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A DIGEST

OF

THE LAW OF SCOTLAND

RELATING TO THE POOR.

BY

JOHN GUTHRIE SMITH,
ADVOCATE.

SECOND EDITION, REVISED AND ENLARGED.

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PREFACE.

THIS edition of the Poor Law Digest has been nearly all re-written; and so much fresh matter has been incorporated, that to a large extent it is an entirely new book. The Author has done his best to make the work complete and accurate; but as his official duties leave him little time for this kind of labour, many mistakes and omissions may still remain, which it is hoped will meet with the indulgence of the reader.

The Author regrets that, within the limits assigned to him, he has not been able to give, in the Appendix, as was originally intended, the Rules and Minutes issued by the Board of Supervision. The Public Health Act of last Session has also been excluded, as a measure so extensive and so important will probably be made the subject of a separate treatise.

The Author desires to express his obligations to Mr. William Guthrie, advocate, who kindly gave his invaluable assistance in the revisal of the proof-sheets.

J. G. S.

DUNDEE, 1*st October* 1867.

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INTRODUCTION.

PRIOR to the year 1845, the law of Scotland regarding the poor was mainly derived from the Acts 1579, c. 74; 1597, c. 272; 1661, c. 38; 1672, c. 18; the Proclamations of the Privy Council, more particularly the Proclamation of 11th August 1692; and the Act 1698, c. 21. In dealing with pauperism, the earlier efforts of the Scotch Parliament, beginning with an Act of the year 1424, were exclusively confined to the suppression of vagrancy and the regulation of begging. For this purpose a distinction was made between those destitute persons who were sick and impotent, and therefore unable to earn a livelihood; and those 'stronge and wasterful beggars' who were able, but not willing, to exercise an honest employment. While the most rigorous measures were taken for the suppression of the latter class, who roamed throughout the country in great numbers, the former were, under certain conditions, permitted to derive a subsistence from voluntary alms. This statutory permission to beg (besides occasional collections which were ordered to be made in their behalf) was, for nearly a century and a half after the year 1424, the only provision made by Parliament in favour of the poor, properly so called. At length the Act 1579, c. 74, laid the foundation of our present system of poor laws, by introducing a compulsory assessment, to supplement the funds derived from the church-door collections and other voluntary sources. Under this and the subsequent Acts, the burden of maintaining its own poor was laid on every parish: the right of the pauper to relief arising from (1) a continuous residence for a given period prior to poverty; and, (2) failing the requisite residence, the burden of his support devolved on the parish where he was born. The assessment was laid one-half on the heritors or landowners, and the other half on the tenants and possessors, according to their means and

substance, which in most cases were measured (though the practice was by no means uniform) by the real rent of the subjects owned or occupied. The persons to whom relief was afforded were of two classes. In the first place, the aged, infirm, and impotent poor. Secondly, provision was made for the apprehension of those idle persons who wandered about the country begging. These, it was directed, should be alimented, and set to work in certain buildings to be erected in burghs, under the name of 'correction houses;' but practically this portion of the law has always remained a dead letter. The only other class of the poor known to the law, apart from those on the permanent roll, is the occasional poor, who received relief when unable to work from sickness or other temporary causes.

In Scotland, parishes are either burghal, *i.e.* those comprised wholly within a burgh royal; landward, those forming a rural district; or mixed, *i.e.* a burgh with a rural district attached. In landward parishes the management of the poor was entrusted to the heritors and kirk-session jointly. The meetings of this body were held twice every year, and they might assess the parish to any amount. They also decided on every claim for relief; but practically, applications were made to the minister, and disposed of by him or his elders. If the heritors and kirk-session delayed or refused to consider an application by a pauper, the judge ordinary might compel them to meet and dispose of it; but he had no power to modify the amount of aliment. The pauper's remedy was then by action in the Court of Session. In burghal parishes, the persons responsible for the administration were the magistrates; but in some burghs their powers were exercised by a committee of managers, chosen upon no definite principle, according to some local usage. In parishes partly burghal and partly landward, the earlier practice was to consider the burghal portion as distinct from the landward, with a separate roll, separate funds, and independent administration; but after 1835, when the case of Dunbar was decided by the House of Lords,[1] the affairs of the whole parish were entrusted to one administration, consisting of the kirk-session, the heritors, and the magistrates of the burgh sitting as heritors.

Such was the state of the law down to the passing of the

[1] 1 S. and M'L. 134.

Poor Law Amendment Act in 1845, the 8 and 9 Vict. c. 83. This statute was founded on the report of a Royal Commission which issued in 1843. While the general features of the old law were left untouched, some important changes were introduced, more particularly in the body entrusted with the administration of the affairs of the poor. In room of the heritors and kirk-session, there was established in every parish a new parochial board, consisting of certain members elected by the ratepayers, delegates appointed by the kirk-session, and heritors holding property of more than £20 yearly value; and a central Board of Control was appointed, under the name of the Board of Supervision.

We propose to exhibit a condensed and practical view of the existing state of the law regarding the poor, under the following heads:—I. ADMINISTRATION; II. ASSESSMENT; III. RELIEF; IV. SETTLEMENT.

ADMINISTRATION.

BOARD OF SUPERVISION.

1. *Constitution.*
2. *Powers—Official Investigation.*
3. *Superintending Authority.*
4. *Jurisdiction in Complaints of Inadequate Relief.*
5. *General Superintendents.*
6. *Visiting Officer.*
7. *Combination of Parishes.*
8. *Duties imposed by other Acts of Parliament.*

THE proceedings of the local authorities in each parish are subject to the control and oversight of a central board sitting in Edinburgh, termed the Board of Supervision. It consists of the following members:—1. The Chairman, who is appointed by her Majesty, and receives a salary; 2. The Lord Provost of Edinburgh; 3. The Lord Provost of Glasgow; 4. The Solicitor-General; 5. The Sheriff of Perthshire; 6. The Sheriff of Renfrewshire; 7. The Sheriff of Ross and Cromarty; 8 and 9. Two members nominated by the Queen. The Sheriffs receive an annual allowance of £100 each. The other members (excepting the chairman) act gratuitously. The staff of the Board consists of—1. A Secretary; 2. Two General Superintendents; 3. A Visiting Officer; 4. Several Clerks; 5. A Standing Counsel.

The Board holds two general meetings in the year, on the first Wednesday in February, and the first Wednesday in August. Adjourned and special meetings may also be held from time to time, as shall seem fit—three members constituting a quorum. Attendance at these meetings is only made compulsory on the paid member, who is also required to 'give regular attendance for conducting the business of the Board.'[1] In the absence of the chairman, the chair is taken by the

[1] Sec. 5.

senior member present; that is to say, by the person who has for the longest time from the date of the meeting, and without intermission, been a member of the Board. The chairman has both an original and casting vote. The Board may devolve all the powers which the statute confers, upon committees.[1] The Board is further directed to make general rules and regulations from time to time, as they shall see occasion, for the conduct of its business and the exercise of its powers. These are subject to the approval and sanction of the Secretary of State before being effectual; and a copy, signed and certified by the secretary of the Board, is received as sufficient evidence of such rules in any court of law.[2] A record of all their proceedings is kept, and an annual report thereof transmitted to the Secretary of State, in order to be laid before Parliament, containing in particular 'a full statement as to the condition and management of the poor throughout Scotland, and the funds raised for their relief.'[3]

Powers of the Board—Official Investigations.—The Board is directed to inquire into the management of the poor in every parish or burgh in Scotland; and for that purpose it is empowered as follows:—

To make inquiries, and require answers or returns, upon any question or matter connected with or relating to the relief of the poor. To issue a summons, signed by one of their number, or the secretary, requiring the attendance of all such persons as they may think fit to call before them. To examine these persons upon oath. To require and enforce the production, upon oath, of all books, contracts, agreements, accounts, and writings, or copies thereof. In lieu of an oath, the party examined may make and subscribe a declaration of the truth of his statements. If any special inquiries appear to be necessary in any part of the country, one of the members may be appointed for the purpose, with power to summon and examine witnesses on oath.[4]

For conducting such investigations, the Board may also have recourse to the assistance of one or more persons not members. With consent or by direction of the Secretary of State, or the Lord Advocate for the time being, they may appoint a member of the Faculty of Advocates, a duly qualified medical

[1] Sec. 6. [2] Sec. 7. [3] Sec. 8. [4] Secs. 9, 10.

practitioner, an architect, or a surveyor, 'to act as commissioner for conducting any special inquiry for a period not exceeding forty days, and may delegate to the persons so appointed such powers as they may deem necessary.'[1] This duty is usually entrusted to the advocate who is Standing Counsel. In these inquiries the Board may allow such expenses of witnesses, or of producing books, etc., as they may deem reasonable. Persons giving false evidence are guilty of perjury; and any person who shall refuse to produce books, etc., or shall disobey any summons or order, or be guilty of any contempt of the said Board, or Committee, or Member, or Commissioner, may be fined in £5 for the first offence, or £20 for the second.[2] These penalties are recovered on the complaint of the secretary to the sheriff of the county in which the offence was committed, or where the offender may be found.[3]

The members of the Board and secretary are authorized[4] to attend meetings of the parochial boards, and to take part in the discussions; but they have no vote. The same privilege may be exercised by any clerk or officer authorized by a writing signed by two of the members.

Superintending Authority.—The Board of Supervision exercises extensive powers with respect to the local administration of the law, the nature of which will be fully explained when we come to that branch of the subject. As regards the constitution of parochial boards, it fixes the number of elected members, and the nature of their qualification in burghal parishes, divides parishes into districts or wards, and issues rules as to the mode in which the election is conducted. A parish, once assessed, requires the consent of the Board to any departure from the original resolution, either with respect to the fact of assessment, or the particular mode in which it is imposed. The approval of the Board is further requisite to any distribution of lands into separate classes, for the purposes of assessment. It also exercises certain controlling powers in regard to the erection of poorhouses—their maintenance, management, and discipline, the supply of medicines and medical relief; but, above all, it is entitled to hold such authority over the inspectors of the poor, that, practically, these functionaries are the officers of the Board of Supervision, and not of the parochial board. The parochial

[1] Sec. 11. [2] Secs. 12, 13. [3] Sec. 81. [4] Sec. 15.

board may appoint any person they please to this office,[1] but it is for the Board of Supervision to judge of his fitness for it.[2] They also censure, suspend, or dismiss him from office; and a considerable part of the duty of the Board of Supervision is the investigation of charges of misconduct against the inspectors of the poor, and governors of poorhouses, which may be brought under their notice, either by the complaints of individuals, or in the reports of their visiting officer and the general superintendents of the poor.

The parochial boards communicate with the Board of Supervision, and obtain their advice in cases of difficulty; and even where the express sanction of the central authority is not required by the statute to the validity of the local board's proceedings, the former has, in many instances, the power of checking them indirectly; *e.g.*, if a poorhouse is insufficient, or the arrangements defective, the Board of Supervision refuses to hold that an offer of admission therein is an offer of adequate relief. Or, under sec. 88, they may complain to the Court of Session, or the Lord Ordinary on the Bills in vacation, that a particular parochial board has obstructed them in the execution of the Act, or that it refuses or neglects to do what is by law required of it. The Court or Lord Ordinary, on a summary petition to this effect, may issue such order as may be just and necessary.

Jurisdiction in Complaints of Inadequate Relief.—The 75th section of the statute provides, 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 a parochial board, unless the Board of Supervision shall previously have declared that there is a just cause of action.' The remedy of a pauper receiving inadequate relief is thus, in the first instance, to apply to the Board, which will examine the grounds of complaint; and if the same appear to be well-founded, or are not in the meantime removed, a minute is granted, signed and certified by the secretary, which at once entitles the complainant to the benefit of the Poor's Roll of the Court of Session.[3]

The penalties imposed by the Act are recovered in a summary way, in name of any agent appointed by the Board or of the secretary; and the proceeding may be had either before the

[1] Sec. 32. [2] Sec. 56. [3] Sec. 74.

sheriff of the county in which the offence has been committed, or of the county where the offender may be found.[1]

General Superintendents.—In 1856, under the authority of the Act 19 and 20 Vict. c. 117, the Board appointed two general superintendents of the poor, to each of whom was assigned a district of the Highlands. By sec. 2 of that statute, these general superintendents are invested with all the powers which, by the 8 and 9 Vict. c. 83, are conferred on the commissioners thereby directed to be appointed. They are expected to visit each parish in the district, and be present at a meeting of the parochial board at least once each year. On these occasions, their duty is to inspect the poorhouse, if there be one, examine into the manner in which relief is administered, and ascertain how the duties of the inspectors are performed. They also inquire into the arrangements for providing medical relief to the poor, and the provision made for the education of the pauper children, receive any complaints that may be made by paupers of harsh and improper treatment, and generally report to the Board any matter that may appear to deserve their notice, or to require their interference in the parish. Practically, these officers watch over the machinery of the Poor Law, and the purity of its administration.

Visiting Officer.—The office of visiting officer, though not specially created by statute, grew out of the provision in sec. 15 of the Poor Law Act, authorizing the Board of Supervision to send a clerk or officer to attend meetings of the parochial board, and take part in the discussions. This work, and the duty of inspecting poorhouses, were found sufficient for one clerk's entire time, and the visiting officer came to be a permanent functionary.[2] He performs analogous duties to those of the general superintendents, but he has not their power of compelling the attendance of witnesses, or of examining them on oath.

Combination of Parishes.—Parishes may be combined for the purposes of the Poor Law, by the Board of Supervision, on the application of any of the parochial boards interested; or, if the Board of Supervision is satisfied of the expediency of a union, they may, *ex proprio motu*, require the local boards to meet and consider the proposal. If, after this, the local boards are favourable, the Board of Supervision are empowered to resolve

[1] Secs. 81–6. [2] See 16th Rep. B. of S.

and declare that such parishes shall thenceforward be combined, and shall be considered as one parish, so far as regards the support and management of the poor, and all matters connected therewith. To the combination thus formed, any adjacent parish may, on application, be afterwards added, with or without consent of the combination,[1] and the combination may be dissolved in the manner pointed out by 24 and 25 Vict. c. 18.

Duties imposed by other Acts of Parliament.—Since the Board of Supervision was established, various duties not connected with the Poor Law have been imposed on it by the Nuisance Removal, the Registration, the Vaccination, and other statutes, which will be found at the end of the volume.

THE PAROCHIAL BOARD.

I. Constitution of Parochial Boards.

1. *Burghal Parishes.*
   - Electors.
   - Mode of Election.
2. *Parishes not Burghal.*
   - Heritors.
   - Electors.
3. *Disputed Elections.*

II. Business of the Board.

1. *Applications for Relief.*
2. *Property and its Administration.*
   1. Mortifications.
   2. Kirk-session Funds.
   3. Statutory Penalties.
3. *Investment of Funds.*

III. Poorhouses.

1. *Agreements by Parishes to build.*
2. *Boarding of Paupers of other Parishes.*
3. *Cost of Erection—Power to Borrow.*
4. *Regulation of Poorhouses.*

IV. Disabilities of Members of Parochial Boards.

V. Limitation of Actions.

The imposition of assessments, and the direct regulation of the affairs of the parish, are entrusted to a parochial board, the constitution of which falls next to be explained. So long as the poor of the parish are maintained by funds obtained otherwise than by assessment, the administration remains in the parties in whom it was vested prior to the passing of the statute of 1845;

[1] Sec. 16.

but it proceeds in conformity with the provisions of that measure after the parish is assessed. The character of this body has varied greatly at different periods in the history of the law. When, by the statute 1579, c. 74, power was given 'to tax and stent the haill inhabitants in the parish, according to the estimation of their substance, without exception of persons,' the execution of the Act devolved in towns on the magistrates of burghs, and in country parishes on justices or the lords of regality, commissioned by the king. For these commissioners, there were substituted, by the Act 1592, c. 149, certain persons to be nominated by the ministers, elders, and deacons of each parish; by 1597, c. 272, and 1600, c. 19, the management was transferred to the kirk-session; and finally, by the Act 1672, c. 18 (confirmed by the proclamations of the Privy Council of 11th August 1692 and 29th August 1693), the whole management was, in country or landward parishes, entrusted to the heritors and kirk-session jointly, while in royal burghs it remained vested, as before, in the magistrates. The magistrates had the power of levying the funds, but the ordinary management of the poor was devolved on a committee of managers, chosen on no definite principle, according to the usage of each particular burgh. Previous to the decision of the Dunbar case in 1835,[1] where the parish was partly burghal and partly landward, the practice was to consider it as two distinct parishes; the burgh having the magistrates as a board of its own, for the management of the poor belonging to it, which were supported out of funds levied from the inhabitants; while the remainder of the parish was dealt with by the heritors and kirk-session, as if it were wholly landward. But by the above case it was settled, that where the parish comprehends a royal burgh and landward district, the administration should be entrusted jointly to the magistrates of the burgh, the minister and kirk-session, and the heritors of the landward part of the parish, acting as one body.[2]

The kirk-session is composed of the minister, who is *ex officio* chairman or moderator, and other persons selected for their spiritual gifts and graces, from the congregation. The number is indefinite, and rises or falls with the requirements of

[1] Mags. of Dunbar *v.* Duchess of Roxburgh, 10 April 1835, 1 S. and M'L. 134.

[2] Currie *v.* Lockhart, 1 Mar. 1841, 3 D. 799.

the parish, and sometimes also with the capacity for the office existing in the community. If there are no elders, the minister is held to represent the session. At one time this ecclesiastical body claimed the exclusive right to administer the affairs of the poor; but the Court of Session, in 1751, decided 'that the heritors have a joint right and power with the kirk-session, in the administration, management, and distribution of all and every of the funds belonging to the poor of the parish, as well collections as sums mortified for the use of the poor, and stocked out upon interest, and have a right to be present, and join with the session in their administration, distribution, and employment of such sums; without prejudice to the kirk-session to proceed in their ordinary acts of administration and application of their collections to the ordinary and incidental charities, though the heritors be not present nor attend.'[1] In practice, the 'ordinary acts of administration' referred to in the above-recited judgment, were almost uniformly left to the management of the kirk-session, without interference on the part of the heritors. Some of the leading heritors or their factors might attend the stated yearly or half-yearly meetings, when the accounts were audited, and the lists of the poor were inspected; but applications for relief were usually made either to the minister or some of his elders, and were usually decided by the kirk-session. If the decision was unduly delayed, the judge ordinary might compel the heritors and kirk-session to meet to consider the applicant's right to relief; but if the claim was rejected, his powers were at an end; and if the allowance was inadequate, he had no jurisdiction to reverse their decision.

There is no specification in any of the statutes as to who are to be considered heritors; but the principle of the older cases is, that those who are liable to pay for the poor as heritors, should have a voice in the administration of the fund. The expression includes feuars, and it was on more than one occasion found, that all are entitled to sit at the board with the minister and kirk-session who pay poor-rates in respect of either lands or houses, though they are neither entered in the cess rolls nor the books of the collector as actually paying cess.[2] The new

[1] Heritors of Humbie *v.* Minister of Humbie, 15 Feb. 1751, M. 10,555.

[2] Robertson *v.* Murdoch, 23 Feb. 1830, 8 S. 587; Toshack *v.* Smart, 1771, M. 13,134; Strathmore *v.* Kirriemuir, 1672, M. 13,128.

Act raises the qualification in assessed parishes to the possession of lands or heritages of the annual value of £20 and upwards.

It is to be observed, that where the management remains vested in a body composed of the above three different elements, it is to be viewed as one corporation, and not as three several incorporations. Therefore each member of the kirk-session is entitled to vote, and the meeting may competently act, though composed entirely of one or other of the classes named.[1] It is perhaps unnecessary to add, that the Poor Law has no concern with the formation of parishes *quoad sacra*. The only distribution of the country which it recognises, is that which has been effected for civil as well as ecclesiastical purposes.[2]

The heritors and kirk-session continue to be the administrative body in those parishes which have never resorted to a public assessment, and which are now about one hundred in number. The Act provides that, until an assessment has been imposed, the board shall, in 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; and in the case of a combination of parishes, of the several persons who, if the 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 such committees of their number as they may think proper to appoint.[3]

To the old board, as above constituted, belongs the right of determining whether the parish shall be assessed; and if assessment is resolved on, the mode in which it shall be levied (subject to the approval of the Board of Supervision). The old board continues in existence, and retains its administrative powers, till the new board is appointed.[4] After an assessment is imposed, the new board comes into operation. In its constitution the distinction is retained between parishes burghal and non-burghal.

I. *Burghal Parishes.*—In burghal parishes (*i.e.* parishes or

[1] Galloway *v.* Dalry, 22 Feb. 1810, 15 F. C. 594.
[2] Thomson, 17 Nov. 1808, F. C. See also 7 and 8 Vict. c. 44, s. 6.
[3] Secs. 17, 22.
[4] Meek *v.* The Monkland Canal Co., 14 Nov. 1856, 9 D. 55.

combinations exclusively composed of a royal burgh, or part of a royal burgh, or a burgh which sends or contributes to send a member to Parliament), the board consists of :

1. Such number of elected managers, not being more than thirty, as the Board of Supervision, having due regard to population and other circumstances, may from time to time fix, and possessing a qualification by the ownership or occupancy of lands and heritages to be fixed by the board, but in no case to exceed in annual value the sum of £50.

2. Four persons to be nominated by the magistrates of the burgh.

3. Four persons to be nominated by the kirk-session of the parish ; or, if there is a combination of parishes, to be nominated by the kirk-sessions of each parish jointly, from among their own number.

Electors.—1. Every person assessed for the support of the poor, in respect of ownership of lands and heritages ; 2. In respect of occupancy thereof. In other words, the whole ratepayers ; that is to say—

1. Owners of lands and heritages, of the annual value of

£20 and under,	possess . .	1 vote.
£20 and under £40,	„ . .	2 votes.
£40 and under £60,	„ . .	3 „
£60 and under £100,	„ . .	4 „
£100 and under £500,	„ . .	5 „
£500 and upwards,	„ . .	6 „

2. Occupants of lands and heritages have the same number of votes as an owner assessed to the same amount ; and if any person is assessed as owner as well as occupant, he is entitled to vote as well in respect of his ownership as of his occupancy.

In no case can any person have more than six votes in all ; and no one is entitled to vote who has been exempted from assessment on the ground of inability to pay, or whose rates are due and unpaid at the time of voting.[1]

Burghal parishes may be divided by the Board of Supervision into wards or divisions, each of which returns a certain number of managers. The elector must reside or possess a qualification in the ward in which he votes,—the number of

[1] Sec. 19.

votes to which he is entitled being proportioned to the value of his premises. Nor can he give in all the wards of the parish a greater number of votes than he could have had if the parish had not been divided.[1]

Where premises are the property of a married woman, her husband is entitled to vote and act in respect thereof.[2]

Joint owners and joint occupants are not entitled to vote at the election of a member of the parochial board, but any one of them who may be entered in the roll of elector thus, 'A., for himself and B.,' is entitled to vote, and has the same number of votes which he would have had if the premises had belonged to him as an individual.

Where the premises are owned or occupied by a corporation, joint-stock or other company, any member or officer thereof who may be appointed by the company or governing body, is entered in the books of the parish, by writing after his name the word 'for,' followed by the designation under which the company carries on business.

The assessment roll for the last imposed assessment, and not the valuation roll, determines the persons who are entitled to vote. The valuation roll is only conclusive of the gross value of the property; but in the assessment roll will be found the names of the actual owners and occupants at the time when it is made up. The collector is required to furnish the inspector, one day before the election, with an alphabetical list of the persons who may vote, in which the number of votes to which each is entitled is written opposite to his name. If any person whose name is not in the list, by reason of his being in arrear with his rates, claims to vote on the ground that he has paid them in the interval, his vote is taken on his producing the collector's receipt, but not otherwise. If the parish be divided into wards, the roll is made up as applicable to each ward.

Mode of Election.—The election takes place annually, the members continuing in office for one year, subject to re-election. The parochial board fix the time and place of election, of which public intimation is made in the newspapers, on the door of the parish church, and otherwise.

On the day appointed, it is the inspector's duty, as returning officer, to superintend and conduct the election. No president

[1] Sec. 20.

[2] Sec. 26.

or chairman is requisite; and if there is no contest, a single elector can make a valid election. If there is a contest, the several candidates are nominated and seconded; and if there be less than one hundred persons present, the votes are taken by the inspector or other person appointed by the parochial board to act for him. A reasonable time should be allowed for the voters to assemble, and the doors should then be locked, to prevent persons tendering votes after the roll has been called. When the calling of the roll is completed, the inspector may refuse to receive any votes which may be thereafter tendered. No one can vote for a greater number of candidates than there are vacancies, each elector being held to give all his votes for each person whom he names.

If the number of persons present exceeds one hundred, the inspector, within six days of the meeting, leaves at the premises of every elector, or sends by post to every elector who occupies no premises in the parish, a voting paper in the form issued by the Board of Supervision. These voting papers are collected on the third lawful day thereafter; and within three days from the last day on which the voting papers require to be collected, the inspector declares the result of the election. If by accident some persons have failed to receive voting papers, the circumstance does not seem to nullify the election.[1]

II. *Parishes not burghal.*—Here the board consists of—

1. *Heritors.*—(1.) The owners of lands and heritages of the yearly value of £20 and upwards; or of any agent or mandatory, appointed in writing by an heritor, who is entitled to be a member.

In the interpretation clause it is said that the word 'owner' shall apply to liferenters, tutors, curators, commissioners, trustees, wadsetters, and other persons who may be in the actual receipts of the rents and profits. But supposing a property worth say £20 a year is vested in a dozen of persons as trustees, it never could be the intention of Parliament that each of these persons should be entitled to a seat and independent vote at the parochial board, otherwise the heritors of the parish might be deprived of all legitimate influence in regulating the disposal of

[1] Campbell (Sh. Ed.), 4 P. L. Mag. 285.

the rates which they have to pay. No one of several parties so situated can be said to be individually an owner of a subject so held, but collectively they form *the* owner; and as they cannot speak and vote collectively, they do not appear entitled to sit at the board at all. Nor can they appear by a mandatory, for the privilege of granting a mandate is confined to persons who are members of the board. Nor are they entitled to vote for the elected members, as the qualification is the ownership of subjects of less value than £20. In this manner, property of greater value than £20 vested in several persons collectively is practically unrepresented.

The same remark may be made in reference to joint owners. The ownership which gives the qualification means a right of property belonging to an individual in a specific subject, not the possession of an indeterminate share (*condominium*) in a common subject (*dominium commune*). The case of joint owners is not mentioned except when the value of the property is less than £20, in which event owners may vote through one of their number. If, however, it is of greater value, they have neither a vote nor yet a seat at the board. This is a *casus improvisus* in the statute, but apparently it has not led to any inconvenience.

As in burghal parishes, husbands vote for their wives. The custom of allowing proxies at meetings of heritors for assessing poor's money, electing schoolmasters, and building or repairing kirks, was formerly found by the Court to be too inveterate to be overturned.[1] And in the Poor Law Act it is specially made competent 'for an 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.'[2] The phrase, 'any writing under his hand,' seems to mean any writing *signed* by the party. The same expression occurs in other parts of the statute, particularly in sec. 77, where two justices are required to give an order 'under their hands.' This manifestly would not be invalid, though written by their clerk and unattested by wit-

[1] Robertson *v.* Murdoch, 23 Feb. 1830, 8 S. 587. [2] Sec. 22.

nesses. In practice, the strict formalities of solemn deeds are not required for the authentication of mandates; and it would be productive of great inconvenience if a contrary interpretation were applied to this section of the statute.[1] *Delegatus non potest delegare.* The mandatory must attend personally, and his authority subsists till it is recalled.

(2.) The provost and bailies of any royal burgh in the parish who are assessed for the poor.

(3.) The members of the kirk-session of the parish. If the kirk-session consists of more than six, six members must be nominated from among their own number; no elder being entitled to act who is not assessed.

(4.) Certain members to be elected by the ratepayers, who are not otherwise entitled to act. The following is the scale according to which the number of elected members in all parishes is at present fixed:—

Population.			Elected Members.
Not exceeding	500	.....	1
500	1,500	.....	2
1,500	2,500	.....	3
2,500	3,500	.....	4
3,500	4,500	.....	5
4,500	5,500	.....	6
5,500	7,000	.....	7
7,000	8,500	.....	8
8,500	10,000	.....	9
10,000	11,500	.....	10
11,500	13,000	.....	11
13,000	14,500	.....	12
14,500	16,000	.....	13
16,000	18,000	.....	14
18,000	20,000	.....	15
20,000	22,000	.....	16
22,000	24,000	.....	17
24,000	26,000	.....	18
26,000	28,000	.....	19
28,000	30,000	.....	20
30,000	32,000	.....	21
32,000	34,000	.....	22
34,000	36,000	.....	23
36,000	38,000	.....	24
38,000	40,000	.....	25
40,000	42,000	.....	26
42,000	44,000	.....	27
44,000	46,000	.....	28
46,000	48,000	.....	29
48,000	50,000 and upwards	.....	30

2. *Electors.*—Excluding those who are already members of the board in respect of being owners of lands and heritages of the yearly value of £20, or in respect of being the provost or bailies of any royal burgh in the parish, or members of the kirk-session,—the electors in parishes not burghal are: 1. The owners of lands and heritages of less annual value than £20. These have each one vote. 2. Tenants and occupants have each the same number of votes as owners in burghal parishes; that is to say, the occupation of lands and heritages of the value of—

[1] Scudamore, M. 8599; Turnbull *v.* Smellie, 1 Mar. 1828, 6 S. 676.

£20	entitles the party to	. . .	1 vote.
£20 and under £40	„	. . .	2 votes.
£40 and under £60	„	. . .	3 „
£60 and under £100	„	. . .	4 „
£100 and under £500	„	. . .	5 „
£500 and more	„	. . .	6 „

Where any person assessed as owner is assessed also as occupier, he is entitled to vote as well in respect of occupancy as of his being owner. In no case is the number of votes to exceed six; and the party is disqualified either by exemption from payment of assessment on the ground of inability to pay, or by his assessment still remaining due.[1]

Joint owners, 'not being owners of lands and heritages of the yearly value of £20,'[2] vote through one of their number, who is entered in the roll for that purpose in the manner already explained. Corporations and companies vote in the same manner, and so also joint occupants.

The persons elected must be taken from among those who are assessed—be they occupants or owners—provided they are not owners of lands and heritages of the yearly value of £20, or the provost or bailies of any royal burgh in the parish, or members of the kirk-session, and as such members *vi statuti* of the parochial board. This representation is intended for those who otherwise would be unrepresented at the board; so a party cannot both be a member of the board, and have a vote in the election of members. A representative of joint owners, or of a corporation in the list of voters, may be elected a member, and so also the representative of joint occupants; every person qualified to vote being qualified to be elected. The procedure at elections is the same as in burghal parishes, and the rules issued by the Board of Supervision on the subject will be found in the Appendix.

Disputed Elections.—If the validity of an election is challenged, an appeal lies to the sheriff, who hears the parties, and investigates the matter in any way he thinks proper. The first step is to give notice of the challenge to the returning officer within forty-eight hours of his making the return. No written pleadings are allowed; no record is made of the proceedings; and the sheriff's judgment is not subject to review in any form

[1] Sec. 24. [2] Sec. 23.

whatever.[1] But, in spite of such provisions, however absolutely expressed, a remedy always lies in the form of an appeal to the Supreme Court, against malice, or corruption and oppression, on the part of the judge, and material deviations in point of form. Pending the inquiry before the sheriff (who is the sheriff in whose county the parish or the combination, or the greater portion of such parish or combination, may be situate), the party whose election is disputed may in the meantime take his seat at the board, and is entitled to act till the validity of his election is determined. If the returning officer is guilty of making a false return, he is liable in a penalty of £50, to be recoverable in the Court of Session by the parties aggrieved thereby.[2]

Where a party claims to act as a member of the parochial board, in the character of owner of heritage, without having the statutory qualification, the case is to be distinguished from a disputed election. The remedy is then by suspension and interdict, and the Court will prevent the intrusion, on the application of any heritor or ratepayer.[3]

Business of the Board.—1. *To consider Applications for Relief.*—The meetings of the board are presided over by a chairman, who is elected annually, and has an original as well as a casting vote. In his absence, the members present elect one of their number for the occasion, who has also a double vote. The board is required by the statute to hold at least two general meetings each year—one on the first Tuesday of February, and the other on the first Tuesday in August—'to revise and adjust the roll of paupers and their allowances;' but special and adjourned meetings are held as occasion requires, on summonses issued by the inspector of the poor or the chairman of the board,[4] the form and manner of which have been prescribed by the Board of Supervision:—

'1. In all cases of meetings in which, by the provision of the Act 8 and 9 Vict. c. 83, notice or intimation is required to be given, without prescribing the particular form of the notice, or the manner in which the same is to be given, such notice shall be given in the form and manner following:

[1] Sec. 27.
[2] Sec. 29.
[3] Gilmour *v.* Craig, etc., 18 Feb. 1852, 14 D. 521.
[4] Sec. 30.

'2. In all cases, and in whatever form the notice may be given, it shall be given ten free days before the day of the meeting.

'3. In all cases, and in whatever form the notice may be given, it shall specify the day, hour, and place of meeting, and the purpose for which the meeting is called.

'4. In all cases, such notices shall be affixed to the door of the parish church.

'5. In parishes or combinations in which the number of persons entitled to attend any meeting shall not exceed one hundred, notice is also to be given to each person by a written or printed billet; and all such billets put into the post office ten free days before the day of meeting, shall be held to have been duly delivered. But where the number of persons entitled to attend any meeting shall exceed one hundred, notice is to be given by advertisement in one or more of the newspapers which may be deemed to be most extensively circulated in your parish or combination, instead of by billet.' [1]

Committees may be appointed to act on behalf of the whole board, with the right, if necessary, to exercise all the powers belonging to the board. As these committees require to be often summoned on an emergency, the above rules as to notices do not apply to them; and only such reasonable notice need be given as may be sufficient to enable all the members to attend.

The business of the board is generally—(1) The imposition and collection of an assessment, and the administration of the parochial property; and (2) the superintendence of the poor's roll, the determination of applications by paupers for relief, and the ordering of their maintenance. In levying the assessment, they may appoint one or more collectors,—an office which may be conjoined with that of inspector.[2] The latter branch of their duty is exercised through an inspector, who is charged with the superintendence of the whole affairs of the parish. It is through this officer that the paupers make application for relief, and it falls upon him to make the necessary inquiries into the applicant's circumstances—the parish of his settlement, his ability to work, his means of support, and such other questions as affect his right to relief, and the amount to be awarded. In these inquiries, the applicant is required to give every information

[1] 1st Rep. Ap. B, No. 4.

[2] Sec. 38.

and assistance in his power which the inspector may desire; and the investigation may take place on oath before a magistrate.[1] An answer must be given to every application within twenty-four hours after it is made, either granting or refusing it, unless he is unable in so short a time to satisfy himself as to the circumstances of the pauper; in which case he may delay his decision, on condition of at once giving temporary relief. The inspector is bound to report the application, and his method of dealing with it, to the next meeting of the board, or its committee; and the responsibility of the case thereafter lies not with the inspector, but the board, who will issue to the inspector such instructions as they may think proper. Thereafter the inspector has no authority to afford the applicant further relief, except in conformity with his instructions. But this subject will be more fully considered when we come to the duties of the inspector.

In these proceedings, the duty of the parochial board is of a judicial and ministerial kind. The remedy, therefore, for any irregularity or failure in its discharge, is the same as that which is provided for a neglect of duty on the part of a magistrate or other inferior judge. This is by petition and complaint to the Court of Session. In Telford *v.* Kirk-session of Ancrum, 10 March 1826, 4 S. 554, the Court sustained as competent a petition and complaint, accusing a kirk-session of improperly delaying to give judgment on an application by a pauper for aliment. The initiative, as we have already seen, may be also taken by the Board of Supervision, which, by the 87th section, is specially empowered, 'in the event of any neglect or refusal on the part of a parochial board to do what is required of them by law, to apply by summary petition to the Court of Session, or in time of vacation to the Lord Ordinary on the Bills; and their Lordships are empowered to do therein as shall seem just and necessary.'

2. *Property of the Board, and its Administration.*—1. Mortifications. In many parishes a large revenue is obtained from sums bequeathed or mortified for the use of the poor. The term mortification was the name given to the tenure by which anciently lands were held by religious houses for pious uses; and in which the reddendo was '*preces et lacrymæ*.' Many of

[1] Sec. 70.

these grants were confiscated by the Crown at the Reformation, as being given for superstitious purposes; but lands may be still mortified for the use of the poor, or any similar benevolent purpose, to be holden by the tenures which are still in subsistence. The administration may be entrusted to particular individuals, or a particular corporation; but if the destination is general—to the 'patrons or overseers' of the poor, the fund falls to be administered by the heritors and kirk-session, like any other part of their revenue.[1] Thus, a bequest was made to the poor of the parish of Lochwinnoch of the sum of £4000, to be invested by executors in landed or government securities; and 'the interest arising therefrom to be yearly, and every year thereafter, divided amongst the poor of the said parish by the minister and elders.' It was held that the investment ought to be made in 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 parish, or any committee to be named by them, as interested in the management of the poor funds, in terms of law; particularly subject to such control in the investment, uplifting, or re-investment of the foresaid principal sum, three months' notice being always given to the said heritors or their committee of any proposed change of investment.'[2] So also, where a fund was given generally 'to the poor in the parish of Cramond,' it was held, on a claim by the executors of the testator to distribute it among a selected number of poor persons, that the fund fell to the heritors and kirk-session as the legal administrators for the poor.[3] The same rule was applied where the benefit of the fund was confined to a section of the parish.[4]

The administration of a fund mortified falls under the general law of trust. The powers of the administrators correspond to the object of the donor. The application of the fund, if bequeathed to the heritors and kirk-session or parochial board for

[1] Earl of Galloway *v.* Dalry, 22 Feb. 1810, F. C.; Heritors of Humbie *v.* Minister of Humbie, 17 Feb. 1751, M. 10,555.

[2] Smith *v.* Jaggard, 7 July 1843, 15 S. J. 579.

[3] Watson's Executors *v.* Kirk-session of Cramond, 7 June 1844, 16 S. J. 484.

[4] Cardross, 1789, referred to in Earl of Galloway *v.* Dalry, *sup.*

the benefit of '*the* poor,' is limited to those ordinary poor who are chargeable on the other parochial funds; if left to trustees, to the exclusion of the parochial board, the expression 'poor of the parish' may have a much wider signification—the testator intending to confer on his trustees the right of selecting the objects of his bounty from among a particular class—the class of persons who are truly necessitous. Thus, a bequest to 'poor of this presbytery' was held to be a bequest for the purpose of relieving poverty within the bounds of the presbytery, not for relieving the ratepayers from the duty of alimenting the legal poor. In such a case the trustees are entrusted with the discretion of deciding who shall be the particular poor persons who shall share in the testator's bounty;[1] but when the fund is given to the parish for the legal poor, the administrators have no discretion on the subject. While the fund must be preserved for the purposes of the mortification, to the effect of making it impossible for the subjects to be evicted or adjudged by creditors, the Court found, in the special circumstances of one case, where a bank came to the assistance of the managers of the poor, during a period of great scarcity, by advancing a sum equal to twice the annual revenue, that the debt should be repaid, by annual instalments, out of the rents of future years.[2]

The parochial board, as coming in place of the old administrators of the poor law, acquired right, by the 52d section of the statute, to all property whatsoever, whether heritable or moveable, which, at the time of the passing of the Act, was held for 'the use or benefit of the poor' by 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.' In such cases the heritors and kirk-session, etc., were authorized 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

[1] Presbytery of Deer *v.* Bruce, 20 Jan. 1865, 3 M'P. 402; affd. H. L., 22 Mar. 1867.

[2] The Arbroath Banking Company *v.* Stevenson, etc., 16 June 1847, 9 D. 1228.

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.

To entitle the board to this transference, it is not enough to make out that the funds stand mortified 'for the use or benefit of the poor of the parish:' they must further make out, either (1) that the funds belong to and are vested in the heritors and kirk-session of the parish; or (2) the magistrates, or magistrates and town council of a burgh; or (3) that they are vested in commissioners, trustees, or other persons, on behalf of the said heritors and kirk-session, etc. In some parishes there are funds mortified for the benefit of particular classes of poor, or for assistance of destitute persons who would not be proper objects of parochial relief; and the administration of these is frequently vested in the minister and kirk-session alone. In such cases, under the new law, the administration remains as it was. The statute only contemplates a transference from the body which it extinguished to the one created in its place, of the property held for the use or benefit of the 'legal' poor of the parish. In other words, the question is, whether the property stands in the name of the kirk-session as an independent body, vested with the trust for the purposes specified, or as representing the parish,—as, in short, legal administrators, along with the heritors, of the affairs of the poor; and the burden of proving the latter point devolves on the parochial board seeking to avail themselves of the above section.

Few cases have occurred under the above section. The first was Liddle *v.* Kirk-session of Bathgate, 14 July 1854.[1] The fund here was bequeathed 'to the minister and kirk-session of Bathgate for the time being, for the benefit and behoof of the poor *in* the said parish of Bathgate.' It was held, according to the sound construction of the 52d section, not to be claimable by the new parochial board, in respect that, although the fund had been bequeathed for the benefit of the poor *in* the parish, yet the bequest was to the poor generally; and the parties in whom it had been vested, for their benefit, were the minister and kirk-session, and not the kirk-session and heritors. The testator having seen fit to appoint as his trustees

[1] 16 D. 1075.

other persons than the parochial board, must be presumed to have had in view the establishment of a charity with a wider sweep than the ordinary poor on the poor's roll. Another case was that of Hardie *v.* The Kirk-session of Linlithgow, 15 Nov. 1855.[1] In the year 1707, certain lands in that parish, extending to thirty-five acres, were purchased by the kirk-session with certain funds, which at the time were acquired and administered as poor's funds. The titles to the property were taken in favour of an officer, who seems to have been charged with the superintendence of the poor of the parish, termed an 'eleemosynar,' and his successors in office for the time, 'for the use and behoof of the said kirk-session of Linlithgow, and poor of the said parish.' In 1808 the feudal investiture was renewed in the person of the then eleemosynary, and down to the passing of the Poor Law Act it remained unchanged. Looking to the terms of the title, a majority of their Lordships were of opinion that the trust was to be regarded, not as a trust for the proper administrators of the funds of the poor—the heritors and kirk-session—but as a trust vested in the kirk-session only. It was not, therefore, a trust to which the statute applied; and the administration of the fund was permitted to remain in the hands of the kirk-session.

The fund in question must have been invested in the heritors and kirk-session, or of trustees for the heritors and kirk-session, to be administered by them for the benefit of the parochial poor; but this does not mean that the beneficiaries of the fund should be the whole parochial poor. On the contrary, it is conceivable that the founder may have had in view only a section of a particular parish; and in such a case the parochial board are entitled to recover the fund. Thus the claim of the parochial board was sustained to a fund bequeathed in 1689 to the patrons or overseers of the poor of the parish of Cardross for the good or benefit of the poor of the parish of Cardross, to and for such of them as are betwixt the burn of Auchenfrae and the Keppoch.[2]

2. *Kirk-session Funds.*—In former times, when the duty of relieving the poor of the parish was mainly left to the kirk-sessions, the chief fund at their disposal was the church door

[1] 18 D. 37.

[2] Ferrier *v.* Dunn, 18th Jan. 1860, 3 P. L. Mag. 16.

collections. But besides the proceeds of the 'plate,' presumed to be intended for the relief of the sick and needy, the kirk-session derived a small and fluctuating income from a variety of other sources. By immemorial usage, they established for themselves the exclusive right of letting out the pall or mortcloth used in the parish.[1] If the practice was undisturbed, and they were able to accommodate the public, no one was entitled to enter into competition with them, although the privilege was sometimes claimed successfully by another corporation jointly with the kirk-session, in respect of long and uninterrupted use.[2] The fees thus derived went to the poor; but the money arising from ringing the church bells, and burying in the church, falls to be applied to the reparation of the fabric of the building,[3] and does not belong to the poor. The allowance for communion elements went to the poor when the sacrament was not administered;[4] but if the money had been paid over to the minister, an action of repetition was held not to lie.[5] Certain fees are also exacted on the proclamation of the banns of marriage, and on the occasion of celebrating the ordinance of baptism. These might either go to the session-clerk as the proper emoluments of his office, or be included in the funds of the kirk-session, the clerk in that case being paid by salary; but in either case the fees were intended as payment of the session-clerk for acting as registrar of the parish; and so, in a competition for these fees between the session-clerk and the precentor, it was found that the former must be preferred.[6] The legality of these exactions has been doubted; but it may be observed that, in an old case of the year 1765, it is stated in the pleadings that, by common and universal custom over Scotland, small sums—in some parishes more, in some less—were paid to the kirk-session on occasion of the proclamation of banns of marriage; and the exaction of such sums had been authorized by a decree of the Supreme Court between the kirk-session and Seceders of the parish of Falkirk.[7] This case has not been

[1] Kilwining, 1718; and Turnbull, 1756, M. 8013.
[2] Dumfries, 1783, M. 8018.
[3] Montrose, 1730, M. 7915.
[4] Birnie, 1678, M. 2489; Heritors of Abdie, M. 2490.
[5] Hay, 1780, M. 2492.
[6] Mags. of Elgin *v.* Kirk-session of Elgin, M. 7916.
[7] Beveridge *v.* Bayne, M. 8014.

reported; but in a recent case, Lord Rutherfurd rather favoured the legality of the fee, observing that the primary use of these proclamation dues was to maintain a register; and if there were anything over after that purpose was satisfied, it might be very well applied by the kirk-session to the other expenses bearing upon them.[1]

In former times, it was well settled that any of the heritors of the parish were entitled to call the kirk-session to account for their management of the poor's money. By the proclamation of 29th August 1693, it was declared that, 'for preventing of any question that may arise betwixt the heritors and kirk-session in the several parishes of this kingdom about the quota of the collections at the church doors, and otherwise, to be made by the said session, to be paid into the heritors for the end foresaid, we do hereby, with advice foresaid, determine the same to be half of the said collections, and ordain the said kirk-session to pay in the same from time to time to the said heritors, or any to be by them appointed accordingly.' It follows that, as regards the other half of the church door collections, and the various other sources of revenue to which we have been referring, the kirk-session were entitled to the exclusive control and administration thereof; and in one case the Court sustained as proper charges in their accounts a charge for a new tent for field-preachings, and the session-clerk's salary, but rejected various others, and ordained the balance in the defenders' hands, after deduction of what is above allowed, to be paid to the poor's box of the parish.[2] The collections referred to in the proclamation of course mean those taken at the doors of parish churches. With the affairs of other denominations of Christians the public law has nothing to do; and so the attempt of a kirk-session to seize a collection made by a body of Seceders on the occasion of a fast did not succeed.[3]

With regard to these collections, after a parish resolves upon the imposition of an assessment, the statute provides, 'That all moneys 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

[1] Kirk-session of Crieff *v.* Inspector, 9 Feb. 1854, 16 D. 511.
[2] Hamilton *v.* Cambuslang, 1752, M. 10,570.
[3] Thomson *v.* Hill, 13 June 1739, M. 8011.

each parish :[1] Provided always, that nothing herein contained shall be held to authorize 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 moneys 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.'

Under this section, the whole collections are now under the entire control of the kirk-session. In some cases the proceeds are handed over to the parochial board for disposal ; but in a great majority of instances, the sums collected are dispensed by the kirk-sessions themselves to the poor of their respective parishes. In this way a sum of about £10,000, being one-half of the whole church collections throughout the country, is annually expended on the relief of the poor. The persons, however, so assisted, are for the most part of a different class from the poor actually chargeable to the parish, being generally individuals who have fallen into temporary difficulties, or become otherwise fit objects of public charity ; but are in no true sense fit objects of parochial relief.[2]

It may be added, that in the funds raised by the kirk-session from the hire of the mortcloth, and the proclamation fees, the parochial board has now no interest ; the right to levy the dues, and administer them when levied, being untouched by the statute, which provides only for the transference of property vested in the heritors and kirk-session.[3]

3. *Statutory Penalties.*—An old statute (1621, c. 14), anent playing at cards and dice, and horse-races, forfeits to the treasurer of the kirk in Edinburgh, and the kirk-session in country parishes, for the benefit of the poor, 'where such winning fell out,' all sums above 100 merks (£5, 11s. 1⅓d.), which are won

[1] Sec. 54.

[2] See Lord J.-C. Inglis' opinion in Petrie *v.* Meek, 4 Mar. 1859, 21 D. 614.

[3] Kirk-session of Crieff *v.* Inspector of Crieff, 9 Feb. 1854, 16 D. 511.

'at carding or dycing' within the space of twenty-four hours, or as wagers upon horse-races. The Act requires magistrates of burghs, sheriffs, and justices of the peace, to 'pursue and convene' all persons winning such sums; and if they refuse to do so, they are liable in a penalty of double the winning, recoverable at the instance of the informer, who receives one-half, and the other half is given to the poor. This statute is not in desuetude. It applies to all gaming debts.[1] The right of action is now in the parochial board, as coming in room of the kirk treasurer and the heritors and kirk-session.[2] It has been remarked that this was a wise and salutary law, entitled to a liberal interpretation, not prohibiting, but confining, gaming and racing within proper bounds, and only benefiting the poor at the expense of sharpers, and so lessening the incitement to them to prey upon inconsiderate youth.[3] In one case the question arose, which parish was entitled to a bet laid at Dumfries, upon a race to be run between that town and Kirkcudbright. It was held that the expression in the Act, 'where such winninge shall happen to fall out,' entitled the poor of the parish where the bet was laid to the excess of the amount staked over the statutory sum.

The poor of the parish are also entitled to the fines imposed by different old statutes, which are now seldom, if ever, put in force: *e.g.*, penalties for resetting vagabonds, 1579, c. 74; profanation of the Sabbath, 1579, c. 70; for irregular and clandestine marriages, 1661, c. 34; 1698, c. 6; acting plays without a licence, 10 Geo. II. c. 28, etc.

Investment of Funds.—By sec. 53, all sums of money mortified or bequeathed, which shall become vested in the parochial board, and of which the annual proceeds are to be applied for behoof of the poor, are to be disposed of in one or other of the following ways, 'if not specially directed to be otherwise invested.' They must be, without delay, either (1) lodged in a chartered bank, or (2) placed at interest on Government security, or (3) on heritable security, or (4) in the stock of one or more of the chartered banks in Edinburgh. Of these investments the Board of Supervision require periodical returns.

[1] Straiton *v.* Craigmillar, 1688, M. 9506; Maxwell *v.* Blair, 1774, M. 9522.

[2] Ramsay *v.* Grant, Feb. 9, 1711, M. 10,551.

[3] Dumfries *v.* Kirk-session of Kirkcudbright and Kelton, 15 June 1775, M. 10,580.

POORHOUSES.—*Agreements by Parishes to Build.*—Before the recent statute, establishments for the reception of paupers were erected in many of the larger towns; and the expense connected with their maintenance was held to be a proper charge upon the funds.[1] These almshouses, however, differed considerably from the poorhouses of the new law. Admission was given, as an indulgence or favour, to the more deserving of the aged, infirm, or friendless poor. No system of discipline was enforced, because any impropriety was at once checked by expelling the delinquent. The new statute confers ample powers for the erection of these establishments, for the enlargement of those already in existence, and for making them more thoroughly available for the purposes of their institution. Sec. 60 declares that they are necessary '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 or improvident habits, are unable to take charge of their own affairs.' But as every pauper is both impotent and friendless, these words have no definite meaning; and therefore as regards all descriptions of persons the offer of admission to the poorhouse is a legal tender of relief. The poorhouse is especially suitable for the case of those persons whose indolence or profligacy renders it desirable that a test should be provided against the funds of the poor being devoted to the encouragement of idleness and vice. The parochial board of any parish, or combination of parishes, which contains more than 5000 inhabitants, may proceed to erect a poorhouse as soon as a resolution to that effect has been approved by the Board of Supervision.[2] Two or more contiguous parishes, with the concurrence of the Board of Supervision, may build a poorhouse for their common use;[3] but no poorhouse can be built, or any existing poorhouse enlarged or altered, until the plans have been approved by the Board of Supervision.[4]

Boarding of Paupers of other Parishes.—Although the statute nowhere directly repeals the power possessed by parochial boards under the old law of erecting lodging-houses for their paupers, the sections just referred to make it clear that no parish with less than 5000 can raise *per se* funds by assessment for the erection of a poorhouse. At the same time, they are bound to find

[1] Scott *v.* Fraser, 19 Jan. 1773, M. 10,577. [2] Sec. 60. [3] Sec. 61. [4] Sec. 63.

lodging for their paupers some way; for where lodgings cannot be procured, they do not get quit of their obligation by giving them a sum of money in lieu of the proper accommodation. Small parishes, therefore, ought either to unite and erect a poorhouse in common, or avail themselves of the provision of the statute under which the parochial boards of parishes, or combinations, in which there is a poorhouse, may receive poor persons from other parishes, charging such rates for their maintenance as may be approved by the Board of Supervision.[1] This previous approval of the Board is indispensably necessary, in order to ensure the legality of an offer of admission to the poorhouse.[2] The section contains no direct words enabling an inspector to remove a pauper to another parish; but the Court has held that he has such power, however distant may be the poorhouse in which the paupers of the parish are boarded. In short, when the Board of Supervision approve of an arrangement by one parish to accommodate the poor of another, the poorhouse of the first becomes the poorhouse of the latter. Therefore, where a parish had arranged, with the sanction of the Board of Supervision, for the reception of its poor in the poorhouse of certain united parishes which did not lie contiguous to it, and which was situated at a distance of twenty-five miles, an offer of admission to a pauper in the receipt of out-door relief was held to be a sufficient tender of relief under the statute.[3] In the same case, it was decided that an aged and infirm woman, living with a daughter, was one of those 'aged and other friendless and impotent poor' for whom the 60th section authorizes poorhouses to be provided.

Cost of Erection—Power to Borrow.—When parishes unite for the purpose of building a joint poorhouse, the expense of its erection and maintenance is apportioned in such manner as the parishes may determine; provided '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.'[4] Power is also given, for the purpose of erecting a new poorhouse, or enlarging, altering, or repairing an existing poorhouse, to borrow money

[1] Sec. 65. [2] 9th Rep. Ap. A, 3, p. 157.
[3] Watson *v.* Welsh, 26 Feb. 1853, 15 D. 448. [4] Sec. 61.

upon the security of the future assessments of the parish or combination, subject to the following conditions: (1.) The principal sum must in no case exceed three times the amount of the assessment raised during the year immediately preceding that in which the loan is contracted. (2.) The repayment must be by annual instalments, at the rate of not less every year (exclusive of interest) than one-thirtieth of the sum borrowed.[1] (3.) No further or other sum shall be borrowed or chargeable on the poor's assessment, for the aforesaid purposes, until the whole of the money last borrowed, with interest on the same, shall have been paid off.[2]

Rules for Regulation of Poorhouses.—Parochial boards may form rules and regulations for the management of the poorhouses, and the discipline and treatment of the inmates. But these are not effectual till they have received the sanction of the Board of Supervision.[3] With the view of obtaining greater efficiency and uniformity in this department of management, the Board of Supervision framed a series of rules and regulations, which (with slight modifications for a few parishes peculiarly situated) now form the existing code on this subject. According to these, the management of the poorhouse is under the immediate control of a house governor and a matron, subject to the orders of a committee of the parochial board termed the House Committee, whose duty it is to uphold and maintain the poorhouse and premises in good and substantial repair, and from time to time to remedy, without delay, any such defect in the repair of the house, its drainage, warmth, or ventilation, or in the furniture or fixtures thereof, as may tend to injure the health of the inmates. But alterations of the poorhouse or premises requiring additional building, or the removal of any building or wall, shall not be undertaken by the House Committee, except with the concurrence of the parochial board and the Board of Supervision. The House Committee purchases, from time to time, provisions, clothing, linen, bed-clothes, and every article required for the use of the poorhouse; all accounts of supplies furnished, work executed, or other expenses incurred on account of the poorhouse, being made out as against the House Committee. They also determine what poor children admitted to the poorhouse shall be boarded out, and see that such as are so boarded are placed with proper persons, that their

[1] 19 & 20 Vict. c. 117. [2] 27 & 28 Vict. c. 83, sec. 62. [3] Sec. 64.

education is properly attended to, and that they are trained to habits of industry. The House Committee also see that proper masters or employers are provided for all pauper children under the charge of the committee, who are apprenticed or sent to service, and that the chaplain and the house governor, or other person charged with that duty, continue to exercise a regular superintendence in respect to them, so long as they are chargeable to the parish.

The poorhouse should also be visited once at least in every week, by a committee of two or more members of the parochial board, called the Visiting Committee, who satisfy themselves as to the quantity and quality of the provisions issued to the inmates, and ascertain whether the house is kept clean, well ventilated, and sufficiently warm, and whether the inmates are properly attended to and accommodated.

The duties of the house governor, matron, and porter, are minutely prescribed in a series of regulations which need not be here repeated. These officials may be appointed by the General Committee of Management, appointed by the parochial board under sec. 30.

Every poor person admitted as an inmate into the poorhouse, either upon a first or any subsequent admission, is admitted by a written or printed order signed by an inspector, or by some other person duly authorized by the House Committee, or by a parochial board having a right to send poor persons to the poorhouse, to sign such order, and not otherwise. No one is admitted on any written or printed order bearing date more than three days before the day on which such order is presented at the poorhouse, unless such poor person, at the time of receiving the order, was residing at a distance of more than five miles from the poorhouse; and no poor person shall be admitted on any such order, if it bears date more than six days before the day on which it is presented at the poorhouse. The name and religious persuasion of a poor person admitted to the poorhouse, with all other particulars required to be stated, are duly entered in the register at the time of admission. He is examined by the medical officer, and if pronounced to be labouring under any disease of body or mind, is placed in the sick-ward; otherwise he is placed in the part of the poorhouse assigned to the class to which such poor person belongs.

The inmates, so far as the poorhouse admits thereof, are usually classed as follows :—

1. Males above the age of 15 years.
2. Boys above the age of 2 years, and under that of 15 years.
3. Females above the age of 15 years.
4. Females above the age of 2 years, and under that of 15 years.
5. Children under 2 years of age.

To each of these classes are assigned the apartments and yard best fitted for their reception ; and where the number of inmates and the accommodation admit thereof, the classes may be further subdivided. Each class, or subdivision of a class, is bound to remain in the part of the poorhouse assigned to them respectively, without communication with any other class, or subdivision of a class ; subject, nevertheless, to such arrangements as the House Commitee shall make with reference to the probationary wards, the infirmary or sick-ward, and the employment of nurses and helpers.

All the inmates in the poorhouse, except those disabled by sickness or infirmity, persons of unsound mind, and children, rise, are set to work, leave off work, and go to bed, at such times, and are allowed such intervals for their meals, as the House Committee shall direct. No inmate is permitted to have or consume any spirituous or fermented liquor, unless by the direction in writing of the medical officer ; nor tobacco, food, or provision, other than is allowed in the dietary, unless with the permission of the house governor or matron, subject to the directions of the House Committee. The clothing to be worn by the inmates in the poorhouse is made of such materials as the parochial board or the House Committee shall determine. The inmates of the several classes are kept employed according to their capacity and ability ; but no inmate may work on account of any party other than the parochial board or House Committee, which is entitled to appropriate, for behoof of the parish, the whole proceeds of the labour or employment of every inmate. The boys and girls who are inmates of the poorhouse are, for three or more of the working hours of every day, instructed in reading, writing, arithmetic, and the principles of the Christian religion ; and such other instruction is imparted to them as shall fit them for service or other employment, and train them to habits of

usefulness, industry, and virtue. Twenty-four hours after having intimated to the house governor a desire to be dismissed from the poorhouse, or sooner if the house governor shall think fit, any adult inmate, not a dependent of an inmate, may quit the poorhouse; but no inmate can carry away any clothes, or other article belonging to the poorhouse, without the express permission of the house governor or matron; and when he has a dependent an inmate, he must take every such dependent with him.

A properly qualified medical officer is named to attend at the poorhouse. He is bound to attend at the poorhouse daily, at such time or times as the House Committee shall fix, and also when sent for by the house governor or matron, in cases of sudden illness, accident, or other emergency, and at all such other times as the state of the sick or insane patients within the poorhouse may render necessary. In every case of sudden death or death by accident occurring in a poorhouse, the matter must be reported by the governor with all despatch to the procurator-fiscal (who now, under warrant of the sheriff, performs the functions of the English coroner in such circumstances), and the medical officer makes a special report on the subject. He may also make a *post mortem* examination at the request of the fiscal in four days, and after that date if he see fit.[1]

The religious instruction of the inmates of the poorhouse is committed to a chaplain, who must be a distinct officer from the house governor; and the following are his duties:—

1. To lecture or preach to the inmates of the poorhouse, conjoining prayer and praise every Sabbath-day.

2. To visit any sick inmate of the poorhouse from time to time, and when he may be applied to for that purpose by the house governor or matron.

3. To examine and catechize the children once in every month, or oftener; and after each of such examinations to record the same, and state the general progress of the children, in a book to be provided for that purpose by the House Committee, and which is to be laid before that committee at their next ordinary meeting.

All inmates of the poorhouse, except those who are incapacitated by sickness, infirmity, or infancy, are required to attend morning and evening prayers every day, and divine service

[1] B. of S. Circular, 28 Mar. 1866.

every Sabbath-day; and those who crave, on account of their religious principles, to be exempt from such attendance, may be engaged, during the time of divine service, in religious exercises, or in reading, or hearing read, such religious book suited to their religious persuasion as the house governor shall sanction. Any regular minister of the religious persuasion of any inmate of the poorhouse shall, at any time in the day, on the request of any inmate, be allowed by the house governor to enter the poorhouse for the purpose of affording religious assistance to such inmate, or for the purpose of instructing his child or children in the principles of his religion. It is required, however, that such assistance or instruction must be so given as not to interfere with the good order and discipline of the other inmates of the poorhouse; and such religious assistance or instruction must be strictly confined to inmates who are of the religious persuasion of such minister, and to the children of such inmates.

While the statute seems to have contemplated that the religious instruction of the inmates should be given in the poorhouse, there seems no incompetency in allowing them to leave the poorhouse on a Sunday for the purpose of attending any church or chapel which they may prefer; and the house governor, with the sanction of the House Committee, may grant the requisite permission.[1]

Misconduct on the part of the inmates is divided into cases *disorderly* and cases *refractory*.[2] For the former the house governor may punish any inmate, by requiring him, for a time not exceeding two days, to perform one or two hours of extra work each day, and by withholding for the like time all milk or butter-milk which such inmate would otherwise receive with his meals; or by deprivation of such other articles of diet, and for such time, not exceeding three days, as the House Committee, after consulting with the medical officer, shall direct. Refractory conduct is punishable by solitary confinement, with or without an increase in the time of work, and an alteration of diet, similar in kind and duration to that prescribed for disorderly inmates; but no inmate shall be so confined for a longer period than twenty-four hours; or if it be deemed fit that such inmate shall be carried before a magistrate, and twenty-four

[1] B. of S. Minute, 14 Aug. 1862.

[2] See 29 and 30 Vict. cap. 118, sec. 17.

hours shall not be sufficient for that purpose, then for such further time as may be necessary for such purpose.

The question has arisen, whether the authorities of an infirmary may require the parochial board to remove as paupers to their poorhouse patients discharged or about to be discharged from the infirmary. It is clear that no person is entitled to make application for relief in the name of another, without his consent; and therefore, when the patient is unable himself to travel to the inspector, the only competent method of proceeding is to make him fill up the schedule with which he may be furnished in the usual way, and the application will then be dealt with on its own merits.[1]

Disabilities of the Members of Parochial Boards.—In order to secure the purity of persons holding public and fiduciary situations, a rule has been established on grounds of public policy, by which they are absolutely incapable of making *qua* individuals any bargain with their co-trustees. A trustee, or an agent entrusted with an estate to sell, cannot under ordinary circumstances become himself the purchaser of the property. The interests of buyer and seller are so completely antagonistic, that, to avoid all danger to the trust, it has been made impossible for one person to be both at the same time; and the disability is so absolute, that the Court will not even inquire whether the transaction was fair and reasonable. Lord Eldon said the rule rests on the general principle, that the purchase is not permitted in any case, however honest the circumstances, the general interests of justice requiring it to be destroyed in every instance, as no court is equal to the examination and ascertainment of the truth in much the greater number of cases.[2] And in a recent case in the House of Lords, Lord Cranworth, as Lord Chancellor, laid down the doctrine thus: 'It is a rule of universal application, that no one having fiduciary duties to discharge shall be allowed to enter into engagements in which he has or can have a personal interest, conflicting, or which possibly may conflict, with the interests of those whom he is bound to protect. So strictly is this principle adhered to, that no question is allowed to be raised as to the fairness or unfairness of a contract so entered into. It may sometimes happen that the terms on

[1] B. of S. Minute, 5 Feb. 1864. [2] *Ex parte* James, 8 Ves. 337.

which a trustee has dealt, or attempted to deal, with the estate or interests of those for whom he is a trustee, have been as good as could have been obtained from any other person. They may even at the time have been better. But still, so inflexible is the rule, that no inquiry on that subject is permitted.' And it makes no difference that the party attempting to contract for his own benefit is not a sole trustee, but one of a body of trustees, *e.g.* a board of directors or a committee of management.[1]

This disability extends to all persons actively engaged in the administration of the laws relating to the poor. An inspector of the poor is expressly prohibited from selling goods to paupers, by an order of the Board of Supervision;[2] and on the same principle, members of parochial boards cannot lawfully become contractors for the supply of provisions and other articles issued to the poor.[3] But it would appear that the mere fact that a man is qualified by possession of property to be a member of the parochial board, will not debar him from entering into a contract with the board, if he does not take any part in the proceedings of the board or its committees, nor attend any of its meetings. In such a case he is a member *de jure* only, and not *de facto;* one who is entitled to act, but not bound to act. And so long as he abstains from the exercise of his functions, the principle on which the disability is established does not apply to him. An elected member, however, could not take up this position; and even in the former case, if the party chose to take his seat during the currency of the contract, the contract would thereby become void. The opinion has also been expressed by the Board of Supervision, that, in the case of a combination poorhouse, its Managing Committee may enter into contracts with members of the parochial board, who are *not* members of the Poorhouse Committee, for the supply of provisions, etc.[4] But it is extremely difficult to see the ground of this distinction, and it may be safely affirmed that no such distinction exists.[5]

[1] Aberdeen Railway Co. *v.* Blaikie Brothers, H. L. 20 July 1854, 1 Macq. 461, in C. of S. 14 D. 66; York Buildings Co. *v.* Mackenzie, 1795, 8 Bro. Par. Ca. 42.

[2] Rule, 18 Feb. 1847.

[3] B. of S. Circular, No. 2 of 1863.

[4] Board's Letter, 10 Aug. 1863.

[5] See White and Tudor's L. C. vol. i. p. 130; Paterson *v.* Portobello Town Hall Co. (Limited), 22 May 1866, 4 Mac. 726.

Limitation of Actions.—By the 86th section of the statute it is provided, 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 the cause thereof, shall be given to the defender one calendar month at least before the commencement of the action.'

It is obvious that this section does not apply to any actions which are not actions of damages, in respect of the unlawful exercise of the statutory powers. It does not exclude actions of reduction or declarator, which are only competent in the Supreme Court, or actions for the enforcement of contracts with parochial boards, which may be brought in any court. It has been held that the section does not apply to an action for salary by a dismissed official, and of declarator that the board had no power to dismiss him;[1] but it applies to an action by an official against certain members of the board, charging them with maliciously framing and publishing in their official character a report said to be slanderous against the pursuer.[2] It is true, that a thing done maliciously cannot in strictness be said to be done in the execution of the Act; but it is only to malicious and wrongful acts that the section can apply; because for things lawfully done in its execution, no action can be brought in the Sheriff Court or any court; and as regards these, therefore, no limitation was needed. The case meant to be covered is the case of a person who, while acting in the performance of his official duties, commits an act which the statute does not warrant. However wrongful the act, if it were done by him when clothed with an official character, no action can be brought in respect thereof except in the Sheriff Court, and within three months after the fact committed. Thus, where an action of damages was raised against a member of the parochial board, on the ground that, while visiting the poorhouse in his official capacity, he had maliciously, and without probable cause, given one of the inmates into custody on a charge of assault and riotous conduct in the poorhouse, it was held that the action could not be brought in the Court of Session, but should

[1] Mackay *v.* Beattie, 19 July 1860, 3 P. L. Mag. 228, 22 D. 1486.

[2] Mackay *v.* Chalmers, 5 Feb. 1858, 1 P. L. Mag. 399, 21 D. 443.

have been raised in the Sheriff Court.[1] But where the act complained of is of such a kind that the party could have no reasonable or probable cause for believing that, in doing it, he was acting in the execution of the Act,—*e.g.*, if a member of a poorhouse committee chose, of his own hand, to inflict personal chastisement on one of the inmates,—the protection would be gone, and the action might be brought at any time and in any court.[2]

A mistake committed through excusable ignorance, either in the assumption of a power which does not exist, or the illegal exercise of the authority with which the party may be vested, is something totally different from a wrong done from corruption or gross negligence. 'I shall always abide by the distinction,' says Lord Mansfield, 'between an illegal act done by a magistrate through ignorance, and an act done through the corruption of the heart.' For acts of the latter description the party is entitled to no immunity; but where he errs from *ignorance*, and his ignorance was *excusable*, he is protected. In short, the expression, 'for anything done in the execution of his office,' may be read as if it had been printed, 'for anything done *bona fide*, and under colour or supposed correct execution of his office.'[3] For example, it has been repeatedly decided, that a party suing a Justice of the Peace for damages does not get rid of the limitation by showing that the act was done without authority. To take the case out of the statute, he must show, that if the justice did suppose he was acting within his competency, he had no reasonable ground for his belief, and that it was only through the grossest recklessness that he could have fancied himself to be really clothed with an official character, or invested with the power exercised. He then acts without reasonable or probable cause. 'It would be wild work,' says an English judge, 'if a party might give himself protection by merely saying that he believed himself to be acting in pursuance of a statute. Still, protecting clauses of this sort would be useless if it were necessary that the person claiming the benefit of them should have acted quite rightly. The case to which they refer must lie between a mere foolish imagination and a perfect ob-

[1] Knox *v.* Montgomery, 7 June 1865, 8 P. L. Mag. 110, 3 Mc. 890.
[2] Knox *v.* M'Arthur, 7 June 1865, 8 P. L. Mag. 105, 3 Mc. 890.
[3] Cook *v* Leonard, 6 B. and C. 351.

servance of the statute.'[1] Thus it has been held, that a customs officer levying duties under a repealed statute was entitled to notice,[2] but not where he directed a policeman to do a thing which he knew he had no power to do himself.[3]

So as to jurisdiction irregularly exercised. An act irregularly done cannot strictly be said to be done in *pursuance* of a statute; but by pursuance is here meant the honest intention to carry it out, even though the means taken should be in violation of the Act, or contrary to law. For example, by a Burgh Police Act[4] it was provided that no action should be commenced against any person or persons for anything done in the execution of the Act after three calendar months from the time the act is committed. Two policemen, patrolling the streets on a Sunday night, apprehended a person carrying a peacock, supposing that it must have been stolen (which it was not); and the prisoner, after being kept in custody till the following night, without being brought before the magistrate, who held a court in the morning, was discharged. An action of damages having been raised after the three months, it was dismissed by the Court; for the act being obviously done in the execution of the statute, and not from the policemen being so drunk as not to know what they did, or from a desire to extort a bribe or to gratify revenge, it was no answer to say that it was a bad execution of the Act, or one done carelessly and negligently.[5] Again, as to sec. 17 of the Day Trespass Act, 2 and 3 Will. IV. c. 68, enacting that all actions and prosecutions against any person for anything done in pursuance of this Act, shall be commenced within six calendar months after the fact committed, etc.,—Lord Fullerton said: 'The fair and even necessary construction of the words is, that they denote things not done *de jure*, but *de facto*, in carrying out the statute.' The protection of this statute extends to every person concerned in obtaining or carrying out the conviction,—the prosecutor, the magistrate, the officer who took the party to jail, and every subordinate official.[6] In like manner, as to this particular section of the Poor Law Act, where a collector, in making up the roll of defaulters, entered the two partners of

[1] Per Williams, J., Caun *v.* Clipperton, 10 Ad. and E. 589.
[2] Daniel *v.* Wilson, 5 T. R. 1.
[3] Irving *v.* Wilson, 4 T. R. 485.
[4] 6 and 7 Vict. c. 99 (Glasgow).
[5] Melvin *v.* Wilson, 9 D. 1129.
[6] Russell *v.* Lang, 7 D. 919.

a firm, whose rates had not been paid, as liable each individually in one-half of the assessment, instead of charging the firm for the whole assessment, he was found protected from an action of damages in the Supreme Court, although the diligence had been found to be illegal.[1] So, where the name of a party not resident in the parish was erroneously included in the roll of persons liable for poor-rates, the inspector of the poor and various members of the parochial board were held entitled to found, in answer to an action of damages, on the clause in question.[2]

The statute says the action must be brought in the Sheriff Court, and be commenced within three calendar months after the fact committed. An action is commenced by serving the summons. In computing the three months, we exclude the day on which the cause of action arises, and the party has up to midnight of the last day of the three months in order to raise his action. Further, notice in writing of such action, and the cause thereof, must be given to the defender one calendar month at least before the commencement of the action. Here the day of giving the notice and the day of serving the summons must both be excluded. Thus, a notice posted on the 4th of July of an action raised on 4th August, was not sufficient notice. Indeed, it may be questioned whether posting is equivalent to the actual delivery of notice to the defender.[3]

If a sufficient tender is made to the party complaining of the wrong before the action is raised, he shall not recover; that is to say, he gets the money tendered, but the defender gets his expenses.

It may also be observed, that for the expenses of any actions of the above kind which may be brought against members of the parochial board, they have no right to indemnify themselves out of the parochial funds. A public functionary must stand and be shot at by paupers and other persons who choose to raise actions of damages against him, at his own risk and at his own expense. The funds administered by him cannot be applied to any purposes other than those mentioned in the statutes,—namely, the relief of the poor, and the expenses necessarily incurred in the lawful management of their affairs. On the same principle, in

[1] Ferguson *v.* M'Ewan, 7 Feb. 1852, 14 D. 457.
[2] M'Laren *v.* Steele, 13 Nov. 1857, 20 D. 48.
[3] Ferguson *v.* M'Ewan, 7 Feb. 1852, 14 D. 457.

regard to the duties imposed on the parochial board in connection with the Registration, Nuisance Removal, and other statutes, it is to be observed that all sums which the parochial board may find it requisite to provide for these purposes must be raised as the statutes direct, and separate from the assessment for the poor. The accounts should be kept distinct and separate, as the funds entrusted to the parochial board for relief of the poor, whether these are raised by assessment or otherwise, can be devoted to that purpose, and no other.[1]

THE INSPECTOR.

1. *Appointment.*
2. *Duties generally.*
3. *Administration of Relief.*
4. *As Clerk to Parochial Board.*
5. *Actions in Courts of Law.*
6. *Criminal Responsibility.*
7. *Suspension and Dismissal.*

Appointment.—The parochial board is directed in sec. 32 to appoint a fit and qualified person to be inspector of the poor in the parish. This is an officer that no parish can be without. The appointment of collectors and other functionaries is optional, but the appointment of an inspector is imperative; for the theory of his office is, that being irremoveable by the parochial board, he shall carry out the directions of the Board of Supervision, and see the law faithfully administered in his parish to the ratepayers as well as to the poor. His remuneration is fixed by the board; and its amount, with the name and address of the person nominated, must be forthwith reported to the Board of Supervision, which may annul the appointment by finding that he is unfit or incompetent to discharge the duties of the office.[2] In populous and extensive parishes, or divisions of parishes, the duties of inspecting and visiting the poor may be performed by assistant inspectors; but the duties of the office of inspector cannot be performed by two or more persons jointly.[3] In each parish and district there can be only one inspector, who is directly responsible to the Board of Super-

[1] See 11th Rep. Ap. A, No. 4, p. 4. [2] Sec. 56. [3] Sec. 55.

vision for the whole local administration. It is therefore quite incompetent for a parochial board to appoint a plurality of inspectors, with certain of the statutory duties apportioned to each. Thus, when in so large a parish as the city of Glasgow it was proposed that an additional inspector should be appointed to keep the books and accounts, and attend to correspondence, and generally do the in-door work, in order that the inspector originally appointed should be able to devote his whole time to the out-door duties of the office, the Court, on a summary petition and complaint by the Board of Supervision, found that the parochial board had no right to make such an appointment.[1]

Duties generally.—These are defined by sec. 55:

1. To preserve and be responsible for all books, writings, accounts, and other documents relating to the management or relief of the poor in the parish or division.

2. 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.

3. 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.

4. 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 residences, all the poor persons belonging to the parish or division of the parish in the 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.

5. 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.

6. He has to perform such other duties as the said boards may direct.

Administration of Relief.—1. *New Applications.*—By sec. 70 of the statute, every person legally entitled to parochial relief, must be furnished with the means of subsistence by the inspector, until the next meeting of the parochial board,

[1] The Board of Supervision *v.* The City Parish of Glasgow 1 Feb. 1850, 12 D. 627.

notwithstanding 'that he may not have a settlement in the parish or combination.' Who are legally entitled to relief will be explained hereafter; but the inspector is not at liberty to decline to entertain such an application on the ground that the parish of settlement is well known, and the pauper ought to go at once there. Supposing, for instance, a person confined in a lunatic asylum requires relief, by reason of his funds becoming exhausted, the application may be made to the parish in which the asylum is situated; and the inspector is bound to receive it, because it is for him, and not the pauper, to find out where the parish of settlement is. When the application is made, the course of procedure to be followed by the inspector has been minutely prescribed by the Board of Supervision. Inquiry must be made into the state of health, the ability to work, and the means of support of the applicant. The particulars of this inquiry will be found in the record of applications, and the relative instructions which have been issued for his guidance. To obtain the proper information, it is his duty to visit, if necessary, the home of the applicant, if situate within the parish, either personally or by an assistant inspector. The inspector is bound to return an answer to every application for relief within twenty-four hours of its being made. If, on such inquiry as he shall be able to make within that time, he be satisfied that the applicant is in a state of destitution, and a fit object for parochial relief, he is bound to make such an alimentary allowance as in the circumstances shall be reasonable, until the next meeting of the parochial board, when he makes a full report thereupon. But if, on such inquiry, he be satisfied that the applicant is not a fit object for relief, it is his duty to refuse the application, and report the refusal, with the grounds for refusing it, to the parochial board at their next meeting; or if he be unable within twenty-four hours to satisfy himself as to the true circumstances of the case, he may delay making a final answer for any period which may appear to him necessary for completing his inquiries; but in that case he is required to give such temporary relief, either in food or money, as may seem necessary, until his final answer is made to the applicant.[1]

When relief is refused, the inspector must deliver to the applicant a certificate signed by him, explaining the grounds and

[1] B. of S. Rules, 20 Oct. 1845, secs. 11, 15.

date of the refusal. Where the application is not wholly refused, but the pauper is dissatisfied with his allowance, the inspector should explain to him that the sheriff has no jurisdiction in the matter, and that his remedy is to complain to the Board of Supervision.[1] When the application has been reported to the parochial board or its committee, he has no further responsibility in the case, beyond attending to such instructions as he may receive on the subject.

When the application is sustained, the pauper's name is inscribed in a book, titled 'The Register of Poor admitted to the Roll, or relieved by order of the Parochial Board.' The inspector also records in the 'Pay Roll' the sums paid to each pauper, and the period during which relief has been given.[2] His fourth book is called the Visiting Book, in which he enters his visits to the paupers, and his observations on their conduct and condition. By statute he is bound to visit every pauper living in the parish, or within five miles of it, belonging to the parish; and, in addition, he must visit from time to time, at their dwellings, either personally or by an assistant inspector duly appointed, all paupers recently admitted to the roll, especially those with whose habits and characters he may not previously have been well acquainted, and likewise all such paupers as he may have reason to suspect of deception, or of misapplying the relief given by the parish. He reports to the parochial board, at its next meeting, all cases of misapplication by the pauper of the relief given by the parish, and should make it known to all the paupers that he is required to do so.[3]

In all cases of sickness or accident befalling persons entitled to parochial relief, and requiring immediate medical or surgical assistance, the inspector must, upon his own responsibility, take measures for procuring without delay such medical aid as can be obtained in conformity with the provisions which may have been made, and the instructions which he shall have received from the parochial board. In case of sickness or accident happening to any person in receipt of parochial relief, the inspector must, as soon as may be, and from time to time afterwards, visit the home of such poor person, and supply him with such articles as may

[1] Rules, 14 Oct. 1856.
[2] Rules, 20 Oct. 1845.
[3] Rules, 20 Oct. 1845, secs. 12, 14.

seem necessary, until the case shall have been reported at the next meeting of the parochial board.[1]

The procedure in regard to the care and custody of lunatics is explained hereafter.

The parish which first admits the claim of a pauper is bound to support him until the parish of settlement be ascertained. If he has applied to A and been refused, and then goes to B, where he is admitted, B has no claim against A on the ground that the party was a proper object of relief, and should have been alimented. When refused by A, he should have applied to the sheriff; but having voluntarily preferred to try another inspector, he thereby transferred the burden to him, and the relieving parish must seek its relief against the parish of settlement. Each parish is independent of every other; and if refusal of relief is acquiesced in, the matter is ended so far as that particular parish is concerned.[2] But when relief is once given, there is no way of getting rid of the liability except by discovering the parish of settlement. There is, of course, no incompetency in the pauper voluntarily leaving the parish where his application has been made and granted, and transferring himself to another. He may there make a new application for relief, and the parish is in its turn bound to grant it. But the transfer, to be legal, must be *bona fide*, and entirely the act of the pauper. The inspector of the relieving parish must have nothing to do with it by way of suggestion or otherwise. Thus, where the inspector of A, having relieved a pauper for a month, bribed her to remove into the parish of B, with which she had no connection, by offering to pay her rent there, it was held he did not thereby terminate his obligation to afford relief till her settlement was established.[3] 'A pauper,' says the Lord President, 'may change her parish of her own accord; but if she says, "I would like better to go to A, or any other parish, and be supported there," and the pauper is helped out of the relieving parish for this purpose, that would not be a legal transfer of the liability, for the object of the pauper was avowedly to change the burden from the parish of original chargeability to some other parish.' A cripple wandering throughout the country begging

[1] Rules, 20 Oct. 1845, secs. 19, 20.

[2] Williamson *v.* Leslie, 17 Dec. 1850, 13 D. 335.

[3] Brown *v.* Gemmel, 29 May 1857, 13 D. 1009.

being relieved by the parish of A, it was found that it had no claim of relief against the parishes of B, C, and D, or any of them, on the ground that they had previously given relief, and should have kept her till the settlement was discovered. Such a claim is only competent when it can be shown that the pauper was fraudulently 'spirited away' for the express purpose of transferring the burden of maintaining her to another parish.[1] It is hardly necessary to add, that to fix the pauper in the parish, the application must have been made to the inspector, and the relief given out of the parochial funds. Relief given by a ratepayer would have no more legal effect than private charity.

If the person relieved does not belong to the parish, it is the inspector's duty at once to send notice to the place of his settlement, in order to preserve recourse. A system formerly prevailed, of granting passes to paupers, in order that they might beg their way home; but this is now altogether illegal.[2] After notice of chargeability is given, the ratepayers of the parish of residence are safe, and it is the duty of the inspector to attend to the pauper as if he were one of his own poor. The inspector is responsible for the care and treatment of all the persons in receipt of parochial relief who are living within his bounds, whether they belong to the parish or not; but nothing in the shape of commission or agency in performing this duty can be recovered from the parish of settlement beyond the sums actually expended in the pauper's maintenance. The parish of settlement is indeed bound to make reasonable provision for his support to the satisfaction of the relieving parish, otherwise the pauper, if not disabled by sickness or infirmity, may be sent home to them at their own expense.[3] But the relieving parish is not entitled to demand unreasonable conditions from the parish of settlement, in order that the rights of removal may emerge. It may insist that the aliment shall be paid quarterly, and shall not be doled out in small sums; but the power of removal conferred on the parish of residence is not arbitrary. It is limited to the cases mentioned in the 72d section; and therefore, where the parish of settlement does not refuse or fail to give proper security for the weekly subsistence of the pauper,

[1] Taylor *v.* Strachan, 8 Nov. 1864, 3 M'P. 34; Hay *v.* Simpson, 19 Dec. 1856, 19 D. 200.

[2] Rep., 29 Oct. 1845, p. 26.

[3] Sec. 72.

he must remain in the parish of residence, and be treated in all respects as if he were one of its own poor.[1] It has been held that the parish of settlement is liable in the expense of investigating the claim after notice under sec. 71.[2]

Where the children belonging to one parish are boarded out in another parish, it is the duty of the inspector of the first to see that they are properly cared for. The inspector of the parish in which they are boarded is in no way responsible for them, beyond communicating with their own inspector in case of any sudden emergency.[3]

Where an inspector finds a pauper living in a house so ruinous as to be dangerous, and he refuses to remove to another suitable lodging, application should be made to the sheriff for a warrant to remove him on the ground of danger to life, and that proper arrangements have been made for the pauper's accommodation.[4]

As Clerk to Parochial Board.—The inspector also acts as clerk or secretary to the parochial board; and the following rules have been issued by the Board of Supervision for his guidance in this particular :—

1. The inspector of the poor shall attend all meetings of the parochial board, and make an accurate minute of the proceedings at every meeting, and enter it in a book, and submit the same so entered to the succeeding meeting, to be confirmed by the board and authenticated by the signature of the chairman, as a true record of the proceedings of the board.

2. The inspector shall attend, if required, meetings of committees of the parochial board, and keep an accurate minute of the proceedings of such committees, in the same manner as is above directed in regard to meetings of the parochial board.

3. The inspector shall conduct the correspondence of the parochial board according to such instructions as he may receive.

4. The inspector shall keep all the accounts, and preserve and be responsible for all books, writings, letters, vouchers, and other documents relating to the business of the parochial board, and produce the same, when required, to the Board of Super-

[1] Hay *v.* Melville, 3 Feb. 1858, 30 Jur. 259. See Circulars of B. of S., 1 Oct. 1855 and 2 June 1859.

[2] Hay *v.* Murdoch, 28 Jan. 1854.

[3] Circular, 13 Aug. 1863.

[4] 16th Rep. p. 5.

vision, or to any person duly authorized by that board to receive and inspect the same.

5. The inspector shall, either when required by the chairman of the parochial board, or at his own instance, when the state of the parish business seems to require it, call special meetings of the parochial board.

6. All notices of general and special meetings shall be given by the inspector, in terms of the regulations of the Board of Supervision.

7. The inspector shall make such investigations as to all questions or matters connected with, or relating to, the administration of the laws for the relief of the poor in the parish as the Board of Supervision may require, and prepare and transmit all returns and answers relative thereto, in such manner and form as the said Board of Supervision may direct.

8. The inspector shall, from time to time, prepare such reports as to the state and management of the poor within the parish as may be required by the parochial board.[1]

The Board of Supervision have issued a series of regulations to be observed by inspectors as to keeping the books, making of returns, etc., which have been separately printed, and need not be referred to here more particularly.

It may be added, that all reports, rules, circulars, and other documents, printed or written, which are transmitted by the Board of Supervision, are included among the documents for which the inspector is responsible, in terms of the 55th section of the statute. These are the property of no one individual, but public records, of which every new inspector, upon his appointment, should be put in possession.[2] In communicating with the Board of Supervision, the Board requires inspectors to write a separate letter on each separate subject, so as to facilitate the classification of the documents in the office.[3] In corresponding with the inspectors of other parishes, every letter on any matter involving a claim against the parish must be answered within seven days after the receipt thereof, unless the inspector be prevented from so doing by some sufficient reason, the sufficiency of which shall be determined by the Board of Supervision, if applied to for that purpose. The writer is bound to transmit

[1] B. of S. Rules, 20 Oct. 1845. [2] 9th Rep. Ap. A, 5, p. 158.

[3] 10th Rep. Ap. A, 4, p. 3.

it by post, and to prepay the postage, and must also preserve evidence of the day on which it is transmitted.[1]

Actions in the Courts of Law.—Actions instituted by the parochial board, on behalf of any parish or combination, are brought in name of the inspector, who, in turn, is the proper person to be sued, when the action is directed against the board. The board has the entire direction and control of every such action; but 'all summonses, notices, diligences, decrees, or other proceedings served, or obtained, or had against any inspector of the poor, are binding on, and conclusive against, the parochial board of the parish or combination of which he is an inspector.'[2] In the event of the death, resignation, suspension, or removal of an inspector, the action is transferred, on notice given to his successor, without any action of transference.[3]

As to the inspector's duties in the removal of paupers, and prosecutions for desertion, see under Jurisdiction of Sheriffs, etc., in the chapter relating to the courts of law.

It would appear that an inspector has no power, without the special authority of his board, to refer a claim, or agree to be bound as to the future liability of the parish, by the decision of a Small Debt Court;[4] nor is the judgment obtained for prior advances in the Small Debt Court,[5] or even in the ordinary Court of the Sheriff,[6] *res judicata* on the question of a pauper's settlement.

Criminal Responsibility.—An inspector is liable to be indicted for any breach of the duties imposed on him by statute or common law, which may affect the life or health of a pauper. In one case, the libel charged 'CULPABLE HOMICIDE; as also the wicked and wilful, or wicked and culpable neglect of duty, and violation of the duties of his office, by a public officer, more particularly by an assistant inspector of the poor, especially when committed to the injury of the person or health, or to the danger of the life, of any poor person under his superintendence or charge.' The minor set forth that he had failed and neglected to inquire into the particular circumstances of M. C., an applicant for relief, and to report these circumstances to the paro-

[1] Rules, 7 Dec. 1846. [2] Sec. 57. [3] Sec. 58.
[4] Crauford *v.* Beattie, 12 May 1860, 22 D. 1064.
[5] Robertson *v.* Melville, 4 Feb. 1860, 22 D. 893.
[6] M'William *v.* M'Bride, 27 June 1865, 9 P. L. 133.

chial board, and duly to enter her name in the proper lists or registers, and to return an answer to her applications within twenty-four hours after each application for relief, or additional relief; and to visit her home 'so soon as might be after her sickness or disease first became known to him, or *with due care and attention might have become known to him*,' and from time to time thereafter; and to take measures, on his own responsibility or otherwise, for procuring medical aid without delay; and to supply her with articles which were necessary by reason of her sickness or disease, and destitution;—in consequence of which neglects, the pauper was injured in her person and health, and eventually died. The charge was found relevant.[1]

In another case, an inspector of the poor was tried under an indictment, the major of which set forth, that the wicked and culpable neglect of duty, and violation of the duties of his office, 'by a public officer, particularly by an inspector of the poor, especially when committed to the injury of the person or health, and to the danger of the life, of any poor person entitled to receive parochial relief from said inspector, and more especially when the death of such poor person is caused or accelerated thereby,' was a crime of a heinous nature, etc. In the minor, it was alleged that he wickedly and culpably failed and neglected to make 'inquiry into the circumstances of S. K., and to visit her home for that purpose, and to report the result of such inquiries to the foresaid parochial board; and failed and neglected to return an answer to the said application or applications for relief to her from the poor's funds of the said parish; and failed and neglected to make such an alimentary allowance as in the circumstances was reasonable,' etc. The charge was found proven, and he was sentenced to pay a fine of £50, or suffer one month's imprisonment.[2]

Suspension and Dismissal.—Inspectors of the poor are directly responsible to the Board of Supervision, which has the sole right to dismiss, suspend, or otherwise take cognizance of neglect in the discharge of their duties, or incompetence for their performance. No parochial board can dismiss an inspector once named; and where a parochial board attempted to do so indirectly, by

[1] Lord Advocate *v.* Hardie, Stirling Circuit, 10 April 1847, Ark. 247.

[2] Lord Advocate *v.* Main, Ayr Circuit, Caird 433. See also Lord Advocate *v.* M'Manimy, 1 July 1847, Ark. 321.

reducing the salary of the inspector considerably below the scale adopted in surrounding parishes, they received notice from the Board of Supervision, that the course proposed must not be persevered in, if it would have the effect of removing the inspector from his office.[1] Were the inspector not independent of the parochial board, the interests of the poor might often be sacrificed for those of the ratepayers, and therefore he is only removeable by the Board of Supervision, which is beyond local passions, interests, and prejudices. An assistant inspector, however, is dismissable at pleasure, or at the end of the term for which he is engaged.[2] The Board suspend or dismiss by means of a minute, which declares the office vacant, and directs the parochial board forthwith to proceed to the appointment of another inspector.[3] If the person appointed to the office of inspector is, in the opinion of the Board of Supervision, unqualified, they will refuse to confirm his appointment. He ought not to be a member of the parochial board, or governor of the poorhouse. He must be a person of good moral character; and where an inspector, dismissed some years before for immorality, was re-elected, he was not allowed to take office, even though he had borne a good character since the date of dismissal.[4] The situations which are deemed incompatible with the functions of an inspector, may be illustrated by the cases that have occurred. An inspector, who was appointed sheriff-clerk and justice of peace clerk for the district in which he was inspector, was required to resign.[5] The office ought not to be conjoined with that of procurator-fiscal for the district in which the parish is situated, or sheriff-officer; and the duties of medical officer cannot be discharged by the same person.[6] The Board has expressed its opinion of the inexpediency of permitting the office of inspector of poor to be held by any person who is a ground-officer, or who holds any similar situation under a proprietor or factor; 'and that every inspector who also holds such a situation be required to resign one or the other office, with intimation that if he should decline or fail so to do, the Board will proceed to consider the propriety of dismissing him from the office of inspector.'[7] These various disqualifications apply equally to the office of assistant

[1] 10th Rep. p. 4. [2] M'Pherson *v.* Adamson, 2 June 1858, 1 P. L. 29.
[3] Sec. 56. [4] 13th Rep. p. x. [5] 12th Rep. p. 4.
[6] 10th Rep. p. 1. [7] 9th Rep. Ap. A, 4.

inspector. But the Board will not interfere with an appointment on the ground that, through local influence, a person was elected who was less fit than other candidates.

In Highland parishes, where the people are so ignorant of English as to make it necessary to provide religious instruction in the Gaelic language, it is deemed requisite that 'the inspector should be capable of communicating with paupers and applicants for relief in that language;'[1] and where the qualifications of an inspector in this respect were disputed by different sections of the parochial board by which he was appointed, he was ordered to repair to Edinburgh for the purpose of being examined.

Inspectors and assistant inspectors of the poor are 'strictly prohibited from selling any articles whatsoever to poor persons in the receipt of parochial relief, and from deriving any profit or emolument, either directly or indirectly, from provisions or other articles supplied or sold to such poor persons.'[2]

An inspector is not entitled to divest himself of his office and its responsibilities by resignation. He remains inspector, and accountable for the manner in which his duties have been performed, till his resignation has been tendered in writing to, and accepted by, the Board of Supervision.

The accounts between an inspector and his parochial board are balanced and audited at least once every year; but a settled account may always be opened up on the allegation of any palpable error, omission, or surcharge, the *onus probandi* being of course on the party making the averment. In one case an investigation of the accounts of an inspector was allowed for the space of thirteen years, notwithstanding the existence of annual docqueted balances.[3]

It would appear that an inspector can claim no emoluments except the salary fixed by the board to which he owes his appointment.[4] In discharging the ordinary duties of the parish, he has no right to claim travelling expenses, unless this has been provided for in his original agreement. He is bound to visit, at his own cost, every pauper residing in the parish, and within five miles of any part of the parish, when

[1] 3d Rep. Ap. A, 2*b*. [2] 2d Rep. Ap. No. 5.

[3] Laing *v.* Laing, 17 July 1862, 5 P. L. 161, 34 Jur. 684; M'Laren *v.* Liddell's Trustees, 22 D. 373 and 24 D. 577.

[4] Circulars, 18 Feb. 1847, and 23 Mar. 1847.

required by the parochial board; but an opinion has been expressed, to the effect that 'on all other occasions in which he may be called upon to travel for the purpose of obtaining information connected with cases of disputed settlement, he would be entitled to charge his travelling expenses.' He may also have a claim against his board to be recompensed for duties performed outwith his proper functions. It may be added, that an inspector is not entitled to absent himself from the district over which his duties extend, without the permission of the parochial board previously obtained, or without having provided, to their satisfaction, for the performance of his duties during his absence;[1] and when he is temporarily incapacitated, it is the duty of the board to appoint some one to take his place *ad interim*.

THE COURTS OF LAW.

I. Jurisdiction of Sheriffs and Justices of the Peace.

1. *Refusal of Relief.*
2. *Disputed Elections.*
3. *Removal to England and Ireland.*
4. *Prosecutions for Desertion.*
5. *Recovery of Penalties.*

II. The Court of Session.

I. Jurisdiction of Sheriffs and Justices of the Peace. —We have already seen that a parochial board is not to be viewed as a private body, entrusted with funds for a particular purpose, and so accountable to a pauper claiming aliment, as a defender in an ordinary action for *debt*. So far as the raising and holding of their funds are concerned, they are like a parliamentary board or statutory trustees; so far as respects the administration of relief, their duty is of a judicial nature. They are a court of the first instance for the investigation and decision of all questions affecting (1) the title of a person to be enrolled among the parochial poor, and (2) the allowance which, in his particular circumstances, should be awarded. Therefore though, in the older cases, instances are to be found of sheriffs and other inferior courts entertaining

[1] See 9th Rep. p. 2.

actions against them at the instance of paupers, and decerning for the payment of a given sum, the procedure was quite irregular and incompetent. The local authorities, in determining the case of a pauper, are entrusted with a judicial duty specially requiring local knowledge and other circumstances for its proper discharge; and it was found that no court of law, other than the Supreme Court, had any right to control their proceedings.[1] The principle, excluding review of the proceedings of the heritors and kirk-session by any inferior court, necessarily embraced also the case of an invalid assessment; and in such an event, the only means of obtaining redress was by bringing the matter under the review of the Court of Session.[2]

But there were circumstances in which the judge ordinary was bound to interfere. If the heritors neglected or refused to exercise this privative jurisdiction as to whether a pauper was entitled to aliment, the sheriff might ordain them to meet and consider the claim.[3] So he was at liberty to entertain all questions regarding the right of a pauper to relief which necessarily fell within his ordinary jurisdiction in actions of a patrimonial nature. Thus, if an action were raised at the instance of a third party against the parochial board, for advances made to a pauper, the case, though necessarily depending on the right of the pauper to relief, assumed the form of an ordinary action for money resting owing, to which the board might competently be called as defenders.[4] If a dispute occurs between two parishes as to a person's settlement, it may be competently determined in the Sheriff Court; because such a case more concerns the patrimonial interests of the parishes than those of the pauper, to whom it is a matter of indifference by which he is supported.[5]

It would seem also that the sheriff is entitled to dispose of such a question, even though it arise in an action by a pauper,

[1] Paton, 20 Nov. 1772, M. 10,577; Richmond *v.* Abbey Parish of Paisley, 29 Nov. 1821, 1 S. 189.

[2] Calder *v.* Trotter, 8 June 1833, 11 S. 694; Pollok, 12 Nov. 1833, 12 S. 14.

[3] Orr *v.* Glassford, 10 July 1827, 5 S. 921 (N. E. 855),—a case which is otherwise provided for by the new law.

[4] Howie *v.* Kirk-session of Arbroath, 25 Jan. 1800, M. No. 1, Appx. Poor; Ettrick, 14 Feb. 1824, 2 S. 716.

[5] Rescobie *v.* Aberlemno, 28 Nov. 1801, M. 10,589; Coldingham, M. 10,582; Hutton, M. 10,574.

who, ignorant of the particular parish liable, brings several into the field; but this point need not now occur, as, under the new law, the parish in which a destitute person applies for relief must maintain him till the parish of settlement is ascertained. Where the aliment had been actually advanced by a parish or individual, the sheriff was entitled to give decree for the amount; but in determining a question of settlement, he had no power to control the kirk-session found liable as to the allowance which in their judgment ought to be awarded.[1]

It thus appears that, under the old law, in all matters properly pertaining to the administration of the affairs of the poor—whether these had reference to the expediency of an assessment and the rate to be imposed, or the right of a pauper to relief and the amount to be awarded—the parochial board were absolutely independent of all inferior judges. The sheriff now exercises jurisdiction under the Act of 1845 in several important particulars.

Refusal of Relief.—We have already seen, that when a pauper is refused relief, he is entitled to receive from the inspector a certificate stating his reasons. The party may then, under sec. 73, appeal to the sheriff. The certificate is the first thing which the sheriff usually calls for, because he acts as a court of appeal from the inspector, whose duty it is to make inquiry into the circumstances of the pauper in the first instance. When the refusal proceeds on the opinion of a medical man as to the state of the applicant's health, a copy of that opinion ought also to be produced. The sheriff, if satisfied that the petition shows a *prima facie* case, directs him to be relieved *ad interim*, and orders answers to be given by the inspector, setting forth his reasons of refusal. This statement the sheriff appoints to be answered, and, if necessary, directs a record to be made up and a proof led; 'provided always (says the statute), that nothing herein contained shall be construed to enable the said sheriff to determine on the adequacy of relief which may be afforded, or to interfere in respect of the amount of relief to be given in any individual case.' The procedure is regulated by the following Act of Sederunt:—

Edinburgh, 12th February 1846.—Whereas it is proper that proceedings before sheriffs under the statute 8 and 9 Vict. c.

[1] Paton and Coldingham, *supra*.

83, intituled 'An Act for the Amendment of the Laws relating to the Relief of the Poor in Scotland,' should be summary and uniform,—

The Lords of Council and Session do hereby enact and declare,—

1. That, where relief has been refused by any parish or combination to any poor person who shall have made application for relief, such poor person may apply to the sheriff of the county, without the intervention of an agent, and either verbally or in writing.

2. That the sheriff shall forthwith proceed to consider the facts stated by such poor person; and if he be of opinion, upon the facts so stated, that such poor person is not legally entitled to relief, he shall at once pronounce a deliverance to that effect.

3. That if, on the contrary, the said sheriff shall be of opinion, upon the facts so stated, that such poor person is legally entitled to relief, then he shall forthwith make an order upon the inspector of the poor, or other officer of the 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 sheriff in the same order, and to be intimated, lodge with the sheriff-clerk a statement, in writing, showing the reasons why the application of such poor person for relief was refused.

4. That it shall be sufficient intimation of such order to the said inspector or other officer, that a certified copy thereof be transmitted to him through the post office, marked on the back with the words, 'Sheriff's Office—Poor Law Intimation—immediate.' And it shall be the duty of the sheriff-clerk to make such intimation. And the sheriff-clerk shall preserve the principal order by the sheriff, and likewise enter in the Minute Book of Court the date of transmitting the copy thereof as aforesaid.

5. That if, after such intimation, the inspector or other said officer shall not, within the time appointed by the sheriff, lodge a statement, in writing, in terms of the sheriff's order, the sheriff shall forthwith, upon a certificate by the sheriff-clerk that a copy of such order was duly transmitted as aforesaid, pronounce a deliverance or judgment, definitively finding

such poor person to be legally entitled to relief, and ordaining the parish or combination instantly to proceed and determine the question of amount.

6. That where, on the other hand, the inspector or other said officer shall duly lodge his statement, in writing, in terms of the sheriff's order, the sheriff shall appoint the same to be answered; and he 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; after which he shall proceed to pronounce judgment in the cause, finding substantively such poor person to be legally either *entitled* or *not entitled* to relief; and, in the former case, ordaining the parish or combination, as before, instantly to proceed and determine the question of amount.

7. That, so long as the cause shall be in dependence before the sheriff, and after the said inspector or other officer shall have given in his statement, in writing, as aforesaid, it shall be lawful for the sheriff to resume at any time the question of interim support; and (if he shall see fit) to direct such interim support to be continued until a final judgment shall have been pronounced on the merits of the case: And it shall, on the other hand, be lawful for the sheriff (if he see fit), after the said inspector or other officer shall have given in his statement, in writing, to direct such interim support to be at any time discontinued; as well as thereafter, at any time, to ordain the same to be of new afforded, as he may see cause.

8. Finally, that the said causes, so far as such poor person applying to the sheriff is concerned, shall in all respects be conducted on the same footing—in regard to payment, in the first instance, of any dues of Court, or other fees—as if such poor person had been admitted to the benefit of the poor's roll; that is to say, such poor person shall not, in the first instance, be liable in payment either of any dues of Court, or of any dues to the clerk or officers of Court, or of fees to any agent who may have been appointed to act in his behalf, as aforesaid, except to the extent of actual outlay; but in the event of such poor person being ultimately found entitled to expenses of process, it shall be competent to such poor person to include and charge in his account of said expenses, as against the parish or

combination, all ordinary fees of Court, including clerk's dues and dues of extract, as well as fees, at the usual rate of charge, to his agent, and any officers of Court in like manner as if he had been an ordinary litigant; and on the said expenses being recovered, the amount thereof shall be accounted for by such poor person or his agent to the several parties interested. And further, in the event of such poor persons being ultimately subjected by the sheriff's judgment in expenses to the parish or combination, the expenses so awarded shall be held to include all the usual fees and dues payable, and which have been paid, by the said parish or combination, in the character of an ordinary litigant.

And the Lords APPOINT this Act to be inserted in the Books of Sederunt, and to be printed and published in common form. D. BOYLE, *I.P.D.*

To entitle the applicant to appeal to the sheriff, the relief must have been *de facto* refused. If the sheriff should be of opinion that the relief granted has been so small as to be a virtual refusal, he does not seem to have any jurisdiction to entertain the application; for the administration of the smallest dole from the parochial funds is a confession by the parochial board that the pauper has a good *title* to get something; and anything beyond that is for the determination of the Board of Supervision. Relief, however small in amount and however temporary in character, is nevertheless parochial relief, for it is sufficient to interrupt the acquisition of a settlement;[1] and, therefore, if the pauper has been treated as a casual pauper, without being placed on any roll, he is not entitled to ask the sheriff to require the inspector to place him on the permanent roll. It is very true that, by the forms issued by the Board of Supervision, an appeal regarding the amount of aliment appears only to be given to those who are registered poor, the appeal running, 'I, ——, being one of the poor on the roll of the parish of ——, complain,' etc. But in practice the board is understood to hold that every person who has *de facto* obtained relief from the inspector, must be recognised as entitled thenceforth to relief, whether he is entered on the roll of poor or not. Accordingly, where it appeared that the applicant had

[1] Johnston *v.* Black, 13 July 1859, 2 P. L. 8, 21 D. 1293.

been getting relief from the parish as a casual during the months of March, April, and May, and on the last occasion received from the inspector the sum of one shilling, with the injunction not to come back for more till the 8th of June, when her allowance would be again considered, it was held that the sheriff had no power to interfere; for practically the only difference between her and the inspector was, not the right to relief, but the amount to which she was entitled.[1]

It is, of course, no refusal of relief if the party declines to take it in the form in which it is offered. If he is told to go into the poorhouse, he must either go, or remain without relief altogether.[2] It is for the Board of Supervision to say whether, in the circumstances, the offer of admission to the poorhouse was sufficient. So, if the pauper's parish of settlement has been ascertained, and its liability admitted, the pauper is not entitled to refuse to be removed thither free of expense. It rather appears that the inspector has a compulsory power of removal; but if he declines to be removed, his right to demand aliment from the funds of that particular parish is at end.[3] Where the poorhouse is at a great distance, and the means of transport so difficult as in some Highland parishes, the inspector may not be entitled to refuse out-door relief *ad interim*. At least a pauper, refusing to go to the poorhouse, should be supported till the decision of the Board of Supervision has been given on the case.[4]

Disputed Elections.—The sheriff also determines disputes as to the validity of an election. The objector must serve a notice upon the returning officer of his intention to question the validity of the election within forty-eight hours of the time when the return is made. The sheriff has power to take evidence and call for the production of documents; and parties are heard *viva voce*, without written pleadings or a record of the proceedings. His decision is final, and not liable to appeal by suspension, advocation, reduction, or any other form of review; and he may order expenses to be paid by such parties, and in such manner as to him may seem equitable.[5]

[1] Cassels *v.* Keith, 4 July 1866, 8 P. L. 603, 4 M'P. 1025.

[2] Forsyth *v.* Nicol, 19 Jan. 1867, 5 Mc. 293; Watson *v.* Welch, 26 Feb. 1853, 15 D. 443.

[3] M'Intosh *v.* Welsh, 13 July 1860, 22 D. 1423, 3 P. L. 68.

[4] See B. of S. Minutes, 17 Nov. 1864 and 2 Mar. 1865. [5] Sec. 27.

Removal to England and Ireland.—In imposing on parochial boards the duty of alimenting a person found destitute in the parish, the statute qualified it with the power of removing him compulsorily to the parish of his settlement, if he had a settlement in Scotland, or to England, Ireland, or the Isle of Man, if he was born there, and had no such settlement. The Act 25 and 26 Vict. c. 113 now regulates the manner in which this power is exercised.

The application is made by the inspector of the poor or other officer appointed by the parochial board of the parish or combination where the poor person has become chargeable, and is addressed to the sheriff or any two justices of the peace of the county in which the parish is situated, who must see the party himself, or the person who is the head of the family proposed to be removed, and be satisfied that he is in such a state of health as not to be liable to suffer bodily or mental injury by the removal.[1]

The persons who may be removed are, any poor person who (1) was born in England, Ireland, or the Isle of Man; (2) is in the course of receiving parochial relief in any parish or combination in Scotland; and (3) who has never acquired, or if he ever acquired, is not at the date of the application in possession of, a settlement in any parish or combination in Scotland. It is immaterial that he formerly had a settlement and has now lost it; for the magistrate must deal with the pauper as he finds him when the warrant for his removal is asked.[2] Nor does the statute limit the operation of this power to the permanent poor. If casual aid has been administered, it is sufficient; for the words are general, 'who has actually become chargeable to the complaining parish or combination by himself or his family.' If the pauper has a wife and children, they are of course removeable with him. But where a native of Ireland, who was an ablebodied man, without a settlement here, married a Scotchwoman, who became lunatic, some of the judges, in deciding that the relieving parish had no claim against the woman's parish of birth *stante matrimonio*, expressed the opinion that neither the man nor his wife were removeable to Ireland under sec. 77 of the statute.[3]

[1] Secs. 1, 2. [2] Beattie *v.* Mahone, 25 Jan. 1861, 3 P. L. 353, 23 D. 412.
[3] M'Crorie *v.* Cowan, 7 Mar. 1862, 4 P. L. 421.

The warrant must contain—1. The name and reputed age of every person ordered to be removed; 2. The name of the place in England or Ireland where the magistrate shall find that the pauper was born, or last resided for the space of three years. It is to that parish to which he must be conveyed; and the master of the workhouse thereof, or of the union with which it is connected, is bound to receive him. But if there is no evidence as to the place of his birth or residence for the above period, the pauper may be removed to the port, or union, or parish, which in the judgment of the magistrate is most expedient in the circumstances.[1] 3. The warrant must also contain a statement that the examination was duly made into the state of the person's health. It is addressed to the inspector making the application, and to the guardians of the union or parish to which the pauper is to be removed, to whom a copy is posted at least twelve hours before the removal. No woman or child can be removed as a deck passenger in a steamer between October and March.

The application is signed by the inspector, and accompanied by a medical certificate to the effect that the health of the pauper is such as to admit of his removal. The magistrate is empowered to cause the pauper to be brought before him, and to examine him or any other witness on oath, touching his place of birth or last legal settlement, and to take such other measures as may be necessary for ascertaining whether he has gained a settlement in Scotland. The depositions of the pauper and the witnesses who may be examined are recorded; and, if sufficient, the warrant of removal is granted in one or other of the forms applicable to the particular case which have been prepared by the Board of Supervision.

The Board of Supervision has directed that all removals of poor persons shall be made under the authority of the sheriff;[2] but to some parochial boards it appeared that there was no reason why they should not provide for the removal of a native of England or Ireland, if he were willing to go home himself, without a magistrate's warrant, more especially as, under sec. 77 of the statute, there was an express proviso, that 'nothing herein contained should prevent any parochial board or their inspector from making arrangements for the *due and proper* removal of

[1] Secs. 2, 4, 5. [2] Circular, 25 Nov. 1858.

such poor person either by land or water, with the consent of such poor persons themselves.' The result of the removals so effected was, that the parties rarely reached their proper destination; and having no one to look after them, not unfrequently wandered back to Scotland again. The effect of 25 and 26 Vict. c. 113 is to put an end to these voluntary removals altogether. The inspector is bound to take measures to ensure that the pauper will safely reach the workhouse of the parish or union to which he belongs; and it is obvious that he does not do so by merely taking the pauper's word that he will go there.[1]

Prosecutions for Desertion.—The Act 1579, c. 74, directs that all above fourteen and below seventy years of age, who shall be taken 'wandering and misordering themselves'—idle persons, Egyptians, seers, etc.—all persons being haill and starke in body, and able to work, alleging them to have been herried or burnt, 'and all having no lawful occupation,' who can give no reckoning how they lawfully get their living, with many other descriptions of persons who no longer exist—are to be apprehended and punished. The penalties, varying in severity, are to be found in the statute quoted; the Proclamation, 11th August 1692; and the Act 1609, c. 13. In practice, the punishment of vagrancy (which may be inflicted by any sheriff, justice of the peace, or other magistrate) is a brief imprisonment, with or without security for good behaviour. The Poor Law Act brings under the operation of this old Act two classes of delinquents: (1) English and Irish paupers who return and become chargeable to the parish, after being removed to their native country; and (2) husbands deserting their wives and families, and parents refusing to maintain their illegitimate children. Both are to be deemed 'vagabonds' under the Act referred to. The former class of offenders 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.'[2]

[1] See B. of S. Circular, 15 Feb. 1866.

[2] Sec. 79.

By sec. 80, the inspector is also entitled to take proceedings against every husband or father who shall desert or neglect to maintain his wife and children, being able to do so; 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 to do so, whereby such wife or children or child shall become chargeable to the parish or combination. The offenders, it is said, '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.'

Regarding prosecutions of the above nature, the sheriffs have adopted the following regulations:—

1. That the most convenient form of prosecution, where the conclusion of the libel is restricted to imprisonment not exceeding *sixty days*, or a fine *not exceeding* £10, appears to be that prescribed for the trial of offenders summarily under the statute 9 Geo. IV. c. 29. Schedule C, annexed to that Act, prescribes the form of libel at the instance of a private party, with concurrence of the procurator-fiscal; and though by the Poor Law Amendment Act the inspector is made prosecutor, the prosecution being described as a criminal one, should be with concourse of the procurator-fiscal.

2. The Poor Law Amendment Act declares imprisonment, with or without hard labour, for such period as the sheriff shall think proper, not exceeding *two months*, to be the punishment of the offence mentioned in sec. 79; and fine or imprisonment, with or without hard labour, *at the discretion of the sheriff*, to be the punishment for the offence mentioned in sec. 80. But if the summary form above referred to be adopted in either case, of course the conclusion of the complaint must be limited to a fine not exceeding £10, or imprisonment not exceeding *sixty days*.

(*N.B.*—Two *calendar* months may exceed sixty days; and therefore the libel for any offence under either of the sections should be limited to sixty days, when imprisonment is concluded for. On the other hand, two calendar months *may* be less than sixty days, if the month

of *February* is included (not being leap year), and this must be attended to in prosecutions under sec. 79.)

3. If the conclusion of the libel under sec. 80 be for such fine or such period of imprisonment as the sheriff may think proper, the form of procedure under Act 9 Geo. IV. will not be applicable, and the proof will require to be taken down at length, and authenticated.

4. As prosecutor, the inspector must be personally present at every step of the procedure under the complaint at his instance.

5. A party accused under sec. 80, as well as under sec. 79, may be apprehended with a view to precognition and trial, and committed, the inspector being complainer, with concourse of the procurator-fiscal.

The prosecution may also now be in the form provided by the Summary Procedure Act of 1864, 27 and 28 Vict. c. 53.

Sec. 80 of the statute applies to the following persons:—

1. Every husband who deserts or neglects to maintain his wife.

2. Every father who deserts, etc., his children.

3. Every mother of an illegitimate child who deserts it.

4. Every putative father who deserts an illegitimate child, after the paternity has been admitted or otherwise established.

The prosecution requires to establish these points:—

1. That the respondent neglected to maintain his wife or child.

2. That he was able to maintain them.

3. That, in consequence of said neglect, they had become chargeable to the parish.

It will be seen that a woman is only liable when the person deserted by her is an illegitimate child. A widow or a wife living separate from her husband, who wilfully throws her children on the parish when she is well able to maintain them, cannot be prosecuted criminally under this section.

By desertion is obviously meant not a mere separation of the spouses, resulting through unforeseen circumstances in the wife being driven to seek parochial aid, but a wilful abandonment by a husband of his wife or family to the charity of the parish. Therefore, if a husband cruelly beat and ill-use his wife to such an extent as to drive her from his home, and compel her to apply for relief to prevent her from starving, he is not liable to be

punished under this section, however much he may be thought to deserve it. His answer would be conclusive, that his wife's leaving him was her own act, and he was still willing to maintain her at bed and board. The rule may operate harshly in particular circumstances, but, as Sheriff Fraser observed in a case before him in Renfrewshire, 'it would lead to very inconvenient consequences if, in every case of conjugal quarrels, the wife, being maltreated, should be entitled to leave her husband, along with her infant children, and demand relief from the parish.'[1] However uncomfortable her home—nay, however dangerous it may be for the wife to live with her husband—it is not the business of the inspector of the poor to interfere between them, unless he has positively thrust her to the street and refused to let her in again.

The expression 'able to maintain' implies that it is pecuniary and not physical ability that is meant. The offence consists in leaving his home, and squandering or spending on himself the means which ought to go to the support of the family; and the chargeability must be shown to be the direct and necessary consequence of the husband's act, the family having no other means, direct or indirect, of making a living.

When the neglect is chargeable against the putative father of an illegitimate child, it is usual not to prosecute unless there has been a decree establishing the paternity. It is doubtful if the paternity can be 'otherwise established' where it is not admitted.

In these proceedings the wife is not a competent witness. At common law, her evidence is not receivable for or against her husband in criminal or *quasi* criminal proceedings, unless when he is charged with inflicting a personal injury upon her. But in offences created by this section the injury is not done to the wife, who is alimented out of the parochial funds, but to society, which has to provide these funds.[2] The case therefore falls within the exception of the statute 16 Vict. c. 20, allowing a party or his wife to be a witness in his own cause: 'Nothing herein contained shall render any person, or the husband or wife of any person, who in any criminal proceeding is charged with the commission of any indictable offence, or any

[1] 5 P. L. p. 25.

[2] Hume, ii. p. 349; Burnett, p. 609; 2 Alison 461; Macdonald, 519.

offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, his wife or her husband.'

Recovery of Penalties.—The various penalties imposed by the Act, save the one to which, by sec. 29, a returning officer is liable for making a false return, may be recovered in a summary way before the sheriff of the county in which the offence has been committed, or of the county where the offender may be found. The complaint is made in writing, in name of the secretary of the Board of Supervision, or of an agent to be appointed by a minute of the Board. On receiving the complaint, the sheriff issues an order requiring the appearance of the party complained of; and either on his appearance or default, he may, on proof of the offence, be adjudged to pay the penalty or forfeiture incurred. Failing payment, the offender may be imprisoned for a period not exceeding three calendar months. The penalties must be prosecuted for within six months after the commission of the offence, and are to be paid over to the poor of the parish in which it was committed.[1] Ratepayers are made competent witnesses, notwithstanding the application of the penalty;[2] and any person cited as a witness before a sheriff, who fails to appear or refuses to give evidence, is liable to be fined in £5, over and above any other punishment to which he may by law be liable for every such refusal.[3] No proceeding for the recovery of penalties can be set aside for want of form, and the sheriff's judgment is not subject to review or reduction by any superior court.[4]

By sec. 86, all actions on account of anything done in the execution of the Act must be brought in the Sheriff Court and be commenced within three months after the fact committed; and notice of action is to be given to the defender one calendar month before the commencement of the action.

II. The Court of Session.—The Court of Session, as the Supreme Court of Scotland, has the inherent right of reviewing the judgments of all inferior courts, where the power has not been expressly taken away by Act of Parliament. To it, therefore, an appeal may be taken, not only against the decision of a sheriff as to a pauper's right to relief, but against

[1] Secs. 81–2. [2] Sec. 83. [3] Sec. 84. [4] Sec. 85.

the determination of a parochial board as to the adequacy of the relief granted. That the heritors and kirk-session might be controlled in their administration of the Poor Laws, was found in Higgins *v.* The Barony Parish, 9 July 1824.[1] The proper form of taking the appeal was an advocation of the heritors' judgment; but though the Court are quite competent to alter the allowance granted,[2] they frequently manifested a reluctance to interfere with the determination of the local authorities, who, from local knowledge and other circumstances, were obviously the parties best able to judge as to those who were proper objects of charity, and what was necessary to supply their wants.[3]

The course generally followed where the allowance was considered inadequate, was to remit the matter to the local board, with a direction to award such further allowance as might in the whole circumstances be deemed reasonable.[4] In this case the remit was made without effect; and on a new advocation, the Court ordained the heritors and kirk-session to pay the paupers 3s. 6d. a week.[5] Under the new law, to entitle a pauper to the judgment of the Court of Session on the sufficiency of his allowance, it is necessary that he should come into Court with a minute of the Board of Supervision, certifying that he has a just cause of action; and in virtue of this minute he is at once placed on the poor's roll.[6]

A person aggrieved by the mode in which an assessment is imposed has also an appeal to the Supreme Court, but 'to the extent and effect only of exempting himself from payment of any surcharge which may have been made upon him.'[7] There seems to be no incompetency in paying under protest, and bringing an action for repetition of the amount said to be erroneously levied; but the common form of raising the question is by a suspension of the charge for payment of the rate. In Scotland, this is the great protective remedy against all wrongful proceedings;[8] and although an assessment imposed in a

[1] 3 S. 239 (N. E. 168).
[2] Pryde or Duncan *v.* Ceres, 14 Feb. 1843, 5 D. 552.
[3] Roberts *v.* Fife, 5 Feb. 1825, 3 S. 500, N. E. 349.
[4] Halliday *v.* Balmaclellan, 11 June 1844, 6 D. 1131
[5] S. C., 16 July 1845, 7 D. 1057. [6] Sec. 75.
[7] Sec. 40. [8] Ersk. Inst. iv. 3, 20.

different manner, or for a different purpose, than is authorized by the statute, has been the subject of a reduction, the objection to this form of process is, that it is not strictly applicable to a case in which the remedy is by statute entirely personal to the individual ratepayer. The Court has got over this difficulty, by holding that under the reductive conclusions they have a discretion so to frame their decree as not to disturb the assessment as regards ratepayers who did not appear to complain;[1] but almost every important point in the law of assessment has been tried in the form of a suspension. In one case, it was said that this remedy was only competent where a point of principle is involved, the proper course being in a question of amount to pay the sum demanded, and then sue the Board to get it back.[2] This distinction has not, however, been acted on, and might, if recognised, lead to inconvenience, because a collector obtains a summary warrant for the recovery of the rates on his mere *ipse dixit*, the ratepayer not being entitled to state any objections which do not appear on the face of the proceedings. The suspension is directed against the collector or other person proceeding with the diligence, and not against the inspector.[3] In most cases of suspension the Court has made payment of the assessment in the meantime a condition of the note being passed;[4] but there is no fixed rule to that effect.[5]

The Court of Session, as coming in the place of the Privy Council, possesses all the powers once vested in that body for putting in force the statutes in relation to the poor. In the exercise of this jurisdiction, it has authority to control a parochial board in the discharge of its functions, and to take cognizance of any failure or neglect which may be brought before it by means of a petition and complaint, or by summary petition at the instance of the Board of Supervision.[6] It may also call them to account as the administrators of trusts and mortifications for behoof of the poor.

[1] Garrow *v.* Graham, 14 Dec. 1854, 17 D. 200; Archibald *v.* M'Intyre, 24 Jan. 1856, 18 D. 329.

[2] Tod *v.* Mitchell, 26 Jan. 1858, 20 D. 445.

[3] Neil *v.* Hamilton, 19 Mar. 1864, 7 P. L. 16, 2 M'P. 1081; Leys *v.* Riddell, 13 D. 630.

[4] Watson, 11 D. 1263. [5] G. P. K. and Ayr Railway, 13 D. 304

[6] Sec. 87. Board of Supervision *v.* Dull, 9 June 1855, 27 Jur. 425.

ASSESSMENT.

I. Modes of Assessment.—II. How Levied.—III. The Valuation Roll.

1. *Lands in the Occupation of the Proprietor.*
2. *What is Rent?*
3. *Improvement Expenditure.*
4. *Improvements by Tenant.*
5. *Leases of Unusual Endurance.*
6. *Shootings.*
7. *Woods.*
8. *Fishings.*
9. *Ferries.*
10. *Harbours and Docks.*
11. *Railways and Canals.*
12. *Mines.*
13. *Waterworks.*
14. *Gasworks.*
15. *Deductions for Repairs, etc.*

IV. Property Exempt.

Modes of Assessment.—Compulsory assessment was introduced by the statute 1579; but as the revenues of the kirk-session, arising from church-door collections and other sources, were in general found sufficient for the maintenance of the poor, no assessment was imposed for upwards of a century afterwards. So ample were the voluntary contributions of the people, that prior to the year 1700 there were only three parishes assessed; and down to the beginning of the present century, the number did not amount to one hundred. The mode in which the rate was levied varied considerably in different places. The statute 1579, c. 74, ratified and renewed by 1698, c. 21, authorized an assessment 'of the haill inhabitants within the parish, according to the estimation of their substance, without the exception of persons;' and this 'estimation was to be made every year, for the alteration that may be through death, or by incres or diminution of men's gudes and substance.' By the proclamation of 11th August 1692 (borrowing the rule of an obsolete Act for raising funds for the suppression of vagabonds, 1663, c. 16), the assessment was divided in two parts. In country parishes, one-half of the burthen was borne by the proprietors, according to the annual value of their lands; one-half by the tenants or

householders, according to their annual income, of which, in many cases, the rent they paid was taken as a fair and convenient criterion. In these parishes, the power of imposing the assessment was first committed to the justices of the peace, and afterwards transferred to the heritors and kirk-session. In burghs, in accordance with the proclamation 11th August 1693, the rate was levied by the magistrates upon the inhabitants generally; sometimes on the rental of property, divided between the landlord and tenant; sometimes as a direct tax on income. Rent, however, which in a parish wholly rural or wholly urban was a fair enough measure of a person's income, gave rise to great inequalities where the parish was partly the one and partly the other; because both town and country tenants would be assessed at the same rate on the same amount of rent; and a person paying £20 for a house is obviously a much richer individual than one in the occupation of a £20 farm. To remedy these inconveniences, the practice was, in some burghal and landward parishes, to have two rolls,—one for the burghal poor, under the superintendence of the magistrates, and one for the landward poor, who were provided for by the kirk-session and heritors. In other words, the town was treated as one parish, and the remainder of the parish was treated as another. This practice was corrected by the House of Lords, in the case of the Magistrates of Dunbar *v.* The Heritors,[1] where, reversing the judgment of the Court of Session, it was found that there was no authority for making a distinction between the poor of one district and the poor of another district of the same parish. The law was only conversant with parishes and burghs; and where a parish contained a royal burgh within it, the jurisdiction fell to be exercised by the magistrates, heritors, and kirk-session jointly. From the difficulty, therefore, of finding any common measure of the means and substance of the different classes in such parishes, resort was had in many cases to the original mode, notwithstanding its inconvenience, of imposing the assessment on an estimate of each person's income; but in the great majority of parishes the burden continued to be laid on heritable subjects, one-half being paid by the owner, the other by the tenant.

In framing the new Poor Law Act, considerable diversity of

[1] 11 S. 879, and H. L. 10 April 1835, 1 S. and M'L. 134.

opinion prevailed as to the right principle of assessment; but it was finally determined to give the parochial board, subject to the sanction of the Board of Supervision, the choice of the following different modes of assessment, namely,—

1. Rental without Classification.—*One-half* of the assessment might be imposed on *owners*, and *one-half* on *tenants or occupants* of all *lands and heritages* within the parish, rateably according to the *annual value* of such lands and heritages.

1*a*. Rental with Classification.—To prevent the inequalities that might arise from the rental of premises occupied for different purposes (as dwelling-houses, shops, manufactories, or in country parishes, farms) being taken as the measure of a person's income, a board which adopted the first mode of assessment was empowered by sec. 36 to distinguish lands and heritages into two or more classes, according to the purposes for which they are used or occupied, and to fix such different rates of assessment on the tenants or occupants of each class as may seem just and equitable.

2. One-half on the Rental of Owners, One-half on Income of the Inhabitants.—*One-half* of the assessment might be imposed on the *owners* of all *lands and heritages* within the parish, 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.

3. An equal Percentage on Rental and Personal Income.—The whole assessment might be imposed as *an equal percentage* upon the annual value of all *lands and heritages* within the parish, and upon the estimated *annual income of the whole inhabitants* from means and substance, other than lands and heritages situated in Great Britain and Ireland.

4. Established Usage.—The 35th section permits a parochial board of any parish in which a mode of assessment has been established by a local Act, or by usage prior to 1845, to continue to assess the parish according to that mode.

In their report to Parliament, the Poor Law Commissioners thought it not very unlikely that the second and third modes of assessment mentioned in the Act might gradually be abandoned, and the first mode, with or without qualification, adopted by all, or nearly all, the parishes in Scotland. This hope was very

soon realized. Assessment on income was condemned by the unanimous voice of the community wherever it was tried. It was not only inquisitorial, unequal, unjust; but as many persons had houses in different parishes, or their residence in one and business premises in another, it was most difficult to work, frequently involved double rating, and gave rise to numberless questions. By common consent, the second and third modes of assessment were gradually given up in the great majority of parishes; and finally, in 1861, they were entirely swept away by the 24 and 25 Vict. c. 37.

If the board resolved in favour of the continuance of an established usage, the resolution is reported to the Board of Supervision for their approval, but it takes effect at once. The sanction of the Board is not a condition precedent; but when once the resolution has been approved of, it cannot be altered or departed from till the consent of the Board of Supervision is first had and obtained. It has been decided, that if the sanction of the Board has been obtained under a misapprehension of the facts, the assessment is not thereby invalidated.[1]

How levied.—The person entrusted with the collection of the assessment may be either specially appointed for the purpose, or the duties of collector may be superadded to those of inspector, with such additional remuneration as may be fixed by the board. When a collector is specially appointed, he is the party at whose instance proceedings should be taken for the recovery of arrears, because the 57th section of the statute, authorizing inspectors to sue and be sued, does not refer to the collection of assessment.[2] When several persons are appointed joint collectors, their powers and rights must be judged *secundum subjectam materiem*,[3] as, where two persons were appointed to the situation of town-clerk, each was found entitled to exercise the full powers of the office in any business in which he acted. 'If,' said Lord Fullerton, 'two persons had the power of collecting, it might be necessary that both should grant certificates that payment had not been made, for neither could certify that it had not been made to the

[1] Croll *v.* Scottish Central Railway, 16 Mar. 1861, 3 P. L. 444, 23 D. 747.

[2] Leys *v.* Riddell, 8 Feb. 1851, 13 D. 630, 23 J. 281.

[3] Farish *v.* Mags. of Annan, 15 S. 107, H. L. 14 July 1837, 2 S. and M'L. 73.

other.' But this rule would be modified by the terms of the appointment; and therefore, where two persons received the appointment *ad interim*—one 'to attend to the details of the collection, and to act as collector; and the other to act as treasurer, and see that the cash collected was paid into the bank daily'—the Court found that it was not necessary that the diligence for recovery of arrears should be at their joint instance. For the same reason, if a suspension be raised of the diligence used for the recovery of the rates, the collector, and not the inspector, is the party to be called as respondent.[1] The collector does not hold his office *ad vitam aut culpam*. A different person may be appointed for the collection of each year's assessment, and the appointment may be always recalled for sufficient cause.[2]

The manner in which the assessment is imposed is prescribed in sec. 40 of the statute. The proceeding has two parts. First, before the expiry of one year from the date at which the first assessment was imposed, and yearly or half-yearly thereafter, the parochial board is required to fix and determine the amount of the assessment for the year or half-year then next ensuing. Secondly, they are then directed to make up a book containing the following particulars: (1) The names of the proprietors and tenants or occupants of all lands and heritages within the parish who are liable in payment of the assessment; and (2) the sums to be levied from each of such persons.

It is obvious that a considerable interval must elapse between the first and second stages of this proceeding, because by sec. 33 of the Valuation Act all assessments laid on the real rent of lands and heritages must now be assessed and levied 'according to the yearly rent or value as appearing from the valuation roll *in force* for the time.' But assuming that the assessment runs, as it generally does, from Whitsunday to Whitsunday, the valuation roll for the year will not be completed and ready for use till, it may be, the 30th of September. Sec. 40 of the statute assumes that there may be this necessary interval in making up the assessment roll. Accordingly, in the great majority of parishes the assessment is levied about the term of Martinmas for the year ending at the following Whitsunday. The practice, however, is not altogether uniform, and much

[1] Neil *v.* Hamilton, 19 Mar. 1864, 2 M'P. 1081.

[2] Shaw *v.* Meek, 27 Feb. 1862, 4 P. L. 367, 24 D. 609.

inconvenience, and indeed injustice, is the consequence. The tenant who removes at Whitsunday from a parish may have paid his assessment for the whole year up to Martinmas, and may be called upon in another parish, which imposed the assessment at Whitsunday, to pay again, on account of his new occupancy, for the half-year commencing at that term. But if all parishes imposed their assessments at or soon after Martinmas, and levied them before Whitsunday, the tenant or occupant who removed from one parish to another would escape assessment in the parish to which he removed at Whitsunday till after the following Martinmas, and would not thus be liable to a double assessment for any part of the year.[1]

When the assessment roll is completed, the first duty of the collector is to intimate to each person the amount of the sum to be levied from him, and the time when the same is payable.[2] Any error or surcharge may be brought under the notice of the board, who have power to correct it at their next or any subsequent meeting. By sec. 51, the assessment is payable at the time or times, and in the proportions, to be appointed by the parochial board. A mistake or variance in the Christian or surname or designation of any person does not avoid or affect the assessment, which, notwithstanding such mistakes, is in all cases valid and effectual against the person intended to be charged and *bona fide* liable in payment.

The assessment is recovered either by action in the Small Debt Court,[3] or in a summary form, in the same way as the land and assessed taxes. On production of a certificate by the collector that a person is in default, 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 the land and assessed taxes, and other public taxes.[4] In this last case, the duties of the sheriff are purely ministerial. The warrant is obtained as a matter of course; and if there are any good objections to the rate, other than those which appear *ex facie* of the certificate, the proper remedy is suspension in the Supreme Court. In cases of bankruptcy and insolvency, the assessment is paid out of the first proceeds of the estate, and is declared

[1] See 12th Rep. B. of S. Ap. A, 2, p. 115.
[2] Sec. 40.
[3] See Baillie *v.* Thomson, 5 P. L. 119.
[4] Sec. 88.

preferable 'to all other debts of a private nature' due by the individuals assessed.[1] The effect of this provision is, not only that a bankrupt's poor-rates shall be paid in full by the trustee; but even where a landlord, in the exercise of his right of hypothec, has used sequestration for his rent, if the tenant's assessment is unpaid, the landlord must pay it out of the funds realized by the sale of the effects.

It is to be observed that, in the collection of a rate or tax, the directions of the statute by which it is enforced must be most strictly adhered to. Observance of the rules prescribed is, says the Lord Justice-Clerk, '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 of the statute, which alone authorizes you to levy the rate.' By sec. 40, there can be no legal levy except for the special and particular sums stated in the roll, and for which individual sums each party is assessed.[2] Thus, in the case cited, a mercantile firm—John and Alexander F.—was entered as chargeable with a certain sum. The amount was not paid, and a list of defaulters was put into the hands of the collector, containing the entry, 'John and Alexander F., £2, 11s. 4d.' Thereupon the collector applied for a distress warrant, in order to recover the assessment; but, instead of doing so in the above terms, as he ought to have done, when he might have charged either brother with the full amount, he divided the sum into two halves, and claimed one from each. Accordingly, he gave up John as a defaulter for £1, 5s. 8d., and the same as to Alexander. The warrant having been put in execution, the proceeding was found to be quite illegal and incompetent; for the collector had no right to alter in a single iota the roll of assessment given to him to recover.

A person aggrieved by the assessment is not precluded from the remedy at law, in the form and on the grounds competent at the date of the Act;[3] *i.e.* he may still bring a suspension or reduction; but, to prevent the proceedings of one dissatisfied

[1] Sec. 88.

[2] Ferguson *v.* M'Ewan, 7 Feb. 1852, 14 D. 457.

[3] Sec. 40.

party from disturbing or subverting the whole assessment of the parish, as might formerly happen, the section goes on to provide that such action is only competent to the extent and effect of exempting the pursuer individually from payment of any surcharge which may have been made upon him. In such proceedings any ratepayer is entitled to demand exhibition of the assessment roll, in order to see whether he is fairly rated; and all the members of a parochial board are entitled to get access to the books, even when the affairs of the parish are entrusted to a committee.[1]

Each year's assessment should in general cover each year's necessities; but when disputes arise, and expenses are incurred, with regard to the settlement of paupers, etc., it is obvious that the principle cannot always be rigorously followed out; and the statute nowhere says that an assessment may not be imposed for the payment of past as well as current obligations. Therefore a person who had recently settled in a parish was found not entitled to resist an assessment, imposed in 1853, for payment of a debt, and for the maintenance of a lunatic, which under the old board had been accruing since 1846.[2]

It has been decided that the statute 1579, c. 83, establishing triennial prescription for certain small payments, does not apply to poor-rates. Because assessments are not demanded for some years, there is no presumption that they have been paid, and are prescribed.[3] Nor can effect be given in a suspension of a threatened charge for poor-rates, to a claim of compensation arising out of a separate debt alleged to be due by the parochial board, which is illiquid and disputed. The proper course is to pay the assessment, and raise an action against the parochial board for the counter claim.

The Valuation Roll.—Prior to the year 1854, the only valuation of the heritable property in the kingdom was what is known as the 'valued rent,' established in 1643 by an Act of the Convention of Estates, ratified after the Restoration by the statute of Charles II. The 'heritors, liferenters, titulars, and others,' were empowered to ascertain 'the just and true worth of every person or persons—their present year's rent of

[1] Wingate *v.* Meek, 21 May 1851, 13 D. 972.
[2] Archibald *v.* M'Intyre, 24 Jan. 1856, 28 J. 150.
[3] Munro *v.* Graham, 21 Nov. 1857, 20 D. 72, 30 J. 49.

the crop in the year 1643 to landward, as well of lands and teinds as of any other thing whereby yearly profit and commodity ariseth.' The valuation was to be made, 'deducting what is paid furth thereof to ministers and schoolmasters, superiors, tacksmen, liferenters, and colleges, which deduction as to liferenters, tacksmen, and superiors shall be charged upon them respectively.' The valuation was thus to be the actual rent which the landowner was entitled to draw, under deduction of all the permanent burdens then existing, namely, minister's stipend and schoolmaster's salary; and if *any* part of the rent went to the superior, or any middleman between the fiar and the cultivator of the soil, such as liferenters and the holders of leases of teinds from the titulars, the same was to be charged against these parties respectively. If estates came to be sold, the 'valued rent' might be apportioned; but as no provision was made for re-valuation, in course of time the 'valued rent' of 1643 came to be the merest shadow of the yearly worth of landed property in almost every district of the kingdom. There were thus obvious objections to its being taken as the basis of parochial rating. Not only did it not represent the actual value of real property, but there were many subjects not embraced in it at all, such as mills, manufactories, and other public works which did not exist in 1643, and which, if assessed at all, required to be assessed on a very different scale, from what was applied to the older forms of real estate.

The inconvenience came at length to be so severely felt, that a practice crept in of imposing poor-rates, not on the 'valued rent' at all, but on a rough annual estimate of the real rent; and the system, when challenged, was upheld by the Court as fair and equitable in itself, and within the discretionary powers of the parochial authorities.[1] So, when the Poor Law Act came to be passed, it was declared that the rate should be levied according to the 'real annual value,' which was thus defined by sec. 37: '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 cost of the repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages

[1] Scott *v.* Fraser, 19 Jan. 1773, M. 10,577, Hailes 522.

in their actual state, and all rates, taxes, and public charges, payable in respect of the same.' Under this section an attempt was made to have the value of lands held under lease estimated, not according to the rent actually paid by the tenant, but the sum at which they might reasonably be expected to let at the time of making the assessment. But the Court were of opinion that the rent payable under a *bona fide* lease was the truest criterion which could be obtained, and much more satisfactory than a report by valuators; for it is an estimate by parties having opposite interests—one to have the rent as high as possible, and the other to have it as low as possible.[1] The presumption was, that the value was fairly stated in the lease; and the Court intimated that they would not direct special inquiry without very strong averments of collusion between the landlord and tenant, or partiality on the part of the board.[2] At the same time, there was nothing in the Poor Law Act requiring the valuation to be made in any particular way. There might be cases in which the rent was palpably inadequate to the value, in consideration of other stipulations by the tenant; and when these were taken into account, the inadequacy disappeared. In such a case,[3] a parochial board was justified in overlooking the actual money return made by a tenant at will, and proceeding to ascertain the value of a croft by actual valuation.[4]

[1] Ainslie *v.* Turnbull, 12 July 1854, 16 D. 1043.

[2] Russell *v.* Hutchison, 28 Jan. 1857, 19 D. 326.

[3] Murray *v.* Bruce, 25 May 1852, 14 D. 791.

[4] The following facts relative to the incidence of local taxation were stated by Mr. T. G. Murray, W.S., to the committee appointed by the House of Commons on the valuation of lands and heritages in Scotland. Taking seven estates with which he was acquainted, whose gross rental, on the average of ten years, amounted to £73,375, he found the average annual burdens to be as follows:

Minister's stipend,	3 per cent.
Schoolmaster's salary,	0½ ,,
Parochial assessment,	0¾ ,,
Poor-rates,	2¼ ,,
County taxes,	2 ,,
Total,	8½ per cent.

Exclusive of assessments for building churches, manses, and schools. Repairs on farms, farm buildings, fences, and on the estates generally, amounted to 12½ per cent.; on house property it ought to be 20 per cent.

In 1854 the statute 17 and 18 Vict. c. 91 was passed, for the purpose of doing away with the former anomalous system, under which the parochial board, and the various public bodies charged with the imposition of rates for municipal and local purposes, were each required to have a valuation of their own, prepared frequently with no sufficient data, and exhibiting results of the most contradictory character. Under the authority of this Act there is now annually prepared a valuation roll, by which the poor-rate and all other public assessments leviable, or that may be levied, according to the real rent, are assessed and collected.

The valuation roll contains, in a tabulated form, the following particulars :—

1. The name or description of the subject.
2. The name of the proprietor.
3. The name of the tenant.
4. The name of the occupier.
5. The yearly rent or value.

The duty of preparing the roll is entrusted to an assessor, appointed by the magistrates for property within burghs, and by the commissioners of supply for property in counties. The officers of inland revenue having the survey of income-tax and assessed taxes in the district are eligible for the office, and in a great many cases have been appointed, as otherwise the valuation roll is not available for fixing the duties payable on real estate to the imperial revenue.[1]

The assessor in each county and burgh prepares a new roll every year, on or before the 15th August; by the 25th every person has received a copy of the entry relating to himself, unless it be a mere repetition of the entry of last year. If he has any complaint he may address the assessor on the subject, who may correct the entry before the 8th September, on which day the roll is transmitted to the town-clerk in burghs, and the clerk of supply in counties.

A party aggrieved may also appeal to the magistrates or commissioners of supply, as the case may be, who hold courts of appeal between the 10th and 15th September, and must have all appeals disposed of at latest by the 30th September.

The persons entitled to appeal are all whose names have been entered in the valuation roll of the county or burgh respec-

[1] 20 and 21 Vict. c. 58.

tively, whether as proprietors, tenants, or occupants; but the assessor is entitled to six days' notice, in writing, of the appeal, and of the amount which it is alleged should be substituted for the amount stated by the assessor.

The person appealing, or the assessor (if an officer of inland revenue), if dissatisfied with the determination of the commissioners of supply or the magistrates, is entitled to bring it under the review of the judges of the Supreme Court,—the senior Lord Ordinary and the Lord Ordinary in Exchequer causes,—upon a case stating shortly the circumstances in which the question arose, and the nature of the determination complained of.[1]

As soon as all appeals have been disposed of, and the valuation of the county or burgh completed, the roll is 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 authorize 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 authorize 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.' When authenticated, the clerk of supply or town-clerk, as the case may be, is bound to furnish without fee,[2] 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 person interested is 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 or magistrates may fix.[3]

The expression 'lands and heritages' includes—

(*a*) Lands and houses.

(*b*) Shootings, Deer forests, Fishings. } actually let.

(*c*) Woods.
Copse and underwood yielding revenue.

[1] 20 and 21 Vict. c. 58, s. 2.

[2] Lord Ormidale's opinion, see 3 P. L. 525.

[3] Sec. 12.

(*d*) Ferries.
(*e*) Piers, harbours, quays, wharfs, and docks.
(*f*) Canals.
Railways.
(*g*) Mines, minerals, and quarries actually working.
(*h*) Coalworks.
Waterworks.
Limeworks.
Brickworks.
Ironworks.
Gasworks.
(*i*) Factories.

Feu-duties are not here mentioned. It was before found, that superiors are not liable to be assessed for the erection of a church or manse;[1] and by Lord Mackenzie (Ordinary) the exemption was extended to poor-rates.[2]

In computing the annual worth of these several classes of property, account is to be taken 'of all buildings and pertinents thereof, and of all machinery fixed or attached thereto,'[3]—meaning thereby, attached as a fixture—attached in such a manner that the law would deem it to be a part of the immoveable subject with which it is connected. A person is not liable to be rated on his stock-in-trade, his furniture, or on anything that cannot properly be said to come under the denomination of real estate. The words quoted, therefore, only mean that the assessor is not to take exclusive cognizance of stone and lime, but should take into account machinery erected in such a manner, that in a question, say between landlord and tenant, it would be held in law to pass with the building. Here it is to be observed that the machinery of a mill is not necessarily moveable, because it is removeable without detriment to the building. A moveable subject becomes in law immoveable or heritable, when, in the words of Erskine, it becomes fixed and *united* to an immoveable subject for its perpetual use; or, as Lord Stair puts it, 'though it may be possibly removed, yet it is not *its use* to be so.'[4] Ac-

[1] Carstairs, M. 2333; Murray, M. 15,092; Dundas, M. 8511.
[2] North Leith, cited Dun. 97. [3] 17 and 18 Vict. c. 91, s. 42.
[4] The civil law makes those things heritable, 'quæ vel salvæ moveri nequeunt vel usus perpetui causa junguntur immobilibus, aut horum usui destinantur.'

cordingly, in a leading case, the rule was laid down that the machinery of coal-pits, and those parts of it which were joined directly or indirectly to what was attached to the ground, although capable of being removed either entire or after being taken to pieces, and also *loose* articles which, though not physically joined, were necessary for working the particular machinery, provided they were proper parts of it, and not susceptible of being applied in their existing state to the other engines of the same kind, were heritable.[1]

The expression 'lands and heritages' has been held to include mill multures, which are an heritable subject, the value of the mill being the rent paid for the use of the building by the tenant, and the dues leviable from the lands astricted or thirled to the mill, which may be received by the owner himself.[2] A prison is also included, and may be entered thus: 'Paisley Prison: proprietor, Renfrewshire Prison Board; tenant and occupier, Paisley Prison Board.'[3] Where the manufacture of kelp is carried on, the privilege of gathering the seaware cast on the shore, and of using the shore for the purpose of the manufacture, may be entered at such a sum as would be paid for it by a tenant.[4]

Lands in the Occupation of the Proprietor.—The 6th section of the Act directs that, '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 are *bona fide* let for a yearly rent, conditioned as the fair annual value therefor, 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.' Where the property is in the natural occupation of the proprietor, the correct method of valuation has given rise to much controversy. The question has never been considered by the Court of Appeal, and indeed cannot very well be raised; but the principles by which an

[1] Fisher *v.* Dixon, H. L. 26 June 1845, 4 Bell's App. 286.

[2] Campbell's case, No. 39, 1864, 4 M'P. 1132.

[3] Renfrewshire Prison Board, No. 45, 1865, 4 M'P. 1137.

[4] British Seaweed Co. 1866, No. 47, 4 M'P. 1139; Gordon's case, 1866, No. 48, 4 M'P. 1141.

assessor ought mainly to be influenced are too apt to be overlooked. In estimating the yearly worth of a subject, two views at once present themselves to the mind—its worth to the proprietor himself, and its worth to a purchaser. To ascertain the former, we require only to know how much it originally cost, and a percentage on the amount will be its annual cost to the proprietor, and its value in *his* estimation. But the price paid may have been extravagant, and a large outlay may have been incurred for the purpose of gratifying his own peculiar taste. A country mansion may have cost ten times the sum for which a more judicious person would have erected an equally useful building; or a field may have been bought at an exorbitant figure, in the expectation that in the course of time it would become valuable feuing ground. It would be manifestly unfair, that a person who has so sunk his money, should be rated on an annual percentage on the capital invested. So, too, there are many public buildings, such as hospitals or infirmaries, which have been designed with the double object of being useful public institutions, and at the same time memorials of the munificence of the founders. It would be most unreasonable and impolitic to tax such public monuments, in so far at least as they are purely monumental. To save all such questions, the Act of Parliament has fixed a standard of value, altogether irrespective of the original capital sunk in the purchase or erection of the subject. The property is to be valued at the rent at which, one year with another, it might in its actual state be reasonably expected to let from year to year. In other words, the measure of assessability is the sum which an indifferent stranger would give for the premises if they were submitted to public competition. The value is not what they cost, but what they will bring in 'their actual state,' that is to say, if continued to be applied to the uses to which they have hitherto been put. The assessor has nothing to do with the capabilities of the property. He may think that an old house, for instance, let at £10 a year, would bring £100 if converted into an inn; or that a grass park would yield £20 an acre if let as feuing ground. But with all such considerations he has nothing to do. He must deal with the subject as he finds it. Be it a dwelling-house, a church, or a mill, the question is, What is the worth of the building in that particular character, and in the locality in which it is placed? There are no doubt many descriptions of

property which would be useless, or at all events comparatively valueless, to any person save the party in possession, and which consequently could not be let at all. If Heriot's or Donaldson's Hospital were advertised to be let on lease as a boarding establishment for the education of young gentlemen, it would perhaps be difficult to find a tenant. A country house which cost £5000, possibly would not bring £50 a year if offered on lease; and the value of a mill or manufactory depends on the machinery it contains, and the briskness of the business for which it has been put up. In all such cases it is idle to speculate on what might be screwed out of the property, if applied to other purposes than its accustomed use. We can only compare it with property of a similar description, erected or applied to the same or similar purposes. In the case of the mill, for instance, we know its productive power, and we know the rent of other mills capable of the same or a greater output. Hence we may infer what rent the mill in question might bring if planted in another locality; and that sum, less a sufficient allowance for the disadvantages of situation, proximity to the market, etc., if any such exist, will represent its annual value. So, in the case of the hospital, we know what the master of a boarding school will pay per head for the accommodation of his scholars; and this, multiplied by the extent of the accommodation, is the sum at which the building ought to be entered in the valuation roll.

On the other hand, if the building is used for the purpose of carrying on a profitable business, the enhanced value thereby created cannot be excluded on the ground that it is referable to trade, or to causes which may be transitory in their operation. As is said in an English case, 'Although the profits of trade carried on by the occupier of land upon it cannot be made directly the subject of the rate assessed in respect of such occupation, and the value of the occupation alone is the proper subject, yet in that value is to be included whatever at the time forms part of it, whether permanently or not, and from whatever source derived, and therefore of course not the less so, although derived in any proportion, from the fact of the trade being so carried on upon it.'[1] Thus, a steelyard being put into a house worth about £5, by a person who received twopence a

[1] Reg. *v.* G. W. Ry. Co., 6 Q. B. 201.

ton on the goods weighed, the premises were held to be properly rated at the sum of £24.

Thus, following the simple rule of the Act of Parliament, excluding from view the original cost, and confining the comparison to buildings of the same class, or offering the same kind of accommodation, the difficulties of the subject will be found to be fewer than might at first sight appear. The system of valuing mills and manufactories by putting down a percentage on the original outlay cannot be too strongly condemned, more particularly when gentlemen's country houses are not estimated in the same way. In one case, a silk-mill at Govan, in the occupation of the owners, was estimated, on the principle stated, at £497. The proprietors appealed, contending that all heritages in the occupation of the owners should be valued on one principle, whether gentlemen's residences or public works. If (it was argued) public works in the occupation of the owners are to be valued at a certain percentage on their cost, private residences in the occupation of their owners ought all to be valued at the same percentage, because the Act does not allow two modes of valuation; and, on the other hand, if private residences are valued simply at what it is thought they would rent at from year to year, such a factory as theirs should be entered at nothing, for no one would take and fit up machinery in a factory which was to be let from year to year. The assessor very properly answered, that the objection was not that the factory was valued too high, but that other descriptions of property in the neighbourhood were valued too low. The judges, apparently dealing with the point as a jury question, on which the commissioners were entitled to exercise their own opinion, affirmed their decision, sustaining the valuation of the assessor.[1]

What is Rent? The statute says, the lease, if of the ordinary endurance of nineteen years, shall make the answer. Thus, suppose a farm is let for nineteen years at £100, and is sublet for £150, the former sum is the value which must enter the roll, and the enhanced sub-rent is lost for assessing purposes. In one case the assessor attempted to make a double entry of the same subject,—1*st*, at the rent stated in the lease, and 2*d*, at the difference between the rent and sub-rent, as to which he maintained the tenant was in the position of proprietor. But

[1] Pollok's case, 1861, 24 D. 1457.

it is hardly necessary to say that this ingenious theory was not supported, as there can be only one entry of one subject, and the lease governs in all cases where there is no grassum or other consideration.[1]

In some instances, railway companies, to encourage building along the line, give free tickets for a number of years to parties who build, and they are transferable to the tenant, who may pay a yearly sum for the ticket in addition to the rent; but in such a case the sum paid for the ticket ought not to be included in the valuation of the house.[2]

Sometimes a house is let for £19, 19s. to escape the house duty. This should be entered as the value; but when the tenant is taken bound to pay fire insurance, the assessor must add the premium to ascertain the correct value.[3] In a lease of nineteen years from Whitsunday 1850 the rent was £155; and the tenant, at his removal, was to receive £450 in respect of a dwelling-house he had recently erected. The assessor added 5 per cent. on this sum to £155, making together £177, 10s.; and the commissioners were held to be wrong in holding this to be the true value, the judges being of opinion 'that the subjects should be valued as they now exist, irrespective of the lease.'[4]

When lands such as grazings are let for the *season*, they are held to be in the occupation of the proprietor; and their proper value is the rent which, one year with another, they might probably bring if let for ordinary agricultural purposes.[5]

Where lands are let with entry at Whitsunday as to the houses and grass, and to the lands at the separation of the crop from the ground, the lease begins at Whitsunday as to the whole farm, the outgoing tenant having merely a right of access to the lands after Whitsunday to reap what he has sown.[6] The new tenant is therefore properly entered in the valuation roll as the tenant and occupier from the term of Whitsunday. If, however, he is to pay a higher rent than his predecessor, the in-

[1] Murdoch's case, 1865, No. 44, 4 M'P. 1135.
[2] Mitchell's case, 1866, No. 49, 4 M'P. 1142.
[3] Walker's case, 1862, 24 D. 1453; Hope's case, *ib.*
[4] Macpherson's case, Dec. 1859, No. 16.
[5] Maitland's case, 9 Oct. 1858, 6 P. L. 134, 20 D. 1356.
[6] Wight *v.* Earl of Hopetoun, H. L. 27 May 1864, 2 M'P. 35, aff. 1 M'P. 1097.

creased rent is not the proper value of the farm for the first year. It is the same as if a sitting tenant paid an increased rent, beginning the rise at an intervening term. Suppose, for example, one year's rent is to be, say £100, payable half-yearly, and for next year £150, the rent for the year from Whitsunday this year to Whitsunday next is plainly the mean between the two, namely (£50 + £75) £125. That is the sum actually drawn by the landlord, and is the true *bona fide* rent of the farm.[1] In like manner, when a new tenant succeeds his predecessor at Whitsunday at a higher rent, and the outgoing tenant pays his last half-year's rent at Martinmas following, the mean between the rents of the old lease and the rent under the new lease should be entered in the roll as the value of the first year's possession of the incoming tenant. The distinction seems to have been overlooked in the first case in which it was presented,[2] but it has been subsequently corrected.[3]

Improvement Expenditure.—As regards expenditure in permanent improvements during the currency of the lease, there is no doubt that the value of the subject is increased to an extent corresponding with the amount expended. If £1000 is spent on a farm worth £5000 now, and yielding £250 of rent, it should be worth £6000, and yield £300 at the end of the lease. But the question, how the increased value is to be measured, while the operation of producing it is in progress, has given rise to some difficulty. The following points, however, seem to be settled:—

1. Where lands are in the personal occupancy of the owner, the lands ought, for the purposes of the Valuation Act, to be valued according to the estimated yearly sum at which, in their actual state, they might reasonably be expected to let from year to year; and no deduction of the rent-charge payable to Government for advances under the Drainage Act (9 and 10 Vict. c. 101) ought to be made. No deduction is allowed in respect of sums borrowed and expended in improvements, or in respect of the interests of such sums, and it is obviously immaterial from what source the assistance may have been derived.

2. The lease may stipulate that the owner shall be bound to spend, or obtain on loan from Government, a sum for im-

[1] Hunter's case, 1859, 24 D. 1449. [2] Case 1.
[3] Duke of Richmond's case, 1861, 24 D. 1450.

provements, on which the tenant shall pay six and a half per cent. during the currency of the lease, in addition to the rent; or, no such provision having been inserted in the lease, the tenant may, by a subsequent agreement, have bound himself to pay the rent-charge. The rent-charge, in both cases, will be understood as paid in respect of the value of the land as enhanced by the expenditure in drainage, and the rent-charge ought to be added to the rent for the purposes of the Valuation Act.[1]

3. The owner of the land may have obtained the advance before letting the land, and may not in the lease subsequently granted have distinguished the rent-charge payable to Government, from the sum payable to himself for rent on his own account. In this case, no deduction of the rent-charge ought to be made from the rent payable to the proprietor. The rent stipulated for ought to be assumed as the fair annual value of the lands, and be deemed and taken to be the yearly rent or value of the lands, in terms of the Valuation Act.

4. The tenant, besides paying a certain sum in name of rent, may have agreed to spend a certain sum himself in building a dwelling-house, or otherwise permanently improving the property. In this case, the lease stipulates for a 'consideration other than the rent.' The assessor is therefore, from the date of the expenditure, entitled to disregard the rent as the annual value of the subjects let, and to add a sum for the annual value of the buildings or other improvements; or he may value the subjects in their actual state.[2] The sum for which interest is charged must of course be expended on improvements of a permanent description. In one case it appeared that, by the lease, the proprietor was bound to expend £1000 on fences, drains, and houses; and if not exhausted on these, the balance on lime to be laid on the farm. After the lease, it was arranged that £800 should be expended on fences, drains, and houses, and £200 on lime, and £56 of the £800 was expended on *sheep* drains. The lime was laid on the pasture as a top-dressing. It was afterwards agreed that the tenant should lay out an additional sum of £100 on houses, to be repaid by the landlord, and when repaid, which it was, the tenant was to pay interest on it. The

[1] Maxwell's case, No. 5; Dunlop's case, No. 6; 1858, 20 D. 1355.

[2] M'Culloch's case, No. 36, 1863, 1 M'P. 1196; Duke of Montrose's case, No. 37, 1863, 1 M'P. 1197.

assessor added the whole interest payable by the tenant, for the money so expended, to the rent in the lease. The appellant maintained that, as the benefit from the money expended on *sheep drains* and *lime* would be exhausted some time before the expiry of the lease, the interest for that money could not be deemed 'rent;' the benefit not being in the heritable subject, the interest could not be rent for the use of it; and it was held on appeal, that the interest on the money for sheep drains and lime was not liable, and the rest liable.[1]

The sum of six and a half per cent. usually stipulated as the return by the tenant on these improvement loans, is composed of three and a half per cent. of interest, and three per cent. as a sinking fund, which at compound interest pays off the loan in rather more than nineteen years. One may arrange for the purchase of a house from a Building Society, in consideration of an annual payment extending over a term of years. The payment may be only a little more than the sum which he would have had to pay as rent, but at the end of the term the tenant is suddenly transformed into proprietor. The six and a half per cent. thus represents both capital and interest, and consequently only a part of it should be included in the valuation. In the case of a house or estate purchased in the manner employed by Building Societies, the annual value would not be the interest paid yearly, *plus* the annual instalment contributed to capital, but the sum for which it would let; and it is difficult to see why a different rule should apply to sums expended, not indeed in purchasing the property, but, which is the same thing, making the property more valuable. However, a contrary view has been taken by the judges. In one case, a landlord agreed to give a sum for drainage of the farm, for which the tenant should pay six and a half per cent. of interest, and also to lay out a considerable sum on buildings, etc., without charge to the tenant. The proprietor got a higher rent in consequence of these stipulations. The assessor added the interest payable by the tenant, for the sum for the drainage, to the rent. The landlord maintained that only two and a half per cent. for the drainage, and one per cent. for the expenditure on the buildings, and not the whole increased rent, should be regarded as rent. The Commissioners refused the appeal in both cases,

[1] Dunlop's case, No. 6, 1858, 20 D. 1355.

thereby confirming the charge of the assessor, and the decision was held to be right.[1]

Improvements by Tenant.—The statute contemplates that the subjects assessable shall be held *in property;* and therefore erections made by a tenant without any feudal title, from which the landlord derives no benefit, and of which he cannot take possession till the end of the lease, are not entered in the valuation roll at all. The landowner is not proprietor, for they are not subject to his disposition and control, nor is the tenant, for the word proprietor is restricted to either actual feuars or to liferenters; and in the case stated, his interest in the subject will come to an end with his lease. This doctrine may be illustrated by the following case. A croft belonging to Lord Lovat was let for nineteen years at £8, 10s., the full annual value of the subjects at the time. The tenant at his own expense erected a house, which was used as a dwelling-house and a carpenter's shop. It was at first decided that, in such circumstances, the tenant was not the proprietor, and could not be entered as such, because, although the term proprietor is defined as embracing 'liferenters, fiars, etc., or *other* persons who shall actually be in the receipt of the rents and profits of such lands and heritages,' the expression applies to a party, such as a liferent proprietor, legally entitled to the possession, and not a mere tenant for a limited term. It was then attempted to enter Lord Lovat as proprietor for the sum of £14, 10s., being £8, 10s. (the amount of rent stipulated) *plus* £6, the estimated annual value of the house erected by the tenant. The assessor maintained that the house being *in esse* must belong to some one, and was actually Lord Lovat's; but his Lordship answered, that all he got for the subject was the rent at which it was *bona fide* let, and which must be held to be its fair annual value. The Commissioners reduced the valuation to £8, 10s., being the full benefit derived by the landlord; and the judges held that they were right.[2] On the same principle, a sub-tenant in possession under an arrangement with the principal tenant, to which the landlord is no party, is a mere squatter; and if he chooses to erect any buildings at his own cost, the Act makes no provision for their valuation.[3]

[1] Lockhart's case, No. 8, 1858, 6 P. L. 131.

[2] Lord Lovat's case, No. 29, 1861, 24 D. 1452.

[3] Grant's case, 1858, No. 2, 24 D. 1452.

Leases of Unusual Endurance.—In the cases of the above character, the difficulty arises from the provision that, where the lands are let on a *bona fide* lease of ordinary endurance, the rent payable by the tenant must be taken to be the fair annual value;[1] but if the term of the lease exceeds twenty-one years, the whole subjects are valued irrespective of the rent payable by the lessee, who is entered as proprietor, but is entitled to relief from the actual proprietor, and to deduction from the rent payable by him of the assessments in which the latter would have been liable, in respect of the rent receivable from the lessee. Thus, in Lord Lovat's case, had the subjects been let for more than twenty-one years, the lessee would have been entered as proprietor of premises worth £14, 10s., and might have deducted from his rent of £8, 10s. the proportion of assessments payable by the owner upon that sum.

But although, when the lease exceeds nineteen years in endurance, the lessee is to be entered as proprietor, he is only to have that character in the '*sense* of the Valuation Act;' and as that statute also provides that nothing contained therein 'shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment,' the fact of his being so entered does not render him liable in parochial burdens which properly fall on heritors and proprietors, such as an assessment imposed for rebuilding a parish church.[2] The statute authorizing the assessment fixes the persons and properties liable, and the Valuation Act merely fixes the measure of liability. The 6th section is designed to facilitate the collection of the rate, not to make the tenant liable in burdens to which only proprietors are subject. There is just one exception to this in the Poor Law. By sec. 44 of the Poor Law Act, where houses are built under long leases, the tenant and his heirs and assignees in such lease are, for the purposes of the Act, to be taken to be the owners of *such houses*.

Shootings.—In the interpretation clause of the Poor Law Act, 'lands and heritages' are said to include 'fishings,' but no mention is made of shootings; and it was for some time doubted whether a tenant of shootings could in any proper sense be regarded as a tenant of the land, seeing that he only held

[1] Sec. 6.

[2] M'Laren *v.* Clyde Navigation Trs., 17 Nov. 1865, 4 M'P. 58.

the personal privilege of walking over the ground, for the purpose of amusing himself by killing the wild animals which he might happen to find there, and which were no part of the produce of the soil. This was the view taken of a right of shooting in a case which occurred about forty years ago, in which it was held that a lease of game, although possession had been taken, was not effectual against singular successors, inasmuch as it was a mere personal privilege exercised by delegation of the owner.[1]

But in more recent cases relative to family provisions, it was settled that a shooting rent was part of the annual produce of the estate.[2] 'It was,' said Lord Campbell, 'rent received for the use and occupation of land.' Accordingly, it has now been decided that the tenant under a shooting lease is liable to be assessed for the poor in the parish where his shootings are situated, as tenant or occupant of lands and heritages within the parish.[3] The shootings are not, indeed, *separata tenementa*, but the annual value of the land is the total sum which the proprietor receives for it; that is to say, it is the grazing or agricultural rent *plus* the shooting rent. The shootings, however, require to be actually let. A proprietor may not care for sport, and may not wish to be troubled with a shooting tenant; and it would be hard to make him pay for a privilege which he does not wish to exercise. The interpretation clause of the Valuation Act therefore declares, that it applies only to 'shootings and deer forests where *actually let*.'

We have already seen, that when the lease stipulates that a sum of money is to be expended in improvements, not by the landlord, but by the tenant, it is reasonable to presume that that obligation was taken into account by the parties when the rent was fixed; and in such a case the bare rent is not the annual value. In accordance with this principle, it has been decided that where, under a lease of shootings, the tenant was taken bound to repair a shooting lodge or erect a new one, the assessor ought not to take the rent as the annual value of the subjects let, but should add a sum for the value of the buildings

[1] Pollok, Gilmour, and Co. *v.* Harvey, 5 June 1828, 6 S. 913.

[2] Macpherson *v.* Macpherson, 24 May 1839, 1 D. 794, aff. 5 Bell's App. 280; Sinclair *v.* Duffus, 24 Nov. 1842, 5 D. 174.

[3] Crauford *v.* Steuart, 6 June 1861, 3 P. L. 607, 33 Jur. 498.

erected under the obligation in the lease, the subjects being entered in the roll as 'shootings with buildings attached thereto.'[1]

Woods.—The expression 'lands and heritages' also includes 'fishings, woods, copse, and underwood, from which *revenue is actually derived.*' The question at once occurs, What is the meaning of the expression, 'woods from which revenue is actually derived?' No land is absolutely without value; and does the fact of its being covered with plantation exempt it from assessment altogether? The first case which occurred on this point was of this nature. Mr. and Mrs. Murray Dunlop of Corsock were, *inter alia*, enrolled by the assessor for 33 acres of young plantation, of from one to six years' growth, on land partly muir, partly pasture, and to a small extent arable. The woods yielded no revenue, and were not, in their existing state, capable of yielding any in the shape of rent or otherwise. The assessor valued them at what they would let as pasture or grazing land, being an average of 6s. 7d. an acre. The proprietors objected that they were worth nothing; and a kind of property appropriately set forth in the statute by its true specific denomination, but subject to a qualification, could not be classed under a more general designation, such as lands, in order to get quit of the qualification. The commissioners gave effect to this view, but the decision was held to be wrong.[2]

Suppose, again, that a tenant of a country house, surrounded by woods, has right, 1*st*, to the shooting, and 2*d*, to exclude the agricultural tenant, or any person in right of the proprietor, from pasturing the woods or cutting grass therein. In a case of this kind, it was contended that the woods had no value as pasturage; but that, in fact, the agricultural value might be held as included in the sum paid for the privilege of killing the game. The commissioners disallowed the valuation, on the ground that the proprietor had divested himself of the right to let the ground for pasturage, and the rent paid by the tenant covered the whole produce of the ground. The judges, however, held that the decision was wrong, and upheld the assessor's view, that the Act contemplates two different subjects—the value of the privilege of killing game, and the value of the woods for grazing in their natural state. Both values should

[1] Duke of Montrose's case, No. 37, 1 M'P. 1197.

[2] Dunlop's case, No. 4, 20 D. 1354.

enter the roll. The shooting rent covers no right to the use of the land or its produce, but is an accidental incident of the possession, the worth of which falls to be added to the grazing value of the lands, as in agricultural rents, where not only the rent paid by the farmer is entered, but also the rent paid for the shootings.[1]

Fishings.—It would appear that the qualifying words in the clause referred to do not apply to fishings. They apply to copse and underwood only. Fishings are therefore treated differently from shootings, which require to be 'actually let.' It is difficult to see the ground of this distinction, unless it be that, in the Poor Law Act, fishings are included in lands and heritages, and Parliament were reluctant to take them out of the category to which they had been assigned. It follows that the proprietor of salmon fishings in a river bounding or passing through his property, is not entitled to plead that they are worthless, in respect that they are unlet and yield no rent. Being in the owner's own possession, they must be entered at the rent which, if let, they might be expected to bring.[2]

Ferries.—These are assessable as 'lands and heritages,' but the statute lays down no specific rule for their assessment, as in the case of railways and canals. The right of ferry is a *jus incorporale*, which has hitherto been viewed more as an appendage of the lands with which it happened to be granted, than as a distinct subject. Thus, in a question regarding the Ferry of Kessock, as to whether the proprietor was to be assessed in the parish at one extremity, or the parish at the other, or partly in both, the Court decided that the assessment fell to the parish where were situated the lands of which it was a pertinent.[3] In another case, the question was, whether the Tay Ferry fell to be assessed as part of the line of the Edinburgh, Perth, and Dundee Railway under the mileage rating clause, or as a distinct subject. The company, under their statutes, acquired right to it from the proprietor of the barony of Scots Craig, of which it was part. The Court held that it was not to be regarded as part of the general undertaking; because, while *de*

[1] Lord Forbes, 26 Nov. 1861, 24 D. 1458.

[2] Baird's case, No. 32, 26 Nov. 1861, 24 D. 1456.

[3] Anderson *v.* Gillanders, 22 Mar. 1853, 15 D. 577. See also, as to whether the Ferry Pier built in the sea is assessable, Baillie *v.* Hay, 20 Mar. 1866, 4 M'P. 625.

facto it was no part of the line, it was not a thing which could only be exclusively used for the railway. It was rather to be viewed as a distinct subject, belonging to a corporation who were proprietors, by certain Acts of Parliament, of both a railway and ferries. The revenues therefore fell to be assessed in the parish of the barony of Scots Craig, with which it was before connected.[1] This, however, is now altered. In assessing railways under 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.' But it was held that the pier and landing-place of the Tay Ferry within the bounds of the burgh of Dundee, though an adjunct of the ferry situated beyond the burgh, were assessable within the burgh, and that the railway company were properly entered as proprietors and occupiers.[2]

Harbours and Docks.—In the case of the Leith Docks, the Lord Chancellor observed: 'It must now be held in Scotland, as in England, that the commissioners or trustees of docks, harbours, wharfs, and everything of that sort, are liable to be rated in respect of their receipts, whether in the form of dues or otherwise, and whatever be the purposes to which the receipts are applied.'[3] It is of no consequence that the traffic of the harbour is insufficient to yield any free revenue, the whole dues being spent in its maintenance.[4] In the case of Glasgow harbour, it was held that the Clyde Navigation Trustees were not liable to be assessed in respect of the river and incorporeal right of harbour, which in some sense resembles a right of public way, and does not expressly fall within the Poor Law statute, but that they were liable for the quays and relative buildings, the wharfage ground, steamboat wharfs, sheds, cranes, weighing machines, house property in an adjacent street, and a ferry. Of these the trustees were both owners and occupants; and any dues, rates, or duties for the use of the above accommodation, other than the river and harbour, might be taken into account

[1] E. P. and D. Railway *v.* Arthur, 22 Dec. 1854, 17 D. 252.

[2] Scottish Central Railway Co., No. 38, 1 M'P. 1198. In this case the ferry was unconnected with a railway.

[3] Comrs. Leith Docks *v.* Gardner, H. L. 12 Mar. 1866, 8 P. L. 432, 1 Law Rep. Ap. Ser. 17, 2 M'P. 1234.

[4] Stonehaven Harbour case, No. 46, 1865, 4 M'P. 1139.

in fixing the annual value thereof.[1] Accordingly, the following method of valuing the lands and heritages belonging to the Clyde Navigation Trustees, was adopted by the assessor:—One-half of the gross revenue from goods and vessels was assumed as applicable to quays, cranes, etc., £50,000; deduct harbour-master's department, lamps, police, and general expense, £10,000—balance, £40,000; deduct tenant's profits, one-fifth, £8000. Total assessable, less value of offices in Robertson Street, £32,000. An appeal was taken against the valuation of Mavisbank Quay, in the parish of Govan, which had been valued thus: The total length of the quays, etc., is 4359 yards; Mavisbank is 546; proportion of £32,419 applicable to that distance, £4061. The Court of Appeal reduced the sum to £3470, on the ground that, as regards that portion of the harbour, one-third of the dues was fairly assignable to that portion of the subjects which is not assessable.[2]

Railways and Canals.—No attempt appears to have been made to subject this description of property to assessment till the year 1839, when the parish of St. Cuthbert's imposed a rate on the property of the Union Canal Company situated within the parish. The case gave rise to a lengthened litigation. It was, in the first place, pleaded for the defenders that, although they might be bound to pay poor-rate in respect of the ground actually used in the construction of the canal, the canal itself was not assessable. It was only a highway used by the public for the purposes of traction and locomotion, like other highways, which had never been assessed in Scotland; and as the portion within the pursuers' parish was valueless, and could *per se* yield neither rent nor profit unless it were continued through a great many other parishes, it must be treated as an indivisible subject, which could not be assessed unless the parochial authorities did what they had no right to do,—namely, go out of their own parish to ascertain the amount of the tolls collected on the whole length of the canal, and apportion the sum to the mileage. But even under this method of assessment the defenders would be paying, not the annual value of the canal as an heritable subject, but on the profits of their business; and the parish

[1] Adamson *v.* Clyde Trustees, 1 D. 974, 22 June 1863, 1 M'P. 974; H. L. 1865, 3 M'P. 101, 4 Macq. 931.

[2] Clyde Trustees, No. 51, 25 July 1866, 4 M'P. 1143.

might as well make a levy on the profits of a distillery or a brewery. It is hardly necessary to say that these views were without difficulty overruled by the Court. The canal belonged as much to the category of lands and heritages as the soil on which it was formed. It was private property; and the tolls levied by the company, so far from being simply the profits of their business, were more like rent paid in small sums by third parties for permission to use an heritable subject.

The next point made by the company was, that if they were liable as heritors they could not be liable as occupants. The canal, in fact, was in the situation of having no occupants at all in the sense of the Poor Law Acts; or if it had any occupants, they were the members of the public who had occasion to use it. This plea, however, was also overruled. The Court said that the company, as proprietors of an heritable subject, might let it; but so long as they retained it in their own hands, they must be held to be both owners and occupants. As Lord Cockburn put it, an innkeeper not residing on the premises might as well maintain that not he, but his customers, were the occupants of his inn. Thus it was decided that in the case of canals, railways, waterworks, gasworks, and similar undertakings belonging to joint-stock companies, the companies fell to be assessed both as owners and occupants.[1]

The question remains, How is the assessable value of such great undertakings to be ascertained? Were the country only one parish, they would be valued like any other heritable subject,—namely, at the sum for which they would let from year to year. But a canal or railway may pass through a dozen different parishes. In some the works are inexpensive; in others, there have been gigantic engineering difficulties. Here there are magnificent stations and costly workshops; there the traffic passes silently along without a halt. One district feeds the line with a multiplicity of traffic, another is altogether unproductive. Must the portion of the undertaking belonging to every parish be valued separately, in proportion to the original cost of the ground, or the capital sunk in making the line, or the traffic drawn from the parish, or the profit earned in it? To each

[1] Anderson *v.* Union Canal Co., Mar. 1839, 1 D. 648; S. C., Jan. 1847 9 D. 402; Edinburgh and Glasgow Railway Co. *v.* Adamson, 10 Mar. 1853 15 D. 537.

of these various courses there exist so many objections, that it is satisfactory to know that not one of them was ever attempted.

In the case of the Union Canal, the plan taken by the assessor was to ascertain the free revenue from the whole undertaking, after payment of all charges except feu-duties and taxes, to divide it by the total mileage, and multiply the result by the number of miles in the parish. Thus:

Dues, etc., drawn from the canal, . .		£6964 0 0
Deduct working and other expenditure, .		3517 0 0
		£3447 0 0
Deduct value of buildings, etc., at the terminus in St. Cuthbert's, separately assessed, .		108 0 0
		£3339 0 0
Deduct ten per cent. on £5371, invested in boats, horses, and harness,	£537 0 0	
Deduct five per cent. on capital expended in making a feeder to canal (Cobbinshaw reservoir),	33 0 0	
		570 0 0
		£2769 0 0

Now, as the whole length of the canal is thirty-two miles, and the portion in St. Cuthbert's two and a fifth, or about one sixteenth of the whole, the value of the portion of the canal in this parish was £2769 divided by sixteen, or £173, 1s. 10d.; and deducting £43, 1s. 10d. as an allowance for tenants' profits, etc., the sum assessable was £130.

St. Cuthbert's claimed the right to treat the warehouses and other buildings at the Edinburgh terminus of the canal as a separate subject, separately assessable. The company objected that they were part of the general undertaking,—in fact, a necessary part of it, as they could not carry on business or draw any profit at all without the warehouses. Therefore they said they should be assessed along with the canal, in the same way and on the same principle. The Court, however, thought that the subjects at the terminus were distinguishable from the rest

of the undertaking, and that the fairest way would be to assess them in the parish in which they were situated. The decision of this part of the case is manifestly unsound. The parish had the alternative of adopting either the parochial system or the mileage system. By the former they might have inquired into the value of the whole of the works within the parish separately from the rest of the undertaking, and assessed upon the amount; but they found it for their interest to adopt instead the mileage system, except as regards the valuable buildings locally situated within the parish. Thus they claimed, and were allowed to take the benefit of, both systems,—a method of assessment manifestly contrary to all sound principle.

When the subject therefore came to be reviewed by Parliament, with a view to special legislation, the principle of the above judgment, so far as it can be regarded as a qualification of the mileage system, was very properly rejected. The ordinary method of rating was found to be wholly inapplicable to a railway extending many miles through many parishes; and therefore it was provided that, in rating the property belonging to the company, the undertaking should be regarded as an indivisible subject, and the valuation apportioned among the parishes according to the mileage in each. The Poor Law Act provides: '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 situated in, each parish or combination, in proportion to the whole length.'[1] Under this section, in an action brought by the Edinburgh and Glasgow Railway against the inspectors of the different parishes along the line, it was decided that the computation must include, not the mere line of rails, but the whole undertaking as a *unum quid;* and that the stations, therefore, were not to be assessed separately in the several parishes in which they were situated, but were to be taken as necessary parts of the whole line. In other words, the word railway includes all that is necessary for the convenient use of the line.[2] The interpretation of the Court of Session

[1] Sec. 45.

[2] E. and G. Ry. *v.* Adamson, etc., 10 Mar. 1853, 15 D. 537, 27 J. 514.

was affirmed by the House of Lords,[1] where the Lord Chancellor gave this definition of a station: 'It is a place to which every person using the railway may come, on foot or in carriages, 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. I think it may properly include a directors' room, to which persons having complaints to make may resort for that purpose; but I do not think there can be any practical difficulty on the subject.'

By the Valuation Act, sec. 20, the Queen is empowered to appoint an assessor of railways and canals, whose duty it is to make up, in the month of August every year, a valuation roll, setting forth, in columns, 1*st*, The yearly rent and value of the whole lands and heritages belonging to or leased by a railway or canal company, and forming part of its undertaking; 2*d*, The names of the several parishes, counties, and burghs through which the line of the railway or canal runs, or in which its said lands or heritages, or any part thereof, are situated; 3*d*, The lineal measurement of its entire line, and the portion of such lineal measurement situated in each such parish, county, and burgh; 4*th*, The amount of the cost of its several stations, wharfs, docks, depôts, counting-houses, and houses and places of business; 5*th*, The proportion of such gross amount expended in each such parish, county, and burgh; 6*th*, The share held by each of several companies in any station, etc., held jointly; and 7*th*, The yearly rent or value 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.[2] The yearly rent or value is computed as follows:—

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 fol-

[1] 2 Macq. 331. [2] Sec. 21.

lows; 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 £3 per centum of the whole cost as aforesaid of the stations, wharfs, docks, depôts, 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 compared 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 £3 per centum of the cost as aforesaid of any station, wharf, dock, depôt, 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.[1]

From the valuation of the assessor, an appeal lies to the Lord Ordinary, at the instance of any company aggrieved, or of any parish, county, or burgh interested. Where the line and property of the company is all in one county, the appeal is taken to the sheriff.[2]

Following the directions of the statute, we find that we first require to ascertain *in cumulo* the yearly rent or value of the whole lands and heritages in Scotland belonging to or leased by any railway or canal company, and forming part of the undertaking of such company.

From this we deduct three per cent. of the cost of works not connected with the formation of the permanent way, such as stations, wharfs, docks, depôts, counting-houses, and other houses or places of business in Scotland, of or connected with the undertaking of such railway or canal company. The sum assessable is then calculated as follows:—

[1] Sec. 22. [2] Secs. 24, 25.

As the total mileage of the railway :

Is to the *cumulo* value, under the deduction aforesaid : :

So is the mileage in the parish :

To the amount on which the assessment falls to be levied, *plus* three per cent. of the cost of any station, wharf, dock, depôt, counting-house, or other house or place of business within the parish connected with the undertaking.

The lands and heritages of which the *cumulo* value is to be taken, must not only belong to the company, but form part of the undertaking. The business of a railway company is to provide the means of transport for persons and commodities between their two termini and the intermediate stations. The line may be used by the public the same as a highway—the customer finding engines and carriages; or the company may themselves provide engines, and charge a toll for the use of the line with the motive power; or the company may use their line and rolling stock in conducting the business of common carriers. Whatever is necessary, not in an absolute sense, but reasonably necessary with due regard to the public convenience, to enable the company to carry on the business of transport, must be held to be a part of the undertaking.[1] Thus, it is no part of their business to provide sleeping and hotel accommodation for passengers when they arrive at their destination; and so, if the company has built an hotel as a speculation in the station or its immediate neighbourhood, that is no part of their undertaking. Again, some companies bring in coals on their railway, and sell them on their own account at their various stations; but the sidings, depôts, and other accommodation which they have provided to enable them to carry on the business of coal dealers, cannot in any proper sense be taken to be part of the furniture of the railway. So, too, in the construction of the line, works may have been erected which, being no longer required for the general purposes of the railway, are let to tenants. These are no part of the railway, but fall to be assessed like any other heritable subject in the parish,—the company being entered as proprietor, and the tenant in possession as the occupant. Thus, the Glasgow and South-Western line enters Glasgow over a series of arches which have been let to tenants

[1] The statute says, by implication, that it may include stations, wharfs, docks, depôts, counting-houses.

for stables, stores, workshops, and similar purposes. These several premises, it was decided on appeal, fall to be entered in the local valuation roll in the usual way.[1] So, too, warehouses let to carriers for the deposit of goods, after the transit is completed, require to be separately assessed. In short, the term railway includes not only the line of rails, tunnels, bridges, sidings, and stations, but everything which a tenant taking the railway from year to year for the purpose of carrying on the business of transport, would expect the proprietors to provide for him as part of the tenement.[2]

The Court were lately much divided in opinion on the question, What constitutes a railway station? It obviously includes waiting-rooms, luggage-rooms, cab-stands, and other similar accommodation; but does it also include a refreshment room, let for the special purpose of providing excisable liquors and other refreshments *only* to persons travelling on the line? A majority of the judges were of opinion that, the rooms being let by the company to a tenant holding an excise licence, and occupied by him for the purpose of carrying on, for his own profit, a business which in no proper sense could be said to fall within a railway company's functions, must be held, like an hotel, to be no part of the undertaking. The portion of the station, therefore, occupied by the refreshment rooms fell to be assessed as a separate subject.

In the same case, an attempt was made by the parish to deal with the cab-stands and book-stalls at the station as a separate subject. As to the former, it appeared that a sum was annually paid by a cabmaster for the privilege of being exclusively allowed to keep his cabs at the platform; and in the same way the company had sold the privilege of hawking books and newspapers to the passengers in the trains,—a stall or shop having been built by the tenant within the station for his accommodation, and the display of his publications. The revenue derived from both of these sources was held by the Court to be part of the income arising from the general undertaking. In neither case was there any separate assessable subject; for the transaction between the company and the tenants amounted in substance to a mere

[1] Glasgow and S.-W. Railway Co.'s case, 19 Sept. 1862, 5 P. L. 116.

[2] E. & G. Railway Co. *v.* Adamson, 15 D. 536, 17 D. 1007, affd. 2 Macq. 331; E. P. & D. Railway *v.* Arthur, 17 D. 252.

grant of the right of access to the station, coupled with the privilege of carrying on a certain business there, and was not a lease of any part of the premises, or, indeed, of a permanent structure of any kind.[1]

The statute provides, that the premises whose value is to be inquired into must belong to or be leased by the company. When a station or a line of railway belongs to two different companies, each will be chargeable with one-half of its value, in the account made up by the assessor as to the value of their several undertakings *in cumulo;* but if the one company has only running powers over the other's line, then this right is of the nature of a servitude, of which no account can be taken at all, as it is not an assessable subject. The same may be said of a way-lease, if the grant only amounts to a right of passage; but if the agreement amounts to a conveyance of the soil, or of the line on which it is formed, subject to the condition that it shall only be used for certain descriptions of traffic between certain points, the grantee would be rated as lessee or occupant of the heritable subject.

If one company has leased the line of another company, it is to be dealt with in the same manner as if the lessees had made it themselves,—a provision which saves the question which arose as to the ownership of the Glasgow, Barrhead, and Neilston line, when it was leased by that company to the Caledonian. The lease was to endure for a thousand years but one, and the Caledonian undertook to pay certain sums to the Barrhead Company. On the question, which of the two companies was to be held as owners, the House of Lords, reversing the decision of the Court of Session, held that the Caledonian Company were to be so treated, because, although the deed of agreement was called a lease, the annual payments were not of the nature of rent; and the obvious purpose of the transaction was to make an out and out conveyance of the line to the Caledonian for the whole period specified in the lease.[2]

In estimating the annual value of the whole undertaking, the method to be followed is that which is provided by the statute for ordinary subjects,—namely, 'the rent at which, one

[1] N. B. Ry. Co. *v.* Greig and Mackay, 20 Mar. 1866, 8 P. L. 483, 4 M'P. 645.

[2] Glasgow, Barrhead, and Neilston Railway Co. *v.* Caledonian, H. L. 10 Feb. 1860, 22 D. (H. L.) 1; 2 P. L. 638, revg. 17 D. 1148.

year with another, such railway might, in its actual state, be reasonably expected to let from year to year.' If the line is let in point of fact, then the rent or dividend to be paid to proprietors may be taken as the true measure of its value; and when this was done in the case of the Bathgate line, leased to the Edinburgh and Glasgow Company for £9500 per annum, the Court dismissed a declarator brought to negative this valuation, and have the amount ascertained by taking the gross receipts, subject to certain deductions.[1] But when the assessor has no such guidance, the only course open to him is to ascertain the power of production of the line, or, in other words, the gross profits to which the line *per se* can be said to contribute. Now the gross revenue of the company embraces these various elements: (1) Interest of capital in the line; (2) cost of maintenance and renewal arising from wear and tear; (3) interest of capital invested in rolling stock; (4) cost of repairing depreciation thereof; (5) cost of management in the shape of salaries to workmen and officials; (6) miscellaneous expenses for coal, oil, and other supplies. The first item represents the price paid for the estate, the second a charge incumbent on every heritable proprietor, for which separate provision is made in sec. 37 of the Poor Law Act. If, then, he deduct the whole of these items but the first two from the gross income, the balance will represent the sum actually earned by the line,—the crop, so to speak, produced on the soil on which the line has been constructed. But from this sum a further deduction still remains to be made, seeing that the company act as their own tenants. If they had let their line, the lessees would have been in a position to pay the balance remaining after the above deductions had been made, less a certain proportion for their own profit. Therefore, in order to find the actual value of the sum which an indifferent stranger could afford to give for a lease of a railway, we must deduct from the gross revenue, not only the whole of the above deductions, except interest on capital invested in making the line and cost of maintenance, but a percentage in name of the share of the profit which would properly belong to a tenant, and which the company save, by themselves performing the tenant's function.

Mines, etc.—It was always the law, that though coalworks

[1] Edinburgh and Glasgow Railway *v.* Arthur, 20 D. 677.

were not a subject producing 'rent' properly so called—that is, a sum paid for the use of a subject, *salva substantia*—they were nevertheless assessable.[1] The rule of assessment was the actual rent or lordship paid by the tenant to the proprietor.[2] Under the existing law, they fall within the meaning of 'heritage,' along with minerals, mines, quarries, limeworks, factories, etc. But no mine or quarry can be assessed, unless it has been worked during some part of the year to which the assessment applies.[3] The rent is held to be conclusive, if the lease is for not more than thirty-one years. If it is of greater endurance, the assessor is at liberty to value the subject irrespective of the lease. The result is, that if a coal-field let for less than thirty-one years at, say £200, and sub-let at £350, the difference is lost for assessing purposes. But if the original lease was for more than thirty-one years from the date of entry, the rent would not be taken into account, but the mines would be entered in the name of the lessee or proprietor, and at the sum received by him from his sub-tenant.

Where the rent of a coal-field is stated not at a fixed sum or lordship on the output, the practice is to take the amount of last year's lordship as the valuation of the current year; but if the landlord is entitled to either a fixed sum, or, in his option, a lordship, the assessor is bound to take whichever of them may prove to be the greatest. Thus, where the rent was £300 or a lordship, and the landlord, instead of taking the slump sum, accepted from his tenant the sum of £188, 6s. 10d. as the amount of the lordship, it was nevertheless decided that the higher sum must be entered in the roll, as that on which the public assessments would fall to be paid.[4] Where a granite quarry in the glebe of Kirkmabreck was worked by the Liverpool Dock Commissioners for a lordship of 1s. a ton, under an arrangement with the presbytery, by which ninety per cent. of the returns formed an accumulating fund for behoof of the benefice, the minister of the parish receiving the remaining ten per cent. as a compensation for the inconvenience and annoyance from the working of the quarry, it was held that the quarry was

[1] Inveresk, 28 May 1794, M. 10,885.
[2] Macintosh, etc., *v.* Playfair's Trustees, 20 May 1841, 3 D. 893.
[3] 8 and 9 Vict. c. 33, s. 37 ; 17 and 18 Vict. c. 91, s. 42.
[4] Waddell's case, 1861, No. 24.

properly valued at the sum paid by the Dock Commissioners, the heritors of Kirkmabreck and Presbytery of Wigtown being entered in the column of 'Proprietor,' 'as holding in trust for the benefice of Kirkmabreck.'[1]

Waterworks.—A company established by statute for supplying a city with water are liable as owners and occupants of the ground in which their pipes are laid. The point was decided in Hay *v.* The Edinburgh Water Company, 13 July 1850.[2] In this case it was observed by Lord Dundrennan (Ordinary):—

'There are two questions: 1*st*, Whether the subjects, in respect of which it is proposed to assess the company, are to be viewed as lands and heritages; 2*d*, Whether the company are the owners and occupants of these subjects. It does not occur that there is much difficulty on the first of these points. It is enacted, in the interpretation statute, that the words lands and heritages shall include all lands. It is not easy to see on what ground it can reasonably be maintained, that a portion of the soil under the streets of the city of Edinburgh is not land, at least in the common acceptation of the term. The subject occupied by a line of railway is equally land, whether the rails are laid on the surface of the earth or in a tunnel under ground, and where the surface is owned and occupied by other parties than the railway company. . . . The title of the defenders to these subjects is to be found in their incorporating statute, by which they have acquired a permanent and exclusive right to the land or soil, and of which Parliament alone can deprive them. That they cannot use the land for any other purpose than for conducting their pipes, is true; but for this purpose the right is absolute and indefeasible. . . . The defenders must therefore be held to have acquired, under a statutory title, a permanent and exclusive right in a portion of the soil, and, with submission, a right essentially different from that of a servitude or easement, with which it has been attempted to identify it.'

In the House of Lords, the Lord Chancellor (Cranworth), in moving the affirmance of the judgment, said the question had been settled by the English cases which had occurred with respect to the construction of the statute of Elizabeth, requiring

[1] Kirkmabreck case, 25 Mar. 1861, 24 D. 1456.

[2] 12 D. 1240; H. L. 13 Feb. 1854, 1 Macq. 682.

the churchwardens and overseers to raise a stock by an equal assessment upon the occupiers of all lands, messuages, and so on, in each parish; and in which it had been held, that a water company were, in the sense of the Act, occupiers of land, and not simply the possessors of an easement, or what in Scotland is called a servitude, for conveying their water along a channel, or through pipe of any description. The Legislature must have had the result of these authorities present to its mind; and it could not be held that the word 'lands' should mean one thing in an Act with reference to Scotland, and another thing in an Act with reference to England.

The Valuation Act also provides, for the valuation of the property of 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,' the same machinery as has been appointed for railways and canals. Intimation is made to the sheriff of the county where the head office is situated, by the manager, secretary, or other principal officer, before the 15th May, of the desire of the company to be assessed by the assessor of railways and canals. After due intimation and advertisement, the assessor is declared to be charged with the valuation.[1] He is then directed, with a view to the making up of a valuation roll similar to that of railways and canals on or before the fifteenth day of August every year, to inquire into and fix *in cumulo* the yearly rent and value of all lands and heritages belonging to or leased by such water, or gas, or other company, and forming part of its undertaking, and to fix the just proportions of such *cumulo* yearly rent or value applicable to each parish, county, and burgh in which the company is liable to be assessed.

Gasworks.—It has been decided that gas-pipes laid along the public highways, and in the properties of consumers, are heritable subjects, for which the gas company are liable to assessment; but the value of the meters in the houses of the consumers, though connected by solder, are not, and must be excluded from the computation.[2] Nor can any deduction be made in respect of such machinery as *retorts*, being instruments in which the coals are carbonized and the gas produced, consisting of circular pieces of clay, to which the heat is applied, and also the arches

[1] Sec. 23. [2] Falkirk Gas Co., 1864, No. 41, 4 M'P. 1133.

which contain them, and the pipes through which the gas passes to the purifiers, the whole being distinct and severable from the floor, and not attached to it by cement or mortar, but only packed with fire-clay; or *purifiers*, which are massive iron vessels, standing on a brick base, but not fixed to it, connected with the pipes passing through the soil to the retorts by screw-bolts, and in the same way with the pipes passing through the soil to the tanks and gas-holders; or *steam-engines*, used for driving the machinery, fastened by screw-bolts to a stone base fixed in the soil; or *boilers*, set in brick-work, fixed in the soil; or *gas-holders*, being hollow cylindrical vessels of plate-iron, covered at the top but open at the bottom, and rising and falling by means of pillars and pulleys into circular tanks sunk in the soil, into which the gas passes through the purifiers from the retorts; or other *trade fixtures*, such as pumps and exhausters, which are fixed to the freehold, but would be removeable as tenant's fixtures. In an English case, it has been held that, although all these things were capable of being removed, they were yet so far attached as that it was intended that they should remain permanently connected with the freehold, viz. the gasworks, and remain permanent appendages to them, as essential for the purpose for which the works were made. And it made no difference, that by the practice in letting gasworks, the tenant would be compelled to take and find capital for the purchase of all the above articles.[1]

Deductions — Repairs.—The Poor Law Act defines the annual value of the subjects to be assessed in the same terms as the Valuation Act—'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;' but the latter omits the qualification contained in the Poor Law Act, that the said value shall be estimated 'under deduction (1) of the probable annual cost of repairs, insurance, and other expenses, if any, necessary to maintain such lands and heritages in their actual state; (2) all rates, taxes, and public charges payable in respect of the same.'

The effect of the two statutes, when read together, is that the parochial board are now relieved of the duty of ascertaining the *gross* annual value of the subjects, which they find in the valuation roll prepared for them by public officials; but they

[1] Phœnix Gas Light Co. *v.* Inhabitants of Lee, 1 Law Rep. Q. B. 241.

have still to make for themselves the requisite deductions, in order to ascertain the amount on which the poor-rate falls to be levied. And this duty is not to be confounded with the power conferred by sec. 36, of distributing the property in the parish into certain classes, according to the purposes for which it is used and occupied, and to fix different rates of assessment for the tenants or occupants of the several classes. From the benefit of this classification owners are excluded; but to the deductions of sec. 37 they are entitled equally with tenants or occupants. Where the percentage allowed to cover these deductions is insufficient, a ratepayer may have relief by a suspension in the Court of Session.[1]

As regards these deductions, it may be observed that the statute does not appear to contemplate that minute accuracy in the matter of repairs is to be attempted. As the sums actually paid for rates and taxes may be easily ascertained, there is no necessity for striking an average, and the deduction in this particular must be ascertained from the receipts in the party's hands. But as to repairs the practice is different. A property is not repaired at certain fixed terms, but just when the repairs are needed; and so the statute makes a rough equitable adjustment of the matter, by directing an average to be struck, and the *probable* annual cost ascertained in this manner. No limit is put on the number of years to be taken into account, but they ought of course to be the years immediately preceding the imposition of the rate complained of. As to the manner of making the estimate, the fairest way seems to be to ascertain the proportion which the repairs of one year bear to the valuation of that year—to make each year tell its own story; but in one case the average was allowed to be struck by summing up the gross expenditure for repairs over a series of years, and ascertaining the percentage which it bore to the gross amount of the valuation of the subject during those years.[2]

The word 'repair' is a very flexible term. It means the restoration of a subject to a sound state after decay, injury, dilapidation, or partial destruction. It does not mean the improvement of the subject by the removal of part of it, and its reproduction in a new style. If a line of railway, for

[1] Edinr. and Glasgow Railway Co. *v.* Meek, 10 Dec. 1864, 3 Mac. 229.

[2] E. and G. Railway Co. *v.* Hall, 19 Jan. 1866.

instance, laid on the old principle, were taken up and re-laid with fish joints, this could hardly be called the mere removal of the effects of tear and wear. But in a composite subject like a railway, which is so easily worn out that it is said only to last sixteen years, the term must necessarily receive a more elastic construction than if it were applied to a landed estate, or even a piece of dilapidated house property. Many parts of a railway cannot be repaired except by replacement. An old rail cannot be patched up, but must be taken out and consigned to the melting pot; and when the company are necessarily renewing parts of the line in this way, they are quite entitled to adopt the improvements which science may have discovered. When the character of the particular works is looked at in their relation to the whole composite subject, the proprietors cannot be said to be making a new railway, but in a proper and legitimate sense they are doing only what is necessary to maintain the old. Thus, in the case of the Glasgow Gas Light Company, they were found entitled to a deduction, both on account of the depreciation of their works generally, and of the cost of repairing and replacing their gas-meters, for without such renewal their works would come to a stand-still. Such an expenditure, it was said, was not an allowance for 'depreciation,' which the statute nowhere allowed, but a repair in the proper sense—an expenditure necessary to uphold the subject in a fit condition for yielding rent.[1] As the Lord President put it, 'Any other result would be to impose an assessment on capital, and not on revenue.'

Where it appeared that the sums actually expended by a railway company in maintenance and renewal of way amounted, on an average of twelve years, to 28·60 per cent., and the reporter proposed to allow an additional 5 per cent., on the ground that a much larger rate of expenditure would be necessary for some years, according to the theory that the average 'life' of a railway is sixteen years, the proposal was held to be altogether out of the question, as the company themselves must be assumed to be the best judges of the extent of repairs necessary.[2] In the same case, the Court refused to allow a further deduction of 1·53 per cent., which was suggested on the

[1] Glasgow Gas Light Co. *v.* Adamson, 23 Mar. 1863, 5 P. L. 449.

[2] E. and G. Railway *v.* Hall, 19 Jan. 1866, 8 P. L. 269, 4 M'P. 301.

rather comical principle, that for some years lands and heritages, other than railway property, having been allowed 20 per cent., being probably 1·53 too much, the allowance would square the railway company's account with the parochial board and the public.[1]

Insurance and Taxes.—The ratepayer is entitled to a deduction for insurance, whether he insures or not. A man who does not insure with an insurance office is his own insurer; and the language of the statute is 'probable annual average,' which shows that more than actual payments might be included.[2]

It has been questioned whether property tax, minister's stipend, or poor's assessment, comes within this provision. In 1857, Lord Neaves decided[3] that property tax is not a burden which falls to be deducted from the estimated rental of subjects assessable for the poor under the Poor Law Amendment Act.[4] 'The ground of this opinion,' said his Lordship, '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 equalizing it.' This opinion was lately upheld by the Court. But all other assessments, including poor-rate, actually payable in respect of the subjects, are deducted from the gross value.[5]

Persons liable.—The assessment may be imposed on lands and heritages—one half on owners, and the other half on occupiers. The term owner applies 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 (int. clause). The term is thus not confined

[1] S. C.

[2] Glasgow Gas Light Co., 1 M'P. 727.

[3] Greville *v.* Thomson.

[4] Sec. 37.

[5] E. and G. Railway *v.* Hall, 19 Jan. 1866, 4 M'P. 1006, 8 P. L. 269; Glasgow Gas Light Co. *v.* Adamson, 1 M'P. 727, 6 P. L. 417. See the case of Scottish North-Eastern Railway *v.* Gardiner, 29 Jan. 1864, 8 P. L. 617, 2 M'P. 537, where a clause in the Railway Company's Act, passed prior to the Lands Clauses Act, was held to exempt them from all 'public and parish burdens.'

to a proprietor feudally infeft. 'It means,' says Lord Cranworth, 'a party owning any interest—a tenant for life or a tenant for years, or any man who is possessed of any interest whatever.'[1] Sec. 44 places long leaseholders in the same category: 'Where houses have been or shall be built by the tenant of any land 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.' An occupant is any person in possession. The provision, that one half of the assessment is laid on tenants *or* occupants, plainly implies occupancy on other titles than tenancy. A proprietor in possession of his own estate would be rated both as owner and occupant; or an occupant by mere sufferance would be liable in assessment.[2] So also, in sec. 43, where the one half of any assessment is imposed on owners, and the other half on tenants or occupants of lands and heritages, it is made competent for the collector to levy the whole from the tenant *or* occupant, who may recover the owner's share, or retain it out of his rent. The Barrhead Railway being leased to the Caledonian, under the powers of an Act of Parliament, for 999 years, on payment of a certain dividend to the shareholders, the Barrhead Company ceased to be assessable as 'owners' on the amount of their dividend.[3]

As the assessment is imposed to meet *future* expenditure on an estimate of the probable requirements of the year, the persons who must pay it are those who are in actual possession of the subjects at the time. A tenant assessed at Whitsunday is not entitled to say that he means to leave at Martinmas, and should only be liable in one half year's assessment. Being tenant or occupant when the assessment for the year falls to be paid, he is the only party to whom the board can look for payment. Nor is it any defence to a claim for payment of the rates, that the premises are to be pulled down in the course of a few months. The roll of ratepayers is made up in accordance with the facts as they exist at the time, and the

[1] 1 Macq. 689. [2] See Lord Dundrennan's opinion in Hay, 12 D. 1244.

[3] Glasgow, Barrhead, and Neilston Railway Company *v.* Caledonian, House of Lords, 10 Feb. 1860, 22 D. 1, and 2 P. L. 638, rev. 19 July 1855, 17 D. 1148, 27 S. J. 588; E. and G. Railway Co. *v.* Hislop, 24 Feb. 1858, 30 J. 344.

collector cannot take a less sum than the amount set forth in the roll.

It is still an open question, whether a tenant who has paid the taxes for a twelvemonth has a claim of relief against a person by whom he may be succeeded in the occupation during the year. It is usually made the subject of arrangement; but the doubt is whether, in the absence of such an arrangement, the right of relief arises *ex lege*. It would rather appear that the outgoing tenant is entitled to this relief, because the rate is levied as a burden on the heritable subject, and is one of the incidents of the tenancy, which ought not in fairness to fall entirely on the person who happens to be in possession when the roll is made up. Where the property is sold between terms, the right of relief depends on the terms of the disposition. There is usually a clause binding the seller to relieve the purchaser of all public burdens; and the clause, unless specially qualified, is by statute held to import an obligation to 'relieve of all public parochial and local burdens due from or on account of the said lands prior to the date of entry.'[1] The seller therefore has no relief from assessments which, even though unpaid, might have been legally exacted before the date of entry. By sec. 42 it is made lawful for the parochial board to exempt from payment 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.' And by sec. 43 it is 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.'

Property unoccupied.—The only exemption in the statute in favour of property unlet, is the provision that mines and minerals, not worked during any part of the year, are not to be assessed. So in England it has been held that, in the case of a coal-mine which has been worked out and abandoned before the termination of the lease, although the lessee still pays rent for

[1] 10 and 11 Vict. c. 48, sec. 3.

it according to his covenant, the lessee is not liable to be rated in respect of it.[1] Though houses uninhabitable, or for which it is impossible to find a tenant, are not assessable, inasmuch as they are of no value, there seems to be no ground for holding that property unlet or unoccupied is entitled to exemption. The point was raised, but not decided, in Tod *v.* Jamieson, 26 Jan. 1858.[2] At the same time, Lord Neaves (Ordinary) took the opportunity of saying: '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 actually rented, or yielding a 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.' A mill standing idle from the dulness of trade, or the insufficient supply of the raw material, may fairly be said to be an unprofitable subject; and in such a case in England, the poor-rate is levied on the value of the mill as a warehouse for machinery.[3] But no such distinction can be made in Scotland. The tenant or occupant must be assessed on the rent which he pays for his occupation; for if this were a ground of exemption, one might as well seek to escape liability on the ground that he had made an unprofitable bargain with his landlord.

Parish of Assessment.—By sec. 46, the owners of lands and heritages are not liable to be assessed in more than one parish or combination. Lands disjoined from a parish and annexed to a burgh by statute cease to be liable in poor-rates to the original parish. In the case of Allan *v.* South Leith,[4] it was proposed

[1] R. *v.* Bedworth, 8 East 387. [2] 20 D. 446.

[3] Staley *v.* Overseers of Castleton, 33 L. J. Rep. (N. S.) M. C. 178; Harter *v.* Overseers of Salford, 34 L. J. (N. S.) M. C. 206.

[4] 14 July 1849, 11 D. 1391, 21 Jur. 32; aff. 1 Macq. 293. See also Allan *v.* M'Craw, 1 D. 513, 2 Rob. 507 (1841); Ewing *v.* Burns, M'L. and R. 435, 15 S. 936; M'Craw *v.* Cunninghame, 2 S. and M'L. 773 (1837).

to assess Mr. Allan in respect of the same heritable property in two parishes, under the following circumstances:—By certain charters from the Governors of Heriot's Hospital, certain lands, then in the parish of South Leith, were feued for villa residences, under the condition that, in the event of the royalty being extended so as to comprehend them, they should be subject to the parochial burdens of the city. The property thus granted was in 1767, by 7 Geo. III. c. 27, disjoined from the parish of South Leith, and annexed to the parish of Edinburgh. The 10th section of this 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 declared that, notwithstanding the disjunction, they should remain subject to the minister's stipend and other parochial burdens of South Leith, in the same manner as if the Act had never passed. The proprietor being thus liable in both parishes, maintained that the principle of sec. 46 was, in the particular case, carried out by sec. 91, which repeals all laws, statutes, and usages, in so far as inconsistent with the other provisions of the Act. The Court of Session and House of Lords affirmed this view, and held that Mr. Allan was only assessable in the parish of Edinburgh, 'because,' said the Lord Chancellor, 'wherever the burden was, there ought to be the benefit; and it was evidently the policy of the measure to give each parish the power of acting within, and not beyond, its own dimensions.'

EXEMPTIONS—*Public Buildings.*—It was long a subject of controversy whether buildings devoted to public purposes, and from which consequently no private profit or emolument could be derived, were rateable to the poor. In 1760, Lord Mansfield decided that St. Luke's Hospital was not liable, on the ground that, considering the manner of its tenure and the object of its institution, it was a building without an *occupier* in the sense of the Act of Queen Elizabeth, the occupants being 'neither the trustees, who were merely the nominal instruments of the conveyance, nor the tenants, nor the miserable wretches who were the unhappy objects of the charity;' and it followed by necessary consequence that there could be no rate at all.[1] The judg-

[1] Rex *v.* St. Luke's Hospital, 2 Burr. 1053.

ment was repeated in the case of St. Bartholomew's Hospital;[1] and in 1792, Lord Kenyon unfortunately extended the principle of exemption so far as to embrace every case in which there was no beneficial occupation on the part of the individuals in whom the premises were vested—such, for instance, as public works like canals, vested in trustees and commissioners, with the right of levying tolls for the maintenance and repair of the works. 'It is not sufficient,' said his Lordship, 'to point out property in the parish, in order to show that it is rateable to the poor; there must also be some person or persons in the beneficial occupation of it. In the present case (Salters Load Sluice) there is property which is the subject of a rate, but there is no occupier of it; for the trustees have a bare naked trust, not coupled with any interest.'[2]

The doctrine here enunciated was afterwards qualified in the Governors of the Bristol Poor *v.* Waite,[3] in which it was held that lands and buildings held on lease for the occupation of the poor were rateable, although the guardians were but trustees for public purposes, in the sense used by Lord Kenyon. The judgment in the Salters Load Sluice case was again attacked in 1827, in The King *v.* The Inhabitants of Liverpool;[4] but Lord Tenterden upheld its authority, and decided that the duties levied from the ships resorting to the docks at Liverpool were not rateable, because the statute under which they were constructed authorized only so much to be levied as would pay off the debt incurred in making the docks and keeping them in repair.

In Scotland the same ground of exemption received some countenance from the judgment of Lord Mackenzie in the case of the Heritors of South Leith *v.* The Magistrates of Edinburgh,[5] who, as grantees of the harbour of Leith, were found not liable in poor-rates on the duties and profits thereof, customary or statutory, the same being applied to the maintenance and improvement of the port. 'In such cases,' said Lord Cuninghame, 'the properties do not belong to, and are not occupied by, any heritor in the proper sense of the term, and so are not rateable. Of this description are public highways, public jails, garrisons

[1] Rex *v.* St. Bartholomew's Hospital, 4 Burr. 2435.
[2] Rex *v.* Commissioners of Salters Load Sluice, 4 T. R. 430.
[3] 5 Ad. and E. 1. [4] 7 B. and C. 6. [5] 6 Dec. 1836, 15 S. 204.

with costly fortifications, and other premises, dedicated solely to the public use.'[1]

The case of the Leith Docks[2] was again tried in 1852. The harbour and docks of Leith were by different statutes vested in commissioners, empowered to levy dues, from which they were bound to pay over annually to the Queen's Remembrancer—(1) a sum of £7680, to be applied towards payment and for behoof of the ministers, the creditors, and the schools and colleges of the city of Edinburgh; and (2) the whole surplus revenue to be applied in payment of the interest on the debt due by the city, and if it should be more than sufficient for that purpose, in extinction *pro tanto* of the principal. They were assessed for relief of the poor on the amount of the rates levied, which was said to be the annual value of the harbour and docks. It was unanimously held by the whole Court, that in so far as the rates levied were appropriated to the repayment of advances made by the public, they were exempt from assessment; but a majority of the judges were of opinion that the commissioners were liable to be assessed in respect of the sum of £7680, paid for the benefit of the city of Edinburgh, reserving their right to relief from the persons to whom it was paid. The latter part of this judgment was carried by appeal to the House of Lords; but no opinion on the point now under consideration was given, for their Lordships held that the Court of Session had gone entirely wrong in imposing an assessment upon a sum of money instead of upon lands.

At length doubts of the soundness of the ground of exemption, which had been adopted in both England and Scotland, began to be entertained. The Court of Queen's Bench, which, reluctant to confess the palpable fallacies on which the decision in the Salters Load Sluice case was rested by Lord Kenyon, exerted a vain ingenuity to discover other grounds on which it could be more satisfactorily placed than those enunciated by that judge himself. Lord Campbell thought it could be rested only on the clause in the local Act which directed the tolls levied 'to be applied and disposed of for the several uses and purposes

[1] Per Lord Cuninghame and the concurring judges in Anderson *v.* The Union Canal Company, 7 Mar. 1839, 1 D. 648.

[2] Inspector of North Leith *v.* Leith Dock Commissioners, 15 D. 95; H. L. 27 Jur. 229.

of the said Act, and no other purposes whatever.' But, apart from the difficulty of holding that the mind of a court is *not* to be gathered from the language which the judges themselves choose to employ, it is a familiar principle, that when a statute authorizes moneys to be levied and applied to certain purposes only, it means, of course, after all legal charges, including local rates necessarily connected with the subject, have been defrayed.[1] But the most ingenious subtlety of all that were attempted for the reconcilement of Lord Kenyon's views with the more accurate perception of the law which came to be entertained, was the distinction taken between purposes public but local, and purposes public and national—between a trust for behoof of an unlimited public, and a trust for a public limited by the bounds of a county, or burgh, or parish. Premises held for national public purposes were exempt; those for local were not. On this principle, the Court of Queen's Bench decided in two cases, that the Birkenhead Docks[2] and the property of the Tyne Commissioners[3] were liable to be rated; for although, as in the Liverpool case, the docks were vested in trustees who were bound to spend the tolls taken in keeping them in repair, still the persons who got the benefit were only that section of the public who had ships requiring the sort of accommodation provided.

The same distinction was recognised by our own courts in a case relative to the assessment of the Glasgow Waterworks. The Magistrates and Council of Glasgow are appointed by statute commissioners for managing the Glasgow Corporation Waterworks. They are authorized to levy water rates, but they are bound to expend the rates so levied in supplying the city with water; and if in any one year the revenue should exceed the expenditure, they are bound in the next to reduce the rates to the extent of the excess. The statute debars them in this way from making any profit; but the Court held them liable in assessment, on the ground that their lands were profitably occupied, not by the public, but by a particular portion of the public, viz. the citizens of Glasgow.[4]

When the Birkenhead Docks and Liverpool Docks came to be united under one board as the Mersey Docks, it became

[1] Gardiner *v.* Leith Docks, 2 M'P. 1234.
[2] 2 E. and B. 148.
[3] Reg. *v.* Chirton, 28 L. J. M. C. 148.
[4] Magistrates of Glasgow *v.* Miller, 16 Dec. 1857, 20 D. 290, 30 J. 146.

necessary to have it determined which of these two different sets of decisions was to be followed; and hence arose the Mersey Docks cases—Jones *v.* The Mersey Docks and Harbour Board, and The Mersey Docks and Harbour Board *v.* Cameron.[1] The trustees of these docks were possessed of warehouses and docks, in respect of which they levied tolls on those using them; out of these payments they kept up, improved, and extended the docks, etc., and paid off the money which they had raised under their special Acts. The funds were to be expended solely on the docks, etc.; and in the event of their producing a surplus, the tolls were to be lowered. Being rated for the support of the poor of Liverpool, the trustees refused to pay.

The Court of Common Pleas[2] held themselves bound by the case of The King *v.* The Inhabitants of Liverpool, and decided the first (Jones') case in favour of the trustees, but the second case they decided against the trustees on a technical ground. The first case was then argued in the Exchequer Chamber,[3] and the judgment of the Common Pleas affirmed; the late Mr. Justice Crompton relying on the last-mentioned case, and saying that where a decision had been acquiesced in for a long time, even a Court of Error ought not to disturb it. The second case was decided without argument, and both were brought before the House of Lords.

The opinion of the judges being asked by the House of Lords, the Lord Chief Baron, Mr. Justice Williams, Mr. Justice Blackburn, Mr. Justice Mellor, and Mr. Baron Pigott concurred in the opinion, which may be thus briefly stated: 'The occupation must be of value beyond what is required to maintain the property; and the trustees occupy the docks in question, and receive tolls which, whilst continued at the present rate, would cause a hypothetical tenant to give a rent in excess of what was necessary for the maintenance of the docks. Where there is an actual tenant, the application of the rent is immaterial—namely, it is immaterial whether it goes to the landlord or a mortgagee; and apart from decided cases, it would seem equally immaterial where the owners themselves occupy. There are exemptions: the Crown, not being named, is not bound by the statute, and

[1] H. L. 22 June 1865, 3 M'P. 102, 8 P. L. 42.
[2] See 30 Law J. Rep. (N. S.) M. C. 185, 194.
[3] See 30 Law J. Rep. (N. S.) M. C. 239.

so far the matter is clear. It has also been decided, that where property is occupied for the purposes of the government of the country, as for the police, administration of justice, departments of State, Post Office, Horse Guards, Admiralty, the judges, etc., of assize, county courts, and jails, the same rule holds good, though in the latter cases it is difficult to maintain that the occupants are strictly servants occupying for her Majesty; but still the purposes are public purposes, such as by the constitution of the country are committed to the Sovereign, and may perhaps be considered *consimili casu*. The question is, whether the exemption goes further.' The learned judges then gave an elaborate review of all the decisions, and held that the trustees were exactly in the same position as a company formed under Act of Parliament incorporating the Companies Clauses Act, etc., and paying a maximum dividend to the shareholders.

Mr. Justice Byles, however, came to the conclusion that the occupation must produce profit to the occupier or those whom he represents, who may be a plurality not certainly defined, but still limited by locality or other circumstances. And if the occupation be not for persons thus more or less defined, but for the public at large, then the property is not rateable.

The House of Lords, after consideration of these opinions, decided in accordance with the opinion of the majority of the judges, on the broad ground expressed by Lord Chancellor Westbury. 'On principle, it is by no means necessary that the occupation should be beneficial to the occupier. It is sufficient if the property be capable of yielding a clear rent over and above the necessary outgoings. The only occupier exempt from the operation of the Act is the King, because he is not named in the statute; and the direct and immediate servants of the Crown, whose occupation is that of the Crown itself, also come within the exemption. But this ground of exemption does not warrant many decisions which have held that property used for public purposes is not rateable. So, also, trustees who are in law the tenants and occupiers of valuable property upon trust for charitable purposes, such as hospitals or lunatic asylums, are on principle rateable, notwithstanding that the buildings are actually occu-

pied by paupers who are sick or insane.' And then, after pointing out that the 'erroneous' doctrine laid down by Lord Mansfield originated all the confusion, and briefly sketching the history of the decisions, he says: 'At last, in the case of the Tyne Commissioners *v.* Chirton, the Court of Queen's Bench recurred to that which is in my opinion the true principle,—namely, that the only ground of exemption from the statute of Elizabeth is that which is furnished by the rule, that the Sovereign is not bound by that statute; and that, consequently, when valuable property (that is, property capable of yielding a rent above what is required for its maintenance) is sought to be exempted on the ground that it is occupied by bare trustees for public purposes, the public purposes must be such as are required and created by the Government of the country, and therefore to be deemed part of the use and service of the Crown.' And Lord Cranworth said: 'I can discern nothing in the words or spirit of the Act exempting from liability the occupier of valuable property, merely because the profits of the occupation are not to be enjoyed by him, or by any one on whose behalf he is occupying, but are to be devoted to the benefit of the public;' and pointed out that the only exemption was in favour of the Crown and its servants, in consequence of the Crown not being mentioned in the statute. And Lord Chelmsford said: 'Every occupier of a tenement yielding profit is within the rating clause of the statute, although the tenement be a public work for the general benefit of the realm, and the profit be directed to be applied exclusively to its maintenance.'

Substantially the same question was on the same occasion decided by the House of Lords, in a Scotch case, in the same way. The trustees for the navigation of the River Clyde were assessed on the lands, houses, quays, wharfs, docks, sheds, etc., belonging to or occupied by them in the City Parish of Glasgow; and they sought exemption on the ground that their ownership or occupation was not beneficial to themselves, and that they were merely owners or occupiers for the benefit of the public. But the House of Lords, affirming the decision of the Court of Session, held that the Scotch Poor Law Act did not, any more than the English Act, make an exemption in favour of those who occupy only for the benefit of the public; and on the same

grounds, trustees or commissioners of public docks and harbours must be made liable in Scotland.[1]

A similar judgment was pronounced in reference to the Leith Docks, after it had been no less than three times before the Court. In 1864, when a third action had been raised by the inspector of the poor of Leith for the settlement of the question, the case was held to be undistinguishable from the case of the Clyde Trustees; and the Leith Dock Commissioners were found liable, both as owners and occupiers, in assessment in respect of their docks, harbours, etc.[2]

In the same case it was expressly decided, that where there is a specific appropriation by statute of the whole revenue of a subject, it is nevertheless liable in poor-rates, because the appropriation can only take place after payment of all legal charges.

Crown Property.—From these cases it follows that the only property exempt from poor-rates is that occupied by the Crown. It is immaterial whether the subjects were anciently or recently acquired,—whether held by her Majesty personally as Royal palaces, or by her servants as public offices,—whether as part of the hereditary possessions of the Crown, or rented by the Crown for public purposes, the fee remaining in a subject. The ground of exemption is, that it is the general constitutional and prerogative right of the Crown to be exempt from all taxes imposed by statute, unless the contrary be enacted. In other words, the Crown cannot be taxed by statute except by its own consent, conveyed in a direct message from the Sovereign to the Houses of Parliament, importing a distinct waiver of its prerogative right. So the rule was stated by Lord Jeffrey, in the Advocate-General *v.* Commissioners of Police of Edinburgh, 22 Jan. 1850.[3] The exemption, it was there stated, did not rest upon the absurdity of making the Crown, as the general recipient of all taxes, to contribute to their payment, but was founded on the larger principle, that it was the prerogative right of the Sovereign to be liable to no tax,

[1] Adamson *v.* Clyde Trs., Court of Session, 27 Jan. 1860, 22 D. 606; 26 June 1863, 1 M'P. 974; House of Lords, 22 June 1865, 3 M'P. 100.

[2] Court of Session, 1836, 15 S. 204; 26 Nov. 1852, 15 D. 95; H. of L. 6 Feb. 1855, 2 Macq. 28, 8 P. L. 432; Court of Session, 17 June 1864, 2 M'P. 1234.

[3] 12 D. 456.

and that all the officers for the Crown acting for the Sovereign have the same privilege. The exemption, therefore, extends to all taxes of a local as well as a general kind. In the case referred to, the Crown was held not liable in police and other local rates, in respect of the Edinburgh Post Office. In a former case[1] it had been decided that the Crown was not chargeable with prison assessment and rogue money, in respect of certain Crown lands which were included in the valuation roll of the county. The principle of these decisions was affirmed by Lord Rutherfurd, acting as Exchequer Judge, in the Advocate-General *v.* Oliver, 19 Jan. 1852,[2] as to the non-liability of Paisley Barracks, occupied by the Board of Ordnance, for poor-rates. 'It could not be maintained,' he said, 'that the statute 8 and 9 Vict. c. 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's use, or on property of her Majesty, or on property used for her Majesty."' Such subjects, he therefore held, were not liable to be assessed for that purpose. These decisions entirely overrule the older cases, where it was affirmed that, if the Crown acquire right from a subject to a property liable to poor-rates, it passes to the Crown *cum suo onere*.[3]

In the cases above quoted, the assessment, as laid upon a public department, would, if sustained, have formed a claim upon the Treasury; but where it is laid upon a public officer in his individual character, not as officially representing the Queen, it falls to be recovered from his own private effects, as in the case of any other subject. Therefore there is no exemption when the assessment is laid upon Crown property in the beneficial possession of a private party. Thus there are two cases, where Lord Haddington, as Keeper of the King's Park at Holyrood, was found liable in the payment (1) of poor-rates, and (2) of a rate imposed by the heritors for the erection of a manse.[4] So with regard to all tenants of the Crown. The Court of Ex-

[1] The Advocate-General *v.* Garioch, 12 D. 447. [2] 14 D. 356.

[3] Officers of Ordnance *v.* Heritors of North Leith, 14 June 1825, 4 S. 91. See also Bruce, 28 Nov. 1810, F. C.; Milroy, 20 Nov. 1815, F. C.

[4] Canongate *v.* Lord Haddington, 1816, F. C.; and Ross *v.* Lord Haddington, 8 June 1824, 3 S. 76.

chequer refused to stay proceedings taken by an inspector for the recovery of assessment from the master gunner in Edinburgh Castle, who resides with his family in a portion of the fortress.[1] The assessment, it was said, was a personal debt of the party on whom it was laid, to be paid out of his own funds, and was due by him in respect of his occupancy of the Crown property, just as a Crown tenant is charged with poor-rates in respect of occupying Crown lands. At the same time, the Court abstained from deciding the question, as they considered that the proper way of trying the legality of the assessment was in the form of a suspension in the ordinary courts.

But the public purposes which entitle to exemption being those which fall within the province of the Government, include not only such premises as are in the occupation of the head of a great department of State, like the Postmaster-General, but also those like the national universities, where the occupiers are not perhaps strictly servants of the Sovereign, but are *consimili casu*.[2]

We have already seen that a county prison may be entered in the valuation roll, but it is not assessable. County buildings occupied for the assizes,[3] or as a county court,[4] or as a jail,[5] are all exempt; for though maintained by local rates, they are national property held for national purposes. Nor is a reformatory liable to be rated.[6]

Ecclesiastical Property.—Ministers of the Church of Scotland are liable to assessed taxes, and to property tax, and to rates levied under local Acts on their manses, glebes, and stipends;[7] but, strange to say, churches, manses, and glebes of the Established Church are exempt from poor-rates.

Prior to the present Poor Law Act, it was ruled in one case[8] that glebes and manses were not liable for public and parochial burdens. Though poor-rates are imposed in respect of lands and heritages, it was held that the minister *qua* such was not to

[1] Advocate-General *v.* Beattie, 29 Jan. 1856, 18 D. 378.
[2] University of Edinburgh *v.* Greig, 20 July 1865, 3 M'P. 1151.
[3] Hodgson *v.* Local Board of Carlisle, 8 Ell. and Bl. 230.
[4] Manchester case, 3 Ell. and Bl. 336.
[5] Gambier *v.* Lydford, 23 L. J. M. C. 69.
[6] Shepherd *v.* Bradford, 33 L. J. M. C. 182.
[7] M'Lea *v.* Walker, H. L. 1 Bligh App. 535 (1819).
[8] Cargill *v.* Tasker, 27 Feb. 1816, 19 F. C. 203.

be considered 'as heritor, tenant, or possessor;' and therefore, though *de facto* possessing, his possession was not such as to bring him within the statutes. The question, whether this exemption still remained under the new law, was raised in the case of Forbes *v.* Gibson, 18 Dec. 1850.[1] It was contended that if a minister, in his clerical character, was not liable for his glebe, either as 'heritor' or 'occupant,' he was reached by the word 'owner' in the new Act. But the Court were of opinion, that if the Legislature intended to alter the very ancient privilege attached to the domiciles and pertinents of our resident clergy, a special clause to that effect (as in the case of stipends by sec. 49) would have been inserted in the statute, declaring their liability in express terms. The exemption was therefore found not to be taken away, and the House of Lords affirmed the decision.[2] The exemption of ecclesiastical buildings is not now confined to those connected with the Established Church. By statute 28 and 29 Vict. cap. 62, no poor-rates can be imposed on any church or chapel exclusively appropriated to religious worship.

Scientific and Literary Societies.—By 6 and 7 Vict. c. 36 (1843), societies established *exclusively* for purposes of science, literature, or the fine arts, are exempt from the charge of county, burgh, parochial, and other local rates, in respect of land and buildings occupied by them for the transaction of their business, either as tenants or owners, 'provided that such society shall be supported wholly or in part by annual voluntary contributions, and shall not, and by its laws may not, make any dividend, gift, division, or bonus in money, unto or between any of its members.' To entitle to the privilege, a certificate must be obtained in the manner directed by the Act; but such certificate is not conclusive of the right of the society to exemption.[3] Three copies of the rules, signed by the president or other chief officer, and three members of the council or committee of management, and countersigned by the clerk or secretary, are transmitted to the Lord Advocate, or the depute appointed for examining the rules of friendly societies. If the society is found entitled to the benefit of the Act, a certificate to that effect is written on each of the three copies of the rules. One copy is then returned

[1] 13 D. 341, 23 J. 120, and 24 J. 524.

[2] 1 Macq. 106. But a glebe feued under the Glebe Lands Act, 1866, is liable to be rated.

[3] R. *v.* Phillips, 17 L. J. M. C. 83.

to the society, one is retained by the examiners, and the other transmitted to the clerk of the peace, for confirmation at sessions, and to be deposited.[1] If alterations are made on the rules, they must be submitted to the examiner within one month, in order to be certified in the same way. If the certificate is refused, the society ceases to have the benefit of the Act from the time when the alterations came into force.[2] In such cases, however, the rules may be submitted to Quarter Sessions, and the justices may order them to be filed, notwithstanding of the refusal of the certificate; and the collector of the assessment may, in the same way, appeal from the decision of the examiner, in granting the certificate, to the Quarter Sessions.[3]

It appears from certain decisions of the English courts, where the cases under this Act have been of more common occurrence than in Scotland, that, to entitle a society to plead the exemption, these requisites are essential:—(1.) Its laws must expressly prohibit the making of any dividend, gift, division, or bonus in money, unto or between any of its members;[4] but a rule, to the effect that a subscriber should have power to transfer his property in the library of a literary institution, was found not to be a contravention of the provision;[5] nor a clause in the constitution of a society, that, upon its dissolution, the property was to be sold and divided among the members. 'No law of the society,' said Lord Denman, 'can prevent its dissolution, and a consequent division of the common stock.' This sort of division the Legislature did not intend to prevent.[6] (2.) The society must be instituted for the purposes of science or literature *exclusively; i.e.* these must be its direct, immediate, and *only* objects.[7] Thus, a society instituted for the diffusion of religious principles and sentiments, though by literary means, is not within the exemption.[8] So, in Reg. *v.* Pocock, 8 Q. B. 729, a society instituted for the purposes of education was not entitled to the exemption, though the object was to be gained by scientific and literary means. Williams, J., there said: 'We find that algebra, trigonometry, elocution, and poetry, are taught; these

[1] Sec. 2. [2] Sec. 3. [3] Sec. 6. [4] Reg. *v.* Jones, 8 Q. B. 719
[5] Birmingham Churchwardens, etc., *v.* Shaw, 10 Q. B. 868.
[6] Birmingham Case, 10 Q. B. 878.
[7] Reg. *v.* Bradford Library (1858), 28 L. J. M. C. 73.
[8] Reg. *v.* Jones, 8 Q. B. 719.

certainly come within the terms, science and literature; but that does not show that the society was instituted exclusively for these purposes.' So, too, the privilege was refused to a society, in which the promotion of science, literature, and the fine arts was not the direct object of the institution, but only a means, among others, of effecting the general elevation of the physical, intellectual, moral, and religious condition of the working classes.[1] (3.) The premises, in respect of which exemption is claimed, must be occupied *solely* for these purposes. Therefore, where a society let their premises at a profit for the exhibition of dwarfs and wild Indians—purposes other than those for which it was originally instituted—they were held liable to be rated, although the funds were applied to the objects of the institution.[2] But where part of the building was let to tenants, and the rents received by the society, and applied to the proper purposes of its institution, the Court held that, while the tenants were, no doubt, rateable in respect of their own premises, the receipt of rent from them by the society did not take away the exemption as to so much of the building as the society itself occupied.[3]

The only case which has occurred in this country is that of the Edinburgh Philosophical Institution *v.* Hay, 10th February 1857, in which Lord Handyside, as Lord Ordinary (and his judgment was acquiesced in), refused the privileges of the statute to an institution established for the purpose of affording, at a cheap rate, to its members and the public, the means of acquiring general information, and of obtaining instruction in science, arts, and literature. These objects were carried out by—(1.) A news-room; (2.) A library and reading-room; and (3.) Public lectures. Separate subscription was permitted to the first two departments—the news-room and library—or to the lectures simply. The lectures were delivered in halls hired for the purpose, the buildings of the institution being devoted to the news-room and library. The Lord Advocate declined to certify that the institution was entitled to the benefit of the Act, because one of its purposes was a news-room. 'Were it the sole

[1] Scott *v.* the Churchwardens of St Martin's-in-the-Fields, 10 November 1855, 5 El. & Bl. 558.

[2] Purvis *v.* Trail, 19 Jan. 1849, 3 Exch. 344.

[3] Reg. *v.* the Overseers of Manchester, 16 Q. B. 449.

purpose,' he observed, 'the society would not be entitled to the exemption; and it is not sufficient for a society claiming exemption, that *some* of its purposes are such as would, if they were the only purposes, bring it within the scope of the Act; it must be established exclusively for literature, science, or the fine arts.' Lord Handyside affirmed this view, observing: 'It is quite conceivable that a scientific or literary society, without losing its title so to be regarded, should furnish itself with some of the public journals of the day, and even place them in a separate apartment, without forfeiting its proper character, and depriving itself of the benefit of exemption from rates. It might seem contrary to the spirit and intendment of the statute to construe it so rigidly. And if the society were for the advancement of science, literature, or the fine arts, out of pure love to aid their progress to higher efforts, it might be reasonably maintained, that furnishing to its place of meeting the means of being acquainted, in some measure, with the occurrences of the day, would not essentially alter the character of the society. The question might depend on the *degree* to which the thing was carried. But, in the present instance, the annual reports show that the news-room all along, and at the present time, has been at least as prominent an object of care with the association as any other.' For that reason his Lordship did not think the society came within the statute.[1]

Charitable Institutions.—In this country there is no exemption for such institutions. In the first case which occurred, a society, instituted by the bakers of Paisley, possessing certain mills where the members ground all their grain, the profits, along with the other revenues being, in the first place, devoted to the support of poor members, and the surplus appropriated 'to the use of the society.' On the question, whether this association, in respect of the trade carried on at the mills, and the rent thereof, was liable to a rate imposed on means and substance, for behoof of the poor of the burgh, it was contended that poor rate is a personal, and not a territorial burden—heritage being only taken as the measure of its extent; that there could be no assessment where there was nothing to constitute wealth or property in the party assessed; and, therefore, that

[1] See 'The Law as to the Exemption of Scientific and Literary Societies from the Parish and other Local Rates,' by G. Taylor.

this society, being a friendly association, which devoted all its revenue to benevolent objects, could not be liable. The Court found that the society was not a purely charitable institution, and directed an assessment on the surplus profits from the mill, or other property remaining after the usual allowances were made to the poor and aged members. So far as expended in charity, the revenues of the association were not assessable.[1] In this case, it will be observed, the assessment was imposed on means and substance; and, where this was the mode adopted, it might with some reason be contended, that a friendly or charitable association holds its revenues merely as trustee or administrator for the purposes of its institution, and so is not liable to assessment. But now an assessment can only be imposed on all lands and heritages within the parish, without exception; and it has been determined that the fact of the property being used for the purposes of a charitable institution does not form any ground of exemption. In Greville *v.* Beattie, decided by Lord Neaves in the Outer House,[2] the objection was taken, that the Canongate House of Refuge was not rateable. The Lord Ordinary said, 'He could discover no grounds on which the occupants of premises otherwise assessable could be exempted, in consequence of any peculiar use to which the building might be put, the operations there carried on, or the purposes to which the proceeds might be applied. If there were room for such an inquiry, it would be difficult to draw the line between what was charitable and what was not. The House of Refuge may be, and doubtless is, a charitable and useful institution; but other associations, whether useful or injurious, whether well or ill conducted, may make similar professions, for purposes of the most miscellaneous kind, embracing the relief or alleviation, real or supposed, of every possible or imaginable form of poverty or misfortune with which humanity may be afflicted. It would not be easy for a Court to stop, if once it were to begin with such a principle. Nor does there seem anything either unreasonable or severe in requiring that parties who have to occupy a house for their own benevolent objects should pay the taxes, as they have in general to pay the rent, which may be naturally connected with their occupation; and if a charitable society must

[1] Bakers' Society of Paisley *v.* Magistrates, 6 Dec. 1836, 15 S. 200.

[2] 20 Dec. 1856.

pay taxes on premises which they occupy at a rent, it does not seem to alter the principle or the result when they purchase the premises, and come then to be owners as well as occupants of them.'

When the Leith Docks case was lately in the House of Lords, the Lord Chancellor observed: 'We did not expressly decide last year that public charities were rateable to the poor, because that case was not before us; but probably the principle of our judgment would extend to charities.' Accordingly, Heriot's Hospital has been found liable to poor rate,[1] the trustees being owners as well as occupants of the hospital buildings and grounds within the meaning of the Poor Law Act.

[1] Greig *v.* Heriot's Hospital, 28 March 1866, 8 P. L. 558.

RELIEF.

I.—Persons entitled to Relief.

II.—Nature of Relief.

Outdoor Relief.
Indoor Relief.
Education of Pauper Children.
The Sick Poor.

III.—The Insane Poor.

IV.—Recourse against Relations.

Principle of Liability.
Order of Liability.
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Army and Navy Pensioners.
Natives of India.

V.—Recourse against other Parishes.

Persons entitled to Relief.—It has already been observed that the earlier efforts of the Scottish Parliament were directed to the regulation of begging and the suppression of vagrancy. The statutes in the order of time are: 1424, c. 25; 1424, c. 66; 1503, c. 70; and 1535, c. 22. The Act of 1503 confirmed the Act of 1424, with the explanatory statement that the local authorities should 'thoil nane to beg except cruiked folk, seek folk, impotent folk, and weak folk,' that is to say, persons mentally weak or imbecile. By the Act 1535, c. 22, it was enacted that no beggars 'be thoiled to beg in ane parochin that are borne in ane uther.' Then came the Act 1570, c. 74, which is divided into two parts. The first ordained that all strong and idle beggars, above the age of 14 and under the age of 70, found wandering and misordering themselves, should be apprehended and dealt with by the magistrates in burghs and justices in landward parishes. This class interdicted, includes, amongst others, 'all common labourers, being persons able in body, living idly and fleeing labour.' As to these, the statute assumes that in this country every person willing to work would be able to get it; and that if he suffered from no disability,

mental or physical, his destitution must be treated as due to his own fault, and for which, therefore, no public provision required to be made. But others differently situated required to be differently treated; and therefore the second part of the Act proceeds: 'Since charity would that the poor, aged, and impotent persons should be as necessarily provided for as the vagabonds and strong beggars repressed, and that the aged and impotent poor people should have lodging and abyding places throughout the realm to settle themselves into,' the 'provosts and baillies in burghs and towns, and the justices in landward parishes, were ordained to take acquisition of all aged poor and impotent persons born within the parish or dwelling, or having their most common resort therein the last seven years, who of necessity must live by almes.' For the 'needful sustentation' of such persons, the magistrates were required to tax and stent the whole inhabitants according to the estimation of their substance. It is unnecessary to refer to the subsequent statutes. By one of them, 1672, c. 18, correction houses were directed to be established; but this, like many others, fell into total desuetude. The consequence was, that till the Act of 1845 the relief given to paupers in Scotland was essentially what is termed 'outdoor relief;'[1] and there being no such provision as was established in England by the 14th Elizabeth, for the lodging of persons destitute from want of employment, the country has been saved from the evils attending the compulsory relief of the able-bodied poor.

In construing the above statutes, it has been held that the words 'poor, aged, and impotent,' are to be read as aged poor and impotent poor; meaning thereby, that all persons who, by reason of age or infirmity, cannot live without alms, are entitled to relief. It follows, that a person, however destitute, is absolutely excluded from relief if able-bodied. In Pollok *v.* Darling,[2] the Court of Session held that those persons were entitled to relief under the Poor Laws, who, though in ordinary seasons able to gain their livelihood, are reduced, during a dearth of provisions, to have recourse to a charitable supply; and an extraordinary assessment might for that purpose be levied.

[1] But see per Inglis, J. C., in Forsyth *v.* Nicoll, 19 Jan. 1867, 5 M'P. 293.

[2] M. 10,591, F. C., 17 Jan. 1804.

This judgment, pronounced on the 19th Nov. 1802, was, after a re-hearing, adhered to in 1804; but it was overturned by the decision in the case of M'William *v.* Adams.[1] In 1848, the pursuer and appellant, a boiler-maker in Glasgow, preferred a petition to the Sheriff, setting forth that he was utterly destitute, and willing to work, but unable to find employment, and that he had been refused all assistance from the parish. The Court found, that able-bodied persons are absolutely excluded from the benefit of the Poor Law, Lord Brougham observing: 'There is the greatest difference between relieving all impotent poor, and relieving all able-bodied persons who cannot find work, and there is no absurdity in supposing that the Legislature intended to exclude the latter class. The relieving officer may easily discern whether an applicant is disabled by infirmity. But to ascertain whether he is unable to find work, and whether the inability does not arise from his own fault, may be very difficult. The construction, therefore, that the able-bodied are excluded from relief imputes no inconsistency to the lawgiver; it rests, on the contrary, on a solid and intelligible distinction.'

In the above case, some of the judges indicated an opinion, that although the applicant, being able-bodied, could not demand relief as a matter of right, it might nevertheless be competent for the managers of the poor, in the exercise of the discretion with which they are vested as administrators of the parochial funds, to give relief voluntarily to a person out of employment, as an *occasional* pauper. Prior to the Act of 1845, a distinction was sometimes made between the 'ordinary' and the 'occasional poor.' The former were those placed on the permanent roll of paupers; the latter received temporary assistance more as charity than as a matter of right, out of the church-door collections, and other funds at the disposal of the kirk-session. To the former, relief was given as a matter of legal obligation; to the latter, it was given at the discretion of the managers, during the existence of unusual distress among the working population. The distinction between the two classes was thus drawn by Sir Henry Moncrieff, in a report laid before the General Assembly: 'Those of the first class receive a constant supply from the parish funds; and those of the second are only

[1] Court of Session, 11 D. 719; House of Lords, affirming decision of the whole Court, 26 March 1852, 1 Macq. 120.

assisted when they are laid aside from work by sickness or *accidental causes*, and especially during that season of the year which chiefly affects their health, or suspends their labours. They receive at that time such assistance as their immediate necessities demand for the limited period when they are in this situation; but when the cause which occasioned the demand ceases to operate, the parish assistance is withdrawn, and they return to labour, under a conviction which they never relinquish, that both their subsistence and their comfort must ultimately depend on their personal industry.' The instances, however, in which parochial relief was afforded to able-bodied persons, on account of their inability to find employment, were reported by the Royal Commissioners to have been of very rare occurrence.

When the Act of 1845 was passing through Parliament, a clause was inserted, for the purpose, apparently, of securing the legality of the system under which the parochial funds might be given to the unemployed, not *ex lege*, but *ex pietate*. Section 68 enacts: '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.'

Reading this section in connection with sec. 33, authorizing an assessment for the purpose of raising 'the funds requisite for the relief of the poor persons *entitled to relief*,' the meaning seems to be, that the fund is to be applicable for the relief of poor persons legally entitled to relief, whether they are occasional or permanent. In both sections, the Legislature is speaking of the impotent poor, and not of the able-bodied; but if so, it is difficult to see the reason of any distinction between cases of permanent and occasional disability. If disability exists, the party can demand relief as a matter of right, whether the disability is likely to be of long or short duration. No person can ever be absolutely said to have acquired the character of a permanent pauper. As Lord Jeffrey says,[1] 'The maladies are temporary; nonage must be removed; sickness and insanity may be removed; even old age may be removed, as giving a claim to relief, by the acquisition of property.' But, neverthe-

[1] Adams *v.* M'William, 11 D. 845.

less, it seems to have been the intention of the framers of the Act, that able-bodied persons out of employment might, if destitute, come under the denomination of 'occasional poor,' and might therefore be relieved out of the funds raised by assessment. In December 1846, in consequence of applications made to the Board of Supervision by parochial boards on this subject, they thought it advisable to take the opinion of counsel, as to 'whether, in any circumstances, a parochial board may legally grant relief to destitute able-bodied persons out of employment, either from the funds raised for the poor generally, or by imposing and levying a special assessment for this purpose.'

The Lord Advocate and the Dean of Faculty (afterwards Lord Rutherfurd and Lord Colonsay) were of opinion, 'that the late Act 8 and 9 Vict. c. 83, does not confer on or recognise in able-bodied persons out of employment any right to demand relief; and that such persons are not within the scope of the provisions for enforcing and rendering effectual claims for parochial relief.' On the other hand, they were of opinion, 'that the statute removes all doubt as to the legality of affording relief to occasional poor from *the funds raised by assessment*, as well as from *the collections* at the church door, or rather that half of such collections formerly in use to be retained by the kirk-session for such purposes.' And they were further of opinion, 'that able-bodied persons accidentally or unavoidably thrown out of employment, and thereby reduced to immediate want, may be regarded as occasional poor, to whom temporary relief may lawfully be given out of the funds raised by assessment.' But that 'such persons cannot be admitted on the roll of poor entitled to parochial relief.'

The law, therefore, as regards the relief of able-bodied persons, was understood to be, that while they had not in any circumstances a right to demand relief, and could not, therefore, by any legal proceeding enforce that demand, parochial boards might legally, when they thought it advisable, apply the funds raised by assessment to the temporary relief of destitute able-bodied persons who were out of employment, and that half the collections at the church door were applicable to the same purpose. To this unrestricted discretionary power conferred by statute on the parochial boards, and to the voluntary contributions of the public in extraordinary emergencies, was entrusted

the relief of such cases of destitution as might occur amongst the classes not by law entitled to demand relief.

This opinion continued to be acted on till the case of Petrie *v.* Meek, 4 March 1859,[1] which raised the question whether the acquisition of a settlement had been interrupted by the payment of a sum of 8s. as relief to an able-bodied man out of employment. The Second Division of the Court (then presided over by the present Lord President Inglis) unanimously held, that a parochial board were not entitled to employ any part of the funds raised by assessment for the support of the poor to the relief or assistance of able-bodied persons under any circumstances,—or, in other words, to raise funds for such a purpose, and that able-bodied persons could not be classed under the 'occasional poor' of sec. 68 of the statute. Some dissatisfaction having been expressed with this judgment, the case of Jack *v.* Isdale[2] was raised for the avowed purpose of retrying the question. A member of the Parochial Board of Dundee applied for a suspension and interdict against the board giving casual relief from their funds to a person who was admitted to be able-bodied, and whose case was entered in the books of the board thus:—'Sick wife and slackness of trade, whereby he cannot get full employment.'

A majority of the whole Court were against the competency of the proposed application of the poor's fund, and on appeal the judgment was upheld by the House of Lords. The relief proposed to be given was defended on the ground above stated, that, under sec. 68, although a person out of work, in a state of destitution, could not demand relief, the board might, if they chose, competently give it. The Lord President (Lord Colonsay) said that this was his intention in framing the statute. 'It says that the occasional poor who are able-bodied, and who had had no right formerly to demand relief, shall not have the right to demand relief in future; but they are not excepted from the class of occasional poor, who are now to get relief, and the only difference between them is that the right of demand does not exist in the case of the able-bodied occasional poor.' But the Lord Chancellor said he was unable to distinguish or see

[1] 21 D. 614.

[2] H. L. 12 Feb. 1866, 4 M'P. H. L. 1, 1 Law Rep. Sc. Ap. 1, aff. 2 M'P. 978.

any difference in principle between being entitled to relief and entitled to demand relief. The right to give, and the right to receive relief, were correlative. If there was no right to demand, there was none to give relief. It could not be, that where a fund had been raised for a special purpose, defined in an Act of Parliament, and given into the hands of persons whose duty it was to carry the Act into execution, it was open to them to say: 'We think that you are not within the class of persons defined in the Act of Parliament; but we think you are a proper object of relief, and therefore we shall give it to you, although we are not authorized by the Act to do so.' The result is that the occasional or casual poor referred to in sec. 68 of the statute, are those who are temporarily disabled from pursuing their avocations by being reduced by disease, bodily or mental, below the condition of able-bodied; and who, equally with the permanent poor, are legally entitled to demand relief.

What is an *able-bodied* person? 'A man,' says Lord President Inglis, '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.*'[1]

An able-bodied man being bound to support his children, the Court refused a claim which was preferred by a father, destitute, and unable to find employment, on the part of four children of tender years, and unable to support themselves.[2] The reason is, that, 'while the father and children continue to represent one family, the law will not distinguish between them.' The children can only claim through their parent, who represents them; and the father, not being a claimant himself, must, *presumptione juris et de jure*, be earning a subsistence. 'Wherever,' says Lord Truro, 'the law gives parish relief, it also gives certain authorities and rights; and it is one test by which to ascertain the title to relief, whether the parties claiming it are in a condition to be amenable to that authority, and to those rights which are exacted, as the guards and protection of the parish at

[1] Jack *v.* Thom, 14 Dec. 1860, 23 D. 173, 33 Jur. 79; Petrie *v.* Meek, 21 D. 614.

[2] Lindsay *v.* Thomson and M'Tear, 11 D. 719; H. L., 1 Macq. 155, 24 S. J. 391.

whose expense the relief is to be provided. The parish officers have the right to appoint the place for the destination of those to whom they are bound to administer relief; but I find no authority in principle, or in any part of the Act of Parliament, for such a separation of the children, in point of right, from their father, as that, while the father can support himself, he may cast his children on the parish.'[1]

But while, 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, there is no such presumption in the case of the mother widowed or deserted, and burdened with the support of a family. She is bound to maintain her children herself, if she has the means; but her ability or inability to do so depends upon circumstances, and is matter for inquiry.[2] A woman without incumbrance may be able to support herself, but, having a child to nurse, unable to support both herself and child. She is then entitled to relief; and being so, it is she, and not the child, who is deemed *the* pauper—a principle which, as will afterwards appear, is of great importance in the law of settlement.[3]

A wife and children deserted and left destitute by the father, are equally entitled to parochial relief. While the desertion continues, the wife must be dealt with practically as a widow. Should the husband return, it will be quite open for the parochial board to discontinue the relief; but, in the meantime, her right to it is undoubted, although the husband by whom she has been abandoned may be an able-bodied man. These principles were affirmed in Hay *v.* Doonan, 25th June 1851,[4] which was the case of a wife who was deserted by her husband, and left with three children—the eldest thirteen, and the youngest under two. In such cases, 'the question which arises is not, whether the applicant is able-bodied to the effect of supporting herself, but whether she is able-bodied to the effect of supporting both herself and family.'[5] It has been said that the *onus* lies on the parish to show that she is capable of doing so; but this can only be maintained on the supposition that there is a presumption in favour of every woman being unable to sup-

[1] 1 Macq. 161. [2] Mackay *v.* Baillie, 20 July 1853, 15 D. 974.
[3] See Lord Deas' opinion in Hay *v.* Thomson, 28 S. J. 190.
[4] 13 D. 1223. [5] Per Lord Robertson, in *ca. cit.*

port herself and children; and for this presumption there is no foundation whatever.

It is of course obvious that, provided infirmity, bodily or mental, does exist, the incapacity need not be total. It is enough that the party is, through disease or incapacity, incapable of earning sufficient for his own maintenance. Such persons, however, who are partially disabled, are bound to do as much work as they can for their own support.[1] They may be set to work by the parish, and the proceeds of their labour either expended on their own maintenance or thrown into the general fund.[2] The right to relief arises to every one who has acquired a settlement in this country—foreigners as much as native citizens.[3]

Although an able-bodied man is not entitled to claim relief for himself or his family, the fact of his wife being insane may entail upon him such an unusual expense, that he will be practically reduced to a state of pauperism, and in such a case the Parochial Board is bound to make some provision[4] for her proper care and treatment. In this case the husband is the pauper, being reduced to a state of disability by the illness of his wife. So a father, though able-bodied, may be reduced by the extra expense necessary for the support of the lunatic child to the same position in which the law has dealt with a mother alimenting an ordinary family.[5] The question always turns on the question of fact: Will a man earning the wages of the husband or father, after providing for his wife or son in an asylum, have enough left for the maintenance of himself and the other members of his family in the humblest possible way?

Nature of Relief.—*Outdoor.*—The nature of the relief which a Parochial Board is required to administer, is comprehensively defined in the older statutes as 'needful sustentation,' —an expression which has been explained to mean, such an allowance as will secure from the cravings of hunger, or the risk of the loss of health from an inadequate supply of food.[6]

[1] Dunl. 29.
[2] 1579, c. 74.
[3] Higgins *v.* Barony Parish, 9 July 1824, 3 S. 239.
[4] Jack *v.* Thom, 14 Dec. 1866.
[5] Hay *v.* Paterson, 29 Jan. 1857, 19 D. 332.
[6] Per L. P. in Pryde *v.* Ceres, 14 Feb. 1843, 5 D. 552.

In the new law it is described as 'the sufficient means of subsistence,'[1] including 'medicine, medical attendance, nutritious diet, cordials and clothing, in such manner, and to such an extent, as may seem equitable and expedient.'[2] There are various ways in which outdoor relief may be distributed. The pauper may receive his allowance in the form of a sum of money, paid weekly, fortnightly, monthly, or at longer intervals; or if his habits are such as to render it inexpedient that he should be entrusted with money, relief is given in victuals and clothing. Sometimes the assistance rendered is payment of the house-rent. In fixing the amount of relief, and the mode in which it is rendered, the whole circumstances of the individual are considered—his health and strength, whether he is totally unable to work, or, if the disability is only partial, the amount which he is able to earn—the pecuniary position and domestic circumstances of relations who may be primarily liable to maintain him—the price of necessaries, and the mode of living practised by labourers on the spot. If he is in no employment, work may be provided. The fact of his having relations who refuse assistance, is no reason for refusing relief. An allowance should at once be given, and measures taken for the recovery of the amount expended from those legally liable.

In estimating the means of a pauper, no account can be taken of private charity, which is casual, accidental, or uncertain. 'Even if it were proved,' said Lord Jeffrey, in one case, 'that the farmer on whose grounds the paupers were located had sent them a daily mess of porridge and a supply of new milk, no account could be taken of it, unless indeed it had been sent as a voluntary contribution to the heritors and kirk-session, with this special destination.'[3] The Parochial Board cannot be required to award relief for any definite period;[4] and they may at any time, on a change of circumstances, increase, modify, or withdraw the relief already granted.

The following are the rules and regulations in cases of paupers complaining of inadequate relief:—

The Board of Supervision, by virtue of the powers vested in it by sec. 7 of the Act 8 and 9 Vict. c. 83, has made the follow-

[1] Sec. 70. [2] Sec. 69.

[3] Halliday *v.* Balmaclellan, 11 June 1844, 6 D. 1131.

[4] Robert, 3 S. 500.

ing rules to regulate the form and manner in which poor persons seeking redress for inadequate parochial relief, in terms of the Act, sec. 74, shall transmit their complaints to the Board of Supervision.

1. No such complaints in respect of which the rules of the Board of Supervision shall not have been complied with, will be received by the board.

2. The inspector of the poor in each parish shall at all times be provided with printed applications and schedules for the use of poor persons desiring to lodge such complaints with the Board of Supervision.

3. The inspector shall deliver a copy of such application and schedule to each poor person on the roll of the parish who may demand it.

4. The inspector, if required by the applicant so to do, shall fill up the schedule in any terms the applicant may desire.

5. If the applicant shall prefer to have the schedule filled up by any other than the inspector, he shall be at liberty to do so.

6. Every such application and schedule, before being transmitted to the Board of Supervision, must be signed, at the places indicated in the printed form, by the poor person complaining, with his or her name, or with a mark attested by one witness.

7. Every such schedule, before being transmitted to the Board of Supervision, shall be delivered open, filled up, and signed as above directed, to the inspector, who shall thereafter inscribe upon it such remarks as he may have to make, and sign them with his name at the place indicated for his signature.

8. The inspector, if required by the applicant so to do, shall, within twenty-four hours from the time when the schedule shall have been delivered to him for that purpose, open, filled up, and duly signed, forward it to the Board of Supervision, with such remarks as he may have to make inscribed upon it.

9. If the applicant shall prefer to transmit the schedule to the Board of Supervision otherwise than through the inspector, he shall be at liberty to do so; and in that case, the inspector shall return the schedule to the applicant, with such remarks as he may have to make inscribed upon it, within twenty-four hours from the time when it shall have been delivered, open, filled up, and duly signed, to the inspector.

Forms of application by poor persons complaining of inadequate relief, and the schedules attached to these applications, which are to be filled up by or for them, are obtained from the inspector.

Indoor Relief.—When a parish has either a poorhouse of its own, or an arrangement with another board for the boarding of its paupers in a poorhouse, the offer of admission therein is all that the pauper can legally require. Whether the relief offered be adequate and suitable, will be decided by the Board of Supervision. It is not to be supposed that, when Parliament authorized the erection of poorhouses, they were meant for any particular description of paupers. There is a preamble to sec. 60 of the statute, setting forth the necessity of more effectually administering, by the erection of poorhouses, to the wants of the aged, and other friendless and impotent poor, and those who, from weakness of mind, or by reason of dissipated and imprudent habits, are unable to take care of themselves. But these words are so general, that it is difficult to give them any definite meaning. '"Aged and other friendless and impotent poor" just means,' says Lord Neaves, 'all sorts of poor. "Impotent" means impotent so that they cannot maintain themselves, and "friendless" means that there are no other persons willing and able to support them.' Accordingly, in a recent case, the judges did not hesitate to characterize the first six lines of sec. 60 as purely 'sentimental matter,' which had better been left out; for the poorhouse is intended for every person who requires parochial relief. If a mother applies for relief for her infant child, she must accompany it to the poorhouse;[1] and in a late case it was found that a pauper, aged sixty-five, who lived with his wife, and had been for some time in receipt of outdoor relief, was not entitled to treat the offer of admission to the poorhouse as a refusal of relief, even although its acceptance involved separation from his wife, who had never asked public aid. In short, no one is entitled to demand outdoor relief as a matter of right, unless, in the opinion of the Board of Supervision, it would, in his peculiar circumstances, be unjust or inexpedient to aliment him in any other form.[2]

The principles which ought to be taken into account in judg-

[1] Watson *v.* Welch, 26 Feb. 1863, 15 D. 448; Mackay *v.* Baillie, 20 July 1853, 15 D. 971.

[2] Forsyth *v.* Nichol, 17 Jan. 1867, 5 Mc. 293.

ing of the sufficiency of an offer of admission to a poorhouse as a legal tender of relief, are too obvious to require any detailed statement. It is understood that the Board of Supervision requires to be satisfied that confinement in a poorhouse will not be injurious to the pauper's health. The offer must embrace all dependants living in family with him, including his wife even, though ablebodied and self-supporting, and boys and girls under fourteen, unless they are earning a sufficient wage. As to girls, the children of old persons living in the poorhouse, the parochial board are expected to take a general charge of them, and see that they are not placed in situations where their morals are likely to be corrupted.

On this subject, reference may here be made to the following important minutes of the Board of Supervision :—

Extract Minute of the Board of Supervision respecting the responsibility of an inspector of poor for pauper children boarded out in his parish by another parish, dated 13*th August* 1863.

It appears to the Board, that when a parochial board places pauper children beyond the limits of the parish, it cannot thereby relieve itself of its responsibility for the proper care and treatment of the children, but must continue to be directly and primarily responsible that the children are properly cared for, kindly treated, and duly instructed. It is the bounden duty of the parochial board to take efficient measures and precautions to enable it to acquit itself of that responsibility, and especially to take care that the children are frequently visited at their residences by a competent and trustworthy person, employed by the parochial board, who shall report on the occasion of each visit the condition in which he finds the children, and more particularly anything that may appear to him to be objectionable, or to require the intervention or the attention of the parochial board.

The Board are therefore of opinion that the inspector of the parish in which such children are boarded cannot be held responsible for them in the manner in which, by the Board's circular of the 1st October 1855, he is held responsible for all other classes of paupers. It would be his duty, however, to attend to any application which, on any occasion of emergency, might be made to him on behalf of any of those children, and to inform the inspector of the parish to which a child is chargeable, of anything affecting a child's welfare that might be brought to his notice. It would also be his duty to report to this Board any neglect, abuse, or irregularity affecting the welfare of such children boarded in his parish as might come under his observation, or might be brought to his notice.

Extract Minute of the Board of Supervision respecting failure to provide accommodation for casual sick poor, dated 20th October 1863.

The documents respecting the death of Robert Shearer, which were before the Board on 15th September, were again submitted. The Board are of opinion that the inspector is not responsible, having done all that the parochial board permitted or enabled him to do, in order to the due performance of his duty in this distressing case; but the Board are further of opinion, that the parochial board, by its persistent refusal to provide accommodation for casual sick poor, and by its consequent failure to afford such relief as the statute requires, and as the Board of Supervision have repeatedly called upon it to provide the means of affording, has hastened the death of the pauper Robert Shearer, and has thus placed itself in a painful and discreditable position.

Extract Minute of the Board of Supervision respecting the admission of paupers affected with fever to the hospital of a poorhouse, dated 10th September 1863.

The Board are of opinion that it is not competent to any parish to send to the poorhouse hospital a pauper whose admission would be dangerous to the other inmates of the hospital; and that when it is believed that any pauper proposed to be sent to the hospital of the poorhouse cannot be admitted without danger to the other inmates, the proper course is to require the medical officer of the poorhouse to certify in writing, and on soul and conscience, whether such danger would, in his opinion, attend the admission of the pauper, or whether arrangements can be made consistent with the safety and welfare of the other inmates for the admission of the pauper proposed to be sent to the poorhouse hospital.

Extract Minute of the Board of Supervision respecting the removal of persons about to be discharged from an infirmary to the poorhouse, dated 3d February 1864.

The questions that have arisen between the infirmary and the parochial board relate to the removal, as paupers, by the parochial board, of persons discharged, or about to be discharged, from the infirmary. On the one hand, the authorities of the infirmary hold that the parochial board ought to remove to the poorhouse all patients alleging themselves to be destitute, whom it may be considered expedient to discharge from the infirmary, on whatever ground. On the other hand, the parochial board hold that they are not bound, either by legal obligation or by the rules of the infirmary, to remove persons who had not been admitted to be proper objects of parochial relief previous to their admission to the infirmary.

It does not appear to the Board that the ground taken by either party is tenable. To assume that the authorities in the infirmary are

entitled to determine who are and who are not proper objects of parochial relief, would be to invest them with a jurisdiction which the statutes have reserved for the sheriff alone, and at the same time to supersede the discretionary power which the statutes have conferred on the inspector and the parochial board with regard to applications for relief. In like manner, the assumption that no one who had not applied for and received parochial relief before entering the infirmary can be a proper object of parochial relief when discharged from that institution, is inadmissible. A person who was not a proper object of parochial relief when admitted to the infirmary may become so while there, and even in consequence of being obliged to go there; and it is clearly the duty of the parochial board to give adequate relief to every applicant who is a proper object of relief, whatever may be the circumstances which have brought him or her to that condition.

The number of persons whom the inspector of the City Parish of Glasgow was called upon, by the infirmary authorities, to remove to the poorhouse in the forty-two weeks from the 9th January to 21st October 1863, appears to have been thirty-two, or less than one per week. All of these thirty-two persons are stated by the authorities of the infirmary not only to be unfit patients to remain there, but to be destitute, and so completely disabled as to be incapable of proceeding to the inspector's office in order to apply for parochial relief. On these grounds, the inspector is required by the infirmary to admit them as proper objects of parochial relief, and to remove them to the poorhouse. But it further appears, that about twenty per cent. of the whole number did not desire parochial relief; declined to accept it when it was offered to them, and thus do not appear to have been parties to the application which was made to the inspector in their behalf.

The Board consider it highly objectionable, and, in fact, subversive of every sound principle in the administration of a Poor Law, that application for parochial relief should be made, without his or her concurrence, on behalf of any person who is not by nonage or mental condition incapacitated from concurring.

If an application to the inspector, on behalf of a patient, by an officer of the infirmary is to be regarded as an application by the patient, then, in terms of the statute, it may be a bar to the acquisition of a settlement, and yet in a large proportion of the thirty-two cases referred to, the application would seem to have been made without the knowledge or concurrence of the patients. Indeed, there is nothing to show that they are ever allowed a choice. Are those persons to be debarred from acquiring a settlement by an act of the officers of the infirmary in which they had no part?

Again, it appears, that of the thirty-two persons referred to, there were about ten per cent. who were in a moribund state when they were removed from the infirmary to the poorhouse, and who died a

few days after their admission. It appears to the Board, that a removal from the infirmary to the poorhouse in such circumstances is, on many grounds, highly objectionable. The knowledge that such a practice prevailed might very naturally deter humane persons from contributing to the funds of the institution. If persons arriving at the poorhouse in such a state of disease were sent to the infirmary, it might not appear to be unreasonable or unnatural; but it does seem to be reversing the natural course, to remove them from the infirmary to the poorhouse.

It is most desirable, however, that the institutions, public and private, which have for their object the alleviation of the sufferings of the working classes, should act together harmoniously; and it appears to the Board, that as between the infirmary and the parochial board, matters may be so arranged as to leave no reasonable ground of complaint to either.

In all cases in which the patient, when discharged from the infirmary, is able to go, or can without inconvenience be conveyed, to the inspector's office—there to make personal application for parochial relief, if he desires it, in the usual manner—that course ought to be pursued as the most regular and proper; but if, from any cause, it cannot be adopted, then another course may be substituted. The concurrence of the patient for whom parochial relief is demanded, is in all ordinary cases indispensable; and this can best be secured by requiring that a schedule of application for parochial relief shall be filled up on behalf of the applicant, and signed with his or her name, or mark, duly attested. On receiving this application (the schedules for which ought to be supplied by the parochial board), the inspector will deal with it as he would with any other application from a person confined to bed or to his residence, and will cause the applicant to be visited at his residence, which, in the case supposed, would be the infirmary. It would then be his duty either to offer relief, and if it be indoor relief, to remove the applicant to the poorhouse, as he would from a private residence, or to refuse relief and give a certificate of refusal, which would enable the person refused to apply to the sheriff.

If the course here pointed out be uniformly and systematically pursued, it appears to the Board that neither the authorities of the parish nor of the infirmary would have any reasonable ground of complaint, or of difference in carrying on the important duties which bring them into contact, and which both are no doubt desirous to conduct in the manner which appears to them the best calculated to promote the public interest.

Extract Minutes of the Board of Supervision respecting paupers in the Highlands and Islands offered indoor relief.

Extract Minute, dated 17th November 1864.—The documents respecting paupers offered indoor relief which were before the Board at

last meeting were again submitted. The Board are of opinion that, where the distances and difficulties of transport are such as they are in the Mull Poorhouse Combination, it would neither be expedient nor proper to refuse outdoor relief, and to offer relief only in the poorhouse to any pauper on the roll, or any applicant for parochial relief, without the authority of a minute to that effect, recorded in the Minute Book, by the parochial board, or its committee duly nominated.

The removal of paupers from the parishes of the Mull Combination to the poorhouse is too serious a matter to be left to the discretion and responsibility of the inspector, and ought never to be resorted to until each case has been considered by the parochial board, and their decision upon it duly recorded.

When the inspector intimates to any pauper, or any applicant for parochial relief, that the parochial board has refused to continue or to give outdoor relief, and has resolved to give him or her relief in the poorhouse, he ought, when offering indoor relief and removal to the poorhouse at the cost of the parish, to explain the consequences of declining that offer, and at the same time to tender a form of complaint to the Board of Supervision, to be filled up and dealt with in terms of the rules relating to inadequate relief; and should the person decline to accept the relief offered, and also decline to make a complaint in the prescribed form, it would then be competent to the parochial board, or its committee duly authorized, to strike the name of that person off the roll, on the ground that he or she had been offered, and had refused, relief in the poorhouse.

But if, on the other hand, the poor person should desire to complain to the Board of Supervision that the relief offered is inadequate in the circumstances of his or her case, then it will be the duty of the inspector to proceed as in any other case of complaint of inadequate relief, and to take care that the complainant does not suffer for want of needful sustentation pending the decision of the Board of Supervision.

Should the Board dismiss the complaint, in respect of the offer of relief in the poorhouse, and should the person still persist in refusing that offer, it would be competent to the parochial board to strike his or her name off the roll on the ground of such refusal. But no person can, in any case or circumstances, be held to have been struck off the roll unless a minute to that effect has been duly recorded.

Every such minute will determine the date at which the person to whom it relates ceased to be in receipt of parochial relief.

Extract Minute, dated 2d March 1865.—The letter of the inspector, dated 14th February, as to period at which a pauper refusing indoor relief may be struck off the roll, which was before the Board at last meeting, was again submitted. The Board are of opinion that if, at the end of a month after a pauper has been furnished with a form of complaint on the ground of inadequate relief, the inspector has reason

to believe that the complaint has not been transmitted to the Board of Supervision, and if he has not himself received any communication from the Board of Supervision on the subject, he may then submit the case to the meeting of the parochial board held next after the period of a month has expired as above stated, with a view, if that board should see fit, to the name of the pauper being struck off the roll by a minute of the parochial board to that effect.

In any such case in which a pauper ceased to receive relief in consequence of having refused to receive it in the poorhouse, it would be competent to the parochial board to direct the inspector, in the event of a renewed application by the same person, to renew the offer of relief in the poorhouse, without bringing the case again before the parochial board, provided there were no such change of circumstance as might be calculated to change the views of the parochial board with regard to the propriety of giving relief only in the poorhouse.

Extract Minute, dated 2d March 1865.—The Board took into consideration the documents which were before the Board at last meeting relating to the case of Ann M'Donald, a deaf mute, who was admittedly otherwise ablebodied, and who had maintained herself as a hired servant, but who had applied for parochial relief, and having been refused by the inspector on the grounds above stated, made application to the sheriff-substitute, who ordered interim relief.

The Board are of opinion that the authority of the sheriff or his substitute to order relief to any person making application to him, who has applied to the inspector and has been refused relief, is clear and unquestionable; and that it is the duty of the inspector at once to 'obtemper' the order, even if an appeal to the sheriff from the decision of his substitute should be considered advisable. But the Board consider it equally clear that, in any question relating to the adequacy of the relief afforded or offered, whether as interim or permanent relief, the jurisdiction of the sheriff is expressly excluded by the statute; and if any sheriff-substitute should usurp such jurisdiction, the proper course would be to appeal to the sheriff.

The statute, while it excludes the jurisdiction of the sheriff, has provided other means of obtaining redress, if the relief afforded, whether permanent or *ad interim*, is by the pauper considered inadequate.

At the same time, the Board are of opinion that, where removal to the poorhouse implies removal to such a distance as from Kilmallie to Oban, no pauper ought to be called upon to accept interim relief in the poorhouse; and that no pauper ought, in any case, to be removed to the poorhouse, unless by an order of the parochial board, duly entered in the minutes.

The Board desire also to point out, that an order of the sheriff to give relief would not be adequately obtempered by making an offer to remove the pauper to the poorhouse on a future day. Not only

must relief be given immediately in such cases, but it must be continued until removal to the poorhouse has actually been effected by order of the parochial board, or until the applicant, by refusing relief in the poorhouse without sufficient reason, has ceased to be a proper object of parochial relief. Of the sufficiency of any reasons that may be assigned for refusing to accept relief in the poorhouse while outdoor relief is demanded, the Board of Supervision are the proper judges; and in such cases the pauper ought to be provided with a schedule complaining of inadequate relief, to be filled up and transmitted to that Board in the manner prescribed by the rules.

Copies of the Board's minutes of 17th November 1864 and 2d March 1865, in the case of Morven (see preceding Extract Minutes), to be sent along with this minute for the information of the Parochial Board of Kilmallie.

Circular and Minute as to Accommodation for Casual Poor.[1]

Excerpt Minute of Board of Supervision, February 24, 1848.

The Board of Supervision would recommend to the parochial board of every parish, in which suitable accommodation for the sick poor who may demand casual relief has not been provided, to make immediate arrangements for that purpose. It would be desirable that every parish should have at its command a house fitted for the reception of such sick poor, having no domicile in the parish, as may become chargeable, and that arrangements should be made to provide them with proper attendance, and with the conveniences and comforts their situation may require.

BOARD OF SUPERVISION, *March* 6, 1848.

SIR,—I am directed by the Board of Supervision to forward to you a copy of the prefixed excerpt minute, which you are required to bring under the notice of the parochial board of your parish at their next meeting.

It has been ascertained, from the inquiries which the Board of Supervision has recently been called upon to institute, at the instigation of the officers of the Crown, and upon representations made by private individuals, that the want of accommodation for casual paupers, when seized with sudden sickness, and especially when labouring under fever or other contagious disorders, is very general. Poor persons disabled by sickness cannot, under any circumstances, with propriety be placed in common lodging-houses, where they rarely meet with the quiet and attention which their cases require. But to place paupers suffering from fever in a lodging occupied by healthy poor persons or independent labourers, is a measure altogether un-

[1] Third Annual Report, App. p. 3.

justifiable. It tends to propagate disease, and thereby to endanger life, to produce destitution and misery, and ultimately to increase the demands on the funds raised for relief of the poor.

I have therefore to request that the immediate and earnest attention of your parochial board may be directed to this subject, and to the serious responsibility attaching to them in regard to it.—I am, sir, etc.

(Signed) W. Smythe, Secretary.

To the Inspector of Poor of

Circular Letter as to Accommodation for Casual Sick Poor who have no Domicile in the Parish.

Board of Supervision, Edinburgh, 12*th February* 1855.

Sir,—From the returns made to the Board's circular letter of the 12th October 1854, calling the attention of parochial boards to the minute of the 24th February 1848, and circular of the 6th March 1848, respecting the accommodation of casual sick poor, it appears that in many parishes the object contemplated by the Board in those communications has been misapprehended or imperfectly understood. It is desirable, therefore, to explain more in detail the views of the Board upon that subject.

It has frequently happened, that persons have been struck down by disease, and have become chargeable in parishes where they have no domicile, and where it has been found impossible to procure for them accommodation in the house of any resident inhabitant. Such cases are most frequent during the prevalence of epidemic disease, when sudden attacks are most likely to occur, and when there is at the same time the greatest indisposition on the part of the inhabitants to receive into their houses persons suffering from the prevailing epidemic. But a similar difficulty may arise at any time, if a person who has no domicile in the parish is attacked by any disease considered infectious or contagious.

Any person who is a proper object of parochial relief is entitled to demand relief from the parish in which he may be in need of it ; and the parish is in that case bound to provide adequate relief, including lodging, medicines, medical and other attendance, if necessary. And if a poor person should die in consequence of the failure of the parochial authorities to provide what in the circumstances constitutes adequate relief, there can be no doubt that those authorities whose failure was the cause of death would be amenable to criminal proceedings. It would be no answer to such a charge, to say that none of the inhabitants would on any conditions receive the sick pauper into his house, and that therefore proper accommodation could not be provided for him. The inspector of the parochial board might in such circumstances be found guilty of having caused the death of the

pauper, by their failure to afford such relief as the statute requires, and as the Board of Supervision has repeatedly called upon them to provide the means of affording.

All that the Board contemplated in their minute of the 24th February 1848, and in the circulars which have subsequently been issued on this subject, was that parishes should put themselves in a position to fulfil their statutory obligations in regard to the cases above referred to. Each parochial board must decide, with reference to the circumstances of the parish, upon the amount of accommodation that would place them in such a position. In one parish a single room, available at any time when it may be required, might be sufficient; in another, several rooms may be necessary; but there is no parish, which is liable to have to provide accommodation for a casual sick pauper who has no domicile in the parish, and whom it might be impossible or improper to lodge in the house of a resident inhabitant, or to remove to a distant place, which ought not to have at its command accommodation in the parish for such persons.

A parish which fails to secure the means of fulfilling its statutory obligations in this respect, may at any time find itself involved in consequences of a very disagreeable kind; and exposes its inspector, who is held primarily responsible, to the risk of being made amenable to proceedings which would be distressing to any man of respectability and character.

I am directed by the Board of Supervision to transmit this circular letter to all parishes in Scotland, and to require you to lay it before your parochial board at their next meeting.—I am, sir, your obedient servant, W. S. Walker, Secretary.

To the Inspector of Poor.

Poorhouses and Lodgings for Paupers.[1]

In some parishes paupers have complained that they were unable to procure lodgings, and that the parochial boards refused to provide them. In answer to these complaints, the parochial boards have stated that neither separate houses nor lodgings in the houses of the other inhabitants could be got in the parish; or that they had offered the pauper the usual allowance for house rent; or that they were willing to pay a reasonable rent for any suitable lodging or dwelling, which the pauper might be able to hire in the parish. In some cases the parochial board expressed its readiness to pay the rent of any suitable lodging the pauper might find in another parish, but declared its inability to procure him a dwelling within the parish in which he had resided, and in which he had a settlement.

These cases raised several questions, on which it was necessary that we should come to a deliberate conclusion.

The statute invests the parochial board of a parish, whose popu-

[1] Second Annual Report, pp v.-vii.

lation exceeds 5000, with power to raise funds by assessment, for the erection of a poorhouse; and in such parishes this power affords an obvious remedy for the evil complained of. But although the statute did not expressly take away the power which all parochial boards were supposed to possess under the old law, to erect poorhouses at the cost of the parish, it appeared probable, that inasmuch as it confirmed this power only to parishes whose population exceeded 5000, it might be held to have denied it to all whose population was below the specified amount. On this point, we thought it right to take the advice of the Lord Advocate and the Dean of Faculty, who gave it as their opinion that no parish, the population of which does not exceed 5000, can raise funds by assessment for the erection of a poorhouse, except in combination with one or more parishes, the aggregate amount of whose population, together with its own, exceeds 5000. In many parishes, therefore, which have not the required amount of population, and which cannot arrange a combination for that purpose with adjoining parishes, the erection of a poorhouse cannot be made the means of supplying accommodation for paupers.

We are of opinion, however, that lodging is an essential part of the 'needful sustentation' with which the parochial board is by law bound to provide a pauper, and that this obligation is not discharged by tendering to the pauper a money allowance, which will not procure that part of needful sustentation. The cases are no doubt rare in which money is not exchangeable for all that is included in needful sustentation; and where it is so exchangeable, all that remains to be considered is the question of amount. But it has recently occurred in some of the remote islands, that food could not be purchased by the paupers at any price; and in such circumstances it is obvious that the parochial board, by tendering any amount of money, could not have discharged the legal obligation imposed upon it to provide the poor with needful sustentation. In like manner, if lodging is not to be obtained at any price, the parochial board cannot, by merely tendering a payment in money, however large its amount, acquit itself of the legal obligation to provide that part of needful sustentation; and if, in such circumstances, a pauper should perish for want of the shelter of a dwelling, we are of opinion that the parochial board would be responsible for his death, in the same manner as if he had died for want of food. It is in rural parishes only that any serious difficulty in procuring lodging for the poor is likely to arise, and in these parishes all the persons possessed of lands and heritages of the yearly value of £20 and upwards, are members of the parochial board, and have it in their power to obviate the difficulty.

We had also to consider whether a parochial board fulfils its obligation by offering to pay for any suitable lodging the pauper may find in another parish than that in which he has his settlement. We are of opinion that the parochial board cannot require the pauper to

go beyond the limits of his parish to seek for a lodging; but that the question whether the parochial board would fulfil its obligation by providing a lodging in another parish, cannot be equitably decided, except with reference to the particular circumstances of each case. There may be great difficulty in providing a pauper with lodging in the parish to which he belongs, while it may be easily procured in an adjoining town or village. If by his removal thither the pauper would not be placed beyond the reach of the relations or friends from whom, if he had remained in his own parish, he was entitled to expect offices of kindness and sympathy, he would be subjected to no real hardship if he were constrained to accept, in satisfaction of his claim for this part of needful sustentation, the lodging or dwelling offered by the parochial board; and if the difficulty of providing him with a lodging in his own parish arise, as it often does, from his character and previous conduct having made him obnoxious to the parishioners, his condition might be improved by his removal.

When a pauper, from any cause, is a fit object for relief in a poorhouse, and an offer is made to board him in the poorhouse of a neighbouring parish, in terms of the 65th section of the statute, we think that this offer must be held to be a tender of adequate relief. But we are of opinion that the parochial board is not entitled to require a pauper to enter a poorhouse in a distant part of the country, and we have accordingly held that the complaint of a pauper in Thurso was not removed by an offer to board him in a poorhouse in Dunfermline or Glasgow.

When a pauper is afflicted with any disease which cannot be properly treated except in a public hospital, we have stated it as our opinion, that the parochial board, after that fact has been established by sufficient medical evidence, would be entitled to require the pauper to remove for his treatment to such an establishment at the cost of the parish. It appears to us that the pauper is bound to contribute by every means in his power to the cure of the disease which has disabled him from earning his own livelihood, and made him chargeable to the parish.

On the other hand, when there are no special circumstances in the case of a pauper to justify the parochial board in calling upon him to remove beyond the limits of his parish, we are of opinion that he is entitled to require that lodging and every other part of needful sustentation shall there be provided for him. A parochial board has a right to require that every pauper on the roll of the parish shall reside within its limits, unless the state of any individual's health should render it unsafe to remove him from another parish in which he resides; but the law, which recognises this power to enforce the residence of each pauper in his parish, does not confer upon parochial boards an uncontrolled power to expel a pauper from his parish, either by direct or indirect means. On the contrary, it appears to

contemplate, as a general rule, the residence of paupers in the parish to which they are chargeable. To a man whose life has been spent in one place, or who has no friends except the inhabitants of the parish in which he has resided for many years, the prospect of removal from that vicinity will be alarming, and the power to expel him might be employed to deter him from enforcing his legal rights.

When a poor person is induced, without the exercise of undue influence, voluntarily to accept accommodation in another parish than that to which he is chargeable, it must be presumed that the arrangement is not disadvantageous to him.

Circular Letter respecting Parochial Lodging-houses.

BOARD OF SUPERVISION, EDINBURGH, 20*th December* 1861.

SIR,—I am directed to transmit, for the information of the parochial board, the annexed copy of a minute passed by the Board at their meeting yesterday, and I am to call upon you to submit it to the parochial board at their next meeting.—I am, sir, your obedient servant, W. S. WALKER, Secretary.

To the Inspector of

Copy Minute of the Board of Supervision referred to.

The Board took into consideration the reports of the visiting officer on the parochial lodging-houses for paupers in the parish of Denny, and several other parishes; also reports from the general superintendents on similar houses, and the returns and plans relating to those establishments which were sent to the Board in consequence of their circular letter of the 4th March 1861.

The Board see with regret that so large a proportion of the parochial lodging-houses for paupers, which parochial boards have erected on their own responsibility, and in numerous instances have attempted to employ for the purposes of statutory poorhouses—even to the extent of using them as a test—are in many essential particulars extremely defective. Some are overcrowded; some are insufficiently furnished with bedding, bed-clothes, and other articles; in some the diet provided for the lodgers is insufficient or otherwise objectionable. All are conducted without sufficient regard to the proper classification of the lodgers; and some have, in consequence, degenerated into dens of iniquity which it was necessary to abolish and clear out.

After careful deliberation, the Board have therefore come to the conclusion that, however unobjectionable or even praiseworthy may have been the motives which originally led to the formation of such parochial establishments by the local boards, experience has now proved that there is no such security for their proper management as would justify the Board in assuming that an offer of admission to any such lodging-house is necessarily an offer of adequate relief, as a similar offer of admission to a poorhouse, erected and conducted in

terms of the statute, may in all but a few exceptional cases be assumed to be; and henceforward, the Board will not be disposed to hold an offer of admission to or of continued residence in a parochial lodging-house for paupers to be an offer of adequate relief, or a sufficient answer to a complaint of inadequate relief.

In cases, however, where parochial boards have merely erected dwellings for paupers, who there receive outdoor allowances, or where parochial lodging-houses, of the class above referred to, are converted into habitations or lodgings for paupers receiving outdoor allowances, the Board, in dealing with complaints of inadequate relief, will be prepared to take into account the value of the accommodation thus provided by the parochial board, if the site be salubrious, the building in habitable condition, and the amount of accommodation suitable to the wants of the pauper and his family, should he have a family. But it must be understood that the paupers lodging in such houses cannot legally be subjected to any restraint regarding ingress and egress, to which they might not properly be subjected in any lodging hired for their accommodation.

A copy of this minute to be sent to each parish.

Circular as to Paupers boarded in Poorhouses.[1]

BOARD OF SUPERVISION, EDINBURGH, 11*th Jan.* 1854.

SIR,—I am directed by the Board of Supervision to call the attention of the parochial board of ——— to the decision of the Court of Session, 26th February 1853, in the case of Watson against Welsh, respecting the relief of paupers in a poorhouse neither in nor belonging to the parish of settlement.

I am further directed to state that the Board observe, from a return of inmates in the poorhouse of ——— during the six months preceding 1st January 1854, that there have been ——— paupers accommodated therein belonging to the parish of ———; and I am to intimate that, until the rates at which poor persons from the parish are to be received into that poorhouse have been approved by the Board of Supervision, in terms of 8 and 9 Vict. c. 83, sec. 65, the parochial board are not in a condition to remove the ground of any complaint of inadequate relief by an offer of admission to that poorhouse, and that such previous approval is necessary in order to ensure the legality of any offer of admission to a poorhouse.

If the parochial board, therefore, propose to use the poorhouse of ——— for their paupers, they ought, without loss of time, to apply to the Board of Supervision for their approval of the rates of charge, in terms of the statute.—I am, sir, your obedient servant,

(Signed) W. S. WALKER, Secretary.

To the Inspector of Poor

[1] Ninth Annual Report, App. A. p. 157.

Education of Pauper Children.—The education of poor children, who are themselves, or whose parents are, objects of parochial relief, is a duty as incumbent on the parochial board as the obligation to furnish the necessaries of life. Education, food, and clothing, are all comprehended under the general term 'aliment' which a parent is bound to provide for his infant offspring; and the parochial board, which, by taking the child into its own custody, comes *in loco parentis*, is equally bound to afford that amount of instruction which will enable it in after years to earn an honest living. Accordingly, by sec. 69 it is made 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.'

In Scotland, the affairs of the poor are now administered on principles of strict neutrality in religious matters. In former times, the heritors and kirk-session, and in burghal parishes the magistrates, claimed the right to educate all the pauper children in the parish according to the strictest tenets of Presbyterianism; but the rules of the Board of Supervision prevent a parochial board from now pursuing this proselytizing policy. Children must be educated in the religious persuasion which the parents or surviving parent may desire, and if the parents be dead, in the faith which they professed. If there is a properly conducted Roman Catholic school in the parish, the Roman Catholic children are of course sent there. They are also sometimes boarded with Roman Catholic families; but in any case, Roman Catholic clergymen are always entitled to have the freest access to Roman Catholic paupers,[1] and with that view the inspector is required to intimate the names and residences of the pauper children of Roman Catholic parents to the nearest resident Roman Catholic clergyman.

The Board of Supervision has expressed its opinion, that the parochial board ought not to object to pay for children sent, by desire of their parents or legal guardians, to an existing and properly taught Roman Catholic school, similar fees to those which may be usually paid for pauper children at other schools in the same parish; but they are of opinion that the parochial board is not under any legal obligation to contribute otherwise

[1] See B. S. Minute, 13 Feb. 1862.

from the parochial funds to the establishment or maintenance of a Roman Catholic school.[1]

Paupers blind, or deaf and dumb, should be sent to an asylum;[2] and persons suffering from disease or accident may

[1] Thirteenth Report, App. A. p. 40. The following minute was issued under date 13th Feb. 1862, respecting the education of pauper children of Roman Catholic parents:—'Complaints have been made to the Board that pauper children whose parents were Roman Catholics have been placed by the parochial board in Protestant institutions, to which Roman Catholic clergymen are denied access, and have thus been brought up as Protestants. The Board therefore desire to remind parochial boards that they are bound to take care that the education given by them as a part of the relief which they are required to afford to pauper children, shall not be so conducted as to counteract the religious instruction which the parents or surviving parent may intimate a desire to give to any such child. In the case of children who have no surviving parent, the intention of the parents in this respect must be inferred to have been to bring up the children in the religious tenets which they themselves professed.

'In order to acquit themselves of these obligations, parochial boards ought to place the younger children of Roman Catholic parents whom it is desired to board out in families of the Roman Catholic persuasion, when suitable families of that persuasion can be found in the parish, or within such distance beyond it as the parochial board may consider it expedient to send pauper children. If no such families can be found, and the parish has poorhouse accommodation, then such Roman Catholic children ought to be placed in the poorhouse, where the Roman Catholic clergyman has access to them, in terms of the rules and regulations. But if there be no suitable Roman Catholic family in which the child can be boarded, and the parish be not possessed of poorhouse accommodation, then special care ought to be taken that, wherever the child may be placed, the known clergymen of the religious persuasion of its parents shall have free access to it, at reasonable hours, for the purpose of imparting religious instruction; and the place of residence of every such child ought to be intimated to the nearest resident clergyman of the religious persuasion of its parents.

'When there is a properly conducted Roman Catholic school in the parish, the child of Roman Catholic parents who is boarded out ought to be sent to that school, if it be within a reasonable distance of the residence of the Roman Catholic family in which the child is boarded; or if no suitable Roman Catholic family can be found willing to receive it, and there be no poorhouse accommodation belonging to the parish, then the child, which must, in that case, of necessity be boarded in a Protestant family, ought, if possible, to be placed with one which resides within such a moderate distance of a properly conducted Roman Catholic school as will admit of the child's regularly attending that school, and the child should be required to attend it accordingly.'

[2] Such an amount of education as is necessary to fit them for the performance of their religious and moral duties, and may enable them to become

be sent for treatment to an infirmary. To these institutions the parochial board may make such contributions annually as may seem expedient.[1] Previous to transmitting the patient, the medical officer of the parish should ascertain whether the case is suitable for treatment in the institution, and that the pauper can be received. The inspector ought also to send to the authorities of the institution, along with the patient, an admission of liability for the cost of his maintenance while an inmate (if such cost is charged by the rules of the institution), for the funeral expenses in the event of his death, and the cost of removal to the original parish of residence in the event of his being discharged uncured. The inspector ought also, at the same time, to transmit to the inspector of the parish in which the institution is situated, a statement of the poor person's case, and an admission of liability for the patient's maintenance, in the event of his requiring parochial relief when discharged from the institution.[2]

If there be no deaf and dumb institution within the parish, the board is perhaps not legally bound to send the children to a distance for their education; but there is no doubt of their power to do so, and there is equally little doubt of the propriety of the step, as it is only by such means that a deaf and dumb child can be trained up to be self-supporting.[3]

not only innocuous, but useful members of the community, is a part of the relief to which pauper children are by law entitled; and, in the case of the deaf and dumb, even that amount can be afforded only by special means of instruction suited to their condition. Where those special means are available within the limits of the parish, the parochial board is therefore under a legal obligation to give to such pauper children as cannot receive the necessary amount of instruction in any other way, the benefit of those means. Accordingly, the Board would be disposed to regard the failure to send a deaf and dumb pauper child to an institution for the instruction of that class of unfortunates, where such was available in the parish, as a well-founded ground for a complaint of inadequate relief.—*B. of S. Circular*, Feb. 9, 1860.

[1] Sec. 67.

[2] Twelfth Rep. B. of S. 117.

[3] B. of S. Minute, Feb. 9, 1862. *Excerpt Minute of Board of Supervision, April* 25, 1854.—The Board are of opinion that it is not competent to the parochial board to transfer a pauper orphan to any person not legally a guardian, for the purpose of having the child conveyed out of Scotland; but it would be competent for the parochial board, on being satisfied that the Dublin Deaf and Dumb Institution is a proper institution

The condition of vagrant children has, within the last few years, frequently attracted the attention of the Legislature; and several statutes were passed for the purpose of rendering reformatory and industrial schools fully available for their education and training. These Acts of Parliament have all been consolidated in the Reformatory Schools Act, 1866,[1] and the Industrial Schools Act, 1866.[2] By this latter Act it is provided,[3] that where a child sent to a certified industrial school is, at the time of his being so sent, or within three months has been, chargeable to any parish, the parochial board of the parish of the child's settlement is liable to repay to the Commissioners of her Majesty's Treasury all expenses incurred in maintaining him at school, to an amount not exceeding five shillings per week.

The classes of children which may be sent to an industrial school are children under fourteen years of age, who are (1) refractory in a poorhouse;[4] (2) are found begging or receiving alms (whether actually or under the pretext of selling or offering for sale anything); (3) are found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence; (4) are found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment; (5) any child who frequents the company of reputed thieves.[5] Children under twelve years of age charged with an offence may be dealt with in the same way. The order of detention is obtained from a magistrate; and a child, while inquiry is being made respecting him, or a school to which he may be sent, may be detained in the poorhouse of the parish or combination in which he is found.[6]

The Sick Poor.—Before the late statute came into operation, no special provision was made for the medical relief of the poor. The only medicines and medical attendance received by pauper invalids, were such as might be gratuitously afforded by the

in which to place the pauper, and that they can obtain the means of ascertaining from time to time that he is properly treated there, to enter into an arrangement with that institution for placing the child there, and to place him there accordingly. But the parochial board must be held responsible for the proper treatment of the child wherever he may be placed.

[1] 29 and 30 Vict. c. 117.
[2] 29 and 30 Vict. c. 118.
[3] Sec. 38.
[4] Sec. 17.
[5] Sec. 14.
[6] Sec. 19.

medical men resident in the district, aided by the chance charity of neighbours. This, however, is now a matter of statutory obligation. Out of the funds raised for the relief of the poor, the board are required to provide 'medicines, medical attendance, nutritious diet, cordials, and clothing for such poor, in such manner and to such extent as may seem equitable and expedient.'[1] This is an entirely different provision from sec. 66, relating to the appointment of a 'medical man' 'to give regular attendance on a poorhouse.' The manner of relieving the sick poor is left entirely to the discretion of the parochial board. The selection of the medical man, the terms of the arrangement to be made with him, the right to dismiss him with or without notice, rests wholly with the parochial board, who are in this matter, so long as the requirements of the Act are complied with, entirely independent of the Board of Supervision. In most cases, the medical man is engaged by the year at an annual salary; and it is now necessary that he be registered under the Medical Act.[2]

But in the parishes which participate in the annual grant in aid of medical relief in Scotland, the rules of the Board of Supervision require that the medical man be paid by salary; and, to prevent possible abuse of the funds voted by Parliament, he is dismissible by the Board of Supervision.[3]

The following are the rules now in force with reference to medical relief:—

Rules framed by the Board of Supervision, under the Statute 8 *and* 9 *Vict. c.* 83, *as to Medical Relief of the Poor.*

1. All poor persons who stand in need of medical relief shall be duly and punctually attended by a *competent* medical practitioner, and supplied with medicines and medical and surgical appliances of such quality, and to such extent, as may be necessary for the proper medical or surgical treatment of such poor persons.

2. A medical practitioner is not *duly qualified* unless he has a degree or diploma of physician or surgeon from a university or other body in Great Britain or Ireland legally entitled to confer or grant such degree or diploma. A medical practitioner not thus qualified, who has not held the office of parochial medical officer for at least one year prior to the 2d of August 1848, will not be held to be *competent.*

[1] Sec. 69.

[2] 21 and 22 Vict. c. 90, s. 36.

[3] See Board of Supervision *v.* Menzies and M'Donald, 9 June 1855, 17 D. 827.

3. In addition to medical relief, parochial boards shall furnish the sick and convalescent poor with nutritious diet, cordials, clothing, suitable lodging, and sick-bed attendance, to such an extent as may be necessary, according to the circumstances of each case.

4. A medical practitioner, appointed by the parochial board to attend any poor person, shall intimate in writing to the inspector the description and extent of the relief, under Rule 3, which he may consider necessary for the proper treatment of such poor person; and, on receipt of such intimation, the inspector, on his own responsibility, shall forthwith furnish or refuse the relief so intimated to be necessary, until he shall have brought the case before the parochial board, and received their instructions regarding it. But if the inspector refuses or fails to furnish that relief, or any part of it, he will be held accountable for such refusal or failure.

5. Medical attendance and medical or surgical appliances which are furnished by the medical officer, or procured from a laboratory on his prescription, are chargeable under the head of medical relief; but nutritious diet, cordials, clothing, suitable lodging, sick-bed attendance, and such appliances and means as are not furnished by the medical attendant, nor procured from a laboratory on his prescription, are not chargeable under the head of medical relief; and inspectors of the poor are required to prepare the annual returns transmitted to the Board of Supervision, in conformity with this rule.

6. A medical practitioner who has undertaken to attend the whole or any part of the poor in a parish, or district of a parish, shall attend personally, and at their homes if necessary, the poor persons entrusted to his care, and is responsible that such visits and attendance are duly and punctually made and given. If he employs an assistant to aid him in the performance of his duties, no subdivision of the duty of personal attendance, or diminution of personal responsibility, will on that account be recognised.

7. A medical officer, appointed by the parochial board to attend the poor of a parish, or of a part of a parish, is bound to afford every reasonable facility for sending or conveying the medicines and appliances furnished from his own laboratory to paupers who are unable to go or to send for them; but when it is necessary to send a messenger expressly for that purpose, he may call upon the inspector, in writing, to provide such messenger, and the inspector, when so called upon, will be held responsible that the medicines and appliances are duly and punctually delivered.

8. A medical officer appointed to attend the poor, within twenty-one days after his appointment, or as soon thereafter as he shall b required by the parochial board so to do, shall, if practicable, name to the parochial board a duly qualified medical practitioner, for whose diligence he will be held responsible, and whose nomination is not objected to by the parochial board, who will perform the duties of

the medical officer in case of his absence from home, or other unavoidable hindrance to his personal attendance.

Additional Rules applicable to Parishes which participate in the Parliamentary Grant.

9. Every parochial board which has accepted, or may accept, the share of the parliamentary grant apportioned to the parish, shall name one or more medical officers, with a fixed salary or salaries, to attend the poor.

10. In every parish that participates in the parliamentary grant, lists of all aged and infirm persons permanently disabled, who are actually in the receipt of parochial relief, and residing within the parish or district of each medical officer, shall be prepared every six months, and a copy furnished to the medical officer, who is bound to attend all such poor persons, on their producing to him a ticket furnished to them by the parochial board.

11. Every medical officer appointed by the parochial board to any such parish, or to a district of any such parish, shall duly and punctually attend upon and prescribe for all poor persons requiring medical or surgical assistance within the parish or district to which he is appointed, whenever he shall be thereunto required, by a written or printed order from the parochial board or the inspector of the poor; or, in cases of sudden and urgent necessity, from a member of the parochial board; or by the production, on the part of any poor person, of the ticket referred to in Rule 10.

12. Such medical officer shall make returns of the sick poor to the parochial board, according to the form A [annexed], either weekly or monthly, as that board shall direct; he shall make to the Board of Supervision such returns of the sick poor as this Board may from time to time require; he shall give to the parochial board and to the inspector of the poor, when required, any reasonable information respecting the case of any poor person under his care; make any such written report relative to any sickness prevalent among the poor as the parochial board or the Board of Supervision may require of him; attend the parochial board when summoned by them; give a certificate under his hand in every case to the parochial board or the inspector, or the poor person on whom he is attending, of the sickness of such poor person, or other cause of his attendance, when required to do so by the parochial board or the inspector.

13. The offices of inspector and medical officer shall not be held by the same person.

14. The medical officer of a parish, or a district of a parish, shall not vote at the meeting of any parochial board whose officer he is.

Approved by the Right Hon. Sir George Grey, Bart., one of her Majesty's Principal Secretaries of State, October 21, 1848, *April* 10, 1856, *and September* 11, 1863.

The Insane Poor.—By sec. 59 of the Poor Law Act, the inspector was required to report without delay, to the Board of Supervision, all cases of insane or fatuous persons chargeable as paupers to the parish; and the parochial board, within fourteen days after the insanity was discovered, were bound to have the pauper conveyed and lodged in an asylum, or establishment legally authorized to receive lunatic patients. Authority was given to the Board of Supervision, in the event of the parochial board neglecting or refusing to comply with this provision, to take such measures as might be necessary for the removal of the lunatic at the expense of the parish; or, under special circumstances, if removal to an asylum was thought inexpedient, they might provide for him in such other manner as might be considered advisable. These powers of the Board of Supervision have been taken away by the 20 and 21 Vict. c. 71,—an Act for the regulation of the care and treatment of lunatics, and for the provision, maintenance, and regulation of lunatic asylums in Scotland.

The chief objects of this statute were to provide for the erection of district asylums for the reception of pauper lunatics, and to ensure the proper care and treatment of lunatics generally, whether placed in public establishments, or left in private houses under the charge of relatives and strangers. The machinery established by the Act for effecting these purposes was as follows:—

1. A central board termed the General Board of Commissioners in Lunacy for Scotland, consisting of two paid and two unpaid commissioners, with a chairman, also unpaid, appointed by the Queen.

2. Two medical persons, termed Deputy Commissioners, appointed by the Secretary of State.

3. A district board, chosen out of the commissioners of supply and magistrates of burghs in each county by the prison board. The country was originally divided into eight districts; but there are now twenty-one, namely—

The *Dumfries District*, comprising the counties of Dumfries, Kirkcudbright, and Wigtown.

The *Edinburgh District*, the counties of Edinburgh and Peebles.

The *Fife District*, the counties of Fife and Kinross.

The *Inverness District*, the counties of Inverness, Nairn, Ross and Cromarty, and Sutherland.

The *Roxburgh District*, the counties of Roxburgh, Berwick, and Selkirk.

The *Stirling District*, the counties of Clackmannan, Dumbarton, Linlithgow, and Stirling. And every other county forms a district by itself.

The districts being formed, it became the duty of the Board to determine whether the existing accommodation for the insane poor in each district was sufficient for its wants, or whether and to what extent additional accommodation should be provided. The Lunacy Board were empowered to require the district board to take measures for the erection of a district asylum, or adapting any existing asylum to that purpose, the expense being defrayed out of a public assessment;[1] but the district board might contract with the proprietors of any asylum already established in the district, 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 should be arranged.[2] The stringency of this provision, which in effect required the lunatic paupers of each district to be accommodated within the limits of the district itself, was subsequently relaxed by the Act of 1862, which authorizes agreements or arrangements to 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.[3] At the same time, it was enacted that where any district board failed to supply proper accommodation for the pauper lunatics of the district, the Court of Session may, on the application of the Lunacy Board, appoint a person at whose sight and instance the whole powers and duties of the board relative to the providing of accommodation shall be performed.[4]

The Lunacy Board is also empowered 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 to

[1] 20 and 21 Vict. c. 71, s. 51–55. [2] *Ib.* s. 59.
[3] 25 and 26 Vict. c. 54, s. 8. [4] *Ib.* s. 9.

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. 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, is liable in a penalty not exceeding £10.[1]

All private asylums require to be licensed by the Board. A private asylum is a house established as a private speculation, for the reception of more than one lunatic, and is distinguished from a 'public asylum,' in so far as the latter term includes all hospitals or madhouses established for the custody of lunatics by Act of Parliament or Royal Charter, or under any deed or mortification, without any view to pecuniary profit.[2] The licences are granted in a form given in the Act, and specify the maximum number of patients to be received, and the period for which the licence is to be valid.[3] For these licences a fee is payable,[4] but the Board also grants special licences to occupiers of houses, for the reception and detention therein of lunatics, not exceeding four in number, without any fee; and in such houses the detention of a lunatic pauper may be authorized, on the application of the inspector of 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. But no lunatic can 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, is liable to a penalty not exceeding ten pounds.

Without going into further detail on this matter, the result comes to this, that a lunatic pauper may be disposed of in any of the five following ways:—

1. He may be transmitted to a public or district asylum. The asylums of this class are, at present, 12 in number, and

[1] Secs. 3 and 4, Act 1862.
[2] 20 and 21 Vict. c. 71, s. 3.
[3] 20 and 21 Vict. c. 71, s. 27, 28.
[4] Sec. 5, Act 1862.

are situated in Aberdeen, Argyll, Banff, Dumfries, Dundee, Edinburgh, Elgin, Glasgow, Inverness, Montrose, Perth (2); but others are in course of erection.

2. He may be accommodated in a private asylum or licensed house, of which there are 13 in various parts of Scotland.

3. In a parochial asylum. These are 6 in number: the Abbey (Paisley), Barony (Glasgow), Burgh (Paisley), Falkirk, Glasgow, Greenock.

4. In the lunatic wards of the poorhouses of Aberdeen, Cuninghame, Dundee, Dunfermline, Edinburgh, Govan, Linlithgow, South Leith, Liff and Benvie, Old Machar, Perth, Rhins of Galloway, St. Cuthbert's, Stirling.

5. Single patients may be permitted to reside with relatives, or boarded with strangers in private dwellings, where not more than four lunatics are kept; but if the house contain more than one, a licence is required.

There are also two training schools for imbecile children, —namely, Baldovan Institution and Larbert Institution.

In regard to public asylums existing at the date of the Act (1857), or afterwards founded, the Lunacy Board has only a right of inspection and visitation, coupled with the power of enforcing their rules, in so far as they relate to the books to be kept and the returns to be made by such establishments. But in regard to all other establishments for the care and treatment of the insane, their powers are of a very sweeping order. They have the superintendence, management, direction, and regulation of all matters arising under the Lunacy Acts 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. They are also empowered 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 the 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 authorized by the 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.'[1]

As regards the two paid commissioners, their duties are defined in sec. 17. These are, 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.' They 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 to be kept in each asylum are regularly and correctly kept; and, in addition to the stated inspections before mentioned, the commissioners are bound on all occasions to 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. The commissioners may also, 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.[2]

The two deputy-commissioners have such of the powers of the commissioners, and perform such of their duties, as the Board may direct.[3]

A lunatic is defined by the statute to mean any person certified by two medical persons to be a lunatic, an insane person, an idiot, or a person of unsound mind; 'and a pauper lunatic

[1] 20 and 21 Vict. c. 71, s. 9; 29 and 30 Vict. c. 51, s. 18.
[2] 20 and 21 Vict. c. 71, s. 17 and 19. [3] S. 21.

is any lunatic (*i. e.* a person falling within the foregoing definition) towards the expense of whose maintenance any allowance is given or made by any parochial board.'[1] It is not necessary that he be registered on the roll of paupers, if he be the wife, child, or other dependant of any registered pauper.

It is the duty of the inspector of the poor to provide for and relieve all destitute persons found in the parish, whether sane or not, and whether they have a settlement in the parish or not. In the case of an insane person becoming chargeable, the inspector's first duty is forthwith to report the same to the parochial board;[2] and within seven days he is required to transmit an intimation to the secretary of the General Board of Lunacy. The transmission of this intimation is made imperative by sec. 112 of the Lunacy Act, under a penalty of £10 in every case in which he may become aware of a pauper lunatic 'being in the parish' of which he is inspector; that is to say, whether he is chargeable to the parish or not. But by the rules of the Lunacy Board, intimation also requires to be sent whenever he becomes aware of the pauper lunatic having become chargeable to his parish, although not resident therein, and although the inmate of an asylum.[3]

Within three weeks after the foregoing intimation has been made to the Lunacy Board, the inspector must provide for the removal of the lunatic (unless the Lunacy Board has granted authority to provide for him in some other way) to the asylum for the district comprehending the pauper's parish of settlement; or if there be no such district asylum, to any other asylum in which the district or the parish of settlement may have, with the sanction of the Lunacy Board, made arrangements for the reception and treatment of its pauper lunatics.

No person can be committed to an asylum without the order of the sheriff of the county in which the lunatic is resident, or in which he is found, or in which the asylum is situated.[4] This order may be obtained on the petition of the inspector of the poor or some person related to the lunatic, accompanied by certificates granted within fourteen days of the date of the petition by two registered medical practitioners.

[1] 25 and 26 Vict. c. 54.

[2] B. of S. Rules, 29 Oct. 1845, s. 17; and 26 Jan. 1858.

[3] B. of S. Rules, 1864.

[4] 25 and 26 Vict. c. 54, s. 34.

As to the persons by whom these medical certificates may be granted, it was provided by 25 and 26 Vict. c. 54, that they should have no immediate or pecuniary interest in the asylum in which the lunatic is placed; but one of them might notwithstanding be the medical superintendent, or consulting or assistant physician, of such asylum, not being a private asylum. By the 29 and 30 Vict. c. 51, this latter qualification was repealed with regard to all lunatics other than pauper lunatics. Sec. 4 declares, '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 a certificate of emergency.' This requires only to be signed by one medical person.[1]

The admission of the patient must be within fourteen days of the date of the order, unless it be an order of the Sheriff of Orkney and Shetland, when twenty-one days are allowed for its execution.

The certificate granted by the medical man bears that he has, separately from any other medical practitioner, visited and personally examined the party, and must set forth (1) the facts indicating insanity observed by himself, and (2) other facts, if any, communicated to him by others. This formality is required by sec. 35 of the Lunacy Act, which provides that '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.' It not unfrequently happens, that the facts mentioned in the certificate as indications of insanity observed by the medical man himself, would hardly convey that impression to any other person. 'Natural stupidity;' 'The patient has a great desire to appear conspicuous as a musician;' 'He will not answer any questions put to him, and is of a slouching, dogged appearance;' 'Incapacity of control as regards stimulants,'—are not appearances inconsistent with perfect soundness of mind; and yet instances are not uncommon of certificates being granted in these and similar terms. Now, in such circumstances, is the sheriff bound to grant the warrant, or is he entitled to hold the certificate insufficient? in other words, is his duty judicial or ministerial? It is understood that some

[1] 25 and 26 Vct. c. 54, s. 14.

sheriffs consider themselves entitled to examine the sufficiency of the evidence contained in the certificate, while others hold themselves bound to accept without hesitation the opinion of the medical man that the party is insane, and fit to be detained in an asylum. It cannot be doubted that the sheriff's function in this matter is purely judicial, seeing that the granting or withholding of the order is entirely within his own discretion. He is there to protect the party against any attempt to deprive him of his liberty without adequate cause; but in discharging this duty, he has just two things to consider: 1*st*, Whether the petition and certificate are regular, and in conformity with the provisions of the Act; 2*d*, Whether the medical man's opinion is founded on his own examination of the patient, as well as on facts communicated by others. It is for the purpose of enforcing this last safeguard that the distinction is taken between the things to which he himself can speak, and the things told him by others. But, as the result of his own examination may comprehend a multitude of details relating to the manner, the expression, and modes of thought of the patient, but must be stated in the briefest and most general terms, the sheriff is in our judgment bound to accept the medical man's opinion, however imperfectly he may have expressed himself. If he takes upon himself the responsibility of certifying on soul and conscience that the man is insane, and that that opinion is founded not simply on what he was told, but also on what he himself saw, no sheriff is entitled to constitute himself a court of appeal from this judgment. If such had been the intention of Parliament, he should have been empowered to call the alleged lunatic before him and examine him himself. 'The general inconsistency of his conversation' may not *per se* be very conclusive proof of insanity; but if the medical man should say that his opinion was founded 'on the general appearance of the party, and the manner in which he answered the questions put to him,' he has said all that the law requires, and the sheriff is not entitled to hold that the opinion so formed was founded on imperfect data.

When a mistake has been made in the order or medical certificate, it may be amended within twenty-one days after the reception of the lunatic; but the amendment must have the sanction of the Lunacy Board, which, failing any amendment

being made that they may deem necessary, is entitled to report the matter to the sheriff, in order that he may either amend or recall his original order.[1]

In granting a certificate of lunacy, a medical man incurs a very serious responsibility, both under the statute and at common law. The former imposes a penalty of £300 or imprisonment for twelve months on every person who shall wilfully and falsely grant a certificate to the effect that one is a lunatic whom he knows to be sane; and a penalty of £50 on every person who may grant a certificate without having seen and carefully examined the person to whom it relates, at the time and in the manner stated in the certificate, with a view to discover his mental condition to the best of his knowledge and power.[2]

The medical man is also liable in damages at common law for wilfully or negligently notifying a sane person to be a lunatic. The issue sent for trial is, 'whether the defender did wrongfully grant the certificate,' that is to say, without due inquiry and examination. The pursuer is not bound to prove that he was sane at the time, as that will be presumed unless the contrary is shown; but he is required to prove not only that a mistake was committed in sending him to an asylum, but that it was such a mistake as any well qualified medical practitioner should with reasonable care have avoided. A medical man, in granting his certificate, does not guarantee its strict accuracy. He may be mistaken; he merely says that to the best of his belief the person is a lunatic. Accordingly, should he commit such an error as to mistake inebriety for insanity, he is not responsible for the consequences, unless he has acted recklessly, either by not applying his mind to the case at all, or by hurrying through his examination in a perfunctory and insufficient manner.[3]

As such questions do not seem suitable for the determination of a common jury, it is now enacted that the issues, after being adjusted, shall be tried and the amount of damages (if any) assessed by the Lord Ordinary without a jury, in the manner prescribed by the Court of Session Act for trials of fact without a jury.[4]

[1] 29 and 30 Vict. c. 51, s. 5. [2] 20 and 21 Vict. c. 71, s. 38.

[3] See M'Intosh *v.* Smith and Lowe, H. L. 9 Mar. 1865, 3 M'P. 6, aff. 2 M'P. 1261.

[4] 29 and 30 Vict. c. 51, s. 24.

The Lunacy Act[1] provides that, under special circumstances, the parochial board may, with consent of the Lunacy Board, dispense with the removal of any pauper lunatic to an asylum, and provide for him in some other manner, and under proper regulations as to inspection and otherwise. When a pauper lunatic is reported to the Lunacy Board, notice is at the same time given by the inspector that he has been sent to an asylum, or that he remains under the care of a relative, or has been committed to the custody of a stranger. In every case in which he has not been sent to an asylum, the sanction of the Lunacy Board is required; and the inspector gives such details as will enable them to judge of the character of the malady, and the provision made for the patient's maintenance. If it is proposed that the lunatic should be permitted to remain with his friends, the Board grants its sanction without further formality if they see no objection to the proceeding. But when the lunatic is to be placed with a stranger, the order of the sheriff as well as the sanction of the Board is necessary.

The statute of 1866 makes it illegal for any one to receive or keep any person as a lunatic for gain without the order of the sheriff or sanction of the Board. The sheriff may grant the order on one medical certificate, and it must be applied for within fourteen days of the person being received; but an exception is made in favour of the case where an insane person is sent for the purpose of temporary residence only, not exceeding six months, and under the certificate of a medical man.[2] To such a case the foregoing provision does not apply.

By the Poor Law Act,[3] the Board of Supervision was empowered, when a parochial board neglected to provide for the removal of an insane or fatuous person to an asylum, to take the measures requisite for his removal. This provision is now repealed,[4] and the power formerly possessed by the Board of Supervision is transferred to the Lunacy Board.[5] By the Act of 1862 it is declared, '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

[1] Sec. 95.
[2] 29 and 30 Vict. c. 51, s. 13.
[3] 8 and 9 Vict. c. 83.
[4] 20 and 21 Vict. c. 71, s. 113.
[5] 25 and 26 Vict. c. 54, s. 18.

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.'

Under the former law, when a patient was placed in an asylum, the authority for his detention lapsed only with his recovery. So long as he remained of an unsound mind, the order of the sheriff remained in force. But now, by 29 and 30 Vict. c. 7, it is enacted, '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.' The validity of the order is not affected by the escape of the lunatic, or by his being temporarily absent. He may be reconfined under the same order, if he is brought back within twenty-eight days from the day on which he left or escaped, or within a period of three months when he has been absent under the care of the officers or attendants of the asylum.[1]

The Lunacy Board may, on the application of the person at whose instance any lunatic is detained, or in his absence, of

[1] 29 and 30 Vict. c. 51, s. 6.

the nearest known relative, or in the case of a pauper lunatic, of the inspector of the poor of the parish defraying the cost of the lunatic's maintenance, authorize his removal or liberation on probation without an order of the sheriff; and in the event of his reconfinement being necessary, no fresh order is requisite, the original warrant remaining in force.[1] But during this probation every pauper lunatic remains subject to the inspection of the commissioners; and the parochial board cannot put him off the poor's roll, or alter the conditions on which a probationary discharge was granted—any inspector of the poor doing the contrary being liable in a penalty of £10.[2]

It is competent for the parochial board, by a minute at any duly constituted meeting, to direct the removal or discharge of any of its lunatics who have not been committed as dangerous under the Act of 1862; a copy of the minute being a sufficient warrant to the superintendent of the asylum, to cause or suffer the lunatic to be discharged. If the superintendent thinks he ought not to be discharged, he reports the case to the Lunacy Board, which is entitled to prohibit his discharge; and any inspector removing a lunatic from any asylum or house against the written representation of the superintendent, is liable in a penalty of £10.[3]

When a lunatic has been removed by a minute of the parochial board, the inspector of the poor is required, under a penalty of £10, to intimate to the Lunacy Board within fourteen days the following particulars:—1. Date of removal; 2. The house to which the lunatic has been taken; 3. The name of the occupier; 4. The sum paid by the parish for his maintenance. The Lunacy Board is entitled, at any time whenever they see fit, to order the lunatic to be replaced in an asylum, which order the inspector is bound to obey within fourteen days, under a penalty of £10.[4]

When the Lunacy Board has ordered a pauper's removal to an asylum, the relatives cannot take him off the poor's roll without their sanction. But by sec. 11 of the Act of 1864, a parochial board is empowered by a minute 'to remove from the poor's roll any pauper lunatic in any asylum or house for whose maintenance it is responsible, and to entrust the disposal of such lunatic to any party who shall undertake to provide, in a

[1] 25 and 26 Vict. c. 54, s. 16.
[2] 29 and 30 Vict. c. 51, s. 8.
[3] 29 and 30 Vict. c. 51, s. 9.
[4] 29 and 30 Vict. c. 51, s. 10.

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 authorize 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.'

The apprehension of dangerous lunatics was formerly regulated by the Act 4 and 5 Vict. c. 60. That Act is now repealed, and provision on the subject is made by the 25 and 26 Vict. c. 54, s. 15. It is there enacted that, upon application by the procurator-fiscal or inspector of the poor, or other person, accompanied by a certificate from a medical person, bearing that a lunatic is in a state threatening danger, or in a state offensive or threatening to be offensive to public decency, the sheriff may forthwith commit such lunatic to some place of safe custody. Notice is 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. Notice is also given to the inspector of poor of the parish within which the lunatic has been apprehended or found. If the inspector of the parish does not within twenty-four hours undertake, to the satisfaction of the sheriff, to make due arrangements for the safe custody of the lunatic, the sheriff proceeds to take evidence of the condition of the 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 is required to commit the lunatic to an asylum. It is further provided that 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.[1]

A lunatic who becomes a pauper when an inmate of a lunatic asylum, falls to be supported in the first instance by the parish in which the asylum is situated. No claim lies against the parish from which the lunatic was originally transmitted, if it be not the parish of settlement; and if he be a foreigner, he necessarily becomes a permanent burden.

IV. Recourse against Relations.

Principle of Liability.—As the public charity of a parish was never meant to supersede the private duties of kindred, the pauper's relations in the direct line are primarily liable to maintain him, if their circumstances are sufficient to enable them to do so. The claims of aliment recognised by the law are referable to three sources. 1*st*, The *jus naturæ*, as in the case of husband and wife, parent and child, in which the law enforces a natural obligation coeval with the existence of society; 2*d*,

[1] See Gemmel *v.* Beattie, 24 Jan. 1861, 3 P. L. 333 and 358, 23 D. 386; 4 Feb. 1862, 4 P. L. 330, 24 D. 431.

The *jus repræsentationis*, whereby the obligation arising *jure naturæ* may be exacted from one inheriting a succession from a person deceased, who would have been liable *ex debito naturali* had he been in life. 3*d*, *Positive statute*. By the Act 1491, c. 25, as explained in practice, a liferenter is bound to give a reasonable support to the fiar of the lands liferented.

The conditions on which a claim for support will be sustained, are: (1.) That the claimant is quite destitute of funds or property of his own, realized or realizable. If the claimant is in a profession by which he is unable to make a living, he is nevertheless entitled to aliment, because the name of an employment will not afford a man bread, and *officium nemini debet esse damnosum*. (So it was found in Ayton *v.* Colvill, 25 July 1705 (Mor. 390, 451), where the Court ordained a stepmother to give a portion of her jointure for the support of her husband's son, who was an advocate without practice.) But the party must show that he has no means of raising money, and is in possession of no kind of marketable right. Thus, a professional gentleman without practice was entitled to the reversion of certain property, with the liferent of which his mother had been vested by a settlement executed under the direction of the Court of Chancery at the time of her marriage with his father. Having contracted a second marriage, the mother refused to make any contribution to the support of the son. The Court of Session sustained the claim of aliment *super jure naturæ;* but the House of Lords reversed the decision, on the ground that the rights of parties had been fixed by the English settlement, and the claimant, as entitled to the reversion of the property on his mother's death, had an immediate vested interest which he could turn to account.[1] The same judgment was repeated in Drysdales *v.* Drysdales, 3 Dec. 1831,[2] where children entitled to certain reversionary interests were, in the circumstances, found to have no claim against their mother.

(2.) The second condition of the claim is, that the party charged is in circumstances sufficient to enable him to fulfil the obligation. And here it must be observed, that the rule applicable to the case of a party claiming the aliment having an

[1] Wooley *v.* Maidment, 25 May 1815, F. C.; H. L. 27 May 1818, 6 Dow 257.

[2] 10 S. 98.

expectancy, by no means applies to the converse case, viz. where the expectancy belongs to the party from whom the aliment is claimed. While the pursuer must dispose of whatever rights he may have which are marketable, before maintaining his claim, the defender is not bound to do so in order to be able to meet it. Thus the chance of succession to an entailed estate is not property of the character requisite to subject him in liability. For example, an ordinary entailed proprietor, reduced to difficulties, could not compel his son to sell his *spes successionis* in order to procure aliment for him.[1] The degree of poverty which would afford ground of exemption, must in all cases be a question of circumstances. Erskine says, that 'though the parent himself should be reduced to necessitous circumstances, yet, as long as he keeps house, he is obliged to give the same entertainment that he takes to himself to such of his children as have not sufficient means of maintenance.'[2] But more countenance has been given to the rule as stated by Lord Stair, that there must first be reserved to the parents that which is necessary for their sustenance, so that when they are not able to entertain their children, they may lawfully expose them to the mercy and charity of others;[3] for although every man, however poor, is in strictness bound to share what he has with his helpless offspring, as far as it will go, the Court will not compel implement of the obligation where their interference would obviously have the effect of reducing the party to the situation of a pauper. A man has been held bound to aliment his grandchildren, although he was little better than a common labourer, and had eight children of his own to support.[4] But in similar cases the Court has repeatedly refused to sustain the claim of aliment, by reason of the party being in circumstances of great poverty;[5] and in another held that the offer of the defender to take some of his grandchildren home to live with him, was as much as a person in his position could reasonably be required to do.[6]

With regard to the manner in which the duty of aliment

[1] M'Donald *v.* M'Donald, 20 June 1846, 8 D. 830.

[2] Ersk. Inst. i. 6, 56. [3] Stair, i. 5, 7.

[4] Tait *v.* Whyte, 28 Feb. 1802, M. Aliment, App. 3.

[5] Wilson *v.* Cockpen, 3 S. 547; Stirling *v.* Heriot, M. 389; Ettrick *v.* Sword, 2 S. 715; Napier *v.* Napier, Elch. Aliment, 12.

[6] Jameson *v.* Jameson, 8 D. 86; Stair, i. 5, 9.

may be implemented, it would appear that, in general, a father or grandfather from whom an allowance is claimed, does all that the law requires of him by offering to receive the party into his family. 'The principle,' says the Lord Justice-Clerk (Inglis), 'is, that we are to protect the child against want, and the principle goes no further.' So, where a man with over £100 a year offered his daughter 5s. a week, with a room adjoining his own house, the Court, although the situation of the parties was alleged to be most uncomfortable, said they must 'leave the defender to settle the matter between God and his own conscience.'[1]

If a daughter is married, she appears entitled to no further indulgence. The wife of a W.S. raised an action against her father, a lieutenant R.N., setting forth that her husband, having become bankrupt, was unable to support either her or himself, and concluding for an aliment of £40 annually. The father, in answer, offered to take the pursuer into his own house. She refused to go; and, in respect of the defender's offer, he was assoilzied from the conclusions of the action. The ground of the decision, as put by Lord Fullerton, was, that though a daughter, once forisfamiliate by marriage, may not absolutely have lost all claim against her father for aliment, she must in such circumstances make her option. She must either hold herself forisfamiliate, in which case she has no claim; or, if she chooses to hold herself as still *in familia* and to have a claim against her father, she must submit to the ordinary rule, and accept his offer to receive and aliment her in his family.[2]

But conversely, a descendant is not entitled to compel his father, grandfather, etc., to reside with him. If the descendant is unable to do more than take his parents home to live in family with him, the Court will not interfere; but if he is sufficiently well off to make a further provision, he will be decerned to pay periodically a certain sum. 'I have no idea,' said Lord Glenlee, '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 circum-

[1] Bain *v.* Bain, 16 Mar. 1860, 22 D. 1021.

[2] Wallace *v.* Goldie, 20 July 1848, 10 D. 1510.

stances, the parent must have a separate aliment.'[1] The only exception to this rule is, when the son is unable to afford a separate maintenance. It is then sufficient for the son to receive the father into his house, and maintain him with the rest of the family.[2]

In fixing the amount to be paid, the Court, without making a minute inquiry into the defender's means, satisfy themselves of his ability to make a reasonable provision, and then award such a sum as may fairly seem to be sufficient to relieve the natural necessities of a person occupying a station in life to which the pursuer has been accustomed. It is obvious that what would be competence to a common labourer, might be wholly insufficient to meet the wants of a lady in a higher rank; for an individual's wants depend in a great measure on the habits in which he has been educated, and in many cases might be very imperfectly supplied by the administration of a mere pauper's allowance.

The cases on this subject will be found noted at the foot,[3] but it is beyond the scope of this work to examine them more particularly, because in the case of a pauper alimented by the parochial board, the right to relief is at once destroyed, whenever a relation offers to provide him with sufficient means of sustentation. As the whole extent of the obligation of the parochial board is the administration of a mere pauper's allowance, whenever any one undertakes to fulfil this duty, the board has neither title nor interest to interfere further in the matter. Thus, an old woman having obtained relief from the parochial board, after she had refused an offer by a grandson to take her into family with him, the inspector, thinking that the grandson should have made a separate provision for her, brought an action against him for repayment of the aliment; but the Court dismissed the action, because, although the sheriff or other court of competent jurisdiction might have found that the grandson was in the circumstances bound to give her

[1] Jackson *v.* Jackson, 17 Nov. 1825, 4 S. 188.

[2] Greig *v.* Crawford, 1817, not rep.

[3] Thom *v.* Mackenzie, 2 Dec. 1864, 3 M'P. 177; Landers *v.* Landers, 10 Mar. 1859, 21 D. 706; Jackson *v.* Jackson, 4 S. 186; White *v.* White, 10 Mar. 1829, 7 S. 567; Greig *v.* Crawford, Dun. 372; Ettrick *v.* Sword, 2 S. 715; Maule *v.* Maule, 1 W. & S. 266.

a separate maintenance, the parochial board was not entitled to do more than judge whether the offer was made in *bona fide*.[1] Of course, if the inspector had reason to suppose that the offer was a mere sham, or that the applicant for relief was in danger of being ill-used, or perhaps starved, he would be entitled to disregard it; but as his whole duty is to administer such relief as is due *ex lege*, he has clearly nothing to do with those considerations on which a court proceeds in dealing with questions of aliment *ex æquitate*.

It has been sometimes assumed, that the obligation to aliment an indigent relation is like a contingent debt, which, originating at one's birth, remains in abeyance till circumstances emerge requiring it to be put in force. But this is a subtle refinement, which the real nature of the claim does not sanction. There is no debt contracted at birth, for there can be no debt without a creditor; and here the title of the creditor does not arise out of the relationship simply, but depends on the fact that he is destitute. Till, therefore, destitution arises, there is neither debtor nor creditor, and consequently no enforceable obligation in existence. From this, various important consequences follow: — 1. The duty of aliment is determinable by the law of the domicile of the defender, at the time when the claim is made.[2] 2. His ability to fulfil the obligation is to be ascertained from a consideration of the circumstances of the defender when the claim arises. 3. It ought also to follow, that the duty incumbent on a daughter to aliment her parents does not pass to her husband, unless in point of fact she was alimenting them at the time of the marriage; but a contrary view was taken by the judges in the case of *Moir* v. *Reid*, 13 July 1866.[3]

The reciprocal obligation on parents and children to support each other is permanent and indelible. It is an obligation which can never be discharged, or *ab ante* compounded for by a present payment. Whatever sacrifices the party sought to be charged has already made, he must nevertheless be prepared to meet the duty again whenever the occasion arises for its exercise. Lord Elchies says: 'Should a parent give a portion

[1] Buie *v.* Steven, 5 Dec. 1863, 2 M'P. 208.

[2] See Lord Fullerton's opinion in M'Donald *v.* M'Donald, 8 D. 830.

[3] 4 M'P. 1060.

to a son, and he by rioting squander it away, that would not exeem the parent from the natural obligation of alimenting, no more than the parent's vices would exeem the children from that duty.'[1] These duties, which have been called *jura sanguinis*, are wholly beyond the pale of private paction.

Aliment *super jure naturæ* is a totally different thing from aliment *ex jure repræsentationis*. 'There lies,' says Lord Stair, 'no obligation on brothers and sisters to aliment each other, unless the brother were heir of the father in a competent estate, and the remanent children not at all provided for.'[2] In Scotland, the younger children are always protected by the right of legitim against the cruelty or caprice of an unnatural parent; but where the whole succession consists of a landed estate, and the father has failed to make any provision for the younger children, the obligation to maintain them is, by the usage of Scotland, transferred to the eldest son or heir. 'For,' says Erskine, 'the right of primogeniture, which entitles the eldest son to the father's whole heritage, would be most iniquitous if it were not charged with the alimony of the younger brothers and sisters, where the father has left them unprovided.'[3] The obligation of aliment *ex jure repræsentationis* is thus a mere equitable qualification of the right of primogeniture, and can only arise in a case where the children are totally unprovided for. Nay, supposing a spendthrift has already obtained more than his fair share of the succession from his father during his life, it would be most unreasonable were he still entitled to claim aliment after his father's death from his more deserving brothers and sisters. It is therefore always a good answer to a claim of aliment against an uncle, as representing a grandfather, to say that the father of the claimant had been sufficiently provided for. Thus, a father divided a fortune of £12,000, etc., equally between two sons. The elder was improvident, and died, leaving a wife and child destitute; the younger was fatuous, and his nephew by the elder brother was his sole next of kin and heir-at-law. On an action being raised for aliment against the lunatic uncle, as representing the grandfather, against whom the pursuer would have had a good claim

[1] Elchies' Annot. p. 31; Strathmore *v.* Strathmore, 1 W. S. 402; Stair, i. 5, 1.

[2] Stair, i. 5, 10.

[3] Inst. i. 6. 58; *v.* Ivory's note.

had he been in life, the Court assoilzied, distinguishing the case from cases of succession to a family estate.[1] The grandfather, it was said, had fulfilled every obligation incumbent on him when he divided his means between his two sons; and their children must follow the fortunes of their fathers, to whom were entrusted the fate of the unborn grandchildren.[2] So also, a child who has received an adequate provision on the death of his father, has no claim against his father's representative on subsequently becoming destitute.[3]

Unlike the duty of aliment *ex naturali debito*, this obligation is capable of being purchased and discharged; and while the one claim may be satisfied by an offer of admission into the family, the other can only be extinguished by a money payment. The one we have seen is permanent and indelible, but the other only endures till majority or marriage. On this last point the doctrine of Erskine is explicit: 'The heir is bound to maintain his younger brothers only until their majority, because they are presumed capable, after their perfect age, of earning a livelihood to themselves by business or employment. But sisters must be maintained till their marriage, because the daughters of gentlemen can do as little for themselves after as before majority, till they get a husband to provide for them.'[4] 'There can be no claim,' says Lord Succoth, 'against a brother, unless (1) the claimant is totally destitute, (2) unless he is in minority.'[5]

Order of Liability.—The duty of maintenance falls (1) upon one's descendants—the nearer before the more remote. Children are liable before grandchildren; and the parent of the claimants is only liable after the descendants have been exhausted, or are unable to discharge the obligation.[6] (2.) Failing children or grandchildren, the party liable is the father of the person destitute. (3.) If the father be dead or *incapax*, the duty devolves on the mother,[7] even before the paternal ascend-

[1] As in Seatons, M. 431; Seton, M. 429; Dalziel, M. 450; Buchanan, 21 Jan. 1813, F. C.

[2] Stuart *v.* Court, 10 June 1848, 10 D. 1275.

[3] Strathmore *v.* Strathmore's Trs., 2 S. 84, N. E. 77; H. L. 17 June 1825, 1 W. S. 402; Hunter's Trs. *v.* Macan, 25 May 1839, 1 D. 817.

[4] Ersk. i. 6, 58; Strathmore, 1 W. S. 402.

[5] Strathmore *v.* Strathmore, *sup.*

[6] Fraser, Parent and Child, p. 86.

[7] More's Lect. i. p. 83; Douglas *v.* Douglas, M. 425.

ants have been discussed. (4.) Failing father and mother, the claim lies against grandfather and grandmother. (5.) In the case of grandchildren, the mother's father is only liable after the father's father has been discussed, although no liability attaches to the father of the mother of a bastard child.[1]

A stepmother is not liable *super jure naturæ* to aliment a stepson. They are strangers to each other in blood; and there is no natural tie between them, out of which this natural obligation springs.[2] A father-in-law is not bound to maintain a son's widow;[3] and even in a case in which the son was alive, it was found that the father was liable in aliment to his grandchildren, but not to his daughter-in-law,[4] although the reason of the claim was the desertion of the son.[5] In the case of Duncan *v.* Hill,[6] the judges are reported to have said, that 'our decisions had subjected a father to the obligation of alimenting the wife of his son during his son's life and incapacity to maintain her.' But if any such decisions were ever pronounced, they do not seem to have been reported; and although in the above case aliment was found due to the daughter-in-law, there was this important specialty, 'that the husband had been illegally and against his own will sent out of the country to the West Indies *by his father*.' It would rather appear that any claim which a daughter-in-law can make against her father-in-law must be made through her husband, who would of course require to show that his destitution was the result of innocent misfortune, and did not arise from a mere indisposition to work. It has lately been decided, that a man during his wife's life is bound to support his mother-in-law,[7] even when the wife was a natural child.[8]

Husband and Wife.—As the relation of husband and wife is the earliest, so is the natural obligation to support each other the strongest. A wife has no moveable estate. Everything

[1] Nicol *v.* Kirk-session of Dundee, 19 June 1832, 10 S. 670.

[2] M'Donald *v.* M'Donald, 8 D. 830.

[3] Pagan *v.* Pagan, 27 Jan. 1837, 16 S. 399; Twill *v.* Marshall, 21 Dec. 1815, F. C.

[4] Belch *v.* Belch, 1 Dec. 1798, Hume 1.

[5] Chrystie *v.* M'Millan, 6 July 1802, M. App. Aliment 5; Tait *v.* White, M. App. Aliment 3.

[6] 17 Feb. 1810, F. C. [7] Moir *v.* Reid, 13 July 1866, 4 M'P. 1060.

[8] Wilson *v.* Todds, before Ld. Jerviswoode, Ord. Jan. 1867: acquiesced in.

not heritable in its nature which she has or can have, falls under the *jus mariti*, and belongs to the husband. The husband, however, is only bound to maintain his wife in his own house, because the chief purpose of marriage is adherence; and therefore an action for aliment at the wife's instance will only lie where (1) there has been ill-usage, followed by a contract of separation;[1] because, though a contract of separation is revocable at any time by either of the parties, it is not so when the grounds on which it proceeded would have warranted separation *a mensa et thoro*.[2] (2.) The husband forfeits his right to the society of his wife by maltreatment; and, therefore, where the ill-usage justifies her in abandoning his house, he is bound to furnish separate aliment. (3.) The right to aliment may also be maintained either on the ground of desertion, in which case the claim subsists till the husband's society is restored; or on the ground of adultery, in which case it endures till a divorce is obtained.

But not only is a husband bound to aliment his wife during his lifetime, he is also required to provide sufficiently for her in case of his death;[3] therefore the obligation transmits to descendants *lucrati* by the succession. A widow, whose husband died within year and day without issue, was found entitled to be alimented by the heir of the deceased, a distant collateral relation, out of her husband's estate, though she was the daughter of a gentleman of some fortune, and could not therefore be said to be indigent.[4] The rights of the spouses and representatives are now not affected by the dissolution of the marriage within year and day.[5] When her legal provisions of *terce* and *jus relictæ* are inadequate, an addition to them may be made out of the estate.[6] In the same circumstances, a fourth of the free produce of the effects, heritable and moveable, belonging to the deceased, was awarded by the Court.[7] In one case, a woman, who was servant before marriage, and whose husband died, leaving property rented at £12 sterling, was found to have no claim against her husband's heirs. She must earn her bread, it was

[1] Shand *v.* Shand, 10 S. 384.
[2] Shand *v.* Shand, 28 Feb. 1832, 4 S. J. 600.
[3] Ferguson *v.* Logan, 11 July 1809, 1 Hume 5.
[4] Louther *v.* M'Laine, 15 Dec. 1786, M. 435.
[5] 18 Vict. c. 23, s. 7. [6] Thomson, 6 Mar. 1778, M. 434.
[7] Young *v.* Campbell, 17 Jan. 1790, M. 400.

said, in the same way as before marriage.[1] The soundness of this case has been doubted,[2] where a blacksmith's widow was allowed aliment of £15 out of property yielding from £30 to £50. So also a widow, who previous to her marriage supported herself as a sempstress, was awarded an allowance of £25 per annum during viduity, out of heritable subjects belonging to her husband yielding a free rental of £54.[3]

Illegitimate Children.—A bastard has in law no father. In legal language, he is *filius nullius*. The person by whom he is proved to have been begotten is subject to the duty of maintenance so long as the child is unable to maintain himself, but the father has no legal relations to his offspring. He has all the burdens of paternity, without any of its privileges. He has no *patria potestas* or right of custody. He has no right to interfere with the administration of his estate. He does not succeed to it, should the bastard die; and while the duty of maintenance arising out of the relation of parent and child is reciprocal, the father alone, in the case of a natural child, is subject to the obligation, and cannot demand aliment from the child as a legitimate parent may do.[4] But while the law imposes this obligation on the father, it leaves him to implement it in the way which may be most convenient for himself, or which he may deem most expedient. Of course the infant, during its tender years, cannot be separated from the mother, who is absolutely entitled to its custody for the period during which a child is supposed to require all a mother's care. Though the father's house may be a fitter place for it, no offer by him to remove it from the mother can be pleaded against what Lord Jeffrey calls 'her natural, predominating, and overbearing right.'[5] To preserve this right of custody in the mother, a decree of aliment against the father in a filiation case is usually for the period of seven years in the case of a boy, and ten years in the case of a girl. The theory on which the decree proceeds, is that, both parents being mutually bound to support the child, the mother,

[1] M'Cowan *v.* Paterson, 20 May 1809, F. C. 277.

[2] Smith, 11 Mar. 1812, 16 F. C. 555.

[3] Bowie or Harvie *v.* Harvie, 6 S. 1144, 7 S. 305; M'Conochy, 26 Feb. 1830, 8 S. 604.

[4] Corrie *v.* Adair, 24 Feb. 1860, 22 D. 897.

[5] Weepers *v.* Kennoway, 20 June 1844, 6 D. 1166.

having the custody, will contribute her share in personal services, and the father ought to make a certain periodical payment to the mother as trustee for the child. But the distinctive feature of the proceeding is, that the aliment is given to the child, and not to the mother; so that any agreement by her to compromise her claims for a single payment is valid only for the terms that are past, and does not affect the child's right to aliment for the future. The discharge is effectual against the mother, but is of no efficacy against the child;[1] and therefore either the mother herself, or any other person on whose charity the child is cast, may always have recourse on the father.

The decree of aliment is only limited to ten or seven years, to enable the parties at the end of the period to make other arrangements for the support of the child if they think proper. The father's right to order the manner of the child's maintenance then comes into force. He may take the custody himself, unless the child is of such a weakly constitution as to render its separation from the mother inexpedient; in which case he must continue to make an annual payment to the mother as before—it may be, as long as the child lives; for although the obligation ceases when the child is able to support itself, the whole question of the father's duty to interpose in the bastard's behalf, by reason of his incapacity, always remains open up to his death.[2] *Inhæret ossibus.* There is no possible way of shaking himself rid of the obligation.[3]

But when the child has reached an age when it may be safely removed from the mother, the father is entitled to meet her demand for further aliment by taking the child home, or by offering to make other provision for it. If the offer be reasonable, and the mother decline to part with the child, then all further claim upon the father is for the time at an end.[4]

The mother's right of custody is a right peculiar to herself. It does not transmit to her representatives at her death; and, therefore, where the infant was taken home by the paternal grandfather at the mother's death, it was found that he had

[1] A. B. *v.* Chisholm, 12 Feb. 1842.

[2] Finlayson *v.* Govan, 7 July 1809; Pott *v.* Pott, 12 S. 183.

[3] Anderson *v.* Lauder, 10 D. 961.

[4] Simpson *v.* Cassels, 14 Jan. 1865, 3 M'P. 396; Ballantine *v.* Malcolm, Hume 424.

a good claim for her share of the aliment against her representatives, who had intromitted with her estate.[1]

As to the obligations incumbent on the bastard, it may be observed that, being in law the child of nobody, he is not bound to aliment his father on his coming to poverty,[2] but he is bound to support his mother. On the other hand, he has no claim against his grandfather, paternal or maternal, because a bastard is, in contemplation of law, not a member of his parents' family, and consequently there is no legal association between him and remoter ascendants.[3] The same principle deprives him of all claim against the father's heir.

In some of the cases which occurred before the Poor Law Act came into operation, it was held that, where a natural child received aliment from persons other than the parents, they were entitled to be reimbursed by the parish, on the ground that, from the birth of the child, the parish was subsidiarily liable for its maintenance. Thus, where a bastard was supported by the mother and her friends—the father having absconded—aliment was awarded against the parish from the birth of the child, though the relatives were not parties to the process, and no application was made for two years after.[4] Similarly, where the mother had failed to recover aliment from the father of the bastard, it was found that her own father, with whom she and her child resided, was entitled to recover from the parish aliment not only for two years past, but in future, so long as he should continue to support the child, and the parents were unable to do so.[5] A grandmother, under like circumstances, was found entitled to make the same claim. A woman having been delivered of a child in October 1842, obtained decree against the father, but never recovered anything from him save a few shillings. The mother supported herself by obtaining occasional work at a mill. The grandmother took charge of the child, and supported it by begging and the contributions from her daughters. After ineffectual applications had been made to the kirk-session, the grandmother raised an action against them for

[1] Wilson *v.* Taylor, 4 July 1865, 3 M'P. 1060.
[2] Per Baron Hume; cited Fraser, Parent & Child, 127. Cf. *sup.* p. 189.
[3] Nicol *v.* Dundee, 19 June 1832, 10 S. 670.
[4] Robert *v.* Fife, 5 Feb. 1825, 3 S. 349.
[5] Weepers *v.* Kennoway, 20 June 1844, 6 D. 1166.

past and future aliment. The Court found that she had a good title to insist in the action, but that, in modifying the amount of the claim, there must be taken into view the fair proportion of what ought to have been contributed by the mother of the illegitimate child in question during the time she was earning wages; and, further, that the same proportion must continue to be paid by the mother when she was able to do so.[1] It is apprehended, however, that these cases are not now law. The funds raised by assessment cannot be devoted to any other purpose than what is sanctioned by the statute; and by sec. 70, the sole duty cast on the parochial board is to administer relief to destitute persons *after* application is made for it.

When a person is in that state of mental or bodily incapacity as legally to entitle him to parochial relief, the inspector to whom the application is made is not entitled to say, 'You have relations rich enough to support you, who are legally bound to do so; go against them.' 'Sustentation,' says Lord Fullerton, 'must be given in the first instance by the parish, which must seek its relief against those bound to aliment the pauper.'[2] If the pauper has any good claim against third parties, the parish will be much abler to enforce it than the pauper himself, who in the meantime must not be allowed to starve. So, where relief has been given, on the pauper's application, outwith his parish of settlement, it is no answer to a claim by the relieving parish against the parish of settlement, that the pauper's relations should in the first place be discussed. That may involve an expenditure of time and money which the relieving parish is not bound to incur; and if any right of relief exists against the party's relatives, it is for the parish of settlement to enforce it.[3]

Actions of relief by the inspector of the poor may be raised against the parties primarily liable to support a pauper, either in the Sheriff Court or the Court of Session. The claim rests on these three matters of fact: 1*st*, That the pauper was legally entitled to relief; 2*d*, That relief was given; 3*d*, That the defender is legally bound to maintain him.

But while the pauper's relations are legally bound to reimburse the parish for the advances which they have made, there

[1] Lumsden *v.* Heritors, etc., of Leslie, 18 July 1846, 8 D. 1260.

[2] Pryde *v.* Ceres, 5 D. 577.

[3] Per Lord Dundrennan in Hay *v.* Adams, 23 Jan. 1856, 3 P. L. 173.

is no right of action for the repetition of past advances against the pauper himself. Public relief given to a person legally entitled to it is given as charity; or, as Lord Stair puts it: 'In all cases, aliment or entertainment given to any person without paction is presumed a donation, if the person was major, and capable to make an agreement.'[1] It follows that a parish which has alimented a person of property, before he succeeded to it, cannot have recourse upon the property after his death;[2] and that any funds which a pauper afterwards acquires by succession, are not attachable by the parish which previously supported him.[3]

The attempt has been sometimes made to exact from the pauper, when he applies for relief, a disposition *omnium bonorum*, with the view of preserving the rights of the parish in the event of his subsequently being placed in a position to repay their advances. But it is scarcely necessary to point out that a conveyance executed in these circumstances is wholly illegal. If the pauper is *in titulo* to demand relief, the inspector dare not refuse it. The parochial board is the trustee of certain funds for behoof of the applicant, and they are not entitled to annex any conditions to the performance of what is simply an execution of their trust. No court of law or equity would support a deed taken from a starving man, which was so entirely without consideration.

A parish has no title to sue an action in respect of the maintenance of a person likely to become a burden on their funds, but who has not yet made any claim upon them, against either the parish of his settlement or the relatives legally liable. Accordingly, an action by a kirk-session, for the aliment of a bastard child, against the putative father, without the concurrence of the mother, was thrown out, on the ground that no claim for its support had ever been made against the parish.[4]

Army and Navy Pensioners.—By the 2 and 3 Vict. c. 31, it is enacted that, when any pensioner shall apply for relief to

[1] Stair, i. 8, 3; Ersk. iii. 3, 92; Drummond *v.* Steuart, 2 Mar. 1756, M. 412; Horn *v.* Lady Wedderburn, 12 July 1757, M. 412.

[2] M'Lachlan *v.* Kirk-session of Steventon, 25 Jan. 1828, 6 S. 443.

[3] Henderson *v.* Alexander, 18 July 1857, Outer House, 1 P. L. 148.

[4] Kirk-session of Garvald *v.* Forrest, 14 Feb. 1817, 19 F. C. 293; Conf. Hutton, 6 Dec. 1770, M. 10,574.

the heritors and kirk-session, it shall be lawful, but not compulsory, on them to grant relief, and to require him to assign his next quarterly payment of pension or allowance, which assignment shall be free of stamp duty. If a pensioner leaves his wife and family chargeable to a parish, any two justices may issue an order that the allowance next falling due be paid to the parochial board, to be applied to the indemnity of the parish—one-half where the wife or only one child has become chargeable, and two-thirds where the wife and one or more children have become chargeable.

Natives of India.—The 18 and 19 Vict. c. 91,[1] makes provision for the recovery, by parochial boards, from the East India Company of sums expended in relief of natives of India. By sec. 22 of that Act, the East India Company is bound to take charge of, and send home or otherwise provide for, all persons, being Lascars or other natives of the territories under the government of the Company, who are found destitute in the United Kingdom; and if any such person is relieved and maintained by any persons administering the relief of the poor, notice thereof is to be sent in writing to the Secretary of the Court of Directors, now probably to the Secretary or Under Secretary of State for India (21 and 22 Vict. c. 106, s. 64), specifying, so far as is practicable, the following particulars, viz.:—1. The name of the person so relieved or maintained. 2. The presidency, or district, or part of the territories of the East India Company of which he professes to be a native. 3. The name of the ship in which he was brought to the United Kingdom. 4. The port or place abroad from which such ship sailed, and the port or place in the United Kingdom at which such ship arrived, when he was so brought to the United Kingdom, and the time of such arrival. 'And the said East India Company shall repay to the said overseers, guardians, or other persons, out of the revenues of the said Company, all moneys duly expended by them in relieving or maintaining such destitute person, after the time at which such notice aforesaid is sent or otherwise given.'

Recourse against other Parishes.—By sec. 71, the sums expended in behalf of a poor person found destitute in a parish, may be recovered from the parish to which he may be

[1] Merchant Shipping Act Amendment Act.

ultimately found to belong. This was always the law ;[1] but the claim might be cut off by *mora*, which is still a good defence to an action against the parish of settlement. Thus, a parish which had relieved a pauper who was not one of its own poor, from the year 1836 to 1849, was found to be barred from insisting in a claim for repetition against the parish of settlement, on account of the delay which had occurred.[2] In another case, a pauper, whose legal settlement was elsewhere, became chargeable to a parish in 1843. The inspector communicated with the parish ultimately discovered to be the parish of settlement; but the inspector of the latter denied all liability, and no further correspondence took place; nor was any claim made till 1850, when the statutory notice was given. On an action being brought by the relieving parish for reimbursement of past advances, the Court held that, by reason of the *mora*, the claim of relief could not be carried beyond the date of the statutory notice. As to what constitutes *mora*, Lord Cockburn said: '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, I should be disposed to decide against it.'[3] The same plea was given effect to in Scott *v.* Anderson, 15 July 1854,[4] where a parish which had relieved a pauper lunatic for twenty-two years, from 1829, and then brought an action against the parish of settlement, to be reimbursed for the past and relieved from future maintenance, was found, in the circumstances, to be precluded from insisting in the claim.

As section 71 confers on the relieving parish an absolute right to recover from the parish of settlement in *all* cases in which relief has been given to a pauper, on one condition only —that written notice of chargeability shall be sent—it might be supposed that there is no longer room for the operation of the principle of *mora*. *Mora* and want of notice together may bar a claim; but where notice is given, the parish of settle-

[1] Rescobie, M. 10,589.
[2] Hay *v.* Knox, 20 June 1850, 12 D. 1260, 22 S. J. 464.
[3] Hay *v.* Jack, 15 Feb. 1853, 15 D. 388, 25 S. J. 234.
[4] 16 D. 10,941, 26 S. J. 594.

ment is fairly put on its guard; and, as Lord Neaves says, 'there is delicacy in saying how far mere lapse of time will cut off the right.'[1] But the Court has not adopted this view; for when a parish sleeps over its rights, great injustice is done to both parishes. 'In the one case, the ratepayers of to-day are obliged to pay a debt truly due by their ancestors; and in the other case, the present generation are enriched at the cost of those who preceded them.' It is for this reason that the highly penal consequences of *mora* are still inflicted, even where due notice has been given; but in this case, of course, *mora* is not so easily inferred. An action brought in 1862 regarding a pauper, as to whom notice was sent in April 1850, was held to be cut off, as regards all advances, prior to a second notice in 1860.[2] The same rule was applied in a case where notice (of an insufficient kind) was first sent in 1851, and action was not brought till 1862, when notice was again sent, the pauper having then for a second time become chargeable.[3] The plea of *mora* applies to a claim by an individual, as much as to a claim by a parish.[4] Of course, where there is an admission of the claim, there is no room for *mora;* the relieving parish then becomes the agent of the parish of settlement.

As to what constitutes sufficient notice, the statute requires, 1*st*, that the notice shall be in writing; 2*d*, that it shall be sent to the inspector of the poor of the parish or combination to which the pauper belongs; 3*d*, that the poor person to whom the relief is being given, shall be named and described with sufficient particularity to enable the inspector to make inquiry into the matter.[5] Even although the designation of the pauper is

[1] Jack *v.* Simpson, 14 June 1864, 6 P. L. 574, 2 M'P. 1221.

[2] Brown *v.* Lemon and Cameron, 19 Jan. 1864, 6 P. L. 351, 2 M'P. 454.

[3] Jack *v.* Simpson, 14 June 1864, 6 P. L. 574; but see Beattie *v.* Wood, 9 Feb. 1866, 8 P. L. 441, 4 M'P. 427.

[4] Duncan's Trustees *v.* Gow, 31 Jan. 1861, 3 P. L. 400, 23 D. 420.

[5] By the rules of the Board of Supervision, the notice should be accompanied with a 'statement of the circumstances,' and much inconvenience is avoided by attention to the following rule:—

'Whereas representations have been made to the Board of Supervision, complaining of neglect on the part of the inspectors of the poor in not replying to letters and communications sent to them by inspectors of parochial boards of other parishes, more especially letters relating to disputed settlements, and claims of paupers who have been relieved in parishes to which they do not belong: And whereas, in consequence of such neglect, not only

imperfect or inaccurate, the parish of settlement is not entitled to found on the circumstance, if the notice, taken as a whole, is fairly sufficient to enable the inspector to identify the party meant.[1] Where a man with two children applied for relief, the notice sent was in these terms: 'James Scott, a native of Ireland, is lying in a very bad state of health, and has two children depending on him for support; Susan, aged nine, and Felix, the above-named, born in Leith; and claim is made on your parish,' etc. The father having died soon after the notice was sent, and relief having been given for some years to the boy Felix, the same was held not to be recoverable, because the notice showed on its face that, the pauper being a native of Ireland, there was no claim against any Scotch parish, and notice regarding the father was not notice as regards the son.[2] So a notice of 'Alexander Clark's three children, residing at 36 Clyde Street,' having become chargeable, was held not to be a good notice in reference to Elizabeth Clark, a child of the said Alexander Clark, but at the date of the notice residing in the poorhouse of the parish sending it.[3]

have the legal liabilities of parishes been evaded, and great embarrassment and delay been occasioned in fixing and ascertaining the proper settlements of paupers, but much needless expense has also thereby been incurred,—the Board of Supervision therefore directs:

'1. That every inspector of the poor, to whom any letter or communication shall have been addressed by the inspector of another parish, on any matter involving a claim against the parish to the inspector of which the letter may be addressed, or making any inquiry in regard to relief given or refused to a pauper, shall be bound to acknowledge and reply to such letter or communication within seven days after the receipt thereof, unless prevented from so doing by some sufficient reason, the sufficiency of which shall be determined by the Board of Supervision, if applied to for that purpose.

'2. An inspector of the poor sending any such letter or communication, shall be bound to transmit it by post, and to prepay the postage. He must also preserve evidence of the day on which it is transmitted; and the post-mark of the post-office through which the inspector, to whom any such letter or communication may be addressed, usually receives his letters, shall be held to be sufficient evidence of the time of receipt.

'3. Every inspector of the poor who shall receive any such letter or communication, shall be bound to preserve the same, and to produce it with its cover or envelope (if any), when called upon by the Board of Supervision.'

[1] Jack *v.* Fraser, 19 July 1861, 4 P. L. 22.

[2] Jack *v.* Simpson, 14 June 1860, 6 P. L. 574, 23 D. 1221.

[3] Beattie *v.* Adamson, 23 Nov. 1866, 9 P. L. 159, 5 M'P. 47.

For the terms of a letter which was also held not to be sufficient notice, reference may be made to Hay *v.* Simpson, 19 Dec. 1865.[1] The inspector wrote, intimating that 'a pauper had applied for relief, who stated that she had relief from your parish for many years, which was discontinued about a year ago;' and he added, 'Let me know what you know of her, and if her statement is correct.' The Court were all but unanimous in holding that this letter was not a compliance with the statutory condition. Explicit written notice could always be easily given, and there was no good reason for ever dispensing with it. But in the letter in answer the defender said, 'You should either send her to the house of refuge, or offer to take her into your workhouse—of course at our expense.' This was held to be a sufficient recognition of the pauper, and authority to disburse the aliment which was sought to be recovered.

As the parish receiving the notice is entitled to know not only the ground of the claim made against it, but the person by whom it is made, a notice by the inspector of A. will not enure to the parish of B.[2]

The question has occurred: If a pauper, of whose chargeability notice has been given, ceases for a time to require parochial aid, is a fresh notice necessary when he again is put on the roll? The answer depends on whether the party has ceased to be chargeable simply in the sense of having his relief stopped; or has *de facto* been rehabilitated, so as to be no longer entitled to ask or to receive relief. Many breaks may occur in the continuity of the aliment, after which no fresh notice would be requisite, if in the interim the pauper has never been restored to the position of a person capable of supporting himself by his own industry. In such a case the first chargeability can never fairly be said to have come to an end. But where for a considerable period of time a person has ceased to become a proper object of relief, and has become self-supporting, if he should be again admitted to the roll of paupers, he is in the position of a poor person having become chargeable within the meaning of the section. Thus, where there was an interval of twenty months between the first and second administrations of relief, a second notice was deemed necessary.[3]

[1] 19 D. 200, 29 S. J. 97. [2] Lemon *v* Brown, 2 M'P. 454.
[3] Beattie *v.* Wood, 9 Feb. 1866, 8 P. L. 441, 4 M'P. 427.

By sec. 70, the parish to which the pauper first addresses his application for relief is bound to furnish him with sufficient means of subsistence until the parish or combination to which he belongs be ascertained, and his claim on such parish or combination admitted or otherwise determined. The duty of giving this interim relief terminates with the admission of liability; thereafter the relieving parish acts as the agent of the parish of settlement in ministering to the wants of the pauper. The statute assumes that the admission shall be made by the parish to which the pauper belongs; and therefore if, through some mistake in point of law or fact, the parish is afterwards discovered *not* to be the parish to which he belongs, it might be contended that the admission might then be withdrawn,—the relieving parish being, of course, indemnified for the outlay which it may have incurred on the faith of the admission. But the simplest way of adjusting the rights of the various parties, is for the parish making an admission through mistake to sue the parish truly liable as the place of settlement; and this is the view of the Board of Supervision, who have expressed the opinion, that when a parish has formally and unconditionally admitted liability for a pauper who has become chargeable in another parish, the responsibility for the maintenance of the pauper must thenceforward be held to be with the parish which has so admitted liability, until the claim of the pauper on some other parish shall have been admitted or otherwise determined, in terms of the statute.[1] An admission is the same as putting the pauper on the roll of the parish making the admission,[2] which is the act not of the inspector, but the parochial board. It follows that, though an inspector may, in the course of business, competently make an admission, it is equally competent for the parochial board to withdraw it, provided this be done *tempestive*, and while matters are still entire.[3] But when the admission has been acted on, the parochial board will be bound by it, whether it was made with their express sanction or not.[4]

Questions have occurred as to whether the terms of a correspondence between the inspectors imported an admission or not;

[1] B. of S. Minute, 30 Jan. 1862.

[2] Per Lord President in Johnston *v.* Black, 13 July 1859, 21 D. 1293.

[3] Taylor *v.* Strachan, 8 Nov. 1864, 7 P. L. 122, 3 M'P. 34.

[4] Beattie *v.* Greig, 22 Nov. 1853, 4 P. L. 238.

but these cases are usually cases of circumstances.[1] In one case, it was held that an adjustment of a claim for which a summons had been brought, did not bar the same parish from raising the question of liability when a second action was raised in regard to the same pauper, who, having ceased for a time to be in receipt of relief, had for a second time become chargeable.[2]

As an appendix to this chapter, the following documents, which have been issued by the Board of Supervision, may here be inserted:—

Paupers belonging to one Parish who are residing in another Parish.

BOARD OF SUPERVISION, EDINBURGH, 1*st October* 1855.

SIR,—I am directed by the Board of Supervision to transmit the annexed copy minute passed by the Board, in reference to paupers belonging to one parish who are residing in another parish. And I am to call upon you to lay it before the parochial board at their next meeting.—I am, sir, your obedient servant,

W. S. WALKER, Secretary.

To the Inspector of Poor of

'The Board are of opinion that an inspector of the poor must be held responsible for the relief and proper treatment of every pauper residing within the limits of his charge, although the pauper may not have a settlement therein, unless it can be shown that he is residing there without the knowledge of the inspector; and that the inspector cannot, by any arrangement with the parish of settlement or otherwise, divest himself of that responsibility so long as the pauper resides there.

'The statute does not contemplate, and the Board cannot sanction or approve, the residence of a pauper within the limits of the charge of an inspector who cannot be held responsible for the relief and proper treatment of the pauper; and, therefore, when a pauper who is chargeable to a parish is found to be residing in another parish, it is the duty of the inspector of the parish to which such pauper belongs immediately to intimate the fact of such residence, with the name and circumstances of the pauper, to the inspector of the parish or combination in which he resides, unless when that inspector shall have given notice in writing of the pauper's residence to the parish to which he belongs.

'So long as a pauper belonging to another parish is residing within the limits of an inspector's charge, it is the duty of the inspector to treat that pauper in all respects in the same manner as if he were a

[1] See Scott *v.* Oliver, 8 Mar. 1861, 5 P. L. 67.

[2] M'Donald *v.* Taylor, 3 July 1863, 9 P. L. 348.

pauper belonging to the parish in which he resides; and the statute does not appear to contemplate that the parish in which he resides shall be entitled to recover from the parish to which he belongs, commission or agency, or any such charge, in addition to the sums actually expended on behalf of such pauper. It is very doubtful whether any such additional charge could be recovered by legal proceedings; and it may even be doubted whether the payment of such additional charge would be a legal application of the funds raised by assessment for the relief and management of the poor.

'The Board, however, are of opinion that, where a pauper is residing in another parish than that to which he belongs, it is the duty of the last-mentioned parish to pay in advance to the parish in which the pauper resides, the sum required for his weekly relief; and that when such payment has not been so made, or has been found insufficient, the parish in which he resides is entitled to recover from the parish to which he belongs, not only the sums it has been necessary to expend on behalf of the pauper in lieu or in excess of such weekly payments, but also interest at the legal rate of five per cent.

'But although parochial boards and inspectors of the poor cannot in any manner divest themselves of responsibility for the relief and management of a pauper belonging to another parish who resides within the limits of their charge, except by removing him to his own parish, in terms of the 72d section of the statute 8 and 9 Vict. cap. 83, it is very desirable that parochial boards and inspectors should keep in view the probability that the abuse of the statutory power of removal would lead to the abolition of that power.'

(Signed) W. S. Walker, Secretary.

Circular Letter respecting Cost of Management of Paupers not residing in their Parish of Settlement.

Board of Supervision, Edinburgh, 2*d June* 1859.

Sir,—I am directed to state, for the information of your parochial board, that the Board of Supervision have had under their consideration the practice, recently adopted by some parochial boards having paupers belonging to other parishes resident within their limits, of intimating to the parish of settlement, that unless that parish agrees to pay a certain percentage on the pauper's allowances as 'the cost of management,' in addition to the allowances themselves, the parish of residence will remove the pauper to his parish of settlement.

The Board considered it expedient to obtain the opinion of counsel upon the legality of this practice; and I am directed to transmit the annexed queries, and opinion by Lord Advocate Baillie, Dean of Faculty Moncreiff, and Mr George Ross, from which the parochial board will perceive that, in the opinion of counsel, such a practice is not justifiable.

It having also come to the knowledge of the Board, that in some

parishes where the practice of charging a commission as the cost of management prevailed, sums so received have been appropriated by the inspectors as perquisites of their office and part of their remuneration, I am directed to intimate that the Board are of opinion that an inspector of poor is not justified in accepting from another parish any remuneration for the performance of his statutory duties.—I am, sir, your obedient servant, W. S. Walker, Secretary.

To the Inspector of Poor of

COPY QUERIES AND OPINION OF COUNSEL.

'Quest. 1. Has the parish of residence power to annex any condition founded on their own satisfaction, on failure to comply with which the power of removal emerges?

'Ans. 1. We are of opinion that the parish of residence has no power to annex a condition which the parish of settlement is not obliged to comply with.

'Quest. 2. Is the parish of settlement relieved from the charges of removal by a tender of reasonable security for payment of the constant weekly subsistence of the pauper, or by prepayment of the weekly subsistence?

'Quest. 3. Would the parish of residence be still entitled to say, We are dissatisfied, and will remove the pauper, even although the parish of settlement were to leave it to the former to fix the weekly allowance?

'Ans. 2 and 3. We are of opinion that the parish of settlement would be relieved from the charges of removal by a tender of proper security for the payment of the constant weekly subsistence of the pauper allowed by the parish of residence; and we do not think that the parish of residence would be entitled to say that they were dissatisfied, and to remove the pauper, unless they could show that they had reasonable grounds for being dissatisfied with the security offered by the parish of settlement for the payment of such allowance. We do not think, however, that the parish of residence would be held to be unreasonable in objecting to weekly prepayments, and in insisting that the prepayments should be quarterly or half-yearly.

'Quest. 4. Could the parish of residence remove a pauper because the other parish refused to make an allowance for subsistence plainly and extravagantly unreasonable?

'Ans. 4. We are of opinion that the Court would not be disposed to listen to any objection on the amount of the provision allowed to the pauper by the parish of residence, unless they are satisfied that the allowance was granted *malâ fide*, or was manifestly contrary to reason and justice.

'Quest. 5. In short, is the power of removal conferred on the

parish of residence altogether arbitrary, or to be limited to cases in which the parish of settlement refuses or fails to make such provision as may reasonably and legally be required for the pauper's constant weekly subsistence?

'ANS. 5. We are of opinion that the power of removal conferred on the parish of residence is not altogether arbitrary, but is limited to those cases in which the parish of settlement refuses or fails to give proper security for the weekly subsistence of the pauper allowed by the parish of residence. Some of the observations which fell from the Court in the case of Hay *v.* Melville, may appear to give some colour to a different construction of the statute; but having regard to the conclusion of the summons in that case, we do not think that a different view of the statute was intended to be taken by the Court. It may perhaps be thought that the parish of settlement has no interest to object to a removal by the parish of residence. But we can conceive cases in which a pauper, by remaining in the parish of residence, might be able to do something for his maintenance, which he might be precluded from doing if removed to the parish of settlement. We further think that the Court, in construing the power of removal given by the statute to the parish of residence, would not lose sight of the wishes of the pauper himself to continue in the parish of residence.

'QUEST. 6. And, in the special case now brought under notice, are the parochial board the sole judges of what is satisfactory to them in this matter, or are they bound to be satisfied with such provision as cannot fairly be said to be insufficient for the pauper's subsistence?

'ANS. 6. We refer to our answers to the two preceding queries.

'QUEST. 7. Or, in other words, can the parish of residence, notwithstanding the decision referred to, which settles that a charge for management is not warranted by the statute, exercise the power of removal conferred by the 72d section of the statute, solely because the parish of settlement refuses to pay that charge?

'ANS. 7. We are of opinion that the parish of residence is not entitled under the statute to exercise the power of removal conferred by the 72d section, on the ground that the parish of settlement refuses to pay a sum in name of expenses of management.

(Signed) 'CHARLES BAILLIE.
J. MONCREIFF.
GEORGE ROSS.'

SETTLEMENT.

SETTLEMENT BY RESIDENCE.

Period.
Continuity.
Residence Industrial.
Retention.
Lunatics.

SETTLEMENT BY BIRTH.

SETTLEMENT BY MARRIAGE.

WIVES DESERTED.

WIDOWS.

SETTLEMENT BY PARENTAGE.

Pupils.
Minors Pubes.
Illegitimate Children.
Lunatic Children.

THE burden of maintaining a pauper falls on the parish in which he is said to have his *settlement*. This is a term not found in any of our ancient Acts of Parliament, Privy Council proceedings, or judicial discussions, and its meaning has not yet been authoritatively defined. It seems to have been borrowed from the law of England about the end of the last century, to express the local relation of a person in a state of poverty to a particular parish by birth or residence, in respect of which the parish is bound to relieve the rest of the community of the duty of providing for his care, custody, and maintenance. Settlement has been occasionally spoken of as a right vesting in every person, whether he be a pauper or not; and which at any moment, by falling into a state of destitution, he is entitled to put in force against some parish or other. But the use of it in this sense is rather apt to mislead. Strictly speaking, the right of a pauper to be maintained lies against the whole community. To him it is a matter of indifference what parish is the distributor of the public charity;[1] for, provided he is unable from

[1] Per Inglis, L. Pres., in Miles *v.* Simpson and Greig, 19 July 1867.

bodily or mental infirmity to make a living, aliment sufficient for his wants has been guaranteed him by statute, no matter how he is locally situated. The law of settlement has been framed, not for the protection or benefit of the pauper, but of the ratepayers of the country, by distributing the burden of maintaining the poor, according to certain fixed principles, among the different parishes into which the kingdom is divided.

Settlements are of two kinds: 1. *Direct* or *Original;* 2. *Derivative.* One of the earliest statutes relating to the poor[1] appears to have proceeded on the very natural principle, that no parish should be troubled with any but the paupers and beggars who were born within its bounds. It ordains that 'no beggars be thoiled to beg in ane parochin that are born in ane uther; and that the headsman of ilk parochin make takinnes and give to the beggars thereof, and that they be susteined within the bounds of that parochin; and that nane uthers be served with almous within the bounds of that parochin, but they that bearis that takinne allanerlie.' However, when the earlier leglislation came to be revised, and the foundation of the existing Poor Law was laid in 1579, it was deemed proper to provide for the case of those who in early life abandoned their place of birth, that they should be held to be settled in those parishes in which they had had their most common resort for a given time prior to poverty. The statute 1579, c. 74, while repeating the enactment that 'nane be thoiled to beg in an parochin that are bore in an uther,' directs all 'pure people to repayre to the parochin, quhair they were borne or had their maist common resorte or residence the last seven years by past, and there *settil themselves.*' 'And the provost and baillies in burrowes or townes, and the saidis judges in the parochines to landwart, sall give an testimonial to sik pure folk as they find not borne in their awin parochin, or making residence therein the last seven zeiris, sending or directing them to the next parochin, and sa fra parochin to parochin quhill they be at the place quhair they were borne or had their most commown resorte or residence during the last seven zeiris preceding.' However, very early in the administration of the Poor Law, both in this country and in England, it was assumed, in absence of any statute to that effect, that the wife must be with her husband, and that the children must remain with their father; and,

[1] 1535, c. 22.

therefore, that any settlement gained by him, must be gained not only for himself, but for all his family.[1] Hence arose the settlement by marriage, which a woman acquires through her husband; and the settlement by parentage, *i.e.* the settlement which unemancipated children take from their parent. These are called derivative settlements, because they are not the direct creatures of statute, but arise by force of construction, and are acquired by the party through another.

Thus the only settlements known to the statute law, are Settlement by Birth and Settlement by Residence.

Every question of settlement must necessarily be determined by the circumstances of the pauper, as these exist at the date of his applying for and receiving parochial relief. On some occasions there may frequently be a disposition to modify the strictness of the common law rules by certain apparently equitable considerations; but this tendency must be always resisted. The time required to acquire or lose a settlement must be counted to a day. It is only by an inflexible adherence to the letter of the Act of Parliament in the matter of settlement, that confusion and uncertainty in this branch of the law can be avoided; and it is to be remembered that, in the progress of time, and over a large population, the accidents of life are generally distributed with tolerable equality. The parish which may lose to-day from the operation of a fixed and definite rule, may be the gainer by its rigid application to-morrow.

Settlement by Residence. — *Period.* — Under the old law, a party acquired a settlement in the parish in which he had haunted and resorted for the three years immediately preceding poverty; and a settlement once acquired, could only be displaced by the acquisition of another. The law operated with much injustice on the great centres of population, to which there is always a constant influx of the poorer classes from the rural parishes; and therefore it was recommended by the Poor Law Commission, that the period of residence for acquiring a settlement should be extended to seven years; and to save the numerous questions which had arisen under the old law, as to whether a person's residence had been 'industrial' or not, it was suggested that the residence by means of which a settlement might

[1] See 1 Macq. App. 378.

be acquired, should be understood to mean residence where a party maintains himself without parochial relief, or having recourse to common begging, either by himself or his family. Ultimately it was settled that the period of residence should be five years; and, subject to that modification, the commissioners' recommendations in regard to settlement by residence were embodied in the 67th section of the Poor Law Act, providing that, to acquire a settlement in any parish or combination,

The person must have resided therein
For five years
Continuously,
Without common begging by himself or family, and
Without having received or applied for parochial relief.

By the word 'person' we are to understand one who is *sui juris*, and capable of regulating his own movements, independent of another's control. It excludes Pupils, for in the eye of the law a pupil is nobody;[1] Lunatics, for a lunatic is a perpetual pupil; Married Women, for the wife's person is sunk in that of the husband; Persons above fourteen who are still members of their father's family, for till forisfamiliation they cannot have an independent existence separate from the parent. But persons above fourteen, forisfamiliate, unmarried, and who are not subject to any mental incapacity, be they natives or foreigners, are the persons to whom the section of the statute relates.

By residence, again, we are to understand living in the parish as one's place of abode, let the manner of life be what it may. It is personal presence, in such circumstances that nowhere but the particular parish can be called his home.[2] It is not necessary to hold or possess lands, to rent a house, or even to have a permanent lodging. Nor has intention, which enters so largely into cases of domicile, anything to do with the question. What the law simply looks to, is the bare fact of personal presence for the prescribed period.

It is a rule of legal computation, that, when a period is described as running from a particular day, or from a certain thing being done, the day on which the thing is done is excluded

[1] On the question, whether a boy placed out at apprenticeship a few months before fourteen, and living by himself for some years afterwards, is forisfamiliate from the date of his apprenticeship, see Hay *v.* Scott, 15 D. 62.

[2] But see Miles *v.* Simpson and Greig, 19 July 1867.

from the enumeration. But sec. 76 is not so expressed. The words are: 'No person shall acquire a settlement in any parish or combination by residence therein, unless such person shall have resided for five years continuously in such parish.' Thus the period runs, not from the first day on which he enters the parish, but the first moment he sets foot in it. The first day is not excluded, but included, in the computation. Full age in male or female is twenty-one years, which age is completed on the day preceding the anniversary of a person's birth.[1] So, if he is born on the 1st of January, he is of age to do any legal act on the morning of the last day in December, though he may not have lived twenty-one years by nearly forty-eight hours. The reason assigned is, that if the birth took place at the first second of the 1st of January, the twenty-one years would be complete on the last second of the 31st December. But in law there is no fraction of a day. *Dies inceptus pro completo habetur.* It is the same, whether a thing is done upon one moment of the day or on another. And therefore, if a person comes into a parish before midnight of the 1st of January 1860, the five years are complete at the earliest dawn of the 31st December 1864.[2]

Continuity.—When the Act says that the residence must be for five years continuously, it does not mean continued presence day after day for five years without any interruption. Absences from home, for longer or shorter intervals, necessarily occur among all classes. A sojourn in the country or at the seaside, a trip to the continent, or a visit to friends, are in modern times common, and indeed necessary, events in the yearly round of existence; while, among the lower orders, the practice of leaving home to look out for work during a temporary dulness in trade is no less frequent. Such interruptions will always occasionally or accidentally occur; and, to hold that a party's residence in a parish is thereby broken, would be to make the acquirement of a settlement hardly possible.[3] Continu-

[1] Blackstone's Com. B. i. ch. xvii. s. 2.

[2] See Ogilvie *v.* Mercer, M. 3336; 2 More's Lect. p. 97; Puchta's Pandekten, s. 75; Dig. Lex. 134, de V. S. (50, 16).

[3] 'What the Poor Law Act means by continuous residence in a parish, is that the person 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

ously does not mean uninterruptedly or constantly, but a residence of such a kind that, notwithstanding absences of a temporary or accidental nature, be they long or short, it may be fairly said that for the requisite period the party's connection with the parish remained unbroken.

In computing the period, and judging of the character of a person's residence, much will always depend on the nature of his business, and the circumstances in which one of the same profession necessarily must live. Many men, such as commercial travellers, professional musicians, itinerant lecturers, and travelling tinkers, are always on the move. The peculiarity of their case is, that if they have a home somewhere, there is usually no other abiding-place to come into conflict with it; and accordingly, in dealing with peripatetic persons of that kind, less distinct evidence of continued residence in the parish which may be called their headquarters will be deemed sufficient, than if their habits were of a more settled character.[1] Thus, an itinerant dancing-master lived for four or five months every winter, for fourteen years, in the burgh of Irvine. He had no house of his own, but lived in lodgings, and taught in an inn, following his profession in other places during the remainder of the year. The Court decided that, having uniformly resorted to Irvine for so long a period during the winter months, his case resembled that of many descriptions of tradesmen, who not unfrequently seek work at a distance in summer, and return to their homes in winter. They therefore found Irvine liable in the maintenance of the pauper, in preference to the parish of birth.[2]

The same rule would be applied to the case of a sailor with a wife and family living in a house rented by him, and with whom he lives when on shore. The mariner's occasional absence

arises of necessity from a consideration of the ordinary habits and occupations of human beings. It is never meant that the statute should be so construed that a person cannot be away in pursuit of his ordinary business, or for an occasional visit of pleasure, or on account of some accidental occurrence, without the continuousness of his residence being thereby interrupted. In short, the statute must be read with reference to such a kind of absence as, either accidentally or incidentally, must necessarily occur from time to time in the life of every one.'—Per Lord President Inglis in Hewat *v.* Hunter, 6 July 1866.

[1] See Lord Benholme's opinion in M'Gregor *v.* Watson, 22 D. 965.

[2] Dalmellington *v.* Irvine, 3 Dec. 1800, M. Poor, App. 3.

at sea, or even on a whaling voyage, would still entitle him to say that his residence was in the bosom of his family, in the house which he had provided for them, and to which he invariably resorted when on shore.[1]

The residence must be for the full statutory period of five years; and on no account will the rule be relaxed, so as to admit of constructive presence in the parish at either term, if in point of fact the party was resident elsewhere. Thus, in a case under the old law, residence in a parish for three years *minus* a fortnight was found not to make it liable, even although it was proved that the party had made preparations, and intended to go some time sooner. 'Two years, eleven months, and a fortnight,' said Lord Cockburn, 'cannot be counted as three years, for the Court will next be asked to disregard the want of three weeks or of four, or of three or four months. The Lord Ordinary is for adhering firmly to the rule, insomuch that his decision would have been the same, though it had been but a *single day* that was wanting.'[2]

Further, the residence contemplated by the statute is the residence of the *person* himself. He cannot make up the period in combination with some other person, whatever may be the relation subsisting between them. In one case, the Court allowed the residence of a wife during her husband's life to be counted along with her residence as a single woman to found a settlement; but the husband was a foreigner, and having no settlement in this country, the Court thought themselves at liberty to disregard the fact that for part of the time the pauper was *vestita viro*.[3] If a man lives for four years in a parish and then dies, the widow is not entitled to say in a year after that she has a settlement in the parish, because her own residence, *plus* that of her deceased husband, makes up the five years. The residence of the husband is insufficient—the residence of the wife is insufficient; and the two being separate, and independent of each other, cannot be spliced or joined together to produce the desired result. What a wife takes from her husband is the settlement existing in his person at the

[1] Aberdeen Infirmary *v.* Watt, 15 Dec. 1858, 21 D. 117; Miles *v.* Simpson and Greig, 19 July 1867.

[2] Crieff *v.* Foulis Wester, 4 D. 1538.

[3] Thomson *v.* Knox, 12 D. 1112.

time of his death,—not the means of settling herself, by finishing what he had begun, in a parish where possibly the man himself never meant to reside for five years.[1]

A break during the currency of the five years will in general raise a different kind of case from that in which the five years are never allowed to be completed by the party's sudden departure from the parish. Proof of the mere fact of a break at the end of the term is in general sufficient to destroy or prevent the acquisition of a settlement; proof of a break between the two terms may be capable of being so explained, as to show that it was merely incidental to the residence. Thus, the residence will not be broken by the person's removal under a sentence of imprisonment; but if he were confined towards the end of the five years, and died in jail, or never returned, the case might be different. For instance, a collier went to work in the parish of Falkirk, and lived there from January 1850 to January 1856. But in 1853 he left, and went to Slamannan, where he was absent for about five months. During this time he had left certain articles of furniture in his house in Falkirk, his tenancy of which appeared to have been kept up; but it was proved that he was working at another coal-field in Slamannan; that his wife had there joined him; and on these facts the Court held that there had been a voluntary change in his residence and employment, not incidental to, but subversive of, his previous residence in Falkirk. It was therefore decided, that the parish of birth on which the onus lay, not only of proving residence for the requisite term in another parish, but residence unbroken, had failed to establish the residential settlement in Falkirk.[2]

In a case in which the question was, whether the pauper had resided for five years continuously in Blair-Athole, from April 1846 to April 1851, it appeared that he was a shepherd usually employed from March to December, and he went home to his father's in Kingussie during the winter months. The Lord President said: 'I do not think the fact of his going occasionally to his parent's house, where 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

[1] Kirkwood *v.* Wylie, 3 M'P. 398; M'Gregor *v.* Watson, 22 D. 965.

[2] Beattie *v.* Leighton, 20 Feb. 1863, 1 M'P. 434.

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.' On this principle, the Court decided that, as no further gaps were proved, except some weeks during the winter months, the settlement in Blair-Athole had been made out.[1] In a similar case, a journeyman tailor lived in Edinburgh from 1843 till his death in 1848; but during that time he left his wife occasionally, 'through drink,' and was absent in other towns for some weeks at a time. On one occasion he was away for nine weeks. He had also, during part of the time, occupied a lodging beyond the boundary of the City parish. The Court, taking into account the specialties attending residence in large towns, did not think that these interruptions were sufficient to prevent the acquisition of a settlement. It was said that, where a party has been working in Edinburgh, and has lived in Edinburgh for five years with that object, it could not be held that he has left Edinburgh, because he accidentally changes his lodging to the other side of a street which happens to be beyond the boundary of the royalty. He did not leave Edinburgh for work; and 'I think' (said the L. J.-C.), 'if his calling was all the time in Edinburgh, he must be held to have lived there, notwithstanding his occasional residence beyond the boundary.'[2] But if *de facto* he crossed the boundary, it is difficult to see why it should have been held that he did not cross it; and this case stands contrasted with more recent decisions. A man who rented a house, and lived with his wife and family for eight months or so every year, and hiring himself out for 'the season' as a groom or game-watcher in other parishes, was held not to have acquired a settlement,[3] though it would seem that a person in the position of a day labourer may be occasionally absent from his wife and family in other parishes, even for weeks at a time, if he does not go for any definite time, or on any definite engagement.[4]

If a man out of work leaves his wife and family to seek for a situation elsewhere, and then returns and resumes his resi-

[1] Mackenzie *v.* Cameron, 21 D. 93.

[2] Hay *v.* Kirkpatrick, 9 July 1851, 13 D. 1313.

[3] Hewat *v.* Hunter, 6 July 1866, 4 M'P. 1033.

[4] Hastings *v.* Hughan and Semple, 27 Jan. 1866, 8 P. L. 331; and cf. Miles *v.* Simpson and Greig, 19 July 1867.

dence, his absence even for a very considerable period does not stop the continuity. He certainly goes away with the intention of changing his residence, but it is an intention which is never carried out; and therefore the event may be passed over as one of those natural incidents in the life of a working man which are of constant occurrence. A man took a house in Govan, and resided there with his family from May 1851 to the spring of 1856, when he went to Manchester, and various other towns in England, in search of work. After an absence of six weeks he returned to Govan, and completed his residence of five years in Govan. The Court decided in favour of the settlement. 'If,' said the Lord Justice-Clerk, 'his wife and family had joined him in England, and he had never returned to Govan, a question might have arisen as to when his residence ceased.'[1] And so the result might have been different if he had died when absent;[2] or if he had found the object of his search, and failed to return; or if he had gone away under a certain engagement, for the purpose of fulfilling it: for in the latter case, the party having bound himself to stay away, it is impossible to regard his absence as incidental to the residence in the parish where he had formerly been employed. In such a case, his departure from the parish not only supersedes it as to personal presence, but also as to employment; and the absence, so far from being incidental to, is subversive of, the first residence. The circumstance that a person hired to live and labour in another parish is unable, from illness or some other cause, to fulfil his engagement, is immaterial, provided he leaves in point of fact. The case of Hay *v.* Cumming, 6 June 1851,[3] must now be pronounced to be erroneous. The pauper, a servant girl, came to Edinburgh in 1835, and applied there for relief in 1842. At Martinmas 1837 she went into service at Portobello, on an engagement for six months, and in January 1841 went to Gogar on an engagement for four months; but from both places she returned to Edinburgh within six weeks—in one case dismissed, in the other ill. She was also occasionally absent on visits. On these facts it was observed, that if she had completed her service of six months, that would have been a sufficient interrup-

[1] Hamilton *v.* Kirkwood, 2 M'P. 107.

[2] But see per Inglis, J. C., in Aberdeen Infirmary *v.* Watt, 21 D. 117.

[3] 13 D. 1057.

tion, because it would have been a very important part of three years in another parish. But as each of these engagements terminated abruptly after a few weeks, the actual absence, in point of fact, was not sufficient to sever into unconnected and separate periods the residence in Edinburgh. It was subsequently observed by their Lordships, that in this case they went far enough;[1] and undoubtedly the correct opinion was indicated by Lord Cockburn, when he asked, 'How can I hold the pauper to be living in Edinburgh, when she not only did not, but could not, legally live there, being bound by her engagement to live at Portobello?' The fact that a party is *de facto* absent under an engagement, is now held to be subversive of her former residence. If a female, engaged as a domestic servant in the parish of A., is obliged through ill health to go home to her parents for a short season in the parish of B., and then resumes her old employment, her residence would be all along in the parish of A. But not so if, on her recovery, the contract with the former master was held to be broken, and she commenced on her return an entirely new business; for in this case her former residence terminates with her departure, and on her return she commences *de novo*. Thus, a pauper whose parish of birth was Boharm, where her father resided, engaged herself as a servant in the parish of Old Deer. In two years she was obliged to return to her father's house from ill health, and remained away eleven months. She then returned to Old Deer, and set up as a dressmaker. Including her absence, she had resided in the parish five years, when she became a pauper; but the Court held that her residence was not continuous. The sole tie between the pauper and the parish arose from her contract with her employer; and when the service was left, her connection with it was at an end.[2]

It is to be observed that, in such questions, there is no place for the principles regulating the law of domicile.[3] In domicile, the length of the absence is of comparatively small moment, provided the *animus revertendi* is established; but what the Poor Law Act requires is not intention—it is actual continuous residence. In the case last cited, the defender laid some stress upon the fact

[1] 30 Scot. Jur. 296.

[2] Hutchinson *v.* Fraser, 11 Feb. 1858, 20 D. 545, 30 J. 294.

[3] See per Inglis, J. C., in Crawford *v.* Petrie, 24 D. 367.

that the pauper fully intended to return to her master's house, and resume her employment whenever her health was sufficiently restored; 'but it seems to me' (said the L. J.-C.) 'quite ludicrous to import the 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.'

Where there is a complete break up of one's establishment, and the party removes to another parish, even for a single day, the residence will be held to be broken.[1] In such cases, such a circumstance as his having sold off his furniture, coupled with the fact of departure, is generally conclusive. So, where a pauper worked at a mill in Govan, where he took his meals, and slept in his father's house in Glasgow, but had given up doing so, and gone into lodgings in Govan during five weeks when his father was absent from home in search of work—the pauper's motive being that he was unable to agree with his stepmother,—it was held that, although he had gone back to his father's house immediately on his return, the continuity of the residence had been broken; the pauper's return to his father's house when he came back being treated as purely accidental. The father, it was said, had left Glasgow for the purpose of disconnecting himself with Glasgow by getting work elsewhere: the pauper had then no longer any temptation to live anywhere but in Govan; and as his father might never have returned to Glasgow, his taking lodgings in Govan was regarded as the commencement of a new and independent residence.[2] But the evidence of the commencement of a new residence in a parish must be clear and explicit. For instance, absence, in buying furniture, and making the requisite preparations for taking up one's residence elsewhere, is not sufficient. If the occupation of the new house is actually begun, it will break the continuity, even although, finding it not to answer, the party should return to his old residence in a day or two after. But merely preparing to shift one's place of abode is something different from actually shifting it; and absence for the time requisite to make the preparations will be regarded as incidental to the old residence till the connection with the parish is finally severed.[3]

[1] Hay *v.* Beattie and Hardie, 20 D. 146.
[2] Adamson *v.* Kirkwood, 24 May 1861.
[3] Grant *v.* Reid and Miller, 22 D. 1110.

Where the person's place of abode is in one parish, and the seat of his industry in another, he is deemed to reside, not in the parish in which he earns his wages, but in the place where he sleeps. This was held to be the true test where the pauper worked in Govan and took his meals there, but slept every night in his father's house in Glasgow;[1] and the English rule is the same. Where the master's house was in two parishes, and a girl, hired to him as a yearly servant, performed her services in that part of the house which was in the parish of A., but slept in that part which was in the parish of B., the Court held that she gained her settlement in B.[2] Where a man works and sleeps in one parish, and occasionally visits his wife and family resident in another, the question for decision has been very aptly put by Lord Jerviswoode, thus: Whether the party's residence was in the parish of his labour, and his absence, when he went to visit his wife and family, incidental to that residence; or whether his residence was with his wife and family, and his absence at his work incidental to that residence.

In a case of a labouring man, hired by the day or the week, who comes home to his wife and family at regular intervals, every night, or every Saturday night, his residence may very properly be said to be with his wife and family. But a slight change in the nature of his employment may entirely alter the case. Not unfrequently a man, hitherto residing with his wife and family at the seat of his industry in the parish of A., permanently removes himself to another field of labour in the parish of B.; but as no house is to be had, his wife and children may not follow for some months after. Though he may still occasionally visit them, A. has become, to all intents and purposes, the place of his settlement. For instance, a married man, resident in Eastwood, went to Croy in May 1842, and lived till December in lodgings, when he was joined by his wife and family, whom he had left behind him in Eastwood, and whom, in the interval, he had regularly visited every alternate Saturday, remaining with them till the Monday. On the question whether his residence in Croy began in May or December, Lord Ivory decided it was May, because the long period of the family's after residence in Croy drew back and gave a character

[1] Per L. J.-C. in Kirkwood *v.* Adamson, *supra*.

[2] Archbold's Poor Law, p. 506.

and consistency to what might otherwise partake of ambiguity as regards the pauper's own earlier residence.[1] So, a farm-servant, hired under a termly engagement, must be held to reside at the scene of his employment, even although he should occasionally, at longer or shorter intervals, with the leave of his master, visit his wife and family resident in another parish.[2] Nor does a sailor, without house or home, live in the port from which his ship hails; any occasional residences with relations or others in the town on the ship's return, being insufficient to keep up his connection with the parish.[3]

Let us now turn to a consideration of those cases in which the residence is interrupted by causes other than voluntary. By the law of England, an imprisonment in or out of the parish, whether for felony, misdemeanour, or debt, is no break in the residence; but the time of it is merely to be deducted, leaving the residue of it as the period of actual residence.[4] In interpreting sec. 76 of the Poor Law Act, a similar result appears to have been attained by excepting from its operation cases where the absence is not voluntary but compulsory, such as the absence of a soldier with his regiment, or a convict sentenced to transportation. In Hay *v.* Croall and Beattie,[5] it was observed by the Lord Justice-Clerk (Hope): 'When a man is absent, not from voluntary separation from his family, but in the service of the country as a soldier, his settlement continues in the parish where he had 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, in the parish in which he had acquired a settlement at the date of the enlistment. The fact of absence with his regiment does not destroy the settlement he had acquired in C., by which parish it is admitted and found that his family must during that absence be supported.'

Recently the point was again mooted in a case in which the question was, whether the absence of a soldier in India, who, when he enlisted in 1855, was possessed of a residential settlement in Edinburgh, where his wife and family continued to

[1] Hodgert *v.* Petrie and Mason, 1 P. L. Mag. 350.
[2] M'Gregor *v.* Watson, 22 D. 965.
[3] Aberdeen Infirmary *v.* Watt, 21 D. 117.
[4] Archbold, P. L. 708. [5] 5 Feb. 1858, 20 D. 507, 30 J. 272.

reside, had the effect of destroying the settlement. Lord Curriehill and Lord Ardmillan expressed the opinion that a soldier's absence had no such effect. 'My opinion,' said Lord Curriehill, '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.' The question, however, must be pronounced to be still undecided.[1]

Again, the residence is not held to be interrupted by imprisonment on a criminal charge.[2] So, in another case, a person (who had been a soldier, and deserted) resided in the parish of Rhynie from July 1840 to June 1847. During that time he was absent from the parish for six months (Nov. 1843–May 1844), part of which was spent in prison for breach of the peace, and part with his regiment at Aberdeen, to which he was handed over as a deserter, but from which he again escaped and returned to Rhynie. The Court were of opinion that the absence did not deprive the residence of its continuous character.[3]

Residence Industrial.—As the purpose of the law of settlement is to fix on whom the burden of the pauper's maintenance falls, it is obvious that residence in a parish is of no avail for the foundation of a settlement, after the party has made a public demonstration of his pauperism. In other words, a settlement by residence cannot be acquired by a person in the position of a pauper. The older decisions show that it was not necessary that the party should be supporting himself by his labour; for an apprentice, residing with his master, and maintained by his father, was found to have acquired a settlement in the parish during his apprenticeship.[4] Nay, it was not even requisite that the party should have been engaged in an industrious occupation. No one can be a pauper so long as he is able to work; and it was found that the heritors of a parish, who, in neglect of the Act 1672, c. 18, had permitted to reside among them one who was described as a common vagrant, were bound to support her when she fell into indigence.[5] But it was always the rule, that no person who was a proper object of relief could

[1] Mason *v.* Greig, 3 M'P. 707.
[2] Per Lord Neaves in Beattie *v.* Leighton, 1 M'P. 434.
[3] Roger *v.* Macconochie, 5 July 1854, 16 D. 1005, 23 J. 549.
[4] Cockburnspath, 9 June 1809, 15 F. C. 300.
[5] Rescobie *v.* Aberlemno, etc., 28 Nov. 1801, M. 10,589.

acquire a settlement by residence for any length of time, even although he had never received aid from the parish.[1] By the Poor Law Act, the old rule is expanded into these two conditions: The party, during his residence in the parish, must have maintained himself (1) without having had recourse to common begging, and (2) without having received or applied for parochial relief.

The expression 'shall have maintained himself' has been construed to mean, shall never have become a burden on the parish, in whatever way he may have been supported—by an annuity, the contributions of friends, or by any other means. In the upper ranks, the cases of persons supported wholly by allowances from their fathers are only too frequent; and in the lower, it is a leading characteristic of the Scottish peasantry, to struggle as long as possible to keep their aged parents off the parish. Persons so supported do not fall within the provision of the statute. A pauper who, along with his father, had come into the parish of St. Cuthbert's paralytic, and who had lived with him and been supported by him for eight years, when he applied for relief, was held during that time to have 'maintained' himself in the sense of the Act.[2] In other words, to have the character of a pauper, one must have the right to be placed on the roll of the poor; and this he cannot have, so long as he is able to gain a subsistence from other sources than public begging or the parochial funds. Thus, a female, who had maintained herself by getting work when she could—going occasionally into service—and receiving assistance from private individuals, but who had never applied for parochial relief, was held not to have been a pauper during the period of her residence, and so not precluded from acquiring a settlement.[3] In that case the Lord Justice-Clerk observed: '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.' A woman, blind from her infancy, who resided for five years in the parish of Edinburgh, earning something by her work, although not much, and eking out a subsistence by private

[1] Runciman, 24 June 1784, M. 10,583.

[2] Thomson *v.* Gibson and Borthwick, 13 Feb. 1851, 23 J. 304.

[3] Hay *v.* Cumming, 6 June 1851, 23 J. 490, 13 D. 683.

charity, having not become a burden on the parish, was held entitled to the benefit of her residence, and to have acquired a settlement.[1]

The words, 'without having received or applied for parochial relief,' mean, that if one who is entitled to be enrolled among the legal poor actually receives assistance from the public funds, his settlement must be determined at the date of chargeability, or, more properly, at the date of the application, if its subsequent fate shows it was well founded at the time when it was made. Actual application, however, is not indispensable: it is enough if relief was actually received by a person *in titulo* to receive it; and therefore the words are disjunctive.

The statute does not require the relief to be of any definite amount, or given for any particular period. In Hay *v.* Scott, 23 Nov. 1852, 25 J. 33, the receipt of 4s. 6d. during a five years' residence in Edinburgh did not prevent the pauper's absence from Duddingston from receiving effect, so as to destroy his settlement in that parish; and in another case, also relating to the loss of a settlement from absence, relief given to the extent of 3s. in money, and 4s. in coals, was disregarded.[2] But these are precedents which would not now be followed; because the Court are not entitled to inquire into the amount of relief given, if *de facto* relief was received by a person entitled to receive it.[3] But in every case it is essential that the party was entitled to receive it: for otherwise the parochial funds have merely been misapplied; and the fact that relief has been given to a person who had no right to get it, will be disregarded. If, for instance, at the time of his application, the pauper was an ablebodied man, any relief which he may have received will not stop the continuity of his residence.[4] So where, as the five years were just expiring, a small sum was advanced to a pauper, who was not a proper object of relief—the money being intended apparently as a device to prevent the party becoming a permanent burden on the parish—the Court viewed the advance merely as a donation by an ingenious in-

[1] Hay *v.* Ferguson and Lennox, 17 Jan. 1852, 14 D. 352.

[2] Turnbull *v.* Kemp, 27 Feb. 1858, 20 D. 703.

[3] Craig *v.* Simpson, 19 July 1859, 2 P. L. 80, 21 D. 1363; Johnston *v.* Black, 13 July 1859, 2 P. L. 8, 21 D. 1293.

[4] Petrie *v.* Meek, 21 D. 614; Jack *v.* Thom, 14 Dec. 1860, 23 D. 173.

spector, and, considering the situation of the pauper at the time, held that it did not prevent the acquisition of a settlement by residence in the parish for the statutory period.[1]

Retention.—A settlement acquired by residence was by the old law never lost by mere lapse of time and abandonment of the parish. The obligation, once constituted against a particular parish, could only be taken off by being afterwards constituted against another.[2] Thus, a pauper who had lived in a parish, at any period of his life, for more than three years, might come back upon it for relief at any distance of time, if he had never after acquired a settlement elsewhere. If he had lived in several parishes for the requisite term, the burden fell upon the one in which he had his settlement immediately preceding his destitution.[3]

By the Poor Law Act, a settlement acquired by residence is lost if the party, 'during any subsequent period of five years, has not resided in the parish continuously for at least *one year*.' The effect of this is, that while a new settlement can only be acquired by a residence of five years, the benefit of a *quondam* industrial residence may be lost by absence from the parish for *four years and a day*. The reason is, that thereafter a continuous residence for one whole year before the lapse of five years becomes impossible.[4] In this case, it was held that a pauper who had acquired a settlement by thirteen years' residence, and became chargeable as a pauper elsewhere, after an absence of four years and four months, had no claim on the parish of his former residence.

The running of the period requisite for destroying a settlement, is of course stopped by the granting of relief. It will not do, however, to say that the pauper was at any part of the time a proper object of relief, and should have received it. Residence for the proper time in another parish forfeits the settlement, even though the pauper was at the time in the greatest destitution, provided he never received parochial aid.[5]

Lunatics.—By the Lunacy Act,[6] it is enacted: 'Every

[1] Porteous *v.* Blair, 19 D. 181, 29 J. 83.
[2] Brown *v.* Mordington, 4 Mar. 1806, M. App. Poor, 4.
[3] Crailing, M. 10,573, and other cases in Dict. *voce* 'Poor.'
[4] Hay *v.* Morrine and Thomson, 7 Feb. 1851, 13 D. 628 and 23 J. 430.
[5] Turnbull *v.* Russell, 27 Feb. 1858, 30 J. 370.
[6] 20 and 21 Vict. c. 71, s. 75.

pauper lunatic detained in any district asylum under the 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 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.'

The principle of the rule here established as regards lunatics confined in a public asylum, seems to be equally applicable to the case of those confined in a private house, or indeed not confined at all. These are not the 'persons' to whom sec. 76 applies. To reside in a place, and still more to be capable of maintaining oneself, implies volition, and the power of acting as a free agent, such as a person bereft of reason is necessarily without. There are, of course, shades of differences in the manifestations of insanity. A man of undoubtedly weak mind may nevertheless be able to work and earn wages; and in such a case it has been held that he is capable of acquiring a settlement.[1] But where the unsoundness of mind is so decided that the party might be properly sent to an asylum, the mere fact of his living in a parish is not the kind of residence contemplated by the statute. So, in an early case, it was held by Lord Methven, Ordinary, that an idiot, having no will of her own, could not acquire a settlement anywhere.[2] Again, a person supported for many years out of her own funds in the lunatic asylum at Montrose, did not thereby acquire a settlement in Montrose;[3] and the same rule was applied in a case where the lunatic had been boarded by her friends in another parish.[4] In short, the theory of the law in regard to persons permanently and helplessly insane is opposed to the recognition of their acts, conduct, or procedure, as affecting their legal status and position. A party of full age resided with his father five years, with the exception of the periods of five and three months respectively, during which

[1] Haddington *v.* Dunbar, 19 Dec. 1837, 16 S. 268.

[2] Gladsmuir, 11 June 1806, M. Ap. Poor, 5. The judgment was altered by the Court, but not on the above point.

[3] Melville *v.* Flockhart, 20 D. 341.

[4] Watt *v.* Hannah, 20 D. 342.

he was boarded by his father in a lunatic asylum. It was held that these absences did not interrupt the continuity of the residence.[1]

Where a person, who has acquired a settlement in a parish by five years' intelligent residence, becomes insane, but continues to reside in the parish, it is not yet settled whether his residence in a state of lunacy has the effect of keeping up his settlement or not.[2] In the leading case on this subject, Lord Benholme was inclined to think, that as he had never been out of the parish, the settlement could not be destroyed; but other judges were of a different opinion—the present Lord President observing that, as residence coupled with intelligence was required to acquire a settlement, both were equally necessary to retain it. 'The fact,' said his Lordship, 'of being locally within the parish in an asylum, in a state of lunacy, would not be a fulfilment of the condition required by the Act.' It is quite clear, that if he had been only four years in the parish prior to his insanity, an additional year's residence in a state of lunacy would not give him a settlement; and it is now conclusively established, that absence from a parish in a state of lunacy for more than four years destroys a residential settlement previously acquired. The construction put on the statute is, that the settlement ceases *ipso jure* on the lapse of the five years subsequent to its acquisition, unless during their currency he has *renewed* his residence therein for one year at least. This a lunatic is unable to do; for, though he may be brought back to the parish, he cannot be said to reside in it *ex animo*, in the manner required by the Act of Parliament.[3]

By the Lunacy Act,[4] the sheriff may commit a dangerous lunatic to a place of safe custody, and the person or parish liable in the maintenance of the lunatic is liable in the expense. But it is to be observed that the lunatic is not necessarily reduced to the condition of a pauper. He is to be treated as *if* he were a pauper lunatic; but whether he is *de facto* a pauper in the sense of the Poor Law, may depend on circumstances. Therefore, where a person labouring under *delirium tremens* was

[1] Greig *v.* Chisholm, 19 Dec. 1857, 20 D. 339.

[2] Crauford *v.* Petrie, 28 Jan. 1862, 24 D. 357.

[3] Crauford *v.* Petrie, 4 P. L. 313, 24 D. 357, 34 Jur. 180, partly reversing Melville *v.* Flockhart, 19 Dec. 1857.

[4] 20 and 21 Vict. c. 71, s. 85.

apprehended and treated by the sheriff as a pauper lunatic, and 7s. was paid by the parish for his maintenance in jail, besides other expenses, it was decided that the continuity of his residence was not thereby broken.[1]

Settlement by Birth.—Settlement by birth is that which every person has by the mere act of coming into the world. The place where he was born is deemed *prima facie* his place of settlement till some other is proved; and it remains the ultimate place of resort when every other fails.[2] If there is any doubt as to whether the pauper was actually born in a particular parish, the fact must be legally established by competent evidence. If, for instance, the house stood on the borders of two parishes, or in the lapse of time has been swept away, so that it cannot now be precisely ascertained whether it stood in the one parish or the other, a relieving parish, although having no connection whatever with the pauper, will remain saddled with the burden.[3] '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.'[4] In the ordinary case, the relieving parish seeking reimbursement discharges its duty by bringing all the parishes which can possibly be liable into the field, leaving them to settle the question of liability among themselves. But where the question is one of boundary or local situation, it is not enough to convene both parishes, and aver that the pauper was born in one or the other. The actual place of birth must be clearly pointed out. A congenital idiot, whose father was alive, became chargeable as a pauper when twenty years of age. The father had no residential settlement; and the relieving parish being unable to prove his birth settlement, was held to have no claim against the pauper's own birth parish. 'The father,' said Lord Cowan, 'being a Scotsman, must have a settlement somewhere; and till they find it out, the relieving parish must continue to bear the burden.'[5] On the other hand,

[1] Lindsay *v.* Mackenzie, 11 July 1866, 4 M'P. 1037.
[2] Melrose and Stitchell *v.* Bowden, M. 10,584.
[3] Anderson *v.* Mackenzie, 3 M'P. 253; Hopkins *v.* Ironside, 3 M'P. 424.
[4] Per L. J.-C. in Hopkins *v.* Ironside, 3 M'P. 424.
[5] Hopkins *v.* Ironside and Wallace, 27 Jan. 1865, 7 P. L. 376.

when the birth is admitted, the onus lies on the parish to relieve itself, by showing that the party is in possession of a settlement elsewhere. If that settlement is the result of marriage, it must be proved; if of residence, it must show not only that there was residence for the proper period, but that it was free from such interruptions as would break its continuity.

As it is the mere fact of birth in a parish which constitutes this settlement, it is of no consequence that the parents were foreigners; that the mother had come immediately before from her own proper parish, in order to be delivered in secret or beside her friends, or by a celebrated accoucheur, or that she had been suddenly overtaken with the pains of labour while on a journey. To allow, in such circumstances, a *constructive* birth settlement contrary to the actual fact, would be attended with a multitude of inconveniences, which would altogether destroy the present admirable simplicity of the rule. No doubt there is one case, decided in 1822,[1] which is sometimes quoted in support of an adverse view; but the facts there were involved, and it is difficult now to ascertain the true ground of judgment. A woman being about to be confined of a natural child, left her home, and in order to 'escape observation,' went into a neighbouring parish, where she was confined, and went home again as soon as she was sufficiently recovered; the child being removed the very next day to a distant part of the country, where it was brought up to manhood. When this person's settlement came to be questioned about forty years after, the parish of birth sought to escape liability on a variety of grounds; one being that the mother's residence in the parish was too temporary, but the chief one, that when the child was born she was possessed of a settlement by residence in her own proper parish, and that this settlement descended to the child. As the judgment of the Court is simply, 'sustain the defences,' we do not know what was meant to be decided by the case; but it may be affirmed with perfect confidence, that if a child is born in a parish in point of fact, no court of law would now hold that they were at liberty to alter the fact, and find the child was born in another parish, because the mother had left it only a few days before to *escape observation*.

If, then, the mother's purpose in going into the parish is immaterial, it must also follow that the character of the building

[1] Dalmellington *v.* Troqueer, 22 Jan. 1822, 1 S. 259 (N. E. 244).

in which the birth takes place, *e.g.* a maternity hospital, infirmary, or jail, ought not to affect the question. In England, by statute 54 Geo. III. c. 170, no person can acquire a settlement by reason of his being born of the body of a mother actually confined in a prison, or a house licensed for the reception of pregnant women;[1] and when the birth occurs in a union workhouse, the infant is taken to be born in the parish on whose account the mother was received and maintained in the workhouse.[2] But there is no similar provision in the law of Scotland.

In England it is also held that, in proving the place of birth, proof of declarations on the subject by the father or mother is not evidence, though tendered after their death.[3] The parents must be examined as witnesses *in causa;* or the pauper's own evidence, supported by such adminicles of proof as parish registers, registers of baptism, etc., will be sufficient.

When an infant of tender years is found exposed in a parish, that is presumed to be the place of birth, in the absence of any proof to the contrary, the onus being thrown on the parish of exposure to show where the child came from.[4] The probability is, that it was born near the place where it was first found, more particularly if it was adopted and taken charge of by the parish for some years after its discovery, without complaint.[5]

Settlement by Marriage.—1. *Wives Deserted.*—A woman, when she marries, takes the settlement of the man she marries. The wife's person is in law so sunk in that of her husband, that, so long as the conjugal relation subsists, she can acquire no settlement apart from him; because the *consortium vitæ* is so eminently the first object and the primary duty of the married relation, that till she is separated from him by death, divorce, or other legal process, she is considered as part of himself, for whom no claim can be made except through him, and against parties liable on his account. No matter whether in point of fact they are living in different parishes or not, the husband's residence is the wife's, and it is his settlement

[1] See R. *v.* Manchester, 4 B. and A. 504.
[2] R. *v.* St. Clement Danes, 32 L. J. 25, M. C.
[3] R. *v.* Erith, 8 East 539. See Hay, 16 D. 364.
[4] Thomson *v.* Pollok, 17 Nov. 1808, F. C.
[5] Wilson *v.* Greig (Lord Neaves), 2 P. L. M. 633.

that is liable to give her relief. It was never doubted that this was the rule applicable to all married persons living in this country, even in a state of separation. But the question occurred, whether it made any difference that the husband had deserted her and gone abroad; and it was decided that it did not.[1]

The question arose between the parishes of St. Cuthbert's, Edinburgh, and St. Nicholas, Aberdeen. A married woman was deserted by her husband in 1830, when he was in possession of a settlement in St. Nicholas. In 1834 she came to St. Cuthbert's, and lived there till 1838, when she became chargeable as a lunatic. The husband, it appeared, had gone to Australia, and died there some time between 1839 and 1843. It was argued that the wife, having been abandoned in the circumstances stated, was practically reduced to a state of widowhood. She had then acquired, notwithstanding the marriage, many of the rights of a single woman. She could choose her own residence —engage in trade—sue for performance of her contracts, be sued for their breach—be imprisoned and subjected to personal diligence in respect of her own transactions, be made a bankrupt, raise an action of damages for slander, and be competently cited for her own delicts in the absence of her husband.[2] Being thus in so many important particulars removed by the husband's own voluntary act from the civil disabilities resulting from the marriage, it was pleaded the rational and necessary consequence was, that in the matter of settlement she should be held to be her own mistress, and at liberty to acquire a settlement for herself.

This argument, however, admits of an easy answer. So long as the married relation remains unbroken, the rule applicable to separations in this country cannot be affected by the mere *distance* which the husband has placed between himself and his spouse: the husband might return and send for his wife, and the settlement which he had never lost would then undoubtedly become the wife's. But if it would revive on his return, it could not be said to be lost during his absence; and so their Lordships decided.

[1] Gray *v.* Foulie, 9 D. 811.

[2] 2 Bell's Coms. 167; Cullen *v.* Ewing, 19 Nov. 1830; Gale *v.* Bennet, 19 D. 665; Alcock *v.* Barclay, 7 D. 819.

Lords Ivory, Cockburn, and Medwyn returned the following opinion, drawn by Lord Ivory:—

'We are of opinion with the Lord Justice-Clerk, that the Lord Ordinary's judgment should be altered.

'There seems to be no room in the circumstances of the present case for any deviation or exception from the general rule, that while the marriage subsists the legal settlement of the husband is that of the wife. The mere fact of their living apart is certainly not conclusive of the contrary; for a separation by voluntary arrangement does not affect the question, and it may be doubted whether judicial separation would operate differently. It is not necessary, however, to go into these considerations, any more than it is to consider what effect might be due to a separation created by a sentence of transportation against the husband. For, in the present question, there is nothing beyond the simplest possible case of a separation *de facto*. It may amount to what both parties call a desertion. But if so, it is a desertion which has no definite character or effect in law, which touches none of the legal relations of the spouses, and against which there is nothing to prevent both or either from at any moment seeking redress. Suppose the deserting husband, for example, to have taken up his abode, and acquired for himself a legal settlement in another Scots parish, we see nothing that could have hindered the wife, wheresoever she may have resided in the interval, from following him into such parish, and there insisting upon all her legal rights, whether against himself or the parish.

'Any other conclusion would draw after it consequences of great inexpediency. It would lead to inquiries and interferences on the part of parishes highly vexatious (it might be even oppressive) as regards the parties, and unquestionably tending to produce much unseemly and expensive litigation between parish and parish. It is better to adhere resolutely to the general rule of law, and thereby shut the door against everything of this kind. For, 1*st*, as an inter-parochial question, the accidents of life distribute themselves naturally with so much of average equality, that on the aggregate result, taking a succession of cases, it can matter but little in the end how the rule is fixed, so that it really be fixed one way or the other. And 2*d*, as regards the pauper, it must generally be indifferent whether one parish or another be fixed on as the parish of the settlement, so that substantial relief be obtained.

'In giving the above opinion, we of course take it for granted that there is no question of disputed fact before the Court, and especially that it stands conceded as the express condition of the argument on both sides, that the parish of St. Nicholas, Aberdeen, against which the claim of relief is set up, is to be taken as the undoubted parish of the husband's settlement up to the time of his death.

Indeed, were it not so, there could be no room for dispute. For if the husband's settlement were gone, it necessarily follows, from the very principle on which our opinion rests (viz. that the settlement of the wife is inseparable from his), that the wife's settlement must have fallen along with her husband's. Not only so, but upon the same hypothesis it would matter nothing whether the wife had or had not resided for three years in St. Cuthbert's: St. Nicholas would here have continued to be the parish of her settlement. 2*d*, So entirely is it the husband's settlement which rules in this question, that, as was decided in the case of Pennycuick, the deserted wife could not in her own right fall back even upon her maiden settlement. But if the wife would still retain her husband's settlement in two such important predicaments, why should that settlement cease to be hers in the actual case under consideration? Her husband's desertion is not, *per se*, enough; for if it were, it would equally have ruled the two cases that have just been noticed. Neither is her having a separate residence of her own in another parish for three years and upwards of itself sufficient; for if it were, the wife might acquire a different settlement from that of her husband, whether she were in the legal sense deserted or not. But even where the husband's desertion is combined with a three years' separate residence on the part of the wife, why should the parish be entitled to set up a plea in respect of the husband's desertion, where the wife herself does not choose to complain? So long as husband and wife deem it prudent not to repudiate their relation as married persons, or to bring before the public the unhappy story of their quarrels, is a third party to be allowed to step in between them, for the purpose of depriving either of their legal rights? We are humbly of opinion that such a result could not be justified either in law or expediency.'

In the above case, the parish found liable was that in which the husband, many years before the question arose, had acquired a residential settlement, which at that time was not lost by the mere lapse of time. Were the case to occur now, the claim against the parish of residence would be forfeited by the husband's absence; but the only effect of that would be to bring in his parish of birth. In this matter, no distinction can be taken between a settlement acquired by residence or birth. If the husband was in possession of a settlement by residence at the time of his desertion, and his wife was able to support herself for more than five years after, before falling into poverty, her claim would of course be against the husband's birth parish, which would be his settlement in the event of his return to Scotland.

Put the case, that the husband is a foreigner, who is not possessed of a settlement in this country at the date of his desertion, what becomes of the wife? Does she go back on her own native parish, or does the burden of her support fall without recourse on the relieving parish? In other words, is her own maiden settlement wholly extinguished by the marriage? or is it merely placed in abeyance during the time that the husband may live with her in this country, reviving on his abandonment of her society?

The case which first raised this question was that of Hay *v.* Skene, decided 13 June 1850.[1] A woman became chargeable as a lunatic in Edinburgh in 1847, who in 1841 was deserted by her husband, an Englishman to whom she had been married in 1839, she being at that time in possession of a settlement in her native parish of Old Machar. The latter parish pleaded that the pauper's claim against her parish of birth was lost by her marriage, her settlement being the settlement of her husband, which must be somewhere in England.

The view taken by the majority of the judges was, that as, by the Poor Law statutes, every person born in Scotland had a settlement somewhere in the country, either by birth or residence, the mere fact of her being a married woman could not deprive her of that statutory right, unless the husband had also a settlement in this country; for though the courts of law, in interpreting the statutes, had decided that the wife must go with the husband in the matter of settlement, it was always assumed that in that case the husband himself had a settlement somewhere. The principle sanctioned only contemplated the substitution of one settlement for another, not the total extinction of the wife's by the fact of the marriage. Therefore, where the pauper was a native Scotswoman, the wife of a foreigner who had no settlement in this country to which she could have recourse, the principle had no application. As the Lord Justice-Clerk Hope put it, 'it is not simply by saying you are a married woman that the parish of birth is free; it is by the additional and available fact, that the husband has a settlement which is good to the wife, and which has truly become hers, that the parish of birth makes out a defence that relieves them.' His Lordship added:

[1] 12 D. 1019.

'The two grounds which, in my opinion, are sufficient for judgment, are:

'1. That when the parish of birth pleads the marriage of the woman in defence, that defence requires and presupposes, to make it complete and available, that the woman acquired another settlement, viz. the settlement of her husband.

'And 2. The grievous, flagrant, and to my mind unparalleled injustice, that if a foreigner marries a woman in this country, dies, or deserts her, without having acquired any settlement in Scotland, the parish in which he accidentally dies, or in which she accidentally becomes ill after desertion, but in which she may not have been three months, shall be for life burdened with her maintenance, and the parish of her birth be relieved, although she never acquired any other settlement. The ground, and the sole ground, of relief to the latter, in regard to a married woman, is the existence of another settlement acquired by reason of her marriage, or by the husband after her marriage. Another settlement is the foundation of the exemption of the parish of birth. Where that wholly fails, they cannot support their defence.'

And Lord Cockburn added:

'An unknown settlement in a foreign country seems to me to be very like no settlement at all. It is a mere mockery of the whole practical sense of the matter, to talk of a Scotchwoman losing the settlement of her birth, by having lived for one day as the wife of a man who then deserted her, and of whom all that is known is, that he had a settlement as a native somewhere or other in the empire of China *quoad* Scotland; and, in reference to this question, China and England seem to be very much the same. The defender seems to think that all difficulty is removed by simply landing this lunatic at the nearest English port, and leaving the English authorities to maintain her till they find her husband's settlement out. But I am not satisfied that the statutes warrant any such removal of a Scotchwoman deserted by an English husband whose settlement is unknown.

'It may be true, after all, that this deserter really has a settlement in England, and that, in virtue of it, that place is bound to maintain his wife. But on whom does the law lay the burden of ascertaining all this? I am inclined to think, on the parish against which the woman's last known settlement creates a *prima facie* obligation. It is the duty of that place, either to fulfil its obligation, or to relieve itself from it, by transferring it on some other parish. The authorities of the place where the pauper was accidentally found, having discovered the last known settlement, are not bound to inquire over all the earth for another possible one.'

Against these opinions, however, Lord Moncreiff entered an

emphatic protest, in a judgment which has since been pronounced by the highest authorities to be 'deserving of great consideration,' and which indeed is now regarded as a correct expression of the law on this subject:—

'It is, as I understand, settled law, that by the marriage the woman's settlement by birth is altogether suspended as long as the marriage subsists, and it is not even a settled point that it revives by the death of the husband. We have not that case to deal with. The presumption is, that the husband is still alive. And is there any law for this, that, during the subsistence of a marriage, the burden of maintaining a wife can be thrown on the parish of her birth? I see none, and I can see no principle on which it can be maintained. If the husband were here, it is conceded that he might be removed to England, although he had no known settlement there; and in that case the wife might be removed along with him. But the inspector could get no relief against the parish of the wife's birth. And just suppose that the inspector should remove the husband to England, leaving the wife here, could he then make a claim against the parish of Old Machar for relief of the maintenance of the wife? He surely could not. And yet what is he doing here? The husband has removed himself to England. His obligation to maintain the wife remains as it was; and if he is in poverty, that obligation is transferred to his parish of settlement in England; and I apprehend that there can be no more claim by the inspector of Edinburgh against the parish of Old Machar in this case, than there would be in the other. The principle of the pursuer's case seems to be, that the inspector of a place who has been obliged to give support to a pauper found there, must at all events have relief somewhere. That has not been provided. The law is, that he is entitled to relief when he has ascertained the place or parish of settlement which is bound to give him relief. Till he does so he cannot obtain it. And it appears to me, that to say that the parish of the wife's birth is liable in the case which here occurs, though it would not be so liable if the husband were in Scotland, whether he had a settlement in Scotland or not, is just to say that we must give effect to the claim in order to relieve the parish where the pauper is, whether there is any legal claim in the parish sued for or not. I can see no ground for such a theory. I formerly observed that the pursuer, in his argument, assumed that the object of the statutes was to provide to every one a settlement by virtue of birth or residence in Scotland. This may be true generally, but it is not true universally, nor is it true for the purpose of the argument. For, undoubtedly, a woman by marriage loses her settlement by birth for the time. And then, if her husband has no settlement in Scotland, either by birth or residence, she has no settlement at all in Scotland while the marriage subsists. And again, it is un-

questionable that, under the late statute, the husband and the wife may be both removed to England without any regard to the wife's settlement by birth, which effect is not altered by the husband having or not having a known settlement in England.'

The subject came again to be reconsidered by the whole Court, in a case which more than one judge has described 'as one of the most perplexing' they had ever been required to determine.[1] A woman born in Monkton came into the parish of Kilwinning, and soon after the inspector had to take charge of her as a lunatic. Her husband, an Irishman, was an able-bodied man, working at the time in the neighbouring parish of Dalmellington; but though he had been fifteen years in Scotland, he was without a settlement. The relieving parish of Kilwinning sued Monkton as the parish of the wife's birth, which pleaded that the pauper's birth settlement was suspended or put in abeyance by her marriage to a foreigner; that it could not revive so long as the marriage subsisted; that in the matter of settlement the fate of a married woman was by her marriage linked to that of the husband, whether he had a settlement or not; and therefore the relieving parish must itself bear the burden. The opinion of the whole Court was that this defence was well founded, some of their Lordships laying it down broadly, that, as a general rule, a wife acquires both the settlement and non-settlement of her husband during the subsistence of the marriage.

This decision appears to be irreconcilable with the case of Hay *v.* Skene; but there was this difference between the two cases, that in the latter the husband by his own act voluntarily put an end *de facto* to the connection by abandoning his wife's society, and leaving the country; while in M'Crorie *v.* Cowan he simply remained passive, casting on the parochial board the burden of supporting the lunatic, which, being only a labouring man, he was unable himself to bear. It was the husband, therefore, who was *the pauper;* and this being so, the judgment but affirms the proposition that, by the marriage, the married pair are made one; and so long as the marriage subsists they remain one, no matter whether the husband chooses to live in this country or not.

The question came again to be considered in the case of

[1] M'Crorie *v.* Cowan, 24 D. 72.

Carmichael *v.* Cowan.[1] Some of their Lordships thought that the rule recognised in Hay *v.* Skene as to the desertion of the husband operating as a revival of the wife's maiden settlement, should not be called in question. But others seemed to be of opinion that the rule of M'Crorie's case, that by the marriage a woman acquires both the settlement and non-settlement of the husband, should be applied to every claim for relief by the wife during the subsistence of the marriage, whether the husband deserted her or not.

The facts of this important case were these:—William Phillips, born in Glasgow on the 28th August 1853, was the lawful son of Michael Phillips, an Englishman, who deserted his wife without acquiring a settlement by residence in Scotland in March 1855. Mrs. Phillips supported herself and child in Glasgow till September 1857, when she became chargeable in New Kilpatrick, and died on 3d October 1857. Mrs. Phillips was born in Glassary. Her child was put on the roll of paupers in New Kilpatrick in January 1858; and that parish sued Glasgow, the parish of the pupil's birth, and Glassary, the parish of the mother's birth. A majority of the judges held Glassary liable for the pupil; and on the point which we are now considering, the following instructive observations fell from the present Lord President:—

'The question whether the pauper's mother had a settlement in the parish of her own birth during the period between her husband's desertion and her own death, is an open question, in dealing with which I must, of course, assume the soundness of the general rule settled in M'Crorie *v.* Cowan.

'On this new and special question I am of opinion that the desertion of the husband cannot so alter the legal condition and capacity of the wife, as to render her in law capable of enjoying any personal status independently of her husband. It may be that a married woman living in a state of desertion may bind herself in certain personal contracts, and may carry on business on her own account. But I am of opinion that her person remains as completely sunk in that of her husband as if they were living together, and that in all questions of status her condition as a married woman is unsusceptible of alteration except by the dissolution of the marriage. It is well-settled law, that even where the spouses are living separate under a contract of separation, the wife cannot have a domicile independently of her hus-

[1] 28 Feb. 1863, 1 M'P. 452.

band; and the reason of this (her personal incapacity) seems to me to apply with at least equal force in the matter of settlement.

'But the argument maintained here against the parish of birth of the pauper's mother necessarily assumes that she had a *persona standi* apart from her husband, not only to the effect of giving her a legal right and claim against a party who in no possible view could be the debtor of, or answerable to, her husband, but even to the effect of creating rights and claims of relief among third parties, all of whom are absolutely unconnected with the husband by obligation or liability of any sort.

'That this is a doctrine unauthorized by statute, will, I should imagine, be at once conceded. It must, therefore, in the absence of direct authority, be rested on principles of the common law, as applicable to the relation of husband and wife. But I find no principle of the common law which will justify the position that a married woman deserted by her husband is, by reason of her desertion, restored to the legal capacity of an unmarried woman; and I think there is, on the contrary, very high authority for saying that desertion by the husband will not give the wife any capacity in the matter of settlement; for in the case of Gray *v.* Foulie, 9 D. 811, which was considered by the whole Court, it was deliberately adjudged that, where a husband with a Scotch settlement by birth deserts his wife and goes abroad, she cannot, while the marriage remains undissolved, acquire a settlement by industrial residence for herself, but necessarily follows or retains her husband's settlement.

'While, therefore, the pauper's mother was alive, she would have had her claim, in case of destitution, against the parish in which she was for a time, and the relieving parish would have had no recourse against the parish of her birth.'

These views were concurred in by the Lord President, Lord Curriehill, and Lord Ardmillan, but did not commend themselves to the rest of the Court, who, holding by Hay *v.* Skene, decided that the desertion of the husband operated in the matter of settlement exactly as his death would have done. From this it follows that the settlement of a deserted wife is her husband's settlement at the date of the desertion; and if he is a foreigner without a settlement in Scotland, the parish liable for the woman's maintenance is the parish of her own birth. The principle on which the majority of their Lordships proceeded cannot yet be said to be conclusively settled. But it has since received some confirmation from the more recent case of Mason *v.* Greig,[1] which related to the settlement of a woman, who, having been deserted by her husband in 1855,

[1] 11 Mar. 1865, 3 M'P. 707.

when he enlisted, and left the country in possession of a residential settlement in Edinburgh, continued to reside in Edinburgh till 1863, when she became chargeable. The case of Hay *v.* Skene was there recognised as still of binding authority, and as establishing the proposition that death and desertion are the same. It follows that a deserted wife is as capable of acquiring a residential settlement for herself as a widow. 'If,' said Lord President M'Neill, 'we 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 the 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.' This is contrary to the case of Pennycuick (3 Mar. 1813), which has been quoted as an authority for the proposition, 'that a married woman, during the subsistence of a marriage, cannot obtain by residence a settlement independent of the husband, although she be deserted by him, or even although he has no known settlement.[1] The case was this: A woman who had her maiden settlement in Duddingston, where she lived six years in her father's family, married an Englishman without a settlement in this country. She was deserted by him, and came back, with three children of the marriage, for *whom* she claimed aliment from Duddingston. The Court rejected the claim, being of opinion, according to the report, 'that the mother, being the wife of an Englishman, could not acquire for her children a residence in any parish in Scotland during the subsistence of the marriage, so as to entitle them to aliment from the poor's funds.'[2]

It is obvious that, with reference to such a claim by a wife emerging during the life of the husband, no distinction can be taken between a settlement by birth and a settlement by residence. If he has no residential settlement, then the settlement which the wife acquires by marriage will be in the parish where the husband was born. In Barbour *v.* Adamson,[3] the House of

[1] Dun. 325.

[2] See Lord Moncreiff's remarks on this case, 9 D. 830, and *conf.* Gibson *v.* Murray, *inf.*

[3] 30 May 1853, 1 Macq. 376, 25 Jur. 419.

Lords threw the burden of maintaining children left destitute by the desertion of the father, or by reason of his being transported, on the parish of the father's settlement, in whatever way acquired, whether by birth or residence; and the same principle applies to the wife of a deserting or transported husband.[1]

Widows.—When the marriage is dissolved by the death of the husband, the wife being again *sui juris*, is liberated from the *incapacity* to acquire a settlement, which resulted from the marriage, as completely as if she had never been married at all. She can take up her residence wherever she thinks proper, and in that manner acquire a residential settlement for herself. But if she is capable of acquiring, she is as capable of losing a settlement; and therefore, if the husband's settlement at the time of his death was residential, it may be lost by the absence of his widow from the parish for more than four years and a day.

If the husband has left the parish in which he held a residential settlement three years or so before his death, and the widow does not return to the parish for more than a year, it would appear that the forfeiture has been incurred. 'The parish,' says the Lord Justice-Clerk Inglis, 'is entitled to take up this position: You left us more than four years ago, and we have never heard of you since. You have not kept up your connection with us, and we are no longer responsible for you.'[2]

If the settlement held by the widow, derivative of her husband at the time of his death, is in his birth parish, it is not quite clear how long it endures. Probably till it is displaced by the acquisition of a new one. But if a new settlement be acquired by the widow's own residence, and then lost, does the liability attach to the husband's parish of birth, or the parish of her own birth? The former view assumes, (1.) that the radical settlement of birth is never wholly extinguished, for it always contingently exists as something for a person to fall back upon, when all else fails; that, consequently, a man may have always vested in his own person two rights of settlement at one and the same time,—not only the settlement by residence, but conditionally a settlement by birth. (2.) That as by marriage the

[1] Hay *v.* Thomson, 23 June 1854, 16 D. 994.

[2] Allan *v.* Higgins, 23 Dec. 1864, 3 M'P. 309.

whole rights of the husband are vested in the wife, both of these rights of settlement become hers when he dies. And (3) that, after his death, she has the power of making his birth settlement operative by forsaking the parish of residence, just as he himself could have done had he been alive; in other words, that there is such a complete identification between the spouses, that, notwithstanding the man's death, matters must be dealt with exactly as they would have been if the husband had been alive at the time when the widow claims relief.

The obvious answer to the foregoing reasoning is, that the derivative rights of a widow can never be greater than those which are possessed by the husband himself at the time of his death. *Ex hypothesi*, he had then no claim on his parish of birth, because he was possessed of a settlement by residence. That settlement the widow might have kept up, had she herself chosen; but whether she did so or not, it was the utmost measure of the inheritance which she derived from her husband. Thenceforth she acts as an independent person, and must be dealt with as such. The husband is dead, and by no fiction of law can be held to be operating through his surviving widow, so as to be effectuating and completing a claim on his parish of birth which he could not have enforced at the time of his death. In short, a man can never have more than one settlement, and there is no such thing as two derivative settlements.

This, which was long a moot point in the law, was finally settled in favour of the view last stated; but the difficulty of the question is sufficiently indicated, by the fact that the judgment was carried by the narrow majority of only one—seven of their Lordships holding that the burden of maintaining the widow fell on her own parish of birth, six that it devolved on her husband's parish of birth. The facts on which their opinion was taken were these:[1]

In 1853, pauper became chargeable.

In 1847, husband died possessed of a settlement by residence in St. Cuthbert's.

In 1848, the pauper, his widow, left St. Cuthbert's without returning. The husband was born in the parish of Dunse; the widow in Prestonpans.

The view taken by the minority of the judges, as expressed by

[1] Hay *v.* Waite and Carse, 24 Feb. 1860, 22 D. 872.

the Lord President, was that the parish in which a party is born is under a liability to maintain him from the moment of his birth, unless something supervenes to make another parish liable, *i.e.* his residence therein for a certain time prior to poverty. But the right so obtained was defeasible by the party's absence; consequently the original or birth settlement was never superseded: it was only suspended for a time by reason of the party's residence elsewhere; and this contingent right of the husband to fall back on his birth settlement, enured to the widow as much as the party himself. The husband might have been absent from the parish for say three years at the time of his death; and if the absence were continued for the requisite term by the widow, the residence settlement would be lost by what could not be said to be the widow's own act; and in that case she certainly ought to have the right which the husband had himself to fall back on her own native parish.

But the result of the judgment is, that this theory of a party having two co-existent rights of settlement at the same time—one defeasible, and the other contingent on the defeasibility having occurred in point of fact—cannot be supported; and still less can it be maintained that a man at his death communicates to his wife two settlements—one actual, the other only to be recurred to in the event of her choosing to leave the parish in which he died, and failing to obtain a residence settlement for herself. The true doctrine is, that at her husband's death his residential settlement becomes hers, in the same way as if it had been obtained by her own separate and independent residence as a single woman; and that any party, *sui juris*, who has possessed a residential settlement and then lost it, falls back on the parish of his own birth.

In one peculiar case, the pauper (an Englishwoman) married a native of Renfrew. Under the old law, the husband gained a settlement in the Abbey parish of Paisley, which was his subsisting settlement at the date of his marriage to the pauper. From Whitsunday 1841 till his death in December 1844, he resided in the Burgh parish of Paisley. His widow returned to England in 1845, and returned to the Abbey parish in 1848. Having then become chargeable as a pauper, the question arose, 1*st*, Whether the burden fell on the Abbey parish or the Burgh parish? Against the latter it was decided there was no claim,

for at the date of the Act there was no necessity for relief, and no residence for five years. Nor was there any claim against the Abbey parish, for the former settlement of the husband had been lost by absence for more than four years. The husband having thus died without a residential settlement, his birth settlement in Renfrew revived for behoof of his widow.[1]

When a widow marries a second time, and the second husband deserts her, the parish liable for her, and the children she has had by both husbands, is the parish in which the second had his settlement at the date of the desertion.

This proposition has not been established without great difference of opinion on the bench. Strictly speaking, the statutory settlement of birth ought only to be modified in respect of the relation of father and child; but the rule stated makes one's parish liable for the children of another man, with whom he is in no way connected. But then the person seeking relief is the mother of both families; and she is as much entitled to have beside her the children by the first husband as by the second. The mother's acquisition of a settlement through the second marriage is the same as if it had been acquired by her own independent residence as a widow.[2]

The question whether a pauper is a married woman, may be tried *incidenter* in the Sheriff Court or the Supreme Court. The parties themselves are competent witnesses, but their evidence is usually received with the greatest caution: for not only is it not uncommon to find among the lower ranks of society exceedingly loose, and indeed inaccurate, notions of the nature of the marriage bond; but it is always such an exceedingly easy thing for a pauper to say she is married, when in point of fact she is not, that, for reasons of public policy, it is manifestly expedient that every precaution should be taken against the possibility of a loose and irregular connection being changed by the evidence of the parties themselves into a relation of a more sacred character. Therefore, where the alleged marriage consists in a secret contract between the spouses, it will in general require to be supported by some corroborative evidence, such as either the testimony of other persons present on the occasion, when such is the case, or at least by their own conduct sub-

[1] Robertson *v.* Brown and Stewart, 12 Dec. 1854, 27 J. 58.

[2] Greig *v.* Adamson, 3 M'P. 575.

sequent to the alleged marriage, and by the belief of their neighbours and acquaintances, that they were really married persons, and were reputed as such. Thus, in a case in which both the pauper and her alleged husband swore positively that, on a certain occasion, the man put a Bible into the woman's hand, and said, 'Are you willing to be my wife, through life and through death?' to which she answered, 'Yes;' and the man, taking the Bible into his hands, said, 'I take you for my wife,' the Court refused to hold the marriage proved, because the notion of their being married persons was not only not supported, but in some degree contradicted, both by their own conduct and by the belief of their neighbours.[1]

Settlement by Parentage.—To prevent the dispersion of the different members of a family through the various parishes in which they may have been born, the rule has been established, that when they require parochial relief, they must be all treated as one. They are all consubstantiated with the parent. 'The branches,' says Lord Jeffrey, 'are held to be where the root is: though they may overhang and drop into other parishes, the true parish is that where the root is.'[2] Hence the doctrine of derivative settlement by parentage.

The principle was recognised in some early cases, where the parent at the time of the child's birth had a settlement in another parish by residence;[3] but for some years after the Poor Law Act, it was supposed that the operation of the rule should be confined to the case of the derivative settlement having been so acquired.[4] This error was corrected by the House of Lords in 1853, when it was laid down, that if the principle was to be admitted at all, it must extend to the father's settlement, however acquired, whether by birth, his own residence, or his father's residence. The necessity for preserving the

[1] Beattie *v.* Baird, 16 Jan. 1863, 1 Macph. 273.

[2] Hume *v.* Pringle and Halliday, 22 Dec. 1849, 12 D. 411.

[3] Coldingham *v.* Dunse, 28 July 1799, M. 10,582; Howie *v.* Alyth, M. Poor, Ap. 1.

[4] See Thomson *v.* Stewart and Morris, 19 July 1850; Thomson *v.* Scott, 26 Feb. 1851; Hay *v.* Scott, 25 Nov. 1852; Hay *v.* Oliphant, 19 July 1853. But these cases are now of no authority, since the judgment of the House of Lords, reversing the decision of the Court of Session (2 July 1851, 23 J. 603) in Adamson *v.* Barbour, H. L. 30 May 1853, 25 J. 419, 1 Macq. 376.

influence of the family tie is the same in all cases, whether the parent's settlement is the result of residence or not.

The facts of this case were: In 1854, a man named Duncan M'Intyre, who was then living with his family at Glasgow, was apprehended on a charge of theft, tried, convicted, and transported. At that time his settlement was in his parish of birth, Lochwinnoch. His family consisted of a wife and five children —the eldest nine years of age, the youngest an infant a few weeks old. The two eldest children were born at Falkirk, the two youngest at Glasgow; the other child was born at Linlithgow, but died in March 1847. The mother, being unable to support the children, applied to the City parish of Glasgow for relief; and relief was granted during the years 1847 and 1848, and part of 1849. The inspector then raised an action of relief against the inspector of Lochwinnoch; and this parish, as the transported father's only settlement, was found liable. The principle of the judgment was thus stated by the Lord Chancellor:—

'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. What, then, is the principle which gives this derivative settlement to the children? There is no enactment on the subject, and it is, as I conceive, merely the result of a construction which the courts have felt warranted in putting on the statutes relating to the maintenance of the poor,—namely, that for all purposes relating to settlement, the father is understood to comprise in himself all his children who are in a state of nonage. Unless this principle is admitted, the children could not acquire a settlement by the industrial residence of the father. But if the principle is admitted at all, it cannot be confined to the case of a settlement acquired by residence, but must extend also to the *father's settlement, however acquired, whether by birth, or by his own residence, or by his father's residence.* . . . Whether the father's settlement has been gained by birth or residence, 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 see no ground for the supposed distinction.'

So strictly is the rule enforced, that a pupil child cannot have a settlement different from his father's, that if the father is a native of Scotland whose settlement cannot be found, no recourse can be had against the pupil's own birth parish, and the relieving parish remains saddled with the burden. The duty is imposed on the relieving parish of finding the pauper's parish of settlement. No native-born Scotsman can be alleged to be without one; and the mere fact of their having done all in their power to find it out, is of no moment if they have not succeeded.[1]

After the death of the father the pupil children follow the fortunes of the mother. Legally, a pupil has no settlement of its own, except that which it takes through its parents.[2] To throw children on the settlement of the father at an interval after his death, and when the mother is still surviving, would have the effect of separating them from her, and thus break up the family relation, which is contrary to the policy of the Poor Law. If the mother falls into poverty, the parish liable is bound to support both her and her family, or, in other words, to give her sufficient aliment for both. The mother, therefore, is the pauper. Her settlement is the settlement of the children. The settlement left her by her deceased husband may (if residential) be lost by absence; she may acquire a new one by residence, or by marrying again. But in these events the settlement of the children changes with hers, whatever be the way in which the change is effected.

In the first case in which it was pleaded that a mother could not acquire a settlement for her child,[3] the pauper was a posthumous child, born in 1804, in Little Dunkeld, but she had lived with her mother from 1805 in the parish of Foulis Wester to 1823, when the mother died; and though she did not become chargeable till 1831, she had in the interval been wandering about the country, never three years in any parish. Upon these facts it was held that the mother's residence in Foulis Wester had the effect of not only conferring a settlement on herself, but on her daughter; and this judgment has since been repeated.[4]

If the application for relief is made before the lapse of four

[1] Hopkins *v.* Ironside, 3 M'P. 424. [2] Coldingham *v.* Dunse, M. 10,582.
[3] Crieff *v.* Foulis Wester, 4 D. 1538. [4] Grant *v.* Reid, 22 D. 1110.

years from the death of the husband, liability attaches to the parish of the husband's settlement; and if he be a foreigner without a settlement, the liability is transferred to the mother's parish. In the leading case in which this was determined, an Englishman married and died in Scotland without having acquired a settlement.[1] The widow had been born in the parish of Peebles, and the children in the parish of Melrose. For the former parish, it was contended that the death of the father had not the effect of transferring to the surviving mother the rights and powers of the father. On the contrary, though she was entitled to the custody of the children during their tender years for the purposes of nurture, it was for these purposes and no other. She was not their guardian. She could not assume the management of their affairs. She would not succeed to them when they died. Her home was not that of the children, for the tutors might regulate their education, and fix their place of residence.[2] Therefore the law did not contemplate or provide for the maintenance of the family bond after the death of the father; and if he was not possessed of any settlement, they must fall back on the parishes in which they were severally born. This would have been the result if their mother had predeceased their father; and why should her survivance for a few days have the effect of transmitting their settlement by birth into a parentage settlement derived through the mother? In these views, Lord Curriehill, the Lord Justice-Clerk, and Lord Murray concurred, and were for placing the burden of alimenting the children on the parish of Melrose, in which they were born. But the rest of the Court thought that practically it was the mother herself who was the pauper, inasmuch as she was seeking and entitled to receive relief, not only for herself but for her infant children—the children being only introduced into her claim for relief as increasing the burden on her; that it was very desirable that she should not be separated from them; and that, in the circumstances, the mother of a lawful child was entitled to the same rights as the mother of a bastard.

Lord Deas said:—

'No doubt the children acquired by birth a settlement in the

[1] Gilson *v.* Murray, 13 June 1854, 16 D. 926.

[2] Scott, M. 16,361, Br. Sup. 5872.

parish of Melrose. This settlement they may fall back upon at any time, failing every other settlement. But I see no greater difficulty in holding their own birth settlement to be suspended by the liability of the 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 when 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. In these circumstances, I think the parish of her settlement, although it is only a settlement by birth, can maintain no present claim of relief against the parish of the children's birth.'

In the above case the father had died in this country; but it now appears that the same result follows if he deserts his wife and family and leaves the country.[1] We have already seen that, as regards the widow's settlement, the death and desertion of the husband are the same. By a fiction of law he is held to cease to exist whenever he abandons his home and leaves the country; and till he chooses to return, the wife is restored to those personal rights which belong to a widow or a single woman. It follows that, on the death of the wife subsequent to the date of the desertion, the children of a foreigner without a settlement fall not on their own parish of birth, but on the parish of the mother.[2] It was so decided in a case already referred to, in which the pauper, still a pupil, was the son of an Englishman who deserted his family in 1855, and of a native Scotchwoman who did not become chargeable till 28th Sept. 1857, and died on 3d October following. The mother's native parish of Glassary

[1] Carmichael *v.* Adamson, 28 Feb. 1863, 1 M'P. 452.

[2] *Ibid.*

was held by a majority of the judges liable for the support of the pupil, the father having no settlement in Scotland; and the views which influenced their Lordships in coming to this result were thus stated 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 already alluded to. 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 ground 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 first, 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 by Michael Philips as operating the same consequences with his death.'

Minors Pubes.—Hitherto we have dealt only with pupils. The difficulties begin when the minor is above fourteen. In Scotland, the attainment of puberty effects a most important change in the rights and personal status of a child. A pupil has practically no legal existence. A father, in virtue of his *patria potestas*, has the absolute power of disposing of his children's persons, of directing their education, and of moderate chastisement.[1] But at puberty the child is presumed in law to have acquired such an amount of mental capacity as to be capable of

[1] Ersk. Pr. i. 7, 36.

disposing of his own person, and even of entering into the bonds of holy matrimony. His father may, indeed, still compel a *minor pubes* to remain in family with him; and while he continues there, to contribute by his labour and industry to the family stock.[1] But with his father's permission a minor may start in business for himself, and set up a house of his own; and if the father be dead, a boy of fourteen is practically his own master; for he may stay wherever he pleases, with, without, or even against his guardian's will.[2] He cannot dispose of his heritage; but he may make a testament regulating the distribution of his moveable estate. He is not fit for certain public offices requiring maturity of judgment. He cannot be a judge, a commissioner of supply, a magistrate, a juror, an elector, or a member of Parliament. But so far as regards his own status, and the right to regulate his own personal movements, he is practically free from any disability whatever; the single exception being that, if his father be alive, and he chooses to leave the family without his father's permission, the latter may follow after him and bring him back.

The separation of a member of a family from the parent stem is in England called *Emancipation*, and in Scotland *Forisfamiliation*. This subject is chiefly treated by our writers in its connection with the law of succession, and more particularly as bearing on the right of certain of the members of a family to claim along with the rest a share of the legitim. It is obvious that in the Poor Law all this kind of learning is entirely out of place. All that can be said on the subject is, that at fourteen a boy, and at twelve a girl, *may* be forisfamiliated; that is to say, they then possess the right to leave the family, and acquire a settlement for themselves, the father not objecting. But whether the right is exercised or not is always a pure question of fact, the determination of which must be regulated by the circumstances of each individual case.

That a child of fourteen may acquire a residential settlement for himself, even when his father is alive, was decided at a very early period. The father had a residential settlement in the

[1] Ersk. Pr. i. 7, 36.

[2] See Bank. i. 6, 1; Bell's Prin. § 1630; 2 Fraser, 27; Marshall *v.* M'Donald, M. 8930; Graham *v.* Graham, M. 8934; Anstruther, 1 Fount. 613; Ersk. Inst. i. 6, 55.

parish of Coldingham. The child, 'when a boy *about* fourteen years of age,' was bound apprentice in the parish of Cockburnspath, and resided there in that capacity for *more* than three years; and this residence was held to impose the burden of the lad's maintenance on the parish of Cockburnspath, although during the whole period he was supported by his father.[1] There is an unfortunate looseness in the report as to the age at which the residence began to be counted; but it is assumed that he was then more than fourteen.

When the age of puberty is attained, the settlement of the child is the actual existing settlement of the father at that date. If he remains a member of his father's family, he still follows the father's fortunes in the matter of settlement; for, as already observed, the mere attainment of a capacity to acquire a settlement is quite immaterial if the right is not put in force. So long as the family bond remains unbroken, the residence of all the members is lost in the residence of the head. On the one hand, the father acquires by residence a settlement not only for himself, but for all his children unforisfamiliate, whether they happen to be living with him or not; and, on the other hand, the settlement is kept up by the continuous residence of the father for one year in every five, even although the children should be living elsewhere at the time.

This being so, what is the effect of forisfamiliation on a settlement held derivative of the parent? In the first place, if the father is still alive, and his settlement is residential, that continues to the child till it is either lost by his absence from the parish, or he acquires another by marriage or residence elsewhere. Thus, in what is known as the Lasswade case,[2] the pauper had resided with her father from her birth, in 1808, till 1814, when she went to live with her maternal grandmother. She attained puberty in 1820, and went into service at Whitsunday 1821. At this time her father possessed a residential settlement in the City parish of Edinburgh. From 1814 the pauper never returned to her father's house; and from 1821 down to 1836, when she died, she had shifted about from one place to another without acquiring a settlement anywhere. The

[1] Heritors of Cockburnspath *v.* Coldingham, 9 June 1809, F. C. See also Hay *v.* Scott, 15 D. 62.

[2] 6 D. 956.

question arose in regard to the aliment of an illegitimate child which she had borne in 1834. This, again, resolved into the inquiry, Where was her own settlement at the time of her death? The Court held that her settlement was in the City parish, where her father had his settlement when she attained puberty and went to service. On the one hand, this result was not affected by the fact of her not living with her father for some years prior to puberty; and, on the other, although the father's settlement in the City parish was, subsequent to 1820, displaced by the acquisition of another in St. Cuthbert's parish, his daughter's settlement did not change with his in respect of her emancipation. The judgment of the Court, 'as regards the City of Edinburgh, finds that, after the said Margaret White (the pauper) had acquired a settlement therein, she never afterwards resided continuously for three years in any one parish, and therefore in her own right she never acquired any new legal settlement to disturb or displace that which she had so acquired, and therefore that the said Margaret White had, at the time of her death, her last legal settlement in the said city and parish of Edinburgh.'

This case occurred before the passing of the Act of 1845; but under the new law it is incumbent on a person taking a residential settlement through his parent at the time of forisfamiliation, to keep it up by continuous residence therein, in the same manner as the parent himself is required to do. Sec. 76 applies to every person claiming a residential settlement, whether original or derivative. The connection with the parish once formed must be maintained, otherwise it shall lapse.[1] In like manner, the forfeiture is incurred by the absence of both parent and child. A father left a parish possessed of a residential settlement in 1852; died in 1854; and a daughter, who was only emancipated by his death, became chargeable in 1857, without having in the interval returned to the parish. It was held that, although the child was not forisfamiliated till the man's death, the parish was entitled to count both the absence of the father as long as he lived, and the absence of the child subsequent to his death, in order to make out the period of forfeiture.[2]

[1] Hume *v.* Pringle, 6 D. 411; Robertson *v.* Melville, 22 D. 894.

[2] Allan *v.* Higgins, 23 Dec. 1864, 3 M'P. 309.

But when the derivative settlement is the birth settlement of the father, how long does it subsist for the benefit of the child? This is a question which has given rise to much controversy. Plainly, it cannot endure for ever; for in that case the statutory settlement of birth would be practically annihilated, and thus an Act of Parliament would be repealed by the manner in which it has been *construed* by the courts of law. Failing the pauper having a residential settlement, the inquiry would be, not where he himself was born, but where his father or his grandfather happened first to see the light. In every case, an investigation would be necessary into the history of obscure persons, and their ancestors, if they had any, up to, it may be, the year 1579, when the celebrated statute of that date was passed into law. Consequences so very absurd could never have been contemplated by the House of Lords, when they laid down the rule as to derivative settlements in Barbour *v.* Adamson; and therefore there must evidently be a limit of some kind assigned to the operation of the principle in question.

Now, in fixing this limit, it has been suggested that the difficulty may be solved in three different ways.

First, It has been said that the father's birth parish shall be the parish burdened with the child until he attain *majority*. This was the view expressed by Lord Cowan, in a case about to be cited. 'It is impossible for me' (said his Lordship) 'to doubt that, when an adult pauper having no residential settlement becomes chargeable, it is the parish of his own birth which must be liable for his support, by force of express enactment (1579, 1672); or that, had the question in this case regarded the support of a pauper of mature age, any inquiry as to the birthplace of his father would have been quite irrelevant.' To separate children of twelve and fourteen from their mother, would not, in his Lordship's opinion, be fairly carrying out the principle of Barbour's case; and therefore, as the mere attainment of puberty ought not to take from the children their derivative birth settlement, the only solution of the difficulty is to hold this derivative settlement at an end, when the circumstances that gave rise to it cease to exist, that is, when the children have grown up to be men and women of perfect age.

Second, Although this would be a simple and convenient rule, it has not approved itself to the minds of other eminent authorities.

Lord Neaves said he 'did not think that the attainment of any period of life, or, except where the statute has said so, the simple lapse of time, could ever instantaneously change a person's settlement, so that he shall go to bed at night with one settlement, and rise in the morning with another.' 'I conceive,' said his Lordship, 'the law to be clearly this, that after either of these derivative settlements has transmitted to the child, it will subsist in his person as his own settlement, until it is extinguished in some known or appointed way, such as would extinguish a settlement of the same kind, if it had been originally in his person. A derivative settlement will be lost under the statute by non-residence. A derivative birth settlement will be lost by the acquisition of another settlement by residence or marriage.' In this view Lord Kinloch and Lord Ormidale concurred.

Third, It is, however, needless to pursue this subject further, because it has now been finally determined that a pauper who, when he becomes chargeable, is above fourteen, forisfamiliate, and is not possessed of any but a derivative birth settlement, falls not on the parish of his father's birth, but on the parish of his own birth.

The facts of the case[1] in which this was found were these:—

In 1857 the pauper, then sixteen years of age, and living with his mother, who was not in receipt of relief, became chargeable.

In 1851 his father had died, possessed of a settlement in Lasswade, where he was born.

The pauper himself was born in Edinburgh; and the question was, whether Edinburgh or Lasswade was the parish liable.

The following is from the opinion returned by the Lord Justice-Clerk (Inglis):—

'The survivance of the pauper's mother, and the fact that he lived in family with her until he was sixteen years of age, is urged as a reason why he should not depend on the parish of his own birth for a settlement, but should rather be a burden on that parish of settlement which she and he originally derived from her husband and his father. This argument seems to us to be founded on a misconception of the legal relation subsisting between a widowed mother and her children in puberty. The mother never possesses any authority of the same kind with the *patria potestas*. During the year of nurture, the

[1] Craig *v.* Greig and M'Donald, 18 July 1863, 1 M'P. 1172.

non-separation 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. In the lower ranks, among whom children generally have no legal guardians, the mother commonly assumes the custody of such children without any legal title; but this does not interfere with the application of the legal principle.

'When the child attains the age of puberty, all legal authority of the mother over the child is at an end, unless she has been nominated by her husband, or chosen by her child, as one of his curators. Apart from such special and factitious relation of curator and minor, the widowed mother and the child in puberty are persons quite independent of one another. They are, no doubt, mutually under natural obligations of duty and affection; and so strong are these natural obligations, that they are legally compellable to aliment one another in case of destitution. But the child is just as much bound to aliment and support the mother, as the mother to aliment and support the child; and if they live together for the purpose of making their joint earnings go as far as possible in the support of both, this is a voluntary association or partnership for mutual benefit, and has no foundation in a power of control on the one hand and of obedience on the other, or in a relation of any other kind than an arrangement of convenience, dictated, it may be, in whole or in part, by natural affection.

'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.'

The results, then, of the various cases which have been above referred to may be summarized in the following propositions:—

1. Pupil children (being legitimate) follow the settlement of their father, if he has one.

2. After the father's death the pupil children follow his settlement in the first instance; but failing the father's settle-

ment, the mother, as now the head of the family, may possess or acquire an independent settlement for herself or her family.

3. If the father has no settlement, the settlement held by the wife before marriage revives.

4. The settlement accruing to the pupil children from the father or mother equally attaches to the children, whether the parent's settlement is one by residence or birth.

5. The desertion of the husband is the same as his death.

6. A minor *pubes* unforisfamiliate continues to hold the father's settlement, which, if residential, may be lost by the father's absence.

7. A minor forisfamiliate takes the settlement possessed by his father at the date of the forisfamiliation.

8. A minor whose father has died during pupillarity (possessed of only a birth settlement) is forisfamiliate on attaining puberty, and thenceforward he is chargeable on the parish of his own birth.

Illegitimate Children.—It is a fixed rule, that an illegitimate child follows the settlement of the mother, if that can be ascertained; if not, the liability falls upon the parish of its own birth, and subsists in either case till he acquires an industrial settlement for himself, by five years' residence after pupillarity, and supporting himself without parochial aid. This holds equally, whether the settlement of the mother be acquired by residence, or belonged to her by birth, or results from her marriage to a man other than the bastard's father.[1]

It was for some time doubted whether the rule applied where the mother's settlement is acquired otherwise than by birth or residence, *e.g.* a settlement acquired by marriage before or subsequent to the birth of the bastard. It was supposed that, after the dissolution of the marriage, no new burden in respect of it could be made to attach to the deceased husband's parish; and it was decided in two cases in the Second Division,[2] that the mother's settlement by marriage did not enure to the illegiti-

[1] Lasswade, 6 March 1844, 6 D. 956; Gladsmuir, June 1806, M. Ap. Poor, 6; Rescobie *v.* Aberlemno, 28 Nov. 1801, M. 10,589; Edin. *v.* Brown, 11 June 1806, M. Ap. Poor, 5.

[2] Hay *v.* Scott, 23 Nov. 1852, 15 D. 62; and Hay *v.* Oliphant, 19 July 1853, 18 D. 508.

mate child, and that its settlement was in the parish of its own birth. This view was, however, overturned in Hay *v.* Thomson, etc. (Campbell's case), 6 Feb. 1856, 28 J. 191, 18 D. 510, in which it was decided by the whole Court, that the rule was incapable of exception: the settlement of a bastard is that of its mother, be it acquired by residence, by birth, or by marriage. The widow of a man who at his death had a settlement by residence in the parish of St. Cuthbert's, gave birth to an illegitimate child in the parish of Canongate some years after her husband's death. It having been found that the settlement of the husband accrued to the widow and the children born of the marriage, the question arose, whether the illegitimate child must be supported by its own birth parish, or by the parish burdened with the support of the mother. The Court decided that the burden fell upon the latter. 'The first question I ask myself in this case (said Lord Deas) is, Who is the pauper? The answer I make to that question is, The mother; and if the mother was the pauper, it appears to me *cadit quæstio.* Is her own settlement not to be the rule as to what parish is liable to relieve her, the pauper? And if her own settlement be the rule, then nobody doubts that her settlement here was that which she had acquired by marriage. Taking this view of the case, it does not appear to me to be material whether the settlement of the pauper mother was direct or derivative. The parish of her settlement, however acquired, must be equally liable to maintain her *cum omni causa.*' 'When the mother has acquired a settlement,' said Lord President M'Neill, '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 elsewhere, for example, or by her entering into a subsequent marriage; but that is not a pressing consideration, for settlement by residence might cease in a similar manner. Nor do I see that the view taken by the judges who decided the case of Lasswade is of any importance. *However she derived the settlement, it is her settlement in her right for the time, so long as she holds it.*' It has also been found, that where the widow of a man having a settlement in A. marries a man having a settlement in B., who afterwards deserts her, she and the children of the first marriage are chargeable to B.[1]

[1] Greig *v.* Adamson and Craig, 2 Mar. 1865, 3 M'P. 575; overruling

Lunatic Children.—While the law presumes absolutely that every ablebodied father is able to maintain his infant offspring without parochial aid, an exception is created in his favour by the lunacy of one of his children. It is required by the police and other statutory regulations, that the lunatic should be separated from the family, and removed to a place of safety; and the aliment there required is an expense to which the father may be unequal, just as a mother, by reason of her natural infirmity, is relieved of the obligation of maintaining her family. The expense of every pauper lunatic devolves on the parish of his settlement (sec. 76, 20 and 21 Vict. c. 71). As insanity reduces a lunatic to the state of a pupil, a person who has been insane from his youth can acquire no direct settlement, save the settlement which belongs to him by birth; and this only can come into operation in the event of his holding no derivative settlement through his parents. The case of Gladsmuir *v.* Preston, 11 June 1806, M. Ap. Poor, 5, is a case in point. A woman, who was a farm-servant in the parish of Saltoun, was delivered in 1791 of a female bastard child, which was taken to her grandmother's, in the parish of Gladsmuir, where she lived till the death of the latter, in 1801. Meantime the mother, in 1799, went into service in the parish of Preston, acquired a settlement, and married a labourer there. On the death of the grandmother she took home her lunatic child; and upon her death some time after, a question arose as to this lunatic's support. In fixing the liability, three questions were decided: 1*st*, That a natural child takes the settlement of its mother, not of its own birth; 2*d*, That a child living separate from its parent while in pupillarity does not acquire a separate settlement; and 3*d*, That a lunatic child falls to be supported, both before and after pupillarity, by the parish of the parent's settlement. In the first case which occurred under the Poor Law Act, this decision was overlooked; and it was determined that where the father of a lunatic, aged eighteen, had only a birth settlement, the burden of supporting the lunatic fell upon the parish of his own birth, and not on that of his father's birth.[1] But this judgment is no longer of authority. The settlement of

Dinwoodie *v.* Knox, 17 April 1849, Shaw's Just. Rep., and Hay *v.* Scott, 23 Nov. 1852.

[1] Thomson *v.* Steuart and Morris, 19 July 1850, 12 D. 1266, 22 J. 598.

the lunatic is in all cases the settlement of the father. 'The parish in which the parent has a settlement is liable to maintain it; that is settled by the case of Gladsmuir. And 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.'[1] In this case the pauper was born in Dalkeith in 1838, and was at the date of the action sixteen years of age. His father, who was born in Laurencekirk, and never acquired another settlement, was in 1853 imprisoned. The boy, who was always of weak mind, became chargeable in Edinburgh, and ultimately was confined in Morningside Asylum. The Court decided that a lunatic child in puberty takes the settlement of the parent; so in this case the burden devolved on the parish of the father's birth.

We have already seen that a lunatic, though incapable of acquiring a settlement by residence, may lose a residential settlement, acquired or inherited, by absence. In a recent case, it appeared that the pauper was born in 1810 in Edinkillie, resided with her father at Killearnan, where he had a residential settlement, till 1853, when she became insane, and was removed to an asylum out of the parish. The father died in 1858, and the pauper, who never returned to Killearnan, became chargeable in 1860. The Court held that the pauper, being a lunatic who had never been forisfamiliated, had the benefit of her father's residence in Killearnan down to 1858, notwithstanding her absence, and having become chargeable before this settlement was lost by absence, Killearnan was the parish liable.[2]

[1] Per L. P. in Hay *v.* Paterson, 29 Jan. 1857, 19 D. 329, 29 J. 152.

[2] Killearnan *v.* Edinkillie, 5 June 1867.

APPENDIX.

I. STATUTES.

POOR-LAW ACTS.

No. I.—1579, c. 74.—For Punishment of Strang and Idle Beggars, and Relief of the Pure and Impotent.

Forasmeikle as there is sundry lovabil Acts of Parliament maid be our Soveraine Lord's maist nobil progenitors, for the staunching of maisterful and idle beggars, away-putting of sornares, and provision for the pure; bearing, that nane sall be thoiled to beg, nouther to burgh nor to land, betwixt 14 and 70 zeires. That sik as make themselves fules, and ar bairdes, or uthers siklik runners about, being apprehended, sall be put in the Kingis waird or irones sa lang as they have ony gudes of their awn to live on. And fra they have not quhairupon to live of their awin, that their ears bee nayled to the Trone, or to an uther tree, and their ears cutted off, and banished the countrie; and gif thereafter they be found againe, that they be hanged.

Item, That nane be thoiled to begge in an parochin that ar bore in an uther. That the heads men of ilk parochin make takkinnes, and give to the beggars theirof, that they may be sustein'd within the boundes of that parochin; and that nane uther bee served with almes, within that parochin, but they that beares that takinne allanerlie, as in the Actes of Parliament theiranent at mair length is conteined. Quhilkes, in the tyme bygane, hes not beene put to dewe execution threw the iniquitie and troubles of the time by-past, and be reasoun that there was not heirtofoir an ordour of punischment sa speciallie devised as need required; bot the saidis beggares, beside the uthers inconvenientes quhilks they daylie produce in the common-wealth, procure the wrath and displeasure of God for the wicked and ungodlie forme of living used amongs them, without marriage, or baptizing of a great number of their bairnes. Theirfoir now, for avoyding of the

inconvenientes and eschewing of the confusion of sindrie lawes and actes concerning their punischement standing in effect, and that some certaine execution and gude ordour may follow thereanent, to the great pleasure of Allmichtie God, and common weill of the realme; it is thocht expedient, statute, and ordained, as weil for the utter suppressing of the saidis strang and idle beggars, sa contagious enimies to the common weill, as for the charitabil relieving of aged and impotent pure peopil, that the ordour and forme following be observed:

Vagabounds and idle beggars suld be punished.

That is to say, that all persons being above the aige of fourteen and within the aige of three scoire and ten zeires, that heirafter ar declared and set forth be this act and ordour to be vagaboundes, strang and idle beggars, quhilkes sall happen at ony time heirafter, after the first day of Januar nixt to cum, to be taken wandering and misordering themselves, contrarie to the effect and meaning of thir presentes, sall be apprehended, and, upon their apprehension be brocht befoir the provest and baillies within the brugh, and, in everie parochin in landwart, befoir him that sall be constitute Justice be the Kingis commission, or be the lords of regalitie, within the samin, to this effect; and be them to be committed in waird in the commoun prison, stokkes, or irons, within their jurisdiction, there to be keeped, unlatten to libertie, or upon bande or sovertie, quhil they be put to the knawledge of ane assize, quhilk sall be done within six dayes thereafter; and gif they happen to be convicted, to be adjudged to be scourged, and burnt through the eare with ane hote iron; the processe quhairof sall be registrate in the court buikes; except sum honest and responsal man will of his charitie bee contented then presentlie to acte himselfe before the judge, to take and keip the offender in his service for ane haill zeir next following, under the paine of twentie pound, to the use of the pure of the toun or parochin. And to bring the offendour to the head court of the jurisdiction at the zeires end, or then gude pruife of his death; the clerke taking for the saide acte twelve pennies onely:

Of him quha flyes his master's service.

And gif the offender depart, and leave the service within the zeir, against his will that receives him in service: Then, being apprehended, he sall be of new presented to the judge, and, be his command, scourged and burned throw the eare as is foresaid. Quhilk punischment, being anis received, he sall not suffer againe the like for the space of threescoir days thereafter, bot gif at the ende of the saidis lx days, hee bee founden to be fallen again in his idle and vagabond trade of life: Then, being apprehended of new, he sall be adjudged, and suffer the paines of death as a thief.

Quha suld be esteemed vagabounds and idle beggars.

And that it may be knawn what maner of persones ar meaned to be idle and strang vagabounds, and worthy of the punischment before specified, It is declared that all idle persones, ganging about in ony countrie of this realme, using subtil, craftie, and unlauchful playes, as juglarie, fast-and-lous, and silk utheris. The idle people calling themselves *Ægyptians*, or any uther that feinzies them to have knawledge of charming, prophecie, or others abused sciences, quhairby they persuade the peopil that they can tell their weirds, deathes, and fortunes, and sik uther phantastical imaginations; and all persones being haill and starke in bodie, and abill to worke, alledging them to have bene herried or burnt in sum far pairt of the realme, or alledging them to be banished for slauchter, and uthers wicked deeds; and uthers nouther havand land nor maisters, nor using ony lauchful merchandice, craft, or occupation quhairby they may win their livings, and can give na reckoning how they lauchfullie get their living; and all minstrelles, sangsters, and tale-tellers, not avowed in special service be sum of the lords of Parliament or great burrowes, or be the head burrowes and cities for their common minstrelles; all commoun labourers, being persones abill in bodie, living idle, and fleeing labour, all counterfaicters of licences to beg, or using the same, knowing them to be counterfaicted; all vagabound schollers of the Universities of *Saint Andrewes*, *Glasgow*, and *Abirdene*, not licensed be the Rector and Deane of Facultie of the Universitie to ask almes; all schipmen and mariners, alledging themselves to be schipbroken, without they have sufficient testimonials, sall be taken, adjudged, esteemed, and punished as strang beggares and vagaboundes.

Of them quha maintaines or receipts vagabounds.

And gif ony person or personnes, after the said first day of Januar nixt to cum, gives money, harberie, or ludgeings, settis houses, or shaws ony uther reliefe to ony vagabound or strang beggar, marked or to be marked, wanting an licence of the provest and baillies within burgh, or of the judge within that parochin; the samen being dewlie provin at the court, they sall pay sik unlaw to the use of the pure of the parochin as be the judge at the court sall be modified, swa the same exceed not five punds.

Of them quha stayes the execution of this act.

And alswa, gif any person or personnes disturbes or lettis the execution of this act ony maner of wayes, or makes impediment against the judges and ordinarie officiars, or uthers personnes travelling for the dew execution hereof, they sall incur the same paine quhilk the vagabond suld have incurred in case he had bene convict.

Of souldiers and schipbroken men.

Providing alwayes that schipmen and souldiers landing in this realme, have licence of the provest or baillies of the towne, or the judge of the parochin quhair they war schippebroken, or first entered in the realme, sall, and may passe, according to the effect of their licences, to the rowmes quhair they intend to remayne. And that the licence onelie serve in the jurisdiction of the giver; sa that gif the person travelling hame have farther journey, he procure the like licences of the judge of the next parochin or towne throw quhilk he mon passe, and sa fra parochin to parochin, till he be at his resting place.

Searchers of vagaboundes.

And that there be certaine persones, ane or maa, nominate in everie burgh and parochin, be the officers and judge thereof, for searching, receiving, and convoying of the vagaboundes to the commoun prison, irones, or stokkes, upon the commoun charges of the parochin. Quhilkes persones sa elected, sall be halden to do their dewtie diligentlie, as the saidis judges will answere thereupon.

Reparation of hospitals for aged and impotent persones.

And seeing charitie wald that the pure, and aged, and impotent persones, suld be als necessarilie provided as the vagaboundes and strang beggars repressed, and that the aged, impotent, and pure people suld have ludgeing and abiding places, throught the realme to settle themselves intil: It is therefore thought expedient, statute, and ordained, that the Lorde Chancellar, according to the derection of sindrie lovabill Actes of Parliament heretofoire maid, sall call for the erectiones of all hospitalles to be produced befoir him, and inquire and considder the present estait thereof, reducing them so far as is possible to the first institution, as may best serve for the helpe and reliefe of the saidis aged, impotent, and pure peopil;

Inquisition suld be taken of aged, pure, and impotent persons.

And als that the provests and baillies of ilk burghe and towne, and the justice constitute be the King's commission, in every parochin to landwart, sall, betwixt and the said first day of Januar next to cum, take inquisition of all aged, pure, impotent, and decayed persones borne within that parochin, or quhilkes was dwelling, and had their maist commoun resorte in the saide parochin the last seven zeiris bypast, quhilkes of necessitie mon live bee almes:

All pure peopil suld return to their awin parochin—and of their sustentation.

And upon the said inquisition, sall make ane register buike, containing their names and surnames, to remain with the provest and baillies within the burgh, and with the justice in every parochin to landwart; and to the effect, that the number of the pure people of every parochin may be knawin, statutes and ordainis that all pure peopil, within fourtie dayes after the proclamation of this present act at the Mercat Croce of *Edinburgh*, repayre to the parochin quhair they were borne, or had their maist commoun resorte or residence, the last seven zeires by past, and there settil themselves, under the paine to be punished as vagaboundes, and contravenars of this present proclamation.

And the said space of fourtie dayes being by past, that then the provest and baillies within burrowes, and the judge constitute be the Kingis commission in ilk parochin to landwart, make a catalogue of the names of the saidis pure people, inquire the men and women quhair they wer borne, quhidder they are maryed or unmaried, quhen, and be quhom they war maried, and quhat bairnes they have, and quhair their bairnes were baptized, and to quhat forme and trade of life they addresse themselves and their saidis bairnes: Gif they be diseased or haill and abill in bodie, and quhat they got commonly on the day, be their begging: And sik as necessairlie mon be susteined be almes, to see quhat they may be maid content of their awin consentis to accept daylie to live unbeggand, and to provide quhair their remaining sall be, be themselves or in hous with others, with advice of the parochiners quhair the saidis pure peopil may be best ludged and abyde. And thereupon, according to the number, to consider quhat their neidful sustentation will extend to everie oulk, and then, be the gude discretions of the said provests, baillies, and judges in the parochinis to landwart, and sik as they sall call to them to that effect, to taxe and stent the haill inhabitants within the parochin, according to the estimation of their substance, without exception of persones, to sik oulklie charge and contribution as sall be thocht expedient and sufficient to susteine the saidis pure peopil. And the names of the inhabitants stented, togidder with their taxation, to bee likewise registrate:

Collectors for males.—Overseers.

And that, at their discretion, they appoynt overseers and collectours in everie burgh toun and paroche, for the haill zeir, for collecting and receiving the said oulklie portion, quhilkes sall receive the same, and deliver sa meikle thereof to the saidis pure peopil, and in sik maner as the saidis provests and baillies within burgh, and judges in the parochin to land-wart, *respectivé*, sall ordaine and command;

and that overseeres of the saidis pure peopil be appoynted be their discretions, to continue also for a zeir.

Stent-roll.

And at the end of the zeir, that the taxation and stent roll be always maid of new, for the alteration that may be throw death, or be incres or diminution of mennes gudes and substance.

Testimonials to be given to the pure.

And that the provest and baillies in burrowes or tounes, and the saidis judges in the parochines to landwart, sall give an testimonial to sik pure folk as they find not borne in their awin parochin, or making residence therein the last sevin zeiris, sending or directing them to the nixt parochin, and sa fra parochin to parochin quhill they be at the place quhair they were borne, or had their most commoun resort or residence, during the last seven zeirs preceding; there to be put in certain abiding places, and susteined upon the commoun almes and oulklie contribution, as is befoir ordained, except leprous peopil, and bedfast peopil, quhilks may not be transported; providing that it be leiful to the pure peopil, sa directed, to their awin abiding places, with testimonialles to aske almes in their passage, sa as they passe the direct way, not resting twa nichtes togéther in any an place, without occasion of seekeness or storme impeede them.

Of the pure refusand to return to their awn parish.

And if one of the pure people refuse to passe and abide in the places appoynted, or, after the appoyntment, be found begging, then be punished by scourging, imprisonment, and burning throw the eare, as vagabounds and strang beggars; and for the second fault, to be punished as thieves, as is befoir appoynted.

Collectors.

And gif the persones chosen collectours refuse the office, or having accepted the same, beis found negligent therein, or refusis to make their compts everie half zeir, anis at the least, to the provests and baillies in the burrowes, and to the saidis judges in landwart, and to deliver the super-plus of that quhilk rests in their handes at the end of the zeir, or half zeir, to sik as sall be chosen collectours of the new: then ilk-ane of the offenders so offending, sall incur the paine of twentie punds, to the use of the pure of that parochin, and imprisonment of their persones during the kingis will; for quilkes paines, the saidis provests, baillies, and judges sall poynd and distrenzie:

Of them quha refusis to contribute to the help of the pure.

And gif ony persones, being abill to further this charitable worke, will obstinatlie refuse to contribute to the reliefe of the pure, or dis-

courage uthers from sa charitabil ane deede: the obstinate or wilful person, being called befoir the saidis provests and baillies within burgh, or judges in the parochins to landwart, and convict thereof be ane assize, on sufficient testimonie of twa honest and famous witnesses his nightbours, upon the supplication of the saidis provests, baillies, and judges, to the Kingis Majestie and Privie Councel, the obstinate and wilful person or persones sall be commanded to waird, in sik pairt as his hienes and his councel sall appoynt, and there remaine quhill he be content with the ordour of his said paroch, and performe the same in deede:

Of the pure refusand to worke.

And gif the aged and impotent persones, not being sa diseased, lamed, or impotent, bot that they may worke in some maner of wark, sall bee, be the overseers in ony burgh or parochin, appoynted to wark, and zit refuses the same: then, first, the refuser to be scourged and put in the stokkes; and for the second fault, to be punished as vagabounds, as said is.

Of beggers' bairnes.

And gif any begger's bairne, being above the age of five zeirs, and within fourteene, male or female, sall be liked of, be ony subject of the realme of honest estait, the said person sall have the bairne, be the ordoure and derection of the said provest and baillies within burgh, or the judge of every parochin to landwart: Gif he be a manchild, to the age of xxiv. zeirs, and gif sche be a woman-child, to the age of xviij. zeirs; and gif they depart, or be taken or intised from their maister or maistresse service, the maister or maistresse to have the like action and remedie as for their hired servand or prentises, asweil against the bairne, as against the taker and intiser thereof.

Collection of victualles, meat, and drink.

And quhair collecting of money may not be had, and that is over great ane burding to the collectours to gadder victualles, meat, and drink, or uther things for the reliefe of the pure in some parochines: that the provest and baillies in burrowes, and the saidis judges in the parochines to landwart, be advise of certain of the maist honest parochiners, give licence under their handwrits to sik, and sa many, of the saidis pure peopil, or sik uthers of them as they sall think gude, to ask and gadder the charitable alms of the parochiners, at their awn houses. Sa as always it bee speedily appoynted and agried, how the pure of that parochin sall be susteined within the same, and not to be chargeable to uthers, nor troublesome to strangers. And seeing be reason of this present act and ordour, the common prisone, ironnes, and stokkes of everie head burgh of the schire, and uthers townes, ar like to be filled with ane greater number of prisoners nor of befoir

hes been accustomat, in sa far as the saidis vagaboundes, and uthers offenders, ar to be committed to the commoun prisone of the schire or towne where they were taken, the same prisones being in sik townes quhair there is a great number of pure peopil, mair nor they ar weill abill to susteine and relieve; and sa the prisoners ar like to perish in default of sustenance:

Expenses of prisoners.

Therefoir the expense of the prisoners sall be payed be a pairt of the commoun contributions, and oulkly almes of the parochin quhair he or sche was apprehended, allowand to ilk person ane punde of ait breade, and water to drink: for payment quhairof, the presenter of him to prison sall give sovertie, or make present payment:

Execution of this act.

And that the schireffes, stewardes, and baillies of regalities, and their baillies, over all the realme, and their deputes, see this present act put to due execution in all poyntes, within their jurisdictions *respectivé*, as they will answer to God and our Soveraine Lord thereupon:

Interpretation of this act.

And quhat ever doubt or ambiguitie sall happen to arise upon this act, or ony pairt thereof, our Soveraine Lord, with advice of his saidis three estaites, committis the interpretation, explanation, supplement, and full execution thereof, to his Majestie, with advice of his Privie Councel.

No. II.—Excerpt from 1672, c. 18.

Act for Establishing Correction-houses for idle Beggars and Vagabonds.

And to the effect that it may be known what poor persons are to be sent to the saids correction-houses, and who are to be kepped and entertained by the contributions at the paroch kirk for the poor, the ministers of ilk paroch, with some of the elders, and, in case of vacancy of the kirks, three or more of the elders, are hereby ordered to take up an exact list of all the poor persons within their paroches, by name and surname, condescending upon their age and condition, if they be able or unable to work, by reason of age, infirmity, or disease, and where they were born, and in what paroches they have most haunted during the last three years preceding the uptaking of these lists; intimation being alwayes made to the whole heritors of the paroch to be present, and to see the lists right taken up; and that

the heritors, who, and the possessors of their land, are to bear the burden of the maintenance of the poor persons of each paroch, or any of them who shall meet with the said ministers and elders, shall condescend upon such as through age and infirmity are not able to work, and appoint them places wherein to abide, that they may be supplied by the contributions at the paroch church; and gif the same be not sufficient to entertain them, that they give them a badge, or ticket, to ask almes at the dwelling-houses of the inhabitants of their own paroch only, without the bounds whereof they are not to beg; and that they do not at all resort to kirks, mercats, or any other places where there are meetings, at marriages, baptismes, burials, or upon any other public occasion. And likewise, that such of the saids poor persons as are of age and capacity to work, be first offered to the heritors or inhabitants of each paroch, that if they will accept any of them to become their apprentices or servants, they may receive them, upon their oblidgement to entertain and set to work the said poor persons, and relieve the paroch of them; for which cause they shall have the benefit of their work until they attain the age of thirty years, conform to the Act of the twenty-two Parliament of King James the Sixth; and the rest of the saids poor persons be sent to the correction-houses, for whose entertainment the saids heritors shall cause contributions, and appoint a quarter's allowance to be sent along with them, with cloaths upon them to cover their nakedness; and the said allowance to be paid quarterly thereafter, by way of advance.

No. III.—WILLIAM AND MARY, 11th August 1692.

Proclamation of the Privy Council anent Beggars.

WILLIAM AND MARY, etc., to
, Macers of our privy council, messengers-at-arms, our sheriffs in that part, conjunctly and severally, especially constitute, greeting: Whereas several good laws have been made by our royal predecessors for maintaining the poor, and relieving the lieges of the burden of vagabonds; in prosecution whereof, we hereby require the heritors, ministers, and elders of every parish, to meet on *the second Tuesday of September* next, at their parish kirk, and there to make lists of all the poor within their parish, and to cast up the quota of what may entertain them according to their respective needs, and to cast the said quota, the one half upon the heritors, and the other half upon the householders of the parish; and to collect the same in the beginning of every week, month, or quarter, as they shall judge most fit; and to appoint two overseers yearly to collect and distribute the said maintenance to the poor, according to their several needs; and likewise to appoint an officer to serve under the

said overseers, for inbringing of the maintenance, and for expelling stranger vagabonds from the parish, whose fee is to be stented on the parish, as the rest of the maintenance for the poor is stented. And such poor as are not provided of houses for themselves or by their friends, the heritors are to provide them with houses on the expense of the parish, in manner foresaid.

And if any parish shall fail in providing sufficiently for their own poor, the parish so failing shall pay the sum of £200 Scots, to be uplifted, a third part to the pursuer, and two parts to be applied to the maintenance of the poor of the parish, and that monthly, *toties quoties*, as they shall fail in their duty. And if there be any mortifications already, or if any hereafter shall accrue to any parish, the same shall be applied, by the advice of the heritors and elders, to the use aforesaid; but without diminution of the stock of the said mortifications. And the heritors and elders are hereby appointed to have a second meeting at the said parish kirks this year, on the second Tuesday of October next, for a more exact settling of the matter; and yearly thereafter, the heritors, ministers, and elders of every parish, are to meet on the first Tuesday of February, and the first Tuesday of August, yearly, to consult and determine herein, as shall be thought fit, for every ensuing half-year, and to appoint overseers by the year or half-year, as they shall conclude.

And all the ministers are hereby required to give timeous information to the sheriff of the shire, if any parish shall fail in performance of this Christian duty, in whole or in part: and the sheriff, or sheriff-depute, are hereby required to call the delinquent before them without delay, and, if guilty, to fine them in double the quota which the minister shall attest to be wanting, and to cause poind for the same immediately. And where churches are vacant, that two of the greatest heritors residing within the parish, shall be appointed by the first meeting in September next, to inquire into the duty of parishioners and overseers, and to inform the sheriff of their delinquence.

And if any of the poor of the parish are able to work, the heritors of the parish are hereby authorized and required to put them to work according to their capacities, either within the parish or to any adjacent manufactory, as they shall find expedient, furnishing them always with meat and cloaths.

And if any young children be found begging under the age of fifteen years, any person who shall take the said children and bring them before the heritors, ministers, and elders, and cause registrate the name and designation of the child in the session-book, and shall there enact himself to educate the said child either to trade or work, and take an extract of the act from the clerk of the session, the said child shall be obliged to serve the said person so educating him, for meat and cloaths, until he pass the thirtieth year of his age. And

all manufactories are declared to have the same privilege as to the education of such young ones; and this to extend not only to the children of beggars, but also to poor children whose parents are dead, or with consent of the parents, if they be alive; and if any young ones about fifteen years of age shall voluntarily engage themselves upon the like conditions, and if any of the young ones, so educated, shall disobey their masters when reasonably employed, their masters are hereby warranted to correct them as they judge expedient, life and torture excepted; and if any person harbour or reset any such servant belonging to any other, they shall return them to their master on demand, under the pain of one hundred merks, *toties quoties*, as oft as they shall be required so to do. And if any master shall exact any inhuman or too rigid service from any such servant, the sheriffs or justices of peace, upon application of the servants, are to judge in the case; and if the severity so deserve, the servant may be loosed from such a master, the servant, or some for him, paying the master as much yearlie as the fee of servants of that quality would extend to each year, to the number of years wanting to the thirtieth year of the servant's age. And the heritors, meeting on the days appointed, or major part of them, are authorized and required to conclude and determine matters for that half-year.

And to the end that the poor may be returned to their own parishes, and the nation freed of vagabonds, we strictly require and command all beggars within the kingdom forthwith to repair to their several parishes with all diligence, and to keep the ordinary highways to the same; and so soon as they come to their parish, to present themselves to the heritors and elders, that their names may be listed amongst the poor of the parish, and they lodged and entertained accordingly; with certifications to all who shall be found begging without the bounds of their parish after the said second Tuesday of September next, they shall be seized as vagabonds, *imprisoned, and fed on bread and water for a month*, or till they be sent home to their parish, in manner after mentioned; and if they be found vaguing a second time, they are to be marked with an iron on the face; and all the lieges are hereby prohibited to give any almes to such begging vagabonds, other than bread and water allenarly, after the second Tuesday of September, until they arrive at their own parishes.

And to the end that our will hereanent may be more speedily made practicable, we strictly command and charge all our lieges within this our ancient kingdom, to apprehend such beggars as they shall find vaguing without their own parish after the second Tuesday of September, and forthwith to carry them to the principal heritor of the parish where they were apprehended, if it be in landward, and to one of the bailies in towns, who shall examine the beggar in the shire and parish where he was born, and shall direct him forthwith to the nearest parish that lies in the road to the parish of his birth,

and deliver him to the nearest heritor that lies in that highway in the next parish, and so forth from parish to parish in the same road, until he arrive at the parish of his nativity, who shall then list him, and entertain him amongst the poor; and the heritors to whom the vagabonds are delivered, are hereby authorized and required to send two fencible men of their parish to convey every beggar to the heritor of the next parish, and to send a note of the beggar's name and the parish where he was born, which is to be delivered to the next heritor who receives him; and every heritor who receives him is to return a note signed of his reit, and so forth, from heritor to heritor, in every several parish; and if any of the saids beggars offer to make their escape in their transportation, the beggar so doing shall be scourged, and fed with bread and water during the rest of his journey. And whoever gives alms to any beggar not in their parish after the second Tuesday of September, and shall not seize him, in order to his transportation, as said is, shall be fined in 20 shillings Scots, *toties quoties*, to be uplifted by the overseers, and applied to the use of the poor of the parish. And if the heritor to whom the vagabond be brought fail in his duty of sending him, he shall be fined in 20 pound Scots, *toties quoties*, to be applied as said is. If any fencible man, sent to convey them, refuse or fail in his duty, he is to be fined in two merks Scots, *toties quoties*, to be applied as said is; and the said fencible men are to be chosen by turns, as the said parishers.

And whereas by act 18, session 3, Parliament 2, Charles II., correction-houses are appointed to be erected in several burghs therein mentioned, for employing the poor people in work as they are capable, which have hitherto been too much neglected (until the lesser burghs be able to perform what is there required, lest so good a design should totally fail), we hereby strictly require our burghs of *Edinburgh*, *Stirling*, *Dundee*, *Aberdeen*, *Inverness*, *Glasgow*, *Jedburgh*, *Dumfries*, and *Cupar in Fife*, or such of them as have not already established correction-houses, in the manner and to the ends prescribed by the said act, to erect and establish such houses, and to receive such poor for work therein as shall be sent to them from any parish, in manner, and on the conditions prescribed by that act and this, but prejudice of erecting of correction-houses in other burghs therein mentioned with all conveniency. Our will is herefore, and we charge you strictly, and command that incontinent these our letters seen, ye pass to the Market Cross of Edinburgh, and to the Market Crosses of the whole head burghs of the several shires of this kingdom, and there, in our name and authority, by open proclamation, make publication of the premises, that none pretend ignorance: And ordains these presents to be printed.

No. IV.—William and Mary, 29th August 1693.

A Proclamation of the Privy Council anent Beggars.

William and Mary, etc. Forasmuch as the intent and design of our Proclamation, of date 11th August 1593, requiring all beggars within this kingdom forthwith to repair to their several parishes with all diligence, hath been much disappointed and frustrated by the uncertainty of the parishes where the said respective beggars have been born, and for want of suitable provision made by the heritors and magistrates of the respective parishes where the said beggars have been born, or had their last seven years' residence; for remeid whereof, we, with the advice of the Lords of our Privy Council, strictly require and command all the beggars within this kingdom immediately to repair to the several parishes where they were born; or where the parish or place of their birth is not certain or distinctly known, that they repair to the parishes where they last resided for the space of seven years together, and to keep the ordinary highways to the several parishes of their birth, or last seven years' residence; and so soon as they come to the said respective parishes, to present themselves to the heritors and elders; and where parishes are vacant, and have no elders, to the heritors alone, whom we, with advice foresaid, require and command to make the provisions necessary for the said beggars, and to list their names among the poor of the parish, that they may be lodged and entertained accordingly, with certification to all who shall be found begging after the *second Tuesday of September* next, they shall be seized as vagabonds, imprisoned, and fed with bread and water for a month, or till they be sent home to the respective parish of their birth, or last seven years' residence, in manner mentioned in our said former proclamation: And we, with advice foresaid, require and command the magistrates of our burghs royal to meet and stent themselves conform to such order and custom, used and wonted in laying on stents, annuities, or other public burdens, in the respective burghs, as may be most effectual to reach all the inhabitants: And the heritors of the several vacant parishes likewise to meet and stent themselves, for the maintenance of their said respective poor; and to appoint the ingathering, uplifting, and applying of the same for the uses foresaid, sicklike, and in the same manner as the heritors and elders are appointed by our former proclamation: And all the ministers and heritors are hereby required to give timeous intimation to the sheriff of the shire, if any parish or person shall fail in performance of this Christian duty, in hail or in part, and the sheriff, or sheriff-depute, are hereby required to call the delinquents before them without any delay; and if guilty, to fine

them in of double the quota which the ministers or heritors shall attest to be wanting, and to cause poind for the same immediately. And further, for preventing of any question that may arise betwixt the heritors and kirk-session in the several parishes of this kingdom, about the quota of the collections at the church doors, and otherwise, to be made by the said session, to be paid into the heritors for the end foresaid, we do hereby, with advice foresaid, determine the same to be half of the said collections, and ordain the said kirk-session to pay in the same from time to time to the said heritors, or any to be by them appointed accordingly: and we ordain our said former proclamation to stand in full force, etc., and to be put in execution, in so far as the same is not hereby altered.

No. V.—William and Mary, 31st July 1694.

A Proclamation for putting former Acts and Proclamations anent Beggars in Execution.

William and Mary, etc. Forasmuch as many good laws have been made by our royal predecessors, for maintaining the poor, and relieving the lieges from vagabonds, in prosecution whereof several proclamations have been emitted by our Privy Council, for the better putting the said laws in execution, notwithstanding whereof due obedience hath not been hitherto given to the same, so that the poor are not duly provided for, nor the vagabonds restrained in many places: Therefore we hereby require and command the ministers, heritors, and elders of every parish, and householders and inhabitants within the same, *respectivé*, to follow forth and give ready obedience to the Acts of Parliament and Proclamations of our Privy Council already made; And further, we, with advice foresaid, require and command the sheriffs of the several shires, and their deputies, justices of the peace, and magistrates of the royal burghs of this kingdom, within their several jurisdictions, to take trial how far, and in what manner, the said acts of Parliament and proclamations of council have been obeyed and put to execution, conform to the tenors thereof; and where any have neglected, or been deficient, and wanting in what is required of them by the said acts and proclamations, to amerciate and fine them therefor, in the manner specified: And if any difficulty shall happen in the after prosecution thereof, through what cause or occasion soever, not provided for by the said laws and proclamations, the magistrates respective foresaid, are hereby required to represent the same to the Lords of our Privy Council, that they may give such order thereanent as may bring this good work of relieving the poor, and restraining vagabonds, to the desired issue: For the better effectuating whereof, we, with advice foresaid, nominate and appoint a

committee of the Lords of our Privy Council to receive in any representation from the magistrates respective above named: And likewise with power to them to call and convene before them the sheriffs and other magistrates respective aforesaid, to whom the execution of the said acts and proclamations are committed, and particularly the magistrates of Edinburgh, and to examine and take trial of their negligence in the said matter, and to modify the fines and penalties to be exacted from them for the same, and to report their opinion therein to a full council, the first council day of September next. Our will is herefore, etc.

No. VI.—William, 3d March 1698.

Proclamation anent the Poor.

William, etc. That where the many good and laudable laws made for maintaining the poor, and suppression of beggars, vagabounds, and idle persons, have not hitherto taken effect, partly because there were no houses provided for them to reside in, and partly because the persons to whom the execution of these laws was committed have been negligent of their duty; for remeid whereof, we, with the advice of the Lords of our Privy Council, ordain the former proclamations formerly emitted, of the date the 11th August 1692, the 29th August 1693, and last of July 1694, ratified and approven by act 29, session 6, of our current Parliament, to be reprinted and put to full and vigorous execution in all points: And in order to make the said proclamations the more effectual, we, with the advice foresaid, revive act 18, sess. 3, Parl. 11, Charles II., in so far as concerns the providing correction-houses for the receiving and entertaining of beggars, vagabounds, and idle persones within the burghs therein mentioned, viz.—one correction-house at the burgh of *Edinburgh*, for those of the town and shire of *Edinburgh;* one at the burgh of *Haddington*, for those of the shire of *Haddington;* one at *Dunse*, for the shire of *Berwick;* one at *Jedburgh*, for the shire of *Roxburgh;* one at the burgh of *Selkirk*, for the shire of *Selkirk;* one at the burgh of *Peebles*, for the shire of *Peebles;* one at *Glasgow*, for the shire of *Lanark;* one at the burgh of *Dumfries*, for the shire of *Dumfries*; one at the burgh of *Wigton*, for the shire of *Wigton;* one at the burgh of *Kirkcudbright*, for the stewartry of *Kirkcudbright;* one at the burgh of *Ayr*, for the shire of *Ayr;* one at the burgh of *Dumbarton*, for the shire of *Dumbarton;* one at the burgh of *Rothsay*, for the shire of *Bute;* one at *Paisley*, for the shire of *Renfrew;* one at *Stirling*, for the shires of *Stirling* and *Clackmannan;* one at *Linlithgow*, for the shire of *Linlithgow;* one at *Culross*, for these twelve parishes in *Perthshire* belonging to the presbytery of *Dunblane;* one at the burgh of *Perth*, for the rest of the

shire of *Perth;* one at *Montrose*, for the shire of *Kincardine;* one at the burgh of *Aberdeen*, for the shire thereof; one at *Inverness*, for the shires of *Inverness*, *Ross*, and *Cromarty;* one at the burgh of *Elgin*, for the shires of *Elgin* and *Nairn;* one at *Inverary*, for the shire of *Argyle;* four in the shire of *Fife*, viz.—one at *St. Andrews*, one at *Cupar*, one at *Kirkaldy*, and one at *Dunfermline*, for the four ordinary divisions of that shire; one at *Dundee*, for the shire of *Forfar;* one at *Banff*, for the shire of *Banff;* one at the burgh of *Dornoch*, for the shire of *Sutherland;* one at *Wick*, for the shire of *Caithness;* and one at *Kirkwall*, for the shires of *Orkney* and *Zetland;*—each of which houses shall have a large closs, sufficiently enclosed for keeping in the said poor people, that they be not necessitate to be always within doors, to the hurt or hazard of their health: And ordains the said magistrates of the said burghs to provide the correction-houses, and appoint masters and overseers for the same, by advice of the presbytery, or such as they shall appoint, who may set the poor persons to work, and that betwixt and the 1st day of October next, under the pain of 500 merks quarterly, until correction-houses be provided for, conform to the said act.

But in place of the Commissioners of Excise mentioned in the same act, we, with advice foresaid, require and command the sheriffs of the shires and their deputes to put the said act in execution within their respective shires, as to every thing that by the said act was committed to the Commissioners of Excise; and ordains the said sheriffs and their deputes to give account of their diligence herein, betwixt and the 1st of December, under the pain, every one of them, of 500 merks, who shall failzie and neglect to do the samen, to be employed for the use of the poor of the shire, and to be liable in £100 weekly, after the said day, before they return an account of their diligence to our Privy Council, to be employed for the use foresaid.

And ordains the several parishes within every shire and district to send their poor to the magistrates of the towns where the correction-houses are to be provided, against the 1st day of November next, that they may be put into the said correction-houses: And in case the said correction-houses be not ready to serve the poor against the said day, ordains the poor to be sent to be maintained by the magistrates of the burgh who were to provide the said correction-houses, and that aye and while the correction-houses be provided; and that by and attour the foresaid penalties imposed by the said act of Parliament, in case of falzieing of providing the said correction-houses against the said day: And, in the meantime, before the said correction-houses be provided, ordains the said acts and proclamations of our Privy Council to be put to full execution.

And because there may some questions arise in putting the said acts in execution, for which there can be no general rule set down, in respect of the different conditions and circumstances of several places

of the country; therefore, that the said act may be more effectually, and with greater expedition, put in execution, we, with advice foresaid, give power and warrant to the ministers and elders of each parish, with advice of the heritors, or so many of them as shall meet and concur with the ministers and elders, upon intimation to be made by the minister from the pulpit upon the Sabbath day before, to decide and determine all questions that may arise in the respective parishes in relation to the ordering and disposing of the poor, in so far as it is not determined by the laws and acts of Parliament, and the former acts of our Privy Council, which are ratified by the act of Parliament foresaid. Our will is herefore, and we charge you strictly, and command that incontinent these our letters seen, ye pass to the Market Cross of Edinburgh, and remanent Market Crosses of the head burghs of the several shires and stewartries within this kingdom, and thereat, in our name and authority, by open proclamation, make intimation hereof, that none may pretend ignorance. And ordain these presents to be printed.

No. VII.—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 authorized 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 secretary; 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 authorize 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 authorize 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 authorized 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 Superyision, 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 authorized 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 authorized 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

the 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;*[1] 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

[1] Repealed by 24 & 25 Vict. cap. 37.

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 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 unforeseen 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 payment 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 land 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 authorized 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 authorized 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 authorize 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 the 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 the 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 authorized 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 authorized 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 authorized 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 inquiry 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 inquiries: 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 authorized 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 provided 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 authorized 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.[1]

Parochial Board may borrow Money on Security of Assessment remaining due.

LXXXIX. And be it enacted, That if the Parochial Board of any

[1] See 52 Geo. III. c. 95, sec. 13 & 14; 25 & 26 Vict. c. 82.

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 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. VIII.—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 authorized 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, exclusive 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. IX.—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 authorize 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 authorize 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 applica-

tion 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. X.—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 assesssment 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 authorized 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. XI.—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. XII.—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 authorizing 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. XIII.—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.—1. 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 practise 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 sheriff-substitutes; 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.[1] 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 authorized 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 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 authorize 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

[1] Extended 29 & 30 Vict. c. 51, sec. 18.

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 authorized to inquire, which oath the chairman of the board is hereby authorized 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.[1] *The General Board of Commissioners in Lunacy for Scotland appointed by this Act shall exist for five years from 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.*

[1] Repealed 25 & 26 Vict. c. 54, sec. 24.

After Five Years Secretary of State may empower the Inspector-General to exercise Powers of the Board.

XXIII.[1] *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 Exchequer for all the fees and duties hereinbefore provided in respect of licences.*

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

[1] Repealed 25 & 26 Vict. c. 54, sec. 24.

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 apartments, 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.[1] *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.

[1] Repealed 25 & 26 Vict. c. 54, sec. 14.

Orders and Medical Certificates may be amended.

XXXVI.[1] *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 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.

[1] Repealed 29 & 30 Vict. c. 51, sec. 5.

Penalty for receiving Lunatics in Unlicensed Houses or without the required Order.

XXXIX. Any person who shall be convicted of receiving, concealing, 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.[1] *No person shall receive or keep any one lunatic, or 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

[1] Repealed 29 & 30 Vict. c. 51, sec. 13.

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.[1] *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 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*

[1] Repealed 29 & 30 Vict. c. 51, sec. 14.

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 authorized 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 thereby 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 Board, 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 this 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 assignations 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 county, 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 authorized 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 assessments 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 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 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 he 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 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 additional 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.[1] *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 day 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 authorize 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 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

[1] Repealed 25 & 26 Vict. c. 54, sec. 15.

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 authorized, 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 so removed.

Liberation of Lunatic 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, etc., 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 licence 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 transmitted 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 permitting 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 appli-

cation 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 offender 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 authorized 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 authorized 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 authorize 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 authorize you to receive the said *A. B.* as a patient into the public [*or* private] asylum of and I authorize 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.

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.	Date of last previous Admission (if any).
			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 after 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 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 ten pounds.

Board may grant special Licences for Reception in Poorhouses 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.[1] *If any person desirous of being received into any public, private, or district asylum, or into any house specially licensed 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*

[1] Repealed 29 & 30 Vict. c. 51, sec. 15.

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 authorize 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 authorize 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 Pauper 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 Ground 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 satisfaction 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 authorizing the superintendent of the asylum to which the lunatic may be committed to receive the lunatic, and authorizing 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 authorize 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 injury 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 authorize 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, authorize 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 authorize 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 tained, 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, authorizing 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. III.—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 authorized 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 the 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 an 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 entrusted 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 entrust 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 authorize 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 authorize 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 authorize 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 authorized 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, etc., 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 Superannuations to Officers, etc.

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.

Power 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 authorized 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 .

THE BURIAL GROUNDS ACTS.

No. I.—Act 18 & 19 Vict. c. 68, 23d July 1855,

To amend the Laws concerning the Burial of the Dead 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 'Burial Grounds (Scotland) Act, 1855.'

Parochial Board to carry into Execution this Act.

II. In the execution of this Act in parishes not within the limits, prescribed or established under the Act passed in the session of Parliament held in the seventeenth and eighteenth years of the reign of Her present Majesty, intituled 'An Act for the Valuation of Lands and Heritages in Scotland,' of any burgh sending or contributing to send a member to Parliament, 'Parochial Board' shall be held to signify the Parochial Board for the management of the poor, where such parishes are not combined for such management, and where such parishes are so combined the Parochial Board under this Act shall signify and be composed of such members of the combined board as are assessed for relief of the poor either in respect of occupancy or ownership within each parish respectively; and the manner of holding and of transacting business at meetings of such Parochial Boards under this Act shall be similar to the manner in use in respect of the management of the poor; and in parishes within the aforesaid limits of any burgh aforesaid the Town Council of the burgh shall be held to be the Parochial Board of such parish under this Act: Provided always, that where, within the aforesaid limits of any burgh aforesaid, there is included a burgh of regality, the magistrates of such burgh of regality shall, notwithstanding anything hereinbefore enacted, be held to be the Parochial Board of any parish within, or forming part of, such burgh of regality.

Provision as to Parishes partly burghal.

III. Where any parish is partly within and partly without the

limits of such burgh aforesaid, it shall be lawful for the sheriff of the county within which such parish or the greater part thereof is situated, on application to him by any two members of the Parochial Board of such parish, or by any ten persons assessed for relief of the poor within such parish, or by any two or more householders residing within one hundred yards of any burial ground or proposed burial ground within such parish, and on giving notice by advertisement in the *Edinburgh Gazette* and such newspapers of local circulation as he may deem fitting, and hearing any parties having interest, to determine whether such parish shall be held to be a parish within or without the limits of the said burgh for the purposes of this Act, and an interlocutor so determining shall receive effect and be as valid as if the same was set forth in this Act; and it shall not be competent to make any new application to the sheriff for his determination in respect to such parish till after the lapse of five years from the date of his last determination respecting the same.

Proceedings on Complaints of Danger to Health.

IV. It shall be lawful for any two members of the Parochial Board of any parish in Scotland, or for any ten persons assessed for relief of the poor within such parish, or for any two householders residing within one hundred yards of any burial ground or proposed burial ground, to present a petition to the sheriff of the county within which such burial ground or proposed burial ground is situated, setting forth that a burial ground within such parish or such distance is or would be dangerous to health, or offensive or contrary to decency, and the sheriff shall thereupon fix a day, being not less than ten nor more than twenty days after such petition is presented, for inquiring into the allegations contained therein, and shall appoint intimation thereof to be made by advertisement in the *Edinburgh Gazette* and in such newspapers of local circulation as he shall deem fitting, and on hearing the petition shall permit all parties whom he shall judge to have an interest to appear and be heard in such manner as he shall deem fitting, and if on such hearing he shall be of opinion that any of the aforesaid allegations are true, he shall pronounce an interlocutor to such effect, and shall transmit a copy thereof to one of Her Majesty's principal Secretaries of State: Provided that it shall not be competent to present any such petition to the sheriff, except with concurrence of the procurator fiscal, till after the lapse of five years from the date of any petition to the like effect having been dismissed.

On Representation of Secretary of State, Her Majesty in Council may restrain the opening of new Burial Grounds, and order Discontinuance of Burials in specified Places.

V. It shall be lawful for Her Majesty, from time to time, by

order in Council, upon the representation of one of her principal Secretaries of State that a copy of such interlocutor of a sheriff has been received by him, in pursuance thereof to order that no new burial ground shall be opened within certain limits specified in such order, save with the previous approval of one of such Secretaries of State, or (as the case may require) that after a time mentioned in the order burials within certain limits, or in certain burial grounds or places of burial, shall be discontinued wholly, or subject to any exceptions or qualifications mentioned in such order, and such order in Council shall thereupon have like force and effect as if the same were embodied in this Act: Provided always, that notice of such representation, and of the time it shall please Her Majesty to order the same to be taken into consideration by the Privy Council, shall be transmitted to the Crown agent in Edinburgh, and the sheriff-clerk of the county in which such burial ground is situated; and the same shall be by them respectively published in the *Edinburgh Gazette*, and fixed on the doors of the church of or on some other conspicuous places within the parishes affected by such representation, one month before such representation is so considered.

Penalties.

VI. Every person who shall after the time mentioned in such order in Council bury any body, or in anywise act or assist in or permit the burial of any body, in any way contrary to such order, shall be liable for each such offence to be imprisoned for any period not exceeding two calendar months, or to pay a penalty not exceeding twenty pounds.

Order not to extend to Burial Grounds of Quakers or Jews, unless expressly included.

VII. No such order in Council as aforesaid shall be deemed to extend to any burial ground of the people called Quakers, or of the persons of the Jewish persuasion, used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order, or shall be deemed to extend to any non-parochial burial ground, being the property of any private person, unless the same be expressly mentioned in such order.

Saving of certain Rights to bury in Vaults, etc.

VIII. Provided always, that, notwithstanding any such order in Council, where at the time of the passing of this Act any person shall be entitled to any right of interment in or under any church or chapel or within any churchyard or burial ground affected by such order, it shall be lawful for one of Her Majesty's principal Secretaries of State, from time to time, on application being made to him, and on being satisfied that the exercise of such right will not be injurious

to health, to grant licence for the exercise of such right during such time and subject to such conditions and restrictions as such Secretary of State may think fit, but such licence shall be revocable at any time, and shall not give to the holder of such right, or to any other party, any other power than he would have had if this Act had not been passed.

Upon Requisition of Ratepayers or Members of Parochial Board, Meeting of Parochial Board to be convened, to determine whether Burial Ground shall be provided.

IX. Although no burial ground in the parish has been closed by order in Council, the inspector of the poor of any parish not within burgh, and the town clerk in the case of any parish within burgh, shall be bound, upon the requisition in writing of ten or more persons assessed for relief of the poor of the parish, or upon the requisition in writing of any two or more members of the Parochial Board of the parish, to convene a special meeting of the Parochial Board of such parish, for the purpose of determining whether a burial ground shall be provided under this Act for the parish; and if a majority of such meeting of the Parochial Board shall resolve that a burial ground shall be provided under this Act for the parish, such new burial ground shall be provided in the same manner as if an old burial ground had been closed by order in Council.

When Burial Grounds are closed by Order in Council, Board to provide suitable Burial Grounds, etc.

X. Whenever any burial ground shall have been closed by order in Council, the Parochial Board shall forthwith proceed to provide a suitable and convenient burial ground for the parish, and to make arrangements for facilitating interments therein; and in the event of a suitable burial ground not being provided by the Parochial Board within six months after such order or requisition as aforesaid, it shall be lawful for such board, or for any ten or more persons assessed for relief of the poor in the parish, or any two or more members of the Parochial Board, to apply by summary petition to the sheriff to have a suitable portion of land designated for the purpose of a burial ground; and the sheriff shall examine such witnesses and make such inquiry as he shall think proper, and shall keep a note of such evidence as may be adduced, and, if he thinks fit, shall thereupon proceed to designate and set apart such portion as he may deem necessary of any lands in such parish suitable for the purpose, not being part of any policy, pleasure ground, or garden attached to any dwelling-house: Provided always, that due intimation shall have been given of not less than ten days to the owner of such lands, that he may be heard for his interest before such designation is actually made, subject always to an appeal to any of the Lords Ordinary of

the Court of Session, whose decision shall be final, such appeal always being presented within fourteen days of the date of the sheriff's judgment; and provided also, that no land shall be so designated nearer than one hundred yards to any dwelling house without the consent in writing of the owner of such dwelling house; and on such land being so designated the Parochial Board shall proceed to acquire the same in manner hereinafter provided.

Consent of Owners of Houses to new Burial Grounds, where necessary.

XI. Any burial ground may be provided under this Act either within or without the limits of the parish for which the same is provided; but no ground not already used as or appropriated for a cemetery shall be appropriated as a burial ground, or as an addition to a burial ground, under this Act, nearer than one hundred yards to any dwelling house, without the consent in writing of the owner, lessee, and occupier of such dwelling house.

Board may purchase Land for Cemeteries, or contract with Cemetery Companies.

XII. For the providing such burial ground, it shall be lawful for the Parochial Board of the parish to contract for and purchase or take any lands and buildings thereon for the purpose of forming a burial ground, or for making additions to any burial ground to be formed or purchased under this Act, as such board may think fit, or to purchase from any company or persons entitled thereto any cemetery or cemeteries, or part or parts thereof, subject to the rights in vaults and graves and other subsisting rights which may have been previously granted therein: Provided always, that it shall be lawful for such board, in lieu of providing any such burial ground, to contract with any such company or persons entitled as aforesaid for the interment in such cemetery or cemeteries, and either in any allotted part of such cemetery or cemeteries or otherwise, and upon such terms as the Parochial Board may think fit, of the bodies of persons who would have had rights of interment in the burial grounds of such parish.

Certain Provisions of 8 *&* 9 *Vict. c.* 19 *incorporated with this Act.*

XIII. 'The Lands Clauses Consolidation (Scotland) Act, 1845,' except the provisions of that Act 'with respect to the provisions to be made for affording access to the special Act by all parties interested,' shall be incorporated with this Act; and, for the purposes of this Act, the expression, 'the promoters of the undertaking,' wherever used in the said 'Lands Clauses Consolidation (Scotland) Act, 1845,' shall mean any Parochial Board under this Act: Provided always, that the provisions in the said Act 'with respect to the purchase and taking of lands otherwise than by agreement' shall have effect only in respect of such lands as the sheriff of the county shall

have designated as fitting for a burial ground in manner aforesaid: Provided further, that the provisions in the said Act 'with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof,' shall be held to apply only to such lands or portions thereof in which no burial shall have taken place, and such provisions shall not be restricted in operation to any fixed period after the purchase of such lands.

Parochial Boards may concur in providing a Burial Ground for the common Use of their Parishes.

XIV. The Parochial Boards of any parishes which shall have respectively resolved to provide burial grounds under this Act may concur in providing one burial ground for the common use of such parishes, in such manner, not inconsistent with the provisions of this Act, as they shall mutually agree on, and may agree as to the proportions in which the expenses of such burial ground shall be borne by such parishes; and the proportion of each of such parishes of such expenses shall be raised by assessments in manner after-mentioned; and, according and subject to the terms which shall have been so agreed on, the Parochial Boards for such parishes respectively shall, for the purpose of providing and managing such one burial ground, and taking and holding land for the same, act as one joint board for all such parishes, and may have a joint office, clerk, and offices, and all the provisions of this Act shall apply to such joint board accordingly.

Burial Ground to be the Burial Ground of the Parish or Parishes for which it is provided.

XV. When any burial ground shall have been provided in terms of this Act, such burial ground shall, from and after such time as the sheriff of the county shall appoint, be deemed the burial ground, or part thereof, of the parish for which the same is provided; and where the same is provided for two or more parishes such burial ground shall be in law as if such parishes were one parish, and as if such burial ground were the burial ground of such one parish; and the parishioners and inhabitants of such parish, or of each of such parishes, shall have the same rights of sepulture in such burial ground as they respectively would have had in the burial ground or burial grounds in and for their respective parish, subject to the provisions herein contained.

Liabilities of old Burial Grounds transferred to new Burial Grounds.

XVI. Where any burial ground shall be closed in terms of this Act, and a new burial ground provided in place thereof, the whole burdens upon, and liabilities attaching to, the burial ground so closed, shall be transferred to, and become burdens upon, the burial ground

provided in room thereof; and the revenues of the new burial ground shall be liable for the same, in like manner as the revenues of the burial ground so closed were liable.

Management to be vested in Parochial Boards.

XVII. The general management, regulation, and control of the burial grounds provided under this Act shall, subject to the provisions of this Act and the regulations to be made thereunder, be vested in and exercised by the respective Parochial Boards providing the same.

Boards may sell exclusive Rights of Burial, and Right to erect Monuments, etc.

XVIII. Any Parochial Board, under such restrictions and conditions as they think proper, may sell the exclusive right of burial, either in perpetuity or for a limited period, in such parts of any burial ground provided by such board as may with the sanction of the sheriff be appropriated to that purpose, and also the right of constructing any chapel, vault, or place of burial, with the exclusive right of burial therein in perpetuity or for a limited period, and also the right of erecting and placing any monument, gravestone, tablet, or monumental inscription in such burial ground; provided always, that such exclusive rights shall not extend in all to a space greater than one half of such burial ground.

Boards may make Arrangements for facilitating the Conveyance of Bodies to Burial Grounds.

XIX. Any Parochial Board may make such arrangements as they may from time to time think fit for facilitating the conveyance of the bodies of the dead from the parish or the place of death to the burial ground which shall be provided under this Act, or to any other place of burial, subject to the provisions of this Act and the regulations to be made thereunder; and it shall be lawful for any of the aforesaid cemetery companies to undertake any such arrangement, and to carry the same into effect, subject to the provisions and regulations as aforesaid.

Places may be provided for Reception of Bodies until Interment.

XX. It shall be lawful for any Parochial Board, subject to the provisions of this Act and the regulations to be made thereunder, to hire, take on lease, or otherwise to provide fit and proper places in which bodies may be received and taken care of previously to interment, and to make arrangements for the reception and care of the bodies to be deposited therein, and for providing such places such boards may exercise the powers vested in them under this Act for providing burial grounds.

Secretary of State may make Regulations as to Burial Grounds, etc.

XXI. It shall be lawful for one of Her Majesty's principal Secretaries of State, from time to time, to make such regulations in relation to the burial grounds and places of reception of bodies previous to interment which may be provided under this Act, as to him may seem proper for the protection of the public health and the maintenance of public decency; and the Parochial Boards and all other persons having the care of such burial grounds and places for the reception of bodies shall conform to and obey such regulations.

Exemption of Burials from Toll.

XXII. No funeral procession, or carriage in such procession, and no foot passenger, shall, while going to or returning from the place of interment on the occasion of any interment, be liable in any toll or pontage.

Board may lay out and embellish Burial Ground.

XXIII. It shall be lawful for any Parochial Board to enclose, lay out, and embellish any burial ground provided by such board in such manner as may be fitting and proper.

Board to fix Payments for Interments in Burial Ground.

XXIV. Every Parochial Board under this Act shall, subject to the approval of the sheriff of the county, fix and receive such fees and payments in respect of interments in any burial ground provided by such board as they shall think fit, and from time to time revise and alter such fees and payments, and a table showing such fees and payments shall be printed and published, and shall be affixed and at all times continued on some conspicuous part of such burial ground.

Certain Provisions of 10 *&* 11 *Vict. c.* 65 *incorporated with this Act.*

XXV. The provisions of 'The Cemeteries Clauses Act, 1847,' with respect to the protection of the cemetery, shall be incorporated with this Act, and be applicable to any burial ground provided under this Act, and 'the company' in these clauses shall signify the Parochial Board under this Act.

Expenses to be paid by Assessments.

XXVI. The expenses incurred by the Parochial Board of any parish in carrying this Act into execution, in so far as the sums received for exclusive right of burial or as fees or other payments in respect of interments shall be insufficient, shall be raised by assessment, to be levied in the same way as that which may be in force for the time being for the relief of the poor within the parish; and the Parochial Board shall have like powers for the levying of such assess-

ments as Parochial Boards have for the levying of assessments for the relief of the poor.

Power to borrow Money.

XXVII. Provided always, That it shall be lawful for the Parochial Board to borrow any money required for providing and laying out any burial ground under this Act, and to charge the future assessments under this Act with the payment of such money and interest thereon: Provided that there shall be paid in every year, in addition to the interest of the money borrowed and unpaid, not less than one twentieth of the principal sum borrowed, until the whole is discharged.

The Public Works Loan Commissioners may advance money for the Purposes of this Act.

XXVIII. The commissioners for carrying into execution an Act of the session of Parliament holden in the fourteenth and fifteenth year of Her Majesty, chapter twenty-three, 'to authorize for a further period the advance of money out of the consolidated fund to a limited amount for carrying on public works and fisheries and employment of the poor,' and any Act or Acts amending or continuing the same, may from time to time make to the Parochial Board of any parish, for the purposes of this Act, any loan, under the provisions of the recited Act or the several Acts therein recited or referred to, upon security of the assessments for the relief of the poor of the parish.

Minutes of Proceedings of Board to be entered in a Book—Board to keep Accounts, which shall be open to Inspection.

XXIX. Minutes of all proceedings of the Parochial Board under this Act, with the names of the members who attend each meeting, shall be kept; and the Parochial Board shall provide and keep books in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money are paid and such liabilities incurred; and all such books shall at all reasonable times be open to the examination of every member of the Parochial Board and ratepayer, without fee, and they may take copies of or extracts from such books or any part thereof, without paying for the same.

Board may appoint and remove Officers, etc.

XXX. The Parochial Board may appoint and may remove, at pleasure, a clerk and such other officers and servants as shall be necessary for the business of the board in respect of and for the purposes of their burial ground, and may appoint reasonable salaries, wages, and allowances for such clerk, officers, and servants,

and, when necessary, may hire a sufficient office for transacting their business.

Register of Burials to be kept in every Ground provided under this Act—Registers to be Evidence.

XXXI. All burials within any burial ground provided under this Act shall be registered in a register book to be provided by the Parochial Board providing such ground, and kept for that purpose; and such register book shall be so kept by some officer appointed by the said board to that duty; and in such register books shall be distinguished in what parts of the burial ground the several bodies (the burials of which are entered in such register books) are buried; and in case such burial ground has been provided for more than one parish, such register shall be kept or indexed so as to facilitate searches for entries in such books in respect of bodies from the several parishes; and such register books, or copies or extracts purporting to be thereof, shall be received in all courts as evidence of the burials entered therein.

Sheriffs' Decisions to be final.

XXXII. No interlocutor or deliverance of a sheriff under this Act, excepting as herein provided, shall be in any way subject to review, or to be set aside by reason of any defect of form therein or in the procedure on which it followed.

No. II.—Act 20 & 21 Vict. c. 42, 17th August 1857,

To Amend 'The Burial Grounds (Scotland) Act, 1855.' 18 & 19 *Vict. c.* 68.

Whereas it is expedient to amend the Act passed in the session of Parliament holden in the eighteenth and nineteenth years of Her Majesty, chapter sixty-eight, intituled 'An Act to amend the Laws concerning the Burial of the Dead 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:

Section 28 *of recited Act repealed.*

I. The 28th section of the said Act is hereby repealed.

Commissioners of Public Works may make Loans to Parochial Boards for the Purposes of Burial Ground (Scotland) Acts.

II. The commissioners for carrying into execution an Act of the session of Parliament holden in the fourteenth and fifteenth years of Her Majesty, chapter twenty-three, 'to authorize for a further period

the advance of money out of the consolidated fund, to a limited amount, for carrying on public works and fisheries and employment of the poor,' and the several Acts therein recited, mentioned, or referred to, and the Act or Acts subsequently passed for amending, continuing, or extending the same, may from time to time make to the Parochial Board of any parish for the purposes of the said Burial Ground (Scotland) Act, 1855, any loan under the provisions of the recited Act, or the several Acts therein recited or referred to, or subsequently passed for amending, continuing, or extending the same, upon security of the assessments authorized by the said Burial Grounds (Scotland) Act, 1855.

INDUSTRIAL SCHOOLS ACT.

ACT 29 & 30 VICT. c. 118, 10th August 1866,

To consolidate and amend the Acts relating to Industrial Schools in Great Britain.

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 as the Industrial Schools Act, 1866.

Extent of Act.

II. This Act shall not extend to Ireland.

Acts described in First Schedule repealed.

III. The Acts described in the first schedule to this Act are hereby repealed; but this repeal shall not affect the past operation of any such Act, or the force or operation of any certificate, order, rule, or sentence made or passed, or the validity or invalidity of anything done or suffered, or any right, title, obligation, or liability accrued, before the passing of this Act; nor shall this Act interfere with the institution or prosecution of any proceeding in respect of any offence committed against, or any penalty or forfeiture incurred under, any Act hereby repealed.

Interpretation of Terms—28 & 29 *Vict. c.* 126—23 & 24 *Vict. c.* 105.

IV. In this Act, the term 'justice' applies to England only, and

means a justice of the peace having jurisdiction in the place where the matter requiring the cognizance of a justice arises; the term 'two justices' applies to England only, and means two or more justices in petty sessions, or the Lord Mayor or an alderman of the city of London, or a police or stipendiary magistrate or other justice having by law authority to act alone for any purpose with the powers of two justices; the term 'magistrate' applies to Scotland only, and includes sheriff, sheriff-substitute, justice of the peace of a county, judge in a police court, and provost or bailie of a city or burgh; the term 'prison authority' with respect to England has the same meaning as in the Prisons Act, 1865, and with respect to Scotland means the administrators of a prison as defined by the Prisons (Scotland) Administration Act, 1860; the term 'parish' includes a place separately maintaining its own poor.

Industrial Schools—Description of Industrial Schools and Managers.

V. A school in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught, shall exclusively be deemed an industrial school within the meaning of this Act.

The persons for the time being having the management or control of such a school shall be deemed the managers thereof for the purposes of this Act.

Inspector—Inspector of Industrial Schools, and Assistant.

VI. Such one of Her Majesty's inspectors of prisons as one of Her Majesty's principal Secretaries of State (in this Act referred to as the Secretary of State) from time to time thinks fit to appoint to be the inspector of reformatory schools shall be also the inspector of industrial schools.

The Secretary of State may from time to time appoint a fit person to assist the inspector; and every person so appointed shall have such of the powers and duties of the inspector of industrial schools as the Secretary of State from time to time prescribes, but shall act under the direction of the inspector.

Certified Industrial Schools—Mode of certifying Industrial School.

VII. The Secretary of State may, on the application of the managers of an industrial school, direct the inspector of industrial schools to examine into the condition of the school, and its fitness for the reception of children to be sent there under this Act, and to report to him thereon, and the inspector shall examine and report accordingly.

If satisfied with the report of the inspector, the Secretary of State may, by writing under his hand, certify that the school is fit for the reception of children to be sent there under this Act, and thereupon the school shall be deemed a certified industrial school.

School not to be certified as Industrial and Reformatory.

VIII. A school shall not be at the same time a certified industrial school under this Act and a certified reformatory school under any other Act.

Notices of Certificate to be gazetted—Copy of Gazette to be Evidence.

IX. A notice of the grant of each certificate shall within one month be inserted by order of the Secretary of State in the *London* or in the *Edinburgh Gazette*, according as the school to which it refers is in England or in Scotland.

A copy of the *Gazette* containing the notice shall be conclusive evidence of the grant, which may also be proved by the certificate itself, or by an instrument purporting to be a copy of the certificate, and to be attested as such by the inspector of industrial schools.

Inspection of School.

X. Every certified industrial school shall from time to time, and at least once in each year, be inspected by the inspector of industrial schools, or by a person appointed to assist him as aforesaid.

Alterations, etc., of Buildings to be approved.

XI. No substantial addition or alteration shall be made to or in the buildings of any certified industrial school without the approval in writing of the Secretary of State.

Contribution by Counties and Boroughs to Establishment and Enlargement of Schools.

XII. In England a prison authority may from time to time contribute such sums of money, and on such conditions as they think fit, towards the alteration, enlargement, or rebuilding of a certified industrial school,—or towards the support of the inmates of such a school,—or towards the management of such a school,—or towards the establishment or building of a school intended to be a certified industrial school,—or towards the purchase of land required either for the use of an existing certified industrial school, or for the site of a school intended to be a certified industrial school; provided, first, that not less than two months' previous notice of the intention of the prison authority to take into consideration the making of such contribution, at a time and place to be mentioned in such notice, be given by advertisement in some one or more public newspaper or newspapers circulated within the district of the county or borough, and also in the manner in which notices relating to business to be transacted by the prison authority are usually given; secondly, that where the prison authority is the council of a borough, the order for the contribution be made at a special meeting of the council; thirdly,

that where the contribution is for alteration, enlargement, rebuilding, establishment, or building of a school or intended school, or for purchase of land, the approval of the Secretary of State be previously given for that alteration, enlargement, rebuilding, establishment, building, or purchase; in Scotland a county board may contribute to any certified industrial school with the consent and in the manner provided by the Prisons (Scotland) Administration Act, 1860, respecting contributions to reformatories.

Mode of obtaining Approval of Secretary of State.

XIII. In order to obtain the approval of the Secretary of State as aforesaid where required, the managers of the school, or promoters of the intended school, shall forward to the Secretary of State particulars of the proposed establishment or purchase, and a plan of the proposed alteration, enlargement, rebuilding, or building, drawn on such scale, and accompanied by such particulars and estimate of cost, as the Secretary of State thinks fit to require; and the Secretary of State may approve of the particulars and plan submitted to him, with or without modification, or may disapprove of the same, and his approval or disapproval shall be certified by writing under his hand.

Classes of Children to be detained in Certified Industrial Schools—as to Children under Fourteen Years of Age found begging, etc.

XIV. Any person may bring before two justices or a magistrate any child apparently under the age of fourteen years that comes within any of the following descriptions, namely; that is found begging or receiving alms (whether actually or under the pretext of selling or offering for sale anything), or being in any street or public place for the purpose of so begging or receiving alms; that is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence; that is found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment; that frequents the company of reputed thieves.

The justices or magistrate before whom a child is brought as coming within one of those descriptions, if satisfied on inquiry of that fact, and that it is expedient to deal with him under this Act, may order him to be sent to a certified industrial school.

As to Children under Twelve Years of Age charged with Offences.

XV. Where a child apparently under the age of twelve years is charged before two justices or a magistrate with an offence punishable by imprisonment or a less punishment, but has not been in England convicted of felony, or in Scotland of theft, and the child ought, in the opinion of the justices or magistrate (regard being had to his age and to the circumstances of the case), to be dealt with under this Act, the justices or magistrate may order him to be sent to a certified industrial school.

As to refractory Children under Fourteen Years of Age in charge of Parent, etc.

XVI. Where the parent or step-parent or guardian of a child apparently under the age of fourteen years represents to two justices or a magistrate that he is unable to control the child, and that he desires that the child be sent to an industrial school under this Act, the justices or magistrate, if satisfied on inquiry that it is expedient to deal with the child under this Act, may order him to be sent to a certified industrial school.

As to refractory Children under Fourteen Years of Age in Workhouses, Pauper Schools, etc.

XVII. Where the guardians of the poor of a union or of a parish wherein relief is administered by a board of guardians, or the board of management of a district pauper school, or the Parochial Board of a parish or combination, represent to two justices or a magistrate that any child apparently under the age of fourteen years maintained in a workhouse or pauper school of a union or parish, or in a district pauper school, or in the poorhouse of a parish or combination, is refractory, or is the child of parents either of whom has been convicted of a crime or offence punishable with penal servitude or imprisonment, and that it is desirable that he be sent to an industrial school under this Act, the justices or magistrate may, if satisfied that it is expedient to deal with the child under this Act, order him to be sent to a certified industrial school.

Order of Detention—Form and Contents of Order sending Child to School.

XVIII. The order of justices or a magistrate sending a child to a school (in this Act referred to as the order of detention in a school) shall be in writing signed by the justices or magistrate, and shall specify the name of the school.

The school shall be some certified industrial school (whether situate within the jurisdiction of the justices or magistrate making the order or not) the managers of which are willing to receive the child; and the reception of the child by the managers of the school shall be deemed to be an undertaking by them to teach, train, clothe, lodge, and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate of the school takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the children detained in the school is discontinued, whichever shall first happen.

The school named in the order shall be presumed to be a certified industrial school until the contrary is shown.

In determining on the school the justices or magistrate shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a school conducted in accordance with such religious persuasion, and the order shall specify such religious persuasion.

The order shall specify the time for which the child is to be detained in the school, being such time as to the justices or magistrate seems proper for the teaching and training of the child, but not in any case extending beyond the time when the child will attain the age of sixteen years.

Temporary Detention in Workhouse, etc.

XIX. Two justices or a magistrate, while inquiry is being made respecting a child or respecting a school to which he may be sent, may, by order signed by them or him, order the child to be taken to the workhouse or poorhouse of the union, parish, or combination in which he is found or resident,—or where (in Scotland) there is no such poorhouse, or the poorhouse is at an inconvenient distance, to such other place, not being a prison, as the magistrate thinks fit, the occupier whereof is willing to receive him,—and to be detained therein at the cost of the union, parish, or combination for any time not exceeding seven days, or until an order is sooner made for his discharge or for his being sent to a certified industrial school; and the guardians of the poor for the union or parish, or the keeper of the poorhouse, or other person to whom the order is addressed, are and is hereby empowered and required to detain him accordingly.

Power to Parent, etc., to apply to remove Child to a School conducted in accordance with Child's Religious Persuasion.

XX. If the parent, step-parent, or guardian, or if there be no parent, step-parent, or guardian, then the god-parent or nearest adult relative, of a child sent or about to be sent to a certified industrial school which is not conducted in accordance with the religious persuasion to which the child belongs, states to the justices or magistrate by whom the order of detention has been or is about to be made (or to two justices or a magistrate having the like jurisdiction) that he objects to the child being sent to or detained in the school specified or about to be specified in the order, and names another certified industrial school in Great Britain which is conducted in accordance with the religious persuasion to which the child belongs, and signifies his desire that the child be sent thereto, then and in every such case the justices or magistrate shall, upon proof of such child's religious persuasion, comply with the request of the applicant; provided, first, that the application be made before the child has been sent to a certified industrial school, or within thirty days after his arrival at such a school; secondly, that the applicant show to the satisfaction of the justices or

magistrate that the managers of the school named by him are willing to receive the child: Provided always, with respect to Scotland, that if any child who has become chargeable to any parish, and who is under this section sent from Scotland to a school out of Scotland, might have been removed from Scotland (under any Act for the time being in force relating to the relief of the poor in Scotland) at the instance of the inspector of the poor of the parish to which he has become chargeable, had he not been sent out of Scotland under this section, then and in every such case the chargeability on such parish for such child shall cease on his being so sent out of Scotland.

Where Order to be for Detention in School of Parochial Board.

XXI. In Scotland, where a magistrate is about to make or has made an order for sending a child to a certified industrial school, and the child is chargeable at the time to any parish, or has been so chargeable within three months then last past, and there is in that parish a certified industrial school maintained by the Parochial Board thereof, and conducted in accordance with the religious persuasion to which the child belongs, and the inspector of the poor of such parish certifies to the magistrate (or to a magistrate having the like jurisdiction) that he requires the child to be sent to the certified industrial school in such parish maintained by the Parochial Board thereof, and conducted in accordance with the religious persuasion to which the child belongs, then and in every such case the magistrate shall direct the child to be sent to the last-mentioned school accordingly, the inspector of the poor defraying the expense of conveying the child thither; provided that where the order of detention has been made, the application of the inspector to the magistrate be made within fourteen days of the day of the making of the order.

Order to be Warrant for Conveyance and Detention.

XXII. The order of detention in a school shall be forwarded to the managers of the school with the child, and shall be a sufficient warrant for the conveyance of the child thither, and his detention there.

Expenses of Conveyance to School.

XXIII. The expense of conveying to a certified industrial school a child ordered to be sent there shall be defrayed by the police authorities by whom he is conveyed, and shall be deemed part of the current expenses of those police authorities.

Evidence of Order of Detention.

XXIV. An instrument purporting to be an order of detention in a school, and to be signed by two justices or a magistrate, or purporting to be a copy of such an order, and to be certified as such

a copy by the clerk to the justices or magistrate by whom the order was made, shall be evidence of the order.

Management of School—Religious Instruction in School.

XXV. A minister of the religious persuasion specified in the order of detention as that to which the child appears to the justices or magistrate to belong, may visit the child at the school on such days and at such times as are from time to time fixed by regulations made by the Secretary of State for the purpose of instructing him in religion.

Lodging Child out of School.

XXVI. The managers of a school may permit a child sent there under this Act to lodge at the dwelling of his parent or of any trustworthy and respectable person, so that the managers teach, train, clothe, and feed the child in the school as if he were lodging in the school itself, and so that they report to the Secretary of State, in such manner as he thinks fit to require, every instance in which they exercise a discretion under this section.

Licence for living out of School.

XXVII. The managers of a school may, at any time after the expiration of eighteen months of the period of detention allotted to a child, by licence under their hands, permit him to live with any trustworthy and respectable person named in the licence, and willing to receive and take charge of him.

Any licence so granted shall not be in force for more than three months, but may at any time before the expiration of those three months be renewed for a further period not exceeding three months, to commence from the expiration of the previous period of three months, and so from time to time until the period of the child's detention is expired.

Any such licence may also be revoked at any time by the managers of the school by writing under their hands, and thereupon the child to whom the licence related may be required by them, by writing under their hands, to return to the school.

The time during which a child is absent from a school in pursuance of a licence, shall, except where such licence has been forfeited by his misconduct, be deemed to be part of the time of his detention in the school, and at the expiration of the time allowed by the licence he shall be taken back to the school.

A child escaping from the person with whom he is placed under a licence, or refusing to return to the school on the revocation of his licence, or at the expiration of the time allowed thereby, shall be deemed to have escaped from the school.

Power to apprentice Child.

XXVIII. The managers of a school may, at any time after a child has been placed out on licence as aforesaid, if he conducted himself well during his absence from the school, bind him, with his own consent, apprentice to any trade, calling, or service, notwithstanding that his period of detention has not expired, and every such binding shall be valid and effectual to all intents.

Rules of School to be approved by Secretary of State.

XXIX. The managers of a certified industrial school may from time to time make rules for the management and discipline of the school, not being inconsistent with the provisions of this Act; but those rules shall not be enforced until they have been approved in writing by the Secretary of State; and rules so approved shall not be altered without the like approval.

A printed copy of rules purporting to be the rules of a school so approved and to be signed by the inspector of industrial schools shall be evidence of the rules of the school.

Evidence as to Reception in School, etc.

XXX. A certificate purporting to be signed by one of the managers of a certified industrial school or their secretary, or by the superintendent or other person in charge of the school, to the effect that the child therein named was duly received into and is at the signing thereof detained in the school, or has been duly discharged or removed therefrom or otherwise disposed of according to law, shall be evidence of the matters therein stated.

Liability to Removal not affected by Stay at School.

XXXI. The time during which a child is detained in a school under this Act shall for all purposes be excluded in the computation of time mentioned in section one of the Act of the session of the ninth and tenth years of Her Majesty's reign (chapter sixty-six), 'to amend the laws relating to the removal of the poor,' as amended by any other Act.

Offences at School, etc.—Refusal to conform to Rules—29 & 30 Vict. c. 117.

XXXII. If a child sent to a certified industrial school, and while liable to be detained there, being apparently above ten years of age, and whether lodging in the school itself or not, wilfully neglects or wilfully refuses to conform to the rules of the school, he shall be guilty of an offence against this Act, and on summary conviction thereof before two justices or a magistrate shall be liable to be imprisoned, with or without hard labour, for any term not less than

fourteen days and not exceeding three months, and the justices or magistrate before whom he is convicted may direct him to be sent at the expiration of the term of his imprisonment to a certified reformatory school, and to be there detained subject and according to the provisions of the Reformatory Schools Act, 1866.

Penalty on Child escaping from School.

XXXIII. If a child sent to a certified industrial school, and while liable to be detained there, and whether lodging in the school itself or not, escapes from the school, or neglects to attend thereat, he shall be guilty of an offence against this Act, and may at any time before the expiration of his period of detention be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a justice or magistrate having jurisdiction in the place or district where he is found, or in the place or district where the school from which he escaped is situate; and he shall thereupon be liable, on summary conviction before such a justice or magistrate, to be, by and at the expense of the managers of the school, brought back to the same school, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his committing the offence.

If the child charged with such an offence is apparently above ten years of age, then, on his summary conviction of the offence before two such justices or such a magistrate, he shall be liable, at the discretion of the justices or magistrate, instead of being sent back to the same school, to be imprisoned with or without hard labour for any term not less than fourteen days and not exceeding three months, and the justices or magistrate before whom he is convicted may direct him to be sent at the expiration of the term of his imprisonment to a certified reformatory school, and to be there detained subject and according to the provisions of the Reformatory Schools Act, 1866.

29 & 30 *Vict. c.* 117—*Penalty on Persons inducing Offenders to escape from Certified Industrial Schools.*

XXXIV. If any person does any of the following things (that is to say,)—First, knowingly assists, directly or indirectly, a child liable to be detained in a certified industrial school to escape from the school; second, directly or indirectly induces such a child so to escape; third, knowingly harbours or conceals a child who has so escaped, or prevents him from returning to school, or knowingly assists in so doing; every such person shall be guilty of an offence against this Act, and shall, on summary conviction thereof before two justices or a magistrate, be liable to a penalty not exceeding twenty pounds, or, at the discretion of the justices, to be imprisoned for any term not exceeding two months, with or without hard labour.

Expenses of Children in Schools—Power of Treasury to contribute towards Custody, etc., of Children detained.

XXXV. The Commissioners of Her Majesty's Treasury may from time to time contribute, out of money provided by Parliament for the purpose, such sums as the Secretary of State from time to time thinks fit to recommend towards the custody and maintenance of children detained in certified industrial schools; provided that such contributions shall not exceed two shillings per head per week for children detained on the application of their parents, step-parents, or guardians.

Power to Prison Authority to contract for Reception of Children in Schools.

XXXVI. In England a prison authority may contract with the managers of a certified industrial school for the reception and maintenance therein of such children as are from time to time ordered by justices to be sent there from the district of the prison authority.

Power to Guardians of Poor, etc., to contribute.

XXXVII. The guardians of the poor of a union or parish, or the board of management of a district pauper school, or the Parochial Board of a parish or combination, may from time to time, with the consent in England of the Poor Law Board, and in Scotland of the Board of Supervision, contribute such sums as they think fit towards the maintenance of children detained in a certified industrial school on their application.

Recovery of Cost of Maintenance in Schools in Scotland when Parishes, etc., are liable.

XXXVIII. In Scotland where a child sent to a certified industrial school under this Act is at the time of his being so sent, or within three months then last past has been, chargeable to any parish, the Parochial Board and inspector of the poor of the parish of the settlement of such child, if the settlement of the child is in any parish in Scotland, shall, as long as he continues so chargeable, be liable to repay to the Commissioners of Her Majesty's Treasury all expenses incurred in maintaining him at school under this Act to an amount not exceeding five shillings per week, and in default of payment those expenses may be recovered by the inspector of industrial schools, or any agent of the inspector, in a summary manner before a magistrate having jurisdiction in the place where the parish is situate.

Provided always, that nothing in this Act shall prevent any Parochial Board on whose funds the cost of support of any such child has become a charge from adopting such steps for the recovery of any sums which may have been paid by such Parochial Board for any

such child against the parish of his settlement, or for his removal, as may be competent to them under any Act for the time being in force relating to the relief of the poor in Scotland.

Contribution by Parent.

XXXIX. The parent, step-parent, or other person for the time being legally liable to maintain a child detained in a certified industrial school shall, if of sufficient ability, contribute to his maintenance and training therein a sum not exceeding five shillings per week.

Order for Enforcement of Contribution by Parent, etc.

XL. On the complaint of the inspector of industrial schools, or of any agent of the inspector, or of any constable under the directions of the inspector (with which directions every constable is hereby required to comply), at any time during the detention of a child in a certified industrial school, two justices or a magistrate having jurisdiction at the place where the parent, step-parent, or other person liable as aforesaid resides may, on summons to the parent, step-parent, or other person liable as aforesaid, examine into his ability to maintain the child, and may, if they or he think fit, make an order or decree on him for the payment to the inspector or his agent of such weekly sum, not exceeding five shillings per week, as to them or him seems reasonable, during the whole or any part of the time for which the child is liable to be detained in the school.

Every such order or decree may specify the time during which the payment is to be made, or may direct the payment to be made until further order.

In Scotland any such order or decree shall be held to be and to have the effect of an order or decree in each and every week for payment of the sum ordered or decreed to be paid for such week; and under the warrant for arrestment therein contained (which the magistrate is hereby authorized to grant if he sees fit), it shall be lawful to arrest weekly for payment of such weekly sum as aforesaid the wages of the defender due and current, and such arrestment shall attach not only to the wages due and payable to the defender at the date thereof, but also to the wages current for the week or other term or period in which such arrestment is executed, any law or statute notwithstanding.

Every such payment, or a proper proportionate part thereof, shall go in relief of the charges on Her Majesty's Treasury, and the same shall be accounted for as the Commissioners of Her Majesty's Treasury direct, and where the amount of the payment ordered in respect of any child exceeds the amount contributed by the Commissioners of Her Majesty's Treasury in respect of that child, the balance shall be accounted for and paid to the managers of the school.

The Secretary of State may, in his discretion, remit wholly or partially any payment so ordered.

Two justices or a magistrate having jurisdiction to make such an order or decree may from time to time vary any such order or decree as circumstances require, on the application either of the person on whom such order or decree is made, or of the inspector of industrial schools, or his agent, on fourteen days' notice being first given of such application to the inspector or agent, or to such person respectively.

Discharge, etc., of Children from School—Detention to cease on Child attaining Sixteen.

XLI. A person who has attained the age of sixteen years shall not be detained in a certified industrial school except with his own consent in writing.

Transfer to another School by Secretary of State.

XLII. The Secretary of State may at any time order a child to be transferred from one certified industrial school to another, but so that the whole period of his detention be not thereby increased.

The Secretary of State may also at any time order a child being under sentence of detention in an industrial school established under any other Act of Parliament, the general rules for the government whereof have been approved by the Secretary of State, to be transferred to a certified industrial school under this Act; and in that case the child shall after the transfer be deemed to be subject in all respects to the provisions of this Act, but so that the whole period of his detention be not by such transfer increased.

The Commissioners of Her Majesty's Treasury may pay, out of money provided by Parliament for the purpose, such sum as the Secretary of State thinks fit to recommend, in discharge of the expenses of the removal of any child transferred under the provisions of this Act.

Discharge by Secretary of State.

XLIII. The Secretary of State may at any time order any child to be discharged from a certified industrial school or from any industrial school established under any other Act of Parliament, the general rules for the goverment whereof have been approved by the Secretary of State, either absolutely or on such condition as the Secretary of State approves, and the child shall be discharged accordingly.

Withdrawal, etc., of Certificate of School—Power for Secretary of State to withdraw Certificate.

XLIV. The Secretary of State, if dissatisfied with the condition of a certified industrial school, may at any time, by notice under his hand addressed to and served on the managers thereof, declare that the certificate of the school is withdrawn as from a time specified in

the notice, not being less than six months after the date thereof; and at that time the certificate shall be deemed to be withdrawn accordingly, and the school shall thereupon cease to be a certified industrial school.

Resignation of Certificate by Managers.

XLV. The managers or the executors or administrators of a deceased manager (if only one) of a certified industrial school may give notice in writing to the Secretary of State of their intention to resign the certificate of that school, and at the expiration in the case of managers of six months, and in the case of executors or administrators of one month, from the receipt of that notice by the Secretary of State (unless before that time the notice is withdrawn) the certificate shall be deemed to be resigned accordingly, and the school shall thereupon cease to be a certified industrial school.

Gazetting and Evidence of Withdrawal, etc.

XLVI. A notice of the withdrawal or resignation of the certificate of a certified industrial school shall within one month be inserted by order of the Secretary of State in the *London* or in the *Edinburgh Gazette*, according as the school is in England or Scotland.

A copy of the *Gazette* containing such notice shall be conclusive evidence of such withdrawal or resignation.

A certificate shall be presumed to be in force until the withdrawal or resignation thereof is proved.

Cesser of Reception of Children on Notice, etc.

XLVII. Where notice is given of the withdrawal or resignation of the certificate of a certified industrial school, no child shall be received into the school for detention under this Act after the receipt by the managers of the school of the notice of withdrawal, or after the date of the notice of resignation, as the case may be; but the obligation of the managers to teach, train, clothe, lodge, and feed any children detained in the school at the time of such receipt or at the date of such notice shall, except as far as the Secretary of State otherwise directs, be deemed to continue until the withdrawal or resignation of the certificate takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the children detained in the school is discontinued, whichever shall first happen.

Discharge of Children detained, etc.

XLVIII. Where a school ceases to be a certified industrial school the children detained therein shall be either discharged or transferred to some other certified industrial school by order of the Secretary of State.

Houses of Refuge, etc., in Scotland—in Scotland, power for Industrial Schools under Local Acts, etc., to receive Children.

XLIX. Where in any city, town, or place in Scotland there has been erected under local Act of Parliament or otherwise, any house of refuge for destitute children or any industrial school, or other similar institution, the commissioners, directors, or managers thereof may receive and maintain therein, if willing to do so, all such children as are sent thereto under this Act, and may pay such portion of the fund under their control as they think proper for the training, maintenance, and disposal of such children; provided that such house of refuge, school, or institution is certified as an industrial school under this Act, and the rules thereof, and all alterations thereof from time to time, are approved by the Secretary of State.

Expenses of Prison Authorities, etc.—Expenses of Prison Authorities and County Boards, how defrayed.

L. Expenses incurred by a prison authority in England in carrying into effect the provisions of this Act shall be deemed expenses incurred by that authority in carrying into effect the provisions of the Prison Act, 1865, and shall be defrayed accordingly.

Expenses incurred by a county board in Scotland in carrying into effect the provisions of this Act shall be a charge on the assessment for current expenses incurred by that board in carrying into effect the provisions of the Prisons (Scotland) Administration Act, 1860.

Miscellaneous—Acts regulating Procedure.

LI. The following Acts—

In England, the Act of the session of the eleventh and twelfth years of Her Majesty's reign (chapter forty-three), 'to facilitate the performance of the duties of justices of the peace out of sessions, within England and Wales, with respect to summary convictions and orders,' and any Acts amending the same;

In Scotland, The Summary Procedure Act, 1864,—

shall apply to all offences, payments, and orders in respect of which jurisdiction is given to justices or a magistrate by this Act, or which are by this Act directed to be prosecuted, enforced, or made in a summary manner or on summary conviction.

Use of Forms in Schedule.

LII. No summons, notice, or order made for the purpose of carrying into effect the provisions of this Act shall be invalidated for want of form only; and the forms in the schedule to this Act annexed, or forms to the like effect, may be used in the cases to which they refer, with such variations as circumstances require, and when used shall be deemed sufficient.

Service of Notices on Managers.

LIII. Any notice may be served on the managers of a certified industrial school by being delivered to any one of them personally, or by being sent by post or otherwise in a letter addressed to them or any of them at the school, or at the usual or last known place of abode of any of the managers, or of their secretary.

Application of Act to existing Certified Schools.

LIV. This Act shall apply to all certified industrial schools being such at the passing of this Act, and to all children sent thereto before the passing of this Act, but no child shall be detained at any industrial school, in pursuance of any order made before the passing of this Act, for a longer period than he would have been liable to be detained if this Act had not been passed.

THE FIRST SCHEDULE.

Acts Repealed.

24 & 25 Vict. c. 113.	The Industrial Schools Act, 1861.
24 & 25 Vict. c. 132.	The Industrial Schools (Scotland) Act, 1861.
25 & 26 Vict. c. 10.	An Act for continuing for a further limited Time, and for extending the Operation of Orders made under the Industrial Schools Act, 1861, and the Industrial Schools (Scotland) Act, 1861.

THE SECOND SCHEDULE.

Forms.

A.—*Order sending Child to Industrial School.*

to wit. } Be it remembered, That on the day of in pursuance of the Industrial Schools Act, 1866, we, two of Her Majesty's justices of the peace for the said [*county*] of , do order that *A. B.* of (whose religious persuasion appears to us to be), being a child subject to the provisions of section of the said Act, be sent to the certified industrial school at , and that he be detained there during .

(Signed) *L. M.*
N. O.

C.—*Complaint for enforcing in England Contribution from Parent, etc.*

D.—*Summons to Parent, etc.*

E.—*Order on Parent, etc., to contribute a Weekly Sum.*

F.—*Distress Warrant for Amount in Arrear.*

G.—*Commitment in Default of Distress.*

H.—*Order in Scotland on Parent, for Payment towards Maintenance of Child.*

The sheriff [*or as the case may be*] having considered the complaint of *E. F.*, the inspector of industrial schools, made under the Industrial Schools Act, 1866, and having heard parties thereon [*or*, in absence of *C. D.*, *designing him*, duly cited, but not appearing], pursuant to the said Act, decerns *C. D.* complained on, weekly and every week from the day of to pay to the said *E. F.*, or to his agent from time to time authorized to receive the same, the sum of shillings for the maintenance and training of *A. B.*, son [*or as the case may be*] of the said *C. D.*, now detained in the certified industrial school of under an order by of date until the said child attains the age of sixteen years, or is lawfully discharged from the said school, and grants warrant of arrestment to be executed by any constable or messenger-at-arms.

Given under my hand this day of at in the county aforesaid.

[*Magistrate's Signature.*]

VALUATION ACT.

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 preced-

ing 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 authen-

ticate 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 authorize 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 authorize 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 days' 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, etc., 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, fail-

ing 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, etc., 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 signatures 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 authorized 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 after mentioned, 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 com-

missioner 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 of 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 afore-

said 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 compared 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 proportions 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, etc., 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 authorized 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 objection, 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 valuations 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 Rolls 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 designation 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 sepa-

rately 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 authorized 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 herein-before 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 authorized 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 life-renters 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

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 authorized 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 six-

pence 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 provided, 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 authorized 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.

XVII. 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 vacci-

nator 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 of 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 herein-before 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 authorized 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 parishes 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 .

ADDENDUM.

WHILE this work was in the press, two important statutes were passed; the one relating to the duties of Assessor of Railways, and amending in certain respects the Valuation Acts; the other consolidating and amending the law relating to the Public Health in Scotland—the 30 & 31 Vict. c. 101. The latter contains 122 clauses, and is too long for insertion in this Appendix, which has already much exceeded the limits originally assigned to it; but the following is the

VALUATION AMENDMENT ACT.

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 included 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 local 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 valuation 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 valua-

tion 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 Acts.

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.

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