanction of the board, may fix; and it shall be the duty of such inspectors to visit the public, private, and district asylums and houses in terms of this Act, within their respective districts, at all such times as they shall be called upon so to do by the district board, or the board, or the sheriff, and otherwise in terms of this Act; and upon all such visitations of asylums, they shall enter in a book to be kept in each such asylum, to be called the "Patients Book," the condition of the asylum, and the general state of the health, mental and bodily, of the lunatics kept therein, and also the particulars of any case

requiring remark: Provided always, that where in any district more than one district inspector shall be appointed, it shall not be necessary that more than one of such inspectors shall be a medical person.

Unqualified Medical Persons not to practise under this Act.

LXXI. It shall not be competent to any person not qualified in terms of this Act as a medical person to practise, or to be employed or to grant any certificate under the provisions of this Act, nor shall it be competent to any medical person who shall have any pecuniary or patrimonial interest or concern with or in any asylum or house in terms of this Act, or any copartnership or participation of profits with any superintendent of any such asylum or house, or whose father, brother, or son shall be superintendent of any such asylum or house, to practise, or to be employed or to grant any certificate under the provisions of this Act; and any person who shall do in the contrary of this enactment shall be guilty of an offence, and be liable, for each offence, in a penalty not exceeding fifty pounds, or to be imprisoned for any period not exceeding three months: Provided always, that any medical person may practise, be employed, or grant certificates under this Act in or with reference to any asylum or house, not being an asylum or house in or with which such person, or his father, brother, or son, is so interested or connected as aforesaid; provided also, that nothing in this enactment contained shall prevent the medical officer of a district asylum from granting certificates with reference to any lunatics of the district to which such asylum belongs.

Provision for Neglect in execution of Act.

LXXII. In case the convener or commissioners of supply of any country, or persons appointed or directed by them, or any magistrates of burghs, or persons appointed or directed by them, shall refuse or neglect to do what is herein or in the said Act of the second and third years of the reign of Her Majesty, so far as the same is made applicable to this Act, required of them respectively, or in case any obstruction shall arise in the execution of this Act, it shall be lawful for the board to apply, by summary petition, to the Court of Session, in either of the Divisions thereof, or, during the vacation of the said Court, to the Lord Ordinary on the Bills, which Court and Lord Ordinary are hereby authorised and required to do therein as to such Court or Lord Ordinary shall seem just and necessary for the execution of the purposes of this Act.

Charge for Pauper Lunatics, and Application of the Monies to be received.

LXXIII. There shall be paid to the district board, for each pauper lunatic sent to and detained in any district asylum, such sum per week, and by such periodical payments, as shall from time to time be fixed by the district board, with the approbation of the board; and the monies to be so paid shall be applied by the district board of each district in defraying the maintenance and expenses of the patients, the salaries and allowances of the superintendent, clerk, officers, and servants, and all other the necessary expenses of such district asylum; and if such monies shall prove inadequate to defray such maintenance and expenses and salaries, the district board of such district shall, with the approbation of the board, make such additional charge for each pauper lunatic kept in such district asylum as may be necessary to make up any deficiency which shall have arisen, or may arise.

District Boards to keep Books.

LXXIV. The district boards shall keep regular books and accounts, showing distinctly the amount of the monies received by them, and of the outlay and expenditure thereof, and shall also keep minutes of the proceedings of the district boards in the execution of this Act; and at all meetings of the district boards three members thereof shall form a quorum, and shall be capable of acting in the execution of the matters entrusted to such district boards by this Act; and the district boards shall keep a distinct account of all assessment and other monies levied or received under the provisions of this Act, and of the application and disbursement of the same, in such form and manner as the board shall direct; and a copy of the account so kept shall be transmitted half-yearly to the board; and the district boards shall also keep minutes of their proceedings in the execution of this Act.

Pauper Lunatic to be held to belong to the Parish of his Settlement.

LXXV. Every pauper lunatic detained in any district asylum under this Act shall be deemed and held to belong and be chargeable to the parish of the legal settlement of such lunatic at the time the order of his reception in such asylum was granted, and the expense of his maintenance in such district asylum shall be defrayed by such parish accordingly; and the residence of any pauper lunatic in any such district asylum shall be deemed to be the residence of such lunatic in the parish legally chargeable with the maintenance of such lunatic.

Parish of the Settlement to be liable in the Repayment of Expenses.

LXXVI. All the expenses attending the taking and sending a pauper lunatic to any district asylum in or from any parish which is not the parish of the settlement of such lunatic, including the sum paid for the order for admission of such lunatic, and the maintenance of such lunatic therein, shall be recoverable by the party or parish defraying such expense from the parish of the settlement of such lunatic; and it shall be competent for the sheriff of the county in and from which such lunatic was taken and sent, to ascertain and fix the amount of the same; and the expense so fixed shall be recoverable by summary process from the parish of the settlement of the lunatic before the sheriff of the county in which such parish is situated.

Expense incurred for Lunatic, from whom to be recovered.

LXXVII. The expense incurred by any superintendent of any asylum, or by any other party, for or in relation to the examination, removal, and maintenance of any lunatic, shall be defrayed out of the estate of such lunatic, or if such lunatic has no adequate estate, and if such expense shall not be borne by the relations of such lunatic, then the lunatic shall be treated as a pauper lunatic, and such expense shall be defrayed by the parish of the settlement of such lunatic, and the superintendent or other party disbursing such expense shall be entitled to recover the same from or out of the parties or estate liable to defray the same as aforesaid.

Expenses to be paid in the first instance by the Parish in which Lunatic was committed—Notice to Parish of Settlement.

LXXVIII. If the parish of the settlement of any such pauper lunatic cannot be ascertained, and if the lunatic has no means of defraying the expense of his maintenance, nor any relations who can be made liable for the same, the expenses attending the taking and sending such lunatic, and of his maintenance in the district asylum, shall be defrayed by the parish in and from which he was taken and sent, but with recourse, nevertheless, to such parish, at any time when it shall appear that such expenses are legally chargeable to any other party or parish, against such party or parish, and who or which shall be liable also in interest and expenses; and the sheriff of the county in which the parish defraying such expenses, in the first instance, is situated, shall certify under his hand the amount of such expenses; and such certificate shall be final and conclusive as to such amount, and shall not be subject to review by any process whatsoever under any proceeding instituted for recovery of the same; and the party

entitled to recover such expenses shall proceed as accords of law against the party or the parish liable for the same, by summary process before the sheriff of the county within which such party resides, or in which such parish is situated, and the judgment of such sheriff shall be final: Provided always, that the parish of settlement shall not in any case be liable in repayment of the expenses incurred in relation to any lunatic as aforesaid, unless written notice shall have been given by the parish or party disbursing the same to the Parochial Board of the parish of settlement, and shall then only be liable for the expenses incurred subsequent to such notice, and for the year preceding.

Access to Pauper Lunatics by Parties interested in the Expense of their Maintenance, etc.

LXXIX. In any investigation or dispute regarding the settlement of any pauper lunatic, the inspector of the poor of any parish, and the relations of the lunatic, and other public officers or parties having an interest in the investigation, shall, on warrant of the sheriff, have free access to the lunatic, in the presence of inspector of the district, or other medical person appointed by the board or the sheriff, for the purpose of seeing or examining the lunatic touching the matter in question.

Where district Asylum can accommodate more than the Lunatics of the District, other Lunatics may be admitted.

LXXX. Where it may appear to any district board that any asylum under its charge is more than sufficient for the accommodation of all the pauper lunatics of the district, or for whom accommodation therein falls to be provided, it shall be lawful for such district board, if they think fit, having obtained the sanction thereto of the board, to give notice thereof by advertisement in some newspaper, one or more, commonly circulated in such district or part thereof, and to permit the admission of so many pauper lunatics of any other district, and (if such district board and the board think fit) lunatics not paupers, but who may be deemed proper objects to be admitted into a public asylum, as to such district board may seem expedient; and such district board may at any time rescind any such resolution, and, with the sanction of the board, may vary the same; and such district board may, if they think fit, require that no pauper lunatic shall be admitted into such asylum under this enactment without an undertaking by the Parochial Board or inspector of the poor of the parish to which such lunatic is chargeable, or, in the case of a lunatic not a pauper, by the person signing the application for the admission of such lunatic, for the due payment of the weekly charge for the lodging, maintenance, medicine, clothing, and care

of such lunatic during his continuance in such asylum, and of the expenses of his burial in case he die therein, as well as for the removal of such lunatic from such asylum within six days after notice given in writing by the superintendent of such asylum; and such lunatic, not being a pauper, shall have the same accommodation in all respects as the pauper lunatics.

Property of Lunatics—Where Property of Lunatic not under judicial Management, and not properly applied for his Benefit, Application to be made to the Court.

And with respect to the property of lunatics, be it enacted:

LXXXI. Whenever the board, or the accountant of the Court of Session, shall have reason to believe or suspect that the property of any person detained or taken charge of as a lunatic is not duly protected, by being placed under the management of a judicial factor, and that the same, or the income thereof, is not duly applied for his maintenance, the board or accountant, as the case may be, shall report thereon in writing to the Lord Advocate; and it shall be competent to the Lord Advocate, in any case in which he shall be of opinion, either by reason of such report, or from inquiries made by himself or by his order, or otherwise, that such proceeding is expedient and proper, to make application to the Court of Session in regard to any person whom be believes to be detained or taken charge of as a lunatic, setting forth that he is informed, or has reason to believe or suspect, that the property of such person is not duly protected, or that the same, or the income thereof, is not duly applied for his maintenance, and praying the Court to cause the matter to be investigated, and to appoint a judicial factor to such lunatic, with a view to the proper care and protection of his property, and to the application of it, or the income thereof, to his maintenance and support, or to do otherwise as may be just and expedient; and the Court, after such intimation or service, and such investigation as they may deem fit, may appoint a judicial factor on the property of such lunatic, or may take other measures with a view to the benefit of such lunatic, or may take any other measures with a view to the benefit of such lunatic, and generally may do under such application as to them shall seem proper.

Where property of Lunatic, though under Management of Judicial Factor, not properly applied for Benefit of Lunatic, Application to be made to the Court.

LXXXII. Where in the case of any lunatic whose property shall, by reason of his being a lunatic, have been placed under the management of a judicial factor, the board, or the accountant of the Court of Session, shall be informed or have reason to

believe or suspect that such property, or the income thereof, is not applied to the due maintenance of such lunatic, the board or accountant, as the case may be, shall report thereon in writing to the Lord Advocate; and it shall be competent to the Lord Advocate, in any case in which he shall be of opinion, either by reason of such report, or from inquiries made by himself, or otherwise, that such proceeding is expedient and proper, to make application to the Court of Session in regard to any such lunatic as aforesaid, setting forth that he is informed or has reason to believe or suspect that the property of such lunatic, or the income thereof, is not duly applied for the maintenance of such lunatic, and praying the Court to cause the matter to be investigated, and to take such measures with a view to the benefit of such lunatic, and the securing the application of the property or income of such lunatic to his due maintenance and support, as may be proper; and it shall be lawful for the Court to make such orders and take such proceedings under such application as it may deem proper and expedient: Provided always, that nothing in this Act contained shall derogate from any powers already possessed by the accountant of the Court of Session, or be construed to prevent such accountant from himself making any investigation or taking any proceedings which may at present be competent at his instance.

Expenses incurred as to Property of Lunatics to be defrayed from such Property.

LXXXIII. The expenses attending such inquiries and applications as aforesaid, in reference to the property of lunatics, shall be chargeable against the property of the lunatics to whom they respectively relate, and may be decerned for by the Court of Session, under any such application as aforesaid, or be otherwise recovered in due course of law.

Accountant of Court of Session to see that Caution for Judicial Factors to Lunatics is sufficient.

LXXXIV. In any case in which, after the passing of this Act, judicial caution falls to be taken for any judicial factor of a lunatic, such caution shall not be received as sufficient until the accountant of the Court of Session shall approve thereof by a marking to that effect on the bond of caution; and where, with reference to any judicial caution received prior to the passing of this Act for any such judicial factor, such accountant shall have reason to believe or suspect that the caution found is or has become insufficient, it shall be lawful for, and the duty of, such accountant to inquire into the matter, and, if he shall think proper, to call upon such judicial factor to find other or addi-

tional and satisfactory caution, and failing such caution being found, to bring the matter under the notice of the Court of Session, in the Division thereof by which such judicial factor was appointed, with a view to the Court making such order on the subject as to it may seem fit.

Dangerous and Criminal Lunatics—Sheriff may commit Dangerous Lunatics.

And with respect to dangerous and criminal lunatics, be it enacted:

LXXXV.* Where any lunatic shall have been apprehended charged with assault or other offence inferring danger to the lieges, or where any lunatic, being in a state threatening danger to the lieges, shall be found at large, or in a state offensive to public decency, it shall be lawful for the sheriff, upon application by the procurator fiscal, or inspector of the poor, or other person, accompanied by a certificate from any medical person bearing that the lunatic is in a state threatening such danger, forthwith to commit such lunatic to some place of safe custody, and the sheriff shall thereupon direct notice to be given in some newspaper circulated within the county of such commitment, and such further notice as he shall think fit, and that it is intended to inquire into the condition of such lunatic on an early date to be named; and the sheriff shall accordingly proceed to take evidence of the condition of such lunatic, and upon being satisfied that he is a lunatic, and threatening to be dangerous, he shall commit the lunatic to any public, private, or district asylum; and in case there shall be no such asylum within the jurisdiction of the sheriff, he shall commit such lunatic to some such asylum of an adjoining county; and an order, such as is herein-before prescribed, shall be granted by the sheriff in respect of every such commitment; and the person or the parish liable in the maintenance of such lunatic shall be liable for the expense of apprehending and of keeping and maintaining such lunatic in such asylum; and such lunatic shall be detained in such asylum until cured, or until caution shall be found for his safe custody, in which last case it shall be lawful for the sheriff, upon application to that effect, and being satisfied as to such caution, and the safety and propriety of such custody, to authorise the delivery of the lunatic to the person so finding security.

Power to Sheriff to transmit Lunatic to another County.

LXXXVI. If any pauper lunatic in respect of whom application shall be made to the sheriff of any county as aforesaid shall have his known settlement in any other county, then it shall be

* Repealed by 25 and 26 Vict., c. 54, sec. 15.

lawful for the sheriff either to follow out the provisions of this Act in regard to such lunatic, or at once to transmit along with the said application such lunatic in safe custody to the sheriff of such other county, to whom it shall be lawful to proceed as if the application had been made to him in the first instance.

Provision for Cases where Insanity stands in bar of Trial.

LXXXVII. Where any person charged under any indictment or criminal libel with the commission of any crime shall be found insane, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person shall appear to the jury charged with such indictment or criminal libel to be insane, the court before whom such person shall be brought to be tried as aforesaid shall direct a finding to that effect to be recorded, and thereupon such court shall order such person to be kept in strict custody until Her Majesty's pleasure shall be known; and it shall be lawful for Her Majesty to give such order for the safe custody of such person so found insane, during her pleasure, in such place and in such manner as to Her Majesty shall seem fit.

Provision for Case of Lunatic acquitted of a Criminal Charge on the ground of Insanity.

LXXXVIII. In all cases where it shall be given in evidence upon the trial of any person charged under any indictment or criminal libel with committing any crime or offence that such person was insane at the time of committing such crime or offence, and such person shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the committing such crime or offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall so find and declare, the court before whom such trial shall be had shall order such person to be kept in strict custody, in such place and in such manner as to the court shall seem fit, until Her Majesty's pleasure shall be known; and it shall thereupon be lawful for Her Majesty to give such order for the safe custody of such person during her pleasure, in such place and in such manner as to Her Majesty shall seem fit.

Provision for Case of Prisoner exhibiting Insanity when in Confinement as a Prisoner.

LXXXIX. If any person, while imprisoned in any prison or other place of confinement under any sentence of death, transportation, penal servitude, or imprisonment, or under charge of any crime or offence, or under any civil process, shall appear to be insane, it shall be lawful for the sheriff of the county where

such person is imprisoned to inquire, with the aid of two medical persons, as to the insanity of such prisoner; and if it shall be certified by such sheriff and such medical persons that such prisoner is insane, it shall be lawful for one of Her Majesty's principal Secretaries of State, upon receipt of such certificate, to direct, by warrant under his hand, that such person shall be removed to such asylum as the said Secretary of State may judge proper and appoint; and every prisoner so removed under this Act, and every person removed previous to the date of this Act, from prison to an asylum, by reason of his insanity, shall remain in confinement in such asylum until it shall be duly certified to one of Her Majesty's principal Secretaries of State, by two medical persons, that such person has become of sound mind, whereupon the said Secretary of State is hereby authorised, if such person shall remain subject to be continued in custody, to issue his warrant to the superintendent of such asylum, directing that such person shall be removed back from thence to the prison or other place of confinement from whence he shall have been taken, or, if the period of imprisonment of such person shall have expired, that he shall be discharged.

Provision for Detention of Lunatics in remote Places.

XC. And whereas it may be difficult in remote parts of the country to obtain the order of the sheriff and medical certificates necessary for the reception and detention of lunatics under this Act, in respect of persons alleged to be dangerous lunatics, or persons in pauper or reduced circumstances alleged to be lunatics: It shall in such remote places be lawful for any justice of the peace of the county in which such alleged lunatic may be, upon being satisfied by sworn information of the minister or any elder of the parish, or other credible person, that such alleged lunatic is a lunatic or a dangerous lunatic, to grant warrant for his detention and transmission in safe custody to the nearest town in which a sheriff or sheriff-substitute shall reside; and the person in whose custody the lunatic is so detained and transmitted shall forthwith take all necessary and proper steps to obtain the requisite medical certificates and order of the sheriff of the county in which he has been apprehended, or to which he has been conveyed, by this Act required; and such case shall thereafter be dealt with as a case in which the lunatic had been transmitted under an order in terms of this Act.

Lunatics may be removed from one Asylum to another.

XCI. If the procurator fiscal or any of the commissioners shall make application to the sheriff for the removal of any lunatic from any asylum or house in terms of this Act, accompanied

by a certificate of two medical persons to the effect that such asylum or house is unsuitable for the confinement of such lunatic, it shall be lawful for the sheriff thereupon to grant an order for the removal of such lunatic from such asylum or house to some other asylum or house, either in his own or in some adjoining county: Provided always, that intimation of the intended application shall be given (to be proved to the satisfaction of the sheriff) to the party by whom or at whose instance such lunatic was confined, or if such party be dead or cannot be found, to his nearest known relative; and the expenses attending such application for removal, and attending the keeping and maintenance of such lunatic in the asylum to which he shall be so removed, shall be defrayed by the party or parish liable for the expense of the keeping and maintenance of such lunatic in the asylum or house from which he shall be removed.

Liberation of Lunatics by Relation or others.

XCII. It shall be lawful for any person, having procured and produced the certificate of two medical persons, approved by the sheriff, of the recovery of any lunatic, or bearing that such lunatic may, without risk of injury to the public or to the lunatic, be set at large, and also an order from the sheriff for the liberation of the lunatic, to require the superintendent of the asylum in which such lunatic is to liberate such lunatic, and such lunatic shall be liberated accordingly; and it shall in like manner be lawful for the board, upon being satisfied by the certificate of two medical persons whom they may think fit to consult of the recovery or sanity of any person confined as a lunatic, to order the liberation of such person; and, previous to the liberation of any such person by order of the board or the sheriff, eight days' notice in writing shall be given of such intended liberation to the person at whose instance such lunatic was detained, or, in the absence of such person, to the nearest known relative of such lunatic, and, in the case of a pauper lunatic, to the party or parish by whom the expense of the maintenance of the pauper lunatic was defrayed; and in all cases of removal or liberation of any lunatic the superintendent of the asylum shall enter or cause to be entered in the register to be kept by such superintendent the particulars of the removal or liberation of such lunatic, and the date thereof, and the authority on which such removal or liberation took place; and when any lunatic has been discharged from any asylum as incurable, the fact of such discharge shall thereupon be entered in the register of the asylum, with a specification of the place to which, and person to whose care, such lunatic has been sent; and copies of all such entries shall, within two clear days of the same being made, be transmitted by the superintendent to the board.

Exception of Lunatics detained by Courts of Law.

XCIII. Provided always, that no such removal or liberation shall be competent or take place in regard to any lunatic detained under the sentence of any court of justice, without the authority of such court, or the warrant of one of Her Majesty's principal Secretaries of State: Provided further, that if, by the expiration of the period of confinement awarded by the sentence of any court of law, any lunatic would be entitled to be set at large, and such lunatic be then uncured, it shall be lawful, upon certificate to that effect by two medical persons, and upon an order granted by the sheriff, to detain such lunatic in the asylum in which such lunatic then is, or to remove him to some other asylum, as may be proper.

Patient released to have Copy of Order and Certificate, &c., on which he was confined.

XCIV. In the event of the release from confinement in any asylum or house of any person who shall consider himself to have been unjustly confined, a copy of the order, petition, statement of particulars, and certificates upon which he has been confined, shall, at his request, be furnished to him or his agent by the clerk to the board, without any fee or reward for the same.

Pauper Lunatics to be sent to a District Asylum, except under special Circumstances.

XCV. Every pauper lunatic to be detained under the powers of this Act shall be sent to the asylum for the district in which the parish of the settlement of such pauper lunatic is situated: Provided always that, under special circumstances, it shall be lawful for the parochial board, with consent of the board, to dispense with the removal of any pauper lunatic to such asylum, and to provide for him in such other manner and under such regulations as to inspection and otherwise as shall be sanctioned by the board; and provided further, that the provisions of this Act as to the requisite license and order, and returns or reports to the board, shall be duly complied with.

Register of Lunatics to be kept in Asylums.

XCVI. In every public, private, and district asylum there shall be regularly kept a book, to be entitled "Register of Lunatics," in which shall be distinctly set forth all the particulars relating to every lunatic who shall be received or detained in such asylum in the manner and form set forth in the Schedule (I) hereunto annexed; and a copy of such register shall be trans-

mitted to the board at such times as they shall direct; and any superintendent of any such asylum who shall fail or neglect to keep such book, or to transmit such copy as so directed, shall be liable in a penalty not exceeding twenty pounds for every such offence.

Registration and Notice of Death of Lunatics.

XCVII. In case of the death of any lunatic in any public, private, or district asylum or house in terms of this Act, a statement setting forth the time and cause of the death, and the duration of the disease of which the lunatic died, shall be prepared and signed by the medical person who attended the lunatic during the illness which terminated in death, or who attended at the time of such death; and in every public, private, or district asylum such statement shall be entered in a register to be kept in such asylum in the terms set forth in the Schedule (J) hereunto annexed; and a copy of such statement, certified by the superintendent of such asylum or house, shall within three days of the date of the death be transmitted to the board, and also to the party or parish by whom the expense of the maintenance of the lunatic is defrayed, and to the person on whose application the lunatic was confined; and every such medical person or superintendent who shall fail in the duties prescribed to them as aforesaid shall be guilty of an offence, and for every such offence be liable in a penalty not exceeding fifty pounds.

General Register to be kept.

XCVIII. The board, on receiving such copies of such register books and entries, shall, after making such examination thereof as they may deem proper, cause the same to be preserved in the office of the board; and from the reports and returns and copies of registers, and other documents transmitted to the board, shall cause to be prepared and completed from time to time, as they shall direct, a general register of all the lunatics who shall be kept or taken care of under the provisions of this Act, and such register shall exhibit the asylum or house under this Act into which each lunatic is received, and the time of his reception, and also the respective dates of the removal, and the place to which and the person to whose care the lunatic is removed, and also the date of the liberation or death of each lunatic; and the board may, at their discretion, give information to any party inquiring into any of the facts set forth in such register, or may refuse such information; and no inspection of the contents of such register, or of any such copies of register books or entries, shall take place without their written authority; and any person making or per-

mitting to be made any inspection of the contents of such register, register books, or entries, without such written authority, shall be guilty of an offence, and for every such offence be liable in a penalty not exceeding fifty pounds.

Punishment for maltreating any Lunatic.

XCIX. If any superintendent, inspector, officer, or servant, or any person employed in any public, private, or district asylum or house in terms of this Act, or otherwise having the care of any person detained as a lunatic patient under this Act, shall wilfully maltreat, abuse, or neglect any person so detained, to the injury of such person, or if any person detaining or taking or having the care or charge, or concerned or taking part in the custody, care, or treatment, of any lunatic or person alleged to be a lunatic, in any way abuse, illtreat, or wilfully neglect such lunatic or alleged lunatic, such superintendent, inspector, officer, servant, or other person shall be guilty of an offence, and for every such offence be liable in a penalty not exceeding one hundred pounds, or to be imprisoned for any period not exceeding six months, without prejudice to any action for damages at the instance of the party aggrieved, or of the person on whose application he was detained acting on his behalf, or of any other person having interest, in any competent court of law: Provided always, that where any such maltreatment or abuse shall amount to an assault, the party committing such offence may be prosecuted, at the discretion of the public prosecutor, either for such assault or for the offence under this Act.

Power to the Lord Advocate to inspect Books of Commissioner.

C. It shall be lawful for the Lord Advocate of Scotland for the time being at all times to examine and inspect all the books, registers, minutes, proceedings, reports, returns, accounts, and documents of every description kept by and in possession of the board, who shall afford all such information regarding every particular under their charge, and the execution of the duties therewith connected, as the Lord Advocate shall at any time require.

Penalty on false Statements, or Refusal to comply with Act.

CI. Any person who shall wilfully make any false statement or return or report, or who shall wilfully make any false representation upon any plan or writing to be used under this Act, or who shall refuse to give any information which by this Act is required of him, or who shall conceal or refuse to divulge any matter or thing as to which inquiry shall be made of him under this Act, shall be guilty of an offence, and for every such offence

be liable in a penalty not exceeding one hundred pounds, or to be imprisoned for any period not exceeding twelve months.

Board annually to report to Secretary of State.

CII. The board shall annually, on or before the first day of February in each year, report to one of Her Majesty's principal Secretaries of State regarding the condition and management of all public, private, and district asylums and houses in which any lunatic is kept or detained under an order of the sheriff in terms of this Act.

Orkney and Shetland separate Counties.

CIII. Orkney and Shetland, with their respective dependencies, shall be taken to be separate counties for the purposes of this Act.

Provision for the Visitation of Lunatics under Order from Secretary of State.

CIV. It shall be lawful for Her Majesty's principal Secretary of State for the Home Department, at any time, by order in writing under his hand, to require the persons or person to whom such order shall be directed, or any of them, to visit and examine any person detained or taken charge of as a lunatic, or represented to be a lunatic, or to be under any restraint as a lunatic, and to make a report to such Secretary of State of such matters as in such order shall be directed to be inquired into; and all and every person or persons having the care, custody, or charge of any person to whom such order in writing applies shall give every facility for the due execution of such order.

Power to Secretary of State to order a special Visitation of any Place where a Lunatic is represented to be confined.

CV. It shall be lawful for Her Majesty's principal Secretary of State for the Home Department to employ the board or any person to inspect and inquire into the state of any asylum, house, or place wherein any lunatic, or person represented to be a lunatic, shall be confined or alleged to be confined, and to report to him the result of such inspection and inquiry; and every such person so employed may be paid such sum of money for his attendance and trouble as such Secretary of State shall deem reasonable; and every such person so employed shall be allowed his reasonable travelling and other expenses while so employed; and such sum of money for attendance and trouble, and such expenses, shall be charged on and shall be paid out of any monies to be voted for that purpose by Parliament.

Penalties, how to be recovered.

CVI. All the penalties and forfeitures by this Act imposed may be sued for in the name of the secretary or of the procurator fiscal of the county in which the offence shall have been committed or in which the offender may be found, and may be recovered by summary proceeding in the name of such secretary or procurator fiscal, or of any agent appointed by the board, upon complaint in writing to the sheriff of the county in which the offence shall have been committed, or to the sheriff of any county in which the offender may be found; and on such complaint the sheriff shall issue a warrant for bringing the party complained against before him, or shall issue an order requiring such party to appear on a day and at a time and place to be named in such order; and every such order shall be served on the party by delivering to him in person, or by leaving at his usual place of abode, a copy of such order, and of the complaint whereupon the same has proceeded; and upon the appearance, or upon the default to appear, of the party, it shall be lawful for the sheriff to proceed to the hearing of the complaint, and upon such proof of the offence as shall satisfy the sheriff, and without any written pleadings or record, the sheriff shall convict the offender, and upon such conviction shall decern and adjudge the defender to pay the penalty or forfeiture incurred, as well as such expenses as the sheriff shall think fit, and shall grant warrant for imprisoning the offender until such penalty or forfeiture and expenses shall be paid: Provided always, that such warrant shall specify a period at the expiration of which the party shall be discharged, notwithstanding such penalty or forfeiture and expenses shall not have been paid, which period shall in no case exceed six months, unless herein otherwise specially provided.

Application of Penalties.

CVII. The amount of the penalties or forfeitures to be so awarded and recovered in respect of any public or private asylum shall be paid and applied towards the general expenses of the board; and the penalties or forfeitures to be awarded in respect of any district asylum shall be paid to the district board of the district in which the offence shall have been committed, as the case may be, to be by such district board applied in payment of the expenses of the district asylum under their charge as aforesaid; provided that no person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this Act unless such penalty or forfeiture shall have been prosecuted for within six months after the commission or discovery of the offence for which it was incurred.

Informalities.

CVIII. No proceeding for the recovery of penalties or forfeitures under this Act shall be set aside for want of form, nor shall the same be removed by suspension, advocation, appeal, or otherwise, or be in any manner subject to review.

Powers granted to Sheriffs to be without prejudice to their Power at Law.

CIX. The powers and authorities granted by this Act to sheriffs shall be in addition and without prejudice to the powers and authorities, otherwise competent to sheriffs by law, all which powers and authorities, as well as the powers hereby granted, may be exercised by them in aid and in the execution of this Act.

Any County may constitute itself into a District under this Act.

CX. If the Prison Board of any county shall so resolve, at a meeting to be held within six months after the passing of this Act, called by public advertisement for the special purpose of considering the propriety of passing such resolution, such county shall be severed from the district of which by this Act it forms part, and be a separate district in itself; and such resolution shall be communicated to the board, and shall be published in the *Edinburgh Gazette* and *North British Advertiser* newspaper by the clerk of such Prison Board within twenty-one days after the passing thereof, and on being so communicated and published shall receive effect; and such county shall then be and become a district under this Act, in the same way and manner as if it had been herein specially constituted such district, and the remainder of the district from which it is so severed shall thenceforward be and become a district under this Act, in the same way as if such county had never been joined with it.

Provisions of this Act may be enforced summarily.

CXI. It shall be competent to the board, during the period of five years from and after the first day of January One thousand eight hundred and fifty-eight, and to the inspectors general in lunacy under this Act, or either of them, after the expiration of such period, to enforce the provisions of this Act, or any of them, by summary application to the Court of Session, or to any Sheriff Court having jurisdiction over the respondent in such application, and it shall not be necessary to proceed by way of ordinary action.

Inspectors of Poor to give intimation of Pauper Lunatics within their Parishes.

CXII. Every inspector of the poor shall, within seven days after he shall have become aware of any pauper lunatic being within the parish of which he is inspector, notify the same to the chairman of the parochial board, and he shall also within the same period intimate to the Board of Commissioners in Lunacy under this Act the name and residence of such pauper lunatic, and all the circumstances he may have ascertained regarding his state and condition, together with the steps that may have been taken in reference to the care and custody of such pauper lunatic; and if any such inspector shall fail within the said period to make such notification and intimation, or either of them, he shall be liable in a penalty of ten pounds.

Certain Provision of 8 & 9 *Vict. c.* 83 *repealed.*

CXIII. Whereas by an Act passed in the session of Parliament holden in the eighth and ninth years of the reign of her present Majesty, intituled "An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in Scotland," the Board of Supervision thereby established is authorised and empowered, on any parochial board refusing or neglecting to provide for the removal of an insane or fatuous poor person to an asylum or establishment legally authorised to receive any lunatic patients, to take such measures as may be necessary for removing such insane or fatuous poor persons to such lunatic asylum or establishment; and it is thereby provided, that under special circumstances in particular cases the said Board of Supervision might dispense with such removal: The said Act, in so far as it grants such powers to the said Board of Supervision, shall be and the same is hereby repealed.

Assessing Clauses not to apply to Shetland.

CXIV. The assessing clauses of this Act shall not extend to the county of Shetland.

SCHEDULES TO WHICH THE FOREGOING ACT REFERS.

SCHEDULE (A).

Form of Summons by the Commissioners.

In the matter of *A. B.*, a lunatic [*or* an insane person, *or* an idiot, *or* a person of unsound mind].

I, one of the Board of the Commissioners in Lunacy for Scotland, in pursuance of the provisions of an Act passed in the

twenty-first year of the reign of Her Majesty Queen Victoria, intituled [*insert the title of this Act*], do hereby grant warrant to messengers-at-arms and sheriff officers conjointly and severally to summon, warn, and charge and each of them, personally or at their respective dwelling places, in common form, to appear before me at [*insert place*], on the day of 18 at o'clock noon, and then and there to testify and bear witness, so far as they and each of them know and shall be asked, concerning the aforesaid matter, under the penalties specified in the said Act.

Given at Edinburgh this day of in the year One thousand eight hundred and .

C. D., Commissioner.

SCHEDULE (B).

Form of Licence by the Commissioners.

I, one of the Board of the Commissioners in Lunacy for Scotland, do hereby certify, that *E. F.* of in the parish of and county of has delivered to me a plan and description of a house and premises proposed to be licensed for the reception of lunatics situated at in the county of in which it is proposed to receive patients not exceeding in number [*or, in the case of a renewed licence,* has delivered to me a list of the number of patients now detained in a house and premises situated at in the county of in which there are at present patients], and the board having considered and approved of the same do hereby authorise and empower the said *E. F.* [he intending *or* not intending to reside therein] to use and employ the said house and premises for the reception of male [*or* female *or* male and female] lunatics, whereof are paupers, for the space of calendar months from this date.

Given at Edinburgh this day of in the year One thousand eight hundred and .

C. D., Commissioner.

SCHEDULE (C).

Form of Statement to be lodged with a Petition to the Sheriff for the Reception of a Lunatic.

1. Christian name and surname of patient at length.
2. Sex and age.
3. Married, single, or widowed.
4. Condition of life, and previous occupation (if any).
5. Religious persuasion so far as known.
6. Previous place of abode.
7. Place where found and examined.
8. Length of time insane.

9. Whether first attack.
10. Age (if known) on first attack.
11. When and where previously under examination, and treatment.
12. Duration of existing attack.
13. Supposed cause.
14. Whether subject to epilepsy.
15. Whether suicidal.
16. Whether dangerous to others.
17. Parish or union to which the lunatic [*if a pauper*] is chargeable.
18. Christian name and surname and place of abode of nearest known relative of the patient, and degree of relationship (if known), and whether any member of his family known to be or to have been insane.
19. Special circumstances (if any) preventing the insertion of any of the above particulars.

I certify, that to the best of my knowledge the above particulars are correctly stated.

Dated this day of One thousand eight hundred and .

[*To be signed by the party applying.*]

SCHEDULE (D).

Form of Medical Certificate.

I, the undersigned, [*set forth the qualification entitling the person certifying to grant the certificate, e.g.*, being a member of the Royal College of Physicians in Edinburgh,] and being in actual practice as a [physician, surgeon, *or otherwise, as the case may be*], do hereby certify on soul and conscience, that I have this day at [*insert the street and number of the house (if any) or other like particulars,*] in the county of , separately from any other medical practitioner visited and personally examined *A. B.* [*insert designation and residence, and if a pauper state so*], and that the said *A. B.* is a lunatic [*or* an insane person, *or* an idiot, *or* a person of unsound mind], and a proper person to be detained under care and treatment, and that I have formed this opinion upon the following grounds, viz. :—

1. Facts indicating insanity observed by myself [*state the facts*].
2. Other facts (*if any*) indicating insanity communicated to me by others [*state the information and from whom*].

(Signed) [*Name and medical designation and place of abode.*]

Dated this day of One thousand eight hundred and .

SCHEDULE (E).

Form of Order to be granted by the Sheriff for the Reception of a Lunatic.

I *G. H.* Sheriff [*or* Sheriff-substitute, *or* Steward, *or* Steward-substitute] of the county [*or* stewartry] of having had produced to me, with a petition at the instance of *I. K.* [*name and designation*], certificates under the hands of and being two medical persons duly qualified in terms of an Act [*specify this Act*], setting forth that they had separately visited and examined *A. B.* [*describe him, and if a pauper state so*], and that the said *A. B.* is a lunatic, [*or* an insane person, *or* an idiot, *or* a person of unsound mind], and a proper person to be detained and taken care of, do hereby authorise you to receive the said *A. B.* as a patient into the public [*or* private] asylum of and I authorise his transmission to the said asylum accordingly, and I transmit to you herewith the said medical certificates, and a statement regarding the said *A. B.* which accompanied the said petition.

Dated this day of 18 .

(Signed) *G. H.*

To the Superintendent of the Public Asylum [*or* Private Asylum] of . } [*Designation.*]

SCHEDULE (F).

Notice of Admission.

I hereby give notice, That *A. B.* [*describe him*] was received into this house as a private [*or* pauper] patient, on the day of , and I hereby transmit a copy of the order and medical certificates and statement on which he was received.

Subjoined is a report with respect to the mental and bodily condition of the above-named patient.

(Signed) *E. F.*, Superintendent.

Dated at this day of One thousand eight hundred and .

Report.

I have this day seen and personally examined *A. B.*, the patient named in the above notice, and hereby report and certify, with respect to his mental state, that [*insert particulars*], and with respect to his bodily health and condition, that [*insert particulars*].

(Signed) *L. M.*, Physician [*or* Surgeon].

Dated this day of One thousand eight hundred and .

SCHEDULE (G).

I *L. M.* a medical person duly qualified in terms of the Act [*specify this Act*], certify, on soul and conscience, that *C. D.* [*name and design the patient*] is afflicted [*state the nature of the disease*], but that the malady is not confirmed, and that I consider it expedient, with a view to his recovery, that he should be placed [*specify the house in which the patient is to be kept*] for a temporary residence of [*specify a time, not exceeding six months*].

SCHEDULE (H).

Districts or Divisions of Scotland.

1. The Edinburgh district to comprise the counties of—
   Edinburgh.
   Haddington.
   Berwick.
   Linlithgow.
   Roxburgh.
   Selkirk.
   Peebles.
   Orkney.

2. The Inverness district to comprise the counties of—
   Sutherland.
   Ross and Cromarty.
   Inverness.
   Elgin and Nairne.

3. The Aberdeen district to comprise the counties of—
   Caithness.
   Banff.
   Aberdeen.
   Kincardine.
   Shetland.

4. The Perth district to comprise the counties of—
   Forfar.
   Perth.
   Fife.
   Clackmannan.
   Kinross.

5. The Dumfries district to comprise the counties of—
   Dumfries.
   Kirkcudbright.
   Wigton.

6. The Glasgow district to comprise—
   Lanarkshire.

7. The Stirling district to comprise the counties of—
Argyll.
Bute.
Dumbarton.
Stirling.

8. The Renfrew district to comprise the counties of—
Renfrew.
Ayr.

(*For Schedule I. see next page.*)

SCHEDULE (J).

Register of Deaths.

Date of Death.	Date of last Admission.	Duration of Disease.	Christian and Surname at full Length,	Sex and Class.				Assigned cause of Death.	Age at Death.		Observations.
				Private.		Pauper.					
				M.	F.	M.	F.		M.	F.	
1850.	1850.										
Sept. 1.	Jan. 2.	- -	William Johnson -	-	-	1	-	- -	23		
1852.	1852.										
Dec. 2.	June 9.	- -	John Brown - -	1	-	-	-	- -	25		
1856.	1855.										
June 8.	May 6.	- -	William Smith -	-	-	1	-	Phthisis	27		

SCHEDULE (I).

Register of Lunatics

Date of last previous Admission (if any).	Number in order of Admission.	Date of Admission.	Christian and Surname at full Length.	Sex and Class.				Age.	Condition as to Marriage.			Condition of Life and previous Occupation.	Previous Place of Abode.	County or Parish to which chargeable.	By whose Authority sent.	Dates of Medical Certificates, and by whom signed.	Bodily Condition.	Name of Disorder (if any).	Form of Mental Disorder.	Supposed Cause of Insanity.	Epileptics.	Congenital Idiots.	Duration of existing Attacks.			Number of previous Attacks.	Age on first Attack.	Date of Discharge, Removal, or Death.	Discharged.				Died.	Observations.
				Private.		Pauper.			Married.	Single.	Widowed.													Years.	Months.	Weeks.				Recovered.	Relieved.	Not Improved.		
				M.	F.	M.	F.																											
	1	1850. Jan. 3.	William Johnson -	-	-	1	-	23	-	1	-	Carpenter -	-	-	-	-	-	-	Melancholia -	-	-	-	-	4	-	-	17	1850. Sept. 1.	1	-	-	-	-	-
	2																																	
	3																																	
	4	1852. June 9.	William Johnson -	-	-	1	-	25	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	3	-	3	1852. Dec. 2.	-	-	-	-	-	-
	5																																	
	6																																	
	7	1856. May 6.	William Johnson -	-	-	1	-	29	-	1	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	4	1857. June 8.	-	-	-	1	-	-
	8																																	

SCHEDULE (K.)

No 1.

Form of Assignation in Security to be granted for Monies borrowed on the Security of Assessments.

Assignation in Security No. [*insert Number*].

WE members of the District Board under the Act [*specify this Act*], in pursuance of the powers of the said Act, do hereby, in consideration of the sum of [*specify sum advanced*], assign to [*name and design creditor*], and his heirs, executors, and assignees, [*or as the case may be*], all the district assessments to be raised and paid within the said district under the said Act, in security of the repayment of the said sum of and of the interest thereof at the rate of pounds per centum per annum from the day of until payment, which sum is to be repayable, with the interest at the rate foresaid, as follows: [*state the terms of repayment according to the arrangement*]. And we consent to registration. In witness whereof [*insert testing clause in common form*].

No. 2.

Form of Transfer of Assignation in Security.

I [*name and designation*], transfer to [*name and designation*], and his heirs, executors, and assignees, an assignation in security numbered [*insert the number of the assignation*], and dated [*insert date*], granted by the District Board of the District to [*name and designation*], for [*insert the sum*], and the interest thereof from the day of . And I consent to registration. In witness whereof [*insert testing clause in common form*].

No. II.—ACT 21 & 22 VICT., C. 89, 2d August 1858.

An Act to amend an Act of the last Session, for the regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums, in Scotland.

WHEREAS by an Act of the fifty-fifth year of His Majesty King George the Third, intituled "An Act to regulate Madhouses" in Scotland, sheriffs of counties are authorised to grant licences

for the reception and confinement of lunatics, and have been in use to licence separate portions or wards of poorhouses for the reception of pauper lunatics: And whereas by an Act passed in the last Session of Parliament, intituled "An Act for the Regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums," in Scotland, district asylums are appointed to be erected for the reception of lunatics; and it is expedient that provision should be made for the custody of such pauper lunatics till such district asylums shall be ready for their reception: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

As to Reception, &c., of Pauper Lunatics in Poorhouses.

I. It shall be lawful for the General Board of Commissioners in Lunacy for Scotland to grant to the governors or keepers of poorhouses licences for the reception of pauper lunatics in wards set apart for that purpose, or in detached or separate portions of such poorhouses, and from time to time to renew or withdraw such licences; and it shall also be lawful for sheriffs of counties to grant orders for the reception and confinement of such lunatics in the wards or portions of poorhouses so set apart and licensed, subject always to such rules, regulations, and restrictions as may be framed by the said General Board of Commissioners in Lunacy for the reception and treatment of patients in such wards or portions of poorhouses consistently with the provisions of the said last-recited Act in regard to private asylums.

Term of Act.

II. This Act shall continue in force for five years from and after the first day of January one thousand eight hundred and fifty-eight, and no longer.

No. III.—Act 25 & 26 Vict., c. 54, 29th July 1862,

To make further Provision respecting Lunacy in Scotland.

Whereas an Act was passed in the twentieth and twenty-first year of the reign of Her present Majesty, intituled "An Act for the Regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums in Scotland;" and another Act was passed in the twenty-first and twenty-second year of the reign of Her present Majesty, intituled "An Act to amend an Act of the last Session, for the

Regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums in Scotland;" and whereas it is expedient to continue the General Board of Commissioners in Lunacy constituted by first-recited Act, and to amend certain of the provisions of the said Acts: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Interpretation of Terms.

I. The following words and expressions when used in this Act shall have the meanings hereby assigned to them:—"Board" shall mean the General Board of Commissioners in Lunacy for Scotland constituted by the said first-recited Act; "secretary" shall mean the secretary of the board for the time being; "lunatic wards of a poorhouse" shall mean those wards or parts of a poorhouse sanctioned by the board for the reception and the detention of pauper lunatics; "medical person" shall mean any person registered as a practitioner in medicine or surgery, pursuant to the Act twenty-first and twenty-second Victoria, chapter ninety; "lunatic" when used in this and the recited Act, shall mean and include every person certified by two medical persons to be a lunatic, an insane person, an idiot, or a person of unsound mind; "pauper lunatic" shall mean and include any lunatic towards the expense of whose maintenance any allowance is given or made by any Parochial Board; "sheriff" shall include sheriffs-substitute; "superintendent" shall mean the person or persons having the management or charge of any asylum, and shall include the proprietor and all persons having any pecuniary interest therein, or in the profits to be derived therefrom, and also the governor of any poorhouse in which pauper lunatics are kept, and the proprietor or any person or persons having a pecuniary interest in any other licensed house for the reception of lunatics.

Provision as to Appointment of Deputy Commissioners continued.

II. The provisions of the said Act in regard to the appointment of deputy commissioners shall be and are hereby continued until the first day of August one thousand eight hundred and sixty-four.

Board may license Lunatic Wards of Poorhouses.

III. It shall be lawful for the board to license lunatic wards of poorhouses for the reception and detention, on the order of the sheriff, of such pauper lunatics only who are not dangerous,

and do not require curative treatment, subject to such rules and conditions as the board may prescribe; and the board may also, if they shall be satisfied that good reasons exist therefor, continue all licences that have been already granted to lunatic wards of poorhouses.

Board may sanction the Reception of Pauper Lunatics in Poorhouses.

IV. It shall be lawful for the board to sanction the reception of pauper lunatics into lunatic wards of poorhouses without the order of the sheriff, according to forms and subject to regulations approved of by the board, and at any time to withdraw such sanction; and any governor or keeper of a poorhouse who shall receive any such lunatic without an order by the sheriff or sanction of the board, or detain any such lunatic for more than seven days after the withdrawal of such sanction, shall be liable in a penalty not exceeding £10.

Board may grant special Licences for Reception in Houses of not more than Four Lunatics.

V. It shall be lawful for the board to grant special licences to occupiers of houses for the reception and detention therein of lunatics, not exceeding four in number, subject to such rules and regulations as the board may appoint, and to exempt the holders of such special licences from the payment of any fee, or of any sum whatever in respect thereof; and, except in so far as expressly exempted by the board, the holders of such licences shall be subject to the whole provisions applicable to the keepers or superintendents of private asylums in the recited Acts and this Act contained; and the board, in the case of a lunatic who is a pauper, on the application of the inspector of the poor of the parish liable at the time for the maintenance or interim maintenance of such lunatic, or in any other case, on the application of any one legally entitled to make the same, accompanied by medical certificates in the forms hereinafter prescribed, may sanction the reception and detention of such lunatic in any house so specially licensed; provided that no lunatic shall be received into any such house without the sanction of the board, granted according to the forms and regulations approved of by them; and any person receiving any lunatic into any house specially licensed as aforesaid, or being concerned in the disposal of such lunatic without the sanction of the board, shall be liable to a penalty not exceeding £10.

Provision for allowing Person to enter Asylum voluntarily.

VI.* If any person desirous of being received into any public, private, or district asylum, or into any house specially licensed

* Repealed by 29 & 30 Vict., c. 51, sec. 15.

for the reception of lunatics as aforesaid, shall make a declaration to that effect before the sheriff of the county in which such asylum or house is situate, and shall produce to such sheriff a certificate by a medical person that his reception into and treatment in such asylum or house would be beneficial to his case, and a written consent by the superintendent of such asylum or house to receive him, it shall be lawful for such sheriff to grant an order for his reception into such asylum or house, which shall be a sufficient warrant to such superintendent to receive him accordingly, and to subject him to the rules and regulations of such asylum or house; provided always that the said superintendent shall within three clear days after such reception, and subject to a penalty of £50 in case of default, transmit to the board, and also to the said sheriff, a statement of all the circumstances connected with such application and reception, together with his opinion of the state of mind of the person so received, and of the expediency or otherwise of his being detained in such asylum or house, and shall make a similar report once every month thereafter, so long as such person shall remain in such asylum or house, under a similar penalty; which penalties may be sued for and recovered by the secretary to the board, and applied as fees received for licences are directed to be applied by the first-recited Act; provided that it shall always be competent to such person to depart from such asylum or house unless the superintendent thereof shall certify to the said sheriff that he considers such person to be in a state of mind dangerous to himself or others; and it shall be lawful for the board or for the said sheriff respectively, if they or he shall see cause, to order the immediate discharge of such person from the said asylum or house, or to make such other order as to them or him may in the circumstances seem proper.

Board may grant Licence to Charitable Institutions for Imbecile Children without Fee.

VII. It shall be lawful for the board to grant licences to any charitable institution established for the care and training of imbecile children, and supported in whole or in part by private subscription, without exacting any licence fee therefor, and such licence may be in name of the superintendent of such institution for the time being.

Care of Pauper Lunatics.

VIII. With the sanction of the board, agreements and arrangements may be made for the reception and detention of all or any of the pauper lunatics of any district, county, or parish in any public, private, district, or parochial asylum or hospital within or beyond the limits of such district, county, or parish.

Secretary of State may authorise Board to apply to Court of Session.

IX. Subject to the provisions of the said first-recited Act and this Act, the board, on a full consideration of the circumstances, may determine from time to time whether the accommodation for any district is adequate, or what addition ought to be made thereto, or whether a new district asylum ought to be erected, and may, in the event of a district board failing to take such steps as the board may consider requisite toward providing accommodation for the district, or contracting with an existing asylum to such an extent and in such way as the board may consider necessary, represent such failure to one of Her Majesty's principal Secretaries of State, who may thereupon communicate such representation to the district board, and after considering any answer which may be made thereto, within such time as he may appoint, such Secretary of State may authorise the board to apply to the Court of Session in either Division, or during vacation to the Lord Ordinary on the Bills, by summary petition in common form, and the Court or Lord Ordinary shall, unless sufficient cause be shown to the contrary, on advising such petition, appoint a person at whose sight and instance the whole powers and duties of the district board relative to the providing of such accommodation shall be performed, at the expense of the district board.

Counties or Parishes providing Asylum Accommodation to be relieved from Assessments.

X. Any county or parish which has, prior to the date of the recited Act, provided accommodation for its lunatic paupers in whole or in part, to the satisfaction of the board, or which shall be entitled to such accommodation in any existing asylum, shall have such relief, partial or total, from assessments for building, furnishing, or maintaining an asylum for the district within which such county or parish is situate as the board may consider reasonable.

Additional Grounds to District Asylums.

XI. In the case of any district asylum where it shall appear to the board, or to the district board (the consent of the board being previously obtained), that it is desirable to acquire additional ground for the use of such asylum, it shall be lawful for the district board to acquire such additional ground from the proprietor or proprietors of the land immediately adjoining; and in the event of the parties failing to agree as to the price to be paid for such additional ground, the same shall be settled and determined

in the manner prescribed by "The Lands Clauses Consolidation (Scotland) Act, 1845," with respect to the purchase and value of land otherwise than by agreement; provided always that the land so to be taken does not form part of any garden or pleasure ground, and shall not exceed five acres in extent; provided also, that if the ground from which the same is taken forms part of a property not exceeding twenty acres in extent, it shall be lawful for the proprietor of the same to require that the remainder of such property shall also be acquired in the same manner by such district board.

Where there is no Asylum, District Board may dissolve itself.

XII. If in any district there shall be no district asylum, it shall be lawful for the district board of such district, with the sanction of the board, to dissolve itself, and on the requisition and order of the board such district board may again at any time be revived; and where there is no district asylum the expenses incurred by the district board may be paid by the Prison Board out of the prison assessments, or where any ground has been acquired for the erection of a district asylum and now found not to be requisite either in whole or in part, it shall be lawful for the district board to sell and dispose of the same or of any part thereof, and to repay the proceeds, after payment of all expenses and liabilities incurred by the board, to the Commissioners of Supply for the county or magistrates of the burgh, as the case may be.

District Boards may make Provision for Payment of Interest on borrowed Monies by fixed annual Instalments.

XIII. Notwithstanding anything in the said recited Acts to the contrary implied or expressed with respect to the borrowing of money for the purposes of said Acts, it shall be lawful for any district board to make provision for repayment of monies so borrowed, and of the interest thereof, by annual instalments of a fixed and uniform amount, so long as any part of the principal sums so borrowed remains unpaid.

Lunatics to be admitted by Order of the Sheriff and on Medical Certificate.

XIV. The thirty-fourth section of the first-recited Act is hereby repealed; and in lieu thereof, subject to the following provisions, the sheriff of any county in Scotland may grant an order for the reception into and detention in any asylum, lunatic ward of a poorhouse, or house as before provided, of any lunatic, if such lunatic be resident or be found within such county, or if the asylum, lunatic ward, or house mentioned in such order be situate within such county; but no such order shall be granted unless upon a petition subscribed by the party applying for the same,

accompanied by a statement of particulars in the form of Schedule (C) to the first-recited Act annexed, and setting forth the degree of relationship or other capacity in which the petitioner stands to such lunatic, and also accompanied by certificates in the form of Schedule (D) to the first-recited Act annexed, bearing date within fourteen clear days next preceding the date of the petition, under the hands of two medical persons, having no immediate or pecuniary interest in the asylum in which the lunatic shall be placed, but one of whom may notwithstanding be the medical superintendent or consulting or assistant physician of such asylum, not being a private asylum; and such orders shall be in the form of Schedule (E) to the first-recited Act annexed; and no superintendent of any such public, private, or district asylum or house, shall receive or detain any person as a lunatic therein, unless there shall be produced to and left with such superintendent such order by the sheriff, dated within fourteen clear days prior to the reception of such lunatic, or if such order be granted by the sheriff of Orkney and Shetland, within twenty-one clear days prior thereto; provided that the superintendent of any public, private, or district asylum may receive and detain therein, for any period not exceeding three days, and without any order by the sheriff, any person as a lunatic, whose case is duly certified to be one of emergency by one medical person qualified as aforesaid.

Sheriff may commit dangerous Lunatics.

XV. The eighty-fifth section of the first-recited Act is hereby repealed, and in lieu thereof when any lunatic shall have been apprehended, charged with assault or other offence inferring danger to the lieges, or when any lunatic shall be found in a state threatening danger to the lieges, or in a state offensive to public decency, it shall be lawful for the sheriff of the county in which such lunatic may have been apprehended or found, upon application by the procurator-fiscal or inspector of the poor, or other person, accompanied by a certificate from a medical person, bearing that the lunatic is in a state threatening such danger, or in a state offensive or threatening to be offensive to public decency, forthwith to commit such lunatic to some place of safe custody; and the sheriff shall thereupon direct notice to be given, in some newspaper circulated in the county within which such lunatic was apprehended or found, of such commitment, and that it is intended to inquire into the condition of such lunatic on an early day to be named, and shall also direct notice of the application to be given to the inspector of poor of the parish within which the lunatic has been apprehended or found (where the application is not presented by the inspector of such parish), and such further notice as he shall think fit; and if the inspector of the parish does not within twenty-four hours undertake, to the satis-

faction of the sheriff, to make due arrangements for the safe custody of such lunatic, the sheriff shall accordingly proceed to take evidence of the condition of such lunatic, and upon being satisfied that he is a lunatic, and in a state threatening danger to the lieges, or offensive to public decency, he shall commit the lunatic to any asylum; and an order authorising the superintendent of the asylum to which the lunatic may be committed to receive the lunatic, and authorising the transmission of the lunatic to such asylum, shall be granted by the sheriff in respect of every such commitment; and such lunatic shall be detained in such asylum until cured, or until caution shall be found for his safe custody, in which last case it shall be lawful for the sheriff, upon application to that effect, and on being satisfied as to such caution, and the safety and propriety of such custody, to authorise the delivery of the lunatic to the person so finding security; and the sheriff, at the time of granting warrant to commit such lunatic to an asylum, or thereafter in proceedings following on the said application, shall pronounce a judgment finding the amount of the expenses connected with the said application, inquiry, and procedure, as the same shall be taxed, and shall grant decree for such expenses against the parish within which the lunatic shall have been apprehended or found at large, and in favour of the procurator-fiscal, or other person (except the inspector of the poor) at whose instance such application shall have been made and such inquiry and procedure conducted, and shall also grant decree against such parish and in favour of the procurator-fiscal or other such person (except the inspector of poor), or in favour of the superintendent or keeper of the asylum to which the lunatic shall have been committed, for such sum as may be necessary for the maintenance of such lunatic; and every such decree shall be final and conclusive, and not subject to review or reduction in any way or by any process whatsoever; but the parish so decerned against and paying such expenses and cost of maintenance shall have relief and recourse therefor against the lunatic and his estate, and any of his relatives legally liable for his maintenance, and also against the parish of settlement of such lunatic in the event of the parish in which the lunatic was apprehended or found at large not being the parish of settlement as accords of law.

On Application of Person at whose instance a Lunatic is detained, Board may authorise his Removal or Liberation on Probation, without an Order of the Sheriff.

XVI. The board may, on the application of the person at whose instance any lunatic is detained, or in the absence of such person on the application of the nearest known relative of such lunatic, and in the case of a pauper lunatic on the application

of the inspector of poor of the parish by which the expense of the maintenance of the lunatic is defrayed, authorise the removal or transfer of any such lunatic from any asylum or house in which he is detained to any other asylum or house legally set apart for the reception and detention of such persons, and without any order of the sheriff; and also on the like application respectively, may grant authority for the liberation on trial or probation of any lunatic from any such asylum or house for such time and under such regulations as the board may consider necessary or proper; and during such period of probation or trial the warrant and certificates on which the detention of such lunatic proceeded shall, in the event of his requiring to be again received into any such asylum or house, be sufficient for his reception and detention therein without a new warrant and certificate; and the superintendent of any such asylum or house shall be bound to receive any such lunatic into his establishment without any order from the sheriff, but shall, in all other respects, in so far as not inconsistent with this Act, be bound to comply with the whole other provisions relating to the reception, detention, and liberation of lunatics in the recited Acts and this Act contained, under the penalties therein and herein provided.

Superintendent to give Intimation of Recovery of a Lunatic.

XVII. When it shall appear to the superintendent of any asylum or house that any lunatic detained therein has so far recovered that he may be safely liberated without risk or injury to the public or the lunatic, such superintendent shall grant a certificate to that effect, or procure one from the ordinary medical attendant of such asylum or house, and shall transmit a copy thereof to the person at whose instance such lunatic is detained, or, in the absence of such person, to the nearest known relative of the lunatic, and in the case of a pauper lunatic to the person or parish by whom the expense of the maintenance of the lunatic is defrayed; and on the failure, within fourteen days from the despatch of such copy certificate, of the person to whom the same was transmitted to take steps for the liberation of such recovered lunatic, such superintendent shall intimate the facts to the board, who may direct such inquiry into the circumstances as they deem necessary, and if satisfied that the lunatic has recovered, or that he may be safely liberated without risk or injury to the public or himself, the board may order his discharge forthwith.

If Parochial Board neglect to provide for the Removal of a Pauper Lunatic, Board may take necessary Measures.

XVIII. If any Parochial Board, after intimation shall have been made to them in terms of section one hundred and twelve

of the first-recited Act, and after requisition by the board, shall refuse or neglect for twenty-one days after such requisition to provide for the removal of a pauper lunatic to an asylum, house, or lunatic ward of a poorhouse, the board may take such measures as are necessary for the removal of such lunatic to an asylum, house, or lunatic ward of a poorhouse, and the whole expense of such removal, and all subsequent expenses incurred by the board for maintenance and otherwise in respect of such lunatic, shall be recoverable by the board, by ordinary process, from the Parochial Board refusing or neglecting to remove such pauper lunatic as aforesaid; but subject to any right of relief which such Parochial Board may legally have against the parish ultimately liable for the maintenance and support of such lunatic.

Insane Prisoners may, on Expiry of Sentence, be detained in General Prison.

XIX. If at any time within sixty days of the expiration of the sentence of any convict or other prisoner confined in the General Prison at Perth, it is certified, on soul and conscience, by two or more medical persons, that they have personally visited and carefully examined the prisoner within the said sixty days, and that he is in their opinion insane, and that his insanity is of a kind which renders it advisable that he should be detained in the lunatic department of the said General Prison rather than in a lunatic asylum, it shall be lawful for one of Her Majesty's principal Secretaries of State, by a writing under his hand, to authorise such prisoner to be detained in the said General Prison after the expiration of his sentence, and such prisoner may thereupon be detained accordingly; provided that it shall at any time thereafter be lawful for Her Majesty to give such order for the safe custody of such prisoner during Her Majesty's pleasure in such place and in such manner as to Her Majesty shall seem fit.

Orders may be carried out in General Prison.

XX. If any person, having been charged under an indictment or criminal libel, shall be ordered by the Court, under the provisions of the first-recited Act, to be kept in strict custody until Her Majesty's pleasure shall be known, such order, whether the General Prison at Perth be mentioned therein or not, or whether the name of any other prison or place be mentioned therein or not, shall be deemed and is hereby declared to be an order which may be carried into effect in the said General Prison (unless such order expressly directs that such person shall not be removed to the said General Prison); and the person to whom such order applies may (excepting in the case above provided) be removed thereto, under the provisions for the removal of

prisoners contained in the "Prisons (Scotland) Administration Act, 1860," and shall be detained in such prison until Her Majesty's pleasure be known; and it shall thereafter be lawful for Her Majesty to give such order for the safe custody of such person during Her Majesty's pleasure, in such place and in such manner as to Her Majesty shall seem fit; provided that within eight days after the reception of such person within the said General Prison, intimation of such reception, under the hand of the governor of the General Prison, shall be transmitted to one of Her Majesty's principal Secretaries of State, and also to the secretary of the board.

Orders to be intimated to Managers of Prisons.

XXI. When any such order shall be pronounced, the clerk of Court shall within eight days of the date thereof send intimation of such order, as nearly as may be, in the terms provided in section fifty-nine of the said Prisons Administration Act, to the managers appointed under the said Act.

Sentence of less than Nine Months may be carried out in General Prison.

XXII. If it shall be certified on soul and conscience by two medical persons that they have personally visited and carefully examined a prisoner confined under sentence in a local prison, in terms of the said Prisons Administration Act, and that such prisoner is insane, the sentence, although for a shorter period than nine months, shall be deemed to be a sentence which may be carried into effect in the said General Prison, and such prisoner may be removed thereto, in terms of the provisions of the said Prisons Administration Act for the removal of prisoners.

Insane Prisoners may be removed to an Asylum.

XXIII. If, within fourteen days of the period when a prisoner in the said General Prison would fall to be liberated by expiry of sentence or otherwise, it shall be certified on soul and conscience by two medical persons that they have personally visited and carefully examined such prisoner, and that he is insane, such prisoner may be removed back to the local prison to which he had been committed until liberated in due course of law, and such removal may be carried out in terms of the provisions of the said Prisons Administration Act for the removal of prisoners; and if arrangements shall have been completed for the reception of such prisoner within a lunatic asylum in any part of Scotland in which he can be lawfully received and detained, he may be removed to such asylum as if the same were such local prison, in terms of such provisions for the removal of prisoners.

Secretary of State may give Orders for Custody of Persons during Her Majesty's Pleasure.

XXIV. The provisions of the first-recited Act and of this Act, authorising Her Majesty to give orders for the safe custody of any person during her pleasure, may be carried into effect by a writing under the hand of one of her principal Secretaries of State, and such writing shall be binding on all persons concerned.

Certain Provisions of Recited Acts repealed—General Board continued.

XXV. Sections twenty-two and twenty-three of the first-recited Act, and such other of the provisions of the recited Acts as are inconsistent with this Act, are hereby repealed; and the general board of commissioners, as established by the said first-recited Act and this Act, shall be continued until Parliament shall otherwise determine.

No. IV.—Act 27 & 28 Vict., c. 59, 25th July 1864.

An Act to continue the Deputy Commissioners in Lunacy in Scotland, and to make further Provision for the Salaries of the Deputy Commissioners, Secretary, and Clerk of the General Board of Lunacy in Scotland.

20 & 21 *Vict.*, *c.* 71; 25 & 26 *Vict.*, *c.* 54.

Whereas by the Act twentieth and twenty-first Victoria, chapter seventy-one, provision was made for the appointment of deputy commissioners under the said Act for five years after the passing thereof, and by the Act twenty-fifth and twenty-sixth Victoria, chapter fifty-four, the provisions of the first-recited Act were continued until the first day of August one thousand eight hundred and sixty-four: And whereas it is expedient that the said provisions should be further continued, and that the said Acts should be amended: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Continuance of Deputy Commissioners.

I. The provisions of the first-recited Act in regard to the appointment of deputy commissioners shall be and are hereby continued until the first day of August one thousand eight hundred and sixty-six.

Treasury to regulate Salaries of Secretary, Clerk, and Deputy Commissioners.

II. The provisions of sections thirteen, sixteen, and twenty-one of the first-recited Act with respect to the amount of salary payable to the secretary, clerk, and deputy commissioners appointed or to be appointed under the same are hereby repealed, and the said secretary, clerk, and deputy commissioners shall receive salaries of such amount as shall from time to time be regulated and approved by the Commissioners of Her Majesty's Treasury; but such salaries shall not exceed the sums hereinafter specified, that is to say, six hundred pounds per annum for the said secretary, three hundred pounds per annum for the said clerk, and six hundred pounds per annum for each of the said deputy commissioners.

No. V.—ACT 29 & 30 VICT., C. 51, 16th July 1866.

To amend the Acts relating to Lunacy in Scotland, and to make further Provision for the Care and Treatment of Lunatics.

20 & 21 *Vict.*, *c.* 71—21 & 22 *Vict.*, *c.* 89—25 & 26 *Vict.*, *c.* 54—27 & 28 *Vict.*, *c.* 59.

WHEREAS an Act was passed in the twentieth and twenty-first year of the reign of Her present Majesty, intituled "An Act for the Regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums in Scotland;" and another Act was passed in the twenty-first and twenty-second year of the reign of Her present Majesty, intituled "An Act to amend an Act of the last Session for the Regulation of the Care and Treatment of Lunatics, and for the Provision, Maintenance, and Regulation of Lunatic Asylums in Scotland;" and another Act was passed in the twenty-fifth and twenty-sixth year of the reign of Her present Majesty, intituled "An Act to make further Provision respecting Lunacy in Scotland;" and another Act was passed in the twenty-seventh and twenty-eighth year of the reign of Her present Majesty, intituled "An Act to continue the Deputy Commissioners in Lunacy in Scotland, and to make further Provision for the Salaries of the Deputy Commissioners, Secretary, and Clerk of the General Board of Lunacy in Scotland:" and whereas it is expedient that the said deputy commissioners should be continued, that certain of the provisions of the said Acts should be amended, and that further provision should be made for the regulation of the care and treatment of lunatics, and for the regulation of lunatic asylums, in Scotland:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short Title.

I. This Act may be cited as "The Lunacy (Scotland) Act, 1866."

Construction of Act.

II. This Act shall be construed with the recited Acts as one Act, and this Act and the said recited Acts may be recited together as the Lunacy (Scotland) Acts.

Continuance of Deputy Commissioners.

III. The provisions of the twentieth and twenty-first Victoria, chapter seventy-one, first recited, and of the twenty-seventh and twenty-eighth Victoria, chapter fifty-nine, last recited, in regard to the appointment and salary of deputy commissioners, shall be and are hereby continued until Parliament shall otherwise determine.

Medical Officers of Asylums may not grant Certificates.

IV. It shall not be lawful for the medical superintendent, ordinary medical attendant, or assistant medical officer of any asylum, to grant a certificate of insanity for the reception of any lunatic, ~~not a pauper lunatic~~, into such asylum, except the certificate of emergency authorised by section fourteen of the third-recited Act.

Orders and Medical Certificates may be amended.

V. Section thirty-six of the first-recited Act is hereby repealed; and in lieu thereof be it enacted, That if after the reception of any lunatic into any asylum or house it appears that any order or medical certificate upon which he was received is in any respect incorrect or defective, such order or medical certificate may be amended by the person who has granted the same at any time within twenty-one days after the reception of such lunatic: Provided nevertheless, that no such amendment shall have any force or effect unless the same shall receive the sanction of the board, and, failing such amendment, it shall be lawful for the board to report such failure to the sheriff, who shall, if satisfied that the original order or medical certificates are in any respect incorrect or defective, and of the failure to amend them, recall such original order.

Orders to remain in force although Patient absent from Asylum.

VI. In every case in which any lunatic or any person who has entered an asylum for treatment under authority of this Act is temporarily absent from the asylum or house for his reception into which the order was given, or shall escape from such asylum or house, or from the care of the officers thereof, such order shall remain in force in the same manner as if such lunatic or person as aforesaid were not absent or had not escaped: Provided always, that such lunatic or person as aforesaid shall return or be brought back to such asylum or house within a period not exceeding twenty-eight days from the day on which he left or escaped from such asylum or house, or within a period of three months where such lunatic or person as aforesaid is accompanied by or remains under the care of the officers or attendants of such asylum or house.

Determination of Orders.

VII. The powers conferred by the sheriff's order for the reception and detention of any lunatic in any asylum or house shall cease and determine with the notice of discharge of such lunatic given by the superintendent of such asylum or house to the board; and in no case shall the sheriff's order remain in force longer than the first day of January first occurring after the expiry of three years from the date on which it was granted, or than the first day of January in each succeeding year, unless the superintendent or medical attendant of the asylum or house in which the lunatic is detained shall, on each of the said first days of January, or within fourteen clear days immediately preceding, grant and transmit to the board a certificate, on soul and conscience, according to the form of Schedule (A) hereunto annexed, that the detention of the lunatic is necessary and proper, either for his own welfare or the safety of the public.

Discharge on Probation of Pauper Lunatics.

VIII. Every pauper lunatic who is discharged on probation from any asylum or house shall remain subject to inspection by the commissioners during the period of probation; and it shall not be lawful for the parochial board to take any such pauper lunatic off the poor's roll, or to alter the conditions on which probationary discharge was granted, without the sanction of the board, during the period of probation; and every inspector of the poor who shall infringe these provisions shall be liable in a penalty not exceeding ten pounds.

Discharge of Pauper Lunatics by authority of Parochial Board.

IX. It shall be lawful for any Parochial Board, by a minute

at a duly constituted meeting, to direct that any pauper lunatic (not being a lunatic committed as a dangerous lunatic under the fifteenth section of the third-recited Act) with whose maintenance it is chargeable, and who is detained in any asylum or house, shall be discharged or removed therefrom; and if a copy of such minute, certified to be a true copy by the chairman for the time of such Parochial Board, be produced to and left with the superintendent of such asylum, he shall, within seven days from the production of such minute, discharge such lunatic, or cause or suffer such lunatic to be discharged: Provided always, that, on the written representation of such superintendent that such lunatic is dangerous to himself or the public, or in any other way not a fit person to be discharged, it shall be lawful for the board, after making such investigation as they shall think expedient, to prohibit the discharge of any such lunatic; and any inspector of the poor removing any pauper lunatic from an asylum or house against the written representation of the superintendent of such asylum or house, without the sanction of the board, shall be liable in a penalty not exceeding ten pounds.

Inspector of Poor to intimate Removal of Pauper Lunatics.

X. Whenever any pauper lunatic has been removed from an asylum or house by a minute of the Parochial Board, the inspector of the poor shall, within fourteen days, intimate to the board the date of removal, the situation of the house to which he has been removed, the christian name and surname of the occupier thereof, and the amount and nature of the parochial allowances made to such pauper lunatic, and that under a penalty of ten pounds; and it shall not be lawful for the said Parochial Board to remove such lunatic to any other house, or to make any alteration in the nature and amount of the parochial allowances, without the same being communicated within fourteen days by the inspector of poor to the board, under a similar penalty; and it shall be lawful for the board, at any time whenever they see fit, to order the lunatic to be replaced in any asylum, and it shall not be lawful for the relatives of any pauper lunatic for whose removal to an asylum the board have issued an order to take him off the poor's roll without their sanction; and every inspector of the poor who shall delay for more than fourteen days sending any pauper lunatic to an asylum, after receiving the order of the board to do so, shall be liable in a penalty not exceeding ten pounds.

Pauper Lunatics may be removed from Poor's Roll and intrusted to Private Parties.

XI. It shall be lawful for any Parochial Board, by a minute at a duly constituted meeting, to remove from the poor's roll any

pauper lunatic in any asylum or house for whose maintenance it is responsible, and to intrust the disposal of such lunatic to any party who shall undertake to provide, in a manner satisfactory to the Parochial Board, for his care and treatment; and on the demand of such party, and the production and delivery of a copy of such minute, certified to be a true copy by the chairman for the time of such Parochial Board, the superintendent of such asylum or house shall permit the removal of such lunatic: Provided always, that in every case in which such superintendent is of opinion that such removal will be injurious to such lunatic, or a risk to the public, it shall be lawful for such superintendent to detain such lunatic for a period not exceeding fourteen days from the production of such certified copy of such minute, and to report the case to the board, and on the report of such superintendent, or on any grounds which the board may deem satisfactory, it shall be lawful for the board to authorise the continued detention of such lunatic in the asylum or house, and the Parochial Board shall continue to be responsible to the asylum or house for his maintenance.

Provision as to dangerous Lunatics.

XII. If at the time when the discharge of a lunatic, not being a pauper, is desired, the superintendent of the asylum in which he is confined shall be of opinion that he is a dangerous lunatic, and that his liberation would be attended with danger to himself or to the public, such superintendent shall forthwith communicate the fact to the procurator fiscal of the district, and shall in the meantime detain such lunatic in the asylum; and it shall be the duty of the procurator fiscal, if he shall see cause, to take such proceedings with respect to such lunatic as are prescribed by the third-recited Act with respect to dangerous lunatics; and if the procurator fiscal shall not see cause to take such proceedings, he shall signify such his determination to the superintendent of the asylum, and the lunatic shall thereupon be discharged, provided he is otherwise entitled to discharge.

As to Lunatics received into any Private House.

XIII. Section forty-one of the first-recited Act is hereby repealed; and in lieu thereof, no person shall receive or keep any person as a lunatic for gain, without the order of the sheriff or the sanction of the board; and any person who shall receive into or keep in his house any such person, or any person alleged to be a lunatic, shall, within fourteen clear days thereafter, make application for such order or sanction; provided always, that when the lunatic is a pauper lunatic such application shall be made by the inspector of the poor, and it shall be lawful in such case for

the sheriff to grant his order on one medical certificate: And every such lunatic shall be visited, as often as the board shall regulate, by a medical person, who shall enter in a book to be kept in such house the date of each visit, and the condition of the mental and bodily health of the lunatic at each such visit; and any medical person who shall make any such entry without having visited the patient within seven days of making such entry, or who shall knowingly make any false entry in such book, shall be liable in a penalty not exceeding ten pounds for each offence: And it shall be in the power of the board to order such inspection and visitation of every such house from time to time as to them shall seem proper: And every person detaining or aiding in detaining any such lunatic, or any person who on inquiry is found to be a lunatic, without the order of the sheriff or the sanction of the board, or after such order or sanction has been withdrawn, shall be liable in a penalty not exceeding twenty pounds: Provided that the enactments of this section shall not apply to any case where the person so received and kept has been sent to such house for the purpose of temporary residence only not exceeding six months and under the certificate of a medical person, which certificate shall be in the form of Schedule (G) to the first-recited Act annexed.

Board may inspect Lunatics in Private Houses.

XIV. Section forty-three of the first-recited Act is hereby repealed; and in lieu thereof, if any occupier or inmate of any private house shall keep or detain therein, without the order of the sheriff or the sanction of the board, any person as a lunatic, although not for gain, beyond the period of one year, and the malady is such as to require compulsory confinement to the house, or restraint or coercion of any kind, such occupier or inmate shall intimate the case to the board, and shall state the reasons which render it desirable that such lunatic should remain under private care; and if the board shall have reason to believe or suspect that any lunatic, or any person treated as a lunatic, whose case has thus been intimated to them, or of whose case no such intimation shall have been made, has been subjected to compulsory confinement to the house, or to restraint or coercion of any kind, at any time beyond a year after the commencement of the malady, or has been subjected to harsh and cruel treatment, it shall be lawful for the board, with consent of one of Her Majesty's principal Secretaries of State, or of Her Majesty's Advocate for Scotland, to authorise and empower any one or more of the members thereof to visit and inspect such lunatic or person detained as a lunatic, and to make such inquiry respecting his treatment, as to such member or members may seem fit; and if on such inquiry it shall appear that such person is a lunatic,

and has been so for a space exceeding a year, and that compulsory confinement to the house, or restraint or coercion of any kind, has been resorted to, or that he has been subjected to harsh and cruel treatment, and that the circumstances are such as to render the removal of such lunatic to an asylum necessary or expedient, it shall be lawful for the board to apply to the sheriff, under a procedure similar to that followed in the cases of dangerous lunatics, and the sheriff, on being satisfied that the person is lunatic, and has been so for more than a year, and is subjected to compulsory confinement, or to restraint or coercion of any kind, or to harsh and cruel treatment, shall issue his order for the transmission of the lunatic to an asylum, and his detention therein until such time as the board shall sanction his discharge: And the sheriff shall grant decree for the expenses of the inquiry and procedure, and also for the maintenance of the lunatic in the asylum, against the parties legally liable for the maintenance of such lunatic.

As to Persons entering Asylums voluntarily.

XV. The sixth section of the third-recited Act is hereby repealed; and instead thereof it is enacted as follows:—It shall be lawful for the superintendent of any asylum, with the previous assent in writing of one of the commissioners, which assent shall not be given without written application by the patient, to entertain and keep in such asylum, as a boarder, any person who is desirous of submitting himself to treatment, but whose mental condition is not such as to render it legal to grant certificates of insanity in his case; Provided always, that every such boarder shall be produced to the commissioners at each of their visits to such asylum, that no such boarder shall be detained for more than three days after having given notice of his intention or desire to leave such asylum, unless on certificates of insanity and an order by the sheriff being obtained, in which case neither of the certificates shall be granted by any medical person connected with the asylum, or having any immediate or pecuniary interest in it, and that notices of admission, discharge, and death with respect to all such boarders shall be made to the board in the same manner as in the cases of lunatics.

Letters to and from Patients to be private.

XVI. Every letter written by a patient in any asylum or house, and addressed to the board or their secretary, or the Commissioners in Lunacy, or any of them, shall, unless special instructions to the contrary have been given by such commissioners, or any of them, be forwarded to its address unopened; and every letter from the board or their secretary, or such commissioner or commissioners, to any such patient, when marked "private" on

the cover, shall be delivered to him unopened; and every person who shall intercept or detain or shall open any such letter without the authority of the patient by whom it is written or to whom it is addressed, shall be liable in a penalty not exceeding ten pounds: Provided that the board shall transmit a copy of such letter to the superintendent of such asylum or house if it shall appear to the board that the contents of the letter are of such a nature that it is of importance that the superintendent should be made acquainted therewith.

As to Lunatics having Judicial Factors.

XVII. It shall be lawful for the board to obtain from the Accountant of the Court of Session the names of all lunatics having judicial factors, and a statement of their funds, and of the sums allowed for their maintenance, and for the board to make such investigation, by inspection or otherwise, as shall, in their opinion, be necessary to ascertain in what manner such lunatics are treated and cared for; and in case of such treatment and care being deemed by them unsatisfactory, the board may present a summary application to the Court of Session, or in time of vacation to the Lord Ordinary officiating on the Bills, who may order such inquiry and direct all such steps to be taken for the improved treatment and care of such lunatics as to the Court or the Lord Ordinary shall appear proper, and may direct the expenses of such application, and of the procedure following thereon, to be paid by the judicial factor out of the funds and estate of such lunatic under his control, and it shall not be competent to bring under review of the Court any interlocutor pronounced by such Lord Ordinary upon any such application with a view to investigation and inquiry merely, and which does not finally dispose thereof upon the merits, but any order pronounced by such Lord Ordinary upon the merits may be reclaimed against by any party having lawful interest to reclaim to the Court, provided that a reclaiming note shall be lodged with an Inner House clerk within eight days, after which the order or judgment of the Lord Ordinary, if not so reclaimed against, shall be final.

Powers of Board to extend to Lunatics detained, etc.

XVIII. The powers granted to the board by section nine of the first-recited Act shall be and are hereby extended to embrace lunatics detained under the sanction of the board.

Liberation of Lunatics committed as dangerous Lunatics.

XIX. It shall be lawful for the sheriff to authorise the discharge of a lunatic committed as a dangerous lunatic from any asylum, on certificates being granted by two medical persons,

approved of by the procurator fiscal, that such lunatic may be discharged without risk of injury to the public or the lunatic.

Penalties for Infringement of Rules made by Board.

XX. It shall be lawful for the board to enforce the rules and regulations which they shall make from time to time in relation to the books or minutes to be kept or made in asylums or houses, and the returns of entries therefrom to be made to the board by the superintendents of such asylums or houses, by imposing a penalty for each infringement or violation thereof, not exceeding ten pounds.

As to Recovery of Penalties.

XXI. All penalties imposed by or under authority of this or any of the said recited Acts shall be recoverable by the board, without prejudice to their right to enforce specific implement of the matters in respect of which such penalties shall have been incurred; and such penalties may be sued for by the secretary of the board before the sheriff or any court having jurisdiction, and that either in any application to enforce such specific implement, or separately on summary complaint; and such penalties, when recovered, shall be applied as fees received for licences are directed to be applied by the first-recited Act.

Fees to be paid for Admission of Lunatics to District Asylums.

XXII. For every order granted by the sheriff for the admission of any lunatic or pauper lunatic into any district asylum there shall be paid, for the general purposes of the said first-recited Act, the fees authorised by the thirty-first section of the said Act for the admission of a patient into a public asylum.

Commissioner not to be personally responsible.

XXIII. The exemption from responsibility conferred on the commissioners by section eight of the said first-recited Act shall extend to everything done *bona fide* in the execution of this or any other of the said recited Acts, or in the exercise of the powers herein and therein contained.

Actions against Medical Persons in respect to Certificates under Lunacy Acts to be tried by the Lord Ordinary without a Jury.

XXIV. In any action at law which may be raised against any medical person in respect of any certificate granted by him under the provisions of this Act, or of any of the recited Acts, the issue or issues, after being adjusted, shall be tried, and the amount of

damages (if any) assessed by the Lord Ordinary before whom such action depends, without a jury; and the proceedings at and consequent on the trial of such issue or issues shall be regulated by the provisions of the Act, &c., intituled "An Act to facilitate Procedure in the Court of Session in Scotland," with respect to the proceedings at and consequent on the trial by the Lord Ordinary without a jury of such issues as may under the provisions of that Act be so tried; and such action at law must be raised within twelve months from the time when any person who may allege that he has sustained any injury in consequence of the granting of any such medical certificate shall have been liberated from the asylum in which he may have been confined in consequence of such certificate having been granted.

Power to Directors to grant Superannuation to Officers, &c.

XXV. The directors of any chartered asylum in Scotland may grant a superannuation allowance out of the funds at their disposal to any officer or matron of such asylum who shall not be less than fifty years of age, who shall have been an officer or matron of such asylum for not less than fifteen years; and such superannuation shall be for such term, and on such conditions, and of such amount, not exceeding two-thirds of the salary of such officer or matron, as the directors shall think fit.

Powers to Directors of Public Asylums to borrow Money.

XXVI. The directors of any public asylum in whom the property thereof is vested may borrow on the security of such property such sums of money as they may think necessary for administering such asylums, or for maintaining or extending their means of accommodation.

Powers to Parochial Boards to borrow Money.

XXVII. Any Parochial Board which has erected or may erect buildings for the treatment of such pauper lunatics as they are authorised to receive and detain under the provisions of the said recited Acts may, by themselves or the trustees in whom the property of such buildings may be vested, borrow such sums of money as they may think necessary for the administration, maintenance, erection, or extension of the same, on the security of such buildings and the lands on which they are erected, and on the security of the rates and assessments leviable by them: Provided that all such sums shall be repaid by annual instalments of not less in any one year than one-thirtieth part of the sum borrowed, exclusive of the interest on the same.

SCHEDULE (A).

I hereby certify, on soul and conscience, that I have, within a period not exceeding one month preceding the date of this certificate, carefully reviewed and considered the cases of the patients whose names are subjoined, and I am of opinion that their continued detention in the asylum is necessary and proper for their own welfare [*or* for the public safety, *as the case may be*].

Superintendent *or* Medical Attendant.

Dated at this
day of 186

No. VI.—ACT 34 & 35 VICT., C. 55, 24th July 1871.

An Act to amend the Law relating to Criminal and Dangerous Lunatics in Scotland.

WHEREAS it is expedient to amend the law relating to criminal and dangerous lunatics in Scotland: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short Title.

I. This Act may be cited for all purposes as "The Criminal and Dangerous Lunatics (Scotland) Amendment Act, 1871."

Disposal of Persons on Indictment placed at Her Majesty's Order, 20 & 21 Vict., c. 71, ss. 87 and 88.

II. When in terms of an Act of the twentieth and twenty-first years of the reign of Queen Victoria, intituled "An Act for the regulation of the care and treatment of Lunatics, and for the provision, maintenance, and regulation of Lunatic Asylums in Scotland," any person having been charged under indictment or criminal letters shall be ordered by the court to be kept in custody until Her Majesty's pleasure shall be known, any order which Her Majesty shall be pleased to issue in relation to the custody of such person may be renewed and varied from time to time, and it shall be lawful for Her Majesty, by an order under the hand of a Principal Secretary of State, to authorise, on such terms and conditions as shall be specified in the order, the liberation from custody in prison or elsewhere of any person who has been ordered to be kept in custody as aforesaid, and if any of the conditions of such liberation are broken, any Principal Secretary of State may, by warrant to be executed by any sheriff officer or by any officer of the General Prison at Perth to whom such war-

rant is delivered, direct such person to be taken into custody and to be conveyed to the place in which he was detained at the time of his liberation, or to any other place to which he might have been removed if no order for his liberation had been given; and any person so taken into custody shall revert in all respects to the same position as he was in at the time when the order for his liberation was given, and shall be subject to be detained accordingly.

Provision as to Persons detained by Judgment anterior to recited Act.

III. When by judgment anterior to the time when the said Act of the twentieth and twenty-first years of Queen Victoria came in force any person charged on indictment or criminal letters has by reason of lunacy been detained until further order of court, or has been disposed of otherwise than by being placed at Her Majesty's disposal, the provisions of this Act, and all other provisions in any Act relating to Scotland authorising Her Majesty to dispose of persons who by reason of lunacy have been ordered to be detained until Her Majesty's pleasure shall be known, shall apply to persons who have been so detained or otherwise disposed of by such judgment.

Relief of Lunatic Department in General Prison from overcrowding.

IV. When in relation to any insane prisoner in the General Prison at Perth it is certified, on soul and conscience, by two medical persons that they have visited and examined such prisoner, and that in their opinion he is insane, but that his insanity is of a kind which can be properly treated in a lunatic asylum, it shall be lawful for one of Her Majesty's Principal Secretaries of State, by a writing under his hand, to order that such prisoner be removed to any district asylum, or to any chartered or licensed asylum in which pauper lunatics are maintained in terms of any contract for such maintenance; and the managers or other administrators of the asylum named in the order shall, unless it be certified by Her Majesty's Commissioners in Lunacy that there is not sufficient accommodation at their disposal, be bound to provide for the reception of the prisoner named therein, and for his detention and maintenance, so long as he may be legally detained in such asylum; and if such prisoner be under a sentence which has not expired, the amount to be paid for his detention and maintenance until the expiry of his sentence shall be fixed by Her Majesty's Commissioners in Lunacy, and the same, when so fixed, may be charged in the accounts for the maintenance of the General Prison at Perth; and if such prisoner be not undergoing any sentence, section seventy-seven of the said Act of the twentieth and twenty-first Victoria, relat-

ing to the expense of the maintenance of lunatics, and all the provisions of the said Act and of any Act amending the same relating to the expense of the maintenance of lunatics in Scotland, shall apply to such prisoner while detained in a lunatic asylum upon an order made under the provisions of this Act: Provided that in the case of chartered asylums or licensed private asylums the consent of the managers or other administrators thereof, both as to the reception of any such person and as to the rate of board, shall be previously had and obtained, without prejudice always to existing contracts.

Removals to and from General Prison.

V. Any insane prisoner who has been removed from the General Prison shall be conveyed back thereto on any order to that effect being issued under the hand of one of Her Majesty's Principal Secretaries of State, and all orders for removal, whether from or to the General Prison in terms of this Act, shall be directed to the governor of the General Prison, who shall be responsible for the execution of the same.

Disposal of Persons becoming Insane in Local Prisons.

VI. When in relation to any person confined in a local prison in terms of the "Prisons (Scotland) Administration Act, 1860," it is certified, on soul and conscience, by two medical persons that they have visited and examined such prisoner, and that in their opinion he is insane, it shall be lawful for the sheriff, on summary application at the instance of the administrators of such prison by a warrant under his hand, to order such prisoner to be removed to a lunatic asylum; and if the asylum named in such warrant be a district asylum, or a chartered or licensed asylum in which pauper lunatics are maintained in terms of any contract for such maintenance, the managers or other administrators thereof shall, unless it be certified by Her Majesty's Commissioners in Lunacy that there is not sufficient accommodation at their disposal, be bound to provide for the reception of such prisoner, and for his detention and maintenance for the period during which he would have been liable to detention in such prison had he not been so removed; and the amount to be paid for the removal of such prisoner to an asylum, and for detention therein, shall be charged against the assessment for current expenses under the administration of the Prison Board of the county in which the offence wherewith such prisoner is charged was committed, and in case of dispute the amount of such payment shall be fixed by Her Majesty's Commissioners in Lunacy: Provided that in the case of chartered asylums or licensed private asylums the consent of the managers or other administrators thereof, both as to the reception of any such person and as to the

rate of board, shall be previously had and obtained, without prejudice always to existing contracts.

Persons in Custody may be reconveyed to Prisons from which they have been removed.

VII. The sheriff of the county in which the prison from which any person has been so removed is situate may, by a warrant under his hand, order such person to be reconveyed to the prison from which he was so removed; and any warrant under the hand of a sheriff in terms of this Act shall be valid, and may be put in force either within the county of such sheriff's jurisdiction or elsewhere in Scotland; and for the purposes of this Act, the term "sheriff" shall include "sheriff substitute."

Removal of Doubts as to Application to Paupers of Provisions for Dangerous Lunatics, 25 & 26 *Vict., c.* 54, *ss.* 15 *and* 16.

VIII. For the removal of certain doubts in an Act of the twenty-fifth and twenty-sixth years of the reign of Queen Victoria, entitled "An Act to make further provision respecting Lunacy in Scotland," the provisions therein concerning lunatics charged with assault or other offence inferring danger to the lieges, or found in a state threatening danger to the lieges, or in a state offensive to public decency, shall not be limited to pauper lunatics, but shall apply to any person so charged or found, although he may not, by receiving parochial relief, or in any other form, come within the definition of a pauper, and the powers conferred upon Her Majesty's Commissioners in Lunacy of removal or transfer of any lunatic from any asylum in which he is detained to any other asylum shall apply to such lunatic.

No. VII.—Act 40 & 41 Vict., c. 53, Sections 61 and 62, 14th August 1877.

Repeal of section 50 *of* 20 *and* 21 *Vict. c.* 71, *and constitution of District Boards of Lunacy.*

LXI. Section fifty of the Act passed in the twentieth and twenty-first years of the reign of Her present Majesty, chapter seventy-one, is hereby repealed, and in lieu thereof it is enacted as follows:

The District Boards of Lunacy elected in terms of the repealed section shall continue in office until the election of district boards elected in terms hereof.

There shall be chosen for each of the districts into which Scotland is or may hereafter be divided for the purposes and in terms of the last-recited Act and any Act amending the same, a

board to be called the District Board of Lunacy, the number of the members whereof shall be fixed by the General Board of Lunacy in Scotland, who shall also fix the number of the members of each district board to be elected by the commissioners of supply and magistrates of burghs respectively in each county within such district, and such number shall be proportioned, as nearly as may be, to the valuation of the property situated in each such county and burgh. The members of such district board shall be elected annually by the commissioners of supply and magistrates of burghs at such time as shall be determined by the said General Board of Lunacy; and any vacancy occurring by the death or resignation of any member shall be filled up by the same body by whom the member so vacating was elected. Such district boards shall meet at such times and places as shall be fixed by the General Board of Lunacy from time to time, and shall have power to adjourn and also to appoint a chairman, who, in case of an equality of votes, shall have a casting vote, and committees of their number, to whom may be delegated all or any part of the powers by the said recited Act committed to such district boards. Three shall be a quorum of a district board.

Provision for expense of Lunacy District Board where there is no District Asylum.

LXII. Where it shall happen that in any such district as is mentioned in the preceding section there shall be no district asylum, the clerk of the district board shall divide and apportion the total amount of the expenses incurred by the district board of such district between the landward part of the county and the burghs situated therein, according to the total value of lands and heritages as appearing in the valuation rolls of such county and burghs respectively, and shall transmit to the convener of the commissioners of supply of the county, and to the chief magistrate of each burgh situated therein, a notification of the total amount of such expenses, and of the proportion thereof to be paid by the landward part of the county and by each burgh respectively.

The sums so apportioned as due by the landward part of the county shall be a charge upon and shall be paid out of the county general assessment of such county, and the sums so apportioned as due by each burgh shall be a charge upon and shall be paid out of any assessment levied in such burgh, and payable one half by the owner and one half by the tenant or occupier of the lands and heritages within the burgh, and if there be no such assessment, then out of any other assessment levied in such burgh.

VALUATION ACTS.

No. I.—Act 17 & 18 Vict., c. 91, 10th August 1854.

For the Valuation of Lands and Heritages in Scotland.

Whereas it is expedient that one uniform valuation be established of lands and heritages in Scotland, according to which all public assessment leviable or that may be levied according to the real rent of such lands and heritages may be assessed and collected, and that provision be made for such valuation being annually revised: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Commissioners of Supply and Magistrates of Burghs to make up Valuation Roll annually.

I. The commissioners of supply of every county and the magistrates of every burgh in Scotland respectively shall annually cause to be made up a valuation roll, showing the yearly rent or value for the time of the whole lands and heritages within such county or burgh respectively, and separately within each parish or part of a parish situated within such county or burgh respectively, and specifying in each case the nature of such lands and heritages, and the names and designations of the proprietors or reputed proprietors, and where there are tenants or occupiers, of the tenants and of the occupiers thereof respectively; and within two months after the passing of this Act the commissioners of supply of each county, and the magistrates of each burgh, shall hold a meeting and adopt such measures as will enable the first valuation roll under this Act to be made up by the fifteenth day of August One thousand eight hundred and fifty-five.

Officer of Inland Revenue to assist the Commissioners of Supply and Magistrates in making up the Valuation Roll.

II. In making up the valuation roll the commissioners of supply and magistrates respectively may take the assistance of the officer of inland revenue charged with the duty of assessing to the income tax in such county or burgh respectively; and such

commissioners and magistrates respectively may, from time to time, as often as they may deem it necessary, by their order in writing, to be signed by their clerk, require any officer of inland revenue, charged with the duty of assessing the income tax in such county or burgh respectively, to appear before them when, and where, and as often as such commissioners and magistrates respectively may deem expedient, and to produce all assessments and other documents in the custody or power of such officer relating to the value of, or assessment on, all or any of the property within the several parishes or places within his district or division, and to be examined on oath, and answer such questions as the said commissioners and magistrates respectively may put to him touching the said assessments or the value of the property contained therein: Provided always, that it shall be in the power of such commissioners or magistrates, if they think fit, not to insert in any valuation roll under this Act the names or designations of the tenants or occupiers of any lands and heritages separately let for a shorter period than one year, or at a rent not amounting to four pounds per annum.

Appointment and Duties of Assessors.

III. In order to the making up of such valuation, the commissioners of supply of each county and the magistrates of each burgh respectively shall, as occasion requires, appoint one or more fit and proper persons to be assessors or assessor for the purposes of this Act; and it shall be the duty of such assessors annually to ascertain and assess the yearly rent or value of the several lands and heritages within the county or burgh respectively, other than the lands and heritages of railway and canal companies, which are hereinafter specially provided for, and to make up such valuation roll thereof in the manner by this Act prescribed; and every such assessor shall be appointed either for the whole county or burgh, or for some particular portion or district thereof to be prescribed by the commissioners of supply or magistrates respectively; and every such assessor shall, on being appointed by the said commissioners of supply or magistrates respectively, and before entering upon the duties of his office, declare that he will faithfully and honestly perform the duties thereof; and every such assessor shall be removeable at the pleasure of the said commissioners or magistrates respectively.

Assessors to make up Valuation Roll by 15th August in each Year.

IV. In every county and burgh the first valuation roll to be made up as aforesaid under this Act shall be made up by the assessors acting under this Act on or before the fifteenth day of August One thousand eight hundred and fifty-five; and a new

valuation roll shall be annually made up by the assessors on or before the fifteenth day of August in every subsequent year.

Notice to be given to Persons whose Property is valued.

V. On or before the twenty-fifth day of August, and not earlier than the fifteenth day of July in each year, the assessor shall transmit or cause to be transmitted to each person included in his valuation, whether as proprietor or tenant or occupier, a copy of every entry in such valuation roll wherein such person shall be set forth either as proprietor or tenant or occupier, along with a notice to such person that if he considers himself aggrieved by such valuation he may appeal against the same to the commissioners of supply of the county or to the magistrates of the burgh, as the case may be, in terms of this Act, or may obtain redress without the necessity of such appeal, by satisfying the assessor, on or before the eighth day of September in each year, that he has well-founded ground of complaint; and such copy and notice may be served by handing the same to such person personally, or leaving the same, or sending it through the post office, at his residence or usual place of abode; and where the residence or place of abode of such person is unknown, it shall be sufficient if service be made as aforesaid upon his factor or agent, or be addressed to him at the office of the clerk of supply of the county or town-clerk of the burgh, as the case may be: Provided always, that where, in making up his valuation as aforesaid, the assessor is merely to repeat an entry which occurred in the valuation of the immediately preceding year, it shall not be necessary for the assessor to transmit such copy and notice as aforesaid to the person or persons specified in such merely repeated entry.

Yearly Rent or Value, how to be estimated.

VI. In estimating the yearly value of lands and heritages under this Act, the same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year; and where such lands and heritages consist of woods, copse, or underwood, the yearly value of the same shall be taken to be the rent at which such lands and heritages might in their natural state be reasonably expected to let from year to year, as pasture or grazing lands; and where such lands and heritages are *bona fide* let for a yearly rent conditioned as the fair annual value thereof, without grassum or consideration other than the rent, such rent shall be deemed and taken to be the yearly rent or value of such lands and heritages in terms of this Act: Provided always, that if such lands and heritages be let upon a lease the stipulated duration of which is more than twenty-one years from the date

of entry under the same, or in the case of minerals more than thirty-one years from such date of entry, the rent payable under such lease shall not necessarily be assessed as the yearly rent or value of such lands and heritages, but such yearly rent or value shall be ascertained in terms of this Act irrespective of the amount of rent payable under such lease, and the lessee under such lease shall be deemed and taken to be also the proprietor of such lands and heritages in the sense of this Act, but shall be entitled to relief from the actual proprietor thereof, and to deduction from the rent payable by him to such actual proprietor, of such proportion of all assessments laid on upon the valuations of such lands and heritages made under this Act, and payable by such lessee as proprietor in the sense of this Act, as shall correspond to the rent payable by such lessee to such actual proprietor as compared with the amount of such valuation.

Assessor may call for written Statement of Rent.

VII. It shall be lawful for any assessor acting under this Act to call upon any person being a proprietor or reputed proprietor or tenant or occupier within the county or burgh or district for which such assessor is appointed, for a written statement of the yearly rent or value and of all other particulars required by this Act of all lands and heritages within such county or burgh or district of which such person is proprietor or reputed proprietor, or tenant or occupier; and if any such person shall, without reasonable excuse, fail to furnish such written statement to such assessor within fourteen days after he shall be called upon in writing so to do, he shall be liable to pay a penalty not exceeding twenty pounds; and if any such person shall present or cause to be presented to such assessor any false statement of such yearly rent or value or other particulars as aforesaid, he knowing the same to be false, he shall be liable to pay a penalty of fifty pounds.

Courts of Appeal.

VIII. The commissioners of supply of every county and the magistrates of every burgh shall annually on or before the fifteenth but not earlier than the tenth day of September in each year, hold a court for hearing appeals against valuations made by such assessors as aforesaid under this Act, of which ten days' notice shall be given, which court may be adjourned from time to time; and at such court, and at latest on or before the thirtieth day of September in each year, all such appeals and complaints under this Act shall be disposed of; and such courts or adjourned courts of appeal shall be held in such and as many places within such county and burgh respectively as such commissioners and magistrates respectively shall appoint; and the

deliverances of such commissioners and magistrates respectively upon such appeals and complaints shall be final and conclusive, and not subject to review.

Persons entitled to appeal.

IX. All persons whose names shall have been entered by the assessors in the valuation roll of the county or burgh respectively, whether as proprietors or tenants or occupiers, shall be entitled to appeal to the said commissioners or magistrates, as the case may be, with reference to such entry: Provided always, that the appellant shall, six days at least before such appeal is heard, intimate in writing to the assessor that he is to maintain such appeal, and specify the amount of valuation which he alleges should be substituted for the amount stated by the assessor.

Procedure at Appeal Courts.

X. It shall be competent to the commissioners of supply and magistrates of burghs respectively in the hearing of appeals under this Act to cite and examine the parties and their witnesses on oath, and to call for all papers and documents which they may deem necessary; and every court of appeal shall be attended by the assessors by whom the several valuations under appeal were made, and such assessors shall answer upon oath all competent interrogatories which may be put to them with reference to the matters involved in such appeals; and it shall not be necessary for the court of appeal to keep any formal record of their proceedings, except only a note of the assessment, appeal, and judgment; but they may, if they think proper, cause any deposition which may be made before them to be taken down in writing, and signed by the deponent, and may authenticate it by the signature of one of their number as having been made in their presence; and every such deposition so taken down, signed, and authenticated shall be deemed and taken to be good evidence in any prosecution for perjury.

Valuation Roll to be retained by Assessor till 8th of September yearly, and thereafter to be open to Inspection.

XI. The valuation roll, when made up by the assessor, shall be retained by him until the eighth day of September in each year, when he shall transmit it to the clerk of supply of the county or to the town clerk of the burgh, as the case may be, or, if there be no town clerk, to such other person as the chief magistrate of the burgh, or if there be no such magistrate the sheriff of the county, may specially appoint for the purpose, which he is hereby required in such case to do, as occasion requires; and the said valuation roll shall thereafter remain in the

office of such clerk of supply or town clerk, or other person specially appointed as aforesaid, patent to every person having interest therein, either as proprietor, tenant, or occupier.

Valuation Roll, when completed, to be authenticated, and to be in force for One Year.

XII. As soon as all appeals taken under this Act shall have been disposed of, and the valuation of the county or burgh shall have been thereby completed, the said valuation roll shall be authenticated in counties by the signature of the convener of the commissioners of supply, or of the clerk of supply, or other person whom the commissioners of supply may authorise for that purpose, and in burghs by the signature of the chief magistrate, or of the town clerk, or other person whom the magistrates may authorise for that purpose, and such valuation roll shall then be in force as the valuation roll of the county or burgh, as the case may be, for the year commencing at the term of Whitsunday immediately preceding, and ending at the term of Whitsunday immediately following; and as soon as such valuation roll has been authenticated as aforesaid, the clerk of supply or town clerk, as the case may be, shall furnish to the clerks of the several parochial boards within the county or burgh a copy of so much thereof as relates to their respective parishes; and every parish, person, or persons, interested in any valuation roll under this Act, shall be entitled to inspect and make copies of the same or any part thereof, at their own expense, at such reasonable times, and on payment of such moderate fee, and subject to such regulations, as the commissioners of supply or magistrates respectively may fix.

As to complaints made with regard to Assessor's Valuations.

XIII. If any complaint shall be made to the commissioners of supply of any county, or to the magistrates of any burgh, sitting as an appeal court as above provided, to the effect that the yearly rent or value of any lands or heritages within such county or burgh respectively has been stated by the assessor in the valuation roll of such county or burgh at other than the just and true amount thereof, such commissioners of supply and magistrates respectively may, if they think fit, make inquiry into such complaint, after giving not less than six day's notice to the proprietor and occupier of such lands and heritages of the time and place when such inquiry will be gone into, and may thereupon alter the amount of the yearly rent or value of such lands and heritages in the valuation roll of such county or burgh to such extent as, after such inquiry, may appear to them to be just; and the commissioners of supply and magistrates respectively, in the conduct of such inquiries as aforesaid, shall have all the same powers and authorities as are by this Act conferred upon them with reference

to appeals; and it shall be lawful for them to award expenses against the complainer where it shall appear to them that such complaint has been made without any reasonable or probable cause: Provided always, that where any parish consists partly of a burgh and partly of a landward district, it shall be competent to the commissioners of supply of the county or to the magistrates of such burgh respectively, if they shall think that any property within such parish has been unduly valued, to refer the true value of the same to the sheriff of the county, who shall decide the same summarily without being subject to review, and the magistrates and commissioners of supply respectively, on such decision being produced to them, shall correct the roll accordingly at the next ensuing period of valuation.

Three Commissioners of Supply or two Magistrates, &c, to be a Quorum.

XIV. In all proceedings under this Act, any three commissioners of supply, and two magistrates of a burgh, shall be deemed to be a quorum of such commissioners and magistrates respectively, and shall be entitled to exercise all the powers conferred upon the general body of commissioners and magistrates respectively under this Act, and the majority present, and voting, shall rule the decision; and where the votes of those present shall be equal, the preses of the meeting shall have a casting vote.

Preses at meetings of Commissioners of Supply, and Magistrates of Burghs, under this Act.

XV. In all meetings of commissioners of supply under this Act, their convener, or, in the absence of the convener, the person who may be elected by such meeting to act as its preses shall be preses of such meeting; and in all meetings of magistrates of burghs under this Act, the Lord Provost, or provost, or chief magistrate of the burgh, when he is present thereat, shall be preses of such meeting; and, failing him, the person who may be elected by such meeting to act as its preses shall be preses of such meeting.

Papers and Documents emanating from Commissioners of Supply, &c., how to be authenticated.

XVI. For the purposes of this Act, the signature of the convener or of the preses of a meeting of commissioners of supply adhibited to any paper or document shall be equivalent to the signatures of the whole commissioners of supply present at a meeting thereof; and the signature of the Lord Provost, or provost, or chief magistrate of the burgh, or of the preses of a meeting of the magistrates of the burgh, adhibited to any paper or document, shall be equivalent to the signature of the whole

magistrates present at such meeting; and the addition to such signatures respectively of the words "Convener," "Lord Provost," "Provost," "Chief Magistrate," or "Preses," shall be good *prima facie* evidence that such signature is the signature of such "Convener," "Lord Provost," "Provost," "Chief Magistrate," or "Preses," as the case may be, and that such paper or document is genuine and authentic.

Powers of Supplementary Assessment granted by existing Acts of Parliament not to be affected.

XVII. Where, by any Act of Parliament, power is given to make a supplementary assessment for any portion of the year from Whitsunday to Whitsunday, such power shall not be affected by this Act; and the assessors under this Act are hereby respectively authorised and required to make up such supplementary valuation roll as may be necessary in order to such supplementary assessment: Provided always, that such supplementary assessment shall be made upon the proprietors, tenants, or occupiers liable thereto, according to the valuations established by this Act of the respective lands and heritages of which they are such proprietors, tenants, and occupiers respectively for the year to a portion of which such supplementary assessment applies: Provided also, that every assessor making up such supplementary valuation roll, shall transmit or cause to be transmitted to each person included therein, whether as proprietor, tenant, or occupier, a copy of every entry in such supplementary valuation roll wherein such person shall be set forth either as proprietor, tenant, or occupier, along with a notice to such person that if he considers himself aggrieved by such supplementary valuation he may appeal against the same as aftermentioned, and it shall be lawful for every such person to appeal within fourteen days thereafter to the Court of Appeal established by this Act; and such court shall have the power of granting relief against such supplementary valuation so appealed against, to such extent and in such way and manner as to such court may seem just.

Expenses of Valuations, how to be defrayed.

XVIII. After the completion of each annual valuation as aforesaid under this Act, the commissioners of supply of each county and the magistrates of each burgh shall cause an account to be made up of the costs and expenses attending the same, and shall ascertain and fix the just amount thereof, and shall cause such amount to be apportioned upon the parishes within such county and burgh respectively, according to the yearly rent or value thereof as fixed by such valuation, and the same shall be assessed and levied along with the assessment for the relief of the poor for the current year within such parishes respectively, or they shall cause such amount, along with such reasonable sum as

they may deem necessary to meet the expenses of collection, to be assessed upon the lands and heritages within their county or burgh respectively, included in such valuation, by a rateable assessment upon such lands and heritages according to the yearly rent or value thereof as fixed by such valuation, the proprietors and occupiers of such lands and heritages being liable to pay such assessment equally between them, or, in the option of such commissioners of supply or magistrates respectively, shall cause such amount to be assessed along with and as part of and by way of addition to any other assessment which may be leviable according to the valuation established by this Act within such county or burgh; and any balance of funds remaining on hand from time to time in any county or burgh, arising from such assessment under this Act in any one year, after answering the expenses of the year with reference to which such assessment was imposed, may be retained and applied by the commissioners of supply of each county and the magistrates of each burgh respectively, in such manner as they may deem fit, for defraying the expenses of making up valuation rolls under this Act in subsequent years, but for no other uses or purposes whatever: Provided always, that where in any county or burgh there are or shall be funds available for the purpose, it shall be lawful for the commissioners of supply of such county or magistrates of such burgh, as the case may be, to defray such costs and expenses as aforesaid out of such available funds, in place of resorting to assessment under the provisions of this Act.

New Qualification for Commissioners of Supply.

XIX. From and after the passing of this Act, no person, other than a person duly qualified as after mentioned, shall be qualified to act as commissioner of supply in any county; and any person not duly qualified as aforesaid acting as such commissioner shall be subject and liable to the penalties presently attached by law to the acting as a commissioner of supply without qualification; and from and after the passing of this Act the qualification requisite for a commissioner of supply in any county shall be the being named as an *ex-officio* commissioner of supply in any act of supply, or the being proprietor or the husband of any proprietor infeft in liferent, or in fee not burdened with a liferent, in lands and heritages within such county, of the yearly rent or value, in terms of this Act, of at least one hundred pounds, or the being eldest son and heir apparent of a proprietor infeft in fee not burdened with a liferent in lands and heritages within such county of the yearly rent or value, in terms of this Act, of four hundred pounds; and the factor of any proprietor or proprietors infeft, either in liferent, or in fee unburdened as aforesaid, in lands and heritages within such county of the yearly rent or value, in terms

of this Act, of eight hundred pounds, shall be qualified to act as a commissioner of supply in the absence of such proprietor or proprietors: Provided always, that, with reference only to the qualification of commissioners of supply under this Act, the yearly rent or value of houses and other buildings, not being farm-houses or offices or other agricultural buildings, shall be estimated at only one-half of their actual yearly rent or value, in terms of this Act: Provided also, that all persons who shall, at the date of the passing of this Act, have been in actual possession of the qualification then required by law for a commissioner of supply, and entitled to act as such commissioner, shall, so long as he shall continue to possess such last-mentioned qualification, be deemed to be in possession of the qualification requisite for a commissioner of supply in terms or this Act.

Assessor of Railways and Canals to be appointed.

XX. In order to the making up of valuations and valuation rolls of lands and heritages in Scotland belonging to or leased by railway or canal companies, and forming part of the undertakings of such companies, it shall be lawful for Her Majesty to appoint, as occasion requires, a fit and proper person to be assessor of railways and canals for the purposes of this Act; and the remuneration or salary to be paid to such assessor of railways and canals in respect of his own time and trouble, and in respect of any clerks or other officers whom he may be allowed by the Commissioners of Her Majesty's Treasury to employ in the execution of his duties under this Act, shall be fixed from time to time by the said Commissioners of Her Majesty's Treasury; and such assessor of railways and canals shall, before entering on the duties of his office, declare that he will faithfully and honestly perform the duties thereof, and shall be removeable by Her Majesty at pleasure.

Such Assessor to make up annually a Valuation Roll of Railways and Canals.

XXI. The assessor of railways and canals under this Act shall, on or before the fifteenth day of August one thousand eight hundred and fifty-five, and on or before the fifteenth day of August in every subsequent year, inquire into and fix *in cumulo* the yearly rent or value, in terms of this Act, of all lands and heritages in Scotland belonging to or leased by each railway and canal company, and forming part of its undertaking, and shall also inquire into and fix the amount which one year with another would be required in order to the acquisition, formation, and erection of the several stations, wharfs, docks, depots, counting-houses, and other houses and places of business respectively, in

Scotland, of or connected with each such undertaking (including the solum on which such stations and others are erected), and shall also inquire into and fix all other matters necessary to enable him to make up a valuation roll of railways and canals as after mentioned; and such assessor of railways and canals shall make up a valuation roll, applicable to all railway and canal companies having lands and heritages as aforesaid, in which valuation roll shall be set forth, in columns, the yearly rent and value, in terms of this Act, of the whole lands and heritages, in Scotland, belonging to or leased by each such railway or canal company respectively, and forming part of its undertaking; the names of the several parishes, counties, and burghs through which the line of such railway or canal company runs, or in which its said lands or heritages, or any part thereof, are situated; the lineal measurement of its entire line, and the portion of such lineal measurement situated in each such parish, county, and burgh; the amount of the cost as aforesaid of its several stations, wharfs, docks, depots, counting-houses, and houses and places of business in Scotland (including as aforesaid), the proportion of such gross amount expended in each such parish, county, and burgh, and, where any stations, wharfs, docks, depots, counting-houses, or other houses or places of business are held or used jointly by any two or more railway or canal companies, the proportions in which such railway and canal companies are respectively interested therein, and also the yearly rent or value, in terms of this Act, ascertained as after mentioned, of the portion in each parish, county, and burgh in Scotland of the lands and heritages belonging to or leased by each railway and canal company, and forming part of its undertaking.

Mode in which the yearly Rent or Value of Railways and Canals is to be ascertained.

XXII. The yearly rent or value, in terms of this Act, of the lands and heritages in any parish, county, or burgh belonging to or leased by any railway or canal company, and forming part of the undertaking of such company, shall be ascertained as follows: that is to say, there shall be deducted, in the first place, from the *cumulo* yearly rent or value of the whole lands and heritages in Scotland as aforesaid of each such railway or canal company, a sum equal to three pounds *per centum* of the whole cost as aforesaid of the stations, wharfs, docks, depots, counting-houses, and other houses and places of business in Scotland of and connected with the undertaking of such railway or canal company (including as aforesaid); and the proportion of such diminished *cumulo* rent or value corresponding to the lineal measurement of the portion of the line, including ferries attached thereto, of such railway or canal company, situated in such parish, county, or burgh, as com-

pared with the lineal measurement of the entire line, including ferries as aforesaid, of such railway or canal company, with the addition of a sum equal to three pounds *per centum* of the cost as aforesaid of any station, wharf, dock, depot, counting-house, or other house or place of business, within such parish, county, or burgh, or of or connected with the undertaking of such railway or canal company (including as aforesaid), shall be deemed and taken to be the yearly rent or value, in terms of this Act, of the lands and heritages in such parish, county, or burgh, belonging to or leased by such railway or canal company, and forming part of its undertaking.

Water, Gas, and other Companies may have their Lands and Heritages valued by the Assessor of Railways and Canals.

XXIII. Where any water company or gas company, or other company having any continuous lands and heritages liable to be assessed in more than one parish, county, or burgh, shall desire to have such lands and heritages assessed by the assessor of railways and canals under this Act, it shall be competent to such water or gas or other company to make intimation in writing of such desire, under the hand of its manager, secretary, or other principal officer, at any time before the fifteenth day of May in the year one thousand eight hundred and fifty-five or before the fifteenth day of May in any subsequent year, to the sheriff of the county within which such lands and heritages, or the head office and place of business in Scotland of such water or gas or other company are situated; and such sheriff shall forthwith make such public advertisement of his having received such intimation as to him shall seem necessary or proper, and also shall make special intimation thereof to the assessor of railways and canals under this Act; and thereupon such assessor of railways and canals shall be exclusively charged, subject to appeal as herein provided, with the valuation of the lands and heritages in Scotland of such water or gas or other company in terms of this Act; and such assessor of railways and canals shall on or before the fifteenth day of August in the year one thousand eight hundred and fifty-five, and on or before the fifteenth day of August in every subsequent year, inquire into and fix *in cumulo* the yearly rent and value, in terms of this Act, of all lands and heritages in Scotland belonging to or leased by such water or gas or other company, and forming part of its undertaking, and shall also inquire into and fix the just proportion of such *cumulo* yearly rent or value applicable to each parish, county, and burgh in Scotland in which such water or gas or other company is liable to be assessed as aforesaid; and such assessor of railways and canals shall include in the valuation roll to be made up by him under this Act, all the water companies, gas companies, and other

companies, whose lands and heritages shall be valued by him as aforesaid, and shall set forth in such valuation roll, in columns, the yearly rent or value, in terms of this Act, *in cumulo*, of the whole lands and heritages in Scotland belonging to or leased by each such water, gas, and other company respectively, and forming part of its undertaking, the names of the several parishes, counties, and burghs in which its said lands and heritages or any part thereof are situated, and also the yearly rent or value, in terms of this Act, of the portion in each such parish, county, and burgh, separately and respectively, of the lands and heritages belonging to or leased by each such water, gas, and other company respectively, and forming part of its undertaking.

Notice of Valuation to be given to Railway and Canal Companies, etc.—If Companies think themselves aggrieved, they may appeal to Lord Ordinary—Proceedings before Lord Ordinary, &c., to be summary.

XXIV. On or before the fifteenth day of August in each year, the said assessor of railways and canals under this Act shall transmit or cause to be transmitted to each railway and canal and other company included in his valuation, either through the post office, or by causing the same to be left at the head or other known office of business of each such company, a copy of every entry in his valuation roll wherein such company shall be set forth, either as proprietor, tenant, or occupier; and if such company consider themselves aggrieved by such valuation, they may obtain redress by satisfying such assessor of railways and canals, on or before the eighth day of September next ensuing, that they have well-founded ground of complaint, and obtaining an alteration by him of his valuation accordingly, which alteration he is in such case authorised to make, or by lodging a note of appeal, on or before such last-mentioned date, to the Lord Ordinary officiating on the Bills in the Court of Session, or where the lands and heritages belonging to such company are all situated within one county, then to the sheriff of such county; and all proceedings before such Lord Ordinary or sheriff, as the case may be, under this Act, shall be summary, and may be taken either in court or at chambers, and shall be conducted in such way as such Lord Ordinary or sheriff respectively may prescribe or allow; and any deliverance which shall be pronounced by such Lord Ordinary or sheriff, as the case may be, on such objections, on or before the thirtieth day of November next after such appeal is entered and such objections are made, shall receive effect, and it shall be the duty of such assessor of railways and canals to alter his valuation in conformity therewith; and such deliverance, and the valuation of the said assessor of railways and canals, if not appealed against, or if appealed against in so far as not altered

by a deliverance of the Lord Ordinary or sheriff as aforesaid, shall be final and conclusive, and not subject to review.

Any Parish, County, or Burgh interested in any Railway or Canal Valuation may appeal against the same to the Lord Ordinary.

XXV. The valuation roll to be made up by the assessor of railways and canals, while the same is in the hands of such assessor, shall be patent to all persons having interest therein, and no fee of any kind shall be charged to any such person for liberty to inspect the same; and it shall be competent to any parish, county, or burgh, having interest in any valuation therein contained, to object to and represent against the same to the Lord Ordinary officiating on the Bills in the Court of Session, or when the lands and heritages belonging to any railway or canal or other company included in such valuation roll are all situated within one county, then to the sheriff of such county, and such Lord Ordinary or sheriff, as the case may be, shall afford to the company to which such objection applies an opportunity of answering such objections, and may also, if he think it necessary or proper, afford such opportunity to the assessor of railways and canals, or to any person or persons whom he may consider to be interested in such objection; and any deliverance which shall be pronounced by him on such objections on or before the thirtieth day of November next after such objections are made shall be given effect to, and be final and conclusive.

Assessor of Railways and Canals may call for Books and Writings, etc., and if such are refused, Right of Appeal to be forfeited.

XXVI. For the purpose of making the valuation of the lands and heritages of railway and canal and other companies by the assessor of railways and canals under this Act, it shall be lawful for such assessor of railways and canals to require the attendance before him of any persons as witnesses, and to examine such witnesses on oath, and also to call from time to time upon any railway or canal or other company to be included in his valuation for detailed statements of the yearly revenue of its undertaking, distinguishing the different sources thereof, and the amount derived from each such source, and also in the case of railways and canals of the cost as aforesaid of each of its stations, wharfs, docks, depots, counting-houses, and other houses and places of business (including the solum on which such stations and others are erected), and also of the parishes, counties, and burghs in which such stations, wharfs, docks, depots, counting-houses, and other houses and places of business are severally situated, and of the lineal measurement of the whole, any, each, and every part of its line, and to

call for production from time to time of any books, vouchers, or other writings in the possession of any railway or canal or other company relating to or bearing upon any matters aforesaid, or to or upon the subject of the inquiries of such assessor under this Act; and if any such company, or its manager or secretary, or the chairman of its board of directors, all for the time being, shall wilfully refuse or delay to furnish any such statements, or to make any such production, when required by the assessor of railways and canals as aforesaid, such company shall not be entitled to appeal against or object to the valuation of such assessor of railways and canals for the year in which such refusal or delay takes place, anything in this Act to the contrary notwithstanding.

Valuations of Railways and Canals, etc., when completed, to be authenticated, and communicated to the Clerks of Supply and Town Clerks, and to be in force for One Year.

XXVII. The valuation roll to be made up annually as aforesaid by the assessor of railways and canals under this Act shall, as soon as may be after the thirtieth day of November in each year, be authenticated by the signature of such assessor, and such valuation roll shall then be in force as the valuation roll of railway and canal and other companies for the year commencing at the term of Whitsunday immediately preceding and ending at the term of Whitsunday immediately following; and the assessor of railways and canals under this Act shall thereupon transmit to the clerk of supply of each county and to the town clerk of each burgh in which any portion of the undertaking of any such company is situated a certified copy of the valuation, in terms of this Act, taken from such valuation roll, of the lands and heritages within such county or burgh respectively belonging to or leased by and forming part of the undertaking of such company; and such valuation relating to such company shall be engrossed by such clerk of supply or town clerk, as the case may be, in the valuation roll of such county or burgh, and shall be authenticated by the signature of such clerk of supply or town clerk, and shall be thenceforward deemed and taken to be a part of such valuation roll of such county or burgh.

Valuation of Railways and Canals, etc., to be transmitted to the General Register House for preservation.

XXVIII. The valuation rolls of railway and canal and other companies to be made up by the assessor of railways and canals in terms of this Act, shall be periodically transmitted by the assessor of railways and canals to the Lord Clerk Register, or his deputy, for preservation in the General Register House, in like manner as the valuation rolls of counties and burghs are hereinafter directed to be periodically transmitted as aforesaid.

Salary of the Assessor of Railways and Canals to be contributed rateably by Railway and Canal Companies, etc.

XXIX. The amount of the remuneration or salary of the assessor of railways and canals under this Act, and of his clerks and other officers as aforesaid, shall, on or before the eleventh day of November in each year, be paid by the railway and canal and other companies having lands and heritages included in the valuation of railways and canals for the year to which such remuneration or salary applies, to the Commissioners of Her Majesty's Treasury, or to such person or persons as they may appoint to receive the same, each company paying a proportion of such remuneration or salary corresponding to the yearly rent or value of its lands and heritages, ascertained in terms of this Act, as compared with the yearly rent or value of the whole lands and heritages in Scotland of railway and canal and other companies included in such valuation; and in case of any difference of opinion as to the proportions in which such remuneration or salary should be borne by such companies respectively, in terms of this Act, the same shall be determined by the Commissioners of Her Majesty's Treasury, whose award thereon shall be final; and on or before the thirty-first day of December in each year the said remuneration or salary received from such companies as aforesaid shall be paid over by the Commissioners of Her Majesty's Treasury to the assessor of railways and canals; and the proportion of such remuneration or salary payable by each such company, in terms of this Act, shall be deemed to be a debt due by such company to the Crown, and shall be recoverable in like manner as any other debt due to the Crown is recoverable by law.

Mistake or Misnomer not to affect Valuation.

XXX. No valuation of any lands or heritages contained in any valuation roll under this Act shall be rendered void or be affected by reason of any mistake or variance in the names of such lands or heritages, or in the christian or surname or desig-signation of any proprietor or tenant or occupier thereof; and no valuation roll which shall be made up and authenticated in terms of this Act, and no valuation which shall be contained therein, shall be challengeable, or be capable of being set aside or rendered ineffectual, by reason of any informality or of any want of compliance with the provisions of this Act, in the proceedings for making up such valuation or valuation roll.

Proprietors of Subjects under Four Pounds to be chargeable with Assessments.

XXXI. In all cases where any lands or heritages shall be separately let at a rent not amounting to four pounds per annum, and

the names of the occupiers thereof shall not have been inserted in the valuation roll, the proprietor of such lands and heritages shall be charged with and have to pay the whole of the assessments on such lands and heritages separately let as aforesaid; but every such proprietor charged with and paying such assessment shall have relief against the tenants and occupiers of such lands and heritages for reimbursements thereof, if and in so far as such assessments may by law be properly chargeable upon such tenant or occupiers.

Prison Assessment to be upon Valuations established by this Act, and not by 2 & 3 *Vict., c.* 42.

XXXII. From and after the establishment of valuations of the lands and heritages in Scotland under this Act, every assessment which shall or might lawfully be assessed or levied under an Act passed in the session of Parliament holden in the second and third years of the reign of Her present Majesty, intituled "An Act to improve Prisons and Prison Discipline in Scotland," upon any lands or heritages, according to the annual value of such lands or heritages, shall be assessed and levied upon the basis of the valuations for the time being established under this Act; and the said last-recited Act is hereby repealed to the extent which may be necessary to give effect to this enactment, but no further.

Other public Assessments leviable on Real Rent to be levied upon Valuations established by this Act.

XXXIII. Where, in any county, burgh, or town, any county, municipal, parochial, or other public assessment, or any assessment, rate, or tax under any Act of Parliament, is authorised to be imposed or made upon or according to the real rent of lands and heritages, the yearly rent or value of such lands and heritages, as appearing from the valuation roll in force for the time under this Act in such county, burgh, or town, shall, from and after the establishment of such valuation therein, be always deemed and taken to be the just amount of real rent for the purposes of such county, municipal, parochial, or other assessment, rate, or tax, and the same shall be assessed and levied according to such yearly rent or value accordingly, any law or usage to the contrary notwithstanding: Provided always, that when the area of any parish church heretofore erected has been allocated among the heritors, according to their respective valued rents as appearing upon the present valuation rolls, all assessments for the repair thereof shall be imposed according to such valued rent; and where in any county, burgh, or town, any county, municipal, parochial, or other public assessment, or any assessment, rate, or tax under any Act of Parliament, other than poor rates, is or might be assessed upon means and substance, such assessment

shall, from and after the establishment of valuations under this Act, be assessed and levied upon the yearly rent or value, in terms of this Act, of such lands and heritages within such county, burgh, or town, one half upon the owners and the other half upon the tenants and occupiers of such lands and heritages, but subject to the provisions and exceptions hereinbefore made and provided as regards lands and heritages separately let at a rent not amounting to four pounds; and all acts, laws, and usages to the contrary are hereby repealed in so far as necessary to give effect to this enactment, but no further.

Valuation Roll to be Evidence in Registration and Appeal Courts.

XXXIV. In all questions and proceedings under any Act of Parliament relating to the franchise, or to the representation of the people in Parliament, it shall be sufficient to refer to an entry in the valuation roll in force for the time, or last in force under this Act in any county or burgh, and such entry shall be received and taken in all such questions and proceedings as conclusive proof that the gross yearly rent or value of the lands or heritages specified therein is at the date of such reference, and has been from the commencement of the year to which such valuation roll applies, of the amount therein set forth; and it shall be competent in all cases, notwithstanding anything in any existing Act of Parliament to the contrary, to refer to such valuation roll in such appeal court, although such valuation roll may not have been produced or referred to in the registration court; and it shall be the duty of every sheriff clerk of a county and town clerk of a burgh officiating or who ought to officiate at any registration court or court of appeal under any such Act of Parliament to have the valuation roll of the county or burgh, as the case may be, in force for the time under this Act, on the table of such registration court or court of appeal, as the case may be, for reference as aforesaid; and as soon as each annual valuation roll of a county, or of a burgh not being a burgh sending or contributing to send a member to Parliament, shall have been completed under this Act, and when the same shall be required for the purposes of any registration or appeal court, the clerk of supply having the custody of such valuation roll shall, when called upon to do so, transmit the same to the sheriff clerk of the county, by whom it shall be retained, patent to all parties having interest therein, until the business of the registration and appeal courts of the year shall be concluded, when it shall be forthwith returned by such sheriff-clerk to such clerk of supply.

Valuation Rolls to be made up in prescribed Form, and to be transmitted to the General Register House for preservation.

XXXV. The valuation rolls to be made up in terms of this Act shall be, as nearly as may be, in the forms of the schedules hereunto

annexed, and shall be otherwise in such form and of such dimensions as may be prescribed by the Lord Clerk Register of Scotland, or his deputy; and at the expiration of six years from the date of the passing of this Act, and at the expiration of every subsequent period of six years thenceforward, every clerk of supply and town clerk or other person, being custodier of the valuation rolls of any county or burgh under this Act, shall transmit or cause to be transmitted to the said Lord Clerk Register or his deputy, in order to preservation thereof in the General Register House of Scotland, the whole valuation rolls of such county or burgh then completed, and not previously transmitted, other than the valuation rolls of such county or burgh in force for the time being.

Boundaries of Burghs sending members to Parliament to be same as prescribed by 2 & 3 *W.* IV., *c.* 65.

XXXVI. The limits and boundaries of such burghs as send, or contribute to send, a member or members to Parliament, shall, for the purposes of this Act, be taken and held to be according to the limits and boundaries prescribed by an Act passed in the session of Parliament holden in the second and third years of the reign of his late Majesty King William the Fourth, intituled "An Act to amend the Representation of the People in Scotland:" Provided always, that in any burgh in which the ordinary jurisdiction of the magistrates shall not extend over the whole of the said boundaries, it shall be lawful to exclude therefrom, for the purposes of this Act, such part thereof, being beyond the ordinary jurisdiction of the magistrates, as may be mutually agreed on by the magistrates of the burgh and the commissioners of supply for the county, or in case of disagreement as shall be determined by the sheriff of such county: Provided always, that where more than one burgh contributes to send a member or members to Parliament, each such burgh shall notwithstanding be held to be distinct and separate burghs for the purposes of this Act; and the magistrates of each burgh respectively shall have and exercise all the powers herein conferred on magistrates of burghs; Provided also, that where the boundaries of any burgh are not prescribed by the before-recited Act of the second and third years of the reign of His Majesty King William the Fourth, the same shall be determined by the sheriff of the sheriffdom in which such burgh is situated, or, if such burgh be situated partly in one county and partly in another, by the sheriff of that sheriffdom in which the greater part of such burgh may be situated; and, as soon as may be after the passing of this Act, every sheriff to whom such power of fixing the boundaries of any burgh for the purposes of this Act is hereby committed shall, by letter to be addressed by him to the chief or senior magistrate or other

administrator on behalf of such burgh, require such magistrate or other administrator of such burgh to attend him at a time and place to be fixed in such letter, and shall likewise intimate the same to the convener or conveners of the county or counties in which such burgh is situated, and shall at such time and place, or at any time or place to which the sheriff may adjourn the inquiry, take such evidence as may be adduced to him, or as he may think necessary, and shall thereupon, by writing under his hand, fix and determine the boundaries of such burgh for the purposes of this Act, and shall cause such written determination to be recorded in the sheriff-court books of his county, and shall furnish an official extract therefrom to such magistrate or administrator, and to the clerk or clerks of supply of the county or counties within which such burgh is situated; and such determination shall, when so recorded, fix and determine the boundaries of such burgh for the purposes of this Act.

Recovery of Penalties.

XXXVII. Every penalty imposed by this Act may be recovered by summary proceeding, upon complaint in writing made in name of an assessor under this Act to the sheriff of the sheriffdom in which the offence shall have been committed, or to the sheriff of any sheriffdom in which the offender may be found; and on such complaint being made such sheriff shall issue a warrant or order requiring the party complained against to appear on a day and at a time and place to be named in such order; and every such order shall be served on the party offending either in person or by leaving with some inmate at his usual place of abode a copy of such order, and of the complaint whereupon the same has proceeded; and either upon the appearance or upon the default to appear of the party offending it shall be lawful for the sheriff to proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party complained against, or other legal evidence, and without any written pleadings or record of evidence, to convict the offender, and upon such conviction to decern and adjudge the offender to pay the penalty incurred, as well as such expenses as the sheriff shall think fit, and to grant warrant for imprisoning the offender until such penalty and expenses shall be paid: Provided always, that such warrant shall specify the amount of such penalty and expenses, and shall also specify a period at the expiration of which the party shall be discharged, notwithstanding such penalty or expenses shall not have been paid, which period shall in no case exceed three calendar months.

Application of Penalties.

XXXVIII. The sheriff by whom any penalty shall be imposed

by virtue of this Act shall award such penalty to be applied for the purposes of this Act within the county or burgh in which the offence was committed, and shall order the same to be paid over to the complainer, or to some other person for that purpose: Provided always, that no person shall be liable to the payment of any penalty imposed by virtue of this Act unless such penalty shall have been prosecuted for within six calendar months after the commission of the offence for which it has been incurred.

Where Assessments are levied under Local Acts on a different Valuation to that established by this Act, Sheriff of the County to fix Percentage.

XXXIX. Where in any burgh or parish or county under any statute any assessment, rate, or tax of a fixed amount or percentage has been assessed upon or levied from the proprietors or tenants or occupiers of any lands and heritages, but according to a different valuation from that established by this Act, it shall be lawful for the sheriff, on an application from any person or persons authorised to assess or levy such assessment, rate, or tax, or from any ratepayer within such county, burgh, or parish, to fix and determine, after such inquiry and notice as he shall think proper, what percentage, according to the valuation to be made under this Act, corresponds with and will yield as nearly as may be the sum which the percentage specified in such statute should yield according to the valuation hitherto in use to be made up under such statute, and the percentage so fixed by the sheriff shall thereafter, subject to all legal rights, be held to be the percentage provided by such statute.

Rogue Money, etc., to be assessed, first giving notice of the same.

XL. After the completion of the first valuation under this Act, it shall be in the power of the commissioners of supply to assess on the said valuation and any subsequent valuation the rogue money and all the other assessments now levied on the valued rent; provided that notice of the resolution so to assess be given at the meeting of the said commissioners previous to the meeting at which such assessment is to be made; but after such resolution has once been adopted by the said commissioners, it shall not be in their power to revert to the former mode of assessment.

Liability to Assessment not to be altered.

XLI. Nothing contained in this Act shall alter or affect any classification or power of classification, or any deduction or allowances, or power of making deductions or allowances, from gross rental, made or possessed by any body, persons or person, entitled to impose or levy assessments, but the same shall not affect

the value to be inserted in the valuation roll in terms of this Act; and nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment.

Interpretation Clause.

XLII. The following words and expressions, when used in this Act, shall in the construction thereof be interpreted as follows, except when the nature of the provision or the context of the Act shall exclude or be repugnant to such construction; (that is to say,) the expression "lands and heritages" shall extend to and include all lands, houses, shootings, and deer forests, where such shootings or deer forests are actually let, fishings, woods, copse, and underwood from which revenue is actually derived, ferries, piers, harbours, quays, wharfs, docks, canals, railways, mines, minerals, quarries, coalworks, waterworks, limeworks, brickworks, ironworks, gasworks, factories, and all buildings and pertinents thereof, and all machinery fixed or attached to any lands or heritages; provided always, that no mine or quarry shall be assessed unless it has been worked during some part of the year to which such assessment applies; the word "oath" shall include the affirmation of a Quaker, Separatist, or Moravian; the word "proprietor" shall apply to liferenters as well as fiars, and to tutors, curators, commissioners, trustees, adjudgers, wadsetters, or other persons who shall be in the actual receipt of the rents and profits of lands and heritages; the word "factor" shall mean a person acting under a probative factory and commission for the proprietor or proprietors, including corporations being proprietors, for whom he is factor, and in the *bona fide* actual management as such factor of the lands and heritages belonging to such proprietor; the word "burgh" shall apply only to a city, burgh, or town, being a royal burgh, or which sends or contributes as a burgh to send a member to Parliament; the expression "magistrates of burghs" shall include the Lord Provost, or provost, or chief magistrate and magistrates and councils of burghs, and all persons being members for the time of such magistracy or council; the word "town" shall extend to and include all burghs, as well royal and parliamentary burghs as burghs of barony or regality, and all other burghs whatsoever, and generally all places situate within a county forming an area of assessment distinct from such county; the word "county" shall include "stewartry," and shall include and apply to a county exclusive of the burghs situated therein; the expression "the assessor" shall mean the assessor under this Act of the county or burgh or portion or district of the county or burgh for which he is assessor, as distinguished from the assessor of railways and canals under this Act.

SCHEDULE REFERRED TO IN THE FOREGOING ACT.

VALUATION ROLL FOR COUNTIES.

County of Parish of

No.	Description of Subject.	Proprietor.	Tenant.	Occupier.	Yearly Rent or Value.				
					1854.	1855.	1856.	1857.	1858.
					£	£	£	£	£
1	Farm of ——	*A. B.* of *C.* .	*E. F.*, residing at ——	*G. H.*, residing at ——	150				
	Do. . .	Do. . .	Do. . .	Do. . .	...	150			
	Do. . .	Do. . .	Do. . .	Do. . .	...	...	150		
	Do. . .	Do. . .	*L. M.*, residing at ——	*L. M.*, residing at ——	...	...	...	160	
	Do. . .	Do. . .	Do. . .	Do. . .	...	...	...	...	160
2	House, Garden, and Grounds of ——	*O. P.*, Esq., Mining Engineer.	... ...	*O. P.*, aforesaid	40				
	Do. . .	Do. . .	... ...	Do. . .	...	40			
	Do. . .	*R. S.*, Merchant in ——	... ...	Do. . .	...	...	40		
	Do. . .	Do. . .	... ...	*R. S.*, Merchant in ——	...	...	...	35	
	Do. . .	Do. . .	... ...	Do. . .	...	...	...	...	35

VALUATION ROLL FOR BURGHS.

Burgh [*or* City] of Year

No.	Description of Subject.	Proprietor.	Tenant.	Occupier.	Yearly Rent or Value.
1	House, 9, High Street	*A. B.*, residing at ——	*C. D.*, Merchant . .	*C. D.*, Merchant . .	£70
2	Shop, 10, Do.	*E. F.*, Architect .	*G. H.*, Draper . .	*G. H.*, Draper . .	50

No. II.—ACT 30 & 31 VICT., C. 80, 12th August 1867.

To define the Duties of the Assessor of Railways in Scotland in making up the Valuation Roll of Railways, and to amend in certain respects the Valuation of Lands (Scotland) Acts.

WHEREAS an Act was passed in the seventeenth and eighteenth years of Her Majesty's reign, chapter ninety-one, intituled "An Act for the Valuation of Lands and Heritages in Scotland," and another Act was passed in the twentieth and twenty-first years of Her Majesty's reign, chapter fifty-eight, intituled "An Act to amend the Act seventeenth and eighteenth Victoria, for the Valuation of Lands in Scotland."

And whereas it is expedient to further define the duties of the Assessor of Railways in Scotland in making up the valuation rolls of railways under the first-recited Act, and to amend in certain other respects the provisions of both the recited Acts:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short Title.

I. This Act shall be cited for all purposes as "The Valuation of Lands (Scotland) Amendment Act, 1867."

Definition of Term.

II. The term "permanent way" in this Act shall mean and include the line or lines of railway, bridges under and over the same, viaducts, tunnels, fences, and ditches along the said lines, signals and apparatus connected therewith.

One Half of Expense of maintaining Permanent Way of Railways to be deducted by Assessor of Railways and Canals before fixing Cumulo Value of Railway.

III. In ascertaining the yearly rent or value in terms of the first-recited Act of the lands and heritages in any parish, county, or burgh belonging to or leased by any railway company, and forming part of the undertaking of such company, one half of the expenses incurred in maintaining or repairing the permanent way of railways, and charged to revenue in the published accounts of such railway company for the year preceding that for which the valuation is made, shall be allowed by the Assessor of Railways and Canals as a deduction before the cumulo yearly rent

or value of each railway is fixed, provided that such assessor is satisfied that such expenses have been truly expended in maintaining or repairing the permanent way of each such railway: Provided always, that the cost of repairs of stations, engine-houses, workshops, wharfs, docks, depots, counting-houses, and other houses and places of business belonging to or leased by any railway company, and forming part of the undertaking of such company, shall not be deemed to be expenses to be allowed by the said assessor in terms of this section.

Amendment of Sec. 22 *of* 17 & 18 *Vict., c.* 91, *as to Stations, etc.*

IV. Whereas the twenty-second section of the first-recited Act, in providing the mode of ascertaining the yearly value or rent of the lands and heritages in any parish, county, or burgh belonging to or leased by any railway or canal company, and forming part of the undertaking of such company, fixed the deduction to be made from the cumulo yearly value or rent of the whole lands and heritages in Scotland as aforesaid of each such railway or canal company in respect of the cost of the stations, wharfs, docks, depots, counting-houses, and other houses and places of business in Scotland, of and connected with the undertaking of such company, at a sum equal to three pounds per centum of the whole cost thereof: and whereas such deduction was fixed at too small a sum, and should for the future be increased: Be it enacted as follows:

The twenty-second section of the first-recited Act shall be read and construed as if the words "five pounds per centum" were substituted for the words "three pounds per centum" wherever these latter words occur in the said section of the said first-recited Act.

Separate Valuation to be assigned, if required before 1*st April in each Year, to Towns and populous Places in which a General or Local Police Act is in force.*

V. The Assessor of Railways and Canals shall, if required as hereinafter provided, specify and assign separately the value of those portions of railways included within the limits of burghs, towns, or populous places (not being burghs in the sense of the twenty-seventh section of the first-recited Act, which section shall remain in full force and effect) which have adopted or shall hereafter adopt the provisions of the Acts of the thirteenth and fourteenth Victoria, chapter thirty-three, or of the twenty-fifth and twenty-sixth Victoria, chapter one hundred and one, or in which any local Police Act is or may hereafter be in force: Provided always, that it shall not be necessary for the said assessor to assign separately the value of the portions of railways in-

cluded within the limits of any burgh, town, or populous place, in terms of this section, unless on or before the first day of April in each year the town clerk or clerk of the commissioners or trustees of police thereof, as the case may be, shall have required him so to assign the same; and such town clerk or clerk of the commissioners or trustees of police, when making such requisition, shall be bound to state the lineal measurement of the portions of the railway or railways belonging to or leased by any railway company, and forming part of the undertaking thereof, situated within the limits of such burgh, town, or populous place, and the assessor shall satisfy himself as to the correctness of such measurement, and the said assessor, immediately on the completion of the valuation roll made up by him under the recited Acts and this Act, shall transmit to each town clerk or clerk of the commissioners or trustees of police so requiring him as aforesaid a certified copy of the valuation, taken from such valuation roll, of the lands and heritages within such burgh, town, or populous place, as the case may be, belonging to or leased by and forming part of the undertaking of such company; and such valuation relating to such company shall be engrossed by such town clerk or clerk of the commissioners or trustees of police, as the case may be, in the roll or book of assessment of such burgh, town, or populous place made up in terms of the Acts of the thirteenth and fourteenth Victoria, chapter thirty-three, or of the twenty-fifth and twenty-sixth Victoria, chapter one hundred and one, or of the Act in force in such burgh, town, or populous place; and such valuation shall be authenticated by the signature of such town clerk or clerk of the commissioners or trustees of police, as the case may be, and shall be thenceforward deemed and taken to be a part of such roll or book of assessment of such burgh, town, or populous place, as the case may be.

Valuation Roll of Railways made up by Assessor of Railways and Canals to be open for Inspection, etc.

VI. The valuation roll to be made up by the Assessor of Railways and Canals, while in the hands of such assessor, shall be patent and accessible to all persons having interest therein, and the assessor shall, when required by any such person, exhibit to him a statement showing the principles and calculations on which the valuation of such assessor is founded, without payment of any fee; and pending the consideration of any appeal against the valuation of such assessor, he shall, if required, be bound to lodge the said statement in court six days before such appeal is to be heard.

Time for lodging Appeals against Assessor's Entries in Valuation Roll.

VII. All appeals or complaints against any entry in the valua-

tion rolls made up in terms of the said recited Acts, and of this Act, either by the assessors appointed by the commissioners of supply of any county, or by the magistrates of any burgh, or by the Assessor of Railways and Canals, shall, except as after provided, be lodged not later than the tenth day of September in each year, and every such appeal or complaint shall, except as aforesaid, be heard and determined not later than the thirtieth day of September in each year.

Sec. 2 of 20 & 21 Vict., c. 58, amended as herein stated.

VIII. The second section of the second-recited Act is hereby amended to the effect of providing that hereafter the judges to whom the case therein referred to shall be submitted, instead of being the senior Lord Ordinary and the Lord Ordinary officiating in Exchequer causes in the Court of Session, shall be any two judges in the said court, who shall be named for that purpose from time to time by Act of Sederunt of the said court: Provided always, that any valuation which shall have been confirmed or altered in conformity with the opinion of said judges shall thereafter be final and not subject to review in any manner of way.

Liability to Assessment not to be altered by this Act.

IX. Nothing contained in this Act shall alter or affect any classification or power of classification, or any deduction or allowances, or power of making deductions or allowances from gross rental or annual value, made or possessed by any body, persons or person, entitled to impose or levy assessments, except that in estimating the amount of such deductions or allowances there shall not be allowed or included therein the proportion of the expenses of maintaining or repairing the permanent way of railways to be allowed by the Assessor of Railways and Canals in terms of section third of this Act; and nothing contained in this section shall affect the value to be inserted in the valuation roll of railways and canals in terms of this Act; and nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment.

Printing of Valuation Roll.

X. It shall be lawful for the commissioners of supply of any county, or the magistrates of any burgh, to resolve at any meeting of their number, ordinary or special, duly called, and by a majority of those attending and voting, that the valuation roll of such county or burgh for the current year shall be printed; and the expenses of such printing shall be deemed to be part of the

expenses of making up such roll in terms of the eighteenth section of the first-recited Act, and shall be assessed for and levied accordingly: Provided always, that notice of the intention to move such resolution shall be inserted in the notice calling the meeting at which it is to be moved.

Partial Repeal of recited Act.

XI. The recited Acts, and all other laws, statutes, and usages, shall be and the same are hereby repealed, in so far as necessary to give effect to the provisions of this Act, but in all other respects they shall remain in full force and effect.

Commencement of Act.

XII. The first valuation rolls made up under the said recited Acts and this Act shall be for the year from Whitsunday One thousand eight hundred and sixty-seven to Whitsunday One thousand eight hundred and sixty-eight: Provided always, that for such year only the time allowed to the Assessor of Railways and Canals for making up his valuation roll, and transmitting copies thereof to each railway, canal, and other company, shall be and is hereby extended to the fifteenth day of September next; the time for complaining to the said assessor, or lodging a note of appeal to the Lord Ordinary officiating on the Bills, or to the sheriff, as the case may be, against any valuation made by such assessor, shall be and is hereby extended to the tenth day of October next; and the time for hearing and determining any such complaint or appeal shall be and is hereby extended to the thirtieth day of November next.

No. III.—ACT 42 & 43 VICT., C. 42, 11th August 1879.

An Act to amend the Acts relating to the Valuation of Lands and Heritages in Scotland.

WHEREAS an Act was passed in the session of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter ninety-one, intituled "An Act for the valuation of Lands and Heritages in Scotland;" and another Act was passed in the session of the twentieth and twenty-first years of the said reign, chapter fifty-eight, intituled "An Act to amend the Act seventeenth and eighteenth of Victoria, for the Valuation of Lands in Scotland;" and another Act was passed in the session of the thirtieth and thirty-first years of the said reign, chapter eighty, intituled "An Act to define the duties of the Assessor of Railways in Scotland in making up the Valuation Roll of Railways and to amend in certain respects the Valuation of Lands (Scot-

land) Acts;" and it is expedient to amend the recited Acts as hereinafter provided:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title and extent of Act.

I. This Act may be cited for all purposes as the Valuation of Lands (Scotland) Amendment Act, 1879, and shall extend to Scotland only.

Commencement of Act.

II. This Act shall have effect from and after the first day of January one thousand eight hundred and eighty, which date is hereinafter referred to as the commencement of this Act.

Recited Acts and this Act to be construed together.

III. The recited Acts and this Act shall be read and construed together, and may together be referred to as the Valuation of Lands (Scotland) Acts.

County valuation committee to be appointed.

IV. From and after the commencement of this Act appeals and complaints under the Valuation of Lands (Scotland) Acts to the commissioners of supply in any county in Scotland shall not be heard and determined by the general body of commissioners of supply of such county, but shall be heard and determined by a standing committee of such commissioners, to be called the county valuation committee. The determination of a county valuation committee shall, for all purposes, be deemed to be the determination of the commissioners of supply by whom it is appointed.

Provisions in regard to a county valuation committee.

V. The following provisions shall have effect with respect to the appointment and proceedings of a county valuation committee; that is to say,

(1.) The commissioners of supply shall annually at their statutory meeting on the thirtieth day of April, or on the day substituted therefor, in terms of the Act passed in the twenty-eighth year of the reign of Her present Majesty, chapter thirty-eight, or at any adjournment thereof, appoint from among themselves a county valuation committee, or they may appoint more than one

such committee, and assign to any such committee such area of jurisdiction as they may think expedient.

(2.) A county valuation committee shall consist of not less than five nor more than twenty members.

(3.) A county valuation committee may from time to time fix the times and places of their meetings, of which notice shall be given by the clerk of supply of the county, in the same manner as notice is for the time given of meetings of the commissioners of supply:

(4.) The quorum of a county valuation committee shall be three members:

(5.) Any vacancy arising in any such committee from death, resignation, or other cause, may be from time to time filled up by the committee;

Any such committee may, if a quorum exists, act, notwithstanding vacancies therein:

(6.) A county valuation committee shall continue in office until another such committee is appointed as hereinbefore provided:

The members of a committee retiring may be reappointed:

(7.) A county valuation committee shall have power to elect one of their own number to act as chairman during their tenure of office, and until a chairman is appointed, and in case of his absence from any meeting, the committee shall elect one of their members present at the meeting to act as chairman of that meeting; and in the event of an equal division of the committee, the chairman shall have a second vote:

(8.) The clerk of supply of the county shall be the clerk of the county valuation committee, or of each such committee if there be more than one, and shall perform all such duties in relation to any such committee or committees as he is required by law to perform in relation to the commissioners of supply in general meeting assembled.

As to complaints made with regard to entries other than statement of value in Valuation Rolls.

VI. It shall be lawful for any person interested to complain to the commissioners of supply of any county or to the magistrates of any burgh under the Valuation of Lands (Scotland) Acts, to the effect that any particular set forth in any entry in the valuation roll for such county or burgh, as the case may be, other than the yearly rent or value of the lands and heritages to which such entry refers, has been set forth erroneously therein; and such complaint shall be made and disposed of in the same

manner and subject to the same conditions and provisions (except in regard to the right of requiring a case to be stated) in and under which complaints that such yearly rent or value has been stated by the assessor in such valuation roll at other than the just and true amount thereof may be made and disposed of.

Where assessors not officers of Inland Revenue, case may be demanded for opinion of two judges of Court of Session.

VII. In the case of persons entitled to appeal against valuations made by assessors under the Valuation of Lands (Scotland) Acts who are not officers of Inland Revenue appointed under the second recited Act, it shall be lawful for such person appealing, or for such assessor, if he shall apprehend the determination of the commissioners of supply in any county, or the magistrates of any burgh, upon such appeal as to the yearly rent or value of the lands and heritages to which such appeal relates, to be contrary to the true intent of the said Acts, and shall then declare himself dissatisfied with such determination, to require the said commissioners or magistrates to state specially and to sign the case upon which the question arose, setting forth the facts proved, together with the determination thereupon, and to transmit such case to the Commissioners of Inland Revenue, to the end that the same may be submitted to any two judges in the Court of Session, who shall be named for that purpose from time to time by Act of Sederunt of the said court, for their opinion thereon; and such judges to whom such case may be submitted, shall with all convenient speed, give and subscribe their opinion thereon; and, according to such opinion, the valuation or assessment which shall have been the cause of the appeal shall be altered or confirmed.

The cases under this section, and also under the recited Acts, may be disposed of by the judges in time of session or vacation, and in court or at chambers, and after hearing parties or not, at their discretion.

Evidence to be taken in shorthand writing if required.

VIII. Either party to any appeal or complaint to the commissioners of supply of any county, or the magistrates of any burgh, under the Valuation of Lands (Scotland) Acts, may, at the hearing of such appeal or complaint, require the evidence to be taken in shorthand writing at his expense, and in that event such evidence shall be taken accordingly.

Case to set forth grounds of Appeal, &c.

IX. In stating any case, the commissioners of supply of any county, or the magistrates of any burgh, as the case may be, shall, in addition to the particulars now required to be stated,

set forth the grounds of appeal or complaint, and the replies thereto in such terms as shall be submitted to them by the parties within ten days after the determination appealed against; and a certified copy of any evidence taken as aforesaid shall be submitted, along with the case, to the said judges, who may, if they think fit to do so, remit the case to the commissioners or magistrates by whom it was stated, with such instructions as the said judges may consider necessary for having the case more fully stated.

Further alterations of day of annual statutory meetings of Commissioners of Supply, 28 & 29 *Vict.*, *c.* 38.

X. Where the day for holding the annual statutory meeting of the commissioners of supply of any county has been altered under the provisions of the Commissioners of Supply Meetings (Scotland) Act, 1865, it shall be lawful again, and from time to time, to alter such day, as nearly as may be in the manner and subject to the provisions and to the effect set forth in the said Act.

PUBLIC HEALTH ACTS.

No. I.—Act 30 & 31 Vict., c. 101, 15th August 1867.

An Act to consolidate and amend the law relating to the Public Health in Scotland.

Whereas it is expedient to consolidate and amend the laws applicable to Scotland for removal of nuisances, for prevention of diseases, and for sanitary purposes generally: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

Short Title.

I. This Act may be cited for all purposes as the "Public Health (Scotland) Act, 1867."

II. From and after the first day of November One thousand eight hundred and sixty-seven, the Nuisances Removal (Scotland) Act, 1856, except Part V. thereof, Sections 441 to 447, both inclusive, of the General Police and Improvement (Scotland) Act, 1862, and also the Sewage Utilisation Act, 1865, and the Sanitary Act, 1866, so far as these two last-mentioned Acts apply to Scotland, are repealed: Provided always, that all proceedings commenced or taken under the said Acts or any of them, in so far as hereby repealed, and not yet completed, may be proceeded with under the said Acts or any of them, or under this Act; and all orders in Council, and all directions and regulations issued by the Board of Supervision under the said Acts or any of them, and all appointments made, and all contracts or works undertaken, and generally all claims, rights, and liabilities, civil or criminal, constituted or existing under the said Acts, before the passing of this Act, with the remedies and proceedings applicable thereto under the said Acts or this Act, shall continue and be as effectual as if the said Acts had not been repealed; and where in any enactments of any Act, general or local, which shall continue in force after the commencement of this Act, any of the Acts or parts of Acts hereby repealed is cited or referred to, such enact-

ments shall be interpreted as if this Act were cited or referred to therein, and as if the provisions of this Act were substituted for the provisions hereby repealed.

Interpretation of certain Terms.

III. In this Act the following words and expressions shall have the meanings hereinafter assigned to them, unless such meaning is inconsistent with the context:

The word "board" shall signify the Board of Supervision for the Relief of the Poor in Scotland:

The word "secretary" shall include assistant secretary:

The expression "medical officer" shall signify a duly qualified medical practitioner appointed under the Act eighth and ninth Victoria, chapter eighty-three, or under this Act:

The word "sheriff" shall include sheriff-substitute:

The word "burgh" shall include not only royal burgh, Parliamentary burgh, burgh incorporated by Act of Parliament, burgh of barony, and burgh of regality, but also any populous place, having a town council, police commissioners, or trustees exercising the functions of police commissioners under any general or local Act:

The word "magistrate" shall include a magistrate or judge having police jurisdiction under the General Police and Improvement (Scotland) Act, 1862, or under any general or local police Act which may be in force:

The word "decree" or "decern" shall include any warrant, sentence, judgment, order, or interlocutor:

The word "owner" shall signify the person for the time entitled to receive, or who would, if the same were let, be entitled to receive, the rents of the premises, and shall include a trustee, factor, tutor, or curator, and in case of public or municipal property shall apply to the persons to whom the management thereof is intrusted:

The word "ship" shall include any sailing or steam ship, vessel, or boat:

The word "premises" shall include lands, buildings, structures of any kind, streams, lakes, drains, ditches, or places open, covered, or inclosed, and any ship, lying in any sea, river, harbour, or other water, or *ex adverso* of any place within the limits of the local authority:

The word "person," and words applied in this Act to any person or individual, shall apply to and include women, corporations, clubs, societies, statutory boards or commissioners, joint stock companies, partnerships, joint owners, and joint occupants, and trustees:

The word "company" shall apply to and include commissioners:

The expression "author of a nuisance" shall signify the per-

son through whose act or default the nuisance is caused, exists, or is continued, whether he be the owner or occupier, or both:

The expression "common lodging house" shall signify a house or part thereof where lodgers are housed at an amount not exceeding fourpence per night for each person, whether the same be payable nightly or weekly, or at any period not longer than a fortnight, or where the house is licensed to lodge more than twelve persons:

The expression "keeper of a common lodging house" shall include any person having or acting in the care and management of a common lodging house.

IV. "The Lands Clauses Consolidation (Scotland) Act, 1845," and "The Lands Clauses Consolidation Acts Amendment Act, 1860," shall, for the special purposes hereinafter mentioned, be incorporated with and form part of this Act, and shall be hereinafter referred to as "The Lands Clauses Acts."

Part I.—Local Authority and Board of Supervision.

Local Authorities as herein named to execute this Act.

V. The following bodies shall respectively be the local authority to execute this Act in the districts hereunder stated in Scotland:

In places within the jurisdiction of any town council, and not subject to the jurisdiction of police commissioners or trustees as after mentioned,—the town council:

In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act,—the police commissioners or trustees:

In any parish or part thereof, over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend,—the Parochial Board of such parish:

Board of Supervision to determine the Local Authority in Parishes not wholly within the Jurisdiction of a Town Council, etc.

Provided always, that where any parish shall be partly within and partly beyond the jurisdiction of a town council and of police commissioners or trustees, and of a parochial board, or of any two or more of such bodies, the board, if application be made to them by any of these bodies, or by any person having interest, may, if they see fit, determine which of the said several bodies shall be the local authority within the whole limits or within any portion

of such parish, and the board may from time to time recal or vary such determination; and provided further, that all determinations already made under the fifth section of the Nuisances Removal (Scotland) Act, 1856, shall be valid and effectual till recalled or varied under this Act.

Where District in more than One County.

VI. Where any parish or burgh shall be situated in more than one county, the board shall, on application being made to them by any person having interest, determine in which one of such counties such parish or burgh shall be held to be situated for the purposes of this Act, whose decision shall be final; and the jurisdiction and powers of magistrates, justices, and sheriffs, and the powers of their officers under this Act, shall be regulated accordingly, and the board may from time to time recal or vary such determination; provided always, that all determinations already made under the fifth section of the Nuisances Removal (Scotland) Act, 1856, shall be valid and effectual till recalled or varied under this Act.

Local Authorities to be Bodies Corporate. Committees may be appointed.

VII. The local authorities shall respectively be bodies corporate, designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of this Act; and the local authority may appoint any committee or committees of their own body to receive notices, to take proceedings, and in all or certain specified respects to execute this Act, whereof two shall be a quorum, unless a larger quorum be specified in their appointment; and such local authority or their committee, thereto duly authorised, may, by minute or other writing signed by the chairman of such body or committee, empower any officer or person to make complaints and take proceedings on their behalf; and all acts done or proceedings taken by or against such committee or officer or person shall be as valid as if they were done by or taken in the name of all the members of the local authority; and the local authority shall have power to commence or carry on all proceedings commenced, or which might have been commenced before the passing of this Act, by the local authority under any of the before repealed Acts, and shall be vested with all property or pecuniary claims so vested in such last-mentioned local authority.

Local Authority to appoint Sanitary Inspectors and other Officers.

VIII. The local authority may, and where it shall be thought necessary by the board for the purposes of this Act the local

authority shall, appoint a sanitary inspector or inspectors, who shall be also inspector or inspectors of common lodging houses, and a medical officer or medical officers, and may make bye-laws for regulating the duties of such inspectors and medical officers, which bye-laws shall not be effectual until they are approved of by the board; and the local authority shall appoint convenient places for their offices, and shall allow to every such inspector or medical officer on account of his employment a proper salary; and if no such inspector or medical officer is appointed the local authority shall, in all cases in which any duty is laid on them by this Act, appoint some person, where the same shall be necessary, to perform such duty, and shall remunerate him as they shall see fit; and the names and addresses and salaries of the said inspectors and medical officers shall be reported by the local authority to the board immediately on such persons being appointed and such salaries fixed; and the said inspectors and medical officers shall be bound to make such returns and special reports to the board as the board shall require them to make; and the said inspectors shall be removable from office only by the board, except in the case where the local authority is the town council or police commissioners or trustees in any burgh in Scotland having a local Act for police purposes, or having a population of ten thousand or upwards according to the census last taken, in which case the inspectors shall be removable from office by the local authority.

Powers of the Board to require Returns and examine Witnesses.

IX. It shall be lawful for the board, upon written application by two or more parties interested or upon the report of any of their inspecting officers, to inquire into the sanitary condition of any parish in Scotland, or into the sanitary condition of any burgh in Scotland not having a local Act for police purposes, or not having a population of ten thousand or upwards according to the census last taken, and also in these two latter cases with the consent of one of Her Majesty's principal secretaries of state, after duly considering any representation which may be made to him by any town council, stating that such consent ought not in the case of such burgh to be given; and for this purpose the board are hereby empowered to make inquiries, and require answers or returns to be made to the board upon any question or matter connected with or relating to the purposes of this Act, and also by a summons, signed by one of their number or by the secretary, to require the attendance of all such persons as they may think fit to call before them upon any such question or matter, and to administer oaths to and examine upon oath all such persons, and to require and enforce the production upon oath of all books, contracts, agreements, accounts, and writings,

or copies thereof respectively, in anywise relating to any such question or matter, or, in lieu of requiring such oath as aforesaid, the board may, if they think fit, require any such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined.

Power to Board to authorise Special Inquiries to be made.

X. It shall and may be lawful for the board, whenever it may seem fitting to them, with the consent of one of Her Majesty's principal secretaries of state or of Her Majesty's advocate for Scotland, to authorise and empower for a limited time one of the members thereof to conduct any special inquiry in any part of Scotland, and to report thereon to the board; and such member so authorised and empowered shall be entitled to summon and examine on oath witnesses and havers, and to exercise all such other of the powers by this Act given to the board as may be necessary for conducting such inquiry, and such member shall be reimbursed by the board of all expenses necessarily incurred by him in conducting such inquiry, and such expenses shall be deemed part of the expenses attending the execution of this Act, and be defrayed in the same manner as the general expenses of the board are now defrayed.

Power to Board to appoint Commissioners for conducting Special Inquiries.

XI. It shall and may be lawful for the board, whenever it may seem fitting to them, with the consent of one of Her Majesty's principal secretaries of state or of Her Majesty's advocate for Scotland, or whenever the board may be thereunto required by one of Her Majesty's said secretaries of state or by Her Majesty's advocate, to appoint some person, not being a member of the board, but being a member of the Faculty of Advocates, or a duly qualified medical practitioner, or an architect or surveyor or engineer, or two of such persons, to act as a commissioner or commissioners for the purpose of conducting any special inquiry for a limited period, and to report thereon; and the board shall delegate to every person so appointed for the purpose of conducting such inquiry all such of the powers of the board as they may deem necessary or expedient for summoning or examining witnesses and havers, and otherwise conducting such inquiry; and every such appointment shall be subject to the approval of one of Her Majesty's said secretaries of state or of Her Majesty's said advocate; and every person so appointed as aforesaid to conduct any special inquiry shall, before he enter on the execution of his duties, take an oath *de fideli administratione officii*, which oath may be administered to him by any member of the board, or by any one of the judges of the Court of Session,

or by the sheriff of any county; and it shall not be necessary to notify the appointment of any such commissioner otherwise than by intimating the same by letter under the hand of the secretary or of any member of the board to the sheriff of the county within which the inquiry in question is to be made; and every such commissioner shall be reimbursed by the board for all expenses necessarily incurred by him in conducting such inquiry, and shall also receive such reasonable remuneration for his time and trouble as may have been agreed upon between him and the said board, and approved of by the Commissioners of Her Majesty's Treasury, or by such person or persons as they shall name.

Power to Board to allow Expenses of Witnesses, &c.

XII. It shall be lawful for the board, in any case where they see fit, to order and allow such expenses of witnesses, and such expenses of or concerning the production of any books, contracts, agreements, accounts, or writings, or copies thereof, to or before the said board, or member thereof, or commissioner or commissioners, as such board may deem reasonable; and such expenses so ordered and allowed shall be deemed part of the expenses attending the execution of this Act, and be defrayed in the same manner as the general expenses of this board are now defrayed.

Penalties on Parties giving false Evidence or refusing to obey Summons of the Board.

XIII. If any person, upon any examination on oath under the authority of this Act, shall wilfully give false evidence, he shall be deemed guilty of perjury, and shall be liable to the pains and penalties thereof; and in case any person shall wilfully refuse to attend in obedience to any summons of the board, or member or commissioner authorised or appointed by the board as aforesaid, or to give evidence, or shall wilfully refuse to produce any books, contracts, agreements, accounts, and writings, or copies of the same, which may be required to be produced before the board, or member thereof, or commissioner or commissioners, or shall wilfully neglect or disobey any of the orders of the board, or member or commissioner, or be guilty of any contempt of the board or member or commissioner, such person being thereof lawfully convicted, shall forfeit and pay for the first offence any sum not exceeding five pounds, for the second and every subsequent offence any sum not exceeding twenty pounds nor less than five pounds.

Power to Board to appoint Clerks, &c.

XIV. The board are hereby empowered from time to time to appoint all such officers and clerks as they shall deem necessary,

and from time to time, at the discretion of the board, to remove such officers and clerks, or any of them, and to appoint others in their stead; provided that the amount of the salaries of such officers and clerks shall from time to time be regulated by the Commissioners of Her Majesty' Treasury; and the name of every person so appointed or removed as aforesaid shall forthwith be intimated to one of Her Majesty's principal secretaries of state for his approval, who shall be understood to approve of such appointment or removal, if no notice to the contrary be received by the board within twenty-one days from the day of the date of such intimation.

Salaries of Legal Members of Board.

XV. The sheriffs of Perth, Renfrew, and Ross and Cromarty shall each receive, so long as they act as members of the Board of Supervision, the sum of one hundred and fifty pounds sterling per annum, and such allowance shall come in place of the allowance of one hundred pounds sterling provided to the said sheriffs by the Act eighth and ninth of Her Majesty, chapter eighty-three, section four.

PART II.—REMOVAL OF NUISANCES.

Description of Nuisances under this Act.

XVI. The word "nuisance" under this Act shall include—

(*a*) Any insufficiency of size, defect of structure, defect of ventilation, want of repair or proper drainage, or suitable watercloset, or privy accommodation, or cesspool, and any other matter or circumstance rendering any inhabited house, building, premises, or part thereof, injurious to the health of the inmates, or unfit for human habitation or use:

(*b*) Any pool, watercourse, ditch, gutter, drain, sewer, privy, urinal, cesspool, or ashpit so foul as to be injurious to health, or any well or other water supply used as a beverage or in the preparation of human food, the water of which is so tainted with impurities or otherwise unwholesome as to be injurious to the health of persons using it, or calculated to promote or aggravate epidemic disease:

(*c*) Any stable, byre, pigstye, or other building in which any animal or animals are kept in such a manner as to be injurious to health:

(*d*) Any accumulation or deposit of manure or other offensive matter within fifty yards of any dwelling house within the limits of any burgh, or wherever situated, if inju-

rious to health, or any accumulation of police manure within a quarter of a mile of the municipal boundaries of any burgh (excepting the city of Glasgow), or any accumulation of deposits from ashpits or manure from town or village laid nearer than fifty yards to a public or parish road or dwelling house.

(*e*) Any work, manufactory, trade, or business injurious to the health of the neighbourhood, or so conducted as to be offensive or injurious to health, or any collection of bones or rags injurious to health:

(*f*) Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates:

(*g*) Any factory, workshop, or workplace, not under the operation of any general Act for the regulation of factories or bakehouses, and not kept in a cleanly state, or not ventilated in such a manner as to render harmless, as far as practicable, any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, and injurious or dangerous to the health of persons employed therein, or any such factory, workshop, or workplace as is so overcrowded, while work is carried on therein, as to be dangerous or injurious to the health of those employed therein:

(*h*) Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible matter used in such fireplace or furnace, and is used within any burgh, for working engines by steam, or in any mill, factory, dyehouse, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever:

(*i*) Any chimney (not being the chimney of a private dwelling house) sending forth smoke so as to be injurious to health:

Provided that in places where at the time of the passing of this Act no enactment is in force compelling fireplaces or furnaces to consume their own smoke, the foregoing enactment as to fireplaces and furnaces consuming their own smoke shall not come into operation until the expiration of one year from the date of the passing of this Act:

(*j*) Any churchyard, cemetery, or place of sepulture so situated or so crowded with bodies or otherwise so conducted as to be offensive or injurious to health:

Power of Entry to Local Authority or their Officers.

XVII. If the local authority or sanitary inspector have reasonable grounds for believing that nuisance exists in any premises,

such local authority or inspector may demand admission for themselves, the superintendent of police, and the medical officer, or any other person or persons whom the local authority may desire to inspect such premises, or for any or all of them, to inspect the same at any hour between nine in the morning and six in the evening, or at any hour when the operations suspected to cause the nuisance are in progress or are usually carried on; and if admission be refused, the local authority or sanitary inspector may apply to the sheriff, or to any magistrate or justice of the peace having jurisdiction in the place, stating on oath such belief; and such sheriff, magistrate, or justice may, with or without intimation to the owner, occupier, or person in charge of the premises, by order in writing, require the occupier or person having the custody of such premises to admit the local authority and others foresaid; and if such occupier or person refuse or fail to obey such order, he shall on conviction of such offence be liable to a penalty not exceeding five pounds; and on being satisfied of such failure or refusal, the sheriff, magistrate, or justice may grant warrant to such person or persons for immediate forcible entry into the premises; and if no such occupier or person can be discovered, or if no person is found on the premises to give or refuse admission, the local authority or their officers may enter the premises without any order or warrant, and forcibly, if need be.

Proceedings by Local Authority when Nuisances are ascertained to exist.

XVIII. In any case where the existence of a nuisance is ascertained to their satisfaction by the local authority, or is certified to them in writing, signed by the medical officer, or where the nuisance in the opinion of the local authority did exist at the time when demand of admission was made or the certificate was given, and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated, they may apply to the sheriff or to any magistrate or justice, by summary petition in manner hereinafter directed, and if it appear to his satisfaction that the nuisance exists, or, if removed or discontinued since the demand of admission was made or the certificate was given, that it is likely to recur or to be repeated, he shall decern for the removal or remedy or discontinuance or interdict of the nuisance as hereinafter mentioned; provided that in the cases under the heads marked (*e*) and (*g*) in section sixteen such application shall be made only on medical certificate as aforesaid, or on a requisition in writing under the hands of any ten inhabitants of the district of the local authority, and that in these cases, and the cases under the heads marked (*h*)

and (*i*) in said sections, shall be made only to the sheriff; and further, that in the cases under the head marked (*j*) in section sixteen it shall not be necessary to cite any person as the author of the nuisance, but such application shall be proceeded with by the sheriff (to whom alone it shall be made) after such intimation to the collector of the churchyard or other dues, or to such other person as to the sheriff shall seem meet; and such person or persons as shall appear after such intimation shall, if the sheriff think proper, be allowed to be heard and to object to such application in the same manner as if he or they were the author of the alleged nuisance within the meaning of this Act.

Form of Interlocutor.

XIX. It shall not be necessary to restrict such decree to any special remedy prayed for in the petition, but as the case shall require, the author of the nuisance or owner of the premises may be ordained to provide sufficient privy or watercloset or ashpit accommodation, means of drainage or ventilation for, or to repair, make safe and habitable, or to floor, pave, cleanse, whitewash, disinfect, or purify the dwellinghouse, building, or premises, or to drain, empty, cleanse, fill up, cover, repair, or remove any pool, ditch, gutter, watercourse, privy, cesspool, drain, or ashpit, or to shut up or purify any well, or to provide a substitute for that complained of, or to abstain from any operation which may pollute a well or stream from which the inhabitants obtain a supply of water, or to cease to use the water of any well or stream as a beverage or in the preparation of human food, or to remove the animal, or to carry away the offensive matter, or to discontinue the work, trade, manufactory, or business, or prevent the injurious effects thereof (according to the nature of the case), or to limit the number of persons who may be accommodated in any house or part thereof overcrowded, or the number of separate dwellings into which such house or part thereof may be divided or let for the use of separate families or persons, or to increase the means of ventilation, or to shut up or regulate the use of any churchyard, cemetery, or place of sepulture, or to do such other works or acts as are necessary to remove the nuisance complained of, in such manner and within such time as in the interlocutor shall be specified; and if the sheriff, magistrate, or justice is of opinion that such or the like nuisance is likely to recur, he may further grant interdict against the recurrence of it, or do otherwise, as the case may in his judgment require; and if the nuisance proved to exist be such as to render a house or building unfit for human habitation, he may prohibit the using thereof for that purpose until it is rendered fit for that purpose, or do otherwise as the case may in his judgment require.

Penalty for Contravention of Decree and of Interdict.

XX. If the said decree be not complied with in good and sufficient manner, and within the time appointed, the author of the nuisance, or the owner, as the case may be, shall be liable, in the case of nuisances specified in clauses (*a*), (*b*), (*c*), (*d*), (*f*), (*i*), and (*j*) in section sixteen of this Act, to a penalty of not more than ten shillings per day during his failure so to comply; and if the said interdict be knowingly infringed by the act or authority of the owner or occupier, such owner or occupier shall be liable for every such offence to a penalty not exceeding twenty shillings per day during such infringement; and in the case of nuisances specified in clauses (*e*), (*g*), and (*h*) in the said section, the party not complying with or infringing such decree shall be liable to a penalty not exceeding five pounds nor less than two pounds for the first offence, and of ten pounds for the second, and for each subsequent conviction a sum double the amount of the penalty in the last preceding conviction, but no penalty shall exceed two hundred pounds: Provided always, in the case of such last-mentioned nuisance (*h*), that if it appears to the sheriff that the best means then known to be available for mitigating the nuisance, or the injurious effects thereof, have not been adopted, he may suspend his final determination upon condition that the author of the nuisance shall undertake to adopt within a reasonable and definite time such means as he shall judge to be practicable, and order to be carried into effect, for mitigating or preventing such injurious effects.

Order when Structural Works are required.

XXI. When it shall appear to the sheriff, magistrate, or justice that the execution of structural works is required for the removal or remedy of a nuisance, he may appoint such works to be carried out under the direction and subject to the approval of any person he may appoint; and he may, before making his order, require the local authority, within a time to be specified by him, to furnish him with an estimate of the cost of the required works.

Local Authority to do Works on Owner's or Occupier's Default, or if Person causing Nuisance cannot be found.

XXII. In case of noncompliance with or infringement of any decree aforesaid, the sheriff, magistrate, or justice may, on application by the local authority, grant warrant to such person or persons as he may deem right to enter the premises to which such decree relates, and remove or remedy the nuisance thereby condemned or interdicted, and do whatever may be necessary in execution of such decree; or if in the original application it appears

to his satisfaction that the author of the nuisance is not known or cannot be found, then such decree may at once ordain the local authority to execute the works thereby directed; and all expenses incurred by the local authority in executing the works may be recovered from the author of the nuisance or the owner of the premises.

Manure, etc., to be sold.

XXIII. Any article or articles removed by the local authority in pursuance of this Act may be sold by public roup, after not less than five days' notice by printed handbills posted in the locality, except in cases where delay would be prejudicial to health, or in which the article or articles are not of the value of two pounds or upwards, in which case the sheriff, magistrate, or justice may, by writing under his hand, order the immediate removal, sale, or destruction of the thing, and the proceeds of the sale shall be retained by the local authority, and applied *pro tanto* in payment of all expenses incurred under this Act with reference to such nuisance; and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such thing; and the balance of such expenses shall be defrayed, if such proceeds are insufficient for that purpose, by the author of the nuisance or the owner of the premises.

Foul Ditches, etc., may be replaced by Sewers.

XXIV. Whenever any watercourse, ditch, gutter, or drain along the side of any public road, street, or lane shall be used or partly used for the conveyance of any water, sewage, or other matter from any premises, and cannot in the opinion of the local authority be rendered free from foulness or offensive smell without the laying down of a sewer or of some other structure, such local authority shall and they are hereby required, subject to the approval of the board, to lay down such sewer or other structure within the limits of their district, or, where necessary for the purpose of outfall or distribution of sewage, without their district, and to keep the same in good and serviceable repair; and they may enter any premises for such purposes, and use such part thereof as shall be necessary, and for such use shall pay such damages as may be assessed by the sheriff on a summary application, and to such party as the sheriff may direct: Provided always, that no damage shall be payable to any person who has caused or contributed to cause such watercourse, ditch, gutter, or drain to become foul or offensive, unless such person shall satisfy the sheriff that he had justifiable excuse for so doing; and such local authority are hereby authorised and empowered to assess the owners of all the premises (according to the yearly value thereof)

from which then or at any time thereafter any material other than pure water flows, falls, or is carried into the said sewer or other structure, for payment of all expenses incurred in making and maintaining the same, and that either in one sum or in instalments, as they shall think just and reasonable, and after fourteen days' notice at the least left with the said owners, if resident within the district, and if not so resident with the occupiers of the said premises, to levy and collect the sums so assessed, with the same remedies in case of default in payment thereof as are hereinafter provided with reference to the general charge and expenses incurred by the local authority under this Act.

Act not to affect Navigation of Rivers or Canals, or Irrigation of Lands.

XXV. Nothing in this Act contained shall enable any local authority or other person to injuriously affect—

(1.) The irrigation of lands in a rural district, or the supply of water used for such irrigation;

(2.) The supply of water required for the purposes of any water-works established by Act of Parliament, or of the compensation water required to be given by the owners of such waterworks, unless the local authority shall have previously obtained the consent of such owners;

(3.) The navigation on or use of any river, canal, dock, harbour, lock, reservoir, or basin in respect of which any persons are by virtue of any Act of Parliament entitled to take tolls or dues, or the supply of water to the same, or any bridges crossing the same, or any towing-path thereon:

Provided always, that it shall not be lawful for the local authority to execute any works in, through, or under any wharves, quays, docks, harbours, locks, reservoirs, or basins without the consent in writing in every case of the persons entitled by virtue of any Act of Parliament to take tolls or dues in respect thereof, and such persons may at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the inspector to the local authority, take up, divert, or alter the level of any sewers and drains, culverts or pipes, constructed by any local authority, and passing under or interfering with such rivers, canals, docks, harbours, reservoirs, or basins, or the towing-paths thereof, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

Penalty on Sale of unwholesome Meat.

XXVI. The sanitary inspector may at all reasonable times enter any premises to inspect and examine any carcass, meat,

poultry, game, flesh, fish, fruit, or vegetables exposed for sale, or which there is probable cause for believing to be intended for human food; and in case any such carcass, meat, poultry, game, flesh, fish, fruit, or vegetables appear to him to be unfit for such food, the same may be seized without any warrant; and if it appear to the sheriff, or any two magistrates or justices, that any such carcass, meat, poultry, game, flesh, fish, fruit, or vegetables are unfit for the food of man, he or they shall, by a writing under his or their hand or hands, order the same to be destroyed, or to be so disposed of as to prevent the same being exposed for sale or used for such food; and the person to whom such carcass, meat, poultry, game, flesh, fish, fruit, or vegetables belong, or in whose custody the same are found, shall be liable to a penalty not exceeding ten pounds for such carcass, piece of meat or flesh, or for any quantity of fish, poultry, game, fruit, or vegetables, or any refuse thereof, and also to pay all expenses caused by the seizure, detention, or disposal thereof.

Penalty for causing Water to be corrupted by Gas Washings, etc.

XXVII. Any person engaged in the manufacture of gas, naphtha, vitriol, paraffine, or dye stuffs, or any other deleterious substance, or in any trade in which the refuse produced in any such manufacture is used, who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, well, or pond, or place for water, constructed or used for the supply of water for domestic purposes, or into any pipe or drain communicating therewith, any product, washing, or other substance produced in any such manufacture, or shall wilfully do any act connected with any such manufacture whereby the water in any such stream, reservoir, aqueduct, well, pond, or place for water shall be fouled, and any person who shall wilfully do or permit to be done any Act whereby the water in any stream, reservoir, aqueduct, well, pond, or place constructed for the supply of water for domestic purposes shall be fouled, shall forfeit for every such offence a sum not exceeding fifty pounds.

Such Penalties, etc., to be sued for within Six Months.

XXVIII. Such penalty may be recovered, with expenses, by the person into whose water such product, washing, or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, or if there be no such person, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

Daily Penalty during the Continuance of the Offence.

XXIX. In addition to the said penalty (and whether such penalty shall have been recovered or not), the person so offending shall forfeit a sum not exceeding five pounds (to be recovered in the like manner) for each day during which such product, washing, or other substance shall be brought or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person by the local authority, or by the person into whose water such product, washing, or other substance shall be brought or flow, or whose water shall be fouled thereby, and such penalty shall be paid to the local authority or person from whom such notice shall proceed; and all monies recovered by the local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

Offensive Trades to be subject to Regulations.

XXX. The business of a blood boiler, bone boiler, tanner, slaughterer of cattle, horses, or animals of any description, soap boiler, skinner, tallow melter, tripe boiler, or other business, trade, or manufacture injurious to health, shall not, after the passing of this Act, be newly established or enlarged in any building or place within any burgh or village, or within five hundred yards therefrom, without the consent in writing of the local authority previously had and obtained, and published in one or more newspapers circulating within the district; and if any question arises under this section as to the existence or limits of a burgh or village, or as to the extent included within the said five hundred yards, or as to whether a business, trade, or manufacture, other than those above specified, is injurious to health, or as to whether such consent ought to have been given, any such question shall be finally determined by the board; and the party dissatisfied may bring the same before the board within twenty-one days after the resolution or order of the local authority has been published as aforesaid; and any person contravening this enactment shall, in addition to discontinuance of such business, trade, or manufacture, be liable for each offence to a penalty not exceeding fifty pounds, and a further penalty of not exceeding forty shillings for each day during which the offence is continued; and the local authority may from time to time make such bye-laws with respect to any such businesses so newly established as they may think necessary, and in order to prevent or diminish the noxious or injurious effect thereof.

Part III.—Prevention and Mitigation of Diseases under Order in Council.

Privy Council empowered to issue Orders for Prevention of Diseases.

XXXI. Whenever any part of the United Kingdom appears to be threatened with or is affected by any formidable epidemic, endemic, or contagious disease, the Lords and others of Her Majesty's Most Honourable Privy Council, or any three or more of them (the Lord President of the Council or one of Her Majesty's principal secretaries of state being one), may, by order or orders by them from time to time made, direct that the provision for the prevention of diseases contained in part III. hereof be put in force in Scotland, or in such parts thereof or in such places therein as in such order or orders may be expressed, and may from time to time, as to all or any of the parts or places to which any such order or orders extend, and in like manner, revoke or renew any such order; and subject to revocation and renewal as aforesaid, every such order shall be in force for six calendar months, or for such shorter period as in such order shall be expressed; and every such order of Her Majesty's Privy Council or any members thereof as aforesaid shall be certified under the hand of the clerk in ordinary of Her Majesty's Privy Council, and shall be published in the *Edinburgh Gazette*, and such publication shall be conclusive evidence of such order.

When Order is issued, Board to be vested with certain Powers—Power to appoint a Medical officer and additional Clerks.

XXXII. When any such order has been issued, the board shall be vested with the powers after provided; and it shall be lawful for Her Majesty to appoint the sheriff of any county in Scotland, other than Renfrew, Perth, or Ross and Cromarty, to be an additional member of the board during the subsistence of such order, and such sheriff shall receive such remuneration as the Commissioners of Her Majesty's Treasury may think proper, not exceeding one hundred and fifty pounds per annum, to be paid out of money to be voted for that purpose by Parliament; and the board may also appoint a general or superintending medical officer to act under their directions during such period, and such officer shall receive a salary to be fixed and paid in like manner; and the board may, with the sanction of the said Commissioners of Her Majesty's Treasury, employ such additional clerks as may be necessary during such period; and the salary of such clerks and the office expenses incurred under this Act shall be defrayed in the same manner as the general expenses of the board are now defrayed.

Power to Board to issue Regulations to carry out such Provisions of Order—Local Extent and Duration of the Regulations of the Board—Publication of Rules and Regulations.

XXXIII. From time to time, after the issuing of any such order as aforesaid, and whilst the same continues in force, the board may issue such directions and regulations as they shall think fit for the prevention, as far as possible, or mitigation of such epidemic, endemic, or contagious diseases, and from time to time may revoke, renew, and alter any such directions and regulations; and the same shall extend to all parts and places in which the provisions of this Act for the prevention and mitigation of disease shall, for the time being, be put in force under such orders as aforesaid, unless such directions and regulations be expressly confined to some of such parts or places, and then to such parts or places as therein are specified; and (subject to the power of revocation and alteration herein contained) such directions and regulations shall continue in force so long as the said provisions of this Act shall, under such order, be applicable to the same parts or places; and all such directions and regulations shall be published by being inserted in the *Edinburgh Gazette*, which publication shall be conclusive evidence thereof, and may be further published, and may be specially communicated to any local authority, by the secretary of the board, as the board may direct.

Orders of Council, Directions and Regulations of Board, to be laid before Parliament.

XXXIV. Every order of Her Majesty's Privy Council, and direction and regulation of the board under part III. of this Act, shall be laid before both Houses of Parliament forthwith upon the issuing thereof, if Parliament be then sitting, and if not, then within fourteen days next after the commencement of the then next session of Parliament.

Matters to be provided for by such Regulations—Local Authority shall execute Regulations, and may direct Prosecution for violating the same.

XXXV. The board, by such directions and regulations, may provide.

For the speedy interment of the dead:

For house to house visitation:

For the dispensing of medicines, and for affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases such medical aid and such accommodation as may be required:

For any such matters or things as may to them appear advisable for preventing or mitigating such diseases:

And the local authority shall superintend and see to the execution of such directions and regulations, and shall do and provide all such acts, matters, and things as may be advisable for mitigating such disease, or for superintending or aiding in the execution of such directions and regulations, or for executing the same, as the case may require, and may direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any such directions and regulations, and such wilful violation or neglect shall be deemed to be an offence under this Act.

Power for Local Authority, &c., to enter Premises.

XXXVI. The local authority acting in the execution of such directions and regulations, or the officers or persons by them in this behalf authorised, may enter at reasonable times in the daytime and inspect any premises where they have ground for believing that any person has recently died of any such disease, or that necessity may otherwise exist for executing in relation to the premises any of such directions and regulations.

When Order in Council in force, overcrowded Houses to come under Common Lodging Houses Provisions.

XXXVII. When any such order of Council is in force in any place, on the certificate of a sanitary inspector, or of a medical officer, or of two duly qualified medical practitioners, or other sufficient evidence, that any house or part of a house is so overcrowded as to be dangerous to health, the local authority shall have power to regulate the same according to the provisions of this Act in reference to common lodging houses.

Order in Council to extend to Ports and Arms of the Sea.

XXXVIII. All orders of Council for executing this Act shall extend to ports and arms of the sea lying within the jurisdiction of the Admiralty, and adjacent to the places to which orders relate; and the board may issue, under the said orders, directions and regulations for cleansing, purifying, ventilating, and disinfecting, and preventing disease in ships and vessels, as well upon arms and ports of the sea aforesaid as upon inland waters.

Part IV.—General Prevention and Mitigation of Disease.

Power to provide Hospitals.

XXXIX. The local authority may provide within their district

hospitals or temporary places for the reception of the sick, for the use of the inhabitants.

Such authority may build such hospitals or places of reception, provided the board approve of the situation and construction thereof, or they may make contracts for the use of any existing hospital or part of an hospital, or for the temporary use of any place for the reception of the sick.

Such authority may enter into any agreement with any person or body of persons having the management of any hospital for the reception of the sick inhabitants of their district, on payment by the local authority of such annual or other sum as may be agreed upon.

Two or more contiguous local authorities having respectively the power to provide separate hospitals may combine in providing a common hospital, provided the board approve of the situation and construction thereof, and all expenses incurred by such authorities in providing such hospital shall be deemed to be expenses incurred by them respectively in carrying into effect the purposes of this Act, and if any question shall arise as to the allocation of expenses, the same shall be determined by the board, whose decision shall be final; and such common hospital shall be deemed to be for the purposes of this Act an hospital within the district of each of the local authorities so combining.

Power to provide Means of Disinfection, and Carriages for Conveyance of infected Persons.

XL. The local authority in each district may provide a proper place, with all necessary apparatus and attendance, for disinfection of woollen or other articles, clothing, or bedding which have become infected, and they may cause any articles brought for disinfection to be disinfected free of charge; and it shall be lawful at all times for the local authority to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to pay the expense of conveying any person therein or otherwise to an hospital or place for the reception of the sick or to his own home; and further, if the local authority shall be of opinion, upon the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check contagious or infectious disease, it shall be the duty of the local authority to give notice in writing, requiring the occupier or owner of such house or part thereof to cleanse and disinfect the same; and if the person to whom notice is so given fail to comply therewith within the time specified in the notice, he shall be liable to a penalty not exceeding one pound for every day during which he continues to make default; and

the local authority shall cause such house or part thereof to be cleansed and disinfected, and may recover the expenses incurred from the occupier or owner; and when such occupier or owner is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out such cleansing and disinfection, the local authority may, at their own expense, cleanse and disinfect such house or part thereof, and any such articles therein.

Local Authority may erect public Waterclosets, etc.

XLI. The local authority may erect such public waterclosets, privies, and urinals, and in such situations, as they may think fit, and may defray the expense thereof, and of keeping the same in repair and in good order, and shall cause such privies to be cleansed daily; and the local authority may also, by written notice to the owner or occupier of any schoolhouse or of any factory or building in which more than ten persons are employed at one time in any manufacture, trade, or business, require them or either of them, within a time specified, to construct a sufficient number of waterclosets or privies for the separate use of each sex; and any person failing to comply with such notice shall be liable for each offence in a penalty not exceeding twenty pounds.

Removal of Persons sick of infectious Disorders, and without proper Lodging, in any District.

XLII. Where an hospital or place for the reception of the sick is provided or exists within the district of a local authority, the sheriff or any magistrate or justice may, on the application of the local authority, with the consent of the superintending body of such hospital or place, by order on a certificate signed by a legally qualified medical practitioner, direct the removal to such hospital or place for the reception of the sick, at the cost of the local authority, of any person suffering from any dangerous, contagious, or infectious disorder, and being without proper lodging or accommodation, or lodged in a room occupied by others besides those in attendance on such person, or being on board any ship or vessel, or may direct the removal from the room occupied by such person of all others not in attendance on him, the local authority providing suitable accommodation for such other persons.

Places for the Reception of Dead Bodies may be provided at the Public Expense. Burial of Dead Bodies.

XLIII. Any local authority may provide a proper place for the reception of dead bodies, and where any such place has been provided, and any dead body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or

any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, the sheriff or any magistrate or justice may, on a certificate signed by a legally qualified medical practitioner, order, by a writing under his hand, the body to be removed to such proper place of reception at the cost of the local authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the local authority to bury such body; and it shall also be the duty of the local authority to bury any dead body found within the district, and which is unclaimed, or which no sufficient person undertakes to bury; but any expense so incurred in regard to any such burial may be recovered by the local authority in a summary manner from any person legally liable to pay the expense of such burial.

In Burghs, etc., the Local Authority may make regulations as to Lodging Houses, with consent of the Board.

XLIV. The local authority having jurisdiction under this Act in any burgh or populous place containing, according to the census last taken, a population of not less than one thousand inhabitants, may, after publication of the proposed regulations in one or more newspapers circulating in the district for one month, make, with consent of the board, regulations for all or any of the following matters; that is to say,

1. For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family:
2. For the registration of houses thus let or occupied in lodgings:
3. For the inspection of such houses, and the keeping the same in a cleanly and wholesome state:
4. For enforcing therein the provision of privy accommodation, or watercloset accommodation, and other appliances and means of cleanliness in proportion to the number of lodgings and occupiers, and the cleansing and ventilation of the common passages and staircases:
5. For the cleansing and limewhiting at stated times of such premises:
6. For the enforcement of the above regulations by penalties not exceeding forty shillings for any one offence, with an additional penalty not exceeding twenty shillings for every day during which a default in obeying such regulations may continue.

Rules as to underground Dwellings.

XLV. It shall not be lawful to let separately, except as a warehouse or storehouse, or to suffer to be occupied as a dwelling place, any cellar whatsoever, or any vault or underground room (not being entirely open on one or other of its sides), which vault or room shall be less in height from the floor to the ceiling than seven feet in the case of houses built prior to the passing of this Act, or less in height than eight feet in the case of houses built subsequently to the passing hereof, or which shall be less than one third of its height above the level of the street or ground adjoining the same, or otherwise shall not have three feet at least of its height from the floor to the ceiling above the said level, with an open area of two feet six inches wide from the level of the floor of such vault or room up to the level of said street or ground, or which shall not have appurtenant thereto the use of a watercloset or privy and ashpit, or which shall not also have a glazed window made to open to the full extent of the half thereof, the area of which is not less than nine superficial feet clear of the frame, and a fireplace with a chimney or flue, or which vault or underground room being an inner or back vault or cellar let or occupied along with a front vault or room, as part of the same letting or occupation, has not a ventilating flue (unless such inner or back vault or room shall be part of a house built before the passing of this Act), or which shall not be well and effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor of such vault, cellar, or room, after the local authority have given notice to the owners thereof that the letting of such cellars, vaults, or underground rooms as dwelling places is prohibited from that time forth; and it shall be the duty of the local authority to issue such notices from time to time, as soon as is convenient, until such notice has been given with respect to every cellar, vault, or underground room occupied as a dwelling house within the district; and it shall not be lawful, after such notice, to let or continue to let, or to occupy or suffer to be occupied, separately, as a dwelling house, any such cellar, vault, or underground room.

Penalty on letting underground Dwellings.

XLVI. Every person who lets separately, or who knowingly suffers to be occupied for hire as a dwelling, any vault, cellar, or room contrary to the provisions of this Act, shall be liable to a penalty not exceeding twenty shillings for every day during which such vault, cellar, or room is so occupied after conviction of the first offence.

Cases in which Two Convictions have occurred within Three Months.

XLVII. Where two convictions against the provisions of this Act relating to the overcrowding of any house, or the occupation of any cellar, vault, or underground room as a separate dwelling place, shall have taken place within the period of three months, whether the person so convicted were or were not the same, it shall be lawful for the sheriff or any magistrate or justice to direct the closing of such premises for such time as he may deem necessary, and, in the case of cellars occupied as aforesaid, to empower the local authority to permanently close the same in such manner as they may deem fit.

Penalty on Person suffering from infectious Disorder entering public Conveyance without notifying to Driver that he is so suffering.

XLVIII. If any person suffering from any infectious disorder shall enter, or any person in charge of a person so suffering shall place such person in any steamboat, sailing vessel, railway carriage, stage coach, hackney carriage, or other public conveyance, without previously notifying to the owner or person in charge thereof that such person is so suffering, the person so contravening this provision shall, on conviction thereof before any sheriff, magistrate, or justice, be liable to a penalty not exceeding five pounds; and no owner or person in charge of any public conveyance shall be bound to convey any person so suffering.

Penalty on any Person with infectious Disorder exposing himself, or on any Person in charge of such Sufferer causing such exposure.

XLIX. Any person suffering from any infectious disorder who wilfully exposes himself, without proper precaution against spreading the said disorder, in any street, public place, or public conveyance, and any person in charge of one so suffering who so exposes the sufferer, and any owner or person in charge of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or person in charge, conveyed any such sufferer, and any person who, without previous disinfection, knowingly gives, lends, sells, transmits, or exposes any bedding, clothing, rags, or other things which have been exposed to infection from such disorders, shall, on conviction of such offence before the sheriff or any magistrate or justice, be liable to a penalty not exceeding five pounds: Provided that no proceedings under this section shall be taken against persons transmitting with proper precau-

tions any such bedding, clothing, rags, or other things, for the purpose of having the same disinfected.

Penalty on Persons letting Houses in which infected Persons have been lodging.

L. If any person knowingly lets any house, room, or part of a house in which any person suffering from any infectious disorder has been to any other person without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner, as testified by a certificate given by him, and lodged with the sanitary inspector or other person appointed to perform the duties of sanitary inspector, such person shall be liable to a penalty not exceeding twenty pounds. For the purposes of this section the keeper of an inn or hotel shall be deemed to let part of a house to any party admitted as a guest into such inn or hotel.

Removal of Manure in Mews, &c.

LI. Where notice has been given by the local authority or their officer or officers for the periodical removal of manure or other refuse matter from mews, stables, or other premises (whether such notice shall be by public announcement in the locality or otherwise), and subsequent to such notice the person or persons to whom the manure or other refuse matter belongs shall not so remove the same, or shall permit a further accumulation, and shall not continue such periodical removal at such intervals as the local authority or their officer or officers shall direct, he or they shall be liable, without further notice, to a penalty of not exceeding twenty shillings per day for every day during which such manure or other refuse matter shall be permitted to accumulate, such penalty to be recovered in a summary manner.

Provision as to Ships within the Jurisdiction of Local Authority.

LII. Any ship lying in any river, harbour, or other water shall be subject to the local authority of the district within or *ex adverso* of which such river, harbour, or other water is situate, and to the sheriff, magistrates, and justices of the peace having jurisdiction in such district, and shall be within the provisions of this Act in the same manner as if such ship were a house within such district, and the master or other officer in charge of such ship shall be deemed for the purposes of this Act to be the occupier of such ship; but this section shall not apply to any ship belonging to Her Majesty or to any foreign government.

Provision as to District of Local Authority extending to Places where Ships are lying.

LIII. For the purposes of this Act, any ship that is in a place within three miles of the coasts of Scotland, and not within the district of a local authority, shall be deemed to be within the district of such local authority as may be prescribed by the board, and until a local authority has been prescribed then of the local authority whose district nearest adjoins the place where such ship is lying, the distance being measured in a straight line.

Medical Officer of Parish to be allowed to charge for attending Sick on board any Ship, and to be paid by Captain.

LIV. Whenever, in compliance with any regulation of the board which they may be empowered to make under this Act, any medical officer shall perform any medical service on board of any ship, such medical officer shall be entitled to charge extra for any such service, at the general rate of his allowance for his services for the parish or place for which he is appointed, and such charges shall be payable by the person in charge of the ship, on behalf of the owners, together with any reasonable expenses for the treatment of the sick; and if such services shall be rendered by any medical practitioner who is not a medical officer, he shall be entitled to charge for any service rendered on board, with extra remuneration on account of distance, at the same rates as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid; and in case such charges be not paid, the medical officer or practitioner may bring an action against the person in charge of such ship for the same, and the ship, cargo, and tackle thereof shall be subject to a lien for the amount of such charges.

Power to remove to Hospital sick Persons brought by Ships.

LV. Any local authority may, with the sanction of the board, lay down rules for the removal to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship who are infected with an infectious disorder, and they may by such rules impose any penalty not exceeding five pounds on any person committing any offence against the same.

Description of Ships within Provisions of 6 *G.* 4. *c.* 78., *and Power to reduce Penalties imposed thereby.*

LVI. Every ship having on board any person affected with a

dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, intituled "An Act to repeal the several Laws relating to Quarantine, and to make other Provisions in lieu thereof," although such ship has not commenced the voyage, or has come from or is bound for some place in the United Kingdom; and nothing in this Act contained shall interfere with or prevent the execution of any orders, regulations, or restrictions to be made by the lords and others of Her Majesty's Privy Council pursuant to the said Act; and any expenses incurred by any local authority in carrying into effect such orders, regulations, or restrictions shall be deemed to be expenses incurred by them in carrying into effect this Act; and all penalties imposed by the said Act of the sixth year of King George the Fourth, chapter seventy-eight, may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or court think just.

Power to defray Cost of Vaccination in certain Cases.

LVII. The local authority may defray the cost of vaccinating such persons as to them may seem expedient, not being paupers or the children of paupers, or persons ordered to be vaccinated in terms of the eighteenth section of the Act twenty-six and twenty-seven Victoria, chapter one hundred and eight.

Power to provide Grounds for public Recreation.

LVIII. The local authority may provide, maintain, lay out, and improve grounds for public recreation, and support or contribute towards any premises provided for such purposes by any person whomsoever.

Part V.—Regulation of Common Lodging Houses.

Common Lodging Houses to be registered.

LIX. The local authority shall cause a register to be kept, in which shall be entered the names and residences of the keepers of all common lodging houses within the district of the local authority, and the situation of every such house, and the number of lodgers authorised according to this Act to be kept therein, and in each apartment thereof; and the local authority may refuse to register as the keeper of a common lodging house any person who does not produce to the local authority a certificate of character, in such form as the local authority shall direct, signed by three inhabitant householders of the parish respectively assessed for the relief of the poor of the parish within which such

lodging house is situate; and the local authority may, from time to time, on the approval of the board, raise or diminish the sum payable per night, according to which, as hereinbefore mentioned, it is ascertained whether a house or part thereof is a common lodging house, but so as not to exceed sixpence per night.

No Lodger to be received in Common Lodging House till it has been inspected and registered.

LX. From and after the date when this Act shall come into operation, it shall not be lawful to keep or use as a common lodging house any house, not being a licensed victualling house, or to receive or retain any lodgers therein, unless such house shall have been inspected and approved for that purpose by the inspector of common lodging houses for the district, and shall have been registered as by this Act provided; and if any person shall contravene this enactment he shall be guilty of an offence under this Act.

Evidence of Register.

LXI. A copy of an entry made in a register kept under this Act, purporting to be certified by the person having the charge of such register, to be a true copy, shall be received in all courts and on all occasions whatsoever as evidence, and shall be *primâ facie* proof of all things therein registered, without the production of the register, or of any document, act, or thing on which the entry is founded, or proof of the signature; and every person applying at a reasonable time shall be furnished by the person having such charge with a certified copy of any such entry for payment of twopence.

Power to Local Authority to make Rules and Regulations respecting Common Lodging Houses, to take effect when confirmed by the Board.

LXII. The local authority may from time to time make rules and regulations respecting common lodging houses within its jurisdiction for the well ordering of such houses, and for the separation of the sexes therein, and for fixing the number of lodgers which may be received in each such house, and in each room therein, and for promoting the cleanliness and ventilation of such houses, and with respect to the inspection thereof, and the conditions and restrictions under which such inspection may be made; and the said local authority may, by any such rules and regulations, impose upon offenders against the same such reasonable penalties as they shall think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding the sum of forty shillings

for each day after written notice of the offence from the said local authority; and the said local authority may alter or repeal any such rules and regulations; Provided always, that all such rules and regulations imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty: Provided also, that such rules and regulations shall not be of any force or effect until the same be submitted to and confirmed by the board, who are hereby empowered to confirm or disallow the same as they may think proper: Provided further, that no such rules and regulations shall be confirmed unless notice of the intention to apply for confirmation of the same shall have been given in one or more of the public newspapers usually circulated within the parish or place to which such byelaws relate one month at least before the making of such application; and for one month at least before any such application a copy of the proposed rules and regulations, in writing, signed by the chairman of the meeting at which they were made, shall be kept at the office or usual place of meeting of the local authority, and be open during business hours thereat for the inspection of parties assessed to the relief of the poor in such parish or place, without fee, and the local authority shall cause every such party assessed as aforesaid who shall apply for the same to be furnished with a copy thereof, on payment of sixpence for every one hundred words contained in such copy.

Such Rules and Regulations, when confirmed, to be printed, and furnished gratis to Keepers of Common Lodging Houses.

LXIII. All such rules and regulations made by the local authority in pursuance of this Act shall, when confirmed as aforesaid, be printed, and hung up in the office or usual place of meeting of the said local authority, and copies thereof shall be furnished gratis to every keeper of a common lodging house, and such keeper shall be bound to keep a copy thereof hung up in some conspicuous place in each room in which lodgers are received, and copies shall also be furnished to any party assessed as aforesaid, upon application, and payment of one penny each for the same; and a copy of such rules and regulations, purporting to be signed by the secretary of the board, shall be received in evidence of such regulations, and of the duly making and confirming thereof, without proof of the signature.

Power to Local Authority to require an additional Supply of Water to Common Lodging Houses.

LXIV. Where it appears to the local authority that a common lodging house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, the local authority may, by notice in writing,

require the owner or keeper of the common lodging house, within a time specified therein, to obtain such supply, and to execute all works necessary for that purpose; and if such notice be not complied with accordingly, the local authority may remove the common lodging-house from the register until it be complied with.

Power to Local Authority to order Reports from Keepers of Common Lodging Houses.

LXV. The keeper of a common lodging house shall from time to time, if required by any order of the local authority served on such keeper, report to the local authority, or to such person or persons as the said local authority shall direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the persons so ordered to report, which schedules they shall fill up with the information required, and transmit to the local authority.

Local Authority may remove sick Persons from Common Lodging Houses to Hospitals, &c.

LXVI. When a person in a common lodging house is ill of fever or any infectious or contagious disease, the local authority may cause such person to be removed to a hospital or infirmary, with the consent of the authorities thereof, where different from the local authority, and on the certificate of the medical officer of the parish, or of any qualified medical practitioner, that the disease is infectious or contagious, and that the patient may be safely removed; and the local authority may, so far as they think requisite for preventing the spread of disease, cause any clothes or bedding used by such person to be disinfected or destroyed, and may pay to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation for the injury or destruction thereof, the amount of such compensation being first certified in writing upon a list of such articles.

As to giving Notice of Fever, &c., occurring in Common Lodging Houses.

LXVII. The keeper of a common lodging house shall, when a person in such house is ill of fever or any infectious or contagious disease, give immediate notice thereof either to the medical officer or to the inspector of common lodging houses, or the inspector of the poor of the parish in which such common lodging house is situated, who shall forthwith inform the local authority and the medical officer that such notice has been received, and thereupon the medical officer shall forthwith visit and report on the case.

As to Inspection of Common Lodging Houses.

LXVIII. The keeper of a common lodging house shall, at all times when required by any officer of the local authority, give him free access to such house and every part thereof.

As to Cleansing of Common Lodging Houses.

LXIX. The keeper of a common lodging house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, ashpits, cesspools, and drains thereof, to the satisfaction of the inspector, and so often as shall be required by or in accordance with any regulation of the local authority, and shall well and sufficiently, and to the like satisfaction, lime-wash the walls and ceilings thereof in the first week of each of the months of *April* and *October* in every year, and at such other times as the local authority may by special order appoint or direct.

Conviction for Third Offence, &c., to disqualify Persons from keeping Common Lodging Houses.

LXX. Where a keeper of a common lodging house is convicted of a third or any subsequent offence under this Act, it may be adjudged as the punishment or part of the punishment for such offence that he shall not, at any time within five years, or any shorter period after such conviction, keep or have or act in the care or management of a common lodging house, without the previous license in writing of the local authority, which license the local authority may withhold, or may grant on such terms and conditions as they think fit.

Part VI.—Sewers, Drains, and Water Supply.

Sewers to be vested in Local Authority.

LXXI. All sewers presently existing within a district, and not being private property, or not being and continuing under the management of persons appointed by the Crown or by Act of Parliament, shall be vested in the local authority: Provided always, that nothing in this Act contained shall affect the rights of any person or persons to the property or management of any sewers in virtue of any existing local or general police statute.

Power to purchase Sewers.

LXXII. The local authority may in terms of the Lands Clauses Acts, acquire the rights and powers vested in any person to make sewers, or to use any sewer, with or without the buildings

and other things thereto pertaining; provided that they shall make compensation for the rights so acquired, and shall also make compensation to the proprietors and occupiers of any lands and heritages which may be damaged by reason of the exercise of the powers hereby conferred, in terms of the said last-mentioned Acts.

Power to make Sewers—Sewers to be Cleansed.

LXXIII. The local authority shall have power to construct within their district, and, also when necessary for the purpose of outfall or distribution of sewage, without their district, such sewers as they may think necessary for keeping their district properly cleansed and drained, and may carry such sewers through, across, or under any turnpike or other road, or any street or place, or under any cellar or vault which may be under the foot pavement or carriageway of any street or road, and after reasonable notice in writing (if upon the report of surveyor it should appear to be necessary), into, through, or under any lands whatsoever, and from time to time to enlarge, lessen, alter, arch over, or otherwise improve, or to close up or destroy all sewers vested in them, provided no nuisance is created by such operations; and if any person is thereby deprived of the lawful use of any sewer, the local authority shall provide another sufficiently effectual for his use. The local authority shall cause their sewers to be so constructed, kept, and cleansed as not to be a nuisance, and for the purpose of cleansing and emptying them may construct and place either above or under ground, such reservoirs, sluices, engines, or other works as may be necessary, and may cause such sewers to communicate with and be emptied into such places as may be fit and necessary either within their district, or if necessary for the purpose of outfall or distribution of sewage, without their district, and to cause the sewage and refuse therefrom to be collected for sale or for any purpose whatsover, but so as not to create a nuisance.

Powers of utilising Sewage.

LXXIV. The local authority may from time to time, for the purpose of utilising sewage, agree with any person as to the supply of such sewage or the distribution thereof over land, and as to the works to be made for the purpose of such supply or distribution, and as to the parties to execute the same and to bear the costs thereof, and as to the sums of money, if any, to be paid for that supply; provided that no contract shall be made for the supply of sewage for a period exceeding five years, unless with the authority of the board, and not for any period exceeding twenty-five years; and the local authority may contract for, purchase, or take on lease any lands, buildings, engines, materials,

or apparatus for the purpose of receiving, storing, disinfecting, or distributing sewage.

Power of Entry.

LXXV. In case it shall become necessary to enter, examine, or lay open any lands or premises for the purpose of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, making or repairing, altering or enlarging sewers or drains, or other purposes ancillary to the powers herein given as to sewers and drains, and the owner or occupier of premises refuses or withholds access and leave to perform the said operations, the local authority may apply to the sheriff, who, if no sufficient cause be shown to the contrary, shall grant warrant to the local authority, their officers and others thereby authorised, to enter and do all or any of the works or operations foresaid.

Formation of Special Drainage District.

LXXVI. Upon requisition to that effect made in writing by not fewer than ten inhabitants of the district, the local authority shall be bound to meet, after twenty-one clear days notice, and shall consider the propriety of forming part of their district into a special drainage district, and the resolution of the local authority at such meeting shall be published in one or more newspapers circulating in the district; and the production of such newspaper, or a certificate under the hand of the chairman or acting clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution; and within ten days after the date of such resolution it shall be competent for any person interested to appeal against the resolution to the sheriff, and the sheriff, not being a sheriff-substitute resident within the district, may either approve or disapprove of such resolution, and if he disapproves thereof he nay either find that no special drainage district should be formed, or may enlarge or limit the special district as defined by the resolution of the local authority, or may find that a special drainage district should be formed and may define the limits thereof; and the decision of the sheriff shall be binding upon the local authority, and shall be final, except where it is pronounced by the sheriff-substitute, in which case it may be appealed to the sheriff.

Power to Drain into Sewers of Local Authority.

LXXVII. Any owner or occupier of premises within the district of a local authority liable for general or special sewerage or drainage assessment shall be entitled to cause his drains to empty into the sewers of such local authority, on condition of his giving twenty days previous notice of his intention so to do to

the local authority, and of complying with their regulations in respect of the mode in which communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the local authority to superintend the making of such communications.

Use of Sewers by Persons beyond District.

LXXVIII. Any owner or occupier of premises beyond the limits of the district of a local authority or within said limits who is not liable for general or special sewerage or drainage assessment may cause any sewer or drain from such premises to communicate with any sewer of the local authority, upon such terms and conditions as may be agreed upon between such owner or occupier and such local authority, or, in case of dispute, shall be settled by the sheriff.

Penalty for making unauthorised Drains.

LXXIX. Every person not being authorised by the local authority who shall make any drain into any sewer vested in the local authority shall be liable in a penalty not exceeding five pounds besides shutting up said drain or paying the expense of shutting it up.

Estimates for Work.

LXXX. Before entering into any contract for executing any such work as herein-before or after mentioned, falling under part VI. of this Act, or connected with sewage or drainage, if the expense thereof may exceed thirty pounds, the local authority shall procure from a surveyor an estimate of the probable expense of constructing the same in a substantial manner, and of the yearly expense of maintaining the same in repair; and such surveyor shall accompany such estimate with a report as to the most advantageous mode of constructing such work, whether under a contract for constructing the same merely, or a contract for constructing the same and maintaining it in repair during a given term of years.

Not to build over Sewers.

LXXXI. Unless with consent of the local authority, no building shall be erected over any sewer belonging to the local authority, and no vault, arch, or cellar, shall be made so as to interfere with any such sewer.

Sewers to be trapped.

LXXXII. All sewers and drains, whether public or private, shall be provided by the persons to whom they severally belong, with proper traps or other coverings or means of ventilation, so as to prevent stench or deleterious exhalation.

Distilleries, &c., to deposit Refuse.

LXXXIII. The owners or occupiers of distilleries, manufactories, and other works shall be compelled, where possible, to dig, make, and construct pools or reservoirs within their own ground, or as near their works as possible, for receiving and depositing the refuse of such works, so far as offensive or injurious to the health of those living in the vicinity thereof, or to use the best practical means for rendering the same inoffensive or innoxious before discharging it into any river, stream, ditch, sewer, or other channel.

Drain discharging below Highwater Mark.

LXXXIV. If the local authority shall consider it necessary for public health that any drain should discharge itself below high-water mark, they shall be entitled, with the consent of the Board of Trade (without prejudice to any question as to the right to the foreshores), to construct the requisite works for that purpose.

As to the Drainage of Houses.

LXXXV. If a dwelling house, distillery, manufactory, or other work, or any erection, or enclosure for the keeping of live stock within the district of a local authority is without a drain, or without such drain as is sufficient for effectual drainage, the local authority may, by notice, require the owner of such house, distillery, manufactory, work, erection, or enclosure, within a reasonable time therein specified, to make a sufficient drain emptying into any sewer which the local authority are entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred feet from the site of the said premises of such owner; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place, not being under any house, as the local authority may direct; and if the person on whom such notice is served fails to comply with the same, the local authority may, at the expiration of the time specified in the notice, do the work required, and the expenses incurred by them in so doing may be recovered from such owner in a summary manner.

Power of borrowing for Sewers.

LXXXVI. It shall be lawful for the local authority to borrow for the purpose of making, enlarging, or constructing sewers, and on the security of the after-mentioned special sewer assessments, where such exist, and general assessments or either of them, such sums of money, and at such times, as the local authority shall deem necessary for that purpose, and to assign the said special

sewer assessments and general assessments or any of them in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignations and discharges thereof may be in or near to the forms contained in the schedule hereto annexed, and such bonds shall be signed by the chairman and two members of the local authority, and shall constitute a lien over the special sewer assessments and general assessments thereby assigned, and shall entitle the creditors therein to recover the sums thereby due from the local authority out of the first and readiest of the said special and general assessments; but no member or officer of the local authority shall be personally liable for the repayment of such money so borrowed, and all such obligations shall be deemed and taken to be granted on the sole security of the assessments assigned; and the money so borrowed shall be repayable either in one sum or by instalments as may be arranged between the local authority and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within thirty years from the date of the loan, but the amount of such loans, including interest, shall form a charge against the assessments of the years intervening between the date of such loans and the date of full repayment in equal proportions; and the money so borrowed as aforesaid shall be applied wholly in defraying the expense of making, enlarging, and re-constructing sewers, and to no other purpose whatsoever.

Local Authorities may combine.

LXXXVII. Two or more local authorities may, with the sanction of the board, combine together for the purpose of executing and maintaining any works by this Act authorised in regard to sewerage or drainage that may be for the benefit of their respective districts; and all monies which they may agree to contribute for the execution and maintenance of such common work shall, in the case of each local authority, be deemed to be expenses incurred by them in the execution of works within their district.

Supply of Water for Burghs above 10,000.

LXXXVIII. With respect to burghs having a population of ten thousand or upwards according to the census last taken, or having a local Act for police purposes, it shall be lawful for the local authority, if they think it expedient so to do, to contract or arrange with any water company established by Act of Parliament for a supply of water, or, where there is no such company, themselves to provide a supply of water, to such extent as may be necessary for the sanitary and other public purposes of this Act hereinbefore provided.

Supply of Water for Burghs under 10,000.

LXXXIX. With respect to the improvement of burghs having a population of less than ten thousand, according to the census last taken, and not having a local Act for police purposes, and with respect to parishes (exclusive of any parts of such parishes as are situated within the district of any local authority other than the parochial boards of such parishes),—

(1.) The local authority, if they think it expedient so to do may acquire and provide or arrange for a supply of water for the domestic use of the inhabitants, and for that purpose may conduct water from any lake, river, or stream, may dig wells, make and maintain reservoirs, may purchase, take upon lease, hire, construct, lay down, and maintain such waterworks, pipes, and premises, and do and execute all such works, matters, and things as shall be necessary and proper for the aforesaid purpose, and may themselves furnish a supply of water, or contract or arrange with any other person to furnish the same; and for the purposes aforesaid the local authority shall be held to have all the powers and rights given to promoters of undertakings by the Lands Clauses Acts: Provided always, that they shall make reasonable compensation for the water so taken by them, and for the damage which may be done to any lands by reason of the exercise of the powers hereby conferred in terms of the said Acts; and further, that for the purposes of this Act the words "lands" and "land" in the said Acts and in this Act shall include "water" and the right thereto: Provided also, that it shall not be lawful for the local authority to provide or supply water in any burgh, parish, or district which any company, established by Act of Parliament, is authorised to supply with water, unless the local authority shall previously have purchased or acquired the undertaking of such company:

House without Supply of Water.

(2.) If any house within the district is without a proper supply of water at or near the same, the local authority shall compel the owner to obtain such supply, and to do all such works as may be necessary for that purpose:

Water for Baths, etc.

(3.) The local authority, if they have any surplus water after fully supplying what is required for domestic purposes,

may supply water from such surplus to any public baths and wash-houses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied: Provided, that when water is thus supplied from such surplus, it shall not be lawful for the local authority to charge the parties obtaining the same both with the special water assessment and also for the supply of water obtained by them; but the local authority may either charge the special water assessment leviable on such premises, or charge for the supply of water furnished to the same, as they shall think fit:

Cisterns, etc., to be supplied with Water.

(4.) The local authority may cause all existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued, maintained, and plentifully supplied with water, and may, if they shall think fit, provide and gratuitously supply water for any public baths or wash-houses established otherwise than for private profit or supported out of any burgh rates:

Special Water Supply District.

(5.) Upon requisition to that effect made in writing by not fewer than ten inhabitants of the district, the local authority shall be bound to meet, after twenty-one clear days notice, and shall consider the propriety of forming part of their district into a special water supply district, and the resolution of the local authority at such meeting shall be published in one or more newspapers circulating in the district; and the production of such newspaper, or a certificate under the hand of the chairman or acting clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution; and within ten days after the date of such resolution it shall be competent for any person interested to appeal against the same to the sheriff; and the sheriff, not being a sheriff-substitute resident within the district, may either approve or disapprove of such resolution; and if he disapproves thereof he may either find that no special water supply district should be formed, or may enlarge or limit the special district as defined by the resolution of the local authority, or may find that a special water supply district should be formed, and may define the limits

thereof; and the decision of the sheriff shall be binding upon the local authority, and shall be final, except where it is pronounced by a sheriff-substitute, in which case it may be appealed to the sheriff.

Power to Borrow for Water Supply.

(6.) It shall be lawful for the local authority to borrow for the purpose of constructing, purchasing, enlarging, or reconstructing such works as are herein authorised for providing a supply of water for the use of the inhabitants of the district, or for the purpose of entering into and implementing any contract or arrangement with any person for such supply, and on the security of the after-mentioned special water assessments, where such exist, and of general assessments, or either of them, such sums of money and at such times as the local authority shall deem necessary for that purpose, and to assign the said special water assessments and general assessments, or either of them, in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignations and discharges thereof may be in or near to the forms contained in the schedule hereto annexed; and such bonds shall constitute a lien over the assessments thereby assigned, and shall entitle the creditors therein to recover the sums thereby due from the local authority out of the first and readiest of the said assessments; but no member or officer of the local authority shall be personally liable for the repayment of such money so borrowed, and all such obligations shall be deemed and taken to be granted on the sole security of the assessments thereby assigned, and the money so borrowed shall be repayable either in one sum or by instalments as may be arranged between the local authority and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within thirty years from the date of the loan; but the amount of such loans, including interest, shall form a charge against the assessments of the years intervening between the date of such loans and the date of full repayment in equal proportions; and the money so borrowed as aforesaid shall be applied wholly in defraying the expense of purchasing, making, enlarging, and reconstructing such works, and to no other purpose whatsoever.

Regulations as to the Purchase of Land, &c.—Publication of Notices.—Service of Notices.

XC. The following regulations shall be observed with respect to the purchase and taking of land otherwise than by agreement by local authorities for the purposes of this Act:

(1.) The local authority, before putting in force any of the powers of the said Lands Clauses Acts with respect to the purchase and taking of land, shall

Publish once at the least, in each of three consecutive weeks in the month of *November* in some newspaper circulated in the district or some part of the district within which such local authority has jurisdiction is situate, an advertisement describing shortly the purpose for which the land is proposed to be taken, naming a place where a plan of the proposed works may be seen at all reasonable hours, and stating the quantity of land that they require; and shall further, in the month of *December*,

Serve a notice in manner herein-after mentioned on every owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer, stating whether the person so served assents, dissents, or is neuter in respect of taking such land; such notice to be served

By delivery of the same personally to the party on whom it is required to be served, or, if such party is absent abroad, to his agent; or

By leaving the same at the usual or last known place of abode of such party as aforesaid; or

By forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such party:

Power to Local Board to petition Secretary of State upon Matters herein stated.

(2.) Upon compliance with the provisions hereinbefore contained with respect to advertisements and notices, the local authority may, if they shall think fit, present a petition to one of Her Majesty's principal secretaries of state: the petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in

respect of the taking such land, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such land, be allowed to put in force the powers of the said Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and such prayer shall be supported by such evidence as the Secretary of State requires:

Secretary of State may direct Inquiry;

(3.) Upon the receipt of such petition, and upon due proof of the proper advertisements having been published and notices served, the Secretary of State shall take such petition into consideration, and may either dismiss the same or direct an inquiry in the district in which the land is situate, or otherwise inquire as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made in the district, after such notice as may be directed by the Secretary of State, no provisional order shall be made affecting any land without the consent of the owners, lessees, and occupiers thereof:

And may make Provisional Order.

(4) After the completion of the inquiry as last aforesaid, the Secretary of State may, by Provisional Order empower the local authority to put in force, with reference to the land referred to in such order, the powers of the said Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as he may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and upon the person in which and upon whom notices in respect of such land are hereinbefore required to be served:

No Provisional Order valid until confirmed by Parliament.

(5.) No Provisional Order so made shall be of any validity unless the same has been confirmed by Act of Parliament, and it shall be lawful for the secretary of state, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order shall be deemed to be a Public General Act of Parliament:

Costs how to be defrayed.

6.) All costs, charges, and expenses incurred by the said

secretary of state in relation to any such Provisional Order as last aforesaid shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, become a charge upon the assessment or special water supply assessment levied in the district or special water supply district, as the case may be, to which such order relates, and be repaid to the said Commissioners of Her Majesty's Treasury by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

Loans from Public Works Loan Commissioners.

XCI. The Public Works Loan Commissioners as defined by "The Public Works Loan Act, 1853," may advance to the commissioners mentioned in the one hundred and ninety-sixth section of "The Police and Improvement (Scotland) Act, 1862," for the purposes mentioned in that section, and upon the security therein mentioned, and to any local authority for the purposes mentioned in part VI. of this Act, such sums of money as may be recommended by one of Her Majesty's principal secretaries of state.

Execution and Maintenance of Works as to Water Supply.

XCII. Two or more local authorities may combine together for the purpose of executing and maintaining any works by this Act authorised in regard to water supply that may be for the benefit of their respective districts; and all monies which they may agree to contribute for the execution and maintenance of such common works shall, in the case of each local authority, be deemed to be expenses incurred by them in the execution of works within their district.

PART VII.—ASSESSMENTS.

Special Drainage Assessment.

XCIII. Where any special drainage district has been formed as hereinbefore provided, the expense of the sewerage and drainage incurred by the local authority within the same, or for the purposes thereof, and the sums necessary for payment as before mentioned of any money borrowed for sewerage purposes as hereinbefore provided, shall be paid out of a special assessment

which the local authority shall raise and levy on and within such special district, in the same manner and with the same remedies and modes of recovery as are herein provided for the district of the local authority.

Assessments in Burghs under 10,000.

XCIV. With respect to burghs having a population of less than ten thousand according to the census last taken, and not having a local Act for police purposes, and with respect to parishes (exclusive of any parts of such parishes as are situated within the district of any local authority other than the parochial boards of such parishes),—

Special Water Supply Assessment.

(1.) Where any special water supply district has been formed as hereinbefore provided, the expense incurred for water supply within the same, or for the purposes thereof, and the sums necessary for payment as before mentioned of any money borrowed for water supply purposes as hereinbefore provided, shall be paid out of a special assessment which the local authority shall raise and levy on or within such special district, in the same manner and with the same remedies and modes of recovery as are herein provided for the district of the local authority:

Assessment for General Expenses incurred in executing this Act.

(2.) All charge and expenses incurred by the local authority in executing this Act or any of the Acts hereby repealed, and not recovered as hereinbefore or after provided, may be defrayed out of an assessment to be levied by the local authority along with but as a separate assessment from any one of the assessments hereinafter mentioned in this section; that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under like powers (which powers are hereby given and are declared to extend over the whole and every part of the district of the local authority) as—

The prison assessment or police assessment, as the local authority shall resolve, where the local authority is a town council or police commissioners, or trustees acting as police commissioners; or, if there be no prison or police assessment, an assessment levied in like manner as is hereinafter authorised, where the local authority is a parochial board:

The assessment for the relief of the poor, where the local authority is a parochial Board, or, where there is no such assessment, by an assessment levied in such manner as an assessment might have been levied for the relief of the poor:

Provided always, that where the local authority is a town council or police commissioners, or trustees acting as police commissioners, or where a parochial board is the local authority in a district, including, as well as the landward part of a parish, a burgh or town having a town council or police commissioners, or trustees acting as police commissioners, the annual value of the following lands or premises shall for the whole assessments under this Act be held to be the nearest aggregate sum of pounds sterling to one fourth of the annual value thereof entered in the valuation roll, made up and completed in terms of the Acts in force for the valuation of lands and heritages in Scotland,—viz.,

1. All lands and premises used exclusively as a canal or basin of a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, excepting the stations, depots, wharfs, and buildings, which shall be assessable on their full annual value:
2. All the underground water or gas pipes or underground works of any water or gas company:
3. All woodland, arable, meadow, or pasture land, or other land used for agricultural purposes:
4. All mines, minerals, and quarries:

And in the event of any dispute arising as to the lands and premises falling under the above exceptions, it shall be lawful to the owner or occupier of such lands and premises to present a petition to the sheriff, praying to have the same declared for the time being liable to assessment upon the said proportion of their value only, and the sheriff shall thereupon order the petition to be served on the local authority upon a short *inducia*, and, after hearing parties and taking such evidence as he shall think necessary, shall pronounce such judgment as to him shall seem just and right, and which judgment shall be final, except that where pronounced by a sheriff substitute it shall be subject to appeal to the sheriff: Provided also, that where a special drainage district has been formed as hereinbefore provided, and the drainage works therein have been executed and are maintained under the authority of this Act, the lands and premises situated within such special district shall

not be liable to assessment for the expense of making sewers and drainage works in other parts of the district of the local authority; and where a special water supply district has been formed as hereinbefore provided, and a sufficient supply of water has been obtained and is maintained therein under the authority of this Act, the lands and premises situated within such special water supply district shall not be liable to assessment for the expense of supplying water for other parts of the district of the local authority:

(3.) The assessments specified in this and the preceding section shall not in any year exceed the rate of one shilling and threepence in the pound where the enactments with respect to water for the domestic use of the inhabitants have been put in force, or the rate of threepence in the pound where such enactments have not been put in force.

Assessments in Burghs above 10,000, *etc.*

XCV. With respect to burghs having a population of ten thousand or upwards, according to the census last taken, or having a local Act for police purposes,—

(1.) All charges and expenses incurred by the local authority in executing this Act or any of the Acts hereby repealed, and not recovered as hereinbefore provided, may be defrayed out of an assessment to be levied by the local authority along with, but as a separate assessment from any other assessment which they may be entitled to levy; that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under the like powers (which powers are hereby given and are declared to extend over the whole and every part of the district of the local authority) as—

The prison assessment or police assessment, as the local authority shall resolve, where the local authority is a town council or police commissioners, or trustees acting as police commissioners; or, if there be no prison or police assessment, an assessment levied in like manner as is hereinafter authorised where the local authority is a parochial board:

The assessment for the relief of the poor where the local authority is a parochial board, or, where there is no such assessment, by an assessment levied in such manner as an assessment might have been levied for the relief of the poor:

Provided always, that the annual value of the following lands or premises shall for the whole assessments under

this Act be held to be the nearest aggregate sum of pounds sterling to one fourth of the annual value thereof entered in the valuation roll, made up and completed in terms of the Acts in force for the valuation of lands and heritages in Scotland,—viz.,

1. All lands and premises used exclusively as a canal or basin of a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, excepting the stations, depots, wharfs, and buildings, which shall be assessable on their full annual value:
2. All the underground water or gas pipes or underground works of any water or gas company:
3. All woodland, arable, meadow, or pasture land, or other land used for agricultural purpoes:
4. All mines, minerals, and quarries:

And in the event of any dispute arising as to the lands and premises falling under the above exceptions, it shall be lawful to the owner or occupier of such lands and premises to present a petition to the sheriff, praying to have the same declared for the time being liable to assessment upon the said proportion of their value only, and the sheriff shall thereupon order the petition to be served on the local authority upon a short *inducice*, and, after hearing parties and taking such evidence as he shall think necessary, shall pronounce such judgment as to him shall seem just and right, and which judgment shall be final, except that where pronounced by a sheriff-substitute it shall be subject to appeal to the sheriff: Provided also, that where a special drainage district has been formed as hereinbefore provided, and the drainage works therein have been executed and are maintained under the authority of this Act, the lands and premises situated within such special district shall not be liable to assessment for the expense of making sewers and drainage works in other parts of the district of the local authority:

(2.) The assessments specified in this section and in the ninety-third section hereof shall not in any year exceed the rate of threepence in the pound.

PART VIII.—ENFORCEMENT OF AND PROCEDURE UNDER THIS ACT.

Procedure if Local Authority neglect its Duty under this Act.

XCVI. If any nuisance shall exist upon or in premises possessed or managed by the local authority, or in which the local

authority have any interest, or if the local authority shall fail or neglect to perform any duty imposed upon them by this Act, or to take all due proceedings in this Act authorised for the removal of nuisances or preservation of health, or due regulation of lodging houses, or for any other of the purposes of this Act, it shall be competent for any two householders residing within the district, or for the inspector of the poor of the parish, or for the procurator-fiscal of the sheriff or justice of the peace court of the county, or of the burgh court, or for the board, to give written notice to such local authority of the matters in which such neglect exists; and if the local authority do not within fourteen days after such notice, or, in the case of neglect to enforce any regulation or direction of the board under part III. of this Act, within two days after such notice, remove or remedy the nuisance referred to, or in any other case neglect to take the steps authorised or required by or under this Act, it shall be competent for the parties aforesaid, or any one of them, to apply to the sheriff by summary petition, and the sheriff shall thereupon inquire into the same, and may make such decree as shall in his judgment be required to enforce the removal or remedy of the nuisance, or otherwise to compel execution of or carry out the provisions and purposes of this Act, and may appoint the same to be carried into effect by and at the sight of such persons as he may think fit, and at the expense of the local authority, or of other parties on whom the expense ought in his opinion to be laid, and for payment of the expenses of such application by the petitioners or by the local authority or other party, as justice may require; and further, it shall be competent for the board to present a petition to the sheriff, under the fourth section of the "Burial Grounds (Scotland) Act, 1855," to the same effect, and to be followed out in like manner as if presented by any of the persons or parties therein mentioned: Provided always, that in regard to any nuisance for the removal of which drainage works are necessary, the sheriff or other judge or court may suspend consideration of the complaint for such time as may seem proper, in order to enable a general system of drainage under any general or local Act or otherwise to be carried out, the better to remove such nuisances.

Provision for Refusal or Neglect of Local Authority.

XCVII. In case any local authority shall refuse or neglect to do what is herein or otherwise by law required of them, or in case any obstruction shall arise in the execution of this Act, it shall be lawful for the board, with the approval of the Lord Advocate, to apply by summary petition to either division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which division or Lord Ordinary are hereby authorised and directed to do therein and to dispose of the ex-

penses of the proceedings as to the said division or Lord Ordinary shall appear to be just.

Procurator-Fiscal may sue by Directions of the Board.

XCVIII. In any place within the jurisdiction of a local authority the procurator-fiscal of the sheriff court, on the board being satisfied that the local authority have made default in doing their duty, may, with the approval of the Lord Advocate, institute and follow out proceedings against the local authority for compelling them to do their duty, and may institute and follow out in all respects any proceeding which the local authority of such place might institute with respect to the removal of nuisances or otherwise; and the expense as between agent and client of all such proceedings shall be paid by the local authority, but with such relief to them against the author of any nuisance or any other party as may be competent.

Duties of Local Authorities as to Inspection of Nuisances, &c.— Procedure where Nuisance beyond District.

XCIX. It shall be the duty of the local authority to make from time to time, and also when required by the board, either by themselves or by their officers, inspection of the district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of the Act in order to cause the abatement thereof, also to enforce the provisions of any Act that may be in force within its district requiring fireplaces and furnaces to consume their own smoke: Where a nuisance is situated in a district the local authority of which does not cause the same to be abated, and which nuisance is offensive or injurious to another district, the local authority of the latter district may call on the first-mentioned local authority to take all competent steps for removal of such nuisance, and the said first-mentioned local authority shall be bound to do so accordingly; and any expense thereby occasioned to the said second-mentioned local authority shall be reimbursed by the first-mentioned local authority, the amount of such reimbursement in the case of dispute to be finally determined by the board.

Local Authority may require Payment of Costs or Expenses from Owner or Occupier, and Occupier paying to deduct from Rent.

C. It shall be lawful for the local authority, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under this Act, either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner

authorised by this Act, and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier who shall not be the author of a nuisance shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier: Provided also, that nothing herein contained shall be taken to affect as between the contracting parties any contract made or to be made between any owner, tenant, or occupier of any house, building, or other property, whereby it is or may be agreed that the tenant or occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect as between the contracting parties any contract whatsoever between landlord and tenant.

Penalty for wilful Damage of Works.

CI. If any person wilfully damages any works or property belonging to any local authority, he shall be liable to a penalty not exceeding five pounds, in addition to the cost of repairing such works or property.

Appearance of Local Authorities in Legal Proceedings.

CII. Any local authority may appear and plead before any sheriff, magistrate, or justice, or in any legal proceeding by any officer or member, or other person authorised generally, or in respect of any special proceeding, by resolution of such authority, and such person being so authorised shall be at liberty to institute and carry on any proceeding which the authority is authorised to institute and carry on under this Act; and it shall not be necessary for the local authority to appear in any other manner in any prosecution or proceeding at their instance.

Recovery of Penalties.

CIII. All penalties under this Act, and also all sums of money and expenses herein directed to be recovered in a summary manner,

may, unless otherwise provided in this Act, be recovered at the suit of the local authority, and may be applied for the purposes of this Act: Provided always, that nothing contained in this section shall impair or affect any other mode of recovery allowed by this Act: Provided also, that all contravensions of the provisions contained in this Act relating to overcrowding of houses, and all contraventions of the provisions in this Act or of the rules and regulations made under the authority of this Act relating to common lodging houses, may be prosecuted as police offences before any judge or magistrate having police jurisdiction, and in the same way and manner as police offences are prosecuted before him under any general or local police act; and in the event of the offender being convicted, and failing to make immediate payment of the penalty which may have been imposed, he shall be liable to imprisonment for any period not exceeding fourteen days, without prejudice to diligence by poinding or arrestment, if no imprisonment has followed on the conviction.

Powers of Act Cumulative.

CIV. All powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by Act of Parliament not hereby repealed, or any law or custom; and such last-mentioned powers may be exercised in the same manner as if this Act had not passed, but without prejudice to the powers conferred by this Act.

Form of Applications to the Sheriff.

CV. All applications to enforce any provision of this Act, or for the recovery of penalties herein imposed, or other sums of money becoming due to the local authority in virtue of this Act, in so far as not herein otherwise provided for, may be by summary petition, and such petition may refer to the clauses of this Act on which it is founded, without setting forth the same; and the sheriff, magistrate, or justice shall thereupon, if he see fit, appoint the petition to be answered within three days after service, or may order the parties to attend him in person, and on advising such answer, or hearing the parties, or on the respondent failing to appear, he may at once decern, or may appoint any competent person to examine the premises and report to him, and may decern on such report, or he may, if either party desire it, order proof to be led before himself on any specified points, and shall in that case appoint a day, not more than five days thereafter, for hearing such proof, and if the proof be not on that day completed may adjourn the same from time to time until completed, and within three days after such completion he shall give decree, and he may find either party liable in expenses, or in any modified sum of expenses, and may, without prejudice to diligence by

poinding or arrestment, grant warrant for the imprisonment of the person convicted or found liable in a penalty or sum of money, unless he shall pay the whole sums found due within a specified time, until the same be paid, such imprisonment not to exceed a specified time, but the judgment shall not be invalidated by any deviation from any of the said periods of time.

No written Pleadings, &c., allowed.

CVI. No written pleadings, other than the petition and answers (when ordained), shall be allowed, and the sheriff, magistrate, or justice shall have power to grant diligence in common form to cite witnesses and havers, and in cases under the heads marked (*h*), (*i*), and (*j*) in section sixteen the sheriff shall take notes of the evidence in like manner as in civil proofs: Provided always, that no decree under this Act against any party shall bar his right to relief against any other party legally liable therein.

Appeal in certain Cases.

CVII. Where in cases under the heads (*h*), (*i*), and (*j*) in section sixteen it shall appear to the sheriff that the true value of the subject complained of as a nuisance, or the cost of the operations necessary to remove or amend it as ordered, or the value of the trade or business interfered with, exceeds the sum of twenty-five pounds or the sum of fifty pounds respectively, he shall certify his opinion to that effect in his decree, and the parties shall thereupon be entitled to appeal from the sheriff-substitute, where the judgment has been pronounced by him to the sheriff, on lodging, within three days after the decree, a note of appeal with the sheriff clerk, and serving the same on the opposite party or the agent acting in such proceedings for such party, and such note shall operate as a sist of execution until the appeal be determined; and on such note being lodged, the sheriff clerk shall transmit the process, together with the sheriff-substitute's notes of evidence, to the sheriff, whose decision thereon shall be final where the value certified is not above fifty pounds; and in the event of such value or cost being so certified to exceed the sum of fifty pounds, the parties shall be entitled to present a note of appeal to the Lord Ordinary on the Bills against the judgment either of the sheriff-substitute or of the sheriff, whether this last be an original judgment or an appeal, provided that, along with such note, the appellant shall lodge a sufficient bond of caution by one or more obligants, to the amount of fifty pounds sterling, for payment or performance of any judgment that may be pronounced under his appeal; and also provided that such note be lodged in the Bill Chamber, and a copy thereof served on the opposite party or his said agent within eight days after the date of the sentence or judgment complained of, which note shall in

like manner operate as a sist of execution until a judgment be pronounced by the Lord Ordinary, which judgment shall be final unless the Lord Ordinary shall allow a reclaiming note to the Inner House, and the judgment of the Inner House shall be final.

No appeal otherwise.

CVIII. No appeal shall be competent from any decree or order of any magistrate or justices, or from the decree or order of any sheriff, except in cases certified in terms of the preceding section; and no decree or order, or any other proceeding, matter, or thing done in the execution of this Act, shall, excepting as herein provided, be subject to review in any way whatever.

Justices being Members of Local Authority may act.

CIX. The sheriff, justices of the peace, or magistrates may in all cases, notwithstanding their being members of the local authority or the board, exercise the jurisdiction vested in them under this Act.

Service of Notices, Petitions, and Orders.

CX. Notices, petitions, and orders under this Act may be served by any person by delivering the same to or at the residence of the parties to whom they are respectively addressed, or by being put into the post office duly addressed to the parties; and where addressed to the owner or occupier of premises they may be served by any person delivering the same or a true copy thereof to some person upon the premises, or, if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises; and service of such notices, petitions, or orders may be proved by a certificate under the hand of the person who posted or delivered or affixed the same, attested by one witness who was also present.

Proof of Resolutions of Local Authority and Board.

CXI. Copies of any orders or resolutions of the local authority or their committee purporting to be signed by the chairman of such body or committee, and all directions and regulations, or orders or resolutions of the board, signed by their secretary or clerk, shall, unless the contrary be shown, be received as evidence thereof without proof of their meeting, or of the official character or signature of the person signing the same.

One or more Joint Owners may be proceeded against alone.

CXII. In case of any demand or complaint under this Act to which two or more parties, whether as owners or occupiers of

premises, may be jointly answerable, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering relief in any case in which they would now be entitled to relief by law.

Penalty on Occupier obstructing Owner.

CXIII. If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, the sheriff or any magistrate or justice to whom application is made shall, by order in writing, require such occupier to permit the execution of the works required to be executed, provided that such works appear to such sheriff, magistrate, or justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within a reasonable time after the making of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such refusal.

Penalty for violating Act or obstructing its Execution.

CXIV. Whoever wilfully violates or contravenes any provision of this Act to which a pecuniary penalty is not herein attached, obstructs any person acting under the authority or employed in the execution of this Act, or wilfully violates any direction or regulation issued by the board under this Act, shall be liable for every such offence to a penalty not exceeding five pounds; provided that nothing in this Act shall exempt any person from any penalty or liability to which he may otherwise be subject.

Works of Distribution of sewage to be deemed a Land Improvement.

CXV. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an improvement of land authorised by the Land Improvement Act 1864, and the provisions of that Act shall apply accordingly.

Compensation to be made.

CXVI. Full compensation shall be made, out of any fund or assessment applicable to the purposes of this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act, except when otherwise specially provided; and in case of dispute, if the sum claimed do not exceed the sum of fifty pounds sterling, the same may be ascertained on a sum-

mary application by either party to the sheriff, whose decision shall be final and not subject to review, unless when pronounced by the sheriff-substitute, in which case it may be reviewed by the sheriff on appeal; and when the sum claimed exceeds fifty pounds sterling, such compensation shall be ascertained and disposed of in terms of the Lands Clauses Act.

Convictions not void for want of form.

CXVII. No conviction or other legal proceeding under this Act shall be void for want of form, or for want of any previous notice, provided in this latter case the party proceeded against or convicted has appeared, or the charge had come to his knowledge; and the charge may be amended at any time, and the proceedings may be adjourned on the ground of want of sufficient notice, or for other good cause.

Local Authority or Board not liable for Irregularity of their Officers.

CXVIII. The local authority and the board shall not be liable in damages for any irregularity committed by their officers in the execution of this Act, or for anything done by themselves in the *bona fide* execution of this Act; and every officer acting in the *bona fide* execution of this Act shall be indemnified by the local authority under which he acts in respect of all costs, liabilities, and charges to which he may be subjected; and every action or prosecution against any person acting under this Act on account of any wrong done in or by any action, proceeding, or operation under this Act shall be commenced within two months after the cause of action shall have arisen.

As to Forms to be used.

CXIX. The forms contained in the schedule to this Act annexed, or any forms to the like effect, may be used for the purposes of this Act, and shall be sufficient therefor, and all written proceedings or documents under this Act may be wholly or partly printed.

Exemption from Stamp Duties.

CXX. All bonds, assignations, conveyances, instruments, agreements, receipts, or other writings made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp duties.

Police Constables to aid in executing Act.

CXXI. The constabulary and police force in their respective jurisdictions shall aid the authorities and officers acting in execu-

tion of this Act, or any directions or regulations issued as aforesaid.

Act not to impair Right of Action, etc.

CXXII. Nothing in this Act shall be construed to impair any right of action in respect of nuisances at common law.

SCHEDULE.

Bond for Borrowed Money.

We, the local authority of the burgh [*or* parish] of considering that, by resolution of the said local authority passed on the day of , it was resolved to borrow the sum of pounds, under the powers contained in "The Public Health (Scotland) Act, 1867," section , for the purpose of [*specify purpose*], and on security of the aftermentioned assessments, and further considering that we have accordingly borrowed and received the sum of from [*name and designation of the lender*], therefore we bind the said local authority to repay the said sum of pounds [*here insert obligation to repay in accordance with the arrangement made between the local authority and the lender*], and in security of the said loan we hereby assign to the said and his foresaids the [*specify the assessments on the security of which the money is borrowed*], and we consent to the registration hereof for preservation and execution. In witness whereof, *&c.*

Transfer.

I, *A.B.* [*designation*], in consideration of the sum of paid to me by *C.D.* [*designation*], do hereby assign and transfer to the said *C.D.*, and his heirs, executors, and successors, a certain bond, number , granted by the local authority of the burgh [*or* parish] of in favour of bearing date the day of for securing the sum of and interest thereon, and all my right and interest in and to the money thereby secured, and in and to the [*here specify the assessments on the security of which the money was borrowed*] thereby assigned; and I consent to registration hereof for preservation. In witness whereof, *&c.*

Discharge.

I, *A.B.* [*designation*], in consideration of the sum of paid to me by *C.D.* [*designation*], do hereby discharge a certain bond, number , granted by the local authority of the

burgh [*or* parish] of in favour of ,
and all interest due thereon, and I declare the assessments thereby assigned to be freed and discharged thereof; and I consent to registration hereof for preservation. In witness whereof, *&c.*

No. II.—ACT 38 & 39 VICT., C. 74, 11th August 1875.

An Act to amend "The Public Health (Scotland) Act, 1867," and other Sanitary Acts, in respect of Loans for Sanitary Purposes.

WHEREAS by the "Public Health Act, 1872," the Public Works Loan Commissioners are authorised to make loans to sanitary authorities in England at the rates of interest, and repayable within the periods therein mentioned:

And whereas by the "Public Health (Ireland) Act, 1874," the Commissioners of Public Works in Ireland are authorised to make loans to sanitary authorities in Ireland at the rates, and repayable within the periods therein mentioned:

And whereas it is just that the Public Works Loan Commissioners should be authorised to make loans to sanitary authorities in Scotland at the same rates and repayable within similar periods:—

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Short Title.

I. This Act may be cited for all purposes as the Public Health (Scotland) Act, 1867, Amendment Act, 1875.

Definitions.

II. The expression "Sanitary Acts" shall mean the Public Health (Scotland) Act, 1867, and any Acts amending the same; and also part IV., sections 7 and 10, and part VI., section 2, of the General Police and Improvement (Scotland) Act, 1862.

The expression "local authority" shall mean and include any local authority under the Public Health (Scotland) Act, 1867, and any Acts amending that Act, and also the commissioners acting under the General Police and Improvement (Scotland) Act, 1862.

The expression "Board of Supervision" shall mean the Board of Supervision for Relief of the Poor in Scotland.

Repeal of 30 *and* 31 *Vict., c.* 101, *s.* 91, *and* 34 *and* 35 *Vict., c.* 38, *s.* 3.

III. Section ninety-one of the Public Health (Scotland) Act, 1867, and section three of the Public Health (Scotland) Amendment Act, 1871, are hereby repealed, and in lieu thereof it is enacted as follows :—

Power to Public Works Loan Commissioners to lend to Local Authority in Scotland for Sanitary Purposes.

The Public Works Loan Commissioners may, with the consent of the Commissioners of the Treasury, on the recommendation of the Board of Supervision, make any loan to any local authority in pursuance of any powers of borrowing conferred by the Sanitary Acts, whether for works already executed or yet to be executed, on the security of any fund or rate applicable to any of the purposes of these Acts, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum, or such other rate as may, in the judgment of the Commissioners of the Treasury, be necessary in order to enable the loan to be made without loss to the Exchequer.

Provided as follows:

(1.) That in determining the time when a loan under this Act shall be repayable, the Public Works Loan Commissioners shall have regard to the probable duration and continuing utility of the works in respect of which the same is required :

(2.) That this Act shall not extend to any loan required for the purpose of defraying expenses incurred in enforcing the performance of or in performing the duty of a defaulting local authority :

(3.) That in the case of any loan already made to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may, if they think fit, reduce the interest payable thereon to the rate of not less than three and a half per centum per annum.

Period of Repayment of Sums borrowed by Local Authorities for Sanitary Purposes.

IV. The provisions of the Sanitary Acts enabling local authorities under the same to borrow money for the purposes of such Acts shall be read and construed as if they provided that any sums of money borrowed from the Public Works Loan Commis-

sioners by such local authority for the purposes of the said Acts shall be repaid within a period not exceeding fifty years.

No. III.—ACT 42 & 43, VICT., C. 15, 27th May 1879.

An Act to amend the Public Health (Scotland) Act, 1867.

WHEREAS by the Public Health (Scotland) Act, 1867, provision is made by section seventy-six for the formation of special drainage districts, and also by section eighty-nine for the formation of special water supply districts in certain burgh and parishes therein specified:

And whereas it has been found that a change of circumstances sometimes renders it expedient that the boundaries of such special drainage districts and special water supply districts should be altered, either by extending or limiting the said boundaries or by combining two or more such districts or portions thereof, but the recited Act contains no provision whereby such alteration can be effected:

And whereas it is expedient that such provision should now be made, and that the provisions of the said recited Act should be made applicable to the districts so altered:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short Title.

I. This Act may be cited for all purposes as the Public Health (Scotland) Act, 1867, Amendment Act, 1879, and the recited Act and this Act shall be read and construed together.

Special Drainage and Special Water Supply Districts may be altered or combined.

II. From and after the passing of this Act, where there shall exist within the district of any local authority to which the provisions of the seventy-sixth and eighty-ninth sections of the recited Act respectively apply a special drainage district or a special water supply district, as the case may be, it shall be competent to such local authority, upon requisition as hereinafter provided, to meet and consider the propriety of altering the boundaries of any such special drainage district or special water supply district, and to resolve upon such alteration of boundaries being effected either by enlarging or limiting the said boundaries, or by combining two or more such special water supply districts or special drainage districts or portions thereof.

Local Authority to act on requisition of Inhabitants.

III. The local authority shall not be entitled to meet for the purpose of considering the propriety of any such proposed alteration of boundaries or combination of two or more special water supply or special drainage districts, except after receiving a requisition to that effect, made in writing and signed by at least ten of the inhabitants of the district of the local authority in terms of section seventy-six or section eighty-nine of the recited Act, as the case may be; but upon receiving such a requisition it shall be bound to meet for said purpose, and twenty-one clear days notice of the meeting shall be given to the members of the local authority.

Decision of Local Authority subject to Review.

IV. In the event of the local authority resolving upon any such alteration of boundaries or combination as aforesaid as is hereby authorised its resolution shall be advertised, and shall be subject to appeal and review in like manner as is provided by sections seventy-six and eighty-nine of the recited Act in regard to advertising and appealing against resolutions as to the formation of special drainage districts and special water supply districts under that Act.

Application of Public Health (Scotland) Act, 1867.

V. The whole provisions of the recited Act applicable to special drainage districts, and special water supply districts shall be applicable *mutatis mutandis* to such districts when altered or combined under this Act.

Application of this Act.

VI. The provisions of this Act shall apply to all special drainage districts and special water supply districts, whether formed before or after the passing of this Act, or altered or combined under the powers conferred by this Act.

REGISTRATION OF BIRTHS, &c., ACTS.

I.—Act 17 & 18 Vict., c. 80, 7th August 1854.

An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland.

Whereas it is expedient that a complete and uniform system of registration of births, deaths, and marriages should be established and maintained in Scotland: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Present System of Registration to cease on 31st December 1854, and this Act to come into operation.

I.* From and after the thirty-first day of December one thousand eight hundred and fifty-four, the present system of registration of births, deaths, and marriages in Scotland shall cease and determine, in so far as regards births, deaths, and marriages taking place after the said thirty-first day of December, and this Act shall come into operation: Provided always, that it shall be competent for any person to register, on or before the thirty-first day of December one thousand eight hundred and fifty-five, in the registers kept and in use before the passing of this Act, any birth, death, or marriage which shall have taken place on or before the thirty-first day of December one thousand eight hundred and fifty-four, in the same manner as if this Act had not been passed: Provided also, that all existing registers of births, deaths, and marriages, including all such entries as may be made as aforesaid, and all extracts and certificates from such registers, shall be and remain of the same legal force and effect in all respects as if this Act had not been passed.

Her Majesty may provide an Office, and appoint a Registrar.

II.† On and after the passing of this Act it shall be lawful for Her Majesty to provide a proper office in the General Register

* Affected by 23 and 24 Vict., c. 85, sec. 2.
† Partially repealed by 23 and 24 Vict., c. 85, sec. 4.

House at Edinburgh, to be called "The General Registry Office of Births, Deaths, and Marriages," in which shall be kept and preserved a register of all births, deaths, and marriages in Scotland, and to appoint, under the seal appointed to be used in Scotland in place of the great seal thereof, the person for the time being holding the office of the deputy of the Lord Clerk Register of Scotland to be Registrar General of Births, Deaths, and Marriages in Scotland; and such Registrar General shall be paid, in addition to whatever salary he may enjoy as Deputy Clerk Register, a salary not exceeding four hundred pounds per annum.

The Registrar General may appoint a Secretary.

III.* It shall be lawful for the Registrar General, with the approbation of the Commissioners of Her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, to appoint a secretary, who may act in his absence with all the powers and in the discharge of all the duties hereby given to or imposed upon the Registrar General; and such secretary shall be paid a salary not exceeding three hundred pounds per annum.

Appointment of Clerks and other Officers.

IV. It shall be lawful for the Registrar General, with the approbation of the said Commissioners of Her Majesty's Treasury, to appoint such clerks, officers, and servants as shall be deemed necessary to carry on the business of the general registry office, and at pleasure, with the like approbation, to remove them or any of them, and, with the like approbation, to fix the salaries of such clerks, officers, and servants, according to the duties and services which they may have respectively to perform.

Expenses of Registry Office and Books, &c., how to be provided.

V. The salary of the Registrar General and Secretary, and all the expenses of the general registry office, including the expenses of clerks, officers, and servants, and of books and stationery, and of making and copying indexes and inventories, and in relation to sessional registers or private burial registers, and all expenses incurred from time to time in the publication and transmission of notices in pursuance of this Act, or otherwise, under the directions and by the authority of the Registrar General, or of the sheriff, and all other expenses connected with the business of the said office not herein otherwise provided for, shall be paid by the said Commissioners of Her Majesty's Treasury out of any monies to be hereafter voted by Parliament for that purpose.

* Partially repealed by 23 and 24 Vict., c. 85, sec. 4.

Regulations for Management of Office and Duties of Officers to be framed.

VI. One of Her Majesty's principal secretaries of state, or the Registrar General with the approbation of such principal secretary, shall and may from time to time make regulations for the management of the general registry office, and for the discharge of the duties of the Registrar General, clerks, officers, and servants of the said office, and of the registrars and assistant registrars herein mentioned, so that such regulations be not contrary to the provisions of this Act; and the regulations so made and approved shall be binding on the Registrar General and secretary, and the clerks, officers, and servants, and on the registrars and assistant registrars; and a copy of all such regulations shall be laid before both houses of Parliament within six weeks after the same are approved of, or if Parliament shall not be then sitting, within one month after the commencement of the next session.

Abstract of Registers to be laid annually before Parliament.

VII. The Registrar General shall transmit once in every year to Her Majesty's Secretary of State for the Home Department a general abstract of the numbers of births, deaths, and marriages registered during the foregoing year, in such form and at such date as such secretary shall from time to time prescribe; and every such annual general abstract shall be laid before Parliament within one month after receipt thereof, or if Parliament shall not be then sitting, within one month after the commencement of the next session.

Registrar for each Parish to be elected by the Parochial Board.

VIII.* A registrar of births, deaths, and marriages shall be elected in manner hereinafter provided by the parochial board of each parish (including the several parishes erected or to be erected under the provisions of an Act passed in the seventh and eighth year of the reign of Her present Majesty, chapter forty-four), not being a burgh or part of a burgh, appointed and acting under an Act passed in the eighth and ninth year of the reign of Her present Majesty, chapter eighty-three, and such parochial board shall be the judges of the qualification of persons to be elected to the office of registrar: Provided always, that any session clerk who is in office at the date of the passing of this Act shall be the registrar under this Act for the parish of which he is session clerk, unless it shall be proved to the sheriff that he is unfit for the office of registrar, or that the duties he has to discharge are incompatible with such office.

* This and some subsequent sections affected by 18 Vict., c. 29, sec. 4.

Meetings of Parochial Board to be called by the Inspector of the Poor.

IX. The meetings of the parochial board in any such parish for the trial of the qualifications and the election of a registrar shall be called by the inspector of the poor acting under the said Act, by the direction either of the sheriff or of the parochial board, in such and the like manner as the ordinary meetings of the parochial board are called under the said Act, and such meetings shall be called and held forthwith after the passing of this Act; and such inspector shall, within six days after a vacancy in the office of registrar of the parish of which he is inspector shall become known to him, apply to the sheriff or the parochial board to appoint a time and place for a meeting of the parochial board for the purpose of electing a registrar to supply such vacancy; and in case there shall happen to be no inspector for the time, the chairman of the parochial board shall make such application to the sheriff, or shall himself appoint a time and place for such meeting: Provided, that if the vacancy be caused by the death of a registrar who was a schoolmaster, it shall be competent to the sheriff, or, with the consent of the sheriff, to the parochial board, or chairman calling the meeting, to postpone the election, for any period not exceeding four months, until the election of the successor of such schoolmaster.

Parishes may be divided or united.

X.* If it shall at any time appear to the sheriff that it is desirable that any parish should be divided, or that two or more parishes or portions of parishes should be united into one district, the sheriff may divide such parish or unite such parishes or portions of parishes into one or more districts as he shall think fit, and each such district shall be held to be and be a separate parish for the purposes of this Act; and the sheriff shall fix the distinctive name by which each such district shall be called for the purposes of this Act; and a written or printed notice of such division or union, setting forth such distinctive names, shall be affixed on the doors of all the known places of public worship within the parish or parishes thereby affected for three consecutive weeks before such division or union shall come into operation, and be published twice a week for three consecutive weeks in two newspapers published or usually circulated in the parishes or in the county in which the same are situated: Provided always, that any session clerk who, under the provisions of this Act, would be entitled to be registrar of any parish, shall be the registrar of such one of the said districts as shall be appointed by the sheriff.

* Affected by 18 Vict., c. 29, sec. 1 (repealed by 23 and 24 Vict., c. 85, sec. 1), and by 23 and 24 Vict., c. 85, sec. 5.

Sheriff may annex small Portion of a Parish to the Parish adjoining.

XI. It shall be lawful for the sheriff, if he shall deem it expedient, in order to avoid any doubt as to the boundary of a parish or otherwise, to annex, for the purposes of this Act, any small portion of a parish to an adjoining parish: Provided always, that any charges payable out of the parochial funds for registrations in respect of such portion so annexed shall be payable and paid by the parish from which such portion is detached to the parish to which the same is annexed: Provided also, that the parochial board of the parish from which such portion is taken shall have no voice in the election of the registrar of the parish to which the same is annexed.

Election of Registrar by Parochial Board.

XII.* At the time when this Act shall come into operation, and at any time thereafter when there shall be a vacancy in the office of registrar, the parochial board shall, subject to the provisions hereinbefore contained, by a majority of the votes of the members present at a meeting specially called for the purpose, elect the registrar of the parish or district; and in case any dispute or difference shall arise as to the voting or majority of votes at such election, or any other proceedings connected therewith, the same shall be settled summarily by the sheriff on hearing verbally the parties or their agents; and in all cases of temporary vacancy of the office of registrar, by death or otherwise, the sheriff shall appoint an interim registrar, who shall, during the time he shall act, have the like powers, and be bound to discharge the like duties as the registrar; and in all cases of the election or appointment of a registrar or interim registrar, such election or appointment shall, within ten days thereof, be intimated in writing to the Registrar General by the parochial board or the sheriff, as the case may be.

Where there is no Parochial Board Heritors may appoint the Registrar.

XIII. In case there shall not be a parochial board acting under the said Act in any parish or district at the time when this Act shall come into operation, or at any time thereafter, in which it is necessary to elect a registrar under this Act, the heritors shall, subject to the approbation of the sheriff, appoint a registrar therein.

Registrar may appoint Assistant.

XIV. It shall be lawful for every registrar, with the approba-

* Affected by 23 and 24 Vict., c. 85, sec. 9.

tion of the parochial board, or where there is no parochial board with the approbation of the sheriff, to appoint by a writing under his hand, a fit person, for whom he shall be responsible, to be his assistant in case of his illness or unavoidable absence, or otherwise ceasing to hold his office, until the appointment of another registrar, and also to act in all cases where such assistant may be authorised or required so to do by any regulation to be made in virtue of this Act, and it shall also be lawful for such registrar, with the like approbation, to dismiss such assistant; and the entries made in the registers of births, deaths, and marriages hereinafter mentioned, and extracts made therefrom, and the duties performed by such assistant registrar, shall be of the like force and effect as if made or performed by the registrar: Provided always, that each folio or page of such registers on which any entry shall be made shall be signed by the registrar, and every such entry shall be authenticated by him, by affixing his initials thereto, unless where the registrar shall by indisposition or other sufficient cause be unable to act, in which case such assistant shall sign and authenticate such registers, and the entries therein.

Registrars not to acquire vested Rights in their Offices, and to be subject to removal.

XV.* No registrar shall acquire any vested right in or to his office by virtue of his appointment; and in case any registrar shall fail or neglect or refuse to discharge the duties of his office, or shall be unfit or incompetent to discharge such duties, it shall be lawful for the parochial board to make application to the sheriff for his removal from his office of registrar, and the sheriff shall thereupon hear parties, and take such proceedings in reference to such application as he shall think fit; and if the sheriff shall be of opinion that such registrar has failed or neglected or refused to discharge the duties of his office, or is unfit or incompetent to discharge such duties, the sheriff shall remove such registrar from his office of registrar, and shall direct notice of such removal to be forthwith sent to the parochial board, and to be published in the parish of which he was the registrar, in such manner as the sheriff shall direct; and such registrar shall, from and after such publication, cease to hold his office under this Act, and shall be incapable of being reappointed thereto, and the parochial board shall, in manner herein provided, elect a registrar to supply the vacancy caused by such removal; and the judgment of the sheriff in all such cases shall be final, and not subject to review in any Court or by any process whatsoever.

Appointments to be exempt from Stamp Duty.

XVI.† The appointments of the Registrar General, and secretary,

* Affected by 18 Vict., c. 29, sec. 2. † Extended by 18 Vict., c. 29, sec. 9.

and of the several registrars and assistant registrars under this Act, and the certified copies of registers, extracts, and certificates, herein mentioned, shall be exempt from all stamp duties.

Fees payable to Registrar.

XVII. The registrar shall be entitled to demand, in respect of registration and the other duties required to be performed by him under the provisions of this Act, the several fees herein authorised to be taken, and shall keep a correct account of all sums received by him in virtue of this Act in the course of each year, and shall, within ten days after the thirty-first day of July yearly, deliver or transmit a copy of such account up to the said thirty-first day of July, authenticated by him, to the sheriff, to be preserved in the sheriff clerk's office, and to be furnished by the sheriff to the Registrar General, and, if required, to one of Her Majesty's principal secretaries of state.

Existing Registers, &c., previous to 1820 *to be transmitted to the Registrar General, and subsequent Registers, &c., to be delivered up to the Registrars.*

XVIII.* All existing parochial registers, minutes, and documents of every description relating to the registration of births, deaths, and marriages which shall have been kept in every parish prior to the first day of January one thousand eight hundred and fifty-five shall, as far as regards such registers, minutes, and documents made and entered prior to the year one thousand eight hundred and twenty, be transmitted, under the direction of the sheriff to the Registrar General, for preservation in the general registry office at Edinburgh, and as far as regards such registers, minutes, and documents from the year one thousand eight hundred and twenty, inclusive, to the said first day of January one thousand eight hundred and fifty-five, shall be delivered over to the custody and care of the person who shall be appointed registrar of the parish under this Act; and where any parish shall be divided, such last-mentioned registers, minutes, and documents shall remain in the custody of the registrar of that portion of the divided parish wherein such registers, minutes, and documents are at the time of the division: and the registrar to whom such registers, minutes, and documents shall be so delivered shall, if required by the Registrar General, make or cause to be made exact inventories and indexes thereof in so far as such inventories and indexes do not already exist, noticing in such inventories any blanks or deficiencies therein or other matter requiring to be noticed; and an authenticated copy of each such inventory and a general abstract of each such index shall be transmitted by him

* Repealed by 23 and 24 Vict., c. 85, sec. 1, (sec. 6 of that Act being substituted.)

to the Registrar General, for preservation in the general registry office; and the registers, minutes, and documents, from the year one thousand eight hundred and twenty to the said first day of January one thousand eight hundred and fifty-five, hereby appointed to remain with the registrar of the parish, shall, at the end of thirty years after the said first day of January, be transmitted, under the direction of the sheriff, to the Registrar General, for preservation as aforesaid; and all such registers, minutes, and documents, and the original inventories, indexes, and general abstracts, and the authenticated copies thereof, whether in the custody of the registrar or Registrar General, may be searched, and certified copies of entries taken therefrom, at all reasonable times, by any person, upon payment of the fees authorised to be taken for the like searches and copies made in or taken from the registers and indexes appointed to be kept under this Act.

Provision as to Sessional Registers.

XIX.* Provided always, that if in the registers kept in any parish prior to the first day of January one thousand eight hundred and fifty-five there shall be entries of births, deaths, and marriages intermixed with entries or records relating to sessional or other matters, it shall be lawful for the sheriff to direct either that copies of the entries of births, deaths, and marriages shall be made and delivered to the registrar of the parish for the purposes and under the provisions of this Act, so that the existing register may remain in the custody in which it then is, or that copies of the entries or records relating to such sessional or other matters shall be made and delivered over to the parties interested therein, and the existing register be delivered to the registrar of the parish; and in either case such copies shall be examined by the sheriff and the registrar, and authenticated by the sheriff.

Provision as to Burial Registers.

XX. And whereas registers are kept at various burial grounds and cemeteries which are private property and maintained at private expense, and are necessary towards the protection of the rights of the owners thereof, such registers shall, upon proof to the satisfaction of the sheriff to the above effect, remain with the proprietors thereof: Provided, that correct copies of all such registers in use on the thirty-first day of December one thousand eight hundred and fifty-four shall be prepared and authenticated at the sight of the sheriff, who shall certify the same, and shall be delivered to the registrar of the parish wherein such burial ground or cemetery is situated; but nothing herein contained shall, after the said thirty-first day of December, relieve any such

* Repealed by 23 and 24 Vict., c. 85, sec. 1, (sec. 7 of that Act being substituted).

proprietors from the necessity of registering deaths in the parochial registers under the provisions of this Act.

The Sheriff to superintend Registrars.

XXI.* The sheriff of each county shall have the control and superintendence of the registrars of the several parishes and districts within such county: Provided, that where a parish shall be situated in more counties than one, such parish shall, for the purposes of this Act, be held to be within the county in which the parish church is situated.

Register Boxes to be provided.

XXII.† The Registrar General shall furnish to the registrar of every parish a strong iron box, to hold the registers, copies of registers, and all other records, papers, or documents connected with such registers, in the custody of the registrar, and every such box for each registrar shall be furnished with a lock and two keys, and no more, and one of such keys shall be kept by the registrar, and the other key shall be kept by the sheriff; and the register books of each parish, while in the custody of the registrar, and not in use, shall be always kept in the register box, which shall always be left locked; and where, from the number of register books, such boxes may not be sufficient to contain the same, such register books shall be deposited and kept in fireproof places approved of by the sheriff, which shall be kept locked as such boxes are hereby required to be.

Books and Forms to be provided.

XXIII. Upon the application of the Registrar General there shall be furnished to him from time to time, from Her Majesty's Stationery Office, all such stationery, books, certificates, schedules, notices, and forms as shall be necessary in the execution of this Act, and as the Registrar General shall require and direct, and the register books shall be of durable materials, and in them shall be printed upon each side of every leaf the heads of information herein required to be known and registered of births, deaths, and marriages, respectively, and every page of each book shall be numbered progressively by printed numbers from the beginning to the end of the book, beginning with number one; and each such page shall be ruled and filled up according to the form given in the three several schedules (A), (B), and (C), hereunto annexed, and each separate entry shall be numbered at the beginning thereof with successive numbers, beginning with number one; and the Registrar General shall furnish to the

* Affected by 18 Vict., c. 29, sec. 8.
† Affected by 23 and 24 Vict., c. 85, sec. 8.

registrar of every parish or district a sufficient number of register books of births, and of register books of deaths, and of register books of marriages, and of certificates, schedules, notices, and forms.

On removal or death of Registrars, register boxes, books, etc., to be delivered up to Successors.

XXIV. In every case in which any registrar, interim registrar, or assistant registrar shall die or be removed from or resign or otherwise cease to hold his office, all register boxes, keys, books, documents, and papers in his possession as registrar, interim registrar, or assistant registrar, or which shall come into the possession of his representatives, shall be delivered up as soon as conveniently may be to his successor in office, or to such other person as the parochial board or the sheriff shall direct; and if any person shall refuse to give up any such box, key, book, document, or paper in such case as aforesaid, it shall be lawful for the sheriff of the county where such person shall be or reside, upon summary application made for that purpose by the parochial board or any one authorised by them, or without such application, to issue a warrant for bringing such person before such sheriff; and upon such person not appearing or not being found, it shall be lawful for the sheriff to hear and determine the matter in a summary way; and if it shall appear to him that any such box, key, book, document, or paper is in the custody or power of any such person, and that he has refused or wilfully neglected to deliver the same, the sheriff is hereby authorised and required to commit such person to the common gaol of such county, or to any legal gaol or place of confinement within the same, near the place where such person may be or reside, there to remain without bail until he shall have delivered up the same, or until satisfaction shall have been given in respect thereof to the person in whose custody the same ought to be, or to the parochial board.

Registrars to dwell in Parish, and put their names on their houses, and their names to be affixed on doors of places of public worship.

XXV.* The registrar and assistant registrar shall dwell or have a known place of business within the parish or district of which he is registrar or assistant registrar; and every registrar shall cause his name, with the addition of registrar for the parish or district for which he shall be so appointed, to be placed in some conspicuous place outside of or on or near the outer door of his own dwelling-house, or of his usual place of business, if different or apart from his dwelling-house; and the sheriff shall cause to

* Partially repealed by 23 and 24 Vict. c. 85, sec. 9.

be printed and affixed for two consecutive Sundays in the month of November one thousand eight hundred and fifty-four, and in the month of July yearly thereafter, upon some conspicuous place on the doors of all the known places of public worship within the county of which he is sheriff, and of every burgh in such county, a list of the names and dwelling-houses or usual places of business, if different or apart from the dwelling-houses, of every registrar and assistant registrar in such county or burgh respectively.

Registrar to learn and register Births and Deaths.

XXVI. Every registrar shall, subject to the regulations to be made as aforesaid, be and he is hereby authorised and required to inform himself carefully of every birth and death which shall happen within his parish or district, and to learn and register, as soon after the event as conveniently may be done, and without fee or reward, save as hereinafter provided, in one of the said register books, the particulars required to be registered, according to the forms in the schedules (A) and (B) hereunto annexed respectively, touching every such birth or every such death, as the case may be, every such entry being made in order from the beginning to the end of the book as aforesaid; and in case of the parish of the birth being different from the parish of the domicile of the parents of the child, the registrar of the parish of the birth shall, within eight days after the entry of the birth in his register, transmit a copy of such entry to the registrar of the parish of the domicile, if known to him, and the registrar of the parish of the domicile shall forthwith transcribe such entry in the register of such parish, and mark on the margin of such entry the name of the parish of the birth.

Parents, etc., to give Information of Births, and to sign the Register.

XXVII. The parents or parent, or, in case of the death or inability of the parents, the person in charge of any child born, and the occupier of every house or tenement in which to his or her knowledge any birth shall take place, and the nurse present at such birth, and in the case of an illegitimate child the mother of such child, or in case of the death, illness, or inability of the mother, the person in charge of such child, or the occupier of the house or tenement in which to his or her knowledge the child was born, or the nurse present at the birth of such child, shall within twenty-one days next after the day of such birth, and under a penalty not exceeding twenty shillings in case of failure, attend personally and give information to the registrar of the parish or district in which the birth occurred, to the best of his or her knowledge and belief, of the several particulars required

by the schedule (A) hereunto annexed to be registered touching such birth, and shall in presence of the registrar sign the register; and in the event of failure or neglect so to give information, such parents and persons above specified, and also any other person having knowledge of the particulars, shall, upon being required personally or by written requisition, within three months after the date of such birth, and under a penalty not exceeding forty shillings in case of failure, attend personally and give information to the registrar of the parish in which such birth occurred, according to the best of his or her knowledge and belief, of the several particulars by the said schedule (A) required to be registered touching the birth of such child, and shall sign the register in the presence of the registrar.

Registrar may require any Child to be produced.

XXVIII. In case of any doubt existing as to the sex or regarding the birth of any child, it shall be lawful for the registrar to require the production of the child, and the parents or any person in charge of the child shall be bound to produce it to the registrar, unless prevented by the illness of the child, or other reason satisfactory to the registrar, under a penalty of forty shillings in case of non-compliance.

Intimation of finding new-born Child or dead body of new-born Child.

XXIX. In case any person shall find exposed any new-born child, or the dead body of any new-born child, such person shall forthwith give notice of the finding of such exposed new-born child, or the dead body of such new-born child, to the registrar of the parish or district, or to the inspector of the poor thereof, or to the district constable, and such registrar or inspector or district constable shall give the like notice to the procurator-fiscal; and any such person, or registrar, or inspector, or district constable, failing to give the notice hereby required, shall be liable in a penalty not exceeding forty shillings.

Register of Children born at Sea.

XXX. If any child of a Scottish parent shall be born at sea on board of a British vessel after the said thirty-first day of December one thousand eight hundred and fifty-four, the captain or commanding officer of such vessel shall forthwith make a minute in the log book or otherwise of the several particulars hereby required to be registered, touching the birth of such child, so far as the same may be known, and the name of the vessel in which the same took place, and shall, on the arrival of such vessel in any port of the United Kingdom, or by any other earlier

opportunity, send a certified copy of such minute through the post office to the Registrar General in Edinburgh, who shall file the same, and shall cause a true and correct copy thereof, verified by his own signature, to be entered in a book to be kept for that purpose in the general registry office, to be called "The Marine Register," and the Registrar General shall keep such book with the duplicate registers according to the provisions of this Act; and the Registrar General shall, within three days after the receipt of such minute, transmit a like copy to the registrar of the parish in which the child's parents are or were last domiciled, if known to him, and such registrar shall forthwith enter the particulars specified in such copy in his register, noticing such transmission therein, in such manner as shall be prescribed by the Registrar General.

Registration after Three Months from the Birth of the Child.

XXXI.* After the expiration of three months following the day of the birth of any child it shall not be lawful for any registrar to register such birth save as herein provided; and in case the birth of any child shall not have been registered according to the provisions hereinbefore made, it shall be lawful for either of the parents of any legitimate child, and for the mother of any illegitimate child, or for the guardians of any legitimate or illegitimate child, to make a declaration in writing before the sheriff of the particulars required to be registered touching the birth of such child, according to the best of his or her knowledge and belief, and it shall thereupon, with the authority of the sheriff, be lawful for the registrar to register the birth of such child according to the information of the person making such declaration; and in every such case the sheriff before whom such declaration is made shall sign the entry of the birth in the register as soon as conveniently may be after such declaration shall have been so made; and for every such registration the registrar shall be entitled, unless the delay shall have been occasioned by his default, to a fee of two shillings from the person requiring such birth to be registered; and no register of births, except in the case of children born at sea, shall be admissible in evidence to prove the birth of any child wherein it shall appear that more than three months have intervened between the day of the birth and the day of the registration of the birth of such child, unless the entry shall be signed by the sheriff; and every person who shall knowingly register or cause to be registered the birth of any child otherwise than herein provided, after the expiration of three months following the day of the birth of such child, shall forfeit and pay for every such offence a sum not exceeding five pounds.

* Partially repealed by 23 & 24 Vict., c. 85, sec. 11.

Name given in Baptism after Registration may be Registered within Six Months.

XXXII.* If any child whose birth shall have been registered as aforesaid shall have any name given to it in baptism, or shall have the name by which it may have been registered altered in baptism, the parent or guardian of such child, or other person procuring such name to be given, may, if such name shall be given within six months after such registration, or if beyond six months, then only with the written authority of the sheriff, granted on a statement of the circumstances submitted to him, procure and deliver to the registrar in whose custody the register of the birth of the child shall be, a certificate, according to the form of schedule (D) to this Act annexed, or to the like effect, signed by the minister who shall have administered the sacrament of baptism, which certificate such minister is hereby required to deliver as soon as may be after the baptism, or, whenever the same shall be demanded, within six months, or if after six months, then with the authority of the sheriff, as aforesaid; and the registrar, upon the receipt of such certificate, and on payment of the fee of one shilling, to which he shall be entitled, shall, without any erasure of the entry of the birth in the register, forthwith insert the name by which the child was baptised in the register, and shall, after entry of the name in the register, certify upon the certificate the fact of the name being so entered; and in case the duplicate register in which such entry is recorded shall have been transmitted to the Registrar General as hereinafter directed, the registrar shall transmit the certificate through the post office to the Registrar General, who shall cause the like entry of the name to be made in the certified copy of the register in the general registry office, and shall preserve the certificate.

Provision for Name given without Baptism after Registration.

XXXIII.* In the case of any child of parents not recognising the sacrament of baptism or infant baptism, it shall be lawful for such parents or the guardians of such child, within six months after the birth of any such child shall have been registered, or if after six months, then only with the written authority of the sheriff, granted on a statement of the circumstances submitted to him, when any name shall have been given to any such child by the parents or guardians of such child, other than that by which it may have been registered, to deliver to the registrar in whose custody the register of the birth of such child shall be, a certificate in the form of the schedule (E) to this Act annexed, or to the like effect, signed by such parents or guardians, whereupon,

* Affected by 23 and 24 Vict., c. 85, secs. 12 and 13.

and upon payment of a fee of one shilling, such registrar shall, without erasure as aforesaid, register therein the name of such child; and such certificate shall be certified and transmitted by the registrar to the Registrar General in the like manner and to the like effect as is hereinbefore prescribed regarding certificates in relation to names given in baptism.

Minister, on Non-production of Certificate of Registration of Birth, to send Notice to Registrar.

XXXIV. There shall be produced to the minister or other person officiating in the administration of the sacrament of baptism of any child a certificate of the registration of the birth of such child, and failing such production such minister or other person shall forthwith intimate the baptism of such child, with all the information which he may have regarding the birth and parentage of such child, to the registrar of the parish in which the parents of such child reside.

Name of Father of illegitimate Child not to be entered, unless at Request of Father and Mother; but if Paternity or Legitimacy of Child fixed by Decree of Court, the Clerk to notify same to the Registrar.

XXXV.* In the case of an illegitimate child it shall not be lawful for the registrar to enter the name of any person as the father of such child, unless at the joint request of the mother and of the person acknowledging himself to be the father of such child, and who shall in such case sign the register as informant along with the mother: Provided always, that when the paternity of any illegitimate child has been found by decree of any competent court, the clerk of court shall, within ten days after the date of such decree, send by post to the registrar of the parish in which the father is or was last domiciled, or in which the birth shall have been registered, notice of the import of such decree in the form of the schedule (F) to this Act annexed, or to the like effect, under a penalty not exceeding forty shillings in case of failure; and on receipt of such notice the registrar shall add to the entry of the birth of such child in the register the name of the father and the word "illegitimate," and shall make upon the margin of the register opposite to such entry a note of such decree and of the import thereof; and in like manner in the event of any child registered as illegitimate being subsequently found by decree of any competent court to be legitimate, the clerk of court shall notify such decree to the registrar, in the form as nearly as may be of the said schedule (F), who shall forthwith make upon the margin of the register in which

* Affected by 18 Vict., c. 29, sec. 5, and also by 23 and 24 Vict., c. 85, sec. 13.

the birth is entered, and opposite to such entry, a note of such decree and of the import thereof, under a penalty not exceeding forty shillings in case of failure.

Correction of Registration of Children legitimated per subsequens matrimonium.

XXXVI.* In the event of any child, registered as illegitimate, being legitimated *per subsequens matrimonium*, the registrar of the parish in which the birth of such illegitimate child was registered shall, upon production of an extract of the entry of such marriage in the register of marriages, note on the margin of the register opposite to the entry of the birth the legitimation of such child *per subsequens matrimonium*, and the date of the registration of such marriage: Provided always, that in all cases in which the paternity of such illegitimate child shall not have been registered in manner hereinbefore provided as having been acknowledged, or as having been determined by decree, the registrar shall not note any such legitimation or marriage opposite to the entry of the birth of such child unless authorised so to do by warrant of the sheriff granted upon the joint application of both parents, of which intimation shall be made as such sheriff may direct, and after due inquiry, and hearing any parties having interest who may appear to oppose such application.

Certificate of Entry of Birth to be given.

XXXVII. When any entry of a birth shall be made in a register, upon the information of any person required to give information under this Act, the registrar on making such entry shall give or transmit by post to the informant, within two days after the date of the entry, an extract thereof, without payment of any fee, under a penalty not exceeding forty shillings in case of failure.

Persons present, etc., to give Information of Death, and to sign the Register.

XXXVIII. The nearest relatives present at the death of any person, and the occupier of the house or tenement in which the death took place, and if the occupier be the person who shall have died, his nearest relatives and the inmates of the house or tenement in which such death shall have taken place, shall, within eight days next after the day of such death, and under a penalty not exceeding twenty shillings in case of failure, attend personally and give information to the registrar of the parish in which such death occurred, to the best of his or her knowledge and belief, of the several particulars required by the schedule

* Affected by 23 and 24 Vict., c. 85, sec. 13.

(B) hereunto annexed to be registered touching such death, and shall in presence of the registrar sign the register; and in the event of failure or neglect so to give information, such persons, and any other person having knowledge of the particulars, or if such death shall not have taken place within a house, then every person present at such death or having a knowledge of the circumstances attending the same, shall, upon being required personally or by written requisition, within fourteen days after the date of such death, and under a penalty not exceeding forty shillings in case of failure, attend personally and give information to the registrar of the parish in which such death occurred, according to the best of his or her knowledge and belief, of the several particulars by the said schedule (B) required to be registered touching such death, and shall sign the register in presence of the registrar.

In case of Persons dying not in a House.

XXXIX. In the event of any person dying not in a house or tenement the occupier of the house or tenement in which such person was at the time lodging or residing, or if the person dying shall have been the occupier, then the inmates of such house or tenement, upon respectively receiving information of such death, shall, within twenty-four hours thereafter, give or cause to be given notice thereof to the registrar of the parish within which the deceased lodged or resided, under a penalty not exceeding forty shillings in case of failure; and if it shall not be known where the deceased lodged or resided, any person present at the death or finding the body, and any parish or public officer, or any party to whom the body shall be brought, and who shall receive the same, shall in like manner, and under the like penalty in case of failure, be bound to give the like notice thereof to the registrar of the parish in which the body shall be so found, or in which it shall be so received, and the registrar shall immediately thereupon communicate such notice to the procurator-fiscal, under a like penalty in case of failure; and in case the procurator-fiscal shall receive such notice from any other person than the registrar, the procurator-fiscal shall, within three days, communicate such particulars as are by this Act required to be registered, so far as within his knowledge, to the registrar.

Procurator-Fiscal to give Result of Precognition.

XL. Provided always, That in every case in which a precognition touching the death of any person shall be held, the procurator-fiscal, having regard to the particulars herein required to be registered concerning the death, shall, in such form and manner as shall be prescribed by the sheriff, with the approbation of the Lord Advocate, inform the registrar of the result of such precog-

nition, and the registrar shall, without requiring the procurator-fiscal to sign the same, make the entry accordingly, stating the procurator-fiscal as his informant.

Medical Attendant to transmit Certificate of Death to the Registrar.

XLI.* The medical person who shall have been in attendance during the last illness, and until the death of any person, shall, within fourteen days after the death of such person, and under a penalty not exceeding forty shillings in case of failure, transmit to the registrar a certificate of such death, in the form of the schedule (G) hereunto annexed, the particulars of which shall forthwith be entered by the registrar in the register, and the registrar shall from time to time furnish gratis to every medical person within his parish or district known to him, or who shall require the same, the necessary copies of such certificate.

Undertaker to transmit Certificate of Interment to the Registrar.

XLII.† The undertaker or other person having charge of the interment of any person shall, within three days after such interment, and under a penalty not exceeding forty shillings in case of failure, transmit to the registrar a certificate of such interment, in the form of the schedule (H) hereunto annexed, the particulars of which shall forthwith be entered by the registrar in the register, and the registrar shall from time to time furnish gratis to every undertaker within his parish or district known to him, or who shall require the same, the necessary copies of such certificate.

Register of Persons dying at Sea.

XLIII. If any of Her Majesty's Scottish subjects shall die at sea on board of a British vessel after the said thirty-first day of December one thousand eight hundred and fifty-four, the captain or commanding officer of the vessel on board of which such death shall have happened shall forthwith make a minute in the log book or otherwise of the several particulars herein required to be inserted in the register touching such death, so far as the same may be known, and the name of the vessel wherein the death took place, and shall, on the arrival of such vessel in any port of the United Kingdom, or by any other earlier opportunity, send a certified copy of such minute through the post office to the Registrar General in Edinburgh, who shall file the same, and shall cause a true and correct copy thereof, verified by his own signature, to be entered in "The Marine Register," and shall within three days after the receipt of such minute transmit a like copy

* Affected by 23 and 24 Vict., c. 85, sec. 14.
† Repealed by 23 and 24 Vict., c. 85, sec. 1.

to the registrar of the parish in which the deceased was domiciled, if known to him, so that the registrar thereof may forthwith make the requisite entry in the register of deaths; and in cases of shipwreck, the captain or any officer of the vessel who may have escaped, or if the officers have all perished, then any person who may have escaped, and shall be required by the Registrar General to that effect, shall to the best of his knowledge comply with the provisions and requisitions in this section, as far as the case will admit.

Registrar to give Certificate of Registration of Death to be delivered at Interment.

XLIV. The registrar, immediately upon registering any death, or as soon thereafter as he shall be required so to do, shall without fee or reward deliver to the informant, for the use of the undertaker or other person having charge of the funeral, a certificate under his hand, according to the form of schedule (I) to this Act annexed, that such death had been duly registered; and such certificate shall, under a penalty not exceeding ten pounds in case of failure, be delivered by such undertaker or other person to the person having the charge of the churchyard, cemetery, church, chapel, aisle, vault, or other place of interment, or having the control, management, or superintendence of the burial of the dead in the place of interment in which the body is to be buried, previous to the interment taking place; and if any dead body shall be buried for which no certificate shall have been so delivered, the person having charge of such churchyard or other place of interment shall within three days thereafter, under a penalty not exceeding twenty shillings in case of failure, give notice thereof to the registrar of the parish in which such death shall have happened, according to the form of schedule (H) to this Act annexed.

Registrar may require Parties to attend him to give Information.

XLV. If the parties bound to give information to the registrar for completing his register shall not attend him for that purpose, he shall make intimation to them requiring them to attend him for such purpose at his place of abode or known place of business where the register is kept at an hour to be fixed in such intimation, between the hours of eight of the clock in the morning and six of the clock in the evening; and in case of their failing to attend, then the registrar shall make a second intimation to the like effect, and if the parties shall again fail to attend, the registrar shall apply to the sheriff, who, upon evidence to his satisfaction of such failure after two successive intimations as aforesaid, shall issue his warrant for compelling the attendance of the parties so failing, which may be executed by any sheriff

officer; and if the expenses of such warrant shall not be recovered from the parties failing to attend as aforesaid, it shall be lawful for the registrar to include the same in the account to be furnished by him to the parochial board as hereinafter directed.

Registration of regular Marriages.

XLVI.* In all cases of regular marriages, when the certificates of the proclamation of the banns are given out, such certificates shall be accompanied by a copy of the said schedule (C), and upon the solemnisation of the marriage, such schedule, having all the information thereby required inserted therein, shall be produced to the minister solemnising the marriage, or to the person solemnising any marriage according to the rites and forms respectively observed by Jews and Quakers, or shall be filled up in the presence of such minister or person, and shall be signed by the parties contracting the marriage, and by the witnesses, male or female, present thereat, not being less than two, and also by the minister or person officiating, and be delivered to the parties contracting the marriage, who shall within three days thereafter either deliver or send by post such schedule to the registrar of the parish wherein the marriage was solemnised; and the husband, and failing the husband the wife, shall in case of failure so to deliver or send such schedule be liable in a penalty not exceeding ten pounds; and upon being received by the registrar, the particulars of such schedules shall be forthwith entered by him in the duplicate registers; and all such schedules shall be taken by the registrar with the duplicate registers to the sheriff, and shall be transmitted by the sheriff with the duplicate registers to the Registrar General, for preservation in the general registry office.

Registrar to attend Parties when required to register Marriages.

XLVII. It shall be competent to the persons intending to contract marriage to require the registrar of the parish to attend at the solemnisation thereof, at any place within such parish; and such registrar is hereby required, upon a written notice of forty-eight hours given to him to that effect, to attend with the register book accordingly, and to make the proper entry therein, and for such attendance and entry the registrar shall be entitled to a fee of twenty shillings, besides the sum of sixpence for each mile which such registrar shall be obliged to travel in going from his place of abode to the place of such marriage.

* Partially repealed by 23 and 24 Vict., c. 85, sec. 15.]

Marriages of persons fined for irregular Marriages, and Marriages established by Decree of Declarator to be registered.

XLVIII.* In the event of any persons being convicted before any justice of the peace or magistrate of having irregularly contracted a marriage, it shall be lawful for either of the parties to such irregular marriage, and they are severally hereby required, to register such marriage in the parish in which such conviction shall have taken place; and in case of any marriage being established by a decree of declarator of any competent court, it shall be lawful for either of the parties to the action in which such decree was pronounced to register such marriage in the parish of the domicile of such parties, or the parish of their usual residence; and the production to the registrar of an extract of such conviction or decree of declarator shall be sufficient evidence and warrant for the registration of such marriages, on payment to the registrar of a fee of twenty shillings.

Convictions in irregular Marriages and Decrees of Declarator of Marriages to be intimated to Registrar.

XLIX.* The magistrate before whom or the clerk of court in which any such conviction has taken place, and the clerk of court in which any such decree of declarator has been pronounced establishing any marriage as aforesaid, shall, upon such conviction so taking place or upon such decree being so pronounced, give information to the registrar of the parish in which such conviction took place, and in case of a decree of declarator, to the registrar of the parish of the domicile, or of the parish of the usual residence of the parties to the action of declarator, by notice of the import of such conviction or decree, in the form of schedule (K) to this Act annexed; and any such clerk of court failing so to do shall be liable in a penalty not exceeding forty shillings, which may be prosecuted for and recovered at the instance of the registrar.

Registrars to make out Account of number of Births, Deaths, and Marriages half-yearly, and Assessment to be levied and Payment made in respect thereof.

L.† Every registrar shall make out an account twice in every year of the number of births, deaths, and marriages which he shall have registered in the half years terminating on the last day of June and the last day of December next preceding, and the sheriff shall examine and verify or cause the same to be

* Affected by 19 and 20 Vict., c. 96, sec. 3.

† Partially repealed by 23 and 24 Vict., c. 85, sec. 16, and also affected by secs. 8, 17, and 18.

examined and verified; and it shall be lawful for the parochial board of the parish, on production of such account so verified and signed by the sheriff, to levy by assessment the sums required for payment to the registrar of the amount of his account so verified, and such further sum as may be necessary for his remuneration, and for the expenses of taking the duplicate registers yearly to the sheriff; and such assessment shall be made and levied in the same manner as and along with but separate from the assessment for the support of the poor; and if there shall be no assessment for the support of the poor in any parish, then such assessment shall be made and levied by the heritors, either in the same manner as and along with but separate from the rate for the support of prisons, or in such other manner as the sheriff may direct; and the parochial board or the heritors shall pay to the registrar such sums as he shall be entitled to receive in terms of such verified account, according to the following scale; (that is to say), for the first twenty entries of births, deaths, and marriages in each half year which he shall have registered, whether the same be of births or of deaths or of marriages indiscriminately, two shillings each, and one shilling for each subsequent entry of births and of deaths and of marriages in each half year; and in the event of such fees being deemed inadequate to his remuneration, such further sum as the parochial board shall think fit.

Registrars may be paid by salary.

LI. Provided, That it shall be lawful for the parochial board, with the approbation of the Registrar General or of the sheriff, to place the registrar and assistant registrar upon annual salaries, the amount of which shall be fixed by the parochial board, with the like approbation; and such salaries shall be paid by the parochial board out of the assessment to be levied as hereinbefore directed, and the fees received by the registrar, which in such case shall be accounted for by him to the parochial board.

Forms to be supplied gratis.

LII.* The registrar shall furnish gratis to all persons hereby required to give information, who shall apply therefor, printed forms, setting forth the heads of the particulars required to be specified and inserted in such forms; and the Registrar General shall cause a printed copy of section forty-six of this Act, and copies also of the schedule (C) hereunto annexed, to be supplied to the several registrars, who shall, upon application therefor, furnish such copies to any minister at any time applying for the same, and to the session clerk of every parish, and to the regis-

* Partially repealed by 23 and 24 Vict., c. 85, sec. 15.

tering officers of the several Societies of Friends, and to the secretaries of the Jewish Synagogues, for use in the registration of marriages under this Act.

Registers to be kept in Duplicate, and annually examined by the Sheriff, and Duplicate to be transmitted to the Registrar General.

LIII.* All the registers hereby appointed to be kept shall be kept in duplicate, and such duplicates shall be paged continuously alike, and each page shall be authenticated by the sheriff affixing his initials thereto before delivery thereof to the registrars, and the contents of each page of such duplicate register books shall be the same, and each page shall be signed by the registrar; and in the first week of August in each year, on such day as shall be fixed by the sheriff, the duplicate register books for the preceding year ending on the thirty-first day of December shall be taken by the registrar to the sheriff, by whom, along with the registrar, the same shall be carefully examined and compared, and a docquet shall be added at the end of each duplicate, stating the examination and accuracy thereof, the number of pages, and any marginal additions or erasures appearing on either duplicate, so as to preclude the possibility of interpolation, and such docquet shall be signed by the parties examining the duplicates; and one of such duplicates shall be retained by the registrar, and the other shall be transmitted by the sheriff to the Registrar General on or before the thirty-first day of August in each year; and the sheriff when transmitting such duplicate shall report any circumstance relating to the registers to which he may think the attention of the Registrar General ought to be called.

Additions to or Alterations of the Registers.

LIV.† If in the course of any year any such additions or alterations as are directed or authorised by this Act to be made on the registers shall be so made, the registrar shall make a minute in duplicate of such additions or alterations, and on the day in the month of August when the sheriff shall examine the duplicate registers, as hereinbefore provided, the registrar shall deliver one of such duplicate minutes to the sheriff, together with all the relative documents, and the sheriff shall, if necessary, inquire into the accuracy of the facts therein set forth, and, if erroneous, correct the minute; and thereupon the sheriff and registrar shall examine and authenticate the duplicate minutes, and one thereof shall be retained by the registrar, and the other shall be transmitted by the sheriff through the post office to the

* Partially repealed by 18 Vict., c. 29, sec. 3.

† Partially repealed by 18 Vict., c. 29, sec. 3, and entirely repealed by 23 and 24 Vict., c. 85, sec. 1.

Registrar General, with the duplicate registers, and such minute shall be deemed and taken to be a part of the registers, and the alterations and additions so authenticated shall forthwith be given effect to on or opposite to the entries in the duplicate registers previously transmitted to the Registrar General for the periods to which such alterations and additions apply.

Duplicate Register to supply the Place of any Register destroyed or become illegible.

LV. If any duplicate register in the custody of the registrar shall be lost, destroyed, or mutilated, or shall have become illegible, in whole or in part, such fact shall be forthwith communicated by the registrar to the Registrar General, who shall require the registrar immediately to transmit to him the duplicate register which shall have been mutilated or become illegible; and the Registrar General shall thereupon present a petition to one of the Divisions of the Court of Session, setting forth the fact of the loss, destruction, mutilation, or total or partial illegibility, as the case may be, of such duplicate register, and the date of the discovery of such loss, destruction, mutilation, or total or partial illegibility of such duplicate; and the Court, on being satisfied regarding the same, and after such intimation as they may think proper, shall order such register to be corrected or completed, or a new duplicate to be made, at the sight of the Registrar General, and such corrected or completed duplicate, or new duplicate, authenticated by the signature of the Registrar General, shall thereupon become in all respects of the same force and validity as the original duplicate.

Indexes of Parish Registers to be made, which may be searched.

LVI. Every registrar shall forthwith make tabular alphabetical indexes of the duplicate registers in his custody, to be kept in the registrar's office; and every person shall be entitled at all reasonable hours to search the said indexes, subject to such regulations as the sheriff may prescribe, and to have an extract of any entry or entries in such registers under the hands of the registrar, on payment of the fees hereinafter mentioned (that is to say), for every general search the sum of two shillings, and for every search for a particular register of birth, death, or marriage, the sum of one shilling, and for every extract of any entry the sum of two shillings; and any registrar who shall refuse or neglect to make such extract for one month after being required so to do shall be liable in a penalty not exceeding ten pounds.

Indexes to be kept at General Registry Office, where they may be searched.

LVII. Every person shall be entitled, on payment of the fees

hereinafter mentioned, to search the tabular alphabetical indexes of the duplicate registers in the custody of the Registrar General, between the hours of ten in the morning and four in the afternoon of every day except Sunday, and to have an extract of any entry in the said duplicate registers; and for every general search of such indexes the sum of twenty shillings, and for every particular search the sum of one shilling, and for every extract of any entry the sum of two shillings, and no more shall be paid to the Registrar General, or such other officer as shall be appointed to receive such fees on his account: Provided, that it shall be competent to the Registrar General to permit gratis searches to be made by or on behalf of and extracts to be given gratis to persons of whose inability to pay he shall be satisfied.

Extracts of Entries to be admissible as Evidence.

LVIII. Every extract of any entry in the register books to be kept under the provisions of this Act, duly authenticated and signed by the Registrar General, if such extract shall be from the registers kept at the general registry office, and by the registrar if from any parochial or district register, shall be admissible as evidence in all parts of Her Majesty's dominions, without any other or further proof of such entry.

Money received by Registrar General to be accounted for.

LIX. Every sum received by the Registrar General under the provisions of this Act shall be accounted for, and paid by the Registrar General, at such times as the said Commissioners of Her Majesty's Treasury from time to time shall direct, into the Bank of England, to the credit of Her Majesty's Exchequer, according to the provisions of an Act passed in the fourth and fifth years of His late Majesty, intituled "An Act to regulate the Office of the receipt of His Majesty's Exchequer at Westminster," or be applied by order of the said Commissioners towards the payment of the expenses of the said general registry office.

Penalty on giving false Information.

LX. Every person who shall knowingly and wilfully make or cause to be made, for the purpose of being inserted in any register of birth, death, or marriage, any false or fictitious entry, or any false statement regarding the name of any person mentioned in the register, or touching all or any of the particulars by this Act required to be registered, shall be deemed guilty of an offence, and on conviction shall be punishable by transportation for a period not exceeding seven years, or by imprisonment for a period not exceeding two years.

Penalty on Registrar for omitting to register.

LXI. Every registrar who shall refuse, or, without reasonable cause, omit to register any birth or death or marriage, or to make any addition to or alteration upon the register, in accordance with the provisions of this Act, shall forfeit a sum not exceeding ten pounds for every such offence.

Penalty for destroying or falsifying Register, etc.

LXII. Every person who shall wilfully destroy, obliterate, erase, or injure any entry, or cause to be destroyed, obliterated, erased, or injured any such register, or duplicate thereof, or any minute, notice, or certificate made or given pursuant to this Act, or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register or duplicate, or any such minute, notice, or certificate, or shall willfully insert or make or cause to be inserted or made in any such register or duplicate any false or fictitious entry of or any false statement touching any birth, death, or marriage, or shall wilfully give any false certificate, or falsify any certificate, or shall certify any writing to be an extract of any such register, knowing the same to be false or fictitious in any part thereof, shall be deemed guilty of an offence, and on conviction thereof be liable to be punished by transportation for a period not exceeding seven years, or by imprisonment for a period not exceeding two years.

For correcting erroneous Entries.

LXIII.* If any error shall be discovered to have been committed in the entry of any birth, death, or marriage in any such register, the person discovering the same shall forthwith give information thereof to the sheriff, and it shall be lawful for the sheriff, and he is hereby authorised and required, thereupon, or upon otherwise coming to the knowledge of such erroneous entry, to summon before him the person who made and any person concerned in the making such erroneous entry, or having knowledge regarding the same, and also any person interested in the effect of such erroneous entry, and to examine all such persons upon oath ; and if the sheriff shall be satisfied that any error has been committed in any such entry, he shall, by authority in writing under his own hand, direct a corrected entry of the birth, death, or marriage in relation to which such error has been committed, and bearing the date of the correction, to be made in a separate register book, to be called "The Register of corrected Entries," and in such corrected entry reference shall be made to the depositions upon which the correction of the error has pro-

Affected by 18 Vict., c. 29, sec. 6.

ceeded, and the sheriff shall also make or cause to be made an entry or marking upon the margin of the original entry of such birth, death, or marriage in the duplicate registers, but shall not alter the original entry, distinctly referring by volume and page and date to the entry made in "The Register of corrected Entries;" and in case the duplicate register shall have been transmitted to the Registrar General, the sheriff shall transmit a copy of the corrected entry and relative marking, authenticated by his signature, to the Registrar General, to be inserted in the duplicate register so transmitted; and the sheriff shall every year transmit such "Register of corrected Entries" to the Registrar General, at the same time and in the same manner as is provided for the transmission of duplicate registers.

Errors in Entry may be corrected before signing.

LXIV. Provided always, that errors committed in the form or substance of any entry may be corrected according to the truth of the case before the entry is signed; and if any correction is intended to be made by erasure or obliteration, the same shall be effected by drawing a line through the erroneous words or figures, but so as to leave the same legible; and any addition or alteration relative to such correction shall be made as near as may be to the correction, and the registrar shall affix his signature thereto.

Recovery and Application of Penalties.

LXV.* All penalties imposed by this Act may, unless otherwise directed, be recovered by summary proceedings upon complaint in writing made by the procurator-fiscal to the sheriff of the county within which such penalty shall be incurred, or to the sheriff of any county in which the person complained against may be found; and on such complaint being made such sheriff shall issue a warrant for bringing such person immediately before him, or shall issue an order requiring such person to appear at a time and place to be named in such order; and every such order shall be served on the person complained against, either in person or by leaving with some inmate at his usual place of abode a copy of such order and of the complaint whereon the same has proceeded; and either upon the appearance or on the default to appear of such person it shall be lawful for the sheriff to proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the person complained against, or upon the oath of one or more credible witness or witnesses, and without any written pleadings or record of evidence, to convict the offender, and upon such conviction to decree, adjudge, and sentence him to pay the penalty incurred, and the expenses attending the conviction, and to grant warrant for imprisoning

* Affected by 18 Vict., c. 29, sec. 7.

him until such penalty and expenses shall be paid: Provided always, that such warrant shall specify the amount of such penalty and expenses, and shall also specify a period at the expiration of which the offender shall be discharged, notwithstanding such penalty and expenses shall not have been paid, and which period shall in no case exceed two months, and such penalty shall go to the Registrar General; and the decision of the sheriff in all such cases shall be final and conclusive, and shall not be subject to review in any court or by any process whatsoever.

Town Councils of Burghs to have Powers of Parochial Boards.

LXVI. Where any parish shall be situated wholly or in part in a burgh, the town council of such burgh shall have and possess all the powers hereby conferred on parochial boards, and shall be liable to the discharge of all the duties hereby imposed on such boards in respect of such parish or part of a parish; and such powers and duties shall be exercised and discharged by such town council as nearly as may be in terms of the provisions herein contained relative to such parochial boards; and such town council shall be entitled to levy such assessment on the real rent of lands and heritages within such burgh as may be required to defray the expense of their proceedings under this Act; and the word "burgh" shall have the meaning annexed to it in the seventy-sixth section of this Act, excepting in the case of burghs which do not as burghs send or contribute to send a member to Parliament, the boundaries of which shall continue to be as fixed by Royal Charter, or Act of Parliament, or other constitution thereof.

Expense of Correspondence of Registrar General relating to this Act how to be defrayed.

LXVII. The expense attending the postage or carriage of all letters and packets relating exclusively to the execution of this Act, sent by the General Post from place to place in Great Britain and Ireland, to or from the Registrar General, and also the expense of registering any letter containing any register transmitted through the post office, shall be defrayed as a part of the expense of the general registry office hereinbefore provided for: Provided always, that such letters and packets as shall be sent to the Registrar General be directed to the Registrar General in Edinburgh, and all such letters and packets as shall be sent by the Registrar General shall be in covers, with the words "Registrar General, Edinburgh," printed on the same, and be signed on the outside thereof under such words with the name of such person as the Registrar General, with the consent of the said commissioners of Her Majesty's Treasury, shall appoint, in

his own handwriting, such name to be from time to time sent to the secretaries of the General Post Office in London, Edinburgh, and Dublin, and under such other regulations as the said commissioners shall think fit; and if the person so to be appointed shall subscribe or seal any letter or packet whatever, except such only concerning which he shall receive the special direction of his superior officer, or which he shall himself know to relate exclusively to the execution of this Act, or if the person so to be appointed, or any other person, shall knowingly send or cause to be sent, under any such cover, any letter, paper, or writing, or any enclosure other than shall relate exclusively to the execution of this Act, every person so offending shall forfeit and pay the sum of one hundred pounds, and be dismissed from his office, one moiety of such penalty to be paid to the use of Her Majesty, her heirs and successors, and the other moiety to the use of the person who shall inform or sue for the same, to be sued for or recovered in any competent court.

Proclamation of Banns and Law of Marriage not affected.

LXVIII. Nothing herein contained shall affect the proclamation of banns, or the registration thereof, as at present in use, or the law of marriage in Scotland.

Registrar General to furnish Notices of Acts required to be done to Sheriffs for Publication on Doors of Places of Worship, etc.

LXIX. The Registrar General shall, within three months after his appointment to such office, and from time to time as he shall think fit, furnish to the respective sheriffs of the several counties in Scotland such printed notices respecting the Acts required to be done under this Act by the persons who are herein required to give notice or information with regard to any birth, death, or marriage as he shall think it requisite to be publicly known, which notices the sheriff shall, as soon as conveniently may be after the receipt thereof, cause to be affixed on the outside of the doors of all the known places of public worship or other public and conspicuous buildings or places within their respective counties.

Notices may be given by Post.

LXX. Wherever notice is required to be given by this Act, the person bound to give the notice shall be held to have sufficiently discharged himself if he shall have put into the post office, before the expiration of the period within which the notice is required to be given, a letter addressed to the person to whom and containing the particulars of which the notice is required to be given.

Penalties not exigible if Notice given.

LXXI. No penalty imposed by this Act on parties failing to give any notice required by this Act shall be exigible, if any of the parties so required shall have given such notice.

Parties may sign by a Mark before Witnesses.

LXXII. In case of the inability to write of any person whose signature is required or necessary under this Act, it shall be lawful for such person to adhibit a cross or other mark, and being adhibited in presence of the registrar, or sheriff, or two witnesses, who shall adhibit their designations to their signatures, such mark shall be in all respects as binding and effectual as the signature of such person if capable of writing would have been.

No Penalty where failure not wilful.

LXXIII. No penalty shall be exacted in any case where it shall appear to the satisfaction of the sheriff that the party failing to comply with the provisions of this Act, in relation to the giving notices under the same, has not wilfully been guilty of such failure, but that such failure has been occasioned by unavoidable accident, or by circumstances over which he had no control, and where he has used every reasonable endeavour towards compliance with such provisions.

Registrar General may alter Schedules.

LXXIV. It shall be lawful for the Registrar General, with the consent of Her Majesty in Council, to diminish, from time to time, the fees hereby authorised to be taken, and to alter the schedules to this Act annexed, regard being always had to the objects and purposes of this Act, and to rendering the same more effectual; and such alteration of fees or schedules shall be published in the *Edinburgh Gazette*, and shall within fourteen days after the same shall have been issued be laid before both Houses of Parliament, or if Parliament shall not be then sitting, within fourteen days after the meeting of the then next session.

Compensation where Keepers of Registers deprived of Office by Operation of this Act.

LXXV. If any person being by law in the office of keeper of any register of births, baptisms, or burials, and not being a session clerk, shall, in the execution of this Act, be deprived of such office, and thereby suffer loss of the emoluments of such office, it shall be competent to such person to make application to the said Commissioners of Her Majesty's Treasury, setting forth the amount of such loss, together with the vouchers and evidence

thereof, and the said commissioners may on consideration of the same find the applicant entitled to compensation, and award the same to such amount as they shall think fit, or find that he is not entitled to compensation.

Interpretation of Act.

LXXVI. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say),

The expression "Registrar General" shall mean the Registrar General of Births, Deaths, and Marriages in Scotland for the time being, appointed and acting under this Act:

The word "parish" shall include any division of a parish or union of parishes into a district or districts made in pursuance of this Act:

And with regard to any birth, death, or marriage herein mentioned, the words "registrar" and "assistant registrar" shall mean the registrar and assistant registrar of the parish or district in which such birth, death, or marriage took place or such marriage was solemnised, celebrated, or contracted; and the word "register" shall mean the duplicate registers of births, deaths, and marriages to be kept and made pursuant to this Act:

The word "sheriff" shall mean the sheriff of the county of which he is sheriff, and shall include sheriffs substitutes:

The words "procurator-fiscal" shall mean the procurator-fiscal of the county or division of a county of which he is procurator-fiscal:

The word "minister" shall be taken to include ministers or pastors of Christian congregations of all denominations:

The word "county" shall include any division of a county established by law:

The word "burgh" shall apply to a city, burgh, or town being a royal burgh, or which sends or contributes as a burgh to send a member to Parliament, and the boundaries of all such burghs shall for the purposes of this Act be the same as are described in the Act second and third William the Fourth, chapter sixty-five:

The word "heritors" shall mean heritors entitled to elect a schoolmaster under an Act passed in the forty-third year of the reign of His Majesty King George the Third, chapter fifty-four.

The word "occupier" shall include the guardian, master, governor, keeper, steward, house surgeon, or superintendent of every gaol, prison, or house of correction, workhouse, hospital, lunatic asylum, or public charitable institution.

Act to extend only to Scotland.

LXXVII. This Act shall extend only to Scotland.

*** NOTE.—*With the exception of Schedule (I), all the Schedules referred to in this Act have been altered by the Registrar General in virtue of the powers conferred by sec. LXXIV. The following are the amended Schedules, as in use from the* 1st *of January* 1861.

SCHEDULES used under this Act.

SCHEDULE (A.)

18 . BIRTHS in the Parish (or District) of in the County (or Burgh) of Edinburgh.

(1.) No.	(2.) Name and Surname.	(2.) When and Where Born.	(3.) Sex.	(4.) Name, Surname, and Rank or Profession of Father. — Name, and Maiden Surname of Mother. — Date and Place of Marriage.	(5.) Signature and Qualification of Informant, and residence, if out of the House in which the Birth occurred,	(6.) When and Where Registered, and Signature of Registrar.
98	*John*	1861,	*M.*	*James Walker, Wine Merchant.*	*James Walker,*	1861.
	WALKER.	*February*			*Father.*	*February 21st.*
		Eleventh.		*Jane Walker, M. S. Hill.*	*(Present.)*	*At Edinburgh.*
		5h. 30m. a.m.				
				1856, *June 12th, Edinburgh.*		*John Smith,*
		1 *North Street,*				Registrar.
		Edinburgh.				

[The Words and Figures in *Italics* in this Schedule to be filled in as the case may be.]

SCHEDULE (B.)

18 . DEATHS in the Parish (or District) of in the County (or Burgh) of Edinburgh.

	(1.)	(2.)	(3.)	(4.)	(5.)	(6.)	(7.)	(8.)
No.	Name and Surname. — Rank or Profession, and whether Single, Married, or Widowed.	When and Whe Died.	Sex.	Age.	Name, Surname, and Rank or Profession of Father. — Name, and Maiden Surname of Mother.	Cause of Death, Duration of Disease, and Medical Attendant by whom certified.	Signature and Qualification of Informant and Residence, if out of the House in which the Death occurred.	When and Where Registered, and Signature of Registrar.
	William	1861.	*M.*	62	*Timothy Canty,*	*Pneumonia—*	*Honora Canty*	1861.
	CANTY.	*February*		*Years.*	*Shoemaker,*	*2 Months.*	*her X Mark,*	*March 2d.*
		Twenty-eighth.			*(deceased.)*	*As certified by*	*Widow.*	*At Edinburgh.*
301	*Agricultural*	*6h. 30m. a.m.*				*H. Bloomfield,*	*(Present.)*	
	Labourer.				*Mary Canty,*	*M.D.*	*John Smith,*	*John Smith,*
		16 Cottage Lane,			*M. S. Nicolas,*		*Registrar,*	Registrar.
	Married to	*Edinburgh.*			*(deceased.)*		*Witness.*	
	Honora M'Carty.							

[The Words and Figures in *Italics* in this Schedule to be filled in as the case may be.]

SCHEDULE (C.)

18 . MARRIAGES in the Parish (or District) of in the County (or Burgh) of Edinburgh.

No. (1.)	When, Where, and How Married. (2.)	Signatures of Parties — Rank or Profession, whether Single or Widowed, and Relationship (if any). (3.)	Age. (4.)	Usual Residence. (5.)	Name, Surname, and Rank or Profession of Father. — Name, and Maiden Surname of Mother. (6.)	If a regular Marriage, Signatures of Officiating Minister and Witnesses. If irregular, Date of Conviction, Decree of Declarator, or Sheriff's Warrant. (7.)	When and Where Registered, and Signature of Registrar.
11	1861. *March Second.* 4 *Hamilton Place* *Edinburgh.* *After Banns, according to the Forms of the Established Church of Scotland.*	*William Hastings.* *Carpenter,* (*Widower.*) *Sophia Mitchell* *Dressmaker,* (*Spinster.*)	32 20	*Chelmsford.* *Essex.* 4 *Hamilton Place* *Edinburgh.*	*Peter Hastings,* *Upholsterer,* (*deceased*) *and* *Ann Hastings,* *M. S. Payne.* *John Mitchell* *Butcher, and* *Sarah Mitchell,* *M. S. Evens,* (*deceased.*)	*James Brown,* *Minister of High Church, Edinburgh.* *John Hastings,* *Witness.* *Jane Mitchell,* *Witness.*	1861. *March 4th,* *At Edinburgh.* *John Smith,* Registrar.

(The Words and Figures in *Italics* in this Schedule to be filled in as the case may be.)

SCHEDULE (D.)

I, minister of do hereby certify That on the day of , 18 , I baptised by the name of , a male child, produced to me by as the child of and and declared to have been born at in the of in the of on the day of 18 . Witness my hand, this day of 18

_____ Minister.

SCHEDULE (E.)

I, do hereby certify, that the male child named was born at in the of in the of on the day of 18 ; that and are the parents of the said child, and do not recognise the sacrament of baptism, and that the name was given to the said child on the day of 18 .

Witness my hand, this day of 18 .

[*To be signed by parent or guardian of child.*]

SCHEDULE (F.)

To the registrar of the parish [*or* district] of in the county [*or* burgh] of . Take notice, that the Court of Session [*or other competent court*], upon the day of 18 , pronounced decree in an action before the said court at the instance of [*pursuer's name and description*], against [*defender's name and description*], relating to the paternity of a male child, named , born at in the of in the of on the day of 18 , finding that the said child was the illegitimate child of the said [*names of pursuer and defender*].

Witness my hand, this day of 18 .

[*To be signed by the clerk of court.*]

SCHEDULE (G.)

To the registrar of the parish [*or* district] of
in the county [*or* burgh] of .

I hereby certify, that I attended , who died on the day of 18 , at , that I last saw the deceased on the day of 18 , and that the cause of death and duration of disease were as undernoted :—

	Cause of Death.	Duration of Disease.
Primary Disease..... (*a*)		
Secondary diseases (if any) (*b*)		
(*c*)		
(*d*)		

Witness my hand, this day of 18 .

*Signature*_____

*Professional Title*_____

*Residence*_____

SCHEDULE (H.)

To the registrar of the parish [*or* district] of
in the county [*or* burgh] of .

Take notice, that upon the day of 18 , the body of of was buried in the [*here insert the name of the churchyard or other place of interment.*]

Witness my hand, this day of 18 .

[*To be signed by the person having charge of the place of interment.*]

SCHEDULE (I.)

I Registrar of births, deaths, and marriages in the parish [*or* district] of in the county [*or* burgh] of do hereby certify, that the death of *A. B.* of was duly registered by me on the day of 18 . Witness my hand, this day of 18 .

_____Registrar.

SCHEDULE (K[1].)

To the registrar of the parish [*or* district] of in the county [*or* burgh] of

Take notice that after proof had been adduced in terms of the Act 19 & 20 Vict. cap. 96, sec. 3, *A. B.*, a justice of peace [*or* magistrate] for the county [*or* burgh] of convicted within the parish [*or* district] of *C. D.* of of having irregularly contracted a marriage with *E. F.* of upon the day of 18 .

Witness my hand, this day of 18 .

[*To be signed by the clerk of court.*]

SCHEDULE (K[2].)

To the registrar of the parish [*or* district] of in the county [*or* burgh] of .

Take notice, that the Court of Session [*or other competent court*], upon the day of 18 , pronounced decree in an action of declarator of marriage before the said court, at the instance of [*pursuer's name and description,*] against [*defender's name and description*] finding that on the day of 18 , the said and had intermarried.

Witness my hand, this day of 18 .

[*To be signed by the clerk of court.*]

II.—ACT 18 & 19 VICT., C. 29, 15th June 1855.

An Act to make further Provision for the Registration of Births, Deaths, and Marriages in Scotland.

WHEREAS it is expedient to amend the Act passed in the seventeenth and eighteenth year of the reign of Her present Majesty, intituled "An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland:" Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Landward and Burghal Parts of Parishes may be united.

I.* It shall be lawful for the sheriff if he shall think it expedient, upon a joint application of the parochial board of any parish and of the town council of any burgh situated within such parish, or upon the application of the Registrar General, to unite such burgh or any portion thereof to any landward portion of such parish, and also to regulate any questions which may arise as to the assessment to be levied upon such burghs or portions of burghs, and upon such landward portions of such parishes respectively.

Registrar General, failing Parochial Board, may apply for Dismissal of incompetent Registrars.

II. If any parochial board shall neglect or refuse to apply, under the authority of the fifteenth section of the recited Act, to the sheriff for the removal of any incompetent registrar, after being thereto required by the Registrar General, it shall be lawful for the Registrar General himself to apply to the sheriff, and such and the like procedure in all respects shall in such case be had and take place as if the application had been made by the parochial board.

Examination of Registers by Sheriff repealed, and Examiners appointed.

III. So much of the fifty-third and fifty-fourth sections of the recited Act as requires the examination of the registers and the authentication thereof by the sheriff shall be and the same is hereby repealed; and no penalty or breach of duty or other consequence shall be deemed to be incurred or to arise

* Repealed by 23 and 24 Vict., c. 85, sec 1, (sec. 5 of that Act being substituted).

from the non-authentication heretofore of any of the said registers or duplicate registers which shall have been sanctioned or acquiesced in by the Registrar General or the sheriff, anything in the said Act to the contrary notwithstanding; and it shall be lawful for the Registrar General, with the approbation of the Commissioners of the Treasury, from time to time to divide Scotland into such districts as he may think fit, and with such approbation to appoint for each district a fit and competent person to be the examiner thereof, who shall be paid such annual allowance as shall be fixed by the said Commissioners of the Treasury, in such and the like manner as the expenses specified in the fifth section of the said Act are directed to be paid; and it shall be the duty of such examiners, at such time or times as shall be fixed by the Registrar General, to proceed to their respective districts, and there in such manner as shall be prescribed by the Registrar General, carefully to examine and compare, along with the several registrars within their respective districts, the registers and duplicate registers of such several registrars, and authenticate and docquet the same, and all alterations and additions thereon or thereto, in such form and manner as the Registrar General shall direct; and it shall be lawful for the Registrar General, with the approbation of the Secretary of State for the Home Department, to frame all such rules and regulations as shall be necessary and expedient for such purposes in the manner, as far as may be, directed by the fifty-third section of the said Act or otherwise; and it shall in like manner be the duty of such examiners respectively to aid, under the direction of the sheriff within their respective districts in executing and carrying into effect the purposes of the eighteenth, nineteenth, twentieth, fifty-third, and fifty-fourth sections of the said Act.

Where Registration District consists of Two Parishes.

IV. Where a registration district, consisting of portions of two or more parishes, has been erected by the sheriff, under the provisions of the said recited Act, the powers thereby and by this Act conferred on parochial boards, and the duties imposed upon such boards, shall respectively belong to and be discharged by the qualified heritors of such registration district, and all meetings of such heritors shall be called by the registrar, or in case of vacancy in the office of registrar, by the heritor of lands of the highest valuation therein; and at such meetings the heritor of the highest valuation present shall preside, and shall be entitled to a casting as well as to a deliberative vote, and assessments under the said recited Act shall be laid on according to the manner thereby prescribed for the case of parishes in which there is no assessment for the poor.

Decrees of Court fixing Status of Parties to be noted in Register.

V. In every case in which the status of any person shall be altered by a decree of any competent court, the clerk to the process shall forthwith report such decree to the Registrar General; and it shall be lawful for the Registrar General, and he is hereby required, to take all measures necessary for having the entries in the duplicate registers affected by such decree rectified, by causing the date of the decree and the import thereof to be noted upon the margin of both duplicates opposite to such entries, as the Registrar General shall think fit and direct.

Register of corrected Entries to be kept in Duplicate.

VI. In reference to the sixty-third section of the recited Act, the register of corrected entries shall be kept in duplicate; and one of the duplicates shall be annually transmitted to the Registrar General, along with the duplicate registers directed by the fifty-third section of the said Act to be annually so transmitted.

Penalties recovered to be paid into Exchequer.

VII. The penalties imposed by the said Act, and by the sixty-fifth section thereof directed to be recovered by prosecution by the procurator fiscal, and when recovered to go to the Registrar General, shall instead be paid to the Queen's and Lord Treasurer's Remembrancer of the Court of Exchequer in Scotland; and the expense of all such prosecutions, where not recovered from the parties, shall be charged and paid in Exchequer, and the recovery of such penalties shall be a part of the ordinary duties of the procurator fiscal.

Sheriff Clerks to act in execution of Acts.

VIII. It shall in all cases be lawful for the sheriff clerks in the several counties, and they are hereby required, to act in aid of the sheriff in the execution of the powers, provisions, and duties of the recited Act and of this Act, in all respects as the sheriffs may direct.

Appointments to be exempt from Stamp Duty.

IX. The appointments of the examiners, and the other clerks and officers to be appointed under this Act, shall, in like manner as the appointments mentioned in the sixteenth section of the recited Act, be exempt from all stamp duties.

This Act and recited Act to be as one.

X. This Act shall be deemed a part of the recited Act, and shall be construed therewith as if the said Acts formed one Act.

No. III.—Act 23 & 24 Vict., c. 85, 6th August 1860.

An Act to amend two Acts of the seventeenth and eighteenth years, and of the eighteenth year, of Her present Majesty, relating to the Registration of Births, Deaths, and Marriages in Scotland.

Whereas it is expedient to alter and amend the Act passed in the seventeenth and eighteenth years of the reign of Her present Majesty, intituled "An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland," and the Act passed in the eighteenth year of the same reign, intituled "An Act to make further Provision for the Registration of Births, Deaths, and Marriages in Scotland:" Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Certain Sections of recited Acts repealed.

I. Sections eighteen, nineteen, forty-two, and fifty-four of the first recited Act, and section one of the second recited Act, are hereby repealed.

Register of Neglected Entries.

II. It shall be competent for any person on payment of a fee of five shillings to register in a book to be kept for the purpose in the general registry office, to be called "The Register of Neglected Entries," any birth, death, or marriage which shall have taken place in Scotland between the thirty-first day of December one thousand eight hundred and the first day of January one thousand eight hundred and fifty-five: Provided always, that in order to such registration there shall be produced to the Registrar General a warrant to that effect by the sheriff of the county in which such birth, death, or marriage occurred, to be granted upon a petition, of which intimation, by advertisement or otherwise, shall be made as such sheriff may direct, and after due inquiry, and hearing any parties having interest who may appear to oppose such petition, and which warrant, and all written documents produced to such sheriff, together with his notes, which such sheriff is hereby required to take, of all parole evidence adduced before him, shall be transmitted to the Registrar General, and shall be retained among the records of his office: Provided also, that a copy of the entry of any neglected birth, death, or marriage which occurred subsequent to the year one thousand

eight hundred and nineteen shall be made and transmitted from the general registry office to the registrar of the parish or district in which such neglected birth, death, or marriage occurred, and shall by him be recorded in such form and manner as the Registrar General may direct.

Correction of Errors in Registers kept prior to 1st January 1855.

III. If any error shall be discovered in an entry relative to a birth, death, or marriage, in any register kept and in use prior to the passing of the first recited Act, which shall have taken place in Scotland after the thirty-first day of December one thousand eight hundred, it shall be lawful for the sheriff of the county wherein the said register is kept, upon the application of any person having interest, of which application such intimation shall be made as the sheriff may direct, and upon production of such evidence, written or parole, as the sheriff shall deem satisfactory, to authorise the Registrar General (or the registrar in whose custody such register may be at the time) to correct the same in such form and manner as the sheriff may direct: Provided that no part of the original entry shall be obliterated, and that the warrant of the sheriff authorising the correction and all written documents produced to him, together with his notes, which such sheriff is hereby required to take, of all parole evidence adduced before him, shall be transmitted to the Registrar General, and shall be retained among the records of his office.

Provisions in secs. 2 and 3 of 17 and 18 Vict., c. 80, repealed with Reference to Salaries of Registrar General and Secretary.

IV. The provisions in the second and third sections of the first recited Act with reference to the salaries of the Registrar General and the Secretary to the Registrar General are hereby repealed; and it shall be lawful for the Commissioners of Her Majesty's Treasury to pay to the Registrar General such salary as that the amount thereof and of the salary received by him as depute clerk register shall not together exceed the sum of one thousand pounds per annum, and to pay to the secretary to the Registrar General such salary, not exceeding five hundred pounds per annum, as shall from time to time be fixed by the said Commissioners, and such salaries shall be paid out of any monies to be voted by Parliament for that purpose.

Landward and Burghal Parts of Parishes may be united.

V. It shall be lawful for the sheriff, if he shall think it expedient, upon a joint application of the parochial board of any parish, and of the town council of any burgh situated within such parish, or upon the application of the Registrar General, to unite such

burgh or any portion thereof to any landward part of such parish, or to unite any landward part of such parish to such burgh or any portion thereof, and also to regulate and determine any questions which may arise as to the assessments to be levied for registration purposes upon such burghs or portions of burghs, and upon such landward parts of such parishes respectively, and all questions as to the right to elect a registrar for such united districts; and it shall also be lawful for the sheriff to regulate and determine all questions which may arise as to such assessment, or such right of election, in the case of all unions which shall already have been effected under the provisions of the first section of the second recited Act hereinbefore repealed; and the decision of the sheriff in all such cases shall be final, and not subject to review in any court or by any process whatsoever.

All existing Parochial Registers before 1820 *to be transmitted to Registrar General, and after* 1820 *till* 1855 *to Parish Registrar.*

VI. All existing parochial registers of births or baptisms, deaths or burials, and marriages or proclamations of banns, which shall have been kept in every parish prior to the first day of January one thousand eight hundred and fifty-five, shall, as far as regards such registers made and entered prior to the year one thousand eight hundred and twenty, be transmitted, under the direction of the sheriff, to the Registrar General for preservation in the general registry office at Edinburgh, and, as far as regards such registers from the year one thousand eight hundred and twenty inclusive to the said first day of January one thousand eight hundred and fifty-five, shall be delivered over to the custody and care of the person who shall have been appointed registrar of the parish under the first-recited Act; and where any parish shall be divided, such last mentioned registers shall remain in the custody of the registrar of that portion of the divided parish wherein such registers are at the time of the division; and the registrar to whom such registers shall be so delivered shall, if required by the Registrar General, make or cause to be made exact inventories and indexes thereof in so far as such inventories and indexes do not already exist, noticing in such inventories any blanks or deficiencies therein or other matter requiring to be noticed; and an authenticated copy of each such inventory, and a general abstract of each such index, shall be transmitted by him to the Registrar General for preservation in the general registry office; and the registers from the year one thousand eight hundred and twenty to the said first day of January one thousand eight hundred and fifty-five, hereby appointed to remain with the registrar of the parish, shall, at the end of thirty years after the said first day of January, be transmitted under the direction of the sheriff to the Registrar General for

preservation as aforesaid; and all such registers, and the original inventories, indexes, and general abstracts, and the authenticated copies thereof, whether in the custody of the registrar or Registrar General, may be searched, and certified copies or extracts of entries taken therefrom, at all reasonable times by any person upon payment of the fees authorised to be taken for the like searches and copies made in or taken from the registers and indexes appointed to be kept under the first recited Act: Provided always, that in all cases it shall be lawful for the sheriff, if he shall think fit, upon a representation to that effect, to direct that the original burial registers shall remain in the custody of the kirk session to whom they belong, copies of the same being furnished to the Registrar General.

Sessional Record to be restored to the Kirk Session of the Parish.

VII. If any of the parochial registers referred to shall be found to contain entries relating to sessional or other matters, as well as entries relating to births or baptisms, deaths or burials, and marriages or proclamations of banns, such entries shall be separated from the rest of the register, under the direction of the Registrar General, for the purpose of being bound and delivered over to the kirk session of the parish to which the register pertains; and where it shall be impossible to effect such separation in consequence of the sessional or other matter being intermixed with the entries relating to births or baptisms, deaths or burials, and marriages or proclamations of banns, the whole of the register shall remain with the Registrar General, or the registrar of the parish, as the case may be: Provided, that it shall be lawful to the kirk session or any one acting under its authority to have access to and to make copies of such sessional or other matter without payment of fees: Provided also, that where the portion falling to be delivered to the kirk session shall happen to contain any entries from which the occurrence of a birth or baptism, death or burial, or marriage or proclamation of banns may be proved, it shall be lawful for the Registrar General to cause copies of such entries to be made for the purpose of this and the first recited Act, and the cost of making such copies shall be defrayed in the manner prescribed by the fifth section of the said first recited Act.

Provision as to Fire-proof Safes and Offices.

VIII. With reference to the twenty-second section of the first recited Act, it shall be lawful for the sheriff, on the receipt of a written application to that effect from the Registrar General, to direct that a fire-proof safe or other place of deposit shall be provided in any parish, district, or burgh, for the due custody of the registers and other documents connected with registration, by the

parochial board, heritors, or town council of the parish, district, or burgh to which such registers pertain; and the cost of such safe or other place of deposit shall be included under the assessment authorised to be levied by the fiftieth section of the first recited Act; and further, it shall be lawful for the parochial board, heritors, or town council of any parish, district or burgh, where they shall consider it expedient, to include under the aforesaid assessment such sums as may be required for the provision and maintenance of a suitable office for the use of the registrar; provided that such office shall be situated within such parish, district, or burgh.

Provision in sec. 25 *of* 17 *and* 18 *Vict., c.* 80, *as to Annual Publication of Lists of Registrars and Assistants repealed.*

IX. The latter portion of the twenty-fifth section of the first recited Act, with reference to the annual publication by the sheriff of a list of registrars and assistant registrars, is hereby repealed: Provided that all elections of registrars shall be intimated to the sheriff as well as to the Registrar General, in the manner prescribed by the twelfth section of the first recited Act, and that due intimation shall be made by the sheriff of all newly appointed registrars in such form as he may consider expedient.

Register of Births, Deaths, and Marriages of Scottish Subjects occurring in Foreign Countries.

X. The birth of any child of Scottish parents, or the death or marriage of any Scottish subject, which shall have taken place in any foreign country since the passing of the first recited Act, if intimated to the Registrar General within twelve months after the passing of this Act, and the birth of any child of Scottish parents, or the death or marriage of any Scottish subject, which shall take place in any foreign country, if intimated to the Registrar General within twelve months after the date thereof, in accordance, as near as may be, with the forms prescribed in schedules (A), (B), and (C) respectively to the first recited Act annexed, and duly certified by the British consul of the country or district within which such birth, death, or marriage shall have taken place, shall be entered in a book to be kept for the purpose in the general registry office, to be called "The Foreign Register;" and all such intimations shall be filed, and the relative entries verified by the signature of the Registrar General.

Provision in sec. 31 *of* 17 *and* 18 *Vict., c.* 80, *as to the Signature of the Register by the Sheriff repealed.*

XI. So much of the thirty-first section of the first recited Act as requires the signature of the sheriff in the register of births,

in the cases therein referred to, is hereby repealed; and in lieu thereof the signature of the district examiner, appointed under the provisions of the third section of the second recited Act, shall be sufficient: Provided always, that in all such cases, before the examiner adhibits his signature to the register, the registrar shall produce the written authority of the sheriff for making the registration, which shall be transmitted along with the duplicate registers to the Registrar General: Provided also, that the entry of any birth, which shall have been registered upwards of three months after its occurrence, if signed by such examiner, shall be admissible in evidence to prove such birth, anything in the said section to the contrary notwithstanding.

Mode of reckoning the Period of "Six Months" referred to in secs. 32 and 33 of 17 and 18 Vict., c. 80.

XII. Whereas doubts have arisen as to the mode of reckoning the period of "six months," referred to in the thirty-second and thirty-third sections of the first recited Act: It is hereby declared, That unless a certificate, in the form of schedules (D) or (E) to the said Act annexed, is presented to the registrar within six months after the registration of the birth to which such certificate relates, it shall not be lawful for the registrar to record the baptismal or other name, without the written authority of the sheriff endorsed upon such certificate.

Additions and Alterations to be inserted in the Register of Corrected Entries.

XIII. The additions and alterations directed and authorised by the recited Acts to be made in the duplicate registers, instead of being given effect to in the manner therein prescribed, shall be inserted in the register of corrected entries referred to in the sixty-third section of the first recited Act, in such form and manner as the Registrar General may direct.

Medical Attendant to transmit Certificate of Death to the Registrar within Seven Days.

XIV. The medical certificate referred to in the forty-first section of the first recited Act shall be transmitted by the medical person to the registrar within seven days after the death of the person to whom it relates, instead of within fourteen days thereafter: Provided that in case such certificate shall not be so transmitted, the registrar shall transmit to such medical person a form of the certificate prescribed by the said Act, and by a written or printed requisition, under his hand, shall require such medical person forthwith to return to the registrar such certificate duly filled up in terms of the said Act; and such certificate so filled

up shall be so returned within three days after the receipt thereof by such medical person.

Provisions in secs. 46 *and* 52 *of* 17 *and* 18 *Vict., c.* 80, *as to Schedule* (C) *repealed.*

XV. So much of the forty-sixth section of the first recited Act as provides for a copy of schedule (C) to the said Act annexed being given out along with the certificate of proclamation of banns, and so much of the fifty-second section of the said Act as requires the registrars to furnish copies of the said schedule to session clerks, are hereby repealed: Provided that in every case of regular marriage a copy of the said schedule shall, upon production of the certificate of proclamation of banns, be procured by the parties contracting the marriage, previous to its solemnisation, from the registrar of the parish or district within which such marriage is intended to be solemnised, who shall be bound, as far as possible, to fill up the said schedule.

Alteration of sec. 50 *of* 17 *and* 18 *Vict., c.* 80, *as to Verification of Registrar's Accounts of Registrations.*

XVI. So much of the fiftieth section of the first recited Act as requires the examination and verification by the sheriff of the registrar's half-yearly accounts of registrations is hereby repealed; and in lieu thereof it shall be lawful for the parochial board or heritors by whom the relative assessment is levied, to take such proceedings as may be deemed expedient for the purpose of ascertaining the correctness of such accounts.

Provision as to Payment of Registrar's Postages, etc.

XVII. It shall be lawful for the registrar to include in his half-yearly accounts of registrations the expense attending the postage or carriage of all letters or packets, and all other necessary disbursements relating exclusively to the execution of his office, and for all such expenses he shall be repaid out of the assessment authorised to be levied by the fiftieth section of the first recited Act; and the necessary expense incurred in the correction of an error under the provisions of the sixty-third section of the first recited Act, where such expenses are not paid by the party or parties through whose fault such error was committed, and where such error was not committed through the registrar's own carelessness, shall be defrayed by the parochial board, and shall be included under the aforesaid assessment: Provided that it shall be lawful for the parochial board to recover such expenses from the party or parties through whose fault the said error was committed: Provided also, that where any search or extract shall

be required by or on behalf of a pauper, the registrar shall be entitled to include the cost thereof in the account which he is required to render to the parochial board under the fiftieth section of the Act first before recited.

As to Remuneration of Registrar.

XVIII. If any registrar shall represent to the Registrar General that his remuneration under the provisions of the fiftieth section of the first-recited Act is inadequate, the Registrar General may require the parochial board to increase the sum payable to the registrar to such amount as the Registrar General considers necessary; and in the event of the parochial board delaying or refusing to pay such increased remuneration, it shall be lawful for the Registrar General to make a summary application to the sheriff, who shall, after hearing parties and making such inquiry as he thinks fit, determine both the expediency of any such increase, and the amount thereof; and all expenses incurred in and with respect to such application shall be paid by the parochial board, or the registrar, as the sheriff may determine; and the decision of the sheriff in all such applications, both on the merits and as to expenses, shall be final and not subject to review in any court or by any process whatsoever.

Clerical Errors in the Duplicate Registers may be corrected by the District Examiners.

XIX. It shall be lawful for the district examiners, appointed under the provisions of the second recited Act, to correct all such clerical errors as may be discovered at the periodical examination of the duplicate registers, subject to such rules and regulations as may be made by the Registrar General, with the approbation of one of Her Majesty's principal secretaries of state.

Commencement of Act.

XX. This Act shall commence and take effect from and after the passing thereof, with the exception of sections eleven, thirteen, and nineteen, and so much of section one as provides for the repeal of sections forty-two and fifty-four of the first recited Act, which shall not take effect till the first day of January one thousand eight hundred and sixty-one; and the recited Acts, excepting in so far as altered by this Act, shall remain in full force and effect; and this Act shall be deemed a part of the recited Acts, and shall be read and construed therewith as if the three Acts formed one Act.

IV.—Act 41 & 42 Vict., c. 43, 8th August 1878.

An Act to encourage Regular Marriages in Scotland.

Whereas it is expedient in order to encourage the celebration of regular marriages in that part of the United Kingdom called Scotland, that provision should be made for the celebration of such marriage after notice to registrars:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. In this Act—

1. "Registrar" means the registrar of births, deaths, and marriages for a parish or district under the Act of the seventeenth and eighteenth years of the reign of Her present Majesty, chapter eighty, intituled "An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland," and the Acts amending the same:
2. "Registrar General" means the Registrar General of births, deaths, and marriages in Scotland appointed under the said Act of the seventeenth and eighteenth years of the reign of Her present Majesty, and the Acts amending the same:
3. "Parish" and "district" have the meanings attached to them respectively in the said Act of the seventeenth and eighteenth years of the reign of Her present Majesty, and the Acts amending the same:

II. This Act may be cited for all purposes, as the Marriage Notice (Scotland) Act 1878.

Commencement of Act.

III. This Act shall commence and come into operation on the first day of January one thousand eight hundred and seventy-nine, which date is hereinafter referred to as the commencement of the Act.

Ministers, etc., may celebrate Marriages on Registrar's Certificate.

IV. From and after the commencement of this Act it shall be lawful for ministers, clergymen, or priests in Scotland to celebrate marriages therein after such publication of notice of an intention to marry as hereinafter prescribed, and upon production to such minister, clergyman, or priest of a certificate or certificates of such publication as hereinafter prescribed; and any marriage so celebrated shall be deemed to be a regular marriage

as if it had been celebrated by such minister, clergyman, or priest after the proclamation of banns of marriage according to the mode now in use.

Regarding Quakers and Jews.

V. Notwithstanding anything contained in this Act, the Society of Friends, commonly called Quakers, and the persons professing the Jewish religion, may contract and solemnise marriage according to the usages of the said society and of the said persons respectively, and every such marriage is hereby declared and confirmed as a regular marriage, provided that the parties to such marriage be both of the same society or both persons professing the Jewish religion respectively; provided also, that notice to the registrar of intention to marry shall have been given, and his certificate shall have issued in manner hereinafter provided.

Registrar's Certificate to be equivalent to Certificate of Proclamation of Banns.

VI. From and after the commencement of this Act a registrar's certificate of the publication of a notice of marriage in the manner provided for by this Act shall, for all purposes of law, save as hereinafter provided, be of the same force and effect as a certificate granted by a session clerk or other proper officer for granting the same of the due proclamation of banns of marriage under the law in force before the commencement of this Act.

Notice of Intended Marriage may be given to Registrars.

VII. In every case of persons residing in Scotland intending that a regular marriage shall be contracted between them in Scotland without the proclamation of banns, each of such persons shall, on or about the same date, give notice of the intended marriage to the registrar of the parish or district in which he or she shall have resided for a period of not less than fifteen clear days previous to the giving of such notice, in the form as nearly as may be set forth in the schedule A. annexed to this Act; provided that when both of such persons reside within the same parish or district a single notice shall suffice.

Duties of Registrars on receipt of Notice of Marriage.

VIII. On the receipt of a notice of an intended marriage, along with the sum of one shilling and sixpence, the registrar, being satisfied that the notice is conformable to the requirements of this Act, shall forthwith enter the particulars set forth in the notice in "The Marriage Notice Book" hereinafter mentioned,

and shall on the same day post or put up in a conspicuous and accessible place on the Door or Outer Wall of his office, a public notice of the intended marriage, in the form as nearly as may be set forth in the schedule B. annexed to this Act, and shall keep the same so posted or put up for seven consecutive days thereafter.

The marriage notice book shall be open at all reasonable times to any person desirous of inspecting the same upon payment of one shilling.

Registrar to grant Certificate.

IX. The registrar, having complied with the requirements of this Act, shall, on the expiration of seven clear days after the receipt of the notice of an intended marriage, in the event of no objection to the marriage appearing on the face of such notice, or being stated to him as hereinafter provided for, and upon payment of a fee of one shilling, grant to the person who gave the notice, or to any person authorised by the person who gave the notice, a certificate of the due publication thereof, hereinafter in this Act referred to as the registrar's certificate, as nearly as may be in one of the forms set forth in schedule C. annexed to this Act, and shall therein set forth whether any objection had been offered to such intended marriage.

Provisions as to Objections to Intended Marriages.

X. The registrar shall disregard all objections to an intended marriage not appearing on the face of the notice, unless—

1. They shall be stated prior to the issuing of the certificate of publication:
2. They shall be stated in writing, subscribed by the person taking the same:
3. The person taking the same shall appear personally to lodge the same with the registrar, and shall in his presence make and subscribe a delaration as nearly as may be in the form set forth in schedule D. annexed to this Act, which the registrar shall endorse on the written statement of objections.

And with regard to objections, timely and duly stated as above provided, the following provisions shall have effect; that is to say,

(*a.*) Where the objection is that the persons intending to contract marriage, or either of them, had not resided fifteen clear days within the parish or parishes or districts or district before giving notice; or that such persons are wrongly named or described in the notice, or that either of them is so wrongly named or described; or that the

notice is otherwise inaccurate in any detail; and generally where the objection does not set forth a legal impediment to a marriage between such persons, but relates to some formality or statutory requirement merely, the registrar shall suspend the issuing of his certificate, and shall consider the objection, and make such inquiry thereanent as he shall see fit, and report thereon as soon as may be to the sheriff or sheriff-substitute of the county in which his office is situated, who shall, on such report, direct the notice to be amended and a certificate to be granted thereon without republication thereof, if he shall see fit; or to be cancelled, if he shall see fit, in which case it shall be competent for the persons intending to contract marriage to give notice *de novo* of their intended marriage:

(*b.*) Where the objection is that the persons intending to contract marriage are within the forbidden degrees of consanguinity or affinity, or are both or either of them already married, or are both or either of them not of a marriageable age, or are from any other legal incapacity disqualified to give such consent as is necessary for marriage; and generally where the objection sets forth any legal impediment to a marriage between them, the registrar shall suspend the issuing of his certificate until there shall be produced to him a certified copy of a judgment of a competent court of law to the effect that the parties are not in respect of the said objection disqualified from contracting such marriage.

Certificates of Proclamation of Banns and of Notice to Registrars to be of equal Authority.

XI. For the purposes of this Act a certificate from a session clerk of the due publication of banns, and a registrar's certificate granted under this Act, shall be of equal authority in authorising a minister, clergyman, or priest in Scotland to celebrate a regular marriage, and such marriage may be celebrated upon the production either of a certificate or certificates of due proclamation of banns, or of a registrar's certificate or registrars' certificates applicable to both parties, or a certificate of due proclamation of banns in the case of one of the parties, and of a registrar's certificate in the case of the other: Provided always, that whenever a marriage shall not take place within three months of the date of such registrar's certificate as aforesaid, such certificate shall be utterly void: And provided further, that no minister of the Church of Scotland shall be obliged to celebrate a marriage not preceded by due proclamation of banns.

Penalties for celebrating Marriages without Certificates.

XII. Any person otherwise entitled to celebrate a marriage who shall celebrate a marriage in Scotland with a religious ceremony without having produced or exhibited to him a certificate or certificates of the due proclamation of banns or a registrar's certificate or registrars' certificates applicable to both parties, or a certificate of due proclamation of banns in the case of one of the parties, and a registrar's certificate in the case of the other, shall be guilty of an offence under this Act, and shall on conviction thereof be liable to a penalty not exceeding fifty pounds.

Offences under this section may be prosecuted before the sheriff or sheriff-substitute under the provisions of the Summary Procedure Act, 1864, but only at the instance of the procurator-fiscal.

Issuing of a Certificate otherwise than in terms of Act to be an Offence.

XIII. A registrar who shall wilfully grant a registrar's certificate to any person, without complying with all the requirements of this Act in regard to the conditions on which and the time when the same may be granted, shall be guilty of an offence under this Act, and shall on conviction be liable to a fine not exceeding twenty-five pounds, or to be imprisoned for a period not exceeding one month, and to be deprived of his office.

Offences under this section may be prosecuted before the sheriff or sheriff-substitute under the provisions of the Summary Procedure Act, 1864, at the instance of the procurator-fiscal of the county.

False Declarations, etc., under this Act to be Punished as Perjury.

XIV. Every person who shall wilfully make or sign any false declaration, or sign or give any false notice of an intended marriage, or who shall wilfully state any false objection to a marriage, or wilfully make any false declaration relative to an objection to a marriage under the provisions of this Act, shall be deemed in law to be guilty of the crime of perjury, and shall on conviction suffer the penalties attached by law to the crime of perjury.

Registrars to be provided with Books, etc.

XV. The Registrar General shall, on or before the commencement of this Act, and thereafter from time to time as may be necessary, furnish or cause to be furnished to every registrar of a parish or district in Scotland, (1) a book to be called "The Marriage Notice Book," prepared in such form as the Registrar

General, having regard to the form of notice prescribed by this Act, shall see fit; and (2) such a number as he shall think sufficient and necessary of forms of notice and of public notice of intended marriages, and of certificates and of all other forms necessary to be supplied to registrars for the purposes of this Act, printed on paper such shape, size, and quality as the Registrar General shall think most convenient for the purposes of this Act and the service of his department, and the expenses of providing and printing the same shall be defrayed in the manner provided in the Act of the seventeenth and eighteenth years of Her present Majesty, chapter eighty, intituled "An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland."

The Registrar General may, with the approval of one of Her Majesty's principal secretaries of state, from time to time prescribe rules for the discharge of their duties by registrars under this Act, and as to the hours during which they shall be bound to give attendance for the purposes of this Act, and a copy of all such rules shall be laid before both Houses of Parliament within six weeks after the same are approved of, or if Parliament be not then sitting, within one month of the beginning of the next session of Parliament.

Persons unable to Write may sign by a Mark.

XVI. Any person unable to write may duly subscribe any notice, declaration, or other writ under this Act, by adhibiting thereto a cross or other mark in the presence of the registrar, or two witnssses, provided the registrar or witnesses shall duly subscribe a declaration relative to such cross or mark as having been so adhibited by such person in their presence.

The Schedules to be part of the Act.

XVII. The schedules to this Act, and all directions therein contained or specified, or thereto appended, shall be of the same force and effect as if the same were enacted in the body of this Act.

As to Alteration of Regulations for Proclamation of Banns.

XVIII. Nothing contained in any statute, law, or custom shall prevent the Church of Scotland as by law established from altering the existing regulations as to proclamations of banns of marriage, and in particular from shortening to any period not less than fifteen clear days the period of residence required in order to such proclamation.

SCHEDULE A.

FORM No. 1 [*applicable to the case of notices by parties residing in different parishes or districts, or giving separate notices*]

NOTICE OF MARRIAGE.—(Pursuant to the Marriage Notice (Scotland) Act, 1878.)

To the registrar of the parish (or district) of in the county of .

I [*here insert the name of the person giving notice*] give you notice that I and the other person herein named are about to contract marriage; that is to say,

Name and Surname.	Condition.*	Rank or Profession.	Age.	Dwelling Place.	Parish [or District] and County in which parties respectively dwell.

And I solemnly declare that I believe there is no impediment of consanguinity or affinity or of age or other lawful hindrance to the said marriage, and that I have had my usual place of abode and residence for the space of fifteen days immediately preceding the date of this notice within the above mentioned parish (or district) of .

And this I declare, knowing that if the declaration is false I expose myself to the penalties of perjury. In witness whereof I have hereunto set and subscribed my hand, this day of 18 . [*Signature.*]

Subscribed and declared by the above-named in the presence of us, the undersigned householders in the above-mentioned parish (or district), who declare that we believe the statements contained in this notice to be true.

A.B. [*name and designation*] Witness.
C.D. [*name and designation*] Witness.

* State whether the person is a bachelor or spinster, widower or widow.

N.B.—The schedule must set forth all the particulars indicated in regard, first, to the person giving the notice, and second, to

the person with whom the person giving the notice intends to contract marriage.

FORM NO. 2 [*applicable to the case of parties residing in the same parish or district, and giving a single notice.*]

NOTICE OF MARRIAGE.—(Pursuant to the Marriage Notice (Scotland) Act, 1878.)

To the registrar of the parish (or district) of in the county of .

We [*here insert the names of the persons giving notice*] give you notice that we, the persons herein named, are about to contract marriage ; that is to say,

Name and Surname.	Condition.*	Rank or Profession.	Age.	Dwelling Place.	Parish [or District] and County in which Parties dwell.

And we solemnly declare that we believe there is no impediment of consanguinity or affinity or of age or other lawful hindrance to the said marriage, and that we have had our usual place of abode and residence for the space of fifteen days immediately preceding the date of this notice within the above mentioned parish (or district) of .

And this we declare, knowing that if the declaration is false we expose ourselves to the penalties of perjury. In witness whereof we have hereunto set and subscribed our hands, this day of 18 . [*Signatures.*]

Subscribed and declared by the above named in the presence of us the undersigned householders in the above mentioned parish (or district), who declare that we believe the statements contained in this notice to be true.

A.B. [*name and designation*] Witness.
C.D. [*name and designation*] Witness.

* State whether the person is a bachelor or spinster, widower or widow.

SCHEDULE B.

Public Notice.*

(Pursuant to the Marriage Notice (Scotland) Act, 1878.)

Notice has this day been received at this office of marriage as intended to be contracted between the following persons; that is to say,

Between I. and	*A. B.* [*here give name and surname, condition, rank, or profession, and place of residence of intending husband*], and *C. D.* [*here give name and surname, condition, rank, or profession, and place of residence of intending wife.*]
Between II.	*E. F.* [*here insert same particulars as above*], and *G. H.* [*here insert same particulars as above*].

All objections to certificates being granted authorising the celebration of these marriages, or any of them, [or of this marriage, *when there is only one notice,*] must be lodged with the registrar in writing within seven days from this date by the objector, who must appear personally to declare to the truth thereof. (Signed) *M.N.*, Registrar.

[*Date of Notice.*]

* One public notice in this form may be made to include all the notices of marriage received at the office in the same day.

SCHEDULE C.

Registrar's Certificate.

(Pursuant to the Marriage Notice (Scotland) Act, 1878.)

Form No. 1 [*applicable to the case of the parties residing in different parishes or districts.*]

I [*M.N.*] Registrar of hereby certify that on the day of 18 *A.B.* [*here give name, surname, condition, rank, or profession, and place of residence of A.B.*], duly gave notice to me of his [or her] intended marriage to *C.D.*, [*give name, surname, condition, etc., of C.D.*], that all the requirements of law in respect of such notice, so far as the said *A.B.* is concerned, have been complied with, and no objections stated [*or*, written statement of objections lodged with me, *as the case may be*].

Certified by me the said *M.N.*, this day of

(Signed) *M.N.*, Registrar.

FORM NO. 2 [*applicable to the case of the parties residing in the same parish or district.*]

I [*M.N.*] Registrar of hereby certify that on the day of 18 *A.B.* [*here give name, surname, condition, rank, or profession, and place of residence of A.B.,*] and on the day of 18 *C.D.* [*here give name, surname, condition, rank, or profession, and place of residence of C.D.*] duly gave notice to me of their intention to contract marriage with each other, and that all the requirements of law in respect of such notices have been complied with, and no objections stated [*or*, written objections lodged with me, *as the case may be*].

Certified by me the said *M.N.*, this day of

(Signed) *M.N.*, Registrar.

SCHEDULE D.

I hereby solemnly declare that the facts as stated by me in the written statement of objections to the marriage intended between *A.B.* and *C.D.*, on which this declaration is indorsed, are true to the best of my knowledge and belief, and I make this declaration knowing that if the declaration is false I expose myself to the penalties of perjury.

(Signed by) *P.Q.*, Objector.

I certify that this declaration was made before me and subscribed in my presence this day of 18 in my office.

M.N., Registrar.

RULES RELATIVE TO THE DUTIES OF REGISTRARS OF BIRTHS, DEATHS, AND MARRIAGES.

Under the Marriage Notice (Scotland) Act (41 and 42 Vict., c. 43). Made and approved in pursuance of the 15th section of that statute.

Commencement of Act.

1. The Marriage Notice (Scotland) Act, 1878, takes effect on and after the 1st of January 1879.—(Sec. 3.)

Alternative Modes of Publishing Intention to Marry.

2. Regular marriages may, after the 1st of January 1879, be celebrated by ministers, clergymen, or priests in Scotland on the production of either—

First, A certificate or certificates of due proclamation of banns applicable to both parties; or

Second, A registrar's certificate or registrars' certificates of publication similarly applicable; or

Third, A certificate of due proclamation of banns in the case of one of the parties, and a registrar's certificate of publication in the case of the other.—(Secs. 4 and 11.)

Quakers and Jews.

3. Where both of the contracting parties happen to be either Quakers or Jews, they may contract and solemnise marriage according to their respective usages; and such marriage shall be regarded as a regular marriage, provided notice of intention to marry has been given to the registrar, and his certificate of publication issued as afterwards explained (see Arts. 5 and 11).—(Sec. 5.)

Legal effect of Registrar's Certificate.

4. On and after the 1st January 1879, a registrar's certificate of publication of a notice of marriage (see Art. 11) shall, for all legal purposes, be of the same force and effect as a certificate of the due proclamation of banns, subject to the qualifications referred to in Arts. 20 and 21.—(Sec. 6.)

Notice of Marriage.

5. In the case of every regular marriage contracted without proclamation of banns, each of the parties shall, on or about the same date, give notice of the intended marriage to the registrar of the parish or district in which he or she shall have previously resided for not less than fifteen clear days, in the form of schedule (A.)

(*a.*) Where the parties reside in different parishes or districts, each of the notices must be in accordance with schedule (A), Form No. 1.

(*b.*) Where they reside in the same parish or district, a single notice in accordance with schedule (A), Form No. 2, may be used.—(Sec. 7.)

Fee for Notice.

6. Along with each notice the registrar is entitled to receive the sum of one shilling and sixpence.—(Sec. 8.)

Notice Book and Posting of Notices.

7. If the registrar is satisfied that the notice is conformable to the requirements of the statute, he shall, on the same day—

(*a.*) Enter the particulars embraced in the notice in his "Marriage Notice Book;" and

(*b.*) Put up in a conspicuous and accessible place on the Door or Outer Wall of his office, a public notice of the intended marriage in accordance with schedule (B).—(*Ibid.*)

Notice Board.

8. The registrar must provide himself, at the expense of the parochial board, town council, or heritors (*as the case may be*), with a suitable board, on which the notices shall be affixed, and which must be suspended on a conspicuous place near the entrance to his office.*

Duration of Publication.

9. Every notice must be kept posted up for seven consecutive days after its receipt—*i.e.*, for eight days, including the day of receipt.—(Sec. 9.)

Inspection of Notice Book.

10. The "Marriage Notice Book" shall be open at all reasonable times (see Art. 28) for the inspection of the public, and for each inspection the registrar shall be entitled to a fee of one shilling.—(Sec. 8.)

Certificate of Publication.

11. On the expiration of seven consecutive clear days—*i.e.*, eight days after the receipt of the notice, provided—

First, No objection to the marriage appears on the face of the notice; or

Second, No objection is lodged as afterwards explained;

the registrar shall grant to the person who gave the notice, or to any one authorised by such person, a certificate of publication in the form of schedule (C), along with a copy of schedule (C) annexed to the Registration Act (see "Registration Regulations," p. 20, *a*).

(*a.*) Where the parties reside in different parishes or districts, each of the certificates must be in accordance with schedule (C), Form No. 1.

(*b.*) Where they reside in the same parish or district, a single certificate, in accordance with schedule (C), Form No. 2, must be granted.—(Sec. 9.) (See Art. 19.)

* A board of 21 in. by 17 in. will accommodate four notices, and will be sufficient for the large majority of parishes. In the case of the more populous districts, the size must be regulated by the probable number of notices requiring to be posted at the same time. Where there happens to be an outer as well as an inner entrance to the registrar's office, the board ought, if possible, to be displayed at the former.

Fee for Certificate.

12. For each certificate in the form of schedule (C) the registrar shall be entitled to a fee of one shilling.—*Ibid.*

Objections.

13. The following may be indicated as examples of objections "on the face of the notice"—

In Col. 4, where the age of the male is set forth as under 14, or of the female as under 12 years.

In Cols. 5 and 6, where the dwelling-place, parish (or district) and county of one or both of the parties is entered as being in England, or elsewhere out of Scotland.

14. All objections not appearing on the face of the notice shall be disregarded by the registrar, unless they are—

First, Stated prior to the issuing of the certificate of publication.

Second, Stated in writing and subscribed by the objector.

Third, Lodged personally by the objector.—(Sec. 10.)

15. Upon every written statement of objections the registrar shall endorse a declaration in the form of schedule (D), as annexed to the Act, which the objector must subscribe in his presence.—(*Ibid.*)

Suspension of Certificate.

(*a.*) Formal Objections.

16. Where the objectors assert—

First, That one or both of the contracting parties had not resided fifteen clear days within the parish or district before giving notice; or

Second, That one or both are wrongly named or described therein; or

Third, That the notice is otherwise inaccurate in detail; and

Fourth, Generally, where the objector does not set forth any legal impediment to the marriage, but merely a failure to comply with some formal or statutory requirement;

the registrar shall suspend the issuing of his certificate, and after considering and investigating the objection alleged, shall report thereon, as soon as possible, through the sheriff-clerk, to the sheriff or sheriff-substitute of the county.—(*Ibid.*)

17. The sheriff shall thereafter direct the notice to be either—

First, Amended, and a certificate granted without republication thereof; or

Second, Cancelled, in which latter case the contracting parties may give notice *de novo*.—(*Ibid.*)

(*b.*) LEGAL IMPEDIMENTS.

18. Where the objector asserts with reference to one or both of the contracting parties that they are—

First, Within the forbidden degrees of consanguinity or affinity;

or

Second, Already married; or

Third, Not of a marriageable age; or

Fourth, Disqualified by any other legal incapacity to give the necessary consent; and

Fifth, Generally, where the objector sets forth any legal impediment to the marriage;

the registrar shall suspend the issuing of his certificate until he is furnished with a certified copy of a judgment of a competent court of law that the parties are not disqualified from contracting marriage in respect of the objection alleged.—(*Ibid.*)

19. Where the objections lodged with the registrar (Arts. 14, 15) have been disposed of, he must draw his pen through the words "no objections stated" at the end of the certificate (Schedule C), and in lieu thereof enter in the blank space provided for the purpose, some such statement as the following:—

"That the written objections lodged by A. B. have been duly disposed of by the sheriff" (or "by a competent court of law), *as the case may be.*

Limitation of Certificate of Publication.

20. The registrar's certificate shall be utterly void when the marriage does not take place within three months of the date of such certificate.—(Sec. 11.)

Ministers of Church of Scotland.

21. No minister of the Church of Scotland shall be obliged to celebrate a marriage not preceded by due proclamation of banns.*—(*Ibid.*)

Entry in Col. 1 *of Marriage Schedule.*

22. (*a.*) Where both of the contracting parties are married without proclamation of banns, the entry in the lower portion of the 1st column of schedule C of the Registration Act (17 & 18 Vict., c. 80), shall be as follows:—

"After publication, according to the forms of the Established Church of Scotland," &c. (*as the case may be*).

(*b.*) Where proclamation of banns has been made in the

* There is no obligation on any minister, clergyman, or priest, other than a minister of the Church of Scotland, to celebrate a marriage, even when preceded by proclamation of banns.

case of one of the parties, and publication by notice in the case of the other, the following words shall be inserted :—

"After banns and publication, according to the forms," &c.

(*c.*) When both of the parties are married after proclamation of banns, the entry shall be in accordance with the examples applicable to regular marriages prefixed to the marriage register.

Penalties.

23. Any person otherwise entitled to celebrate a marriage, who shall celebrate a marriage in Scotland, with a religious ceremony, without the production of the requisite certificates of proclamation of banns, or of the registrar's publication, will be liable, on conviction, to a penalty not exceeding fifty pounds.—(Sec. 12.)

24. Any registrar who shall wilfully grant a certificate in the form of schedule (C) without complying with all the requirements of the Marriage Notice Act in regard to the time of granting and other conditions, will be liable, on conviction, to a fine not exceeding twenty-five pounds, or imprisonment for not more than one month, besides deprivation of his office.—(Sec. 13.)

25. Every person who shall (1) wilfully make or sign any false declaration, or (2) sign or give in a false notice of an intended marriage, or (3) wilfully state any false objection to a marriage, or (4) wilfully make any false declaration relative to an objection to a marriage under the provisions of the Marriage Notice Act, will be deemed guilty of the crime of perjury, and will, on conviction, suffer the penalties attached thereto.—(Sec. 14.)

Prosecutions.

26. Offences under Arts. 23 and 24 may be prosecuted before the sheriff or sheriff-substitute under the provisions of the Summary Procedure Act of 1864, at the instance of the procurator-fiscal, to whom every such offence, if known to the registrar, must be reported by him.—(Secs. 12, 13.)

Signatures by mark.

27. Any person unable to write may duly subscribe any notice, declaration, etc., under the Marriage Notice Act, by adhibiting thereto a cross or other mark, in the presence of the registrar or two witnesses, provided the registrar or witnesses subscribe a declaration to the following effect:—

"I (or we) hereby declare that A. B. adhibited his (or her) mark in my (or our) presence.

C. D., Registrar, *Witness.*
or
E. F., *Witness.*
G. H., *Witness.*"—(Sec. 16.)

Hours of Attendance.

28. The same facility must be given to the public by the registrar for procedure under the Marriage Notice Act as is already prescribed for the ordinary business of registration. (See "Registration Regulations," p. 23, *b*, and p. 27, *e*.)—Sec. 15.

Printed Forms.

29. When the "Marriage Notice Book" or any of the printed notices or other forms furnished by the Registrar-General are nearly exhausted, the registrar must apply for another supply through the medium of his order book.—(*Ibid.*)

30. The forms supplied are five in number (of which the two first are for the use of persons giving notice of marriage), viz.:—

NOTICE OF MARRIAGE.
- First, schedule (A), Form No. 1, applicable to parties residing in different parishes or districts and giving two notices.
- Second, schedule (A), Form No. 2, applicable to parties residing in the same parish or district and giving a single notice.—(Sec. 7.)
- Third, schedule (B), REGISTRAR'S PUBLIC NOTICE. —Sec. 8.)

REGISTRAR'S CERTIFICATE.
- Fourth, schedule (C), Form No. 1, applicable to parties residing in different parishes or districts.
- Fifth, schedule (C), Form No. 2, applicable to parties residing in the same parish or district.—(Sec. 9.)

(Signed) W. PITT DUNDAS.
Registrar General.

Approved.
(Signed) RICH. ASSHETON CROSS.
WHITEHALL, 23*d October* 1878.

VACCINATION ACT.

ACT 26 & 27 VICT., C. 108, 28th July 1863.

To extend and make compulsory the Practice of Vaccination in Scotland.

WHEREAS it is expedient to extend, and in certain cases to make compulsory, the practice of vaccination in Scotland, and to make further provision for the vaccination of the poor: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Parochial Boards to appoint Vaccinators.

I. Within two months after the passing of this Act the parochial board of every parish or combination of parishes in Scotland shall appoint a registered medical practitioner or practitioners to be the vaccinator or vaccinators within such parish or combination.

As to Remuneration of Vaccinators.

II. The remuneration to each such vaccinator shall depend on and be regulated by the number of persons not previously vaccinated who have been successfully vaccinated by such vaccinator; and the allowance for every person so vaccinated shall not be less than one shilling and sixpence when the vaccination is performed within two miles of the residence of the vaccinator by the nearest public road, and two shillings and sixpence when beyond that distance.

Registration Districts.

III. For the purposes of registration under this Act, as hereinafter provided, every registration district, as the same exists at the time, or may from time to time be erected, under and in virtue of an Act passed in the seventeenth and eighteenth years of the reign of Her present Majesty, chapter eighty, intituled "An Act to provide for the better registration of births, deaths, and marriages in Scotland," and of another Act passed in the eighteenth year of the reign of Her present Majesty, chapter twenty-nine, intituled "An Act to make further provision for the

registration of births, deaths, and marriages in Scotland," shall be a vaccination district.

Parochial Boards to give Notice of Names of Vaccinators.

IV. The parochial board of every parish or combination shall from time to time give notice to the Board of Supervision, the Registrar General, and the registrar or registrars for the district within which such parish or combination may be wholly or partially situated, of the names of each vaccinator appointed by them, and that within forty-eight hours of the appointment of such vaccinator.

Parochial Boards, etc., to conform to Regulations made by Board of Supervision.

V. The parochial board of every parish or combination, and each vaccinator, and any other officers engaged in the administration of the laws for relief of the poor in any parish or combination, shall, in the exercise of the functions conferred upon them by this Act, conform to the regulations which may from time to time be issued by the Board of Supervision in relation thereto, which regulations the Board of Supervision is hereby authorised and required to make and issue.

Parochial Boards to defray Expense.

VI. The parochial board of every parish or combination shall defray the expenses incurred by them in the execution of this Act out of any rates or monies which may come into their hands for the relief of the poor, including any share that may be apportioned to any such parish or combination of the grant voted or that may be voted by Parliament towards the medical treatment of the poor, and shall include in the assessment to be levied for relief of the poor in such parish such sum as may be considered necessary by them for carrying into execution the purposes of this Act.

Medical Treatment not to be considered Parochial Relief.

VII. Vaccination and any medical or surgical treatment incidental to it shall not be considered parochial relief, alms, or charitable allowance, and shall not affect the parochial settlement of any person so vaccinated or treated.

Parents or Guardians to cause Children to be vaccinated.

VIII. The father of every child born in Scotland after the first day of January in the year one thousand eight hundred and sixty-four, and in the event of the death, illness, or inability of the

father, then the mother, or in the event of the death, illness, absence, or inability of the father and mother, then the person who shall have the care, nurture, or custody of such child, shall, within six months after the birth of such child, cause such child to be vaccinated by a medical practitioner, and upon and immediately after the successful vaccination of such child the medical practitioner who shall have performed the operation shall deliver to the father or mother of such child, or to the person who shall have the care, nurture, or custody of such child, a certificate under his hand, according to the form of the Schedule (A) hereto annexed, that such child has been successfully vaccinated; and such certificate shall, within three days after the date thereof, be transmitted to and lodged with the registrar for the district by the father, mother, or person aforesaid, and such certificate, if registered, shall, without further proof, be admissible as evidence of the successful vaccination of such child in any information or complaint which shall be brought against the father, mother, or person aforesaid for non-compliance with the provisions of this Act.

If the Child be not in a fit State for Vaccination, the Medical Officer to deliver a Certificate to that effect, to be in force for Two Months.

IX. If any medical practitioner shall be of opinion that any child is not in a fit and proper state to be successfully vaccinated, he shall thereupon and immediately deliver to the father or mother of such child, or the person having the care, nurture, or custody of such child, a certificate under his hand, according to the form of the schedule (B) hereto annexed, that the child is in an unfit state for successful vaccination, and such certificate shall remain in force for two months from its delivery as aforesaid; and the father, mother, or person aforesaid shall, unless they shall within each succeeding period of two months have obtained from a medical practitioner a renewal of such certificate, within two months next after the delivery of the said certificate as aforesaid, and if the said child be not vaccinated at the termination of such period of two months, then during each succeeding period of two months until such child has been successfully vaccinated, cause such child to be examined by a medical practitioner, and if he deem such child to be then in a fit and proper state for vaccination, he shall forthwith vaccinate him accordingly, and if the operation be successful shall deliver to the father or mother of such child, or person aforesaid, a certificate under his hand, according to the form of the said schedule (A), that such child has been successfully vaccinated; but if the medical practitioner be of opinion that the child is still in an unfit state for successful vaccination, then he shall again deliver to the father or mother

of such child, or person aforesaid, a certificate under his hand, according to the form of the said schedule (B), that the child is still in an unfit state for successful vaccination; and the medical practitioner, so long as such child remains in an unfit state for vaccination and unvaccinated, shall at the expiration of every succeeding period of two months deliver, if required, to the father or mother of such child, or person aforesaid, a fresh certificate under his hand, according to the said form; and the production of such certificate shall be a sufficient defence against any complaint which shall be brought against the father or mother, or person aforesaid, for non-compliance with the provisions of this Act.

If Child is insusceptible of Vaccine Disease, Medical Practitioner to certify the same.

X. In the event of the medical practitioner being of opinion, after three successive vaccinations, that any child is insusceptible of the vaccine disease, he shall deliver to the father or mother, or person having the care, nurture, or custody of such child, a certificate under his hand, according to the form of the schedule (C) hereto annexed, that the child is insusceptible of vaccine disease.

Registrar of Births, etc., to deliver a printed Notice to Person registering the birth of any Child.

XI. On the registration of the birth of any child the registrar shall deliver to the person registering such birth a printed notice in the form or as nearly as may be in the form of the schedule (D) hereto annexed, and setting forth such other particulars in regard to the provisions of this Act as in the opinion of the Registrar General may be necessary or expedient, and such notice shall have attached thereto in duplicate the several certificates (A), (B), and (C) prescribed by this Act.

In Insular, Highland, and other Districts, certain Provisions of this Act may be modified.

XII. In insular, highland, and other districts, or portions of such districts, where, from the difficulty of travelling and other causes, it may be considered inexpedient to enforce the provisions of this Act, as expressed in the eighth, ninth, tenth, and eleventh clauses hereof, it shall be competent to the Board of Supervision, upon application by the parochial board, from time to time to frame such modifications thereof as they may consider proper, and the same, when approved of by the Lord Advocate for the time being, shall be held to supersede the provisions in

these clauses so far as regards such districts; and the Board of Supervision may, if applied to by the parochial board, in such cases appoint a medical practitioner or practitioners to travel throughout such districts for the purpose of vaccinating under the provisions of this Act, and may fix such reasonable remuneration to be paid to the medical practitioners so appointed as they think proper, and may allocate among the parishes or combinations within such district such proportion of the expenses so fixed as the board may think proper, and the expenses so allocated shall be defrayed by such parish or combination in the same way as the expenses incurred by parochial boards in the execution of this Act are herein directed to be paid; provided, that in no case shall the remuneration to such medical practitioner exceed a sum equal to three shillings and sixpence for each child vaccinated by him over and above an allowance for travelling expenses.

Stationery, Books, etc., to be provided.

XIII. Upon the application of the Registrar General there shall be furnished to him from time to time from Her Majesty's Stationery Office all such stationery, books, certificates, schedules, notices, and forms as shall be necessary in the execution of this Act; and the whole expenses to be incurred by the Registrar General under the provisions of this Act shall be defrayed in the same manner as his expenses are provided to be defrayed under the said recited Act seventeenth and eighteenth Victoria, chapter eighty.

Registrar General to frame Forms and Regulations.

XIV. The Registrar General, in carrying out the provisions of this Act as regards registration, is hereby empowered and directed to frame such forms and regulations as he may deem requisite for carrying this Act into full effect; and not later than the first day of December One thousand eight hundred and sixty-three he shall transmit the necessary books, certificates, schedules, notices, and forms to the registrars of each district in Scotland, who shall deliver to the vaccinator and other medical practitioners within such district such of the same as they may require for the performance of the duties imposed upon them by this Act.

Registrar of Births, etc., to keep Vaccination Registers.

XV. The registrar of births, deaths, and marriages in every district shall enter in the duplicate register of births kept and retained by him, in the column in which the name of each child is written, the word "vaccinated" under the name of every such child whose vaccination has been certified to him as herein pro-

vided, and the word "insusceptible" under the name of every child who has been certified, as herein provided, to be insusceptible of the vaccine disease, and shall initial each such entry, and shall add thereto the date of the certificate of vaccination or insusceptibility, as the case may be; and he shall also keep a book in which he shall, in the form or as nearly as may be in the form of the schedule (E) hereto annexed, from time to time enter the name of every child whose vaccination has been duly certified to him as necessarily postponed, and the date of the certificate, and the period for which the vaccination is postponed, and each entry in the register of postponed vaccinations shall refer to the corresponding entry in the register of births of the birth of each such child; and such books shall be open for search at all reasonable times, and the registrar shall be obliged to give a copy, certified under his hand, of each entry therein, on payment of a fee of one shilling for each search, and sixpence for each certificate.

Fee to be paid to Registrar for each Person vaccinated.

XVI. A fee of threepence shall be paid to the registrar for each person vaccinated in respect of whom he shall have performed the duties required in this Act, and the said fee shall be payable in the same manner as the fee now payable to such registrar for registering births is paid; and the sums required for the execution of this Act in regard to registration shall be laid on along with and form part of the assessment authorised by the Acts in force for the registration of births, deaths, and marriages in Scotland.

Penalty on Parent, etc., for not transmitting Certificate of Vaccination, etc., to Registrar.

XVII. In every case where there is not transmitted to the registrar a certificate of the vaccination of any child born within his district, or of the postponement of such vaccination, or of the insusceptibility of such child to vaccine disease, all within the periods and in the manner respectively hereby prescribed, the registrar of the district shall intimate such failure to the father or mother, or person having the care, nurture, or custody of such child, by a notice transmitted through the Post Office; and if a certificate, as herein provided, is not exhibited by such father or mother, or other person, to the registrar within ten days from the despatch of such notice, the father or mother, or person aforesaid, so failing shall forfeit a sum not exceeding twenty shillings, to be applied in the manner in which penalties are directed to be applied under this Act, and the further sum of one shilling to be paid to the registrar in respect of such notice; and said last-mentioned sums may be recovered in the same way as penalties are herein directed to be recovered, and failing payment of either of

said sums, such father, mother, or person aforesaid shall be liable to be imprisoned in any of Her Majesty's prisons for a period not exceeding ten days.

Parochial Boards to issue Orders for Vaccination on receipt of List from Registrar.

XVIII. The registrar of each district shall once in every six months transmit to the inspector of the poor of the parish or combination in which such district is situate a list of the names and addresses of such persons as have failed to transmit or lodge a certificate of vaccination in terms of this Act; and on the receipt of such list the inspector of the poor shall lay the same before the parochial board of such parish or combination, and thereupon the parochial board shall issue an order to the vaccinator appointed by them to vaccinate the persons named in such list; and notice in writing of such order shall be given to such persons, or, if children, to their father or mother, or the persons having care of them; and in pursuance of such order the vaccinator shall vaccinate the persons named therein, or any of them, at any time not less than ten nor more than twenty days after the date of such notice, unless such persons shall previously have been vaccinated, and a certificate of their vaccination or insusceptibility shall have been transmitted to the registrar; and if any such person, or the parent or person having the care of any such child shall refuse to allow such operation to be performed, he shall for every such offence be liable to a penalty not exceeding twenty shillings, and, failing payment, to be imprisoned for any period not exceeding ten days.

Return to be made of Number of Children vaccinated.

XIX. In the general abstract of births, deaths, and marriages registered during the year which by the said recited Act seventeenth and eighteenth Victoria, chapter eighty, the Registrar-General is required once in each year to transmit to Her Majesty's Principal Secretary of State for the Home Department, he shall from and after the passing of this Act include a return showing the number of children successfully vaccinated, the number of children whose vaccination has been postponed, and the number of children certified to be insusceptible of vaccine disease, and such other information as the said secretary of state may from time to time require.

Registrars to be subject to Control of Registrar General.

XX. In all matters relating to the execution of this Act the respective registrars shall be subject to the supervision and control of the Registrar General and the inspectors under him, in the

same way and manner as such registrars are subject to supervision and control under the Acts in force relating to the registration of births, deaths, and marriages in Scotland; and the Registrar General and inspectors are hereby empowered and required to exercise such supervision and control; and whenever it appears to them that the provisions of this Act are not being carried fully into effect by any parochial board or the officers appointed by them, the Registrar General shall call the attention of the Board of Supervision thereto with a view to their providing the requisite remedy.

Vaccinators to keep a Book of Persons vaccinated.

XXI. The medical practitioners appointed as vaccinators in each parish or combination shall keep a book in which they shall enter from time to time the number of persons successfully vaccinated by them, those cases in which vaccination has been postponed, and those which have been certified to be insusceptible; and they shall yearly, or at such other times as the Board of Supervision may direct, make a return to the board embracing these and such other particulars as the Board of Supervision may require; and such books and returns shall at all times be open to inspection, free of charge, by the Registrar General, inspectors, or registrars, and officers of the parochial board of the parish or combination to which they relate.

No Certificate to be received as Evidence unless recorded.

XXII. No certificate granted under the provisions of this Act shall be received as evidence in any information or complaint which shall be brought against the father or mother or other person having the care, nurture, or custody of the child named in said certificate, unless the same has been duly recorded by the registrar of the district within which such child was born in manner hereinbefore provided.

Vaccinator to transmit to Registrars the Particulars of Certificate.

XXIII. In every case where, under the provisions of this Act, the vaccinator is required to grant a certificate of vaccination, or of postponement of vaccination, or of insusceptibility to vaccine disease, and grants the same, he shall be bound, and he is hereby required, to transmit to the registrar of the district within which the child referred to in such certificate was born the particulars contained in such certificate, in the form, or as nearly as may be in the form, of the schedule (F) hereto annexed, and that within forty-eight hours from the date of such certificate, under the penalty of twenty shillings for each omission.

Penalty on Persons inoculating so as to produce Disease.

XXIV. Any person who shall produce or attempt to produce in any person, by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article, or thing impregnated with variolous matter, or wilfully by any other means whatever produce the disease of small-pox in Scotland, shall forfeit a sum of five pounds, which shall be recoverable and shall be applied in the same manner as penalties are directed to be recovered and applied under the provisions of this Act.

Recovery of Penalties.

XXV. All penalties imposed by this Act may be recovered by summary proceeding, upon complaint in writing made by the inspector of poor of the parish or combination within which respectively the offence shall have been committed to the sheriff of the county in which the offence shall have been committed, or to the sheriff of the county in which the offender may be found; and on such complaint being made such sheriff shall issue a warrant for bringing the party complained against before him, or shall issue an order requiring the party complained against to appear on a day and at a time and place to be named in such order; and such warrant or order may contain a warrant to cite witnesses for both parties; and such warrant or order shall be effectual in any part of Scotland on being endorsed by the sheriff of any county in which it is to be executed, if other than the county wherein it has been granted, and which endorsation such sheriff is hereby authorised to give, and such warrant shall be a sufficient authority to any messenger-at-arms or sheriff officer to apprehend and detain the offender in custody till he can be brought before the sheriff; and any such order shall be served by a messenger-at-arms or sheriff's officer on the party offending, either in person or by leaving with some inmate at his usual place of abode a copy of such order and of the complaint whereupon the same has proceeded; and either upon the appearance or upon the default to appear of the party offending it shall be lawful for the sheriff to proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party complained against or other legal evidence, and without any written pleadings or record of evidence, to convict the offender, and upon such conviction to decern and adjudge the offender to pay the penalty incurred, as well as such expenses as the sheriff shall think fit, and to grant warrant for imprisoning the offender until such penalty and expenses shall be paid: Provided always, that such warrant shall specify the amount of such penalty and expenses, and shall also specify a period at

the expiration of which the party shall be discharged, notwithstanding such penalty or expenses shall not have been paid, and shall in no case exceed two months: Provided also, that it shall be lawful for the sheriff, if he shall see good cause so to do, to adjourn the proceedings for such time as he may consider proper for the ends of justice; and in such cases the sheriff shall have power to allow the party complained of to go at liberty, on finding proper bail, to be fixed by him, to appear at any such adjourned diet of the proceedings.

When Proceedings for enforcing Penalties may be raised.

XXVI. It shall be competent to raise such proceedings for enforcing any penalties incurred in contravention of this Act at any time during which the person against whom such proceedings are taken is in default; and the sheriff by whom any penalty shall be found due, by virtue of this Act, shall award such penalty to the funds for the support of the poor of the parish or combination in which the offence shall have been committed, and shall order the same to be paid over to the inspector of poor or other officer of the parochial board for that purpose.

Board of Supervision to compel Performance of Acts and Duties by Parochial Board.

XXVII. Wherever the parochial board of any parish or combination shall fail to do or perform any of the acts or duties hereby required of them, it shall be lawful to the Board of Supervision, without prejudice to any right competent to such Board of Supervision to compel performance thereof, to do or perform the same, and the acts or duties so done and performed by the Board of Supervision shall be as valid and effectual as if done or performed by the parochial board failing as aforesaid; and the Board of Supervision shall have the same powers for directing and enforcing the execution of this Act by parochial boards as they now or may hereafter have in relation to any matter concerning the administration of the laws for the relief of the poor.

Where no Parochial Board exists, Heritors to act.

XXVIII. Wherever under the provisions of this Act the parochial board of a parish is required to do or perform any acts or duties, and no parochial board exists within such parish, the heritors, as defined in the seventeenth and eighteenth Victoria, chapter eighty, except as after provided, shall do or perform such act or duty in the same manner as is provided with respect to heritors, in the like cases, in the said recited Act, and in the

eighteenth Victoria, chapter twenty-nine: Provided always, that when any such parish, or portion thereof, is situate within burgh, the town council shall have the same powers with reference to the execution of this Act, in so far as registration is concerned, as are conferred by the Acts in force for the registration of births, marriages, and deaths.

Disputes to be determined by Sheriff.

XXIX. Any dispute or difference which may arise in regard to the allocation of the expenses attendant upon the execution of this Act, between parties or otherwise, shall be determined by the sheriff of the county in which such parishes are situate, or if in different counties, then by the sheriff of the county in which the parish or portion of a parish so disputing possessed of the largest rental is situated, such rental being ascertained by the valuation roll in force at the time.

Interpretation of Terms.

XXX. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say): The expression "Registrar General" shall mean the Registrar General of births, deaths, and marriages in Scotland for the time being, appointed and acting under the seventeenth and eighteenth Victoria, chapter eighty; the word "sheriff" shall mean the sheriff of the county in which he is sheriff, and shall include sheriff-substitutes; the expression "Board of Supervision" shall mean the Board of Supervision for Relief of the Poor in Scotland; the expression "medical practitioner" shall mean any person registered as a practitioner in medicine or surgery pursuant to the Act twenty-first and twenty-second Victoria, chapter ninety, and shall include the vaccinator; the expression "vaccinator" shall mean the medical practitioner appointed by any parish or combination to act as such in such parish or combination; the expression "the district" shall mean and include the registration district at the time existing, erected under and in virtue of an Act passed in the seventeenth and eighteenth year of the reign of Her Majesty Queen Victoria, chapter eighty, intituled "An Act to provide for the better Registration of Births, Deaths, and Marriages in Scotland," and of another Act passed in the eighteenth year of the reign of Her Majesty, chapter twenty-nine, intituled "An Act to make further Provision for the Registration of Births and Marriages in Scotland."

SCHEDULES REFERRED TO BY THIS ACT.

SCHEDULE (A).

I, the undersigned, hereby certify, That the child of aged of the parish of in the county of has been successfully vaccinated by me.

Dated this day of 186 .

(Signed) *A. B.*,
Surgeon of the parish *or* combination (*or other medical practitioner, as the case may be*).

SCHEDULE (B).

I, the undersigned, hereby certify, That I am of opinion that the child of of the parish of in the county of aged is not now in a fit and proper state to be successfully vaccinated, and I do hereby postpone the vaccination until the day of

Dated this day of 186 .

(Signed) *A. B.*,
Surgeon of the parish *or* combination (*or other medical practitioner, as the case may be*).

SCHEDULE (C).

I, the undersigned, hereby certify, That I am of opinion that the child of of the parish of in the county of is insusceptible of the vaccine disease.

Dated this day of 186 .

(Signed) *A. B.*,
Surgeon of the parish *or* combination of (*or other medical practitioner, as the case may be*).

SCHEDULE (D).

To the parent or guardian of (*insert name of child whose birth is registered*).

Take notice, that this child must be vaccinated under the provisions of and Victoria chapter , within months from the date of his (*or* her) birth, under a penalty of £ .

(Signed) *A. B.*, registrar.

Schedule (E).

Register of postponed Vaccinations for the District of in the Parish of

No.	——	Birth Register in which recorded.		Period to which vaccination postponed.	Date of Certificate.	Signature of Registrar.
		Year.	No. of Entry.			
1	Mary Nixon	1864	12	Postponed to 10 March 1864.	12 January 1864.	J. Smith, Registrar.
2	Thomas Dickson	1864	14	Postponed to 4 February 1864.	4 January 1864.	J. Smith, Registrar.
3						

Schedule (F).

Schedule of Particulars to be transmitted by Vaccinator to Registrar.

Full Name of Child.	Sex.	Parent's Name.	Parish of Birth of Child.	Nature of Certificate granted in each Case.	Date to which postponed.	Date of Certificate.
John Smith	Male	James Smith	Dalkeith	Successfully vaccinated	...	4 January 1864
Mary Jones	Female	John Jones	Dalkeith	Postponed	20 May 1864	5 January 1864
James Irvine	Male	John Irvine	Dalkeith	Insusceptible	...	5 January 1864

I, Vaccinator for the parish of in the county of , hereby certify that I have granted certificates under the Vict., cap. , containing the particulars specified in this schedule, and of the dates respectively herein stated.

(Signed)

Vaccinator for the parish of

INDEX.

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PAGE

ABLE-BODIED—
Lunatic wife of man who is, entitled to relief . 120
Person in bad health if able to earn wages, is legally . 125
Wife of man who is, not being deserted by him, is not entitled to relief 130
Woman deserted by husband and left with three young children entitled to relief 121
Chargeability as a pauper lunatic of the dependant of man who is, does not pauperise him . . 180, 256
Settlement of pupil child of man who is, continues unchanged during chargeability . . . 214
Man aged 67 unable to work in wet weather is not . 218

ABLE-BODIED POOR—
Have right to benefit in legacy to minister, &c., for behoof of poor in parish 8
Out of employment not entitled to relief . . 121
Parochial Board cannot legally relieve . . 124, 126

ABSENCE.—See *Residential Settlement.*

ACQUIESCENCE—
In decision of Outer House cuts off claim to expenses of counsel attending debate in Inner House raised by another party 365
See *Mora.*

ADJUDICATION—
Opinion that, cannot be resorted to for recovery of arrears of poor rates 362

ADMINISTRATION OF MORTIFICATIONS—
Heritable subjects mortified cannot be adjudged . 6
When in hands of minister and kirk-session minister may be appointed dispenser of funds, and applications need not be considered at formal meetings . 16
Heritors had a joint right in 17
Heritors and kirk-session could sue and defend as corporate body in 19
See *Poor of Parish; Poor in Parish.*

ADMISSION OF LIABILITY—
When made by inspector without authority is not binding 38
When cannot be withdrawn . . 157, 170, 171, 172
Terms of correspondence held not sufficient to import . 162

PAGE

ADMISSION OF LIABILITY—
Terms of letter held sufficient to import . . 159
Case in which original admission and actings of board held binding in new chargeability . . . 174

ADVOCATION—
Of sheriff's judgment on ground that aliment inadequate was formerly competent 333
Of heritors, &c., deliverance brought after passing of Act of 1845 competent 339

AGREEMENT—
As to repayment of assessment held to be continued, though not formally expressed in receipts . . 85

ALIMENT—
No appeal to sheriff from judgment of heritors and kirk-session as to amount of 19, 333
Heritors and kirk-session were bound to give, to mother of bastard child from birth of child . . . 117
Parochial board only bound to give, after application . 118
Heritors and kirk-session not bound to award for specific period 118
Duration of father's obligation to aliment bastard child 141, 145
Sufficient offer to daughter 146
Offer by grandson to take grandmother into his house sufficient in question with inspector . . . 146
Needful sustentation can alone be claimed . . 118
Cases as to amount of aliment 119
Mother aged 54 cannot on ground of age alone claim from son 143
Parish bound to repay maternal grandfather of bastard for past aliment 141
Child is bound to give parent what will keep him above want 147
When given *ex pietate* there is no claim for repetition . 152
When given by stranger may be recovered, but claim subject to triennial prescription . . . 152
Decree obtained by inspector in action of relief for sums advanced is decree for aliment, and warrants imprisonment, though sum less than £8, 6s. 8d. . . 152
Sheriff has no jurisdiction to alter amount of . . 333
Advocation of sheriff's judgment in awarding, competent 333
Claim for, could be enforced in Sheriff Court . . 336
Claim for, by a pauper against a kirk-session not competent in first instance in Court of Session . . 336
Action for, by a wife against husband, when living separate from him, held competent in Sheriff Court, pending rights of parties being settled in consistorial action 366

ANNUAL VALUE.—See *Valuation—Assessment.*

APPEAL—
Parochial board must lodge, before being heard in question of valuation 366

PAGE

APPEAL—
May be taken against over-valuation 398
Competent, on case stated, to Court of Justiciary in summary petition for recovery of sums due to local authority 408

APPLICATION FOR ALIMENT—
Although delayed for four years, mother of bastard child was, but would not now be, entitled to relief from date of child's birth 117, 118
Need not be in writing 130
Advances made by relations before, not recoverable from parish 136
Application not necessary to entitle inspector to relieve person in fever 295
When given to able-bodied man burdened with three imbecile children without application by him, is not relief in sense of statute 300

ARBITRATION—
Inspector cannot refer to, without consent of board . 35
Society of inspectors or others may be arbiters . . 31
Settlement of dispute as to chargeability of pauper, without formal reference or award, does not prevent reopening question when pauper again becomes chargeable 164

ASSESSED TAXES—
Parish ministers are liable in, on their manses, glebes, and stipends 41

ASSESSMENT—
Subjects Assessable—
Personal property, wherever situated, of residents in parish was formerly 41
Mills, coal, and salt works 39
Mills of friendly society on profits after paying allowances to poor members according to society's constitution 43
Canals 44, 47, 90
Railways 55
Ground where pipes of water company laid . . . 52
Property used for public purposes, and not with view to profit, not now exempt, *e. g.*—
Docks, harbours, quays, &c., the property of magistrates or commissioners . . . 42, 71, 75, 112
Harbours, though dues insufficient to maintain . 385
Bridges 89, 113
Charitable institutions 81, 115
University buildings 86
Works of statutory water commissioners . . 60
Unoccupied property 61, 114
Mill out of work 111
College of justice not now exempt 94

PAGE

ASSESSMENT—*Subjects Assessable*—
Ferries of railway company 54
Subjects not Assessable—
Crown property, *e. g.*, barracks, now exempt . 95, 97, 98
Question whether quarters of master gunner in fortress liable 100
Feu-duties 42
Pier, adjunct of ferry 103
Minerals not liable for building parish church . . 40
Exemptions—
Parish minister exempt from poor rates in respect of manse and glebe 95, 98
Parish minister not exempt from assessed taxes on manse, glebe, and stipend 41
Parochial board cannot exempt tenants under £4 (as a class) on ground of inability to pay . . . 85
Persons liable—
Railway, canal, tramway, and water companies as owners and occupiers . . . 44, 47, 55, 91, 114
Lessee for 999 years, not lessors . . . 64
Lessor of furnished house let for three years . . 86
Lessee of shootings as tenant and occupant . . 65
Imposition and levying of—
In parish partly burgh and partly landward only one roll of assessment 20
Lands disjoined from parish and annexed to burgh, not doubly rated 43, 45, 49
Part of parish disjoined or annexed *quoad sacra*, liable in parish to which it belongs *quoad civilia* . . 41
Assessment might be either on real or valued rent . 39
Effect of want of sanction by Board of Supervision to resolution of parochial board altering mode of assessment 64
Where rate half on owner and half on occupier, half of *cumulo* sum falls on owners and other half on occupiers as a class 92
Rate can be imposed to meet emerging debt . . 57
Judgment of heritors as to principle of assessment was reviewable by Court of Session, not by sheriff . 336
Jurisdiction of sheriff not merely ministerial now, but he may determine questions as to the legality of the assessment 368
Paupers have no title to sue in matters relating to assessment 337
Competent for railway company to raise action of declarator against all the parishes through which line passes, to test the legality of mode of assessment . . 341
Levy must be made in strict accordance with assessment roll 344
Collector, not inspector, sues for assessment . 343, 358

PAGE

ASSESSMENT—
Not incompetent to sue for in Sheriff Court . . 368
Incompetent to sue trustee in bankruptcy for rates due before bankruptcy; collector should rank on estate and claim for preferable debt 363
Warrant to collect valid though signed by one J. P. only 360
Suspension only competent when party is surcharged 333, 365
Suspension of charge on ground that lands assessed not in parish competent 338
Question whether rate must be paid before note of suspension is passed 340, 342
Interest due on over-payments made under agreement to repay if found to be so 85
86th section of Poor Law Act does not apply to reduction of proceedings enforcing assessment . . . 348
Triennial prescription does not apply to poor rates . 349
ASSESSMENT, MEANS AND SUBSTANCE . 47, 48, 49, 50, 51, 96
ASSESSMENT, MODE OF—
Both heritable and personal property were liable . 39
Court of Session has power to review . . . 43
Modification of, on low rents 49
Can be put into operation before sanction is given by Board of Supervision 64
Legality of, cannot be tried by suspension . . 359
ASSESSMENT—See also *English Assessment.*
ASSISTANT INSPECTOR—
May be dismissed at any time by parochial board on reasonable notice 35

B

BANK ACCOUNT—
Opinion that inspector should not be allowed to operate on it himself 27
BANKRUPTCY—
Incompetent to sue trustee for poor rates due before; collector should rank on estate claiming for preferable debt 363
BARRACKS—
Acquired from a subject formerly rateable for the poor 95
Not now liable in assessment 97
BASTARD—See *Illegitimate Children.*
BEGGAR—
Public begging, although it prevents the acquisition, does not prevent the loss, of residential settlement . 300
BELL RINGING FEES—
Do not belong to poor 2
BEQUESTS TO POOR—
To whose support applicable, and by whom to be administered . . 5, 8, 10, 12, 13, 14, 16, 17, 18
Heritable subjects in which invested cannot be adjudged 6

PAGE

BIRTH—
In lying-in hospital lays primary liability on parish where situated in question with parish where child afterwards exposed 156
Burden of proving lies on relieving parish . . 166
BIRTH SETTLEMENT—
Held to be in parish of actual birth . . 205, 213, 216
The mere fact of birth in a parish does not render that parish liable 186
Of exposed child, presumed to be in parish of exposure . 204
Parish of, liable for children whose father had been absent from parish of his residential settlement for some years before his death 184
Of widow of foreigner who had no settlement, liable for her pupil children 195
Of pupil child of Englishman without settlement when mother pre-deceased the father, liable, and not birth settlement of mother 203
Parish of, liable for woman absent from parish of derivative settlement for 13 years 205
Of mother of pupil, the father, an Englishman, having deserted, liable for child 206
Of minor forisfamiliated when father is dead liable, not parish of father's birth settlement . . 210, 220, 227
Parish of, liable for emancipated son, father being dead and mother having pre-deceased father . . 221
Contra 224
Parish of, liable for pupil child of foreigners having no settlement 223
Parish of father's, liable for adult imbecile, and not imbecile's own birth settlement 226
Of man whose widow had married a second time and was dead, liable for his pupil child, the second husband having no settlement 228
Of forisfamiliated illegitimate child liable, and not mother's settlement 227
Parish of wife, deserted by a foreigner who had no settlement, liable for wife 234
Of father who had abandoned his family for several years liable for imbecile daughter 240
Of widow who has lost residential settlement of husband liable for her 242
Of deserted wife of foreigner who has not left the country, but who has no settlement, liable for her . 260
Of husband in desertion liable for his wife until she gains a new settlement 263
Not liable for idiot whose father has a settlement though relieving parish fail to discover it . . 213
Of insane wife of a foreigner with no settlement not liable 247

PAGE

BOARD OF SUPERVISION—
May dismiss medical officer 21
Complaint as to adequacy of relief comes before, not Sheriff 25
Can dismiss inspector who is member of school board . 28
Discretion of, in dismissing inspector will not be interfered with by court 28
Can bring action of parochial board in appointing two inspectors before Court of Session by summary petition 34
Sanction of, to resolution to assess according to local usage not necessary as condition precedent to resolution taking effect 64
Adequacy of offer of relief may be appealed to . . 129
Have right to take action against local authority to compel them to make sewers . . 404, 406
Allowed expenses in action to compel water supply . 406

BOARD OF EDUCATION—
Decision by, as to school accommodation, not reviewable on merits 423

BOARD OF PAUPERS—
Relieving parish after charging a certain amount cannot raise the scale of charge 163

BOOKSTALLS—
Erected at railway stations by tenant who has leased the privilege of selling periodicals not liable to assessment separately from general undertaking . . 78

BOUNDARY OF PARISH—
Diversion of a stream does not alter 169
If disputed can only be adjudicated on after ratepayers of disputed territory have been called . . 359

BRIDGES—
Are liable in assessment 89
Question as to legality of accumulating fund from assessment for maintaining and keeping in repair, for purpose of rebuilding ruinous bridge 89
Built by Commissioners of Public Works not rateable . 113
Dues of, are rateable 394

BROTHER—See *Relatives and their Representatives liable.*

BURGHS OF BARONY—
Are classed under landward parishes; royal burghs alone constituting the other class 41

BURGH—
Same individual might be assessed as inhabitant both of landward parish and of a burgh 40
Schools belonging to small, become vested in parish school board, and such burghs must pay use and wont sums for support of schools to school board . . 412

BURIAL FEES—
Do not belong to poor 2

PAGE

BURIAL GROUND—
Parish minister not bound to pay assessment for . 104
Petition to sheriff on ground that parochial board had failed to provide one is competent . . . 356

C

CAB-STANDS—
At railway stations where company let privilege of supplying cabs not liable to assessment separately from general undertaking 78
CANAL COMPANIES—
Liable to assessment both as owners and occupants . 44, 47, 90
Are entitled to deduction for tenants' profits . . 47
Houses belonging to, at terminus, and occupied by company, are assessable in parishes where situated . 47
When exempted by Act from all public burdens not liable in statute labour assessment . . . 105
Nor for poor rates 107
Houses belonging to, and temporarily let to strangers, should be valued as part of undertaking . . 377
CARTING PLANT—
Railways allowed a deduction for . . . 92
CASUAL BIRTH—
Parish of, liable to parish where child exposed . . 156
CASUAL POOR—
Paupers in sense of Poor Law Act . . . 129
CAVALRY STABLES—
Not liable in assessment 110
CEMETERY.—See *Churchyard.*
CHARITABLE INSTITUTION—
Residence in, insufficient to acquire settlement . . 325
Trustees of, who rebuilt and partially maintained a parish school, had to resign school buildings to school board 422
School belonging to, can be leased or purchased by school board 426
But certain privileges belonging to trustees cannot be transferred to parochial board . . . 426
Governors of, liable in assessment . . . 81, 115
CHILDREN—
Illegal to confine in police cells during preliminary inquiry under Reformatory Schools Acts . . 412
See *Relatives and their Representatives liable—Illegitimate Children.*
CHURCH-DOOR COLLECTIONS—
Made at dissenting places of worship do not belong to kirk-session 2
Made for special purpose do not belong to poor . 4
Made at *quoad sacra* parish church belong to poor . 4
Heritors had right of joint administration of . . 17

PAGE

CHURCHYARD—
Which could not be regulated without danger to public health declared a nuisance and ordered to be closed 405, 406

CLERK OF SUPPLY—
Bound to furnish parochial board with copy of valuation roll free 91

COAL WORKS—
Liable to assessment for poor rates . . . 39
But not for building parish church . . . 40
When assessment is on real rent, actual lordship charged on 46
Railways connected with, not separately assessable . 63
Machinery not included in valuation . . . 383
Nor are pit-mouth buildings and engines . . 399
Oil-works in connection therewith assessable to the extent of 15 per cent. on cost of erection . . 389

COLLECTOR OF POOR RATES—
Does not hold his office *ad vitam aut culpam* . . 37
Is proper party to sue for arrears . . 343, 358
In application against defaulter must adhere to actual terms of roll 344
Not bound to give obligation to repeat if suspension should prove adverse 355
Cannot sue trustee of bankrupt for arrears, but ranks preferably when claim is made 363

COLLEGE OF JUSTICE—
Was at one time exempted from payment of poor rates 94

COMBINATION—
Inspector of parish, representing dissolved combination, can sue for debt due to 365

COMMON GOOD—
Of burghs liable to school board for a sum equal to what was previously given out of it for schools . . 412

COMMUNION ELEMENTS—
Sum allowed for, when not expended, and not paid to minister, belongs to poor 1

COMPENSATION—
Parties liable in, for injury to salmon fishings, are not to be entered as tenants 391

COMPULSORY EDUCATION—
Parents not bound to send young children 3½ miles to school 428
School board must, before prosecuting for failure to provide education, give statutory certificate of failure to procurator-fiscal 429

COMPUTATION OF TIME—
Aliment given for a fortnight is for day on which given and thirteen following days 321

CONSTRUCTION—
Legacy left "to all Christians, except Roman Catholics," not void from uncertainty 13

PAGE

CONSTRUCTIVE BIRTH—
Mere fact of birth in a parish may not instruct liability 186
Doctrine of, not given effect to . . . 205, 213, 216
CONSTRUCTIVE RESIDENCE—See *Residential Settlement.*
CONTINUITY OF RESIDENCE—See *Residential Settlement.*
CONVICTION—
Appeal from, under Summary Procedure Act . . 371
COUNTY COURT HOUSE—
Not liable in rates 110
COUNTY RATES—
Public canal liable for 90
COURT OF EXCHEQUER—
Had no jurisdiction where revenue is not affected . 348
COURT OF SESSION—
Has power to review mode of assessment . . 43, 336
Heritors and kirk-session subject to control of . . 334
Complaint that heritors, etc., had refused to decide application for relief, formerly competent in . . 334
Claim for aliment by pauper not primarily competent in 336
Action against heritors, etc., for repayments of advances by a third party to an illegitimate child competently brought in 336
Could review the amount of relief awarded . . 339
Incompetent to try action of slander by a dismissed official against members of parochial board . . 350
Action to reduce election of an inspector competently brought before 364
Has no power to review on the merits decision of a school board 419
Enforces requisition of Board of Education if within statute 423
CRIMINAL—
Burgh where imprisoned bound to support . . 139
CRIMINAL LUNATIC—
Parish of apprehension was primarily liable for support of 175
Crown was not 175
When found unfit for trial or acquitted on ground of insanity, now detained in General Prison, Perth . 175
Expenses connected with committing to asylum and cost of maintenance there, exigible from parish of apprehension, with relief against parish of settlement . 177
CROFTER—
Who builds house on holding occupied from year to year is not legally owner of house . . . 390
CROWN PROPERTY—
Was liable to certain taxes 95
Formerly liable for poor rates 95, 96
Not now liable to taxation of any kind . . 97, 98, 111

PAGE

CROWN PROPERTY—
When occupied beneficially, how rateability may be tested 348
Is master gunner occupying, rateable? . . . 100
CULPABLE HOMICIDE—
Relevancy of charge against assistant inspector . . 33
CULPABLE NEGLECT OF DUTY—
Inspector found guilty of 34
CURATOR BONIS—
Should not be appointed where estate of lunatic is small 176
Appointed on application of inspector . . . 367
CUSTODY OF CHILDREN—
Father of bastard has right of, when child has reached his sixteenth year, if father has then to support him . 141
Mother of bastard, eight years of age, who renounces claim for aliment, has right of . . . 148

D

DAUGHTER—See *Relatives and their Representatives liable.*
DAUGHTER-IN-LAW—See *Relatives and their Representatives liable.*
DEAF AND DUMB WOMAN—
Can acquire a settlement by residence . . . 329
DEBT—
Incurred in managing mortification not recoverable by adjudication 6
DECLARATOR, ACTION OF—
Competent as to legality of assessment . . . 341
Incompetent by single ratepayer to fix rates of deduction under 37th section of Act of 1845, the proper remedy being suspension 363
DEDUCTIONS FROM ANNUAL VALUE—
Suspension of charge for assessment on ground that deductions improperly allowed incompetent, unless alleged that complainer has been surcharged . . 365
Allowed to—
Canal companies for tenants' profits and in respect of their capital 47
Owners for interest of debt on heritage . . . 47
Railways for up-keep, tenants' profits, etc., . 57, 73, 92
Gas company for meter repairs, insurance, and poor rates, but not for feu-duty 66
Railways for taxes paid for year of valuation only . 73
Railways for average of repairs for a number of years . 73
Railways for carting plant, office furniture, etc. . 92
Owners of heritages in England . . . 114
Gas companies for repairs, renewals, and tenant's profits 397
Owners for cost of furniture in furnished house . . 390

PAGE

DEDUCTIONS FROM ANNUAL VALUE—
Not allowed—
On certain incomes 48
For property tax 59
For income tax 83
To railway for repairs which should, but have not been executed 73
For ironwork furnaces out of blast 391
For tenant's profits in a gas undertaking not wrought to commercial profit 91, 92
For abatements of rent provided for in lease, but without explanation 401
For sums expended by tenant of farm on drainage . 395

DEFENDERS—
Where four had the same grounds of defence, expenses only allowed as if for one 350
Where more than one, entitled only to necessary expenses 351

DERIVATIVE SETTLEMENT—See *Parentage Settlement* and *Marriage Settlement.*

DESERTED CHILDREN—
Fall on birth parish of father . . . 191, 195
Where father a foreigner with no settlement, but mother Scotch, parish of mother's birth liable . . 206

DESERTED WIFE—
Mere fact of being so gives no right to relief . . 118
Entitled to temporary aid 118
With three young children entitled to relief . . 121
Entitled to support from husband's father . . 134
Expenses of prosecuting deserting husband cannot be recovered from parish of settlement by relieving parish 171
Cannot acquire settlement during husband's life . 232
Settlement of husband remains liable for . . 232
Of foreigner, has settlement in parish of her own birth 234, 261
Of foreigner entitled to add residence, while a maiden, to that with husband, to create residential settlement . 234
Of foreigner, who is not out of Scotland, falls on her own birth parish 260
Of foreigner cannot claim against her own birth parish if husband returns to live with her . . . 261
Whose husband was living in a neighbouring parish did not retain residential settlement in parish where left . 240
Chargeable to husband's birth parish, transferred to another parish, whenever he had acquired settlement therein 259
Absence of husband does not destroy residential settlement for 261
Retains husband's birth settlement until she acquires one by residence 263
Can either acquire or retain a residential settlement . 307

PAGE

DESERTED WIFE—
Pupil children of, by a former marriage are to be supported by parish of second husband's settlement . 250
DISSENTING CONGREGATIONS—
Collections of, do not belong to poor fund . . 2
DISPOSITION OMNIUM BONORUM—
When pauper had not granted, parish could not claim his heritage after death 140
If not granted, no claim for repetition of advances . 144
DISTRICT ASYLUM—
Where another asylum is substituted for, by legal authority, liability of parishes is not thereby altered 180, 256
DIVORCE—
Woman who has obtained, cannot claim aliment from quondam husband 151
DOCKS—
Liable in assessment 71, 75, 112
DOCQUETED ACCOUNTS—
Not of themselves sufficient to exclude action of count and reckoning 37
DOMINUS LITIS—
Liability of a parochial board as, reserved . . 366
DONATION—
Parochial relief is of that character . . . 144
DOUBLE RATING ILLEGAL 43, 49
DRAINAGE—
Sheriff cannot interdict local authority from adopting a scheme of 403
Board of Supervision can compel local authority to effect system of 404, 406

E

EDUCATION ACT—
School house which was original parish school, though within burgh, belongs to landward school board . 417
Teachers emoluments how to be fixed under . . 429
Illustrations of the operation of 46th section of . . 412
ELECTION OF MEMBERS OF PAROCHIAL BOARD—
Ratepayer not a candidate cannot impugn . . 26
Voting papers must be issued to all persons charged rates whether they have paid or not . . . 27
ELECTION of REGISTRAR—See *Registrar.*
EMERGING OBLIGATION—
Additional assessment can be imposed to meet . . 57
EMPLOYEES OF RAILWAY—
When tenants of houses owned by company are properly entered as occupiers in county valuation . . 396
ENGLISH ASSESSMENT—
Subjects and parties liable—
Mill out of work 111

PAGE

ENGLISH ASSESSMENT—*Subjects and parties liable*—
Docks vested for public purposes in trustees who derive no benefit from the occupation . . . 112
Pumping stations, wharves, &c., in connection with a drainage system 113
Tramways 114
Hospital 115
Industrial school 116
All subjects profitably occupied 116
Unlet and unoccupied property 114
Deductions are allowed before imposing . . 114
Subjects and parties not liable—
Cavalry stables 110
Governors, matrons, &c., of jail for occupation of houses not larger than necessary within jail where they required to live 110
National gallery as Crown property . . . 110
County court-house 110
Post office premises 111
Keeper of crown stores 111
Police buildings 111
Bridge held by public works commissioners . . 113
Sewers, not being subject of beneficial occupation . 113
ERROR IN FACT—
Not sufficient to reopen admission of liability . 171, 172
ERROR IN LAW—
No claim for repetition of payments made through . 168
Admission cannot be withdrawn in respect of . 157, 172
ESTABLISHED USAGE—
Deductions under 37th section not allowed, where assessment according to 64
EXEMPTION FROM LIABILITY TO ASSESSMENT FOR POOR RATES—
College of Justice was once exempt . . . 94
Not so now 94
Parish ministers are exempt 95, 98
Crown property is 97, 98
Pier adjunct of ferry exempt 103
Proprietor of militia stores is 106
Terms of charter under which superiors exempt . 96
Vassal is, when superior bound to pay all public burdens 97, 100, 101, 102, 105, 107, 108, 109
But only in respect of ownership, not occupancy . 105
Canal when freed by special Act is . . . 108
Subjects, though exempt, must appear on valuation roll 393
EXPENSES—
Given to pursuer and successful defender against unsuccessful defender who had averred in correspondence that another parish was liable . . . 369
Where three defenders were in the field . . 346
Where one of two parishes called pleaded *mora* . . 356

PAGE

EXPENSES—
Ratepayer who successfully complains of unqualified person sitting in parochial board, is entitled to . . 345
If four defenders might have acted in concert and did not, pursuer of action liable only in one account . . 350
Co-defender entitled only to necessary appearances . 351
Successful defender of original action entitled to, where supplementary action raised 354
Board of Supervision in action regarding water supply entitled to 406
Acquiescing party to decision in Outer House not entitled to, for attending debate on reclaiming note, he having no interest 365
Collector of rates, when conduct unreasonable, not entitled to 355
Circumstances in which, when more than one parish was called, the unsuccessful defender not liable for other defenders 346
Relieving parish not entitled to, for unnecessary appearances at debate 347, 360
Nor for unnecessary reclaiming note . . . 349
Nor in unnecessary advocation 351
Nor against defender in supplementary action for litigation in original action 353
EXPENSES OF APPREHENDING LUNATIC—
Although charged with criminal offence, if insane when apprehended, parish of settlement is liable for . 177
Parish of apprehension is primarily liable for . . 177
Procurator-fiscal may recover from parish . . 181
EXPENSES OF INVESTIGATION—
Recoverable from parish of settlement . . . 158
What not recoverable from parish of settlement . 171

F

FACTOR LOCO TUTORIS—
Heritors could competently apply for appointment of . 338
FARM—
Interest of money expended on permanent improvements is to be included in valuation . . . 373, 375
But not for expenditure on sheep-drains and lime . 373
Grass parks let for grazing to be valued at ordinary agricultural value 374
Incoming tenant at Whitsunday held occupant of, for year from Whitsunday where outgoing tenant reaped crop after term of entry . . . 374, 375
Rent in *bona fide* lease, criterion of value . . 53
Valued under certain circumstances irrespective of lease 375, 381
House built by tenant on, not liable to be valued . 376
When rent dependent on fiars' prices and part thereof to be expended in improvements, the full rent is to be put in valuation roll 378

PAGE

FARM—
When let for fourteen years and a life, tenant cannot be entered as owner 379
When sub-let at a higher rent is valued at original rent 385, 390
When improved, value largely increased, and partially sub-let, is valued at rent paid under lease . . 388
Consideration other than fixed rent must be added to valuation of 388
House and garden of, not to be separately entered in valuation roll 395
Deductions allowed under lease for drainage are not to be allowed for in valuation roll 395
Where part is resumed by owner, that part is to be valued at rent which would have been paid by tenant 399
When abatements in rent are stipulated in lease without explanation, the nominal rent, without the abatements, is the annual value 401
When rent for first two years of lease is lower, the rent so paid is the value 401
When prior to new lease, improvements had been made by tenant, rent is not criterion of value . . 402

FATHER—
Of bastard could not be pursued by parish when child not a pauper 138
Has right of custody when child is sixteen years old . 141
Gives a sufficient offer to lodge daughter in room adjoining his house 146
Of bastard, who arranges with third party to advance aliment, can claim benefit of triennial prescription . 151
Having more means than were absolutely necessary for support held bound to repay advances made to a son 153
See *Relatives and their Representatives liable.*

FATHER-IN-LAW—See *Relatives and their Representatives liable*—

FERRY—
Liable in assessment in parish where estate is situated of which it feudally formed a pertinent . . 51
Belonging to railway company, separately assessable, and in parish where situated . . . 54, 382
Law as to assessing ferries held by railway companies now altered 54
Where belonged to navigation trustees they are liable both as owners and occupiers . . . 71
The termini of, being in different counties, valuation should be divided 402
See *Valuation.*

FEUAR—
Who paid cess had right to vote in election of schoolmaster 17

PAGE

FEUAR—
Who has perpetual servitude of railway and pays a rent, is held occupant thereof 377

FEU-DUTIES—
Not liable in assessment 42
No deduction from valuation on account of . . 66

FEVER-PATIENTS—
Local authority must provide for such 403

FISHINGS—
When let along with furnished lodge, in valuing, allowance must be made for furniture . . 374

FOREIGN-BORN CHILDREN—
Have settlement in father's birth parish, he being a Scotchman 195
After forisfamiliation are not chargeable to parish of derivative settlement 218

FOREIGN-BORN WIDOW—
Of a Scotchman acquires at death of husband his settlement of whatever kind 237

FOREIGNER—
Having industrial residence is entitled to relief . . 117
Opinion that foreigner having no industrial settlement is not entitled to relief 123
Fact of, having no settlement, being chargeable in one parish, did not give another parish in which wife and family became chargeable, a claim against the first 169, 254
Having acquired no settlement, his children, after his death, fall on that of his widow 195
Pupil child of, who is dead, and whose wife predeceased him, falls on parish of its own birth . . 203, 223
Illegitimate child of a, in penal servitude, has no claim on own birth parish 229
Wife of, incapable of acquiring a settlement during his lifetime 232
Having deserted wife, her own birth parish held liable 234, 261
Deserted wife of, entitled to add residence while single to that along with her husband after marriage, to create residential settlement 234
Having no settlement, his wife, when insane, has no claim on her own birth parish 247
Widow of, cannot revert to settlement of a former husband 254
Deserted wife of, although he is still in Scotland, falls on her own birth parish 260
Having returned after desertion, the birth parish of wife not liable for relief subsequently given her . . 261

FORISFAMILIATION—
What constitutes—
Minor Pubes, when father dead, is forisfamiliated . 210
Woman who has not left father's family, and is wholly supported by him, is not 217, 218

PAGE

FORISFAMILIATION—*What constitutes*—
Boy about 14 residing away from his father and working at a trade, though still supported by father, is . 267
Question, whether it can take place before minority when pupil is living apart from father and earning his own living? 274
Question, whether minor, after absence in service for eight months, returns to father's house permanently disabled, is forisfamiliated? 276
Not prevented by weakness of intellect which does not preclude from earning a living 267
Effect of, on Settlement—
Destroys child's derivative birth settlement acquired from his father when father dead . . 210, 220
Or when father has deserted 218
Destroys child's derivative residential settlement acquired from father when father and mother dead . 221
Contra 189, 224
Absence of father before child's forisfamiliation counts in calculating time necessary for losing a derivative residential settlement 306
FRANCHISE—
Schoolmaster, although dismissable at pleasure, entitled to 412, 430
FRIENDLY SOCIETY—
Liable in assessment for mills belonging to them, on rents and profits after paying charitable allowances . 42
FURNISHED HOUSE—
Taxes for, payable by landlord 86
In valuing, reasonable deduction must be made for furniture 374
Where proprietor of, contracts to keep up garden, the expense thereof and interest on cost of furniture must be deducted in valuation 390

G

GAMING—
Money lost in, above 100 merks, belongs to poor of parish where wager made 1, 4
GARDEN—
When owner is bound to keep up, expense is deducted from valuation 390
GAS COMPANY—
Deductions for repairs of meters, etc., but not for feu-duties, allowed to 66
Not entitled to deduction for tenant's profits when not wrought for commercial profit 91, 93
Deductions for repairs and renewals and tenant's profit allowed to 397

PAGE

GAS COMPANY—
Pipes laid along streets are heritages for valuation . 384
GLEAN—
Poor have no right to 3
GLEBE LANDS—
When feued, are liable to assessment . . . 100
Quarry on, valued at actual lordship paid, although minister only received a portion . . . 379
GOOD-WILL—
When sum for, is paid to owner of store, it must be added to valuation 396
GOVERNOR OF POORHOUSE—
Action by, against board for breach of contract not under 86th section of Act 354
GRADUATED ASSESSMENT—
Not permissible on means and substance . . 48
GRAIN MILL—
Fair annual value of, is 8½ per cent. on cost . . 394
GRANDFATHER—
GRANDMOTHER—
GRANDSON—
See *Relatives and their Representatives liable.*
GRASS PARKS—
Let for some months in the year, valued at rent they would bring if let for ordinary agricultural purposes 374
GRASSUM—
Improvements conditioned for are valued in addition to rent 381, 382, 388, 402
Inn owned by brewer who conditioned for his liquor only to be sold, valued at more than the rent . . 400

H

HARBOUR—
When not liable to assessment 42, 71
Revenue of, not liable 54
Liable in assessment 71, 75, 112
Although revenue may be insufficient for maintenance 385
Valued at income derived therefrom subject to deductions 391
Of Glasgow, valuation of 387
HERITABLE PROPERTY—
Liable to assessment 39
Belonging to pauper who had not granted disposition cannot be claimed by parish 140
HERITORS—
Single heritor could call upon kirk-session to exhibit accounts of poor funds 2
Kirk-session not bound to account to, for special collections 4
Had joint right with kirk-session in administering poor funds 17, 18

PAGE

HERITORS—
Of the whole parish, are entitled to share in management of bequests to the poor of part thereof . . 18
Who paid poor rates were entitled to vote at meetings of heritors, &c. 19
Who paid parish burdens could vote at election of schoolmaster, though lands not separately entered . 17
Can vote by mandatory at all parochial board meetings 30
Where parish consisted of landward part and burghal part, heritor's liability to maintain poor not confined to landward part 20
Heritors, magistrates, and kirk-session were joint board of management in parish consisting of landward part and royal burgh 20
Had title to sue magistrates of a burgh to maintain their own poor 336
And kirk-session could sue as corporate body . . 19
Sole judges of amount of aliment for illegitimate child . 19
Could oblige paupers to sue relations for aliment . 139
Sheriff had no jurisdiction to review finding of, refusing relief 334
Sheriff could compel them to consider application for relief and could ordain for an adequate aliment . 335
Were subject to the control of the Court of Session . 334
Judgment of, in relation to assessment, was reviewable only by Court of Session 336
Action brought against, by third party for relief to illegitimate child, competently brought in Court of Session 336
Deliverance of, as to amount of relief, if before Act of 1845, could be advocated after passing of Act . 339
Could apply for appointment of factor *loco tutoris* to infant pauper 338

HOMOLOGATION—See *Mora.*

HOSPITAL—
Governors liable for assessment on . . . 81, 115

HOUSES—
Where tenant conditions as to repair, value is more than rent paid 382
Tenants and not landlords responsible for overcrowding of 407
To be valued at actual rental if *bona fide* . . 378
Belonging to Canal Companies at the termini of canal only assessed in parishes where situated . . 47
Belonging to Canal Companies although let to strangers should be valued as part of undertaking . . 377
Belonging to farm, not to be separately valued . . 395
Belonging to railway companies situated outwith the line are separately valued 396
See *Valuation—Farm.*

HUSBAND—See *Relatives and their Representatives liable.*

PAGE

I

IDIOT—
Who is a bastard, follows settlement of mother . 185
When father's birth parish was not found, his own is not liable 213

ILLEGITIMATE CHILD—
Heritors and kirk-session were sole judges of aliment to 19
Husband whose wife is an, bound to support her mother 149
Father's heir not bound to support . . . 133
Father of, could be sued by kirk-session for past advances 135
Claim can be made for, after long lapse of time . . 137
Kirk-session could not pursue for aliment of, when no relief had been asked 138
Father of, bound to support as long as is necessary 141, 145
Father of, entitled to custody when child is sixteen years old 141
Adult, entitled to support 143
Offer by father to aliment in his own family may or may not be sufficient 145
Aliment for, subject to triennial prescription, if paid by third party under contract with father . . 151
Grandfather of, entitled to repayment from parish of advances made by him 142
Maternal grandfather not liable to support . . 141
Grandmother of, entitled to recover from kirk-session advances made by her 119
Mother of, entitled to relief from birth of . . 117
Mother must contribute to support of . . . 119
Mother had claim against parish for inlying expenses . 138
Mother who gives up claim for aliment is entitled to custody 148
Mother must get notice before commitment of, to industrial school 414
Has settlement in parish of parent's residence . . 184
In parish of mother's domicile 185
In that of mother's residence and not in that of father 185
In that of mother's residence derived from her father . 187
When born after death of mother's husband, in parish of own birth 219
In that of mother, even when derived from marriage . 198
Even when such child is not in family with mother . 214
If settlement derivative, is lost at puberty . . 227
When mother is an Irishwoman in penal servitude, no settlement in birth parish 229

ILLIQUID CLAIM—
Cannot be set off against assessment . . . 349

IMBECILE—
Mother can acquire residential settlement for, when living in family with her 206

PAGE

IMBECILE—
Person who is partially, but capable of self-support, may be forisfamiliated 218
Never has any settlement during life but that of father 226
Birth settlement of father who had deserted, liable for 240
Settlement acquired by mother in viduity liable for, after mother's death 298
Relief given to, when living with father, without application, is not parochial relief 300

IMPRISONMENT—
Decree obtained by inspector against a son-in-law competent to sustain 152
For sixty days does not interrupt continuity of residence 304
For about six months does not 276

IMPROVEMENTS—
Interest on permanent, included in valuation . 373, 375
Made by tenant after purchase of subjects estimated in making valuation 396

INADEQUATE RELIEF—
Board of Supervision is alone competent to consider . 25

INCOME TAX—
Is not deducted from gross valuation in computing annual value 83

INDUSTRIAL SCHOOL—
Is liable to be assessed for poor rates . . . 116

INDUSTRIAL SCHOOLS ACT—
Directors of school entitled to act on warrant of commitment under, when *ex facie* regular . . 423
Before commitment under, parent must get notice . 414

INDUSTRIAL RESIDENCE—See *Residential Settlement.*

INFANT—See *Pupil Child.*

INFECTIOUS DISEASE—
Persons attacked by, are a burden on local authority . 403
Contravention of Public Health Act by exposure of person suffering from 405

INLYING EXPENSES—
Mother of child has claim against parish for . . 138

INN—
When owned by brewer who stipulates in letting that his liquors be alone used, an addition made to rent in valuing 400

INSPECTION OF BOOKS—
Ratepayers' right of, in royal burghs . . . 40

INSPECTOR—
Mandates used at election of, may be altered as to date of meeting 25
Two cannot be appointed to one parish . . 34
Board of Supervision may dismiss, who is member of school board 28

PAGE

INSPECTOR—
Is not personally liable for debts of the board . . 35
Must issue voting papers to every person charged with rates, certifying that vote bad if rate not paid . 27
Accounts may be inquired into although docqueted . 37
Cannot admit a claim without authority of board . 38
Nor refer a case to arbitration 35
Is the party to sue in questions as to mode of levying assessment 358
When representing dissolved combination, can sue for debts due to it 365
Curator bonis may be appointed on application of . 367
Is entitled to offer caution under Reformatory Schools Act 412
Action for reduction of election of, competent in Court of Session 364

INSURANCE—
Deduction for, to be made from value of railways . 57
And of gas works 66

INTEREST—
Is due on sums overpaid for assessment on repayment . 85
Paid on permanent improvements included in valuation 373, 375

IRISH PAUPER—
Whose residential settlement is lost, can be removed . 160

IRON WORK—
Furnaces out of blast not exempted from valuation . 391

J

JAIL—
Governor, matrons, &c., of, not liable in assessment . 110

JURISDICTION—
Parochial Board—
As to payment of school fees to school board was final . 427
But is now subject to review of sheriff . . . 428
Appeal may be taken to Court of Justiciary, in action to recover sums due to local authority . . . 408
Court of Session—
Can review mode of assessment 43
Has no power in actions limited by 86th section of Poor Law Act 350
Question as to an election of an inspector competent in 364
Cannot on the merits review decision of school board in dismissing teacher 419
Sheriff—
Cannot entertain claim as to inadequacy of relief . 25
Had no power to alter rate of aliment fixed by kirk-session and heritors 333
Could not entertain appeal against heritors, &c., for refusing relief 334

PAGE

JURISDICTION—
Could compel heritors, &c., to consider application for relief and also ordain sufficient aliment . . 335
In small debt action, cannot refuse expenses because collector of rate has not adopted summary warrant . 356
Arrears of poor rates are not recoverable in the Ordinary Sheriff Court 362
Action by parish against a son for repayment of advances made to his parent is competent in Small Debt Court 367
So is action of relief by one parish against another although question of settlement is involved . . 370
Sheriff can consider merits of cause in trying action for recovery of assessment 368
Court of Exchequer—
Has no jurisdiction where the revenue is not affected . 348

K

KEEPER OF CROWN STORES—
Not liable to be rated 111
KELP SHORES—
Fall to be entered on valuation roll . . . 386
KIRK-SESSION—
Heritors can call for accounts of . . . 2
Have sole right of keeping mort-cloths . . . 3
Cannot exact dues of proclamation for poor . . 3
May make special collection for law expenses . . 4
When proclamation fees may be retained by . . 6
When bound and when not bound to hand over funds to parochial board 6, 8, 10, 12, 14
"Of the several churches" in a Presbytery means those of the Established Church 13
Minister may competently dispense interest of funds left to ministers and elders for relief of poor . . 16
Heritors had joint right of administration of funds belonging to poor with 17, 18
With heritors could sue as corporate body . . 19
With heritors were sole judges of amount of aliment to be given to illegitimate child 19
Had title to recover from father aliment expended on bastard 135
Had no title to pursue bastard's father when child not a pauper 138
When pauper had not granted disposition could not claim his heritage after death . . . 140
Had joint right with magistrates in certain royal burghs to manage poor funds 20
Each member is entitled to vote in management of funds 19
Not entitled to call a meeting of, and heritors, that being duty of minister 337
Can only sue in the names of the individuals composing it 338

PAGE

L

LAND—
Where proprietor has land in one parish and mansion-house in another they cannot be conjoined in valuation roll 395

LANDS VALUATION ACT—
Does not repeal 37th section of the Act of 1845 . 70
Does not make parties liable who are not otherwise liable 77

LANDWARD PARISH—
Same individual might be liable to assessment in, and also in burgh parish 40

LEASE—
Rent paid under *bona fide*, criterion for fixing annual value 53, 59
Of railway for 999 years renders lessees liable in owner's assessment 64
For more than 21 years does not make lessee liable for re-building parish church 77
Valuation of farm fixed under certain circumstances, irrespective of 375
When for 14 years and a life, tenant not entered as owner 379
Rent paid under, when other conditions exist, is not criterion for fixing value 381
When subject is sub-let at a higher rent, only the rent under original, entered on valuation roll . 385, 390
Where farm has been much improved by tenant and partially sub-let at highly increased value, it falls to be valued at rent paid under the existing lease . 388
When tenant sub-lets contrary to provisions of, the sub-tenants are to be entered on valuation roll as joint occupiers and the lessees as tenants 392
When for 21 years, erections put up by tenants are valued 394
When deductions from rent are allowed for in, on condition of being spent on drainage, no deduction is made from valuation 395
When tenant purchases subject before expiry of, the valuation is made irrespective of 396
When owner resumes portion of farm held under, the portion resumed is valued at rent which was payable by tenant 399
Abatements made from rent, and provided for without explanation in, held to be for permanent improvements 401
When rent is made lower, without stipulation as to repairs, during first two years of, the rent actually paid is the value 401
When improvements were made by tenant before new lease was granted the rent to be paid is not criterion of value 402

LEGACY—
To poor in the parish is managed by heritors and kirk-session 5

PAGE

LEGACY—
Circumstances in which parochial board not entitled to administer 8
Unemployed parishioners have title to sue regarding, and to participate in benefits . . . 8
Left to all Christians, except Roman Catholics, not void from uncertainty 13
When invested for behoof of the poor of the parish, falls to parochial board 12, 14
Heritors and kirk-session had joint right to administer 17

LEGAL POOR—
Able-bodied poor had joint right with, in benefit of legacy left for "benefit and behoof of the poor" . 8
Funds belonging to, fall to be managed by parochial board 12, 14

LEGITIMATE CHILD—
Settlement of is determined by birth or residence of parents 184
Settlement acquired by mother in viduity, falls to . 186

LIFERENTER—
Had right to vote at election of schoolmaster . . 17

LIMITATION OF ACTION IN ACT OF 1845—
Circumstances in which applies in action for slander against member of parochial board . . . 350
Does not apply where for breach of contract . . 354

LINEN FACTORY—
Mode of computing valuation of . . . 399

LOCAL AUTHORITY—
Can form water district, although a committee exists for the purpose of providing a supply of water . 403
Has no claim against parochial board for expenses incurred in treating persons attacked by infectious diseases 403
Proceedings generally cannot be reviewed by sheriff . 403
Incompetent for, after supplying district with water, to form part of district into separate water supply district 404
Petition and complaint by Board of Supervision proper remedy to compel, to drain district . . 405, 406
Expenses of complaint against 406
Appeal may be taken to Court of Justiciary in summary petition for recovery of sums due to . . . 408

LUNATIC—
Wife of able-bodied husband is entitled to relief . 120
Fact of a, being kept by a parish where he has no settlement, gives no claim to another parish to recover advances to wife and family . . . 169, 254
Curator bonis to, appointed on application of inspector 367
When estate of, is very small, *curator bonis* should not be appointed 176

PAGE

LUNATIC—
Parish of chargeability of, can claim from parish of settlement repetition of expenses incurred during year prior to date of notice 178
Not necessary that the sheriff should, in all cases, certify amount of expenses 178
When wife or child is chargeable as a, head of family is not thereby pauperised 180, 256
Procurator-Fiscal may recover expense incurred in the committing of dangerous, from parish where apprehended 181
Person liable to fits of insanity, but capable of earning wages can acquire a settlement 268
Parochial board liable for expenses of committing dangerous lunatic 354
Parish of settlement, even when derivative, when put into asylum is liable, so long as detention continues 178, 180, 256
Is incapable of losing a settlement 280
Circumstances in which absence of, in an asylum, causes loss of settlement 302
Cannot acquire a settlement by residence in an asylum 280
Nor by being boarded out in a parish 283
Person, after being in an asylum at expense of parish, lived five years in same parish with his father, held to have acquired a settlement there 279
Short absence in asylum as, insufficient to interrupt continuity of residence 279
Apprehension of a man as a dangerous, and who was treated for a few days as a pauper did not interrupt continuity 314
Settlement of, liable for, although he may have means . 180
Birth parish liable for, though father alive, with only birth settlement 190
In minority and unforisfamiliated, falls on father's birth parish 200
Although absent from father's house in asylum, after being 23 years old, not forisfamiliated . . . 217
Wife of a foreigner not deserted has no claim on her own birth parish 247
See *Criminal Lunatic—Idiot—Imbecile.*

LUNATIC ASYLUM—
Although alleged to be exempt from rating, must be entered on valuation roll 393
Mode of computing valuation of 401
When another asylum is substituted by legal authority for district one, the liability of parishes is not thereby altered 180, 256

LYING-IN HOSPITAL—
Relieving parish of child born in, has claim against parish in which situated 156

PAGE

M

MACHINERY—
Steam engines and boilers used in a mill are to be valued 376
Is not included in valuation of coal work . . 383
MALICE—
Averment of, in action against school board . . 419
MANDATES—
Prescriptive use of, renders legal . . . 19
Party who uses them cannot object to another doing so 19
Are valid at meeting of parochial board although altered in date 25
Can be used at election of registrar . . . 30, 35
MANSE—
Vassal freed by feu-charter from public burdens, bound to pay for building of 94
Exemption from public and parochial burdens applies to assessment for building of 103
MANSION HOUSES—
When valued on a different principle from mills in same parish, can owners of mills object? . . . 380
Owners of, cannot conjoin mansion with land in another parish on valuation roll 395
MANUFACTURERS—
Were liable to assessment on means in two parishes . 48
MARKET DUES—
Not entered on valuation roll 398
When liable to be valued 400
Mode of entering on roll 398
MARRIAGE—
Irregular, may be proved *incidenter* in action by one parish against another 357
Wife who has divorced husband cannot claim aliment from him till provisions of marriage contract become available 151
MARRIAGE SETTLEMENT—
Wife's former settlement is extinguished by marriage . 234
If husband has no settlement she has none, *stante matrimonio*, and her birth settlement not liable 247, 254
If husband who has no settlement, becomes chargeable on one parish, and wife is relieved by another, latter has no claim on first 169, 254
Settlement acquired through husband is liable for wife's illegitimate child, even after husband's death 198, 214
After husband's transportation 239
Settlement by second marriage liable for children of wife's first marriage 250
Contra 233
On husband's death, his settlement by birth or residence at time of death enures to widow . . 236, 238
On death of husband without settlement, wife's birth settlement liable 260

PAGE

MARRIAGE SETTLEMENT—
Settlement acquired by wife through husband, subject to same incidents as his own, *e.g.*, residential may be lost by non-residence 242
When residential settlement enuring to widow lost by absence, her own birth settlement liable . 242, 247
Wife of foreigner without settlement, and who had deserted, may add her residence when wife to her residence before marriage, so as to make residential settlement 234
Widow can acquire new residential settlement, but not by combining residence during marriage and residence in viduity 248
Husband's residential settlement not continued after desertion by wife and family residing in same parish but not in same house 240
Husband's residential settlement not lost to wife by his absence after desertion 261
On husband's desertion his birth settlement liable if he had no residential settlement 263
On second marriage, first marriage settlement entirely lost, not suspended 254
In case of lunatic wife, marriage settlement is that at date of lunacy, and does not fluctuate with husband's 256
Desertion has same effect as death . . 232, 261, 263
Desertion may take place though husband does not leave the country 260
Where husband who had no settlement deserts, wife's birth settlement liable for her and family . . 260

MASTER GUNNER—
Occupying Crown property, is he rateable? . 100, 348

MEANS AND SUBSTANCE—See *Assessment.*

MEDICAL CERTIFICATE—
Registrar not bound to pay for medical certificate of death 22

MEDICAL OFFICER—
May be dismissed by Board of Supervision . . 21

METERS—
Deduction for, to be given to Gas Company . . 66
Are not heritages liable to be valued . . . 384

METROPOLITAN BOARD OF WORKS—
Is not rateable for sewers 113
Is rateable for wharves, tramways, &c. . . . 113

MILITIA STORES—
Exemption from rating extends to landlord of . . 106

MILLS—
Are liable to assessment 39, 42
Even when not working 111
Valuation of, not validly objected to on the ground that other kinds of heritage are too low . . . 380

PAGE

MINERALS—
Proprietor of, not liable for building parish church . 40
When sub-let at higher rent, original rent under lease of ordinary duration to be taken as value . . 380
Under lease, pit-mouth machinery not to be valued . 399

MINOR PUBES—
When a lunatic, falls on father's parish of settlement, not his own 200
When on own birth parish, and not on father's . . 210
Can acquire a residential settlement . . . 267
After being absent eight months at service returned home disabled from paralysis; was he forisfamiliated? 270

MODE OF ASSESSMENT—See *Assessment.*

MODE OF ESTIMATING VALUE—See *Valuation.*

MORA—
Claim sustained against father of bastard after 15 years 137
When no notice given by relieving parish for 7, 10, 13, and 22 years respectively, claim of recourse is barred 154, 155, 158, 164
Where procurator-fiscal paid lunatic's keep for 23 years without intimation of claim on pauper's parish, claim barred 162
Where notice was given, and delay caused by fault of parish of recourse, 8 years' delay did not bar claim . 163
Delay for 10 years in enforcing claim after notice bars . 164
After notice, delay of 6½ years does not bar . . 167
Cases in which delay held not to amount to *mora* 172, 174
Action for reduction of Sheriff Court decree not raised for four years not barred by . . . 345

MORT CLOTHS—
Kirk-session had sole right of keeping, for behoof of poor 3
Dues of, when invested, belong to kirk-session . . 14

MORTIFICATION—See *Administration of Mortifications.*

MOTHER—
Son is *jure naturæ* bound to support . . . 134
Of illegitimate child had claim against parish for inlying expenses 138
Of illegitimate child who gives up claim for aliment is entitled to custody 148
Of illegitimate child must get notice before commitment of child to an industrial school . . . 414
See *Relatives and their Representatives liable.*

MULTURES—
Are heritages and should be valued . . . 383
But not when paid in commutation of thirlage . . 392

N

NATIONAL GALLERY—
Not liable in assessment 110

PAGE

NAVIGATION TRUSTEES—
Liable to be assessed for quays, docks, and wharves . 71, 75
But not separately for river and right of harbour . 71

NIECE—
Uncle who had succeeded to his father's estate bound to aliment daughter of deceased elder brother . . 135

NOTICE BY RELIEVING PARISH—
Want of, bars claim of relief . . . 154, 155, 158
Terms of 159
Statement sent with, held sufficient for description of pauper 163
When given by one parish does not generally enure to another 165
One sent when there is no legal claim is not effective though legal claim emerges afterwards . . 165
New notice is necessary on second chargeability 167, 261
Under Lunacy Acts parish is liable for not more than a year prior to date of 178
Giving or withholding of, has no effect on settlement . 214
Parent of child must get before commitment to industrial school 414
To inspector of proposal to send child to industrial school not necessary 420
School board before dismissing teacher must give him due notice 424
Of assessment sent to usual place of abode is a due demand 93
See *Mora.*

NUISANCE—
Churchyard which could not be properly regulated held to be a 405, 406
Authors of, not liable for expense of removing it, unless they have an opportunity of doing so, or unless author is unknown at date of order 410
Persons not liable for expense of removing nuisance, unless they have opportunity of abating it . . 409

O

OBJECT OF RELIEF—See *Relief.*

OCCUPIERS—
One-half of *cumulo* sum of assessment raised from . 92
Notice of assessment left at usual place of abode is a due demand from 93
Of subjects, who are sub-tenants contrary to terms of lease, should be entered as joint occupiers . . . 392

OFFICE FURNITURE—
Railway to be allowed deduction from value for . 92

OIL WORKS—
Erected by coal company are assessable, and 15 per cent. on cost of erection held to be fair valuation . 389

PAGE

ONUS OF PROOF—See *Proof.*

OVERCROWDING OF HOUSES—
Tenant is responsible for, and not owner . . 407

OWNERS—
One-half of *cumulo* sum of assessment raised from . 92

P

PAPER MILLS—
Are to be valued at what they might be reasonably expected to let 389

PARENT—
Children bound to support indigent . . . 133
General disponee of, bound to support daughter . 134
Who is offered relief in son's house has generally no further claim 138
To support claim by, children should have superfluity . 153
Not bound to send young children 3½ miles to school . 428
Is parent prosecuted under Education Act a competent witness in his own case? 430

PARENTAGE SETTLEMENT—
Imbecile has never any other than . . . 226
Is liable for imbecile daughter of man who has abandoned his family 240
When birth parish of idiot's father is not found, his own is not liable 213
Is liable in all cases for legitimate child . . 184
Is liable for pupil children though residential . . 184
But not when father had been absent several years before his death 184
Is liable even when pupil is a bastard . . . 184
But that of supposed father is not . . . 185
That acquired by mother is liable . . . 185
Even when derived by marriage . . . 198
And when child not living in family . . . 214
When father with only birth settlement deserted the children, their settlement was formerly in their own birth parishes 191
Now that derived from father during non-age is always liable 192
Is liable for daughter, 23 years old, if unforisfamiliated . 217
Or although the children were born abroad, and the father, a Scotchman, has deserted . . . 195
Is not preserved after forisfamiliation . . . 218
Lost by absence for 13 years 205
If father is dead, *minor pubes* goes on own birth parish . 210
Can be lost by absence after forisfamiliation . . 189
Or by absence of seven years, four of which were in pupillarity 220

PAGE

PARENTAGE SETTLEMENT—
Did not accrue to son, 19 years of age, at date of father's death 221
Enured to son at emancipation 224
Was not liable for lunatic 16 years old, whose father was alive, with only a birth settlement 190
When father is a foreigner, mother's birth parish liable after his death for pupil child 196
Or when he has deserted, although mother is dead . 206
When acquired by mother during viduity becomes also that of legitimate child 186
When lost by illegitimate child 227
When mother marries a second time, after her death parish of settlement of legitimate child's own father is liable 228, 231
Is not changed by second marriage of mother . . 233
Settlement acquired by father after chargeability of child has begun enures to child 229
Settlement when pupil becomes a pauper is liable so long as chargeability lasts 214
See *Birth Settlement.*

PARISH—
Claimed against for relief is bound to make due inquiry 163
Of residence cannot charge for visiting paupers . 160
In which pauper resides is entitled to remove pauper to parish settlement 160
See *Relieving Parish.*

PARISH CHURCH—
Proprietors of minerals are not bound to pay for building 40
Neither is lessee of a subject, although lease is for more than 21 years 77

PARISH MINISTER—
Was liable to be rated on stipend only in parish of incumbency 48
Is exempted from poor rates 95, 98
May be a member of parochial board . . . 27
Is liable to pay assessed taxes 41
Is not bound to pay burial ground assessment . . 104
Is exempt from school rate 431
Contra 432

PARISH OF APPREHENSION—
Of criminal lunatic primarily liable . . 175, 177

PARISH OF EXPOSURE—
Presumed to be parish of birth 204

PAROCHIAL BOARD—
Want of qualification in some members does not void proceedings 20
Cannot re-employ medical officer who has been dismissed by Board of Supervision 21
Should not go on increasing its debt from year to year,

PAGE

PAROCHIAL BOARD—
so as to throw on incomers burden not contracted in their time 27
Cannot appoint two inspectors of poor . . . 34
May dismiss an assistant-inspector at any time on due notice 35
Can dismiss collector 37
Are not bound by submission made by inspector without authority 35
Nor by an admission of liability unauthorised . . 38
Can impose additional assessment to meet emerging obligations 57
Can resolve on mode of assessment, and assess before resolution is sanctioned by Board of Supervision . 64
Has no right to exempt as a class, tenants under £4 from assessment 85
Not bound to receive pupil child into poorhouse without mother 123
Cannot claim repetition of advances from pauper where no disposition *omnium bonorum* . . . 144
Not entitled to relieve able-bodied poor out of employment 121, 125, 126
Cannot appear against valuation without having lodged an appeal 366
Circumstances under which had not the privilege held by trustees of nominating children for free education 426
Refusal by, to grant free education under 69th section of Education Act was not subject to review . . 427
Can now be reviewed by sheriff . . . 428
Not bound to pay school fees in case of a woman who is keeping child of another person . . . 431
Not bound to repay local authority for fever patients . 403
Proclamation fees cannot be claimed by . . 7
Not entitled to administer legacy left in special terms . 8
Not entitled to land acquired by kirk-session with trust funds 10
Entitled to administer funds left to the poor . . 12, 14
Entitled to lands acquired by poor's funds . . 14
Entitled without fee to a copy of valuation roll . 90
Inspector is not personally liable for debts of . . 35
Member of, is privileged to make statements pertinent to business on hand while meeting is being held . 22, 346
Member of, cannot be sued in Court of Session for anything done in execution of his duty . . . 24
Action against member of, for assault on pauper does not necessarily come under 86th section of Poor Law Act 24
Member can vote by mandate, even when mandate has been altered as to date 25
Mandates may be used in election of registrar . . 30, 35
Member can demand access to the books . . 343

PAGE

PAROCHIAL BOARD—
And can reduce illegal resolution of board . . 85
Parish minister who does not pay rates may be member of 27

PARTNER—
Of mercantile company was liable to be assessed on means though not resident in parish where business carried on 42

PAUPER—
Able-bodied man does not become pauper by wife or child becoming a pauper lunatic . . . 180, 256
Nor where his pupil child suffering from a permanent serious disease requires to be supported by parish . 218

PENAL SERVITUDE—
Illegitimate pupil child of Irishwoman in, has no claim on own birth parish 229

PERSONAL PROPERTY—
Liable to assessment 39, 41

PIER—
At ferry built on Crown property not rateable . . 103
At ferry owned by a railway company properly valued as separate subject 382
At harbour, although dues are insufficient for maintenance is rateable 385

POLICE BUILDINGS—
Are not rateable 111

PONTAGE—See *Bridges.*

POOR FUNDS—
Sums voted for communion elements when not used and not paid to minister 1
Money lost in gaming above 100 merks . . . 1, 4
Bell ringing and burial fees do not form part of . 2
Dissenting church collections are not part of . . 2
Mortcloth dues to be applied to . . . 3
Session clerk's salary a proper charge on . . 2
But not that of presbytery clerk . . . 2
Proclamation dues cannot be exacted by kirk-session for 3
Though received by kirk-session not to be accounted for to parochial board 6
Special collections made at church door do not fall to . 4
Quoad sacra church ordinary collections go to . . 4
Lands purchased with, belong to parochial board . 14
Also legacy to "poor of parish" . . . 14
Heritors have joint power with kirk-session in managing 17
The whole heritors had right to manage fund left to the poor of a portion of parish . . . 18
Each member of kirk-session was entitled to vote in managing 19

PAGE

POOR FUNDS—
In certain burghs, were managed jointly by magistrates, heritors, and kirk-session 20

POORHOUSE—
Offer of, is adequate offer of relief . . . 129
Even when situated at a distance . . . 123
Offer to receive mother and child in, is sufficient . 123

POOR IN PARISH—
Legacy to, fell to heritors and kirk-session, and belongs now to parochial board 6
Legacy to minister and kirk-session for behoof of, does not fall to parochial board 8
Able-bodied poor have right to share in such bequest . 8

POOR OF PARISH—
Are entitled to surplus of wager above 100 merks . 1, 4
Bequest to, to whose support applicable and by whom to be administered . . . 5, 10, 12, 14, 16

POOR OF THE PRESBYTERY—
Bequest to, to be divided by sessions of churches fell to be administered by Established kirk-sessions . . 13

POOR RATES—
Parish minister exempt from 95, 98
Vassal freed from public burdens liable for . . 96
Superior bound to relieve vassal of all taxes liable for 97, 101, 102
Even when value of property is increased by erection of buildings . . . 101, 102, 107, 108, 109
But only in respect of ownership . . . 105
See *Assessment.*

POST OFFICE PREMISES—
Not rateable 111

PRESBYTERY CLERK—
Salary not a proper charge on poor funds . . 2

PRISON—
Falls within lands and heritages and must be valued . 385
Assessment for, Crown property not liable . . 97

PRIVILEGED STATEMENTS—
Statements made by members of parochial board when meeting is being held and pertinent to business in hand are 22, 346

PROCLAMATION FEES—
Cannot be exacted by kirk-session for behoof of poor . 3
When received by kirk-session do not belong to poor . 6

PROCURATOR-FISCAL—
Was liable on means in parish where chambers were situated 49
Can recover from parish expense of apprehending lunatic 181

PROOF—
Onus of, lies on relieving parish to show where pauper was born 166

PAGE

PROOF—
Onus of showing where pauper has been during occasional absences lies on parish of residence . . 289
Onus on parish of admitted residential settlement of showing that settlement has been lost . . 296
And on parish of birth that residence was continuous, and that admitted absence was incidental to residence 314, 317
Ex post facto entry in register good, in question of birth when combined with pauper's own belief . . 347
Of averments of appellant under Valuation Act not allowed 350
Of marriage insufficient, where alleged husband and wife were contradicted by other witnesses . . 357
Alleged wife can be called to prove that marriage exists 362
Allowed where birth parish averred existing residential settlement, and conjunct probation to relieving parish 367
Entry in register of baptism insufficient, of birth . 372
PROPERTY TAX—
Not deducted from rental before rating 59
PROSECUTION OF DESERTING HUSBAND—
Expenses of, not recoverable from parish of settlement 171
PROXIES—See *Mandates.*
PUBLIC BEGGING—See *Beggar.*
PUBLIC HEALTH ACT—
Is contravened by master who exposes servant suffering from small-pox in public conveyance . . . 405
Authors of nuisances must have an opportunity of removing them before being held liable in expense of doing so 409, 410
PUMPING STATIONS OF DRAINAGE SYSTEM—
Are rateable 113
PUPIL CHILD—
Residence of with mother cannot be combined with residence afterward so as to create a settlement . . 220
Offer to receive with mother in poorhouse sufficient of relief 123
Has settlement in birth parish in certain circumstances 183, 184
When in parish of parent's residence . . . 184
When in parish of mother's residential settlement acquired in viduity 186
In own birth parish in preference to father's . . 191
In parish of father's settlement when legitimate . 192
Although child was born abroad if father a Scotchman . 195
In birth parish of mother, when father, a foreigner, is dead 195
In mother's parish when illegitimate . . . 198
And although not living in family with mother . . 214
In own birth parish, where father a foreigner, and mother predeceased him 203
In mother's birth parish, after her death, when father, a foreigner, has deserted 206

PAGE

PUPIL CHILD—
In same parish during whole period of chargeability . 214
In parish of own birth, when parents, both foreigners, are dead 223
In father's parish, when mother who married a second time is dead 224, 228, 231, 233
In father's residential parish, though acquired after chargeability began 229
When illegitimate, and mother, a foreigner, is in penal servitude, birth parish of, not liable . . . 229
In stepfather's parish, when in family with mother, whose second husband has deserted . . . 250
See *Birth Settlement—Parentage Settlement.*

Q

QUARRY—
On a glebe valued at lordship actually paid by tenant . 379
QUAYS—
Are rateable 71
QUOAD CIVILIA PARISH—
Heritors of, entitled to assess portions disjoined *quoad sacra* for support of poor 41
QUOAD SACRA PARISH—
Collections belonged to poor fund 4
Formation of, does not affect support of poor . . 40
Assessment on, could only be made by original parish heritors 41

R

RAILWAY—
Ferry held by, separately assessable . . . 54
Law now altered 54
Companies rateable both as owners and occupiers . 55
Stations etc., are to be regarded as part of the whole line . 55
In assessing, certain deductions are to be made . 57, 92
Rent paid for under lease, true criterion of value . 63
Private, connected with coal pit, not separately rateable 63
Lessees of, for 999 years, rateable as owners . . 64
Subjects let by company, not included in *cumulo* value, but are separately rateable 66, 93
Having special Act exempting from burdens, not rateable so far as freed by Act 67
Not entitled to improper deductions because other parties have got them 73
Nor for extra deduction for repairs which should but have not been executed 73
Entitled to deduction only for the particular year assessed for 73

PAGE

RAILWAY—
In estimating deductions average repairs for a number of years to be taken 73
Refreshment rooms of, when let to tenant, are separately rateable 78
Book-stalls and cab-stands of, are not 78, 93
Income-tax not deducted from valuation of . . . 83
Effect of Act exempting from public burdens . . 88
Circumstances in which original proprietors of the land occupied by, are liable for expense of manse . . 103
Company rated as occupiers when stables are let with control reserved 115
Company can test legality of assessment by action of declarator against all the parishes through which line passes 341
In appeal against valuation of, proof as to averments of appellant disallowed 350
Annual sum paid for way leave by, is rateable . . 377
Value of free ticket on, granted to tenant of house, not included in valuation 386
Dwelling-houses beyond the fence of, though belonging to the company, fall to be entered on the county valuation roll 396

RATEPAYER—
When not a candidate has no title to object to the election of another 26
Has right to inspect rate books of royal burgh . . 40
Is not disqualified from acting as a witness in action of relief by parish 342
Can demand production of assessment roll . . . 343
Can interfere to prevent unqualified person from sitting in parochial board 345
And is entitled to expenses if successful . . . 345
In disputed territory must be called in action to settle boundaries of parishes 359
Cannot try by declarator what deductions under 37th section should be allowed 363

REAL RENT—
Assessment could be made on, under old law . . 39
In certain circumstances assessment must be made on . 43
When assessment on, collieries pay on actual lordship . 46

RECOURSE AGAINST RELATIVES—See *Relatives and their Representatives liable.*

RECOURSE AGAINST OTHER PARISHES—See *Relieving Parish.*

REDUCTION—
Action of, to reduce minute of parochial board imposing assessment illegally, five months after date thereof, competent 347

REFORMATORY SCHOOLS ACT—
Illegal to confine child in police cells during preliminary inquiry 412
Inspector of poor entitled to offer caution under . 412

PAGE

REFRESHMENT ROOMS—
Railway, separately liable from general undertaking when let to tenant 79
REGISTER OF BIRTH—
Entry made by session clerk not appointed for many years after date of entry held good as evidence when combined with belief of person referred to . . 347
Of baptisms, entry in, not sufficient proof of birth . 372
REGISTRAR—
Not bound to pay for certificates of death . . 22
Election of, can be appealed to sheriff or to his substitute, not to both 30
Mandatories can vote at election of . . . 30, 35
REHABILITATION—
When pauper becomes chargeable a second time a former adjustment of claims does not bar the case being opened up 164
When second chargeability has taken place, new notice is necessary 167
An interval of five months insufficient to effect . . 171
RELATIVES AND THEIR REPRESENTATIVES LIABLE—
Children are for indigent parents . . . 133, 134
When they have superfluity 153
Bound to give what will keep parent above want, relative to parent's position in life 147
Amount of aliment not to be estimated by son's fortune 147
Offer by son in good circumstances to receive mother into house not sufficient 140
Mere fact of mother being fifty-four years of age does not entitle to aliment 143
Each child liable for whole support, unless shown that there are others having superfluity . . . 153
Father for support of child, but only to keep above want . 146
Where gave £100 a-year and son had £90 a-year besides, father not liable further . . . 139
5s. a-week and house accommodation sufficient discharge of his obligation 146
Offer by, to receive married daughter into his house sufficient implement of his obligation . . . 143
Not liable for son's widow . . . 137, 142, 150
Question whether liable, where widow the mother of heir of entailed estate 136
For daughter-in-law where son unable to support . 137
Not for daughter-in-law deserted by husband . 134, 136
General disponee of, is liable for disponer's daughter . 134
Trustees of, liable during minority of children whose provisions are not payable till majority . . 136
Of bastard was liable in relief to kirk-session . . 135
Until child can support itself . . . 141, 143
Even though child is adult 145

PAGE

RELATIVES AND THEIR REPRESENTATIVES LIABLE—
Claim against, may be brought after long lapse of time 137
Heir of, bound to aliment bastard 133
Mother, although wealthy, not bound to aliment son who has marketable reversion 138
Alimenting idiot son of no means, has no claim for repayment when he succeeds to an estate . . 134
Step-Mother not for step-children 143
Is liable when has life-rent of her husband's whole estate 133
Grandfather—for grandchildren though father alive, if father poor 136
Special circumstances may exempt 139
Offer by, where means small and family large, to maintain grandchild in family with himself, sufficient . 138
Maternal, not liable for bastard grandchild . . 141
May claim from parish sums paid for bastard grandchild's support, when parents unable to pay . . . 142
Grandson for grandfather 146
Brother not liable for his sisters when he did not represent his father 133, 150
Succeeding to estate of distant relative, not liable for sister 21 years of age 133
Succeeding to father's estate, liable for brothers and sisters so far as *lucratus* 132
Even for child of father's second marriage . . 132
Who represented father by disposition liable for brother until able to support himself 132
Not liable for brother who received his legal share from father's intestate estate 150
Not liable for elder brother who had received large sum from father 140
Uncle, succeeding to his father's large estate, liable for daughter of deceased elder brother . . . 135
Husband is not liable for wife after divorced from her . 151
Heir of, liable to aliment widow not entitled to any provision from husband 135
Heir of, liable to aliment widow where terce insufficient for support 135
Heirs of, liable to aliment widow, though she was of the lower ranks, and property small 137
Son-in-law liable for wife's parents, at least during the marriage 148
Though wife illegitimate, liable for her mother, at least during the marriage 149
Offer of support by child or grandchild insufficient in question with parent or grandparent, may be sufficient in question with parochial board 146
RELEVANCY—
Sufficient to aver that a settlement is alleged to exist to make summons relevant 169

PAGE

RELIEF—
Offer of, in poorhouse, at a distance, sufficient . 123, 129
Offer to send person labouring under disease to infirmary sufficient 130
Offer of, to a woman and child in poorhouse, sufficient . 123
Offer to remove to parish of liability sufficient offer of . 125
3s. 6d. a-week to widow and seven children insufficient 118
Needful sustentation can alone be claimed as . . 118
3s. 6d. a-week to two old women sufficient . . 119
Parochial board cannot legally grant, to able-bodied poor 121, 125, 126
Continuity of residence of able-bodied man in bad health not broken by receipt of relief . . . 125
Board of Supervision can alone judge of adequacy of . 129
Written application for, is unnecessary . . . 130
Application for, cannot be enforced by non-resident pauper against parish of settlement when irregularly made 131
When son offers to take parent into house, it is sometimes sufficient 138
Offer to be maintained in grandfather's family, sufficient 138
Offer by father to receive married daughter into his house sufficient 143
When given for 13 years without notice, to parish liable, claim of recourse barred by *mora* . . . 154
When given for 7 years 155
Proper object of, cannot acquire a settlement by residence 266
Pauper must have been a proper object of at the time when Act passed, to get advantage of clause of exception in Act of 1845 . . . 269, 277
Small sum given to person not a proper object of, does not interrupt continuity of residence . . . 277
Small sum of, insufficient to prevent loss of settlement . 287
Given at various times, held to prevent the acquisition but not the loss of settlement . . . 292
Receipt of, for short period, retains settlement for four years after chargeability 293
Temporary, although person did not apply, prevented acquisition of a settlement 295
Not applied for, does not interrupt continuity of residence 300
Given to wife of able-bodied man, does not prevent acquisition of a settlement by him . . . 318
When kirk-session gave no decision in application for, Court of Session could interfere . . . 335
Court of Session could review as to amount of . . 339
Advocation against deliverance as to amount of, although brought after passing of Act, competent . . 339
Threat to remove to Ireland, tantamount to refusal of . 339

PAGE

RELIEF—
Parties entitled to—
Able-bodied poor, when crops failed, were . . 117
Foreigner, having industrial residence, was . .117
Mother of bastard child was from birth of child, but not for specific period 117
Deserted wife until relief obtained from father-in-law . 118
Grandmother of bastard supported by her, mother being unable, is, for its support 119
Lunatic wife of able-bodied man, earning 10s. a week, is 120
Deserted wife, though able-bodied, having three young children, is entitled for self and children . . 121
Grandfather of bastard was, for past aliment . . 142
Unemancipated bed-ridden daughter of partially disabled labourer was 218
Person in receipt of allowance from sick society may be 295
Parties not entitled to—
Opinion that foreigner is 123
Deserted wife, where father-in-law able to support . 118
Able-bodied poor out of employment . . 121, 125, 126
Children of able-bodied man 121
Wife of able-bodied man 130
Person who has been offered removal to parish of settlement 125
Person in bad health, but able to earn wages . . 125
Person partly self-supporting and partly living on charity of friends 270

RELIEVING PARISH—
Not having given notice, has no claim after lapse of 13 years for sums expended 154
Cannot claim against another parish not alleged to be parish of settlement 154
May proceed against parish of settlement, even where relations are liable 155
Not freed from liability for interim relief by removing pauper to another parish where no settlement . 155
Has no recourse without notice 155
Where child was exposed, has claim against parish where lying-in hospital in which child born is situated 156
Terms of notice by 159
Which had charged at a certain rate for certain years not entitled to go back on rate and charge at higher rate for these years 163
Cannot transfer liability by sending pauper out of the parish with that object in view 166
Has generally no valid claim against another parish in respect of prior dealing 166
Burden of proof lies on, to show where pauper was born, and not sufficient to say that born in one or other of two parishes 166

PAGE

RELIEVING PARISH—
Burden of proof does not lie on, where one of two parishes admits birth, but avers and offers to prove that other liable 169
When sufficiency of aliment disputed by, parish of settlement cannot claim for expense of visiting pauper or of inspection 160
Nor can it recover expenses of investigation as to settlement 158, 171
Cannot recover expenses of prosecuting deserting husband 171
Onus lies upon, to find where settlement really is, and until then burden is permanent . . . 213
Has no claim for wife and family against another parish, because the husband, a foreigner, is chargeable there 169, 254
Not bound to prosecute deserting husband who has settlement in another parish 359
May raise action when new chargeability occurs against parish previously assoilzied 359
When birth parish alleges that another parish is liable it is proper to convene both in action of relief . 369
Liable in expenses to successful defender in original action, where parish liable had not been called . 354
Expenses not given to—
For unnecessary appearances at debate . . 347, 360
For reclaiming note which was unnecessary . . 349
For unnecessary advocation 351
Against the defender for litigation in which he was not called 353
Expenses allowed to—
When one of two parishes called pleaded *mora* . . 356
Against two defenders 357
See *Expenses.*

REPARATION—
Actions incompetent in Court of Session, where what is complained of was done in execution of Poor Law Act 24

REMOVAL—
Pauper who has been offered, to own parish not entitled to further relief 125
Relieving parish does not free itself from liability for interim relief by removing pauper out of the parish into parish where he has no settlement . . 155
Parish of settlement is not bound to remove pauper home 160
Parish of residence is entitled to do so at expense of parish of settlement unless latter arranges for support 160
Irish pauper whose residential settlement is lost, can be removed 160
Soldier's wife who has lived in a parish eight years dur- his absence, not liable to 307
Threat of, to Ireland tantamount to refusal of relief . 339

PAGE

REMOVAL—
Fraudulent, in order to transfer liability, ineffectual . 166

RENT—
Paid under lease criterion for fixing annual value 53, 59, 63
Actual sum paid as, is to be entered on valuation roll . 387
Paid for furnished house, is subject to deduction in valuing 390

REPETITION OF ADVANCES—
Admission in error of law no ground for . 168, 172

RESIDENCE—
In Scotland implies residence in some parish . . 268
For three years, and being a proper object of relief, must have concurred to give a pauper the benefit of 76th section of Act of 1845 . . . . 269, 275
For three years, when pauperism occurred shortly before passing of Act of 1845, and was renewed shortly after, held sufficient to give the pauper benefit of exception clause 277
See *Residential Settlement.*

RESIDENTIAL SETTLEMENT—
Who may and may not Acquire—
Lunatic cannot 279, 283
But may lose 302
Under Lunacy Act, settlement fixed at date of seclusion in asylum 178
Person subject to fits of insanity who is able to earn wages, may acquire 268
Person in lunatic asylum for a few months at a time, may acquire settlement in parish where usually resides 279
Person residing four years and eight months in parish, and then removed to asylum, where for three months maintained by friends, did not acquire . . 290
As to persons not quite insane, each case dependent on its own circumstances 283
Person deaf and dumb and incapable of earning a living may 329
When soldier who had residential settlement went abroad, and wife remained in parish for five years, wife had settlement either in her own right or husband's 307
Able-bodied man may, though wife, voluntarily separated from him during whole five years, received relief from another parish 259, 318
Deserted wife can 307
Sufficiency of Residence—
Under old law, three years residence sufficient . . 265
Now five necessary 290
Residence of domestic servant during intervals of engagements insufficient 289
Where farm servant lived four years in one parish, and

PAGE

RESIDENTIAL SETTLEMENT—
went on contract of service for twelve months to another where lived for ten months. place of residence in latter 297
Residence of wife and family does not keep up that of husband 312
Residence of sailor, absent half of five years on voyages, in parish of his home 314
Residence of fisherman absent at fishery for some months each year in parish of his home . . . 318
Case of wandering hawker 320
Residence of sailor not in parish where his wife boarded but where he had no home 324
Residence in charitable institution insufficient . . 325
Residence of labourer in parish of his home, though works out of it 330
Residence of labourer in parish of his home, at least until he obtained regular employment in another . 331
Commencement of Residence—
Where person removes to new parish, leaving home and family behind, and they afterwards join him, five years commence at time of his removal . 271, 311
Continuity of Residence—Interruption—
Formerly three years continuous residence necessary . 268
Now five 290
Absence of single day at end of period would prevent acquisition 290
Interrupted by absence of eleven months during the five years 285
Or when person breaks up his home and removes, though soon after returns 278
Or by absence when working and living in another parish leaving no home behind . . . 301
Or by absence of five months in parish where established a new home 304
Or by absence of six months under contract of service . 301
Or by absence under contract of service though wife and child remain 312
Or by removal to another parish for two months working there and taking a house 325
Not interrupted, where servant made six months engagement in another parish, broke it and lived part of time at home 270
Nor by workman's occasional absence, in one of which he lived out of, but worked in parish . . 272
Nor by absence of lunatic in asylum for some months . 279
Nor by absence of shepherd in winter months for six weeks and four months during the course of the five years . 289
Nor by absence of some weeks to obtain furniture, and arranging for continuing residence . . . 298
Nor by absence in search of work . . . 305

PAGE

RESIDENTIAL SETTLEMENT—
Nor by absence of workman leaving wife and family where absence not for definite time or for definite engagement 311
Nor by confinement for few days under warrant as lunatic 314
Nor by absence of fishermen during fishing season . 318
Nor by occasional absences of workmen from parish where his wife and child remained 322
Nor by absence caused by parochial board, to prevent acquisition of settlement 329
Nor by absence of workmen at his work from parish where his wife and children remained, and whom he periodically visited 330
Nor by absence of workman from parish where wife and child remained, at least prior to obtaining regular work 331
Nor by involuntary absence, as in prison . 276, 304
Nor by involuntary absence, on military service, wife and children being left 284, 307
Question whether military service interrupts when no family left 309
Intention, question as to effect of, in determining character of absence 285, 320
Industrial Character of Residence—
Forisfamiliated minor though supported by father might acquire 267
Person "maintains himself" though partly or wholly supported by charity not being parochial relief or from common begging . . . 269, 270, 273, 295
Relief given to person not proper object of relief, no bar 277
Sums given as temporary relief, are a bar 287, 292, 293, 295
Receipt of relief enough, without application . . 295
Advances to able-bodied man with three imbecile children not a bar 300
Receipt of relief by wife of able-bodied man voluntarily separated from or deserting her, does not bar his acquiring settlement in another parish . . 259, 318
Residence in charitable institution prevents settlement in that parish 325
Combination of residences—
Question whether, under former law, minor could combine his residence with residence during pupillarity, he living away from his father, and supporting himself . 274
Residence as minor cannot be combined with residence as pupil 220
Residence of deserted wife cannot be combined with previous residence of husband 240
Residence during viduity cannot be combined with residence when *vestita viro* 248

PAGE

RESIDENTIAL SETTLEMENT—
Wife of foreigner with no residential settlement, can, on his desertion, combine her single and married residence 234
Loss of—
Under former law, old settlement could not be lost till new one acquired 267
Absence for more than four years sufficient . . 269
Course of period required for, stopped only by admission to roll 287
Receipt of relief, whatever its amount, prevents loss of settlement 292, 293
Improper stoppage of allowance to person entitled to relief of no effect 296
Public begging is not a bar to 300
Lunatic may lose settlement by absence . . 302
Lunacy Act makes date of pauper lunatics entrance into asylum the date of his chargeability . . 178
Involuntary absence on military service does not cause loss of settlement 284
Involuntary absence on military service, where wife and family left not sufficient to lose theirs . . 307
Derivative residential settlement must be kept up after forisfamiliation 189, 205
Absence of father and of child may be combined to make the requisite time 306
In computing the time, the rule *dies inceptus*, etc. applies 321
Settlement not lost where person absent on six months engagement leaving a home and family and visiting them periodically 328
Section 76 (*last clause*) *of Poor Law Act of* 1845 269, 271, 273, 275, 277, 311

RES JUDICATA—
Not pleadable in respect of former small debt decree in action of relief 352
Plea of, repelled, although sheriff had decided in a previous chargeability 358

RIVER AND RIGHT OF HARBOUR—
Navigation trustees not liable to be separately rated for 71

ROGUE MONEY—
Crown property is exempt from assessment for . . 97

ROYAL BURGH—
Administration of poor funds joint with magistrates, heritors, etc. 20
Must have only one roll of poor for both burgh and landward portion of parish 20
Ratepayers have right to inspect rate books in . . 40
Land disjoined from another parish, and incorporated with, only liable for assessment in . . 43, 45, 49
Circumstances in which subjects are liable to pay in, and also in original parish 46

PAGE

S

SAILOR—
Who is tenant of a house occupied by his family may acquire a settlement, although absent in voyages most of the time 314
Who had no house, but boarded his insane wife in a parish, visiting her when he could, did not acquire settlement 324
SALMON FISHINGS— 378
When sub-let, original rent only taken as value . 379
Not let should be entered in valuation roll at rent which they would bring 391
When compensation is paid for injuring, the parties paying such are not to be entered as partly occupying . 39
SALT WORKS—
Liable to rating 423
SCHOOL ACCOMMODATION—
Resolution of school board not being carried out, the Court of Session on requisition of Board of Education will enforce it 412
SCHOOL BOARD— 28
Can claim from magistrates of burgh, sum equal to that in use to be paid for schools out of the common good 415
Inspector of poor not be a member of . . . 415
Right of, to visit school 413
When refusing retiring allowance to schoolmaster, must state their reasons 416
Trust funds for poor children do not fall to . . 416
Case in which court remitted to, for re-consideration, when retiring allowance had been refused . . 416
Can alter teaching arrangements of school without consent of schoolmaster 419
Decision of, cannot be reviewed on the merits . . 419
Deviations from statutory procedure by, may be reviewed by Court of Session 419
Averment of malice against, in forming judgment on inspector's report, irrelevant 424
Is bound to give teacher reasonable notice of dismissal . 426
When it has fixed salary of old schoolmaster, is bound for at least a year 426
Can lease or acquire a school not a "subscription" school 414
Teacher's house in burgh when in same building as school, belongs to 429
Not bound to rebuild teacher's house, but may give equivalent in rent 429
Must inquire into excuse, and give certificate, before parent can be prosecuted for not providing education
SCHOOL FEES—
Schoolmaster appointed before Act of 1877 is bound to collect 418

PAGE

SCHOOL FEES—
When parochial board refuses to pay fees of children whose parents are unable to pay, the decision can be reviewed by sheriff 428
Person keeping another's child at rates inadequate to pay fees, not exempt on ground of "poverty" . 431

SCHOOLHOUSE—
Where burghal and landward districts of parish separated, parish schoolhouse, although situated within burgh, belongs to landward school board . . 417
If only school in parish, although built and maintained along with heritors by trustees of a charity, is vested in school board 422
Built by entailed proprietor, although supported by heritors, but not substituted for parish school, held to belong to estate 423

SCHOOLMASTER—
Feuars had right to vote at election of . . . 17
Heritors had, whether separately valued or not . 17
Liferenter voted at election of, in preference to fiar . 17
Appointed before Act of 1872, bound to collect school fees 418
Decision of school board in dismissing, cannot be reviewed on the merits 419
Is entitled to due notice of dismissal . . . 424
Where salary fixed at a yearly rate, bargain is binding for at least a year 426
Where entitled to school fees before Act of 1872, entitled afterwards to fees actually paid, not to average sum . 429
Opinion that Board cannot engage for any term . 425
Though dismissable at pleasure, entitled to franchise . 430
When dismissed, can be ejected from dwelling-house forming one tenement with schoolhouse . . 414
Cannot be interdicted from refusing school board admittance to school, unless notice of visit has been given . 415
Appointed before Act 1872, if removed not through his own fault, is entitled to retiring allowance . 415, 416
Cannot prevent school board from altering teaching arrangements of school, his interest being reserved . 416

SCHOOL RATES—
Clause in disposition to free from schoolmaster's salary does not apply to 424
Liability of parish minister for . . . 431, 432

SEA-WARE—
Is liable to be valued 386

SESSION CLERK'S SALARY—
Was a proper charge on poor fund . . . 2

SETTLEMENT—
Relieving parish may go directly against parish of, although pauper may have relations liable . . 155

PAGE

SETTLEMENT—
Parish of, liable to pay expenses of investigation . 158
Per contra 171
Parish of, liable to pay expense of apprehending lunatic charged with criminal offence, who is insane when apprehended 177
Where lunatic has, at date of reception into asylum, parish of, is liable throughout incarceration . . 178
Parish of, must relieve parish of chargeability, although lunatic may have means 180
Is in parish where it was when chargeability began, so long as relief is continued 214
Per contra 229, 279
Loss of, must be proved by parish of settlement . 296
Is lost by—
Absence of child after forisfamiliation . . . 189
Absence of child for thirteen years 205
Absence of able-bodied man without affecting that of a pupil child who is chargeable 214
Absence of seven years, four of them in pupillarity . 220
Absence of more than four years 269
Absence for five years, although casual relief is given at various times 292
Woman who, after forisfamiliation, continues absence begun by father 306
Residence of lunatic in asylum 302
Absence of six months every year by a hawker who had no house 320
Not lost by—
Absence of lunatic . . . 178, 180, 217, 280
Absence for 4½ years of person presumed to be a pauper in 1845 198
Three years' residence in England 267
Soldier absent with his regiment 284
Absence of seven years when relief is given before the end of the first four years 293
Absence of pauper whose allowance has been improperly stopped 296

SETTLEMENT BY BIRTH—See *Birth Settlement.*

SETTLEMENT BY MARRIAGE—See *Marriage Settlement.*

SETTLEMENT BY PARENTAGE—See *Parentage Settlement.*

SETTLEMENT BY RESIDENCE—See *Residential Settlement.*

SEWERS—
Are not rateable 113

SHERIFF—
Cannot entertain complaint of inadequacy of relief . 25
Has no jurisdiction to alter amount of aliment . . 333
Advocation of judgment of, awarding aliment formerly competent 333

PAGE

SHERIFF—
Action for aliment by wife against husband is generally competent before 366
Circumstances in which it is incompetent . . 366
May try action against son, brought by inspector, for advances made to his mother, in the Small Debt Court . 367
Action competent in Small Debt Court, although question of settlement may be involved . . . 370
Was incompetent for, to find, in committing dangerous lunatic, that parish was liable to expenses and future support 354
Had not jurisdiction to entertain appeal against heritors, etc., for refusing relief 334
Had power to order heritors, etc., to consider application, and to ordain that a sufficient aliment be paid . 335
Had no power to review action of heritors, etc., as to assessment 337
Action of damages against inspector of poor and parochial board for wrongous imprisonment only competent before, in terms of Act of 1845 . . . 348
Not entitled to interfere in the alternative modes allowed by statute for collection of arrears of assessment . 356
Not entitled to admit evidence that valuation roll is wrong 363
In trying action for recovery of poor rate, can consider legality of assessment 368
Petition to, that parochial board had failed to provide burial ground, competent 356
Can review decision of parochial board as to payment of school fees 428
Cannot generally review action of local authority . 403
Cannot find author of nuisance liable in expense of removing it, when no opportunity was given to him of doing so, unless at date of order author was unknown 409, 410

SHIP-MASTER—
Not liable to assessment on means, in parish where ship was usually laid up 51
Question whether an inhabitant of a certain parish . 52

SHIP-YARD—
Sheds, etc., erected in, when ground is held for 21 years are to be valued 394

SHOOTINGS—
Lessees of, are rateable 65
When let with furnished lodge allowance is to be made for furniture in valuing 374
Woods, let along with, are only partially valued separately 381
When let under condition that tenant was to repair lodge, were valued at higher sum than the rent . . 382

PAGE

SICK SOCIETY—
Allowance from, does not prevent recipient from being proper object of relief 295
SISTER—See *Relatives and their Representatives liable.*

SMALL DEBT—
Decree cannot be founded on in action of relief as *res judicata* 352

SMALL DEBT COURT—
Is competent to try an action against a son for relief given to his mother (a pauper) 367
Or by a parish even where question of settlement is incidentally involved 370

SOCIETY OF INSPECTORS OF POOR—
Can act as arbiters 31

SOLDIER—
Absent for 12 years, whose father died with settlement by residence before son's enlistment, held to have a settlement in his own birth parish 221
Effect on settlement of absence with regiment 224, 284, 307
SON—See *Relatives and their Representatives liable.*
SON-IN-LAW—See *Relatives and their Representatives liable.*

SPECIAL ACT OF PARLIAMENT—
Providing for exemption from public and parish burdens, frees railway company from poor rates . . 67
Circumstances in which this result does not follow . 88
Frees canal from statute labour assessment . . 105
And from poor rates 107

STABLES—
Let by railway company but reserving control, held to be occupied by company 115

STATUTE LABOUR ASSESSMENT—
Canal not liable in, when act has freed from all public burdens 105

STATUTORY NOTICE—See *Notice.*

STEAM ENGINE AND BOILER—
Annual value of, included in valuation . . . 376

STEAM POWER—
Mode of ascertaining annual value of . . . 399

STEPMOTHER—See *Relatives and their Representatives liable—Stepson—Stepmother.*

STORE—
Sum paid to owner as good-will, must be added to valuation of 396

SUB-LEASE—
Higher rent paid under does not enter valuation roll 378, 380, 388

PAGE

SUB-LEASE—
Value of portion under, to be stated in valuation roll, as well as rent under lease, to test occupier's right to franchise 393
SUMMARY PROCEDURE—
Complaint under, founding on the 80th section of Act of 1845, can conclude for limited penalty, and need not conclude for hard labour 358
SUMMARY PROSECUTIONS ACT—
How appeal under, taken 371
Appeal can be taken in action to recover sums due to local authority 408
SUPERIOR—
Not obliged to relieve vassal of parish burdens except under special agreement 94
Bound to relieve vassal of all public burdens not therefore bound to relieve him from poor rates . . 94
Obligation on, to relieve vassal of all taxes includes poor rates 97, 101, 102
Is bound to relieve vassal even when value is increased by erection of buildings . . 101, 102, 107, 108, 109
But only in respect of ownership 105
Doubt as to whether liability of, can be greater than amount of feu-duty 107
Circumstances in which, only liable for poor rates on the annual value of feu-duty 109
Entered as owner of railway, for which he receives a rent for privilege of perpetual use 377
SUSPENSION—
Is competent where, in assessment, no deductions were allowed, to ascertain proper deductions . . 70, 363
Is competent in case of assessment previously decerned for by sheriff 338
Competent by a ratepayer to prevent unqualified person from sitting at parochial board 345
Not competent for trying general question as to right of levying assessment 89, 333
Not competent, in case of alleged over-valuation . 343
Circumstances under which rates must first be paid before suspension allowed to proceed 340
Whether to be paid in full or not is in discretion of court 342
In such cases collector not bound to give obligation to repeat 355
Refused where neither caution nor consignation had been given 359
Refused where no surcharge was alleged by complainer 365
SUPPLEMENTARY ROLL.—See *Valuation Roll.*

PAGE

T

TAXES—
Deductions to be allowed in respect of, in case of railways, are for year of valuation only . . . 73
For furnished house are paid by landlord . . 86
TEACHER—See *Schoolmaster.*
TEACHER'S HOUSE—
School board not bound to rebuild, but may give an equivalent in rent 429
In burgh when in same building as school, belongs to school board, and dismissed schoolmaster can be ejected from 414
TENANCY—
Incoming tenant held occupier of farm during year, although outgoing tenant entitled to reap crop after commencement thereof 374, 375
THIRLAGE—
Commutation of, not to be valued as heritage . . 392
TITLE TO SUE—
A single heritor had, against heritors for exhibition of their accounts 2
Parishioners have, regarding legacy left to poor . 8
Heritors and kirk-session as corporate body had . 19
Inspector had, for arrears of poor rates . . 33
Collector has now for arrears of rate . . . 343
And not inspector 358
Inspector has, as to mode of levying assessment . 358
Collector has not a, trustee of bankrupt for rates due before bankruptcy, but can claim preferably on estate . 363
Paupers have not, in matters of assessment . . 337
Any heritor had, magistrates of a royal burgh, as to maintenance of their own poor 336
Kirk-session had, by raising action in individual names of the members 338
Inspector representing dissolved combination has, for debts due to it 365
TRANSPORTATION—
Effect of, on settlement 239
TRADESMEN—
In employment of a company was liable on means in parish where employed 49
TRAMWAYS—
Circumstances in which not liable to be valued in supplementary roll 90
May be assessed, both in respect of ownership and occupancy 91
Are rateable in England 114
TRIENNIAL PRESCRIPTION—
Father of bastard who pays aliment through an agent, can plead, as against the agent 151

PAGE

TRIENNIAL PRESCRIPTION—
Aliment advanced by stranger may be recovered subject to 152
Does not apply to poor rates 349

U

UNCLE—See *Relatives and their Representatives liable.*
UNIVERSITY BUILDINGS—
Are rateable 86
Although specially exempted from assessment must be valued 89
UNOCCUPIED PROPERTY—
Owners *qua* owners are liable in assessment for . . 61
Is rateable in England 114

V

VALUATION—
Subjects to be or not to be valued—
Feu-duties not 42
Sum of money not 54
Sums in commutation of thirlage not . . . 392
Churches not 393
Water way and right of harbour not . . . 42, 72
Sum as compensation for injury to salmon fishings not . 391
Privilege of free railway ticket not . . . 386
Privilege of using railway, at rent paid for privilege . 377
Subjects lettable whether subject to taxation or not . 393
Houses unoccupied 61, 114
Salmon fishings unlet 379
Furnaces not in blast 391
Mills not in work 111
Growing woods producing no immediate return valued as pasture land 373
Piers, quays, &c., of public harbour vested in trustees, although dues insufficient for maintenance . . 385
Ferries 72
Bridge, the dues of which were let . . . 394
Prisons 385
Lunatic Asylums 393, 401
Canals 90
Railways 66, 93
Tramways 91, 114
Right of gathering kelp 386
Gas pipes laid in roads and in consumers' houses . 384
But not meters in consumers' houses . . . 384
Ground in which water company's pipes laid . . 52
House built by tenant not 376
Multures though commuted 383
Steam engine and boiler of mill though removable . 376
Pit-mouth buildings and engines necessary to working of

PAGE

VALUATION—
colliery, under thirty years lease not separately valued, but covered by mineral rent 399
Private railway in connection with coal-pit and used solely for conveyance of coal, not separately from collieries of which it is an adjunct . . . 63
Oil-work belonging to colliery owners not part of coal field 389
Pier and landing place alleged to be adjuncts of ferry, over which company held bonds and of which they received profits 382
Shops and stalls separately let by tacksman to whom market dues of burgh let 398
"Market stance" where market customs let by burgh . 400
Right to collect burgh customs for use of stances on public street not 398
Value, how estimated—
Where crofter built house on croft, rent he paid landlord held value of combined subjects 390
Value of erections acquired by new tenant from original tenant who had right to dispose of them, added to rent 394
Subjects purchased by tenant before expiry of the lease, and improved by him, to be taken not at rent under lease but at value after improvements . . 394
Incoming and outgoing tenant, how entered . . 384
Grass parks let for part of year estimated not at rate paid but at what would bring for ordinary agricultural purposes 374
Woods let with shootings, proprietor not being in sole beneficial occupancy, charged as proprietor and occupier on two-thirds of value 381
Quarry on glebe land valued at rent paid by way of tonnage, though only part went to minister . . 379
Harbour 387, 391
Bridge valued on rent paid for bridge dues . . 394
Paper mills valued at what might reasonably be expected to let for 389
Collieries, actual rent or lordship paid . . . 46
Oil works, 15 per cent. on cost of erection . . 389
Grain mills, 8½ per cent. on price paid for . . 394
Buildings and steam power in manufactory . . 399
Gasworks valued on profits, deducting average cost of repairs and renewals, and tenant's profits . . 397
At average sum divided among shareholders . . 397
When not worked for commercial purposes tenant's profits not deducted 91, 92
Lunatic asylum at £4 per bed 401
"Market stance," where burgh customs let, at rent payable for customs 400
Coal depots, auctioneer's stances, and stables let . 93
Refreshment rooms let at fixed rent . . . 78

PAGE

VALUATION—

When privilege of selling books and supplying cabs let, bookstalls and cabs part of the general undertaking . 78

Bookstalls, cab-stands, advertising places, offices, and warehouses occupied by company, and cultivated slopes on line, part of general undertaking . . 93

Canal company's houses temporarily let to strangers, part of general undertaking 377

Abatements from rent provided for in lease without explanation, but supposed to be for improvements, not deducted from rent 401

When rent payable during first two years of lease is less than that for remainder, no stipulation being made for improvements during the two years, rent paid is proper value 401

In case of furnished house, allowance to be made for use of furniture 374

Where furnished house let, and obligation on proprietor to keep up garden, interest on cost of furniture, and expense of upholding garden, are proper deductions . 390

Value of free railway ticket, a pertinent of house, and for which tenant paid £10 a year, not added to rent. 386

Railways and canals, whole undertaking, including stations, ferries, &c., estimated as *unum quid*, valued by separate assessor, and share of the value apportioned to each parish in proportion to mileage . . 54, 55

Value taken as at rent which railway as heritable subject would bring, deducting expense of conducting the business, interest on capital, allowance for tear and wear, contingencies for accidents, and tenant's profits 57

Subjects let to tenants not part of undertaking, and to be valued by local assessor 66

Dwelling-houses outside railway fence let to company's servants not part of undertaking, and to be valued by local assessor 396

Rent of house taken at actual rent payable . 378, 387

Where under lease of ordinary duration, subjects sublet at higher rent, original rent taken as value 380, 385, 388, 390, 392

Where salmon fishings let at £25 by person who paid £14 to commissioners of woods and forests, rent fell to be entered at £25, and commissioners entered as proprietors 378

Rent not criterion of value when not conditioned as fair annual value 381

Where large sums spent by tenant before entering, rent under lease not always criterion of value . . 402

Where tenant bound to build lodge in addition to paying rent, this allowed for in valuation . . . 382

Where tenant to receive at expiry of lease sum in consideration of house built by him, rent under lease not criterion and subjects to be valued as they existed . 375

PAGE

VALUATION—
Where rent dependent on fiar's prices and excess above specified sum to be laid out in improvements, whole grain rent to be taken as value . . . 378
Sum payable by tenant as goodwill added to sum named as rent 396
Where innkeeper bound to take from owner all the beer required, at less than usual trade discounts, sum added to the nominal rent 400
Interest of expenditure on permanent improvements to be added to rent 373, 375
Not interest of expenditure on non-permanent, such as sheep drains and lime 373, 376
Deductions for drainage, under a lease, not allowed to be taken off rent 395
When part of a farm resumed by owner for planting, farm entered at rent actually paid, and land resumed entered as woodland at rent payable if not so resumed 399
Appeal against—
Without an appeal, parochial board cannot be heard even to maintain that valuation appealed against should not be reduced 366
May be taken by person not on roll . . . 398
Competent against over valuation . . . 398
VALUED RENT—
Assessment made on, or on real rent at option of heritors 39
In certain circumstances assessment cannot be made on 43
VASSAL—
Although freed from public burdens, rateable for manse for parish minister 94
See *Superior*.
VISITING PAUPERS—
Relieving parish cannot charge for, against parish of settlement 106
VOTE, RIGHT TO—
Feuars had, at election of schoolmaster . . . 17
Each member of kirk-session had in managing poor funds 19
By mandate at election of registrar 30, 35
In order to ascertain, assessors should enter in valuation roll the value of sub-let portions of subject as well as rent under lease 392
VOTING PAPERS—
Must be issued to every person on roll whether his rates be paid or not 27

PAGE

W

WARRANT—
Collector must keep to actual terms of assessment roll in application for summary 344
Sheriff in small debt action not entitled to refuse expenses because rates not recovered by general warrant . 356
Valid although signed by one J. P. only . . 360
Of commitment to Industrial School valid although inspector of poor had got no notice 420
Of prosecution under Education Act is only given by certificate by school board of failure to educate . 429
WATER COMPANY—
Liable to assessment on ground on which pipes are laid 52
WATER SUPPLY—
Parties who have obtained special, for themselves, not exempt from assessment for 404
Board of Supervision allowed expenses in action regarding a defective 406
WATER SUPPLY DISTRICT—
Local authority can form, although private committee exists to provide supply of water 403
When local authority has provided water supply for its district incompetent for it to form part of district into a separate 404
WATER WAY—
As affecting valuation of harbour . . . 387
WATER WORKS COMMISSIONERS—
Liable in assessment 60
Not entitled to deduction for tenants' profits in undertakings not worked to commercial profit . . 92
WHARVES—
Liable to be assessed 71, 113
WIDOW—
3s. 6d. a week insufficient aliment for widow with seven children 118
Can acquire residential settlement for imbecile child living in family with her 206
Who marries again cannot jointly with second husband acquire a settlement for child of first marriage . 233
Has her settlement not in her own birth parish but in that of husband 236
When herself a foreigner, has settlement in husband's settlement existing at his death . . . 237
Who has lost residential settlement of husband, falls back on her birth parish . . . 240, 242, 247
Cannot add residence of husband to her own in viduity to make up a settlement 248
Settlement derived from first husband is lost on second marriage 254

PAGE

WIDOW—
Can the separate periods of absence of husband and of, be added so as to lose a settlement? . . . 263
Residence of, after husband's death, can be added to that before, to make up the year necessary to retain settlement 264
See *Marriage Settlement.*

WIFE—
Of able-bodied man not entitled to relief . . 130
Of lunatic is not burden on parish where her husband, a foreigner, had been resident . . . 169, 254
Of a foreigner, when she is insane, has no claim on her own birth parish 247
In receipt of relief, does not prevent husband from acquiring a settlement elsewhere 318
Woman alleged to be a, may be a witness to determine as to marriage in an action as to settlement . . 362
Action for aliment against husband by, competent in sheriff court 366

WITNESS—
Ratepayer in parish not disqualified from acting as, in action of relief against the parish . . . 342
An alleged wife is competent witness in action as to settlement on question whether marriage existed . 362

WOODS—
Lands on which there are growing woods valued as pasture land, although producing no immediate revenue 373
When let with shooting, only two-thirds of value falls to be entered in valuation roll . . . 381

INDEX OF CASES.

INDEX OF CASES.

—o—

A

PAGE

Abbey Parish of Paisley *v.* Richmond 334
Abdie *v.* Corsan 1
Aberdeen City Treasurer . . 398
Aberdeen Infirmary *v.* Watt . 290
Aberdour, Kirk Session of, Flockhart *v.* 14
Abernethy School Board, Morrison *v.* 424
Adam *v.* Lauder 134
Adams *v.* M'Leroy, Hamilton & Co. 48
Adams *v.* M'William . . . 121
Adamson, Barbour *v.* . . . 192
Adamson, Beattie *v.* . . . 214
Adamson *v.* Beattie & Knox . 168
Adamson *v.* Clyde Navigation Trustees 71
Adamson *v.* Hodgert . . . 156
Adamson, Edinburgh & Glasgow Railway Company *v.* . 55, 57
Adamson, Greig *v.* . . . 250
Adamson, Beattie *v.* . 301, 356
Adamson, Magistrates of Glasgow *v.* 60
Adamson, Carmichael *v.* . . 206
Addie, Robert . . . 391
Addie and Rankin . . . 377
Advocate-General *v.* Beattie 100, 348
Advocate-General *v.* Garioch . 97
Advocate-General *v.* Oliver . 98
Advocate, H.M. *v.* Hardie . 33
Advocate, H.M. *v.* Main . . 34
Advocate, Lord, *v.* Brown . . 420
Advocate, Lord, *v.* Stow School Board 423
Advocate, Lord, *v.* Strathmiglo School Board . . . 424
Ainslie *v.* Turnbull . . . 53
Airdrie Local Authority *v.* Ferrier 403
Allan *v.* Dunlop . . . 373
Allan *v.* Parochial Board of Edinburgh 49
Allan *v.* Heriot's Hospital . 97
Allan *v.* Burton and Higgins 316, 360
Allan *v.* Higgins . . . 306
Allan *v.* Shaw and King . . 325
Allan *v.* Maitland and Campbell . 374
Allan *v.* Maxwell . . . 373

PAGE

Amherst *v.* Sommers . . 110
Anderson *v.* Gibson . . 133
Anderson *v.* Gillanders . . 51
Anderson *v* Her Sons . . 143
Anderson *v.* Hogg . . 431
Anderson *v.* Heritors of Lauder . 142
Anderson *v.* Muir . . 337
Anderson *v.* Mackenzie and Jack . 166
Anderson *v.* Paterson . . 229
Anderson *v.* Smith . . 432
Anderson *v.* Union Canal Co. 44, 47
Annandale & Son . . . 389
Arbroath Banking Company *v.* Stevenson 6
Archibald *v.* M'Intyre . . 57
Ardrossan School Board, Marshall *v.* . . . 416, 429
Argyll, Commissioners of Supply of, *v.* Caledonian Canal . . 90
Arthur, Methven *v.* . . 178
Arthur *v.* Stewart, . . . 170
Austin *v.* Shennan . . 171
Ayton *v.* Colvill . . . 133

B

Baillie *v.* Inverness Police Commissioners 103
Baillie *v.* Thomson . . 356
Bain *v.* Bain . . . 146
Baird 379
Bakers' Society of Paisley *v.* Stentmasters, &c. . . . 42
Banffshire Lunacy Board . . 393
Bank of Scotland . . . 397
Barbour *v.* Adamson . . 192
Barony Parochial Board . . 401
Barony Road Trustees *v.* Caledonian Railway Company . . 105
Barracks, Commissioners of, *v.* Milroy 95
Bathgate, Kirk-Session of, Liddle *v.* 8
Beattie and Adamson, Gemmell *v.* . 177
Beattie *v.* Adamson and Kirkwood 163, 301, 356
Beattie *v.* Adamson . . 214
Beattie *v.* Alexander . . 35
Beattie *v.* Arbuckle . . 171

	PAGE
Beattie *v.* Baird	357
Beattie, Crawford *v.*	35
Beattie *v.* Gemmell	354
Beattie *v.* Greig	157, 195, 261
Beattie *v.* Leighton	304, 357
Beattie *v.* Mahon or Wilson	160
Beattie *v.* Mackenna and Wallace	228
Beattie *v.* Nish	372
Beattie *v.* Smith and Paterson	327
Beattie, Stark *v.*	331
Beattie *v.* Wood	167
Beattie, Hay *v.*	278, 351
Belch *v.* Belch	136
Bell	387
Bell *v.* Earl of Wemyss	40
Beveridge *v.* Bayne	3
Birnie *v.* Earl of Nithsdale	1
Black	338
Black, Johnston *v.*	293
Blantyre, Lord	375, 385, 402
Boyd *v.* Shaw	335
Bremner and Elder, Elginshire Lunacy Board *v.*	31
Bremner *v.* Taylor	168, 214
British Fisheries Society *v.* Magistrates of Wick	89
British Linen Company	397
British Sea-weed Company	386
Brown, Lord Advocate *v.*	420
Brown *v.* Brown	133
Brown *v.* Gemmell and Howie	155
Brown *v.* Kirk-Session of Mordington	267
Brown *v.* Skene	292
Bruce	390
Bruce *v.* Veitch	95
Bruce's Executor *v.* Presbytery of Deer	13
Brydekirk	432
Buchanan	40, 393
Buchanan *v.* Parker	42
Buchanan *v.* School Board of Tullialan	418
Buchanan *v.* Morison	134
Buie, Stiven *v.*	146
Burns *v.* Ewing	45
Burton and Higgins, Allan *v.*	316, 360

C

Cadder Local Authorities *v.* Lang	410
Cadder Parochial Board, United Kingdom Temperance Institution *v.*	409
Caerlaverock School Board *v.* Hutton's Trustees	422
Caldwell *v.* Collins	367
Caldwell *v.* Nixon	370
Calder *v.* Trotter	336
Caledonian Railway Co.	396
Caledonian Railway Co. *v.* Dods	92
Caledonian Railway Co. *v.* Meek	107
Callachan *v.* Paterson	427
Campbell, Sir A. I.	380
Campbell, T. W.	383
Campbell *v* Jameson	428
Campbell *v.* M'Lennan	323
Cardross	18
Cargill, Heritors of, *v.* Tasker	95
Carluke School Board, Fraser *v.*	429
Carmichael *v.* Adamson	206
Carron Co.	383
Carstairs *v.* Greig	94
Chalmers, Wm.	377
Chisholm, Greig *v.*	279
Chisholm *v.* Marshall	365
Christie *v.* MacMillan	134, 135
Clark *v.* Board of Supervision	28
Clarkson *v.* Fleming	133
Clyde Navigation Trustees	387, 391
Clyde Navigation Trustees, Adamson *v.*	71
Clyde Trustees *v.* Beattie	355
Coats *v.* Stevens	22
Cochrane *v.* Kyd and Gunn	321
Cochrane *v.* Manson	41
Cockburnspath *v.* Coldingham	267
Coldingham *v.* Dunse	184
Corrie *v.* Adair	145
Corry *v.* Bristow	116
Cowan *v.* Gordon	432
Cowan, M'Crorie *v.*	247
Craig *v.* Edinburgh Tramway Co.	91
Craig *v.* Greig and Macdonald	210
Craig *v.* Gunn	224
Craig *v.* Maclennan and Ross	216
Craig *v.* Simpson	362
Crailing *v.* Roxburgh	265
Cramond, St. Cuthberts *v.*	224
Crawford *v.* Beattie	35
Crawford *v.* Harkness	43
Crawford *v.* Beattie	302
Crawford *v.* Stewart	65
Crieff *v.* Fowlis Wester &c.	186, 268
Crieff Hydropathic Co. *v.* Crieff Police Commissioners	404
Crieff, Kirk Session of, *v.* M'Ewan	6
Croll *v.* Scottish Central Railway Co.	64
Croll and Beattie, Hay *v.*	284, 349
Crosby *v.* Taylor and Greig	320
Cruickshank *v.* Greig	328
Cumming, Hay *v.*	270
Cummings or Mason *v.* Greig	307
Cunningham *v.* M'Craw	43
Currie *v.* Landward Heritors of Lanark	20
Currie *v.* Lockhart	337

D

Dalmellington *v.* Irvine	266
Dalmellington *v.* Troqueer and Ruthwell	186
Dalry, Kirk-Session of, *v.* Newal	19
Dalry School Board, M'Culloch *v.*	426
Dalziel *v.* Dalziel	135
De Courcy *v.* Agnew	136

PAGE

Dempster *v.* Inspector of Kirkmahoe 130
Dempster *v.* Lemon . . 174
Dinwidie *v.* Knox . . . 233
Dinwoodie *v.* Graham . . 180
Donaldson *v.* White . . 363
Douglas *v.* Dickie . . . 85
Drumgray Coal Company . . 389
Drummond *v.* Stewart . . 133
Drysdale *v.* Drysdale . . 138
Dumfries, Burgh of, . . 394
Dumfries, Kirk-Session of, *v.* Incorporation of Squaremen . . 3
Dumfries *v.* Kirkcudbright and Kelton 4
Dunbar 176
Dunbar, Magistrates of, Duchess of Roxburgh *v.* . . 20, 336
Dunbar School Board *v.* The Burgh 413
Dunbar's Trustees *v.* British Fisheries Society . . . 109
Duncan *v.* Forbes . . . 153
Duncan *v.* Hill . . . 137
Duncan *v.* Heritors of Ceres 118, 339
Duncan's Trustees *v.* Gow . 162
Dundas 94
Dunfermline School Board *v.* The Burgh 413
Dunse *v.* Edrom . . . 265

E

Edinburgh and Glasgow Railway *v.* Adamson . . 55, 57
Edinburgh and Glasgow Railway *v.* Arthur . . . 63, 350
Edinburgh and Glasgow Railway *v.* Hall . . . 73, 83
Edinburgh and Glasgow Railway *v.* Meek . . . 70, 341
Edinburgh, Kirk-Session of, *v.* Brown 185
Edinburgh Local Authority *v.* St. Cuthberts Parochial Board, &c. 405
Edinburgh, Magistrates of, *v.* The Faculty of Advocates . . 94
Edinburgh, Perth, and Dundee Railway Company *v.* Arthur . 54
Edinburgh, Procurator-Fiscal of, *v.* Padon and Greig . . 181
Edinburgh University *v.* Greig . 86
Elginshire, Lunacy Board of, *v.* Bremner and Elder . . 31
Ettrick, Heritors of, *v.* Sword . 139

F

Falkirk Gas Company . . 384
Ferguson *v.* Logan . . 135
Ferguson *v.* Malcolm . . 342
Ferguson *v.* M'Ewen . . 344
Ferrier *v.* Dunn . . . 12
Ferrier *v.* Kirk-Session of Lanark 20
Ferrier *v.* Kennedy . . 221
Ferrier *v.* King . . . 405

PAGE

Finlay *v.* Lemon . . . 35
Finlayson *v.* Gown . . 137
Flockhart *v.* Kirk-Session of Aberdour 14
Flockhart, Melville *v.* . . 280
Forbes, Lord . . . 381
Forbes *v.* Kellas . . . 375
Forbes *v.* Gibson . . . 98
Forbes *v.* Marshall and Haswell . 270
Fordoun, School Board of, *v.* Petrie 431
Forsyth *v.* Nicholl . . 129
Forth and Clyde Navigation Canal 377
Fowlie, Gray *v.* . . . 232
Fowlis (Wester), Crieff *v.* . 186, 268
France *v.* Anderson . . 429
Fraser, A. T. T. . . . 375
Fraser 388
Fraser *v.* Carluke School Board . 429
Fraser *v.* Fraser . . . 132
Fraser, Hutchison *v.* . . 285
Fraser *v.* Robb . . . 432
Fraser *v.* Robertson . . 217
Fraser *v.* Anderson . . 51
Fulton *v.* Dunlop . . . 356

G

Galashiels Local Authority, Board of Supervision *v.* . . . 406
Galloway *v.* Nicholson . . 92
Galloway, Earl of, *v.* Kirk-Session of Dalry . . . 19
Gammell 41
Gammell *v.* Weir . . . 41
Gardiner *v.* Leith Dock Commissioners 75
Garrow *v.* Graham . . . 347
Garvald, Kirk-Session of, *v.* Forrest 138
Gemmell *v.* Beattie and Adamson . 177
Gibson, Forbes *v.* . . . 98
Gibson *v.* Murray . . . 195
Gibson *v.* Wood . . . 152
Gillan *v.* Meek . . . 48
Gillanders *v.* Cameron . . 362
Gilmour *v.* Craig . . . 345
Gladsmuir *v.* Preston and Salton . 185
Glasgow and Ayr Railway *v.* Abbey Parish of Paisley . . 342
Glasgow Bridges Trustees *v.* The Police Board . . . 89
Glasgow, Barrhead, and Neilston Railway Company *v.* Abbey Parish of Paisley . . 343
Glasgow, Barrhead, and Neilston Railway Company *v.* Caledonian Railway Company . . 63
Glasgow Corporation *v.* Dods . 91
Glasgow Gas-Light Company *v.* Adamson . . . 66
Glasgow Gas-Light Company *v.* Beattie 85
Glasgow Iron Company . . 396

PAGE

Glasgow, Magistrates of, *v.* Forth and Clyde Navigation Trs. . 350
Glasgow Parochial Board, Board of Supervision *v.* . . . 34
Glasgow and South-Western Railway Company *v.* Magistrates of Glasgow 66
Glasgow Tramways Company *v.* Dods 90, 366
Glasgow University *v.* Burgh of Partick 89
Glasgow, Magistrates of, *v.* Adamson 60
Glasgow, University of . . 393
Glass 395
Glassford, Heritors of, *v.* Orr . 335
Glenshiel School Board, Morrison *v.* 420
Goldie *v.* Goldie . . . 143
Gordon 386
Gourock, Burgh of, Steel *v.* . 403
Gourock Local Authority . . 406
Gow, Young *v.* 172
Graham 394
Graham *v.* Borthwick and Clapperton 367
Grant, John . . 376, 396
Grant, Sir G. M. . . . 375
Grant *v.* Reid . 205, 298, 354
Gray *v.* Fowlie . . . 232
Gray *v.* Heritors of Lassuden . 333
Greenwich, Overseers of, *v.* Metropolitan Board of Works . 113
Greig 367
Greig *v.* Adamson and Craig . 250
Greig *v.* Chisholm . . 279
Greig *v.* Crawford . . . 137
Greig, Cruickshank *v.* . . 328
Greig, Cummings or Mason *v.* . 307
Greig *v.* Hay and Maclaine . 203
Greig *v.* Heriot's Hospital . 81
Greig *v.* Maxwell . . . 51
Greig *v.* M'Beath . . . 247
Greig *v.* M'Leod . . . 296
Greig *v.* Reid and Jones . . 369
Greig *v.* Ross . . . 227
Greig *v.* Simpson and Craig . 261
Greig *v.* Miles and Simpson 314, 360
Greig, University of Edinburgh *v.* 86
Greig *v.* Young . . . 229
Greig *v.* Waite and Carse . . 242
Greig and M'Donald, Craig *v.* . 210
Greig and Padon, Procurator-Fiscal of Edinburgh *v.* . . . 181
Greville *v.* Thomson . . 59
Grozier *v.* Kirkwood . . 359
Guest *v.* Overseers of East Dean . 114
Gunn, Craig *v.* . . . 224
Gunn *v.* Heritors of St. Cuthbert's 339
Gunn, Lawson *v.* . . . 226
Guthrie *v.* Arbroath . . 184

H

Haddington *v.* Dunbar . . 268
Haddington School Board, Whyte *v.* 414

PAGE

Halliday *v.* Heritors of Balmaclellan 119
Hamilton *v.* Adamson and Ferrier 205
Hamilton *v.* Hamilton . . 153
Hamilton *v.* Kirkwood . . 305
Hamilton *v.* Minister, &c., of Cambuslang 2
Hannah, Watt *v.* . . . 283
Hardie, H.M. Advocate *v.* . 33
Hardie *v.* Kirk-Session of Linlithgow 10
Harter *v.* Overseers of Salford . 112
Harvie *v.* Harvie . . . 137
Harvey and Morison, Roger *v.* . 330
Hastie and Ker *v.* Hastie . . 132
Hastings *v.* Hughan . . 311
Haswell *v.* Fortune . . 345
Hay 1
Hay & Company . . . 392
Hay, Sir J. D. . . . 378
Hay *v.* Adams and Begbie 120, 155
Hay *v.* Beattie and Hardie 278, 351
Hay *v.* Beattie . . . 353
Hay *v.* Croll and Beattie 284, 349
Hay *v.* Cumming . . . 270
Hay *v.* Doonan . . . 121
Hay *v.* Edinburgh Water Company 52
Hay *v.* Ferguson and Lennox . 273
Hay *v.* Jack . . 155, 346
Hay *v.* Kirkpatrick . . 272
Hay *v.* Knox . . . 154
Hay *v.* Linton . . . 412
Hay *v.* Melville . . . 160
Hay *v.* Morrine and Thomson . 269
Hay *v.* Murdoch . . 158, 347
Hay *v.* M'Raild . . 240, 289
Hay *v.* Oliphant . . . 239
Hay *v.* Paterson and M'Donald . 200
Hay *v.* Scott . . 192, 274
Hay *v.* Simpson . . . 159
Hay *v.* Skene . . . 234
Hay *v.* Thomson . . 198, 277
Hay *v.* Thomson and Manson 236, 347
Hay *v.* Waite and Carse . . 242
Henderson 395
Henderson *v.* Smith . . 144
Hepburn, Sir T. B. . . 401
Hepburn *v.* Tait . . . 366
Heriot's Hospital, Greig *v.* . 81
Hewat *v.* Hunter . . . 312
Hewat, Knox *v.* . . 169, 218
Higgins, Allan *v.* . . . 306
Higgins *v.* Barony Parish . 117, 334
Highland Railway Company *v.* Dods 93
Hill *v.* Thomson . . . 2
Hodgert, Adamson *v.* . . 156
Hodgert *v.* Petrie and Mason . 271
Hogg, Anderson *v.* . . 431
Home, D. M. . . . 376
Home *v.* Wedderburn's Assignee . 134
Home *v.* Kelso Local Authority . 407
Hope 378
Hope *v.* Lumsdaine . . 108
Hope *v.* Heritors of Cramond . 5
Hopkins *v.* Ironside and Wallace 213

PAGE

Hoseason *v.* Hoseason . . 150
Howie *v.* Kirk-Session of Arbroath 136, 184
Humbie, Heritors of, *v.* Kirk-Session 17
Hume *v.* Halliday and Pringle . 189
Hunter 375
Hunter *v.* Chalmers . . 101
Hunter, Hewat *v.* . . . 312
Hunter *v.* Kelso School Board 415, 416
Hutchison *v.* Fraser . . 285
Hutton *v.* Coldstream . . 265

I

Innes 399
Innes *v.* Ironside . . . 318
Inveresk, Collector of, *v.* Magistrates of Musselburgh . . 39
Inveresk *v.* Tranent . . 183
Inverness, Burgh of . . 398
Inverurie, Burgh of . . 400
Ireland *v.* Jackson . . 263
Ironside, Hopkins *v.* . . 213
Irvine *v.* Waugh . . . 130
Isdale *v.* Jack . . . 126

J

Jack *v.* Fraser . . . 163
Jack, Isdale *v.* . . . 126
Jack *v.* Simpson . . . 165
Jack *v.* Thom . . . 125
Jackson *v.* Jackson . . 140
Jackson *v.* Robertson . . 324
Jerdan 400
Johnston *v.* Black . . . 293
Johnston *v.* Wallace . . 260

K

Kay *v.* Kelso Local Authority . 371
Keay *v.* Stewart . . . 240
Keith *v.* Cassels . . 25, 129
Kelso Local Authority, Home *v.* . 407
Kelso School Board *v.* Hunter 415, 416
Kemp, Turnbull *v.* . . 287
Kennedy *v.* Adamson . . 27
Kennedy, Ferrier *v.* . . 221
Kennedy, Simpson *v.* . . 330
Ker *v.* Tutors of Moriston . 133
Kerr's Trustees . . . 382
Kilgour *v.* Hally . . . 430
Kilmorack, Heritors of, *v.* Beith . 175
Kilwinning, Kirk-Session of, *v.* The Trades 3
Kinglassie, Kirk-Session of, White *v.* 14
Kingoldrum, Heritors of . . 393
Kinloch 401
Kinross-shire, Clerk of Supply of, *v.* Parochial Board of Orwell . 90
Kingston Union *v.* Overseers of Malden 114
Kirkmabreck, Minister of . . 379

PAGE

Kirkwood *v.* Hart and Gemmell . 177
Kirkwood *v.* Knox . 169, 254
Kirkwood *v.* Lennox . . 178
Kirkwood *v.* Manson . . 254
Kirkwood *v.* Wylie . . 248
Kirriemuir, Heritors of . . 393
Knox *v.* Hewat . . 169, 218
Knox *v.* Macarthur . . 24
Knox *v.* Montgomery . . 24
Knox, Thomson *v.* . . 234
Kyd, Cochrane *v.* . . . 321

L

Laing *v.* Fisher . . . 124
Laing *v.* Laing . . . 37
Lanark, Burgh Heritors of, *v.* The Landward Heritors . . 20
Lancashire, Justices of, *v.* Overseers of Stretford . . . 111
Landsborough *v.* Barclay . . 50
Lasswade *v.* Newlands . . 187
Lauder, Collector of, *v.* The Parish Minister . . . 104
Laurie *v.* Dreghorn . . 39
Lawrie *v.* Thomson . 30, 366
Lawson *v.* Gunn . . . 226
Lees *v.* M'Kinlay . . . 100
Leith Dock Commissioners, Scotland *v.* 54
Leith Dock Commissioners, Gardiner *v.* 75
Leith (North), Heritors of, *v.* Magistrates of Edinburgh . . 94
Leith (South), Heritors of, *v.* Magistrates of Edinburgh . . 42
Lemon and Brown *v.* Cameron . 164
Leslie *v.* Gibson . . . 123
Leven Gas Company . . 397
Leys *v.* Riddell . . . 343
Liddle *v.* Kirk-Session of Bathgate 8
Ligertwood *v.* Brown . . 151
Lindsay *v.* Inglis . . . 432
Lindsay *v.* M'Kenzie . . 314
Lindsay, Thomson and M'Tear *v.* 121
Linlithgow, Kirk-Session of, Hardie *v.* 10
Livingstone *v.* Proudfoot . . 20
Lochgilphead School Board *v.* South Knapdale School Board . 424
Lockhart, Sir N. M'D. . . 375
Logiealmond School Board, Robb *v.* 415
London and North-Western Railway Company *v.* Buckmaster . 115
Love *v.* Campbell . . . 359
Lowther *v.* M'Laine . . 135
Ludquharn *v.* Gight . . 152
Lumsden *v.* Heritors of Leslie . 119
Lyall *v.* Bell . . . 131

M

Maidment *v.* Landers . . 138

PAGE

Main, H.M. Advocate *v.* . . 34
Manson, Kirkwood *v.* . . 254
Marshall *v.* Ardrossan School Board 416, 429
Marshall *v.* Marshall . . 137
Mason or Cummings *v.* Greig . 307
Matheson *v.* Kirk-Session of Fodderty 336
Maule *v.* Maule . . . 139
Maxwell *v.* Blair . . . 1
Maxwelltown . . . 432
Meek, Petrie *v.* . . 124, 351
Meek *v.* Monkland Canal Company 33
Melrose and Stitchell *v.* Bowden . 184
Melville *v.* Flockhart . . 280
Melville, Robertson *v.* . 205, 352
Menzies 393
Mersey Docks Trustees *v.* Cameron 112
Methven *v.* Arthur . . 178
Metropolitan Board of Works *v.* West Ham . . . 113
Miles and Simpson, Greig *v.* 314, 360
Miller *v.* Gordon . . . 63
Milne *v.* Ramsay . . . 322
Milroy, Commissioners of Barracks *v.* 95
Mitchell, A. M. . . . 386
Mitchell *v.* M'Nicol . . 430
Mochrum School Board, Macfarlane *v.* . . . 419, 426
Moir, Reid *v.* . . . 148
Moncrieff *v.* Ross . . . 318
Money *v.* Parochial Board of Blantyre 30
Montrose, Duke of . . 382
Montrose Local Authority, Board of Supervision *v.* . . 404
Montrose Kirk-Session *v.* The Magistrates 2
Morris *v.* Orr . . . 96
Morrison . . . 336, 376
Morrison *v.* Abernethy School Board 424
Morison *v.* Glenshiel School Board 420
Muir *v.* Thomson . . . 223
Munro *v.* Graham . . . 349
Murdoch 385
Murray *v.* Bruce . . . 49
Murray *v.* Craik . . . 138
Murray *v.* Hutchison . . 130
Murray, Gibson *v.* . . . 195
Murray *v.* Morton . . . 430
Murray *v.* Scott . . . 94

MAC

M'Conachy . . . 137
M'Cowan *v.* Paterson . . 137
M'Craw *v.* Allan . . . 46
M'Craw and Hill, Cunningham *v.* . 43
M'Crorie *v.* Cowan . . . 247
M'Culloch 381
M'Culloch *v.* Alva Parochial Board 403
M'Culloch *v.* Dalry School Board 426
Macdonald *v.* Macdonald . 143, 366

PAGE

M'Donald *v.* Taylor and Craig 164, 213
Macfarlane *v.* School Board of Mochrum . . 419, 426
Macfarlane *v.* Monklands Railway Company . . . 103
M'Gregor 398
M'Gregor *v.* Caldwell . . 412
M'Gregor *v.* Watson . . 297
Macintosh *v.* Playfair's Trustees . 46
M'Intosh *v.* Taylor . . 150
M'Intosh *v.* Welsh . . 125
M'Isaac *v.* M'Kenzie . . 106
Mackay *v.* Beattie . . . 354
Mackay *v.* Chalmers . . 350
M'Kenna and Wallace, Beattie *v.* 228
Mackenzie *v.* Cameron . . 289
Mackenzie *v.* King . . 93
Mackenzie *v.* M'Kenna and Murray 231
M'Kie *v.* Baillie . . . 123
M'Kissock *v.* M'Kissock . . 138
M'Lachlan *v.* Tennant . . 363
M'Laren *v.* Clyde Navigation Trustees 77
M'Laren *v.* Mackenzie . . 432
M'Laren *v.* Steel . . 52, 348
M'Lauchlan *v.* Kirk-session of Stevenston . . . 140
M'Lea *v.* Walker . . . 41
M'Lennan, Craig *v.* . . 216
M'Lennan *v.* Waite . . 220
M'Neel *v.* Watt . . . 47
Macome *v.* Dickson . . 86
Macpherson *v.* Adamson . . 35
M'Tavish *v.* Commissioners of Caledonian Canal . . . 368
M'Tear and Thomson *v.* Lindsay . 121
M'William, Adams *v.* . . 121
M'William *v.* M'Bride . 310, 358

N

Napier *v.* Adams . . . 49
National Bank . . . 397
Neill *v.* Hamilton . . . 358
Neilston, Heritors of, *v.* Fleming and Others . . . 4
Netherlie, Children of, *v.* The Heir 132
Newlands, Lasswade *v.* . . 187
Nicholl, Forsyth *v.* . . 129
Nicoll *v.* Magistrates of Dundee . 141
Nisbet *v.* Lees . . . 107
Nith Navigation Commissioners . 392
Nixon, Caldwell *v.* . . 370
North Berwick, Kirk-session of, *v.* Sime 338
North British Railway Co. *v.* Greig 78

O

Oakeley *v.* Campbell . . 360
Officer of Inland Revenue *v.* Dunlop 373
Old Monkland, Heritors of, . 393
Ordnance Officers of, *v.* Heritors of North Leith . . . 95

PAGE

P

Pagan *v.* Pagan . . . 142
Palmer *v.* Russell . 180, 256, 365
Panmure *v.* Sharp . . . 4
Paterson, Callachan, *v.* . . 427
Paterson, Hay *v.* . . . 200
Paterson, *v.* M'Donald . . 263
Paterson's Trustees *v.* Hunter . 102
Paton *v.* Adamson . . . 333
Paton *v.* Jardine . . . 333
Peebles, School Board of, *v.* The Burgh 412
Pennycuick *v.* Heritors of Duddingston 232
Perth, City of, . . . 394
Perth School Board *v.* The Burgh . 413
Petrie *v.* Beattie . . . 302
Petrie *v.* Meek and Hunter 124, 351
Pimlico Tramway Company *v.* Greenwich Union . . 114
Pittenweem Local Authority, Board of Supervision *v.* . . . 406
Pollock 380
Pollock *v.* Darling . . . 117
Pollok *v.* Robertson . . 337
Pollok *v.* Petrie . . . 343
Porteous *v.* Blair . . . 277
Pott *v.* Pott . . . 141
Preston *v.* Magistrates of Edinburgh 108
Pringle and Halliday, Hume *v.* . 189
Proudfoot *v.* Johnston . . 300
Pryde *v.* Heritors of Ceres . 118, 339

Q

Queen *v.* Dougall . . . 26
Queen, The, *v.* the Overseers of Manchester . . . 110
Queen, The, *v.* Overseers of West Derby 116
Queen, The, *v.* M'Cann . . 113
Queen, The, *v.* Shee . . 110
Queen, The, *v.* Shepherd . . 110
Queen, The, *v.* Stewart . . 111
Queen, The, *v.* Temple . . 116

R

Rae *v.* M'Lay . . . 346
Ramsay *v.* Grant . . . 1
Ramsay, Milne *v.* . . . 322
Ramsay *v.* Officers of State . 139
Reid *v.* Moir . . . 148
Reid *v.* Williamson . . . 97
Renfrew, Burgh of . . . 391
Renfrew Burgh School Board *v.* Parish School Board . . 424
Renfrewshire Prison Board . 385
Renton Gas Company . . 397
Rescobie *v.* Aberlemno . . 185
Richardson *v.* Heritors of Ancrum 118
Richmond, Duke of 375, 391, 392
Riddells *v.* Riddell . . . 136
Robb *v.* Logiealmond School Board 415
Roberts *v.* Fife . . 19, 117

PAGE

Robertson, John . . . 379
Robertson *v.* Heritors of Buncle . 333
Robertson *v.* Melville . 205, 352
Robertson *v.* Murdoch . . 19
Robertson *v.* Stewart and Brown . 237
Roger *v.* Harvey . . . 330
Roger *v.* Maconochie . . 276
Ross *v.* Carrick . . . 40
Ross *v.* Earl of Haddington . 268
Ross, Moncrieff *v.* . . . 318
Roxburgh, Duchess of, *v.* Magistrates of Dunbar . . 20, 336
Runciman *v.* Heritors of Mordington 266
Russel, Palmer *v.* . 180, 256, 365
Russell *v.* Hutchison . . 59
Russell, Walker *v.* . . . 218

S

Salmond *v.* Adams . . . 49
Salton School Board *v.* Burnet's Trustees 413
Scotland *v.* Leith Harbour Commissioners 54
Scott 378
Scott, W. J. . . . 402
Scott *v.* Anderson . . . 158
Scott *v.* Fraser . . . 39
Scott *v.* Oliver . . 162, 300
Scott *v.* Sharp . . . 134
Scott *v.* Thomson . . . 175
Scottish Central Railway Company 382
Scottish North Eastern Railway Company *v.* Duncan . . 88
Scottish North Eastern Railway Company *v.* Gardiner . . 67
Selkirk Local Authority *v.* Brodie . 408
Selkirk School Board *v.* the Burgh 417
Seton *v.* Paterson . . . 134
Shaw *v.* Beattie . . . 37
Shaw and King, Allan *v.* . . 325
Shennan, Austin *v.* . . 171
Shields 399
Simpson *v.* Allan . . . 295
Simpson *v.* Cassels and M'Gregor . 148
Simpson *v.* Greig . . . 311
Simpson *v.* Kennedy . . 330
Simpson *v.* Reid . . . 325
Simpson and Miles, Greig *v.* 314, 360
Simpson, Greig *v.* . . . 261
Skene, W. A. 388
Skene *v.* Beaton . . . 269
Smith *v.* Overseers of Birmingham 111
Smith *v.* Smith . . 137, 366
Smith, Laing & Company *v.* Maitland 109
Smith *v.* Jaggard . . . 5
Spiers *v.* Fleming . . . 4
Sprot *v.* Heriot's Hospital . . 96
Staley *v.* Overseers of Castleton . 111
Stark *v.* Beattie . . . 331
St. Cuthberts *v.* Cramond . 224
Steel *v.* Burgh of Gourock . 403
Steuart *v.* Keith Parochial Board . 363

	PAGE
Steuart *v.* Earl of Seafield	424
Steuart *v.* Fraser	27, 365
Stewart, Keay *v.*	240
Stewart *v.* School Board of Little Dunkeld	423
Steuart *v.* Stewart	151
Steuart *v.* Sproat	22
Steuart, Robertson *v.*	237
Stirling, Wm., & Sons	389
Stiven *v.* Buie	146
Stonehaven Harbour Trustees	385
Stow School Board, The Lord Advocate *v.*	423
Straiton *v.* The Laird of Craigmillar	1
Strathmiglo *v.* Ceres and Abernethy	342
Strathmore *v.* Minister of Kirriemuir	17
Strathmore *v.* Strathmore's Trustees	139
St. Thomas Hospital *v.* Stratton	115
Summerlee Iron Company	399
Supervision, Board of, Clark *v.*	28
Supervision, Board of, *v.* Parochial Board of Dull	21
Supervision, Board of, *v.* Galashiels Local Authority	406
Supervision, Board of, *v.* Parochial Board of Glasgow	34
Supervision, Board of, *v.* Montrose Local Authority	404
Supervision, Board of, *v.* Pittenweem Local Authority	406
Sutherland, Duchess of	392

T

Tague *v.* Smith	358
Tait *v.* White	136
Taylor *v.* Allardice	152
Taylor *v.* Strachan	38, 166
Taylor and Greig, Crosby *v.*	320
Telford *v.* Kirk Session of Ancrum	334
Thom, Jack *v.*	125
Thom *v.* M'Kenzie	147
Thompson *v.* Parochial Board of Inveresk	25, 364
Thomson	394
Thomson *v.* Gibson and Borthwick	269
Thomson, Hay *v.*	198
Thomson *v.* Knox	234
Thomson *v.* Morris and Stewart	190
Thomson *v.* M'Culloch	135
Thomson *v.* Scott and Aitchison	191
Thomson *v.* Walker and Blacklock	275
Thomson and M'Tear *v.* Lindsay	121
Thomson *v.* Pollock	40
Tod *v.* Mitchell	61
Toshach *v.* Smart	17
Tulliallan School Board, Buchanan *v.*	418
Turbyne *v.* Kirk Session of Leuchars	16
Turnbull *v.* Kemp and Russell	287
Turnbull, Wallace *v.*	259
Turnbull *v.* M'Claws	3

U

Udny	395
United Kingdom Temperance and General Provident Institution *v.* Cadder Parochial Board	409
University and College of Glasgow	393
University of Edinburgh *v.* Greig	86
University of Glasgow *v.* Burgh of Partick	89

W

Waddel *v.* Heritors of Hutton	265
Waite and Carse, Hay *v.*	242
Waite, M'Lennan *v.*	220
Walker *v.* Russell	218
Walkinshaw *v.* Adams	48
Wallace, Johnston *v.*	260
Wallace *v.* Turnbull	259
Watson *v.* Adams and Miller	340
Watson *v.* Caie and Macdonald	329
Watson *v.* Welsh	123
Watson's Executors *v.* Heritors of Cramond	5
Watt *v.* Hannah	283
Watt *v.* Knox	338
Watt, Aberdeen Infirmary *v.*	290
Webster *v.* Mackenzie	274
Weepers *v.* Heritors of Kennoway	142
White *v.* Kirk-session of Kinglassie	14
Whyte *v.* School Board of Haddington	414
Wigtown, Kirk-session of, *v.* Dalziel	135
Wigtownshire Commissioners of Supply *v.* Officers of State	175
Williamson *v.* Leslie	154
Willock *v.* Rice	339
Wilson	3, 377
Wilson, Beattie *v.*	160
Wilson *v.* Greig	204, 296
Wilson *v.* Heritors of Cockpen	139
Wilson *v.* Magistrates of Musselburgh	105
Wilson *v.* Stirling	414
Wilson *v.* Todd	149
Wingate *v.* Meek	348
Wylie, Kirkwood *v.*	248

Y

Young *v.* Campbell	135
Young *v.* Gow	172
Young, Greig *v.*	229

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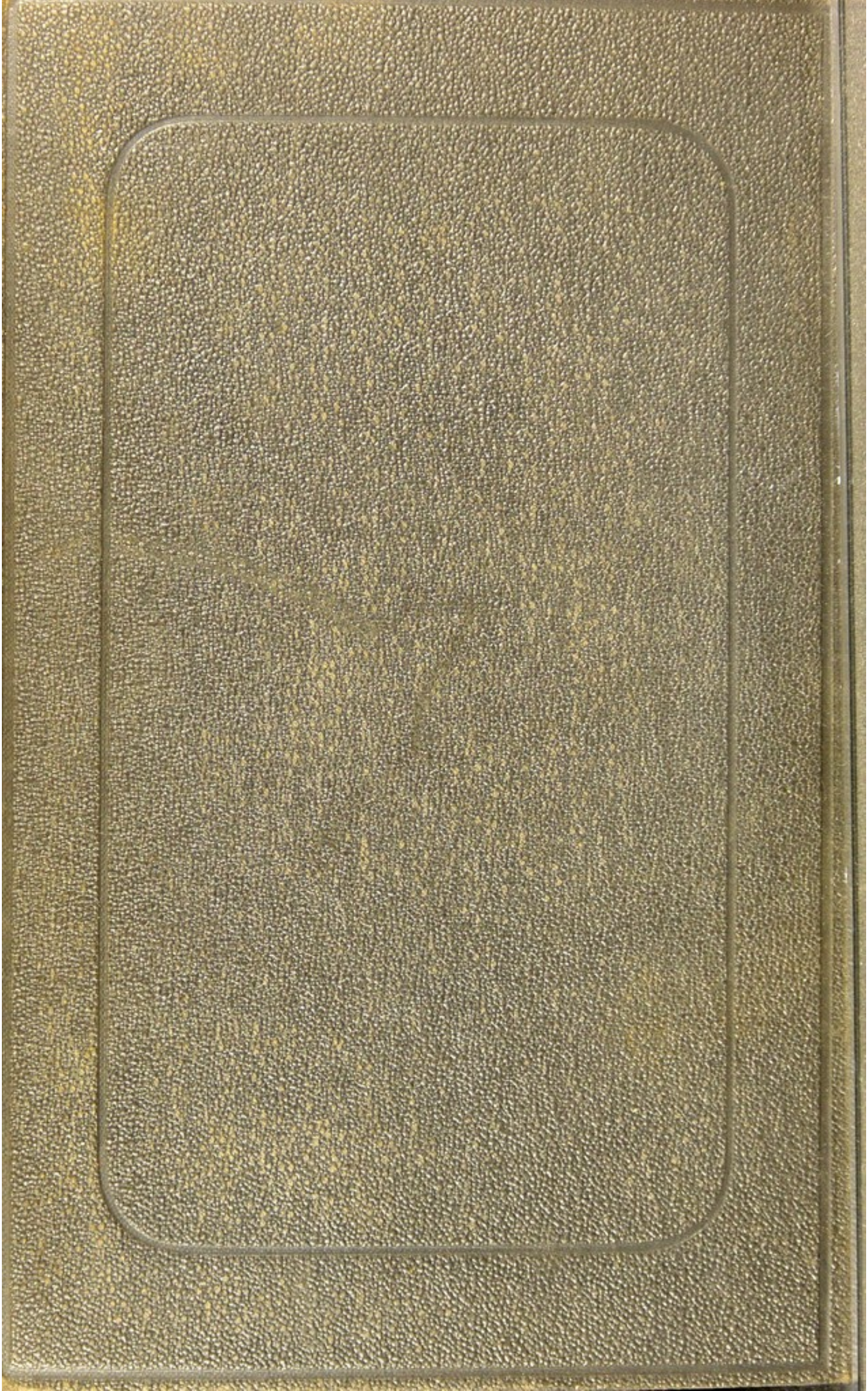
Notes of Recent Decisions.