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Contributors

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A DIGEST OF THE LAW OF SCOTLAND

RELATING TO

THE POOR, THE PUBLIC HEALTH,

AND OTHER MATTERS MANAGED BY PAROCHIAL BOARDS.



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A DIGEST

OF

THE LAW OF SCOTLAND

RELATING TO

THE POOR, THE PUBLIC HEALTH,

AND OTHER MATTERS MANAGED BY PAROCHIAL BOARDS.

BY

JOHN GUTHRIE SMITH,

ADVOCATE.

Third Edition.

EDINBURGH:

T. & T. CLARK, 38 GEORGE STREET.

1878.

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PREFACE.

SINCE this work was first published, Parochial Boards have been entrusted with a number of duties unconnected with the Poor Law, the most important being the execution of the Statute passed in 1867 with respect to the Public Health. A new and interesting field has also been opened by the decisions of the Court of Appeal on the principles of Valuation; and in the complicated relations of social life, the cases which have occurred in the Law of Settlement have been numerous and important.

With the view of making the work a manual of the entire law relating to Parish Business, which might be practically useful to those engaged in its administration, a considerable amount of new matter has been introduced into the present edition. A short supplemental chapter has likewise been added, explanatory of the powers of the Local Authority in carrying out the Public Health Act; but it was deemed unnecessary to do more, because, so far as it consists of a Code of Sanitary Regulations, the Act speaks for itself and needs no analysis. The result is, the work now appears in an enlarged and somewhat altered form, but substantially the original arrangement has been retained.

I desire to acknowledge the very valuable assistance

which I have received from Mr. William C. Smith, advocate, who has kindly taken the trouble to verify the references, and revise the proof sheets in their passage through the press; and Mr. Francis Gebbie, advocate, has been so good as assist me in the preparation of the index.

EDINBURGH, *March* 1878.

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INTRODUCTION.

A SYSTEM of Poor Law consists essentially of only two parts; the one relates to the raising, the other to the distribution of the funds belonging to the poor. The rate may be either national or local. In Scotland, following the old ecclesiastical division of the country into parishes, each parish is held responsible for its own pauperism, the management of the affairs of the parish being entrusted to a local representative body termed 'The Parochial Board;' and for the purpose of adjusting the burden among different parishes, we have the law of Parochial Settlement. The law, as administered in Scotland, thus naturally divides itself into four main branches, —Administration, Assessment, Relief, and Settlement,—and this order of treatment has been followed in the present work.

In dealing with pauperism, the earlier efforts of the Scottish Parliament, known as the 'Statutes of Beggars,' and beginning with Acts 1424 (cc. 25, 42), were mere measures of police designed for the suppression of vagrancy and the regulation of begging. At that time the country, poor and thinly peopled, appears to have been overrun by mendicants, till the evil became so great that Parliament had to interfere for its suppression. A distinction was made between those persons who, being sick and impotent, were unable to earn their livelihood, and 'strong and masterful beggars,' able, but not willing, to exercise an honest employment. The former were allowed to beg, receiving a badge or token for this purpose under certain conditions. The latter were denounced as 'sorners who, besides other inconveniences which they daily produce in the commonwealth, procure the wrath and displeasure of God for the wicked and ungodly form of life used amongst them, without marriage or the baptizing of a great number of their bairns.' Of the

classes of which they were composed, some idea may be formed from the catalogue given in one of the early statutes, where they are described as 'gipsies,' 'fortune-tellers,' 'vagabond scholars of the Universities,' 'wandering ministrels,' and others, 'well and stark in body and able to work,' but alleging themselves to have been 'herried or brunt in some far part of the realm.' It was directed that they should be apprehended and put in prison so long as they had any goods of their own to live on; and if they had none, that they should have their ears cut off and be banished from the country, 'and gif thereafter they be found again that they be hanged.'[1]

At length the Act 1579, cap. 74 (apparently borrowed from the 14th of Queen Elizabeth), laid the foundation of our present system of poor laws by introducing a compulsory assessment[2] to supplement the funds derived from the church-door collections and other voluntary sources, and by requiring a register to be prepared by the magistrates of each burgh, and the justices in every rural parish, of all aged, poor, and impotent persons born within the parish, and who were dwelling and had their most common resort therein for seven years bypast, who of necessity must live by alms. Those who did not belong to the parish, not being leprous or bedfast, were to receive a 'testimonial,' under which they were to be permitted to beg their way back to the parish bound to keep them, and if they refused, were to be punished by scourging and imprisonment. When the register was so prepared, the authorities were directed to consider what their needful sustentation would extend to every week, and then to stent and tax the whole inhabitants within the parish according to the estimation of their substance, without exception of persons, such weekly charge and contribution as should be thought expedient and sufficient to sustain the said poor people, the names of the inhabitants so stented, together with their taxation, being likewise registered.

We have here all the leading features of the existing law, —a statutory right to relief; a limitation of it to those who

[1] 1449, cap. 42. Cf. English Statute of Vagabonds, 3 and 4 Edw. VI. cap. 16.

[2] Erskine, Inst. i. 7. 63, seems to be wrong in stating that the Act 1535, cap. 22, authorized an assessment.

are not able-bodied; a roll of ratepayers; a poor's roll; and the duty incumbent on each parish confined to its own poor. But, in point of fact, the assessment which was authorized to be made was for a long time found unnecessary. Indeed, so strong was the feeling against compulsory assessment, that, excepting occasional temporary impositions in periods of pressing emergency, it appears not to have been resorted to at all until about the year 1755, and not to any considerable extent until times comparatively recent. In 1820, out of 885 parishes, the number assessed was only 192, and in 1839 there were no more than 238. All the parishes except 69 are now under assessment.

The Act of 1579 was followed by various Acts directing the establishment of correction-houses for idle beggars and vagabonds (a scheme which appears never to have been carried out), and transferring the management of the affairs of the poor, in country and landward parishes, to the heritors and kirk-session.[1] A proclamation of the Privy Council of 11 August 1692, directs these persons to meet once a year at the parish church; there to make up a list of all the poor within the parish; to cast up a quota of what may entertain them according to their respective needs; and to cast the said quota, one-half upon the heritors and the other half upon the householders of the parish. But the practical effect of all the legislation on the subject was, that the care of the poor was left in the hands of the church. When the whole people belonged to one communion, and weekly assembled for public worship under one roof, it might safely be left to Christian morality to enforce the obligations of the statutes. The weekly collections at the door of the parish church formed a sufficient fund for the relief of cases of real necessity, which were all personally known to the minister and his elders; while the calling in of the heritors and proprietors, who, in the event of the funds being insufficient, had to submit to the assessment, acted as a check on improvidence, and was an encouragement to administer the funds with due regard to economy. Occasionally there might be a desire to employ the church collections for church purposes at the expense of the poor, and, in order to pre-

[1] Acts 1594, cap. 149; 1597, cap. 292; 1600, cap. 19; 1672, cap. 18; 1695, cap. 43; 1698, cap. 21.

vent any question of this kind, it was ordered by a proclamation of 29 August 1693 that the proportion to be expended for the benefit of the poor should be one-half of the total sum collected at the church door and otherwise, and each kirk-session was ordained to pay in the same from time to time to the heritors or any to be appointed by them. If, on the other hand, the minister found the heritors backward in fulfilling the duty imposed upon them by statute, he was directed to have them convened before the sheriff without delay, with a view to their being fined, if found guilty, in double the quota which the minister or heritors should attest to be wanting. The result of this arrangement was, that one-half of the church funds was applied for behoof of the legal poor, and the other half distributed by the kirk-session among the deserving poor and persons who were destitute from temporary and accidental causes, but who, with a little timely help, were often prevented from becoming permanent burdens on the parish. In this manner the country escaped the difficulties connected with a legalized system of able-bodied relief, and it is not surprising that a compulsory assessment was so long unnecessary. The parish poor's box was the church plate, and it answered reasonably well until the effect of the various secessions from the National Church came to be felt. It is a striking illustration of the consequence of removing the relief of the poor from the natural operation of Christian benevolence, that while for 238 parishes (the number assessed in 1839) the cost of litigation and management was £7342, for all the others in Scotland it was only £666. The growth of dissent in the country, and in particular the Disruption of 1843, rendered impossible a return to the system of voluntary assessment every Sunday, with all its advantages of economy of management, discrimination in the distribution of relief, and the maintenance of that spirit of independence and self-reliance which was long a distinguishing characteristic of the peasantry and the poorer classes in Scotland, but which under the new law has practically ceased to exist.

In parishes which were burghal—that is, those which were comprised wholly within the territory of a burgh royal—the persons responsible for the administration were the magistrates, and in some burghs their powers were exercised by

a committee of managers chosen according to some local usage, and on no definite principle. 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 an independent administration, the town's portion being under the charge of the magistrates, the landward or rural portion, of the heritors and kirk-session. But in 1835 it was decided by the House of Lords, in the case of Dunbar,[1] that this was an erroneous practice; that in Scotland parishes are either burghal or non-burghal; and that the latter class includes the case of a royal burgh with a landward or rural district attached. Accordingly, since the date of this decision, in every such case, the affairs of the whole parish were entrusted to one administration, consisting of the kirk-session and heritors, with the magistrates sitting as heritors.

Such was the state of the law prior to the year 1846. For many years the question of poor relief had occupied the attention of Parliament. Commissions of inquiry were appointed for the investigation of the subject in England in 1832, in Ireland in 1830, and in Scotland in 1843. Following these inquiries, the English Act was passed in 1836, the Scotch Act in 1845, and the Irish Act in 1847. The operation of the Scotch poor laws had also been the subject of an exhaustive and able report by a committee of the General Assembly in 1839. The great evil found by the Commissioners was the insufficiency of the funds provided, and the miserably inadequate allowances given to paupers not only in remote parishes in the Highlands and elsewhere, but even in some of the large towns. A pauper, moreover, had no adequate redress in the Courts of law. The sheriff could only compel the heritors and kirk-session to take his case into consideration, without being able to decide what should be sufficient aliment; and although the Court of Session had fuller powers, any appeal to it was obviously a remedy altogether insufficient in the circumstances. The Commissioners also complained of the entire want of uniformity in the administration of the law. In some parishes the paupers were still permitted to beg; in

[1] Landward Heritors of Dunbar *v.* Town Council and Magistrates of Dunbar, 10 April 1835, 1 S. and M'L. App. 134.

others they were periodically quartered on the inhabitants, and there was the widest difference of opinion as to the proper scale and the manner of relief. For a protection against all these evils, the Commissioners recommended the establishment of a Central Board, whose duty it would be to see that the law was faithfully and honestly administered by the local representative bodies, without injustice to the paupers on the one hand, and with due regard to the interests of the ratepayers upon the other. The recommendations of the Commissioners were substantially adopted by Parliament, and resulted in the Act 8 and 9 Vict. cap. 83. The immediate effect of the new law was very largely to increase the charge upon the ratepayers; the total sum spent in relief and management, which was in 1846 £292,518, rose in less than ten years to nearly double that amount, or £584,823, in 1855; and it went on increasing until it reached its culminating point in 1869, when it stood at the sum of £821,184. Since then, however, there has been a continuous decrease in the expenditure, and the amount in 1876 was £797,800.

Since the Board of Supervision was established, various duties unconnected with the administration of the poor law have been imposed upon it by Parliament, and practically it has now come to be the Local Government Board for Scotland. Of these duties, by far the most important are those relating to the Public Health, under the Act which was passed in 1867 for securing a good supply of pure water, a proper system of drainage, and the removal of nuisances in towns and other populous places.

ADMINISTRATION.

CHAPTER I.

THE BOARD OF SUPERVISION.

THE Board of Supervision is composed of nine members—the Lords Provost of Edinburgh and Glasgow, the Solicitor-General of Scotland, the Sheriffs of Perth, Renfrew, and Ross—all for the time being, and three persons nominated by the Crown, one of whom is chairman of the Board, and is the only salaried member. The advantage of such a Board of Control is now generally conceded. The members are able to consider questions of administration free from local interests and prejudices, and with the enlarged knowledge derived from a constant practical acquaintance with the whole parochial system. The local boards, elected by the ratepayers, may be expected to look well after the interests of their own constituents, so far as a careful distribution of the funds is concerned; but it is the business of the Board of Supervision to see that economy is not obtained at the expense of the poor, for whom it is their duty to provide, and to lay down such regulations as to matters of detail not expressly provided for by statute as will give coherence and uniformity to the administration of the law throughout the country. To make this control more effective, the inspector of poor of every parish is practically the Board's officer. The parochial board appoints him, and finds his salary; but the appointment requires the confirmation of the Board of Supervision,[1] who are entitled to form their own opinion as to his fitness or unfitness for the office, whether that unfitness proceeds from something personal to himself, or from

[1] Sec. 56.

his being engaged in a business or filling an office incompatible, in their judgment, with the proper discharge of his duties. 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, governors of poorhouses, and medical officers, 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, whose special duty it is to inquire into and report on the administration of the law by the local officers. When an inspector of the board desires to divest himself of his office, his resignation has to be tendered in writing to the Board of Supervision and accepted by them, before he is relieved of his functions.

The statute of 1845 gave them very ample powers for making inquiries into the management of the poor in every parish and burgh in Scotland.

First. They were empowered to require answers to returns upon any question or matter connected with or relating to the relief of the poor;[1] and

Second. To summon any person before them, and examine him on oath, and call for production of any books, agreements, accounts, and writings in any wise relating to any such question or matter.

Third. They might send down any one of their number to conduct any special inquiry in any part of Scotland and report thereon, the person appointed having, for the purpose of the inquiry, all the powers of the Board with respect to the examination of witnesses and havers on oath.[2]

Fourth. They were authorized, with the consent of the Lord Advocate or Secretary of State, to appoint a member of the Faculty of Advocates, or duly-qualified medical practitioner, or an architect or surveyor, or two or more of such persons, to be commissioners for the purpose of conducting any special inquiry, for a period not exceeding forty days, and to report thereon; and they are entitled to delegate to the person or persons so appointed such of the powers of the Board as they may deem necessary or expedient for summoning or examining witnesses or havers.[3]

[1] Sec. 9. [2] Sec. 10. [3] Sec. 11.

Fifth. It was declared lawful for any of the members, or the secretary of the Board of Supervision, or for any clerk or officer, duly authorized by writing signed by two of the members of the Board, to attend any meetings of the parochial board, and to take part in any of the discussions, but not to vote.[1]

This latter provision was in effect superseded by the appointment of an officer termed the 'visiting officer,' whose duty it is to visit parishes and inspect poorhouses, and conduct such special inquiries as may be ordered by the Board. Further, in 1856, under the authority of the Act '19 and 20 Vict. cap. 117,' two general superintendents were appointed for the purpose of assisting the Board in the execution of their duties. To each of these persons a district of the Highlands has been assigned; and they are invested with all the powers which by the Act 8 and 9 Vict. cap. 83 are conferred on the commissioners thereby directed to be appointed. They are expected to visit each parish in the district, and to 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, to examine into the manner in which relief is administered, and to 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 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. A medical officer has recently been added to the permanent staff of the Board, to advise them on the numerous questions of a medical nature which now come before it under the Public Health Act, 1867.

At the meetings of the Board the chairman has both an original and a casting vote, and power is given to them to devolve on a committee of two or more members all the powers which the statute confers.[2]

The resolutions of the Board are passed in the form either

[1] Sec. 15. [2] Sec. 6.

of General Rules or of Minutes transmitted to the local boards by circular letter. These Minutes are intended to be only of the nature of instructions and recommendations for the guidance of the local authorities; but the Rules have all the force of a code of procedure, and therefore are not effectual without the sanction and approval of the Secretary of State.[1] Any alterations on the rules already in force also require his sanction. A copy of these rules and regulations, approved as aforesaid, and signed and certified by the secretary, is receivable in any Court of law. In the construction of this section, it has been decided that a general resolution adopted by the Board, to the effect that the union of office of Inspector of the Poor with that of Member of the School Board, or of Manager or Officer under the Education Act, 1872, is incompatible with the discharge of the inspector's duties, was not a general regulation requiring to be reported to the Secretary of State for his approval.[2]

As regards the powers of the Board of Supervision, it is not necessary at present to enter into detail, as these powers are afterwards more fully explained; but it may be stated that they issue rules for the conduct of the elections of the parochial board, fix the number of members to be elected, the nature of their qualifications in burghal parishes, and divide the parishes into districts or wards. A parish rated according to a local Act or established usage requires the consent of the Board before imposing an assessment under the Act. The approval of the Board is further requisite to any distribution of the lands into separate classes for the purposes of assessment and to any change in the mode of classification. They also exercise certain controlling powers in regard to the erection of poorhouses, their maintenance, management, and discipline, the supply of medicines and of medical relief; and although the officers of these establishments are not so directly under their control as the inspector of the poor, the same result is practically attained by their declining to accept as adequate any offer of admission to the poorhouse not conducted to their

[1] Sec. 7.

[2] Clark *v.* Board of Supervision, Dec. 10, 1873, 2 P. L. (3) 14, 1 R. 261. This decision was based partly on the practice of the Board in passing similar resolutions with regard to factors, medical officers, etc.

satisfaction. Another important part of the Board's duties arises under sec. 75 of the statute, which makes it incompetent 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 have previously 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 examines the grounds of complaint; and if the same appear to be well founded, and are not in the meantime removed, a Minute is granted and certified and signed by the secretary, which at once entitles the complainer to the benefit of the Poor's Roll of the Court of Session.[1]

On the application of any of the parochial boards interested, parishes may be combined for the purposes of the poor law by the Board of Supervision; 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 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,[2] and the combination may be dissolved in the manner pointed out by 24 and 25 Vict. cap. 18.

When the orders of the Board of Supervision are disregarded by a local board, or any obstruction arises in the execution of the Act through the refusal or neglect of the boards to do what is required of them, the Board of Supervision are entitled, under sec. 87 of the statute, to apply by summary petition to the Court of Session, or in vacation to the Lord Ordinary on the Bills, who are empowered to do therein as shall seem just and necessary. A similar provision is contained in the Public Health Act;[3] but in that case the power of appeal to the Court of Session can be exercised only with the approval of the Lord Advocate. Of late years there have been several instances in which the Board have found it necessary to avail themselves of this remedy where the local authorities of towns

[1] Sec. 74. [2] Sec. 16. [3] 30 and 31 Vict. cap. 101.

persistently refused or delayed, notwithstanding the remonstrances of the Board, to provide a proper supply of water for the inhabitants, or to carry out a sufficient system of drainage. The Court order a scheme to be given in, and, after hearing the parties thereon, pronounce an interlocutor finding 'that the respondents are bound to take the proceedings required by statute for introducing such supply of water according to the said scheme; and ordain the respondents forthwith to take and carry out the said proceedings according to law, and continue this petition *quoad ultra*,' etc.[1] Where a parochial board, participating in the Parliamentary grant in aid of medical relief, reappointed a medical man who had been dismissed by the Board of Supervision for neglect of duty, the Court refused to listen to an allegation on the part of this officer, that in the investigation which had led to his dismissal he was not allowed an opportunity of being heard; found that his continuance in office by the parochial board was an undue obstruction in the execution of the Act, and interdicted the latter from acting on the Minute under which he was again appointed.[2]

[1] Board of Supervision *v.* Local Authority of Galashiels, 20 July 1875.
[2] Board of Supervision *v.* Parish of Dull, 9 June 1855, 17 D. 827.

CHAPTER II.

THE PAROCHIAL BOARD.

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. The character of this body has varied greatly at different periods in the history of the law. When, by the Act 1579, cap. 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, cap. 149, certain persons to be nominated by the ministers, elders, and deacons of each parish; by Acts 1597, cap. 272, and 1600, cap. 19, the management was transferred to the kirk-session; and finally, by the Act 1672, cap. 18 (confirmed by the proclamations of the Privy Council of 11 August 1692 and 29 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 according to the usage of each particular burgh, and on no definite principle. 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

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

magistrates as a board for the management of the poor belonging to the burgh, who 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 Dunbar case it was settled, that where the parish comprehends a royal burgh and a landward district, the right of administration is jointly in the magistrates of the burgh, the minister and kirk-session, and the heritors of the landward part of the parish, acting as one body.[1]

A kirk-session is composed of the minister, who is *ex officio* chairman or moderator, and a certain number of the lay parishioners, who are chosen by the vote of a majority of the communicants of the parish church, and ordained by the minister to the eldership. The number is indefinite, and rises or falls with the requirements of 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. It is the province of the elders, according to the Act 1502, cap. 16, 'to take heed that the word of God be purely preached within their bounds, with the sacraments richtly ministered, the discipline entertined, and ecclesiastical guddes uncorruptly distributed.'

When the only fund available for parochial relief was the weekly collections at the church doors, of which the kirk-session had the charge, the heritors naturally left to them in many instances the active management of the whole affairs of the parish. So seldom were they interfered with, that they came in course of time to regard themselves as possessing 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-

[1] Currie *v.* Lockhart, 1 March 1841, 3 D. 799. A practice of separate management extending over a century makes no difference in the result.

session to proceed in their ordinary acts of administration and application of their collections to their ordinary and incidental charities, though the heritors be not present nor attend.'[1] In practice, the 'ordinary acts of administration' referred to in this 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 to 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 and 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 definition of heritors in any of the statutes; but the principle of the older cases is, that those who are liable to pay for the poor as proprietors, should have a voice in the administration of the fund. The term includes every species of heritable ownership, and therefore came to be applied to urban as well as to rural proprietors: the owners of subjects in a burgh or town, and feuars in a village, as well as the owners of other descriptions of heritable property. In short, 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 in the books of the collector as actually paying cess.[2] The Poor Law Act raises the qualification in assessed parishes to the possession of lands or heritages of the annual value of £20 and upwards.

When the urban portion of a parish consists of a burgh, the community may be regarded either as a body of individual heritors or as a single heritor, represented by the

[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.* Minister and Feuars of Kirriemuir, 1672, M. 13,128 (under the School Acts); Duncan, Parochial Law, 577.

magistrates as constituting the Corporation; in this respect, however, they occupy a distinct character from what was assigned to them in the administration of the law under the Poor Law Statutes.[1] It is to be observed that where the management remains vested in a body composed of the kirk-session, the heritors, and the burgh, it is to be viewed as one corporation, and not as three several incorporations. The heritors of the parish, it has been decided, constitute by themselves a *quasi* incorporation, so far as regards the repairing and rebuilding of churches, the imposing of assessments for these objects, and other duties of a similar kind.[2] The effect of this is to enable them to hold meetings of their own body, called at the requisition of any one of the parties interested, and at these meetings, acting by the vote of the majority of the members present or represented by proxy, to adopt such measures as appear to them to be called for by the requirements of the parish. Every heritor in the parish is then bound by their acts, whether he be present or absent, voting with or against the majority, acquiescing in or protesting against what is done. The only remedy competent to a dissentient, was to bring the proceedings under the review of the Supreme Court, which had always the power to control and direct the parochial authorities in the execution of their powers. When by statute the kirk-session was associated with the heritors in the administration of the poor law, they were held to constitute one *quasi* corporation, and it was accordingly decided[3] that in certain proceedings which had been taken with respect to a charitable fund under their management, they were entitled to sue as a corporate body. It follows also that 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.[4] 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,

[1] M'Neil *v.* Robertson, 27 May 1836, 14 S. 849, and Lockhart *v.* Lockhart, 24 Jan. 1832, 10 S. 243.

[2] Boswell *v.* Duke of Portland, 9 Dec. 1834, 13 S. 148.

[3] Minister of Dalry *v.* Newall, 17 Nov. 1791, M. 14,557.

[4] Galloway *v.* Dalry, 22 Feb. 1810, 15 F. C. 594.

is that which has been effected for civil as well as ecclesiastical purposes.[1]

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 under seventy in number. The Act provides that, until an assessment has been imposed, the board shall, in case of a parish, whether burghal or not, where there is no combination of parishes, consist of the persons who, if the 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.[2]

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.[3] After an assessment is imposed, the new board comes into operation. In its constitution the distinction is retained between parishes burghal and non-burghal.

The composition of parochial boards in burghal and non-burghal parishes differs in this, that in the burghal parishes, that is, parishes or combinations consisting of a royal burgh or part of a royal burgh, or a burgh which contributes to send a member to Parliament,[4] the owners have no seat at the board, but form part of the constituency who return the elected members; while in non-burghal parishes, the owners of heritable property of the value of £20 and upwards sit at the board, and have no voice in the return of the elected members. The result is, that in many instances the number

[1] Thomson, 17 Nov. 1808, 15 F. C. 7. See also 7 and 8 Vict. cap. 44, sec. 6.

[2] Secs. 17, 22.

[3] Meek *v.* The Monkland Canal Co., 14 Nov. 1846, 9 D. 55.

[4] Sec. 1.

of members is so excessive as to render the parochial board an unwieldy body, unsuitable for the transaction of business of an administrative character.[1] In other respects the boards are composed of the same elements, thus :—

A. IN BURGHAL PARISHES.	*B.* NON-BURGHAL PARISHES.
1. Such number of elected managers as may be fixed by the Board of Supervision, not exceeding thirty.[2]	1. The same.[3]
2. Four persons to be nominated by the magistrates of the burgh.[2]	2. The provost and bailies of any royal burgh in the parish.[3]
3. Four persons to be nominated by the kirk-session of the parish, or by the kirk-sessions jointly, where there is more than one, from among their own number.[2]	3. Six persons to be nominated by the kirk-session, or any less number of which the kirk-session may consist.[3]
	4. The owners of lands and heritages of the yearly value of £20 and upwards.[3]

In the case of a combination, the constitution of the parochial board becomes the same as in burghal parishes. It is required that the members of the parochial board should all be ratepayers in the parish. Candidates for election in burghal parishes must be either owners or occupants rated to the poor and paying their rates; and in non-burghal parishes, any ratepayer, not already entitled as an owner of heritage[4] to a seat at the board, is eligible, provided he possesses such

[1] There are in Scotland at present 804 assessed parishes in all, excluding burghal parishes and combinations. In 517 of those the number of members sitting as owners does not exceed 30; but there are no less than 287 parishes in which the number of owner-members does exceed 30. In seventy-seven, the numbers are 30 to 50; in ninety-two, 50 to 100; in sixty-three, 100 to 200; in seventy-three, 200 to 300; in eleven, 300 to 400; in twelve, 400 to 500; in six, 500 to 1000; in one, 1000 to 1500; in one, 1500 to 2000; and in one the number exceeds 2000.

[2] Sec. 17. [3] Sec. 22. [4] Sec. 23.

qualification in respect of ownership or occupancy as may be fixed by the Board of Supervision, which, however, must in no case be fixed at a higher annual value than £50.[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 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.[2] Persons assessed in the double character of owner and occupant have a double vote.

Where premises are the property of a married woman, her husband is entitled to vote and act in respect thereof.[3]

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 electors; *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.[4]

The election takes place each year on a day fixed by the Board of Supervision, the members continuing in office for one year. They are, however, eligible for re-election. Ten days before the day fixed, the inspector gives notice of the election, in such form and manner as the parochial board may direct; and when this is done, the duties of the board in regard to the election terminate.

The collector of assessment prepares an alphabetical roll, setting forth the names of the persons entitled to vote at the election, the number of votes each person is entitled to give, and the names of the candidates. Lands of the value of

[1] Sec. 17. [2] Sec. 20.
[3] Sec. 26. [4] R. p. 36, 13 Oct. 1845.

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

For the purpose of ascertaining the number of votes to which each person is entitled, and which can in no case exceed six, the books of the collector are to be taken as conclusive evidence of the 'annual value.'[1] This means annual value as defined in the Poor Law Act, not the value appearing in the valuation roll, but the value therein entered under deduction of the allowances made for repairs, insurance, taxes, etc.[2]

At the meeting called for the election, no chairman is appointed. The inspector is the returning officer. At least three days before the meeting, at a meeting appointed for the purpose, he will have received the names of candidates who are put in nomination; and if these do not exceed the number of members to be elected, no voting is necessary, and they will be declared elected at the meeting called for the purpose, even though no ratepayer should then attend. If, however, in the words of sec. 24, on the day appointed the persons assessed 'do not agree in the choice of elected members,' *i.e.* if there are more candidates than vacancies, the inspector, or the person appointed to act for him in case of his absence or inability, is required to take in writing and collect the votes of the ratepayers; and in case of an equality, the person paying the largest amount of assessment is preferred. These votes are now collected by voting papers; but in non-burghal parishes this is not required unless the number present at the election exceeds one hundred. The following are the rules now in force with respect to the elections in burghal parishes or combinations:—

Amended Rules for conducting the Election of Managers of the Poor in Burghal Parishes or Combinations.[3]

Notice of Election.

1. When the number and qualification of the persons to be managers of the poor, and the day on which they are to be elected,

[1] Secs. 21, 24. [2] Sec. 37. [3] 26 Jan. 1870.

shall have been made known to the inspector by the Board of Supervision, it will be his duty forthwith to communicate the same to the parochial board.

2. The parochial board should then, without loss of time, proceed to fix the hour and the place at which the electors are to meet for the purpose of choosing the managers; they should also name the places, besides the door of the parish church, at which the notices of such meeting shall be affixed, and direct that notice shall also be given by advertisement in one or more newspapers circulating in the burgh or combination; and if the Board of Supervision has divided the parish or combination into wards or divisions for the purposes of the election, the parochial board should also name the hour and the place of meeting for each ward, and should immediately communicate the same to the inspector.

Nomination.

3. The parochial board shall name, at the same time, by a Minute, a day, not less than five nor more than eight days preceding the day fixed by the Board of Supervision for the election of managers, on which the nomination of candidates for the office of manager of the poor shall be made, and the place at which such nominations shall be received.

4. All nominations shall be made in writing; and to constitute a sufficient nomination, it is necessary that the candidate should be proposed by one elector and seconded by another. No person shall be held to have been duly nominated unless his nomination paper has been lodged at the place fixed by the parochial board, before 4 P.M. on the day named by the said board for that purpose.

5. Any person qualified to vote may nominate any qualified person as a candidate for the office of manager; but no one ought to be nominated as a candidate whose willingness to serve in the office has not been ascertained.

6. It will be the duty of the inspector to give notice of the day, hour, and place of nomination, and of the day of election, in such form and manner as the parochial board shall have directed, in terms of Rule 2, the said notice to be given ten free days, at least, before the day of election.

7. It will be the duty of the inspector, as soon as the period for nomination has expired, to give immediate public notice of the names, addresses, and occupations of the candidates nominated, and of the proposers and seconders of each—such notice to be given in the same manner as the parochial board shall have directed in terms of Rule 2.

8. The parochial board should also name a person, who shall discharge the duties required of the inspector at the election, in case the inspector should be absent or unable to act; and they should also name persons to discharge these duties in each ward or division,

if the Board of Supervision has divided the parish or combination into wards or divisions for the purposes of the election.

9. The collector and the assistant-inspector or assistant-inspectors, if any, may be employed to assist the inspector at the election, if necessary.

10. The parochial board shall instruct the collector to furnish the inspector, on the day preceding the day fixed for the election, with a certified roll of the persons assessed for the relief of the poor who are entitled to vote at such meeting, in which the names shall be arranged alphabetically according to the annexed form (A.),[1] or in such other manner as shall admit of easy and immediate reference to each name, and in which the number of votes that each person is entitled to give, in terms of sec. 24 of the Act 8 and 9 Vict. cap. 83, shall be written opposite to his name. And if the parish or combination has been divided into wards for the purposes of the election, then the collector shall furnish the inspector with a roll so prepared, of the persons entitled to vote, and the number of votes each person is entitled to give in each ward.

11. Any person is qualified to vote who is assessed for relief of the poor, and who shall have paid all sums assessed upon and due by him at the time of the election, and who shall not have been exempted from payment on the ground of his inability to pay.

Election.

12. If the number of qualified persons nominated in terms of the preceding rules, and not withdrawn, shall not exceed the number of

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[1] FORM A.

ALPHABETICAL ROLL and VOTING LIST of the persons entitled to vote at the election of Managers of the Poor for the parish (or combination) of and ward for the year commencing

Names of Electors.	No. of Votes each Elector is entitled to give.	Names of Candidates.			

I do hereby certify that this list contains the name of every person entitled to vote in ward of this parish (or combination), and the exact number of votes each is entitled to give, for the election of managers of the poor at the election which is to take place on the .

_____ *Collector of Assessment for the Poor.*

managers to be elected, such persons shall, on the day of election, be declared by the inspector to be duly elected, and shall be returned as such by him when he makes the return required by Rule 29.

13. Each person nominated as a candidate may in writing withdraw his nomination; and the person who proposes the candidate may, with the candidate's written consent, withdraw that candidate's nomination at any time before the day fixed by the Board of Supervision for the election; and if so many nominations shall be withdrawn that the number of qualified candidates not withdrawn shall not exceed the number of managers to be elected, such qualified candidates whose nominations shall not have been withdrawn shall be held to be duly elected.

14. If the number of qualified persons nominated, and not withdrawn, shall exceed the number of managers to be elected, the inspector, or, in case of his absence or inability to act, the person named by the parochial board in that event to act for him at the election, shall proceed on the day fixed for the election to take in writing and collect the votes of the persons who, according to the certified roll furnished by the collector, are entitled to vote at that meeting; and if any person, who according to such roll is not entitled to vote, shall claim a right to vote in respect of his having paid the rates due by him in the interval, after the roll was delivered to the inspector, but previous to the hour fixed for the meeting, the vote of such person, if otherwise entitled to vote, shall be received, and his name entered on the said roll as entitled to vote, on his then producing the collector's receipt for such payment, but not otherwise. And in whatever manner the votes may be taken in writing or collected in terms of these rules, no vote of any person who was not entitled to vote at such meeting shall be counted in the election for which such meeting was held.

Voting Papers.

15. When it may be necessary to take in writing and collect the votes as above stated, the inspector, or the person named by the parochial board to act for him, shall cause the doors to be closed when fifteen minutes have elapsed after the hour of meeting, and shall then and there take in writing the votes of the persons present and entitled to vote, according to the annexed form (A.); and the candidates, according to the number of managers to be elected, who shall have a majority of the votes so taken in writing, shall be managers. Provided always, that if within two hours after the conclusion of the meeting there shall be delivered at the office of the inspector a requisition signed by ten qualified electors calling for the issue of voting papers, the voting at the meeting shall be held not to have been conclusive, and the inspector, or the person named by the parochial board to act for him, shall proceed in terms of Rule 18.

16. Each elector shall be held to have given the whole number of votes to which he is entitled by the Act 8 and 9 Vict. cap. 83, for each candidate for whom he votes.

17. The inspector shall not in any case receive the votes of any one elector for a greater number of candidates than there are managers to be elected.

18. If a requisition in terms of the proviso attached to Rule 15 shall have been duly received, the inspector, within three lawful days after such meeting, shall leave or cause to be left at the known house or other premises of each elector occupying a house or other premises within the parish or combination, who was entitled to vote at such meeting, a voting paper according to the annexed form (B.);[1]

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[1] FORM B.

VOTING PAPER for the parish (or combination) of and ward for the election of Managers of the Poor.

Initials of Voter against the name of the Candidate for whom he votes.	Names of the Candidates.	Residence of the Candidates.	Designation.	Opinion of the Inspector as to Disqualification.

I vote for the persons in the above list against whose names my initials are placed.

Signature or mark of voter_____

Signature of witness to the mark_____

N.B.—This paper will be called for on the next lawful day after it has been left, that is, on the day of 18 , and the votes will be lost,—

1*st.* If it be not then delivered to the person sent to receive it.

2*d.* If the initials of the voter be not written against the names of the candidates he votes for.

3*d.* If they be written opposite to more names than there are managers to be elected.

4*th.* If the paper be not signed with the name or mark of the voter.

5*th.* If signed with a mark, if the mark be not attested.

6*th.* If a voter shall give, in the whole wards, a greater number of votes than he would be entitled to have given if the parish had not been divided into wards.

Provided that if this voting paper is not called for, through the default

and shall transmit by post or otherwise to the known residence of each elector not occupying a house or premises within the parish or combination, who was entitled to vote at such meeting, a voting paper (according to a form marked C.).

19. The voting paper shall contain in the proper columns the name, designation, and residence of each person nominated at the meeting, whose nomination shall not have been withdrawn.

20. The elector shall write his initials in the proper column, against the name of each candidate for whom he votes, and shall sign the paper with his name, or, if he cannot write, with his mark at the place for his signature.

21. The mark of a voter who cannot write his name must be attested by a witness, and in that case the initials of the voter must be written opposite to the names of the candidates for whom he votes, by the witness who attests the mark.

22. Any person entitled to vote at the election, for whom a voting paper shall not have been duly delivered as required by Rule 18, shall, on application to the inspector, at his office, between the hours of 9 A.M. and 6 P.M., on the fourth lawful day after the meeting referred to in Rule 18, be entitled to receive a voting paper, and then and there to fill up the same, and to deliver it to the inspector.

23. The inspector, on the next lawful day after that on which the voting paper has been left at the house or premises of each elector occupying a house or premises within the parish or combination, and entitled to vote at the meeting, shall send a person or persons specially named for that duty to the said houses or premises of all such electors to collect the voting papers in a locked bag, with an opening or slip into which the voting papers are to be dropped, and every such elector shall place, or cause to be placed, the voting paper left at his house or premises, whether signed, initialed, or not, in the bag carried by the person who is sent to receive it. Electors not occupying premises within the parish or combination, may transmit their voting papers, duly filled up, to the inspector, by post or otherwise, on or before the second lawful day after the same shall have been posted or otherwise delivered.

24. No such votes so given by voting paper shall be valid, if they are given for a greater number of candidates than there are managers to be elected, or if the voter shall have given, in the whole of the wards or divisions into which a parish or combination may be divided, a greater number of votes than he would be entitled to have given if the parish or combination had not been so divided.

25. In case any voting paper, duly delivered, shall not have been collected through the default of the person named for that duty in

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of the person appointed for that duty, the voter in person may deliver it to the inspector at his office before 2 o'clock P.M. on the next lawful day immediately following the day specified in this voting paper.

terms of Rule 23, the voter in person may deliver the same to the inspector at his office, before 2 o'clock P.M. on the next lawful day immediately following the day specified in the voting paper as that on which it should have been called for.

Return of Managers elected.

26. The inspector shall declare, within two lawful days after the day named for collecting the voting papers, those persons to be elected managers of the poor (according to the number fixed by the Board of Supervision) who shall have a majority of votes.

27. In the event of an equal number of votes being given in favour of candidates, the person paying the largest amount of assessment shall be preferred and held to be elected.

28. The inspector shall forthwith intimate to the persons who shall have been so chosen, that they have been elected managers of the poor for the parish.

29. The inspector shall also affix at each place at which the notice of meeting shall have been affixed, a return (in a form marked D.) of the persons who have been elected managers of the poor, and shall transmit a copy of the same to the Board of Supervision.

30. If the Board of Supervision has divided the parish or combination into wards or divisions for the purposes of the election, then the proceedings for that purpose in each ward shall be the same as if the ward were a separate parish.

Parishes non-Burghal.

A similar code of procedure[1] has been prepared for the guidance of parishes not burghal and not combined, in the election of members to serve on the parochial board. Rules 1 and 2 are the same, the reference to wards in the latter being omitted; 3, 4, and 5 are omitted; and Rule 3 provides for the inspector giving notice (as in Rule 6 of the burghal code) of the day of election in the manner appointed by the parochial board, the interval which should elapse between the notice and the election being left to the board's discretion. 4 and 5 are the same as 8 and 9, and 6 as 10; but the collector's roll requires to be furnished three days before the election. Rule 7 defines the qualifications of voters in the same terms as No. 11, with the proviso that they are not already members of the board by being owners of lands of £20 annual value, a provost or bailie of a royal burgh, or

[1] Rules, p. 118.

a member of the kirk-session. The rules then proceed as follows :—

8. When the electors have met, and constituted their meeting, the first step should be to put in nomination fit and qualified persons to be elected members.

9. Any person entitled to vote at the meeting may nominate any qualified person as a candidate for the office of elected member. But no one ought to be nominated as a candidate whose willingness to serve in the office has not been ascertained.

10. To constitute a sufficient nomination, it is necessary that the candidate should be proposed by one elector and seconded by another.

11. If the number of qualified persons nominated shall not exceed the number of members to be elected, such persons shall be held to be duly elected.

12. The person who proposes a candidate may withdraw that candidate's nomination ; and if so many nominations shall be withdrawn as to reduce the number of qualified candidates to the number of members to be elected, such qualified candidates whose nominations shall not have been withdrawn, shall be held to be duly elected.

13. If the number of qualified persons nominated, and not withdrawn, shall exceed the number of members to be elected, the inspector, or, in case of his absence or inability to act, the person named by the parochial board in that event to act for him at the election, shall proceed to take in writing and collect the votes of the persons entitled to vote at such meeting.

14. All persons are qualified to be elected members who are qualified, as above stated, to vote at such meeting.

15. When it may be necessary to take in writing and collect the votes as above stated, if the number of persons present and entitled to vote at such meeting shall not exceed one hundred, the inspector shall then and there take in writing the votes of the persons present and entitled to vote (according to the annexed form A.), and the candidates, according to the number of members to be elected, who shall have a majority of the votes so taken in writing by the inspector, shall be the elected members.

16. Each elector shall be held to have given the whole number of votes to which he is entitled by the Act 8 and 9 Vict. c. 83, for each candidate for whom he votes.

17. The inspector shall not in any case receive the votes of any one elector for a greater number of candidates than there are members to be elected.

18. If the number of persons present, and entitled to vote at such meeting, shall exceed one hundred, then if it shall be necessary to take in writing and collect the votes, the inspector, within six lawful days after such meeting, shall leave or cause to be left at the house of each elector a voting paper (according to the form B.).

The rules which follow, 19, 20, 21, and 22, are in the same terms as the corresponding numbers of the burghal code; 23 and 25 of the latter being deleted, No. 24 becomes 23, and 24 and 27 inclusive are the same as the rules following 26. If the affairs of the parish are managed by a committee of the parochial board, the inspector is directed to call a meeting of the committee, which may competently act for the board in all matters relating to the election.

Non-Elected Members in Parishes not Burghal.

In non-burghal parishes the non-elected members are: the owners of lands and heritages of the yearly value of £20 and upwards; or any agent or mandatary, appointed in writing by an heritor, who is entitled to be a member. The value here referred to must be taken to mean assessed,—not actual value, the value appearing in the collector's books.[1]

In the interpretation clause it is said the word 'owner' shall apply to liferenters, tutors, curators, commissioners, trustees, wadsetters, and other persons who may be in the actual receipt of the rents and profits. But suppose a property worth £20 a year is vested in several persons as trustees, it cannot have been 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 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 mandatary, 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.

[1] Sec. 21.

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 a seat at the board. This is a *casus improvisus* in the statute, but apparently it has not led to any inconvenience.[1]

As in burghal parishes, husbands vote for their wives. The general rule of law is, that only those members of a public board who are actually present can vote. They cannot act by deputy unless the deputy is expressly authorized. But 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.[2] 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 mandatary 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.'[3] 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 witnesses. 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.[4] *Delegatus non potest delegare.* The mandatary must attend personally, and his authority subsists till it is recalled.

[1] Is a minister of the parish, not being a ratepayer, entitled to a seat at the board? See Steuart, 1 P. L. M. 416.

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

[3] Sec. 22. [4] Sec. 24.

The mandate runs—'You are hereby authorized to attend, act, and vote for me at a meeting of the parochial board of X. to be held on day of August, or any adjournment thereof, for the election of an inspector,' etc. It was held to be no objection to a mandate granted for the 16th August that the date was written on an erasure, or that the mandates were not tendered or acted on till the 5th September, to which day the meeting was adjourned. It was also decided that other mandates were competently used at the same meeting, although they were granted for an expected meeting on 2d August, in connection with the same business, which never took place.[1]

Disputed Elections.

If the validity of an election is challenged, an appeal lies to the sheriff in whose county the parish or the combination, or the greater portion of such parish or combination, may be situate, who hears the parties, and investigates the matter in any way he thinks proper.[2] 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 whatever.[3] 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 or oppression, on the part of the judge, or in cases of material deviations in point of form. Pending the inquiry before the sheriff, 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.[4]

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

[1] Thompson *v.* Parochial Board of Inveresk, 10 M'P. 178.
[2] Sec. 27. [3] *Ib.* [4] Sec. 29.

interdict, and the Court will prevent the intrusion, on the application of any heritor or ratepayer. But the proceedings are not invalidated by the presence of one or more persons not possessed of the requisite qualification, provided they were believed at the time on reasonable grounds to be duly qualified.[1]

[1] Livingstone *v.* Presbytery of Hamilton, 8 D. 808, 6 Bell's App. 469.

CHAPTER III.

THE FUNDS OF THE BOARD.

THE funds which fall to be administered by the parochial board may be derived from the four following sources:—(1) Assessment; (2) Loans raised on the security of the assessment; (3) Voluntary contributions and church-door collections; and (4) Mortifications, etc.

In the management of the affairs of the parish it is obviously desirable that the income of each year should, as nearly as possible, balance its expenditure. The ratepayers being a fluctuating body, each year should bear its own burden. Sometimes, of course, claims will emerge which ought to have been paid years before, but which, in consequence of a dispute on the subject, have been allowed to stand over. When the question comes to be settled, the debt falls to be paid out of the assessment for the year along with the other obligations of the board. On this ground, a person recently settled in the parish was found not entitled to resist an assessment imposed in the year 1853 for the payment of a debt arising out of the maintenance of a lunatic, which, under the old board, had been accruing since 1846.[1] Such cases will always occur under the best system of management, and the statute nowhere says that an assessment may not be imposed for the payment of past as well as current obligations. But in general there will be no occasion for the board getting into debt, and the statute anxiously provides that it should not do so, first, by depriving them of all power of borrowing except to an extremely limited extent; and in the next place by enacting that if, from any cause, the estimate for the year should prove

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

insufficient, the board may meet and impose such further assessments as may be necessary to raise the sum required.[1] No power is given to anticipate future income under any circumstances whatever, except to this limited extent, that, at the beginning of the financial year, and before the assessment has come in, or while it is in course of collection, the board may provide for their immediate requirements by overdrawing the bank account, but even then the over-draft is not to exceed one-half of the sum which is still to come in. This appears to be the meaning of sec. 89, which provides that when the board is short of funds, it shall be competent for them to borrow on security of such part of the assessment as is still due and unreceived, but not to any amount greater than one-half of such assessment. In some instances the terms of this section have not been duly attended to, and a loose system has sprung up of the inspector being allowed to draw money from the bank as he wants it, so that at the close of each successive year there is a constantly increasing balance at the debit of the board. In such circumstances, the rate-payers of one year really come to pay, not the obligations of that year, but those of the immediately preceding year. In a case in which something like this loose practice was exhibited, the system was severely commented on by the Court; and it is hardly necessary to say that it is quite against both the spirit and the language of the statute, which goes on to provide[2] that '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.' That is to say, the account of every year must be brought to a balance before a fresh account is opened.[3]

In many parishes a considerable revenue is obtained from sums bequeathed or mortified for the poor. The term 'mortification' was the name given to the tenure by which anciently lands were held by religious houses for pious uses, the reddendo being *preces et lacrymae*. Many of these grants were confiscated by the Crown at the Reformation, as being given for superstitious purposes; but lands may be still mortified for

[1] Sec. 41. [2] Sec. 89.

[3] Stewart *v.* Fraser, 20 May 1873, 1 P. L. (3) 409.

the use of the poor or similar benevolent purposes, by any of the tenures which are still in subsistence, or by means of a trust in the ordinary way. The mode in which these funds are to be invested as soon as they come into the hands of the parochial board is prescribed by the Act.[1] They are to be either lodged in a chartered bank, or placed out at interest on Government or heritable security, or employed in the purchase of the stock of one or more of the chartered banks in Edinburgh. It must also be kept in view that a public fund cannot be lent, even on heritable security, to any one or more of the members of the board themselves, for no trustee is entitled to employ the fund of which he has charge in any way to his own personal benefit.

The terms in which these old trusts were expressed varied greatly; but it was decided that, 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.[2] 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.'[3] 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

[1] Sec. 53.

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

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

the fund fell to the heritors and kirk-session as the legal administrators for the poor.[1] The same rule was applied where the benefit of the fund was confined to a section of the parish.[2] But since the maintenance of the poor has become a charge on the rates, these old precedents are of doubtful application; and the disposition is rather to hold that a testator, making a gift 'for behoof of the poor,' had in view the larger class answering to that description, and intended to confer on his trustees the power of selecting individuals worthy of charitable help. The intention, of course, has to be gathered from the terms of the deed; and one determining circumstance is the function of the body to whom the bequest is made. For instance, a bequest to a kirk-session under the old law might be taken by them either as trustees simply, or as representing the parochial board; and the word 'poor' would have a larger or narrower signification, according to the character in which it was taken. 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 this case the terms of the bequest were these: 'The whole of the balance of my property I leave to poor of this presbytery, to be divided —I mean the interest—by the sessions of the several churches, but to be paid to all Christians except Roman Catholics.' It was contended by the next of kin that the gift was void, for uncertainty; but it was held that the words used meant the poor within the territory or jurisdiction of this presbytery —the poor of the district; and as the 'sessions of the several churches,' without qualification, could only mean the 'kirk-sessions of the Established Church,' it clearly appeared that it was a gift, to be administered by the kirk-sessions, according to their discretion, among churches of all denominations, except Roman Catholics, within the bounds of the presbytery.[3] It is a rule in Courts of Equity that charitable bequests shall receive a 'benignant construction;' but the rule means

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

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

[3] Presbytery of Deer *v.* Bruce, H. L., 22 March 1867, L. R. 1 Sc. 96; affd. 3 M'P. 402.

no more than this, 'that when the bequest is capable of two constructions, one which would make it void, the other which would render it effectual, the latter must be adopted.'[1] And it has been said that, 'when the general intention is indicated, the Court will find the means of carrying the details into execution.'[2] 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.[3]

The parochial board, as coming in place of the old administrators of the poor law, have 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.' The heritors and kirk-session, etc., were authorized and required, either to continue to hold all such property and revenues for behoof of the parochial board, or to make, grant, subscribe, and deliver such dispositions, assignations, and conveyances of the property and revenues as might be necessary to enable the board to administer the same for behoof of the poor of the parish or combination.

In the construction of this clause, the first question to be considered is the meaning of the words 'poor of the parish.' The phrase is ambiguous; it may mean, as we have seen, either the legal poor, that is, those who are legally entitled to

[1] Per Lord Chelmsford in Bruce, *sup.*

[2] Per Lord Cranworth, Morgan *v.* Morris, 3 Macq. 134.

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

demand parochial relief, or the larger class who have no legal claim to relief, but are in such circumstances of distress as to be fit objects of charity, and whose wants are supplied by the kirk-session out of the church-door collections and other voluntary contributions. A bequest to the legal poor is truly a bequest to ratepayers of the parish, for it merely goes to lighten the burden which is imposed upon them by law. It has therefore been justly observed, that when a fund is bequeathed to such a body as a kirk-session, for behoof of the poor, the natural presumption would be that the testator wished the fund to be devoted to the aid of the occasional poor. His object is, not the relief of the rates, but to prevent poor persons from coming on the poor's roll, by giving timely help to those in the parish who, from want of work or other accidental misfortune, are temporarily reduced to destitution. Funds are often left by charitable individuals to the minister, or minister and elders, of the parish, for the relief of such poor persons as they may consider proper objects of such aid. Such funds do not fall under the operation of sec. 52. In such a case the kirk-session acts as an independent body, and not as the hand of themselves and the heritors, administering the statutes relating to the poor; and their duty is to use their discretion in the selection of the recipients of the testator's bounty from a particular class, viz. those persons in the parish known to be necessitous, whether they may legally have a claim to relief or not. The testator trusts to the discretion of the persons named that the fund will be judiciously administered; and it has been decided that the minister, who has opportunities of knowing the circumstances of his parishioners, may, in such a case, competently be appointed dispenser of the fund, so that every claim need not be formally considered and adjudicated upon at regular meetings of the kirk-session.[1] It is assumed, of course, that due accounts will be kept of the manner in which the fund is administered, so as to satisfy all reasonable inquiries on the subject; and all trusts vested in a public body, such as a kirk-session or a parochial board, or the heritors or magistrates, for charitable objects, may be enforced

[1] Turbine *v.* Leuchars, 15 Oct. 1855, 3 Rettie 10, where the kirk-session was made 'perpetual patrons' of the fund.

at the instance of any residenter in the parish by an *actio popularis*.[1]

With such trusts it was not the object of the statute to interfere. It was no part of its purpose to deprive any class of persons of the right to participate in any funds bequeathed or mortified for their benefit. Its object was merely to transfer to the parochial board, as the new administrative body, such funds as their predecessors held for behoof of the class who had a legal right to parochial support.[2] Accordingly, where it appeared that in the year 1844 (the year before the Poor Law Act came into operation) a legacy was left to the minister and kirk-session of the parish of Bathgate for the time being, for the benefit and behoof of the poor *in* the said parish of Bathgate, it was held that this was not a bequest to the heritors and kirk-session, and did not fall within the operation of the 52d section of the Poor Law Act. The reason which weighed with the Court in coming to this conclusion was, that the body selected by the testator for the administration of the charity was known to be already entrusted with the care of certain poor, but was not the administrators for the legal poor. The presumption therefore was, that the testator must necessarily have meant the poor of whom the kirk-session were in charge, and that he had said in effect that the charity should not be administered by the parochial board; so also, if a gift were now made to the parochial board for behoof of the poor of the parish, the inference would naturally be that it was intended only for the benefit of the class of poor with which they have to deal, viz. the legal poor. At the same time, it must be observed that when the title to the fund is in the minister and kirk-session only, without any mention of the heritors, the circumstance is by no means conclusive against the fund coming under the 52d section. It is notorious that in former times the kirk-session were, in many instances, left in sole charge of the management, and they really administered for the then parochial board. It has therefore been held, that when the title is taken to the minister and kirk-session in express terms, for

[1] Liddle *v.* Bathgate, 14 July 1854, 16 D. 1075; M'Laren's Wills and Succession, vol. i. 440.

[2] Per Lord Curriehill, Inspector of Poor *v.* Kirk-Session of Kinglassie, 13 June 1867, 5 M'P. 869.

the use of the poor of the parish without limitation or explanation, it infers, *prima facie*, a trust for the legal poor of the parish, and throws on the kirk-session the *onus* of establishing that it was not intended to constitute a purely sessional fund to be distributed at the discretion of the kirk-session. 'In order,' says Lord Kinloch, 'to bring any fund under the exceptional category, I think the kirk-session are bound to prove, as I think they may do from facts and circumstances, that the fund came to them and was held by them for their own discretionary distribution. Unless they do so, I do not think they overcome the presumption arising from words which give the fund to them for the use of the poor of the parish, meaning, as I think the phrase means, the presumptively legal poor. I expressed this opinion in the case of Kinglassie, and I still retain it.'[1]

The meaning to be attached to the phrase thus comes to depend on the facts which may be established regarding, *first*, the origin or source of the fund; *second*, its investment; *third*, its administration; and *fourth*, its distribution. In the investigation of these facts the Court will take into account the usage which has been followed for a long term of years in its administration. Thus, where the question arose in relation to a farm, the title to which was taken in the year 1726 in favour of the then minister and certain persons expressly named, elders and members of the kirk-session of Kinglassie, 'and their successors in office from time to time as minister and elders of such kirk-session, for the use of the poor of the parish,' it appeared that the purchase had been made from funds arising from donations, collections, fines, and other sources, which were described in the minute of the kirk-session as being in the poor-box of the parish. It was also made subject to the approval of the heritors; and after the property had been acquired, the rents were thrown into one common mass with other poor's funds, from which all payments to the poor were made indiscriminately, although sometimes for the benefit of those who were obviously not legal poor. It was held that the latter circumstance only showed the loose dealing which took place in many parishes with regard to the poor's funds, and that the property was in trust for

[1] Flockhart *v.* Kirk-Session of Aberdour, 24 Nov. 1869, 8 M'P. 176.

behoof of the legal poor, and therefore fell to be transferred, under sec. 52 of the statute, to the parochial board.[1]

In coming to this decision, the judges explained that they did not mean to throw any doubt on the judgment pronounced in the Linlithgow case.[2] That case was decided on the result of an inquiry allowed by Lord Rutherfurd Ordinary, into the administration of the property there in question, by whom administered, under what control, and for what objects. Such an investigation was held to be necessary from the terms of the conveyance by which the subjects had been, in the year 1707, disponed to the then elymosinar of the parish, 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.' The purchase had been made by the kirk-session with certain funds which at the time were acquired and administered as poor's funds; but it was doubted whether the property, not being held by the heritors and kirk-session, came within the operation of the section, which is confined in its terms to property held directly, or through trustees or commissioners, by the heritors. 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 and to be exercised by the kirk-session only. It was therefore not a trust to which the statute applied, and the administration of the fund was permitted to remain in the hands of the kirk-session.

In the case of Flockhart *v.* the Kirk-Session of Aberdour,[3] it appeared that in that parish, prior to the year 1848, the funds for the support of the poor were raised by voluntary contribution of the heritors, and collections at the church doors, sums paid for mortcloths and marriages, sessional penalties, and fees paid for the erection of headstones in the churchyard. In 1735 the kirk-session invested an accumulated sum, apparently derived from those different sources, of 1550

[1] White *v.* Kinglassie, 5 M'P. 869, *ut supra*.

[2] Hardie *v.* Kirk-Session of Linlithgow, 15 Nov. 1855, 18 D. 37.

[3] 24 Nov. 1869, 8 M'P. 176.

merks (£86), in the purchase of a house in the west end of the village, and three acres of ground. The title was taken 'to and in favour of the minister of the parish and the elders, members of the kirk-session of Aberdour, for the use of the indigent poor of the same parish,' and the rent of the property thus acquired was carried to the poor's funds, and applied in the same way. In 1800 the property was sold to the Earl of Moray for £323, a bond being granted for the price, bearing that it was for behoof of the poor of the same parish. It will be seen that this case differed from the Kinglassie case in two important particulars,—the heritors were not parties to the original purchase, and there was no proof of their having interfered in the management of the property. Upon these facts Lord Deas observed that, 'if the fund had been administered from 1800 downwards by the minister and kirk-session exclusively, for behoof of the occasional poor, or even if it had been so administered for behoof of the general poor permanent and occasional, without the interference of the heritors, I should have held that it did not fall to be made over to the parochial board; but while it is clear enough that the benefit of the fund was not confined to the legal poor, but was extended to the occasional poor also, it is equally clear that the fund was so administered by the kirk-session as acting not for themselves alone, but for themselves and the heritors jointly.' In this the Court agreed, and decided that the fund fell to be transferred to the parochial board. The Lord President stated his opinion that a mixed fund held and administered for behoof of the poor generally, both occasional and legal, was not necessarily transferred to the parochial board.

In the same case a second question arose, in which the circumstances were these: In 1825 the kirk-session received payment of a sum of £50, which had been bequeathed to them subject to the condition that they should 'put the same out at interest, and apply the interest thereof towards the relief of the poor of the parish, but to allow the principal sum to remain entire for ever.' It was admitted that the kirk-session could have used such a bequest for the assistance of the non-legal poor; but as it appeared that this fund had been administered and dealt with in the same manner as the

other, having always been massed with the other poor funds of the parish, the Court declined to make any distinction between the two funds.

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 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, fell 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

[1] Case of Kilwinning, 1718, referred to Turnbull *v.* M'Laws, 1756, M. 8013. In these cases the Trades of a Burgh and a Congregation of Seceders were ordained to desist from letting, or even lending gratuitously, their mortcloths.

[2] Kirk-Session *v.* Incorporation of Squaremen of Dumfries, 1783, M. 8018.

[3] Montrose, 1730, M. 7915.

[4] Birnie, 1678, M. 2489; Heritors of Abdie, 1713, M. 2490.

[5] Hay, 1780, M. 2492.

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.[1] 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 that 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.[2] This case has not been reported; but in a case before Lord Rutherfurd he 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.[3] In parishes *quoad sacra* erected under the Act 7 and 8 Vict. cap. 44, proclamation is now made at the *quoad sacra* church, and the session-clerk of the parish has no right to the fees.[4]

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 collec-

[1] Mags. of Elgin *v.* Kirk-Session of Elgin, 1740, M. 7916.

[2] Beveridge *v.* Bayne, M. 8014, in which a claim by a beadle to dues immemorially paid on baptisms and marriages was sustained, but a claim by the kirk-session to a half-dollar due for the poor alleged to be due on proclamation of banns was rejected.

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

[4] Hutton *v.* Harper, 2 R. 893; affd. 8 March 1876, H. L. 3 R. 9.

tions, and the various other sources of revenue to which we have been referring, the kirk-session were entitled to the exclusive control and administration of them. In one case the Court sustained as proper charges in the accounts of the kirk-session, a charge for a new tent for field-preachings, and the session-clerk's salary, but rejected various other charges, and ordained the balance in the defenders' hands, after deduction of these allowances, to be paid to the poor's box of the parish.[1] 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.[2]

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 each parish:[3] 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.' The right to examine the accounts, here reserved to the heritors, was the right which was exercised in the case of Humbie,[4] in which the heritors, after frequently in vain demanding from the minister an

[1] Hamilton *v.* Cambuslang, 1752, M. 10,570.

[2] Thomson *v.* Hill, 13 June 1739, M. 8011.

[3] Sec. 54.

[4] Heritors of Humbie *v.* Minister and Kirk-Session, 15 Feb. 1751, M. 10,555.

account of his administration, brought a process before the Court of Session, concluding,—1st, that the minister and kirk-session should be obliged to give an account of their past management of the poor's funds, and to this end to produce in Court the record, session books, and other writs concerning the said funds; and 2d, that the heritors of the parish are entitled jointly and equally with the minister and kirk-session to the management and distribution of the poor's fund. Both points were decided in favour of the heritors—'without prejudice to the kirk-session to proceed in their ordinary acts of administration and application of their collections to their ordinary and incidental charities, though the heritors be not present nor attend.' The heritors were thus at all times entitled to an inspection of the kirk-session's books; but the necessity for it has been superseded by the obligation to account to the Board of Supervision. The section has no application to *quoad sacra* parishes.

Under this section the whole collections are now under the entire control of the kirk-session. In some cases a sum is handed over to the parochial board for disposal; but in a great majority of instances, a certain proportion of the moneys collected is dispensed by the kirk-sessions themselves to the poor of their respective parishes. In this way a sum of over £10,000 is annually expended on the relief of the poor. The persons so assisted, however, 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.[1]

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 to administer them when levied, is untouched by the statute, which provides only for the transference of property vested in the heritors and kirk-session.[2]

[1] See Lord J.-C. Inglis' opinion in Petrie *v.* Meek, 4 March 1859, 21 D. 614; and 30th Rep. B. of S. p. 32.

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

Statutory Penalties.

An old statute (1621, cap. 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 of the parish 'where such winning fell out,' all sums above 100 merks (£5, 11s. 1⅓d.) which are won '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 pay, they are liable in a penalty of double the winning, recoverable at the instance of the informer, who receives one half, the other half being 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 winnings 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, cap. 74; for profanation of the Sabbath, 1579, cap. 70; for irregular and clandestine marriages, 1661, cap. 34; 1698, cap. 6; for acting plays without a licence, 10 Geo. II. cap. 28, etc.

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

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

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

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. A similar direction was given in Procl., 11 Aug. 1692. Of these investments the Board of Supervision require periodical returns.

CHAPTER IV.

BUSINESS OF THE BOARD.

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.[1] 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,[2] the form and manner of which have been prescribed by the Board of Supervision. In the case of burghal parishes and combinations, the rules are:—

1. In all cases of meetings of parochial boards in burghal parishes and combinations in which, by the provisions of the Act 8 and 9 Vict. cap. 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:—

2. In all such cases, notice shall be given forty-eight hours at the least before the time of the meeting; provided always that it shall be competent for a parochial board by minute to direct that a longer notice than forty-eight hours (not exceeding ten free days) shall be given of any meeting or meetings specified in said minute.

3. In all such cases the notice shall specify the day, hour, and place of meeting, and the purpose for which the meeting is called.

4. In all such cases the notice shall be given to each mem-

[1] Sec. 31. [2] Sec. 30.

ber of the parochial board by a written or printed billet; and in the case of notices of forty-eight hours, referred to in Rule 2, all such billets put into the post-office not less than sixty hours before the time of the meeting shall be held to have been duly delivered.[1]

As regards other parishes, the notice which falls to be given is ten free days before the meeting, transmitted to each through the post, unless the members exceed one hundred, and then notice is given by advertisement.[2]

The board may delegate all or any of its powers to committees; and 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 order of their maintenance. In levying the assessment they may appoint one or more collectors—an office which may be conjoined with that of inspector.[3] 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 and assistance in his power which the inspector may desire; and the investigation may take place on oath before a magistrate.[4] Every application must be answered within twenty-four hours after it is made, unless the inspector 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

[1] R., 11 Aug. 1875.
[2] R., p. 36, 13 Oct. 1845.
[3] Sec. 38.
[4] Sec. 70.

of the case thereafter lies, not with the inspector, but with 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 position of the parochial board resembles that of the heritors and kirk-session under the old law, who, although a purely administrative body, filled in this matter a *quasi* judicial function. They were not amenable to the sheriff, who, although entitled to enforce the decree of the heritors and kirk-session acting ministerially, had no power to review the resolutions to which they might come.[1] The remedy, therefore, for any failure in the discharge of their duty is the same as that which is provided for neglect 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 difference between the jurisdiction of the Supreme Court and that of the sheriff in this matter is, that while the sheriff cannot review the decisions of other inferior courts unless the power is expressly conferred on him by statute, the Supreme Court may, unless their interference is expressly excluded.[2] The initiative, as we have already seen, may also be 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.'

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

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

[2] Caledonian Canal *v.* M'Tavish, 4 P. L., M. 202.

public policy, by which they are absolutely incapable of making as 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.[1] 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 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 permittted.' 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,[2]—a member of a town council or any public board.[3]

[1] *Ex parte* James, 8 Ves. 337; Deas *v.* Murray, 13 D. 1236; Haining *v.* Commissioners of Police of Dumfries, 23 D. 755.

[2] 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, and M. 13,367.

[3] Bowes *v.* City of Toronto, 11 Moore, P. C. C. 463 (case of Mayor of Corporation); Robinson *v.* Pett, 2 White and Tudor, L. C. 238–66, and cases

This disability extends to all persons actively engaged in the administration of the laws relating to the poor. The inspector of the poor is, by an order of the Board of Supervision, expressly prohibited from selling goods to paupers;[1] 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.[2] 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.

Since the establishment of parochial boards, in 1845, it has been found convenient to entrust them, as representing the ratepayers, with the performance of various duties unconnected with the administration of the poor law, the more important of which may be here briefly noticed.

Registration.

The old parochial registers of births, marriages, and deaths, formerly kept by the session-clerk, having been found deficient in many respects, a system of compulsory registration was introduced in 1855, by the Act 17 and 18 Vict. cap. 80, since amended by the Acts 18 Vict. cap. 29, and 23 and 24 Vict. cap. 85. A General Registry Office was established in Edinburgh, presided over by the Registrar-General, and under the superintendence and control of the sheriff, who is in effect registrar-general for the county. A

there cited; Paterson *v.* Portobello Town Hall Co. (Limited), 22 May 1866, 4 Mac. 726, where the case of two sets of trustees contracting was distinguished.

[1] R. 27. [2] R. 100.

local registrar was assigned to every parish and burgh, whose duty it is to keep the register for his district, subject to the revision of certain officials, named district examiners. The district examiner pays periodical visits to each parish, examines the books kept by the registrar, exercises a certain limited power of correcting clerical errors, and reports to the Registrar-General any matter connected with the operation of the Acts to which his attention ought to be called, including, of course, cases of irregularity or incompetency on the part of the registrar, which appear to require investigation.

Parishes may be divided into several districts for the purposes of registration, or two or more parishes, or portions of parishes, may be united by the sheriff, when it appears to him desirable;[1] each such district being thereafter to be held as a separate parish, with a distinctive name to be assigned to it by the sheriff. It is enacted, that where any parish is situated wholly, or in part, in a burgh, the town council of such burgh shall possess all the powers, and be liable to discharge all the duties, imposed by the Acts relative to parochial boards.[2] The effect is, that when a burgh and a parish happen to be co-extensive, the parochial board is superseded by the town council; and when a parish consists of a burgh and also a landward district, the parochial board must elect a separate registrar for the landward part, unless the sheriff annexes it to the burgh, or adds it to a neighbouring parish. It is understood that in most cases this has been done, one person being elected registrar for the whole, and only one set of registry books being furnished by the Registrar-General. Each district or parish has a registrar, and usually also an assistant registrar, appointed by the registrar, with the approbation of the parochial board, to act for him in case of his illness or unavoidable absence, or of his otherwise ceasing to discharge the duties of his office.[3] The registrar, with the approval of the parochial board, may dismiss the assistant, and a new registrar is not bound to continue the services of the person in office at the date of his appointment.

When a vacancy arises by death or otherwise, the duties of registrar devolve upon the acting assistant; and if there is no assistant, the sheriff will, on application of the parochial

[1] Sec. 10 of 17 and 18 Vict. cap. 80. [2] Sec. 66. [3] Sec. 14.

board, appoint an interim registrar.[1] Within six days after the occurrence of the vacancy, the inspector of poor is required to apply to the parochial board, or the sheriff, to appoint a meeting of the board for the purpose of electing a successor. If the office of inspector is vacant at the time, the chairman is entitled to make the application, or to call a meeting himself.[2] These meetings are convened in the same manner as the ordinary meetings of the board under section 30 of the Poor Law Act, and the heritors who are members may competently vote by means of an agent or mandatary duly appointed.[3] This privilege, however, belongs to heritors only. Neither the provost and bailies of a royal burgh, nor the members of the kirk-session, nor the elected members, are entitled to delegate their functions in this manner. They must be personally present at the meeting. The election is determined by a majority of the votes of the members present; and all disputes connected with the election are settled summarily by the sheriff.[4] The statute, however, contemplates only one appeal, either to the sheriff or to the sheriff-substitute; and when the case happens to be heard by the sheriff-substitute, there is no appeal to the sheriff.[5] When a district includes a portion of another parish, the parochial board of the part annexed has no voice in the election.

The registrar acquires no vested right in his office, and in cases of neglect or unfitness to discharge the duties, he is subject to removal by the sheriff, on the application of the parochial board, provided the sheriff is satisfied, after hearing parties, that the complaint is well founded in point of fact.[6] In this matter the sheriff's judgment is final, and not subject to review. If the parochial board declines to take action, and if there are reasonable grounds for his interference, proceedings may be taken by the Registrar-General.

For the work done by the registrar, certain fees are

[1] Sec. 9. [2] Sec. 9.

[3] Laurie *v.* Thomson, 23 Jan. 1874, 2 P. L., M. 87. [4] Sec. 12.

[5] So held by Lord Ormidale as Sheriff of Renfrewshire, Finlay *v.* Lemon, 8 Aug. 1859, 2 P. L. 1, 27; and by the Sheriff of Lanarkshire, Murray *v.* Blantyre, 2 P. L., M. 22.

[6] Sec. 15.

appointed to be paid to him by the parochial board. Twice a year he makes out an account of the number of entries which he has made in his several registries, and the parochial board is obliged to levy, by assessment, such a sum as may be required for the payment of such account, and such other sum as may be necessary for the registrar's remuneration.[1] This assessment is made and levied in the same manner as and along with the assessment for the support of the poor; but it is to be observed that all sums which the parochial board find it necessary to provide for the registration of births, marriages, and deaths, the valuation of lands and heritages, and for similar statutory purposes, must be raised as the statutes direct, and separately from the assessment for the poor. The accounts should be kept distinct and separate, as the funds entrusted to the parochial board for the relief of the poor, whether these are raised by assessment or otherwise, can be devoted to that purpose and no other.[2] When the registration is under charge of a town council, they are entitled to levy the assessment which may be required to defray the expense of the proceedings under the Act, on the real rent of lands and heritages within the burgh.[3]

It has been decided that a medical practitioner is not entitled to a fee from the registrar for granting a certificate of the death of any of his patients.[4]

Burial-Grounds.

In Scotland, since the Reformation, the building and maintaining of the parish church have been laid upon the heritors. The Act 1597, cap. 292, required the parishioners 'to build and repair the kirkyard dykes' with stone and mortar; and by the Act 1653, cap. 70, entitled, 'An Act for reparrelling and upholding of paroch kirks and kirk-yairdes of the samin, for burial of the dead,' it is ordained 'that the parish kirks within the realm, which are decayed and fallen down, be repaired and up-biggit; and where they are ruinous and faulty, be mended at the expense of the parishioners and parson.' It has long been settled in

[1] Sec. 50. [2] R. 106, 8 Nov. 1855.
[3] Sec. 60. [4] Coats *v.* Steven, Sheriff Bell, 14 Feb. 1861, 3 P. L. 527.

practice that the term 'parishioners' in these Acts 'must be interpreted to include not mere inhabitants whose interest in the parish may cease at any time, but those only having immoveable property in the parish,' that is, heritors, and also that the share of the burden originally allotted to the parson must be added to that borne by the heritors.[1] In the absence of any express statutory provision on the subject, it has also come to be understood and agreed, that when a churchyard requires to be enlarged, the heritors must find the ground, just as they require to find the labour and materials when the church requires to be rebuilt, the proprietor whose land is taken being indemnified by the rest.[2] The obligation incumbent upon the heritors is subject to the jurisdiction of the presbytery, who are entitled to designate the piece of ground for the enlargement of the churchyard, and to give decree for assessing the heritors in the sum necessary to defray the cost.[3]

Although these Acts are still in force, they have been practically superseded by the Act 18 and 19 Vict. cap. 68, an Act to amend the law relating to the burial of the dead in Scotland. Under this Act the parochial board is entrusted with the duty of taking the steps necessary for the discontinuance of existing burying-grounds which have come to be overcrowded, and providing new places of sepulture for the parish. The procedure is competent at the instance (1) of any two members of the parochial board, or (2) any ten persons assessed for relief of the poor in the parish, or (3) two householders residing within a hundred yards of the site of the ground objected to, or (4) the local authority.[4] If, on inquiry, the sheriff is satisfied that the churchyard has become either dangerous to health or contrary to decency, he pronounces a finding to that effect, and an order in Council is then issued directing that from a certain date interments

[1] Boswell *v.* Duke of Portland, 9 Dec. 1834, 13 Shaw 148.

[2] Ure *v.* Ramsay, 5 June 1828, 6 Shaw 916; Stewart *v.* Mags. of Greenock, M. 8019, H. L. 2 March 1779, 2 Paton's Appeals 486.

[3] Porterfield *v.* Gardner, 19 Dec. 1829, 8 Shaw 277; Walker *v.* Presbytery of Arbroath, 1 March 1876, 3 Rettie 498, H. L. 24 Nov. 1876, 14 Sc. L. R. 182.

[4] 30 and 31 Vict. cap. 101 (Public Health Act), sec. 96.

in the burying-ground shall be wholly or partially discontinued.[1]

The existing burying-ground being closed, it becomes the duty of the parochial board forthwith to provide a new one for the parish; and if they fail for six months to do so, the sheriff, on the application of the ratepayers, will designate a suitable place; but his judgment on the matter is subject to appeal to the Lord Ordinary.[2] But it has been doubted whether this appeal goes beyond questions with the owner of the ground proposed to be designated; and if the sheriff should arbitrarily interfere while the matter was still under the jurisdiction of the parochial board, the remedy would be by suspension and interdict.[3] Although the burying-ground be not closed, the statute also authorizes the inspector of the poor in a non-burghal parish, and the town-clerk in a burghal parish, to convene a special meeting of the parochial board to consider the propriety of providing a new burial-ground. If, at such a meeting, it is decided by a majority of those present that a new place of burial is necessary, the Act directs that it shall be provided in the same way as if the old burial-ground had been closed by an order in Council.[4]

The parochial board is authorized to contract for the purchase of any land or building thereon, for a burying-ground, or an addition to burying-ground, under the Act; or to purchase a cemetery, or part thereof, subject to the existing rights of sepulture therein; or to contract with cemetery companies for interments in ground belonging to them, or those having rights of interment in the burial-ground of the parish.[5] The provisions of the Lands Clauses Consolidation (Scotland) Act, 1845, 'with respect to the purchase and taking of lands otherwise than by agreement,' are incorporated with the Act, subject to the declaration that they shall have effect only in respect to such lands as the sheriff of the county shall

[1] 30 and 31 Vict. cap. 101 (Public Health Act), sec. 16. Nuisance includes 'churchyard so situated or so crowded with bodies, or otherwise so conducted as to be offensive or injurious to health;' and the sheriff may order it to be shut up or regulate its use, without the intervention of the Secretary of State (sec. 19).

[2] Sec. 10.

[3] Fulton *v.* Dunbar, 31 May 1862, 24 D. 1032.

[4] Sec. 9.

[5] Sec. 12.

have designated as fitted for a burial-ground in manner foresaid.

Two or more parishes may agree, through their respective parochial boards, to have a joint burial-ground, to be managed under the Act by themselves jointly, upon such terms as may be arranged.[1] The general management of burial-grounds so provided is vested in the parochial boards,[2] who are authorized to have them enclosed and laid out in such way as may be proper; and to defray the expenses incurred in carrying out the Act, in so far as not met by the fees paid under its provisions. The assessment for this purpose is to be imposed in the same way as that in force at the time for the relief of the poor;[3] and the Act 20 and 21 Vict. cap. 42, authorizes loans to be made to parochial boards by the Public Works Loan Commissioners, on the security of the assessment authorized by the statute to be levied.

In the construction of the assessment clauses under these Acts, it has been held that the Poor Law Act is referred to for the purpose of determining the liability to assessment as well as of fixing the manner in which it is to be recovered, and that as parish ministers are exempt from poor-rates in respect of their manses and glebes, they are likewise not liable in the assessments imposed under the Registration Act and the Burial-Grounds Act.[4]

Vaccination.

In 1863 it was decided by Parliament to make the practice of vaccination compulsory, and a statute was passed, 26 and 27 Vict. cap. 108, of which the leading feature is the appointment, by the parochial board of every parish or combination, of a medical practitioner to be the 'vaccinator of the parish or combination,' his remuneration being dependent on the number of persons, not previously vaccinated, who have been successfully vaccinated by him under the orders of the board. At the same time, a central institution for the collection and distribution of vaccine lymph in Scotland was established and

[1] B., Sec. 14. [2] A., Sec. 18. [3] Sec. 26.

[4] So held by Lord Rutherfurd Clark, as Sheriff of Berwickshire, in Lauder, 10 P. L. 123.

organized under the directions of the Board of Supervision, from which supplies are furnished gratuitously to such of the parochial vaccinators as may make application.

By this Act every child must be vaccinated within six months after its birth by the medical attendant, who delivers to the parent or guardian a certificate of successful vaccination. This implies that the operator shall take sufficient and proper means to satisfy himself of the success of the operation before he certifies that it has been successful,—that is to say, that he has personally examined the child on the seventh or eighth day after the operation, or at least on some day during the progress of the vaccine disease; and if any one should grant such a certificate without personal evidence of the fact, he is subject to a criminal prosecution. At the Circuit Court of Inverness, a medical man was convicted of having given a false certificate of vaccination, knowing the same to be untrue, and received sentence of four months' imprisonment.[1] Should the child not be in a fit and proper state to be successfully vaccinated, the medical man is authorized to give a certificate to that effect, which is to remain in force for two months from its delivery, to be then renewed if necessary; and production of this certificate is held to be a sufficient defence against any complaint which may be brought against the father or mother for non-compliance with the provisions of the statute.[2]

The certificate, having been received by the parents of the child, must within three days be transmitted by them and lodged with the registrar for the district,[3] and once every six months the registrar transmits to the inspector of the poor a list of the names and addresses of such persons as have failed to transmit or lodge a certificate in terms of the Act.[4] The list is laid by the inspector before the parochial board, which forthwith issues an order to the vaccinator of the parish to vaccinate the persons named in the list. At the same time the inspector of the poor gives notice, in writing, of the order to each of the persons named in the list, or if children, to the father or mother, or the persons having the care of them. In pursuance of this order, the vaccinator is empowered to vaccinate the persons named therein at any time not less than

[1] H. M. Advocate v. Webster, 24 Sept. 1872, 2 Couper 339.
[2] Sec. 9. [3] Sec. 8. [4] Sec. 18.

ten or more than twenty days of 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.[1] In the construction of this Act the Board of Supervision has been advised as follows :—

1. That it is the duty of the parochial board to see to the proper vaccination of every pauper child; and in order that this may be accomplished, that parochial boards should immediately make such arrangements as will ensure that this is attended to.

2. That the vaccinator is not bound to vaccinate non-pauper children, except on an order to that effect by the parochial board, proceeding upon the list furnished by the registrar to the inspector, in terms of sec. 18 of the statute.

3. That the persons ordered to be vaccinated under the 18th section of the statute are children whose parents or guardians have failed to transmit a certificate of vaccination in terms of the Act; and when the vaccinator is directed by the parochial board to vaccinate any such person, he is entitled in every case to the allowance which has been agreed upon between him and the parochial board.

4. That parochial boards are entitled to defray the cost of vaccination out of the moneys coming into their hands for the relief of the poor, or from the Parliamentary grant for medical relief of the poor, without distinction of the persons vaccinated. But they are not bound or entitled to pay the vaccinator for children other than paupers, except when such children are vaccinated under an order to that effect, in terms of the 18th section; and in all such cases it is competent for the parochial board to proceed against persons who have not transmitted to the registrar a certificate of the vaccination of their children within the statutory period, for the penalties mentioned in the 17th section; and these penalties will become part of the funds for the support of the poor of the parish.[2]

5. That no person can have failed to transmit a certificate in terms of the Act until after the expiry of six months from the 1st of January 1864, so that there can be no objection to the registrar postponing the transmission of the first list until after six months from the 1st of January 1864, provided he thereafter always transmits a list within six months from the date of the preceding list. There appears, however, to be no objection to the registrar transmitting lists oftener than once within six months. The Act directs that a list shall be transmitted once in every six months; but this does not exclude a more frequent transmission.

[1] Sec. 18. [2] But see Public Health Act, sec. 57; *post*, p. 64.

6. That the vaccinator, unless under a special order to that effect, proceeding from the parochial board, is not entitled to go beyond the bounds of his district for the purpose of vaccinating a person removed from the district. If the parish to which the child has been removed is known to the parochial board, notice should be given to the parochial board of that parish, and that board ought to see to the vaccination of the child.

7. That it is competent for the parochial board to make an arrangement with the vaccinator, whereby the vaccinator shall be bound to attend at certain stated times and places, for the purpose of vaccination, and to remunerate the vaccinator for such attendance by a fixed salary in addition to the statutory allowance for each successful vaccination. The parochial board would be entitled to require the presence of pauper children at such times and places, but the presence of non-pauper children would be optional.

10*th Dec.* 1863.[1]

By sec. 5 of the statute, the parochial board of every parish or combination, and each vaccinator, and every officer engaged in the administration of the laws for the relief of the poor in the parish, are required, in the exercise of the functions conferred upon them by the Act, to conform to the regulations which may from time to time be issued by the Board of Supervision; and in the exercise of this power, the following are the regulations now in force:—

1. The parochial board shall, at the time of, or prior to, the appointment of each vaccinator, fix the rate of allowance for the remuneration of such vaccinator, in terms of the 2d section of the Act; and the rate of allowance so fixed shall not be reduced without the sanction of the Board of Supervision previously had and obtained.

2. The inspector of the poor shall, within forty-eight hours of the appointment of each vaccinator, report to the Board of Supervision the name and address of every vaccinator so appointed, together with the rate of allowance fixed for his remuneration.

3. The parochial board shall supply the inspector of the poor, and to each vaccinator appointed by them, a copy of the Vaccination (Scotland) Act, and of the Board of Supervision's Regulations relating thereto.

4. In the case of pauper children, the inspector of the poor shall see to the execution of the Act in all matters required to be done or

[1] R. 162.

provided by the father, mother, or person having the care, nurture, or custody of the said children.

5. The vaccinator shall at all times be furnished with vaccine virus, and shall vaccinate, at the cost of the parochial board according to the rate of allowance fixed in terms of the Act and these regulations, all persons by themselves, or by their parent or parents, in receipt of parochial relief, who may apply to him for that purpose.

6. In every case falling under Regulation 4, where a child has been vaccinated by a person not being a registered medical practitioner, the vaccinator shall examine such child; and if he is satisfied that the operation has been successful, he shall furnish the Inspector of the poor and the registrar of the district with a certificate of insusceptibility on the ground of previous successful vaccination; but if he is not satisfied that the operation has been successful, he shall proceed in terms of the Act.

7. The vaccinator shall make a return to the Board of Supervision on the 1st day of January and on the 1st day of July in every year, according to the Form A.

8. The inspector of the poor shall make a return to the Board of Supervision on the 1st day of January and on the 1st day of July in every year, according to the Form B.

9. The offices of inspector of the poor and vaccinator shall not be held by the same person.

10. A vaccinator shall not act or vote at the meeting of any parochial board whose officer he is.

20th Aug. 1863.[1]

1. When the inspector of the poor has received from the registrar, in terms of the 18th section of the Act, a list of the names and addresses of persons who have failed to transmit or lodge a certificate of vaccination in terms of the Act, he shall lay the same before the parochial board at their first meeting held thereafter, or (failing any such meeting at an earlier date) at a meeting not later than three months from the date on which the said list was received, which meeting the inspector is hereby required to call, for the purpose of receiving the said list and giving orders thereon, in compliance with the 18th section of the Act.

2. All orders issued to the vaccinator, in compliance with the 18th section of the Act, shall be in the Form C, and inspectors of the poor are required to adhere strictly to the terms of that form of order. The body of the order may be printed, and the names and dates filled up in writing. Every such order shall be delivered by being

[1] R. 160.

put into the post office, addressed to the vaccinator, upon the same day on which the order is issued.

3. All notices of orders so issued shall be in the Form E[1] annexed hereto, and inspectors of the poor are required to adhere strictly to the terms of that form of notice. The notice must be entirely in writing, and it must be delivered to the person to whom it is addressed on the day on which it is issued, or as soon thereafter as may be, either by being served upon him or her personally, or by being left at his or her place of residence. The inspector will be held responsible for the due delivery of every such notice, and for being able to prove that such delivery was made.

4. If, after the expiry of twenty days from the date of such notice, the vaccinator shall certify that he has been unable to perform the operation of vaccination upon any child specified in the list annexed to the order, owing to the parent or guardian having refused to allow, or taken means to prevent such operation to be performed, the inspector shall, within seven days after the receipt of such certificate, proceed against the offending person, in terms of the 25th section of the Act, for recovery of the penalty attached to the offence by the provisions of the 18th section.

5. The inspector shall report to his parochial board at the meeting thereof next ensuing, as to whether any orders issued by them have been effectual; and if any such orders have not been effectual, he shall specify in his said report the cause of failure, and the result of all proceedings taken by him for the punishment of offenders.

6. The vaccinator shall be entitled to remuneration from the parochial board for every person he may have visited for the purpose of vaccination, in pursuance of an order under the 18th section of the Act (whether he has performed vaccination or not), the said remuneration to be according to the scale of allowance fixed by the parochial board for successful vaccination.

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[1] FORM E.

VACCINATION ACT.

Notice of Order to Vaccinator.

To residing at

Take notice, that the Parochial Board of have, in terms of the 18th section of the Act 26 and 27 Vict. c. 108, issued an Order to , Vaccinator for the parish of , to vaccinate being a child (*or*) children (*as the case may be*) of which you are the father, (*or*) the mother, (*or*) the person having the care (*as the case may be*).

Dated this day of 18 .

Inspector of the Poor for the Parish of ———.

7. If any child named in the registrar's list shall have left the parish for another known place of residence in Scotland before an order to vaccinate such child has been issued and executed, the inspector of the poor shall give immediate notice of the fact, and of the circumstances connected therewith, to the inspector of the parish to which such child shall have gone, whose duty it shall be to use all lawful endeavours to have the said child vaccinated, and a certificate of such child's vaccination transmitted to the registrar of the district within which the said child was born.

8. If the present place of residence of any child named in the registrar's list shall be unknown, it shall be the duty of the inspector of the poor to take all reasonable means to discover such place of residence, and as soon as such place of residence becomes known to him, to proceed in terms of the preceding regulations.

15*th Dec.* 1864.[1]

By the 57th section of the Public Health Act, the local authority are authorized to defray the cost of vaccinating all such persons as to them may seem expedient, other than those whose vaccination falls to be paid for by the parochial board out of the parochial funds. These are paupers, children of paupers, and defaulters under sec. 18 of the Vaccination Act; but as the parochial board could not legally charge itself with the duty of vaccinating other classes, it was deemed proper to empower the local authority, as one of the measures necessary for the prevention of small-pox, to afford opportunities for gratuitous vaccination and re-vaccination to all persons in their district who chose to submit to it.[2]

[1] R. 163.

[2] R. (H.), 7 Dec. 1876.

CHAPTER V.

POORHOUSES.

UNDER the old law, the Scottish system was essentially one of out-door relief; but in some of the large towns, owing to the number of aged and helpless individuals whose friends are unable or unwilling to take charge of them, certain establishments were provided of the nature of almshouses, to which persons of the above description might be removed and placed under proper care and treatment. The expense connected with these institutions was held to be a proper charge on the funds,[1] but they differed considerably from the poorhouses of the new law. They were refuges for the poor and helpless provided by charity, not houses established by law for the fulfilment of a legal obligation, and a great amount of liberty was given to the inmates. They were allowed out to visit their friends and amuse themselves, and friends were allowed to come in to see them, bringing with them tobacco and other articles of luxury. Those of them who chose to work received their earnings and spent the money upon their liberty days, and the Board of Supervision has stated that one of the first petitions which they received was from the male inmates of a poorhouse, complaining that the weekly sum allowed them for pocket money was unreasonably small. It is hardly necessary to observe that the poorhouses authorized by the statute are of a very different character. Under the poor law as now administered, a poorhouse serves two objects; it is both a refuge and a test. In the first place, it is a shelter for the class referred to in the Act[2] as 'the aged and other friendless and impotent poor, and those poor

[1] Scott *v.* Fraser, 19 Jan. 1773, M. 10,527.

[2] Act 8 and 9 Vict. cap. 83, sec. 60.

persons who, through weakness or facility of mind, or by reason of dissipated and improvident habits, are unable or unfit to take charge of their own affairs.'[1] For these it is declared expedient that poorhouses should be erected in populous parishes, so that their wants may be more effectually supplied, with comfort to themselves and at the least expense to the community. But while this purpose has been served, it has been found that outside the class referred to there is in many parishes a large class of persons whose thriftlessness or profligacy renders it necessary that a test should be provided against the funds of the poor being devoted to the encouragement of indolence and vice, and this test the confinement of the poorhouse supplies. To make it useful, however, in that way, it requires to be conducted in such a manner as will render a life of idleness less attractive than one of labour; and accordingly the Board of Supervision have prepared a code of rules and regulations for the government of poorhouses, under which the inmates are subjected to a considerable amount of discipline and restraint. These rules have been framed for poorhouses generally, and many details are left open to the parochial boards and the managing committees; but when any considerable modification of the rules is wished, the circumstances require to be reported to the Board of Supervision, who must be satisfied of the propriety of the change before the alteration is permitted.

The paupers, then, for whom poorhouses are intended are of two classes:—

(*a.*) Persons incapacitated by youth, age, or disease, mental or physical, and who have no one to attend to them.

(*b.*) Persons whose claims are doubtful, and who are suspected of concealing or misrepresenting their resources, or who may reasonably be expected to be assisted by friends or relatives. Amongst the latter will be included many who are incapacitated to a certain extent, and yet able to work a little if they choose; and likewise those of idle, immoral, and dissipated habits, who would squander their allowance if they were admitted to out-door relief. It is in such cases as these that the poorhouse has been found in practice to be a most

[1] 'Sentimental matter,' per Lord Benholme, Forsyth *v.* Nichol, 19 Jan. 1867, 5 M'P. 293, 'just means all sorts of poor,' per Lord Neaves, S. C.

effectual check, acting as it does as a discouragement to idleness, and furnishing the restraint of which vicious and abandoned persons stand in need.

The statute authorizes the erection of a poorhouse in any parish or combination of parishes containing more than 5000 inhabitants, according to the enumeration of the population last published by authority of Parliament. If a poorhouse already exists, it may be altered or enlarged. Two or more contiguous parishes, with the concurrence of the Board of Supervision, may build poorhouses for their common use;[1] but no poorhouse can be built, or any existing poorhouse enlarged or altered, until the plans have been approved of by the Board of Supervision; and before the new building is opened, the parochial board is required to produce to the Board of Supervision a certificate by an architect, bearing that it has been executed in conformity with the plans, and that it is in every respect safe and suitable for immediate occupation. A certificate is also required from a competent medical man, that, having regard to the drainage, ventilation, furniture, and arrangements, to the condition of the plaster work and building generally, the house is in every respect fit for the immediate reception, without risk or injury to their health, of a certain number of inmates.[2] If, after the premises are opened, any defects are found in the arrangements, the house committee is ordered to have them remedied and removed; and until this is done, the Board will not hold any offer of admission into the house to be an offer of adequate relief.

In some cases parochial boards have erected dwellings or lodgings for paupers. It is hardly necessary to observe that these are not statutory poorhouses. The pauper lodged therein cannot be subjected to any restraint to which he would not be bound to submit in any hired house of his own, and an offer of admission may be refused; but when the offer is made to paupers receiving out-door relief, if the state of the building and the nature of the accommodation provided are of a kind to which no reasonable objection can be taken, the Board of Supervision take it into account in judging of the sufficiency of the relief in the event of its being complained of as inadequate.[3]

[1] Sec. 61 of 8 and 9 Vict. cap. 83. [2] R., 2 Dec. 1852.
[3] R., 20 Dec. 1861, 90.

The statute allows[1] the managers of a poorhouse to receive as boarders paupers not belonging to the parish or combination by which it has been erected, charging such rates for their maintenance as may be approved by the Board of Supervision.[2] This previous approval of the Board is indispensably necessary, in order to ensure the legality of an offer of admission to the poorhouse.[3] 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,—at least within reasonable limits, of which the Board of Supervision will judge. 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; and an offer of admission is in all cases a legal tender of relief, its adequacy in the circumstances being a question for the Board of Supervision in a complaint at the pauper's instance, if he chooses to appeal.[4] 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, the poorhouse being 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.[5] 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.

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.'[6] Power is also given, for the purpose of erecting a new poorhouse, or enlarging, altering, or repairing an existing poorhouse, to borrow money upon the

[1] Sec. 65. [2] Sec. 65. [3] R. 91.
[4] Forsyth *v.* Nichol, 19 Jan. 1867, 5 M'P. 293.
[5] Watson *v.* Walsh, 26 Feb. 1853, 15 D. 448. [6] Sec. 61.

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] The statute, however, gives no power to borrow except for the purpose of erecting a new poorhouse, and consequently the preliminary expenses connected with a scheme which is afterwards abandoned cannot be included in the debt, although they will form a good charge against the current assessment as part of the cost of administration for the year.

By the Rules and Regulations for the management of the poorhouses, and the discipline and treatment of the inmates, issued by the Board of Supervision,[3] 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, and 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 which require additional building, or the removal of any building or wall, cannot be undertaken by the House Committee, except with the concurrence of the parochial board and the Board of Supervision. The House Committee purchase, 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

[1] 19 and 20 Vict. cap. 117, sec. 3.

[2] 27 and 28 Vict. cap. 83, sec. 62.

[3] Sec. 64 of 8 and 9 Vict. cap. 83.

what poor children admitted to the poorhouse shall be boarded out, and see that those boarded out are placed with proper persons, that their 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 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, whether upon a first or upon any subsequent admission, is admitted by a written or printed order signed by an inspector, or by some other person duly authorized to sign such order by the House Committee, or by a parochial board having a right to send poor persons to the poorhouse, and not otherwise. No order is valid after the lapse of six days from its date; indeed, it should be presented at the poorhouse within three days, unless the applicant, at the time of receiving the order, be resident at a distance of more than five miles from the poorhouse. Whenever relief in the poorhouse is offered to a pauper, the inspector is required to transmit to the governor a copy of the page in the register relative to the pauper, stating whether the pauper is in good health and able to work, the nature and extent of his disability, the number of his dependants, etc. If the person is lunatic, he cannot be legally received into the poorhouse unless it possesses licensed lunatic wards, and then only with the consent of the

General Board of Lunacy. In the case of readmissions, it is sufficient if a medical certificate is sent along with the reference to the extract from the register previously transmitted.[1] A newly admitted pauper, if labouring under disease of body or mind, is also examined by the medical officer with a view to his being specially provided for.

The inmates, so far as the poorhouse admits of it, 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 of it, 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 Committee 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 any 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

[1] R., 1 Feb. 1871.

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 dependant 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 dependant an inmate, he must take every such dependant 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.

The religious persuasion of each inmate is ascertained and registered at the time of his admission, and the statute provides that any known minister of the religious persuasion of any inmate is entitled at all reasonable times to be admitted to the poorhouse at the request of such inmate, for the purpose of affording him religious assistance, subject to such rules and regulations as the Board of Supervision may approve.[1]

But the ordinary religious instruction of the inmates of the poorhouse is committed to a chaplain, who must be a distinct officer from the house governor; 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.

[1] Sec. 69.

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, 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 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.

While the statute seems to have contemplated that the religious instruction of the inmates should be given in the poorhouse, there seems to be 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]

In the case of children, the inspector is required to state, in the ticket for admission, the religious denomination of the child as entered in the Children's Separate Register, and the house governor of the poorhouse enters the child in the house register as of that denomination. He is further required to cause to be delivered on Monday of each week to any known minister of the religious denomination of any inmate, who regularly visits or has been nominated to visit the poorhouse for the purpose of instructing the children of his own denomination, a list of all such children then inmates of the poorhouse, if he applies for it.[2] These stringent rules were rendered necessary by the efforts which were made in some country parishes to have the children admitted to poorhouses educated 'according to the religious persuasion of the majority of the ratepayers.' The Roman Catholic inhabitants of the parish complained of the injustice of annexing to parochial relief a condition which must preclude

[1] Board of Supervision Minute, 14 Aug. 1862. [2] R., Nov. 3, 1864.

some of the most destitute of the paupers from receiving it.[1] The Board of Supervision obliged the parochial board to rescind the resolution, and pass a minute to the effect that all children ought to be registered as belonging to the religious persuasion of their parents, or the survivor of them that was known or could be ascertained, unless in cases of desertion by the parents or surviving parents, who in that case were deemed to have voluntarily abandoned the natural right to direct the religious instruction of their offspring. It was also decided that if the child, even when deserted, has been registered as a Roman Catholic, the parochial board has no power to alter the register and describe the child as a Protestant without his or her consent.[2] In another case where a similar kind of proselytism was attempted, children being sent for their education past an Episcopal school, to which the parents wished them sent, to schools in a neighbouring town, the parochial board was informed that they had no power to deprive parents, or a surviving parent, though a pauper, of the natural right to direct the religious instruction of her or their children, and that unless there was reason to believe that the school referred to was improperly conducted, which was not alleged, the parochial board ought to permit the children in question to go to that school, in the same manner as other children, inmates of the poorhouse, were permitted to go to other schools in the town.[3]

Misconduct on the part of the inmates is divided into cases *disorderly* and cases *refractory*.[4] 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

[1] Board of Supervision Sixth Annual Report, p. 7.
[2] R., 16 June 1863. [3] R., 29 June 1854.
[4] See 29 and 30 Vict. cap. 118, sec. 17.

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 hours are insufficient for that purpose, for such further time as may be necessary for such purpose.

A difficulty often occurs as to what is to be done in the case of paupers who apply for relief while suffering from fever, small-pox, or other contagious disease. It is superfluous to observe that it is not competent to any parish to send to the poorhouse persons so affected, when their admission would be dangerous to the other inmates. The proper course is to require the medical officer of the poorhouse to certify in writing whether danger would, in his opinion, attend the admission of the pauper, or whether arrangements could be made, consistently with the safety or welfare of the other inmates, for the admission of the pauper to the poorhouse hospital. When an inmate of a poorhouse is found to be suffering from an infectious disease, and there are no means of separating the patient from the other inmates so as to protect them from the risk of infection, the patient is removed, if that can be done without injury, to some public hospital or other suitable place. When the patient is in such a state as not to be safely removable, the best practical arrangement should be made for the isolation of the patient, even if it be necessary, for that purpose, to discharge some of the other inmates.[1]

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.[2]

In every case of death by accident, or of sudden or unexpected death, the case has at once to be reported to the procurator-fiscal, according to a form supplied for the purpose; and the

[1] Board of Supervision, 18th Report, 29; Public Health Act, sec. 42.

[2] R., 3 Feb. 1864, p. 107.

medical officer makes a report on the circumstances, but he is not entitled to make a *post-mortem* examination of the body without the orders of the procurator-fiscal.[1] Similar rules have been issued by the Board of Supervision, at the request of the Lord Advocate, for the guidance of inspectors of the poor and medical officers, with respect to such cases occurring in parochial buildings which are not poorhouses. A report of the case must be despatched to the procurator-fiscal of the district within which such house is situated, by the first post after the occurrence of the death; and a special written report as to the cause of death is, without delay, made by the medical officer to the inspector, who transmits copies of it to the procurator-fiscal and to the Board of Supervision, and submits the report itself to the next meeting of the parochial board or its committee.

[1] R., 28 March 1866.

CHAPTER VI.

THE INSPECTOR.

THE parochial board is directed by sec. 32 to appoint a fit and qualified person to be inspector of the poor in the parish. This is an officer whom 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 irremovable by the parochial board, he will carry out the directions of the Board of Supervision, and see the law administered in his parish faithfully 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.[1]

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.[2] In each parish and district there can be only one inspector, who is directly responsible to the Board of Supervision for the whole local administration. It is therefore not competent 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 to 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

[1] Sec. 56. [2] Sec. 55.

Board of Supervision, found that the parochial board had no right to make such an appointment.[1]

No parochial board can dismiss an inspector once named; and when a parochial board attempted to do so indirectly by 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.[2] Were the inspector not independent of the parochial board, the interests of the poor might often be sacrificed to those of the ratepayers; and therefore he is only removable by the Board of Supervision, which is beyond local passions, interests, and prejudices. An assistant inspector, however, is dismissible at pleasure, or at the end of the term for which he is engaged.[3] 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.[4]

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 poor-house; and there are various other public offices which the Board consider to be disqualifications, and require him to resign, unless he will resign the inspectorship. He ought not to be a member of the School Board.[5] He will not be allowed to be a manager appointed under sec. 22 of the Education Act, or an officer appointed under sec. 70. The union of the offices of inspector and governor of the poor-house is also inexpedient. It is superfluous to add that 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.[6] The

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

[2] 10 R. 4.

[3] M'Pherson *v.* Adamson, 2 June 1858, 1 P. L. 29. [4] Sec. 56.

[5] Clark *v.* Board of Supervision, 10 Dec. 1873, 1 Rettie 261.

[6] 13 R. 10.

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.[1] The office ought not to be conjoined with that of procurator-fiscal for the district in which the parish is situated, or of sheriff-officer; and the duties of medical officer and vaccinator cannot be discharged by the same person.[2] 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.'[3]

The Board have declined to confirm the appointment of a minor to the office; and under no circumstances will they accept a woman as a *person* fit and qualified in the sense of the Act. The reasons which have induced the Board to come to this decision are, that an inspector of the poor is called on to perform many duties for which a woman is unfitted. He may be required in the dead of night and in inclement weather to travel a considerable distance on foot to attend a case of urgency; he may be obliged to take temporary charge of lunatics, and to deal with persons intoxicated, and other 'idle and strong beggars and vagabonds.' A woman presiding as returning officer at a meeting of electors, and conducting prosecutions in the Sheriff Court, would also be an anomaly; and therefore it was held, in a case from Stromness, that a lady, every way qualified in all other respects for the office, could not be permitted to enter on her duties.[4]

These various disqualifications apply equally to the office of assistant 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

[1] 12 R. 4.
[2] 10 R. 1.
[3] 9 R. Ap. A, 4.
[4] Board of Supervision Report, 1873.

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 the annual docquets and 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. 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.[4] He is bound, when required by the parochial board, to visit, at his own cost, every pauper residing in the parish, and within five miles of any part of the parish; but an opinion has been expressed, to the effect that 'on all other occasions on which

[1] R., April 13, 1848.

[2] R., 18 Feb. 1847, p. 27.

[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] R., 10 Nov. 1853, p. 27.

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.'[1] He may also, under special circumstances, have a claim against his board to be recompensed for duties performed outwith his proper functions; but he is not allowed to act as agent for his board under submissions and in other extra-judicial business, at least not to the effect of charging fees for his trouble against the opposite party; and any expenses recovered must be paid to the credit of the board. In short, he can derive no profit from the management of the business committed to him in any way whatever, *e.g.* by selling goods to paupers.[2] 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; and when he is temporarily incapacitated, it is the duty of the board to appoint some one to take his place *ad interim*.

Duties of the Office.

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.

[1] R., 10 Nov. 1853, 27 [2] R., 18 Feb. 1847, 27.

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.

I. As clerk to the board. In this capacity he attends all meetings of the parochial board or of its committees, writes the minutes, conducts the correspondence, keeps the accounts, advises the board on questions relating to the settlement of paupers, makes all necessary investigations, and prepares the reports and returns which may be called for by the Board of Supervision from the parochial board.

For nearly ten years after the passing of the Poor Law Act no particular system of book-keeping was prescribed. The result was, as might have been expected, an entire want of uniformity, and, in some instances, considerable confusion. The Board of Supervision have no power of auditing parochial accounts; but in 1854 they did their best to remedy the evil by requiring all inspectors to keep their books on one principle, and according to a particular pattern.[1] The first of the series is—

1. *Record of Applications for Parochial Relief.*—In this book the inspector enters from day to day every application made to him, stating shortly the pauper's name, his residence, the country to which he belongs, his age, occupation, and weekly earnings, whether he is wholly or partially disabled, and the number of his 'dependants,' meaning thereby, wives, and descendants under fourteen. Orphans and deserted children are entered as separate cases; but the wife and children not *forisfamiliated* of a person on whose account relief is asked are part of his case, and are not entered separately. In the appropriate column the result of the application is recorded by the inspector writing the words 'relieved,' 'refused,' or 'admitted.'

In the performance of this part of his duty, the matter for inquiry is merely the applicant's destitution, and whether he is legally entitled to relief. If *prima facie* he is fairly entitled to relief, the inspector is bound to give it, notwithstanding

[1] R., 21 Dec. 1854.

'that he may not have a settlement in the parish or combination.' 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. Suppose, for instance, that 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. The inspector is bound to return an answer to every application for relief within twenty-four hours from its being made. If, on such inquiry as he shall be able to make within that time, he is 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 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 is 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, in either 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 date of refusal. This enables the sheriff to judge of the case, if an appeal is made to him on the subject; but when the application is not wholly refused, and the pauper is merely dissatisfied with his allowance, he should be told that his remedy is to complain to the Board of Supervision, and that the sheriff has no jurisdiction. After the application is reported to the parochial board and its committee, the inspector has no further responsibility in the case, beyond attending to such instructions as he may receive on the subject.

[1] Board of Supervision Rules, 20 Oct. 1845, secs. 11, 15.

2. *The General Register.*—When the application is sustained, the pauper's name is entered in a book called the 'General Register of Poor belonging to the Parish.'[1] Here are recorded the names of all persons admittedly chargeable to the parish, resident and non-resident, receiving relief for a short or long period. Each pauper retains the same folio in the register, although struck off and readmitted several times, and thus it shows at a glance the whole history of the case. A similar book is kept under the name of the Children's Separate Register, in which the religious denomination to which the child belongs is also entered, and both are open to inspection, at the inspector's office at certain fixed times, by any ratepayer on payment of a fee, and by any clergyman free of charge.

3. *Pay Roll.*—In this book the inspector enters the sums paid to each pauper, week by week. And (4) in a *Visiting Book* the inspector enters his visits to the pauper, 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 he should make it known to all the paupers that he is required to do so.[2]

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

[1] R. 16, 3 Nov. 1864. [2] Rules, 20 Oct. 1845, secs. 12, 14.

from time to time afterwards, visit the home of such poor person, and supply him with such articles as may seem necessary, until the case shall have been reported at the next meeting of the parochial board.[1]

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 under sec. 73; 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 can 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

[1] Rules, 20 Oct. 1845, secs. 19, 20.
[2] Williamson *v.* Leslie, 17 Dec. 1850, 13 D. 335.
[3] Brown *v.* Gemmel, 29 May 1851, 13 D. 1009.

the parish of original chargeability to some other parish.'[1] A cripple beggar wandering throughout the country having been relieved by the parish of A, it was found that A 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.[2] 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 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.[3] After notice of chargeability is given, the ratepayers of the parish of residence are under no liability, but 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. The parish of settlement is indeed bound to make reasonable provision for his support to the satisfaction of the relieving parish.[4] But the former is entitled to fix the amount of relief, and the form in which it shall be given; if in-door relief is offered, the relieving parish cannot object; if the amount of out-door relief is in their opinion insufficient, its remedy is to remove the pauper to his parish of settlement;[5] but the relieving parish is not entitled to demand unreasonable conditions from the parish of settlement,

[1] Taylor *v.* Strachan, 7 P. L. M. at p. 137.

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

[3] R., 29 Oct. 1845, p. 37.

[4] Sec. 72, R., 2 June 1859, p. 104.

[5] Board of Supervision Letter, 3 Aug. 1871, 5 P. L. (2) 37.

in order that the right 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, he must remain in the parish of residence, and be treated in all respects as if he were one of its own poor.[1] Again, if a pauper belonging to A, and residing in B, within five miles of A, makes an application for relief to the inspector of B, the latter has only to report the fact of the application to the inspector of A, who is responsible for the treatment of the pauper under sec. 55. It has been held that the parish of settlement is liable in the expense of investigating the claim after notice under sec. 71,[2] but not for the cost of prosecuting persons for desertion under sec. 80, nor for travelling expenses incurred in obtaining information as to the settlement of the pauper;[3] and the inspector has no right to commission, or agency, or any similar charge, for looking after the paupers of other parishes residing in his own.[4]

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.

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.

In consequence of difficulties which have been experienced by parochial boards and inspectors of poor in checking

[1] Hay *v.* Melville, 3 Feb. 1858, 30 Jur. 259.
[2] Hay *v.* Murdoch, 28 Jan. 1854, 26 Jur. 201.
[3] Shennan *v.* Austin, 30 Oct. 1874, 2 R. 68, 2 P. L. (3) 634.
[4] R., 1 Oct. 1855, p. 103.

and tracing payments made, and remittances sent from one parish to another, the Board of Supervision have required all inspectors in future to comply with the following instructions whenever they make payment of an account or remit money (whether by cheque or otherwise) to the inspector of another parish: [1]—

1. Every payment of account or remittance shall be accompanied by a letter, either in a separate or in the same enclosure, stating the amount paid or remitted, and the purpose or purposes to which it is to be applied.

2. When there are contra-accounts of adjusted and admitted claims between two parishes, and the one account is in whole or in part discharged by the other as a set-off, this fact shall be stated in the letter required by the immediately preceding instruction.

3. Every inspector shall keep an 'Intimation of Payment' book, with counterfoils attached, in the form prescribed by this Minute; and whenever he makes payment or remittance as above explained, he shall transmit by post an 'intimation of payment' to the chairman of the parochial board in the parish to which payment is made.

4. Every inspector shall keep a 'Receipt' book, with counterfoils attached, in the form prescribed by this Minute; and whenever he receives payment, as above explained, he shall grant a 'receipt' in said form.

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

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

[1] R., 19 March 1874.
[2] 9th Report, Ap. A, 5, p. 158.
[3] 10th Report, Ap. A, 4, p. 4.

must be answered within seven days after the receipt thereof, unless the inspector be prevented from doing so 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 it by post, and to prepay the postage, and must also preserve evidence of the day on which it is transmitted.[1]

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 parochial 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.[2]

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

[1] Rules, 7 Dec. 1846.

[2] H. M. Advocate *v.* Hardie, Stirling Circuit, 10 April 1847, Ark. 247.

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.[1]

Litigation.

It is an inconvenient rule of process in Scotland, that when a summons requires to be raised by such a body as a kirk-session, which is not a corporation, the summons is at the instance of the individual members of the session *nominatim* for themselves, and as composing the kirk-session.[2] To save this needless formality, the Poor Law Act provides, '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.'[3] The question of the inspector's right to sue depends on the parochial board's title or interest to maintain or defend the action; *e.g.*, a question as to the parish boundary cannot be settled

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

[2] Kirk-Session of North Berwick *v.* Syme, 2 D. 23. [3] Sec. 57.

in an action between the two inspectors without calling the ratepayers concerned.[1]

It is also 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.'[2]

But, of course, the parochial board retains the entire direction and control of every such action, although the same may be carried on in name of the inspector.[3]

The Court of Session, as the Supreme Court of Scotland, has the inherent right of examining the proceedings of all inferior judicatures, to the effect of seeing that they keep within the powers committed to them by the statutes from which they derive their authority. Not only do they correct all excess of power, such as assuming jurisdiction over persons beyond their territory,[4] and gross irregularities in point of form;[5] but where the subordinate tribunal fails or refuses to act, they will interfere to compel performance of their statutory duty, even although they may have no power to review the decision on the merits after it is pronounced. For instance, although, under the Education Act, the report of the Education Board is absolute with respect to the planting of schools, the Court has said that, if it were plain that the Board had refused or failed to apply their minds to the question of school accommodation in the particular parish so as to come to an intelligent resolution on the subject, they might interfere to correct that abuse; or if the Board went contrary to or outwith the statute, they might in that case also interfere to set them right.[6] Even on the merits, the right of review in the Court of Session remains, unless by the

[1] Grozier *v.* Kirkwood, 11 Feb. 1864, 9 P. L. (2) 239. As to the right to sue for monies due to a combination now dissolved, see Chisholm *v.* Marshall, 17 Jan. 1874, 1 R. 389, 2 P. L. (3) 139.

[2] Sec. 58. [3] Sec. 57.

[4] Scott, 3 July 1832, 10 S. 760.

[5] Dawson, 18 Feb. 1809, F. C.; Guthrie, 25 May 1827, 5 S. 711; Marr, 1 S. 511; Key, 9 S. 65; Sim *v.* Hodgert, 9 S. 507; Mackay's Practice, vol. i. p. 221 et seq.

[6] Lord Advocate *v.* Stow School Board, 19 Feb. 1876, 3 Rettie 469.

particular Act of Parliament it is excluded; but the sheriff has no authority with respect to inferior judicatures unless it is expressly given.

In virtue of this jurisdiction an appeal was always competent to the Supreme Court, not only on the question of a pauper's right to relief, but against 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, the 'needful sustentation.'[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

[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] Halliday *v.* Balmaclellan, 16 July 1845, 7 D. 1057. [6] Sec. 75.
[7] Sec. 40. Stewart *v.* M'Connochie, 16 Oct. 1869, 3 P. L. (2) 55.

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;[1] and although an assessment imposed in a different manner, or for a different purpose, from that authorized by the statute, may be the subject of declarator or reduction, this form of process is not strictly applicable to a case in which the remedy is by statute made 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 upon ratepayers who do not appear to complain;[2] 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 is only competent where a point of principle is involved, and that, in a question of amount, the proper course is to pay the sum demanded, and then sue the Board to get it back.[3] 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 an *ex parte* statement, and the ratepayer is not 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.[4] In most cases of suspension the Court has made payment of the assessment in the meantime a condition of the note being passed;[5] but there is no fixed rule to that effect.[6]

The Court of Session, as coming in the place of the Privy Council, possesses all the powers once vested in that body for

[1] Ersk. Inst. iv. 3, 20.

[2] Garrow *v.* Graham, 14 Dec. 1854, 17 D. 200; Archibald *v.* M'Intyre, 24 Jan. 1856, 18 D. 329. See *post*, 170.

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

[4] Neil *v.* Hamilton, 19 March 1864, 7 P. L. 16, 2 M'P. 1081; Leys *v.* Riddell, 8 Feb. 1851, 13 D. 630.

[5] Watson *v.* Adams, 7 July 1849, 11 D. 1263.

[6] G. P. K. and Ayr Railway *v.* Abbey Parish, 12 Dec. 1850, 13 D. 304.

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.[1] It may also call them to account as the administrators of trusts and mortifications for behoof of the poor.

Under the Poor Law Act, the jurisdiction of the sheriff is partly statutory and partly at common law. In questions of relief he has not, and never had, any power to decide on the amount or mode of relief offered to a pauper. That is for the parochial board, which, as a court of the first instance, is entitled to deal with it subject to an appeal to the Board of Supervision, or, in the event of their differing in opinion, to the Court of Session. Nor in the case of an assessment laid on by the heritors and kirk-session under the old law had he any power to review its legality, which could only be called in question in the Supreme Courts.[2] But it is for him to determine any question which may arise between the inspector and a pauper about the latter's right to relief in the manner prescribed by sec. 73 of the statute.[3] In the Court of the sheriff, prosecutions for the wilful desertion of wives and children, whereby they are cast on the rates of the parish, are instituted at the instance of the inspector under sec. 80; and inquiries are conducted before him with a view to the removal of the paupers to England and Ireland under the Act 25 and 26 Vict. cap. 113.[4]

All questions of settlement between parishes may be determined in an ordinary petitory action in the Sheriff Court; and to enable him to decide the particular claim before him, he may inquire incidentally into matters as to which he has no jurisdiction, such as the validity of an alleged marriage. It has been decided that when the amount claimed from the parish alleged to be the parish of settlement in respect of the aliment of the pauper does not exceed £12, the action may

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

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

[3] See chapter on Relief.

[4] See post-removal.

be competently raised in the Small Debt Court, even although the decision should practically involve a continuing liability of the parish charged for the future aliment of the pauper.[1] It is always open to the sheriff to remit the case to the ordinary roll, or to sist the process till the matter is raised on a more formal shape. But he is entitled to entertain such an action even although much more than the mere question of amount is involved in the decision. The decree, however, is not *res judicata* so as to bar a subsequent action in the ordinary Court, or in the Supreme Court, with respect to the settlement of the pauper.[2] In order that the inferior Court judgment may have that effect, the matter of continuing liability must have been expressly raised and determined.[3]

By the law of Scotland, a general reference between parties 'of all disputes that might arise between them,' to an indefinite person such as the 'Dean of Faculty' for the time being, or a fluctuating body such as the 'committee of the heritors of the parish of A,' has not the effect of ousting the jurisdiction of the courts of law, so as to bar them from entertaining an action when a particular dispute actually emerges. But it was recently determined by the House of Lords, that should two parishes agree to refer a disputed claim to the Society of Inspectors of the Poor, and to be bound by their opinion, and should *de facto* go before the society with a pending dispute, the losing party is not entitled to challenge the award.[4] But it would appear that an inspector has no power, without the special authority of the board or its committee, to refer a claim, or to agree to be bound as to the future liability of the parish by a decision of the Small Debt Court.[5]

[1] Nixon *v.* Caldwell, 1 June 1876, 3 R. (Just. Ca.) 31; Caldwell *v.* Collins, 3 P. L. M. (3) 530.

[2] Robertson *v.* Melville, 24 Feb. 1860, 22 D. 893.

[3] See M'Williams *v.* M'Bride, 27 June 1865, 9 P. L. (2) 133.

[4] Bremner *v.* Elder, 10 July 1874, 1 R. 1155; rev. 24 June 1875, H. L., 2 R. 136. Lord Chancellor Cairns laid it down as the law of Scotland, that where there are two persons competent to refer to arbitration, where a dispute has arisen, and where those persons may select the arbiter at their option, there is no legal invalidity in selecting as arbiter a society consisting of a number of members.

[5] Crawford *v.* Beattie, 22 D. 1064.

The sheriff is entitled to entertain an action in his ordinary Court for the unpaid assessments of a number of years. The parochial board may go to the sheriff under sec. 88, and get him to enforce their warrant for recovery of the assessment, and in so acting his duties are merely ministerial; but it has been lately decided that this does not exclude an ordinary action, in which the sheriff is at liberty to deal judicially with all relevant pleas which may be stated by way of defence.[1]

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 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.[2] Ratepayers are made competent witnesses, notwithstanding the application of the penalty;[3] 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.[4] 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.[5]

Limitation of Actions.

By the 86th section of the statute it is provided, that 'all

[1] Caledonian Canal *v.* M'Tavish, 4 Feb. 1876, 3 R. 412, 4 P. L. (3) 202.
[2] Secs. 81–2. [3] Sec. 83. [4] Sec. 84. [5] Sec. 85.

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 a reduction of a warrant to imprison for non-payment of a rate on the ground that the rate had been already paid;[1] nor to a declarator, based on grounds of fraud, that an inspector had not been duly elected,[2] nor to an action by a dismissed official for salary, and for declarator that the board had no power to dismiss him;[3] 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.[4] 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, and entitling to damages. 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

[1] Ferguson *v.* Malcolm, 12 D. 732.
[2] Thompson *v.* Inveresk, 30 Nov. 1871, 10 M'P. 178.
[3] Mackay *v.* Beattie, 19 July 1860, 3 P. L. Mag. 228, 22 D. 1486.
[4] Mackay *v.* Chalmers, 5 Feb. 1858, 1 P. L. Mag. 399, 21 D. 443.

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 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] Such a case is not a case of mistake resulting from excusable ignorance; and from the time of Lord Mansfield the distinction has been recognised 'between an illegal act done 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

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

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 observance 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 out the statute, 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 a careless and negligent execution.[5] Again, as to sec. 17 of the Day Trespass Act, 2 and 3 Will. IV. cap. 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

[1] Per Williams, J., Cann *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. cap. 99 (Glasgow).
[5] Melvin *v.* Wilson, 22 May 1847, 9 D. 1129; Murray *v.* Allan, 11 M'P. 147.

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.[1] In like manner, as to this particular section of the Poor Law Act, where a collector, in making up the roll of defaulters, instead of charging a firm for the whole assessment, entered the two partners, whose rates had not been paid, as liable each individually in one-half of the assessment, he was found protected from an action of damages in the Supreme Court, although the diligence had been found to be illegal.[2] 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, in answer to an action of damages, to found on the clause in question.[3]

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.[4] 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.[5]

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.

[1] Russell *v.* Lang, 25 June 1845, 7 D. 919.

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

[3] M'Laren *v.* Steele, 13 Nov. 1857, 20 D. 48.

[4] Under the Summary Procedure Act (sec. 35), the time is limited to two months; Ashley *v.* Mags. of Rothesay, 11 M'P. 708; Moncrieff's Review in Crim. Ca. 121.

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

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. All persons are equal before the tribunals of the kingdom, and a public functionary must defend such actions 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.

ASSESSMENT.

CHAPTER VII.

VALUATION.

PRIOR to the year 1854, the only valuation of the heritable property in the kingdom was what is known as the 'valued rent,' established by an Act of the Convention of Estates, 15 Aug. 1643, ratified after the Restoration by the statutes of Charles II., 1670, cap. 3; 1672, cap. 4, etc. 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 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 to 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 became in almost every district of the kingdom the merest shadow of the yearly worth of landed property. 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 that applied to the older forms of real estate.

The inconvenience came 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 passed, it was declared that the rate should be levied according to the 'real annual value,' which was thus defined by sec. 37:[2] '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 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

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

[2] The clause was in substance borrowed from the English Act to regulate parochial assessments, 6 and 7 Will. IV. cap. 76, sec. 1, in which *rateable* value is thus defined:—'The rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenant's rates and taxes, and tithe commutation rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any necessary, to maintain it in a state to command such "rent."' In the Union Assessment Committee Act, 1862 (the 23 and 24 Vict. cap. 103, sec. 5), gross estimated rental is defined as follows:—'The rent at which the hereditament might reasonably be expected to let from year to year free from all usual tenant's rates and taxes, and tithe commutation rent-charge, if any.' The words have the same meaning in 37 and 38 Vict. cap. 54, an Act to amend the law respecting the liability and valuation of certain property for the purpose of rates.

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 in the absence of very strong averments of collusion between the landlord and tenant, or partiality on the part of the board,[2] no inquiry into the subject would be allowed. At the same time, there was nothing in the Poor Law Act requiring the valuation to be made in any particular way. The rent stipulated might be lower 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, in the opinion of the Court, would be 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.

Another inconvenience of the former system was, that besides the parochial board, the various public bodies charged with the imposition of rates for municipal and local purposes, were each required to have a valuation of its own, prepared frequently with no sufficient data, and often exhibiting results of an extremely contradictory character. The Valuation Act of 1854 has put an end to all this, by establishing a machinery for the preparation in each county and burgh of one general valuation roll, which is annually revised, and 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.

[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.

The duty of preparing the roll is entrusted to an assessor, appointed for property within burghs by the magistrates, and for property in counties by the commissioners of supply. 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 to the clerk of supply in counties.

An appeal against the valuation lies to the magistrates or commissioners of supply, as the case may be. Appeals require to be lodged by the 10th, and disposed of at latest by the 30th September in each year.[2]

The persons entitled to appeal are all those whose names have been entered in the valuation roll of the county or burgh respectively, 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. This is when the valuation is complained of as too high, the appeal, of course, being competent only as regards the appellant's particular entry. When the complaint is that the assessor has erred in making the valuation too low, the injury done is to the ratepayers at large, and the remedy is under a different section.[3] It is there enacted, that if any complaint shall be made (by any party having interest—a ratepayer, etc.) to the commissioners or magistrates sitting as an appeal court, to the effect that the yearly rent or value of any lands has been stated by the assessor in the valuation roll for the county or burgh at other than the just and true amount thereof, the court shall give notice to the proprietor and occupier of the subjects, and alter

[1] 17 and 18 Vict. cap. 91, amended by 20 and 21 Vict. cap. 58.
[2] Sec. 11; 30 and 31 Vict. cap. 80, sec. 7. [3] *Ib.* Sec. 13.

the amount of the valuation to such an extent as, after inquiry, may appear to them to be just. It follows from this that the assessor is not entitled to interfere with the roll after it has been adjusted by the commissioners.[1]

In disposing of appeals it is made competent for the commissioners, three of whom are a quorum, and the magistrates, two of whom are a quorum, to cite and examine parties on oath, and to call for all documents which they may deem necessary; but they are not required to keep any formal record of their proceedings, except a note of the assessment and appeal.[2]

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,—two of whom are appointed by Act of Sederunt for the purpose,—upon a case stating shortly the circumstances in which the question arose, and the nature of the determination complained of.[3]

The theory of a case stated for appeal is, that it is, like a special verdict, final upon the facts, but stating them with sufficient fulness and precision to raise a pure question of law. It should not be a mere report of evidence and opinions, but a statement of the facts which the court below held to be proved; and the question for the opinion of the judges is, whether on a sound construction of the deed in question, or on a fair principle of valuation, the decision complained of is in the circumstances right.[4] Appeals, however, are not unfrequently taken with no apparent object but to obtain a review of the evidence on which the court below proceeded,—a thing quite beyond the province of the judges, for they have not the local knowledge requisite for forming an opinion on the subject, which is the chief reason for entrusting the duty of revising the roll to the magistrates and commissioners. It is only when the rule of the statute has been lost sight of,

[1] Lord Ormidale refused, with hesitation, to allow a parochial board to appear and object to a valuation being reduced by the assessor after the case had been appealed under an arrangement which had been come to with the appellants, Glasgow Tramway Co., 2 P. L. (3) 632.

[2] Sec. 10.

[3] 20 and 21 Vict. cap. 58, sec. 2; amended by 30 and 31 Vict. cap. 80, sec. 8.

[4] University of Glasgow, 4 P. L. (2) 214.

or the subject is not rateable at all, or when the dispute turns upon the construction of a lease or other writing, that the judges have any jurisdiction in the matter.

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,[1] 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.[2] On all questions of value, the roll thereafter becomes absolutely conclusive. Whatever be the actual fact, the entry cannot be impeached on any ground whatever.[3]

It is the duty of the assessor to insert every subject in his roll, actually let or lettable, whether it is liable to taxation or not. Some subjects, such as parish churches, are neither let nor capable of being lawfully let for any purpose whatever, and these are not entered.[4] But in general it is not for the assessor to decide by anticipation whether the property is exempt or not, and the roll is now used for many purposes

[1] See the decisions on this question reviewed in a judgment by Sheriff Monro, 16 March 1874, 2 P. L. (3) 198. The furnishing of the copies is part of the costs provided for in sec. 18.

[2] Sec. 82.

[3] M'Lachlan *v.* Tennant, 4 May 1871, 4 P. L. (2) 455.

[4] Heritors of Kingoldrum, 2 April 1877, correcting Heritors of New Monkland, 21 March 1872; Weem Episcopal Chapel, 29 March 1873.

other than taxation. It fixes the qualifications for commissioners of supply, and establishes the right to be enrolled as an elector to serve in Parliament; and therefore the Act directs the assessor to put a valuation on all lands and heritages in the kingdom[1] of which the use is a marketable right.

There is no provision in the statute for a supplementary valuation roll so as to bring in subjects which are either omitted or not ready for registration when the annual roll is made up. A supplementary roll can only be prepared for the purposes mentioned in sec. 17, but it is not easy to see what that section means. It declares that the power of a supplementary assessment shall not be affected by the Act; but when a supplementary assessment becomes necessary, no supplementary roll is required, and the section appears surplusage.[2]

Rateable Property.

The expression 'lands and heritages' includes—

(*a.*) Lands and houses.

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

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

(*d.*) Ferries.

(*e.*) Piers, harbours, quays, wharfs, and docks.

(*f.*) Canals.
Railways.

(*g.*) Mines, minerals, and quarries actually working.
Coalworks.

(*h.*) Waterworks.

(*i.*) Limeworks.
Brickworks.
Ironworks.

(*j.*) Gasworks.

(*k.*) Factories.

Feu-duties are not here mentioned. It was before found, that superiors are not liable to be assessed for the erection of

[1] University of Glasgow, 4 P. L. (2) 214.
[2] Glasgow Tramway Co., 1 P. L. (3) 270.

a church or manse;[1] and by Lord Mackenzie (Ordinary) the exemption was extended to poor-rates.[2]

'There is no dispute as to the general principle of law, viz. that where any part of the soil is permanently occupied by anybody for profitable purposes, as, for instance, where it is occupied by a company by means of its water or gas-pipes or telegraph posts, then the person so occupying is rateable in respect of such occupation; but when a person has a mere right of use of land, in the nature of an easement which does not amount to occupation, and the occupation remains in somebody else, as, for example, in the case of a lodger, when the occupation remains in the lodging-house keeper, then such person is not liable to be rated. The rateable quality in the portion of lands so used is not gone, but it is rateable in the hands of the person who is occupier.'[3] Although that is the language of an English judge giving judgment in the English Court of Appeal, it appears to be a concise and accurate statement of the principle deducible from a number of cases which have occurred on the subject in Scotland as well as in England. In the case of the Edinburgh Water Co., 13 July 1850,[4] the question was whether a water company, incorporated by statute, for the purpose of supplying the city of Edinburgh with water, were rateable as owners and occupants of the ground in which their pipes were laid. Lord Dundrennan observed: '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

[1] Carstairs, M. 2333; Dundas, M. 8511; Murray, M. 15,092. The earlier cases proceeded on general or local usage; but in Murray's case it was said that in the absence of special agreement the superior is exempt, as he is not entitled to accommodation in the church.

[2] North Leith, cited Dun. 97.

[3] Per Lord Justice James, Cory *v.* Bristo, L. R. 1, C. P., B. 54.

[4] Hay *v.* Edinburgh Water Co., 12 D. 1240; H. L. 13 Feb. 1854, 1 M'Queen 682.

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 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.

In like manner, 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;[1] 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]

No distinction can be drawn between pipes laid under the soil and rails laid on the surface, and therefore a tramway company, formed under the Tramway Act of 1870,[3] are rate-

[1] Assessor *v.* Leven Gaslight Co., 29 March 1873, 11 M'P. 990; Inverurie Gasworks, 21 May 1872, 9 M'P. 986; Falkirk Gas Co., 4 M'P. 1133; Glasgow Gas Light Co., 1 M'P. 727, in which also a deduction of feu-duties was disallowed.

[2] Falkirk Gas Co., 11 May 1864, 4 M'P. 1133.

[3] 33 and 34 Vict. cap. 78.

able in respect of their tramway laid down in the highway or public street.[1]

The ground of these decisions is, that the companies have the exclusive occupation of the soil above or below for a particular purpose, and this distinguishes the case from a mere servitude. A person who has no more than a free easement or right to go across land, or drive over it in company with other people, is not the occupier; but when ground is specially appropriated to a particular purpose, *e.g.* the formation of a railway, the company has acquired a right to the occupation of the subject for a beneficial purpose, and therefore are liable to be assessed upon the sum paid for the use of the land.[2]

Indeed, the uses to which the soil of the country may be put are so various that it is difficult to imagine the right which is not assessable, provided only it is rendered capable of assessment by an occupation of the land. You pare off the surface and get clay for brickmaking, dig quarries and extract the stone, search for substances and carry them away,[3]—in all these cases there is an occupation of the soil which may be the subject of lease, and which is therefore assessable. So also it has been held, that the right to gather seaweed growing or thrown up on the seashore, to be used in the manufacture of kelp,[4] or of casting and removing peats from moss,[5] fall to be entered in the valuation roll. On the other hand, any right which is distinct from the occupation of the soil is not rateable. Thus, in valuing the quays, etc., belonging to harbour commissioners, part of the dues was deducted as applicable to the water-way,[6] and sums receivable in commutation of thirlage, under the Act 39 Geo. III. cap. 55,[7] an Act for the improvement of lands subject to the servitude of thirlage, or under a private arrangement between the parties,[8]

[1] Pimlico Street Tramway Co. *v.* Greenwich Union, L. R., B. 9; The Glasgow Tramway Co., 1 P. L. (3) 270.

[2] Addie *v.* Rankin, 18 Dec. 1859, 24 D. 1454.

[3] Rex *v.* Whaddon, L. R. 10, Q. B. 230.

[4] Gordon, 5 Feb. 1866, 4 M'P. 1141; British Seaweed Co., 4 M'P. 1139.

[5] Forbes, 20 March 1873, 11 M'P. 990.

[6] Clyde Navigation Trustees, 4 M'P. 1143.

[7] Duchess of Sutherland, 11 M'P. 980.

[8] Macleod, 11 M'P. 980.

or as compensation for injuries done to fishings,[1] are not assessable.

As the rate is imposed in respect of the occupation of the premises, it is the tenant who falls to be entered, along with the proprietor,—that is to say, the person who has received from the proprietor, for a definite term, the right of exclusive possession. To constitute the relation of landlord and tenant, the proprietor must have parted with the possession of the subject for a definite term. If he keeps it by the hand of his servant or workman, the possession is still his own ; and it is equally so when the person in occupation is a mere licensee or lodger.[2] A sub-tenant is not entered, and no provision is made for charging the surplus rent, receivable from the sub-tenant, where the lands happen to be let, against either the proprietor or the granter of the sub-lease.[3] For the same reason, no provision is made for assessing buildings erected by a tenant or sub-tenant not under an arrangement with the landlord, and from which he derives no benefit, and of which he cannot take possession till the end of the lease. These interests 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 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 life-rent proprietor, legally entitled to the possession, and not a mere tenant for a limited term. It was then attempted to

[1] Renfrew, 11 M'P. 979.
[2] London and North-Western Railway Co. *v.* Buckmaster, L.R. 10, Q. B. 70.
[3] Murdoch, 4 M'P. 1135.

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.[1] 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.[2]

Premises held in lease by a firm of fishcurers, and sublet to the fishermen, were entered at the original rent; but it was decided that the names of the occupiers, with the rents paid by them, should also be entered as given by the assessor in making up the roll of voters.[3]

In some instances, railway companies, to encourage building along the line, give free tickets for a number of years to persons who build, which are transferable to the tenant, paying 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.[4]

The question may also arise, whether a new building falls to be entered in the valuation roll. The answer is, if it is occupied in point of fact, or, whether occupied or not, if it is substantially finished and ready for occupation.[5] The incoming tenant is entered as tenant from the time he gets access, at the new rent.[6] When the subject let consists of different premises, it is not competent to enter them separately on the roll, because no distinction can be

[1] Lord Lovat's case, 15 Dec. 1859 and 25 March 1861, 24 D. 1452.
[2] Grant, 9 Oct. 1858, 24 D. 1452.
[3] Hay, 12 July 1869, 11 M'P. 981. [4] Mitchell, 4 M'P. 1132.
[5] Kingston Union *v.* Calton, L. R. 4, Q. B. 326, on the Union Assessment Committee Act.
[6] Blantyre, 4 M'P. 1135.

taken between a farm and a farm-steading, or between a dwelling-house and a farm let along with it.[1]

When it is said that every description of property is rateable, we mean, of course, property capable of beneficial occupation. What is taxed is not the property, but the profit derived from it, or rather which might be derived from it. 'If,' said Lord Westbury, 'a property be occupied by persons for a purpose yielding no value at all, and they are absolutely prohibited from using it in any manner that would be productive of value, it may possibly be held that there is no rateable value of the property, and ought not to be assessed in the poor-rate.'[2]

For instance, public sewers laid down as part of a system of drainage belonging to a local board of health, were held not to be rateable. No payment is made for the use of them. The rates which the board are empowered to levy are for the expense of the construction and maintenance only, and the sewers are of no value to any person in particular, any more than the walls which in former times surrounded the town.[3]

Government Property and Public Buildings.

The Crown is not bound by a statute unless named in it. Statutes are made for subjects only; and the Legislature is not presumed to affect the Crown or Crown property in any way, unless it has said so in express terms.[4] An Act authorizing the construction of a particular line of railway would not apply to Crown property unless made so applicable in express terms or by necessary inference; and as it is one of the prerogatives of the Crown to pay no tolls, burdens, or other rates, there has been reared up on this ancient rule of the common law an exemption which is now felt to be both ungracious and unjust.[5] On this ground, property occupied by the servants

[1] Henderson, 11 M'P. 985.

[2] Greig *v.* University of Edinburgh, L. R., 1 H. L., Sc. and Div. App. 354.

[3] Regina *v.* Metropolitan Board of Works, L. R., 4 Q. B. 15; Metropolitan Board of Works *v.* Westham, L. R., 6 Q. B. 193.

[4] Maxwell on Statutes, p. 113.

[5] Mersey Docks Co. *v.* Cameron, 11 H. L. 443, 35 L. J. 22 and 25; Greig *v.* University of Edinburgh, L. R. 1, Sc. and Div. App. 348.

of the State for public purposes, as the Post Office,[1] the Horse Guards,[2] the Public Parks,[3] the Admiralty,[4] likewise premises occupied by local police,[5] by the judges as lodgings at the assizes,[6] a building used as a county court,[7] or for a jail, or for soldiers' barracks,[8] have been all held exempt from poor-rate; and so also the National Gallery in Trafalgar Square;[9] and the tolls levied by the Commissioners of Public Works and Buildings, in respect of a bridge of which they are in possession as servants of the Crown, are not rateable.[10]

In these cases, the assessment, if sustained, would have formed a claim on the Treasury; but when it is made on a public officer in his individual character, and not as officially representing the Government, the principle is subject to some qualification. In a case in which the Master Gunner of Edinburgh Castle was assessed in respect of the house which he occupied within the fortress, no assessment being imposed upon the Crown as owner, the Judges of Exchequer indicated an opinion that he was liable, inasmuch as the assessment would fall to be recovered, not from the Government, but from his own private effects, as in the case of any other subject. The point, however, not having been raised in a proper form, namely, by a suspension in the ordinary Court, was not expressly decided;[11] and it is apprehended it is more accurate to say that where a building, or part of a building, belonging to the Crown, is appropriated to one of its officers to enable him more efficiently to perform his public duties, he is only rateable for the excess beyond the accommodation reasonably required for this purpose. On this ground claims for exemption have been sustained in favour of civil and military officers furnished with official residences by the Government, such as

[1] Advocate-General *v.* Commissioners of Police of Edinburgh, 12 D. 456; Smith *v.* Overseers of Birmingham, 7 E. and B. 483.

[2] Amherst *v.* Summers, 2 T. R. 272.

[3] Advocate-General *v.* Oliver, 14 V. 356.

[4] R. *v.* Stewart, 8 E. and B. 360.

[5] Lancashire *v.* Shelford, E. B. and E. 230.

[6] Hodgson *v.* Carlyle, 8 E. and B. 230.

[7] R. *v.* Manchester, 3 E. and B. 336.

[8] R. *v.* Shepherd, 1 Q. B. 170.

[9] R. *v.* Shee, 12 M. J. 53.

[10] R. *v.* M'Cann, 37 L. J., M. C. 25, L. R., 3 Q. B. 141.

[11] Advocate-General *v.* Beattie, 18 D. 378.

the Storekeeper of Her Majesty's Gun Wharf at Portsmouth (who occupies a house within the walls of the gun wharf);[1] the Lieutenant-Governor of Portsmouth, who uses an official residence for the transaction of his duties;[2] the Colonel commanding Engineers,[3] and the Adjutant-General of Militia.[4]

The property which is exempt also includes the lands and other hereditary possessions of the Crown. It is immaterial whether the premises have been purchased from a subject or have been rented from the proprietor for occupation for public purposes. In some of the earlier cases it was suggested, that when a building belonging to a subject is acquired by the Crown, it cannot be withdrawn from taxation, so as to make the condition of other proprietors worse; that it must be taken *cum suo onere*, and if it paid taxes at the date of its purchase by the Government, it must continue to pay them just as if the purchase had not been made.[5] These cases, however, are not now law, being inconsistent with more recent decisions. But, conversely, there is no exemption in favour of Crown property in the beneficial occupation of a private party, *e.g.* a tenant of Crown lands. Lord Haddington, as keeper of the King's Park of 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.[6]

A public building used for Government purposes, erected under local Acts of Parliament at the public expense, the title being taken to persons named, is also exempt. The Assize Courts of Manchester were erected by the local justices under a local statute, which allowed them to be used for any lawful purpose, under such conditions as the justices might think proper, but not so as to interfere with the use of the buildings for the purposes of the assizes. The justices received a rent of £900 per annum (£600 for the use, and £300 for expenses) from the Corporation of Manchester, in consideration

[1] Regina *v.* Stewart, 27 L. J., M. C. 81.
[2] Regina *v.* Breton, 27 L. J., M. C. 87.
[3] Regina *v.* Foster, 27 L. J., M. C. 89.
[4] Regina *v.* Fuller, 25 L. J. 141.
[5] Bruce *v.* Veitch, 28 Nov. 1810, F. C.; Officers of Ordnance *v.* Heritors of Leith, 14 June 1825, 4 S. 91; Milroy, 20 Nov. 1815, F. C.
[6] Ross *v.* Lord Haddington, 8 June 1824, 3 Sh. (N. S.) 76.

of their allowing them to hold therein the City Quarter Sessions and the City Court of Record; and it was held that the justices were rateable in respect of the amount of £600, because to that extent they had a beneficial occupation within the principle of a decision of the greatest importance in this branch of law, termed the Mersey Docks case.

To understand fully the nature of the judgment pronounced in the case of the Mersey Docks, it is necessary to bear in mind that, from the time of Lord Mansfield, the belief had come to prevail that the 'beneficial use' which was rateable could not be of property held for other objects than private profit; such as buildings devoted to public purposes or dedicated to works of charity, and which, from their nature, existed only for the benefit of the entire community. 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 judgment was repeated in the case of St. Bartholomew's Hospital;[2] 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.'[3]

[1] Rex *v.* St. Luke's Hospital, 2 Burr. 1053.
[2] Rex *v.* St. Bartholomew's Hospital, 4 Burr. 2435.
[3] Rex *v.* Commissioners of Salters Load Sluice, 4 T. R. 430.

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,[1] 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. The case was again tried in 1852.[2] 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 the rates levied, in so far as appropriated to the repayment of advances made by the public, 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 growing pressure of local taxation raised a strong feeling against all exemptions, and when the old cases came to be examined, they were found to rest

[1] 6 Dec. 1836, 15 S. 204.

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

on no intelligible ground whatever. The Courts, afraid to question principles which had the sanction of such great names, endeavoured to limit their operation. A distinction was taken between purposes public and local and purposes public and national, between a trust for behoof of an unlimited public and a trust for the benefit of the public, limited by the bounds of the county, or burgh, or parish. On this principle it was decided that the Glasgow Corporation Waterworks, erected and maintained by the magistrates and council at the public expense, out of a rate which was authorized to be levied only in so far as necessary for recovering the actual cost, were liable in poor's assessment, on the ground that the subjects were profitably occupied, not by the public, but by a portion of the public, viz. the citizens of Glasgow.[1] But the judgment of the House of Lords in the Mersey Docks cases cleared away all these refinements, by deciding that every occupier of a rateable subject is liable without distinction, unless the occupation is on behalf of the Crown, or for the purposes of the Government of the country. The import of this judgment may be inferred from a passage in Lord Cranworth's opinion, in which he says: 'To avoid all misconception, I wish to add that there are certain cases to which the observations I have made do not apply. The Crown not being named, it is not bound by the Act. It follows, therefore, that lands or houses occupied by the Crown, or by servants of the Crown, or for the purposes of the Crown, are not liable to be rated. I conceive that it is from a confusion between property occupied for public purposes and property occupied by servants of the Crown, that this mistake has arisen. This principle exempts from rates, not only royal palaces, but also the offices of the Secretaries of State, the Horse Guards, the Post Office, and many similar buildings. On the same ground, police courts, county courts, and even county buildings, occupied as lodgings at the assizes for the judges, have been held exempt. These decisions have, however, all gone on the ground, more or less sound, that these might all be treated as buildings occupied by the servants of the Crown, or for the Crown, extending, in some instances, the shield of the Crown to what might fitly be described as the public Government of

[1] The Magistrates of Glasgow *v.* Millar, 16 Dec. 1857, 20 D. 290.

the country.'[1] But property held by local corporations, for local purposes, does not come within this category; and it was accordingly held that property held in trust to improve docks and harbours in seaport towns, although having a public character, and although devoted to public purposes, was nevertheless subject to be rated for the relief of the poor.

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 in Scotland must be made liable.[2]

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 indistinguishable 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.[3]

In the same case it was expressly determined, 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.

[1] Mersey Docks *v.* Cameron, and Jones *v.* Mersey Docks, 22 June 1865, 11 Clark, H. L. 443, where the opinions of the English judges are given.

[2] 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.

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

Indeed, it is now decided that piers, quays, etc., of a public harbour are liable to assessment, even although not producing any free revenue.[1]

More recently a claim was made on behalf of the University of Edinburgh, that, as it was properly a national institution, created by the Crown for the benefit of the entire kingdom, its property was within the principle of the Mersey Docks case, exempt from taxation; but it was observed by the House of Lords that the functions of a university cannot be brought within the proper reading of Government purposes, because it is no part of the business of Government to deliver lectures or to grant degrees. It was impossible, therefore, to hold that the property held by the governing authority of the University was held by them for the purposes of the public service. The claim, although admitted by the Court of Session, was rejected by the House of Lords, who decided that it was rateable for the relief of the poor.[2] For the same reason, institutions established for educational and reformatory purposes, like a certified Industrial School under the 29th and 30th Vict. cap. 118, supported partly by voluntary contributions and partly by Government aid, are now held to be rateable.[3] This is almost the necessary consequence of recent legislation on the subject of education. The schools established under the Education Act are all rateable,[4] but school boards have the power of establishing industrial schools, and it would be a strange anomaly if these were on a different footing from their other schools. A reformatory has been held exempt,[5] but that decision has since been disapproved;[6] for although the managers in charge of the institution are assisted with public money, and have the power of detaining children compulsorily, there are other instances in which a similar power is given, as in the case of managers of lunatic asylums, which are not thereby exempt. A lunatic asylum supported by the

[1] Stonehaven Harbour Trustees, 20 Feb. 1865, 4 M'P. 1139.

[2] Greig *v.* University of Edinburgh, 20 July 1865, 3 M'P. 1151; rev. 8 June 1868, 6 M'P., H. L. 97, and L. R., 1 Sc. and Div. App. 348.

[3] R. *v.* Temple, 2 E. and B. 160; R. *v.* West Derby, L. R. 10, Q. B. 283.

[4] Heritors, New Monkland, 21 March 1872, 11 M'P. 986.

[5] Shepherd *v.* Bradford, 32 L. J., Mag. Ca. 182.

[6] Queen *v.* West Derby, *sup.*

public rates falls to be entered in the valuation roll,[1] the local board being entered as proprietor, tenant, and occupier; and in like manner, such institutions as Murray's Royal Asylum, Perth, established by private mortified funds for the purpose of accommodating the insane, not as a mercantile speculation, but as a self-supporting institution, are liable to be rated.[2]

The question raised in these later cases was recently determined in an authoritative manner by the House of Lords in a case with respect to St. Thomas' Hospital in London.[3] St. Thomas' Hospital was founded by a charter of Edward the Sixth, and the lands were given, and the funds derived from the property vested for the purposes of the charity in the mayor and corporation of London. The charter directed the appointment and payment of officers necessary for such an establishment, and provided that the residue of the revenue should be spent 'for the use and maintenance of the poor, sick, and infirm folk of the said hospital.' Their Lordships, unable to distinguish the case of an hospital from the cases of the Mersey Docks and the University of Edinburgh, re-affirmed the principle that, in order to constitute beneficial occupation within the meaning of the statute, it is not necessary that the building should be a source of profit to the occupier; and although the whole benefit may be given to the public, or a section of the public, the building is nevertheless rateable. A private chapel, consecrated to divine uses in perpetuity, from which no revenue is derived, falls to be entered on the valuation roll.[4]

But although Government property is not rateable, there has been of recent years a feeling on both sides of the House of Commons that the exemption ought not to be insisted in; and it is believed that contributions on account of the property belonging to the Government which may be situated in the parish are now made by the Lords of the Treasury in aid of the local rates. In June 1874 a memorandum was submitted

[1] Banffshire District Lunacy Board, 2 July 1870, 11 M'P. 982.

[2] The Burgh of Perth, No. 112.

[3] Mayor, etc., of London *v.* Stratton, L. R. 7, H. L. 477.

[4] Sir Robert Menzies, 29 March 1873, 11 M'P. 989; but see Heritors of Kingoldrum, *sup.* p. 102.

to the House of Commons explanatory of the principles on which these contributions should be made, from which we make the following extract :—'We have had under our consideration the subject of the rules which ought to govern the distribution of the proposed increased grant of Parliament for contributions in lieu of rates in respect of property occupied for the public service. We adopt the principle that property occupied for the public service should contribute to the local rates equally with the other property in the parishes in which it is situated, having due regard to its character in each case. The contribution will be made to the poor, and all the other local rates levied in the parish in which the property is situate; and no parish will be excluded from such contributions on the ground that the Government property is less than a certain minimum. We feel it necessary, considering how widely different are the various kinds of Government property, and how impossible it is to apply to all of these the rates of assessment applicable to private property, to retain in our own hands the valuation of all Government property with the intention of adopting in each case, as far as possible, the same principles as are applicable to the valuation of private property. Thus, property occupied as *ex officio* residences, or quarters for officers of the Government, will be assessed on the estimated rateable value which would attach to such premises if they were in private occupation, and liable to assessment to the local rates. The same rule will, as far as practicable, be applied in determining the rateable value of all Government hereditaments occupied as post-offices, coastguard stations, county courts, police courts, probate registries, inland revenue buildings, custom-houses, etc. The rateable value of the whole of the naval establishments, and of the principal military establishments, was agreed upon between the Government and the parishes in which they are situated in the year 1860. The valuations then agreed upon will be revised with reference to the improvements and additions which have taken place at such establishments since that date. The valuations in these cases will be taken as a guide in fixing the rateable value of the barracks and other buildings at such of the military stations as were not brought within the arrangement of 1860,

and also in fixing the rateable value of the military, naval, and convict prisons. If, in any particular case, the principles of valuation applicable to private property cannot reasonably be adopted, we shall inquire into and decide upon each such case upon its merits, but in no case will we contribute less than was payable on the assessment of the property at the time the Government acquired it. Hereditaments under the control of the Commissioners of Woods and Forests, etc., not being in the occupation of any other occupier, will be the subject of contributions determined on principles similar to those hereinbefore made applicable to Government property. These regulations will apply to Government property in Scotland and Ireland as well as to that in England.'

The Principle of Valuation.

The object of the Valuation Act is not to ascertain how much a house will take to build, or the sum which a property will fetch if offered in the market, but the amount annually paid or payable for its occupation. The poor-rate and other public assessments levied according to the amount appearing in the valuation roll are imposed not on the land itself, but on the revenue derivable from it,—the sum which a tenant, in the open competition of the market, agrees to give, or, if asked, would be prepared to give, for the use of the subject in its actual state. This excludes all inquiries as to the capabilities of the property. The question is not to be determined by what it once was, or what it may hereafter become, but by what it is at the time when the rate is actually made.[1] The assessor may think that an old house might bring ten times the rent if converted into an inn, or that a grass field would yield a much larger sum 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 ; and the proper mode of estimating the value of its occupation is to take it as it actually is.

It follows that when the use to which property can be put is subject to certain restrictions imposed by statute or otherwise, the effect of these restrictions cannot be thrown out of view. A town council or other public body empowered to

[1] Per Lush, J., Metropolitan Board *v.* Westham, L. R., 6 Q. B. 193.

introduce gas or water into a town, unlike an ordinary trading company, seeks no dividend, nay, is usually debarred from making any, and the rates leviable for the use of the gas or water from the community cannot exceed the amount required for defraying the actual expenses of the undertaking. Any tenant taking the works would necessarily take them subject to these restrictions; and it was decided by Lord Blackburn that, in such a case, 'inasmuch as a tenant would only give such a rent as the restrictions imposed by statute would enable him to earn, the rateable value is to be based upon that rent.'[1] So in the case of a local board of health, which erected and occupied works for the purpose of supplying the inhabitants with water, the charges being fixed so low as to yield a profit far less than would have accrued to a company carrying on the works as a commercial undertaking, it appeared that, in consequence, their average income for a number of years did not exceed £600. They had been assessed, however, not on this sum, but on the sum of £1400, an estimate of the amount which might have been earned by a trading company carrying on the waterworks for their own benefit. It was decided by the Court of Appeal that they were entitled to be entered at the lower value, because there was here a restriction placed by law on the value of the occupation, and Lord Justice Mellish observed: 'An occupier of land is not rateable in respect of the whole profit derived from the land, but only in respect of the profit which he himself derives from the land. If there be a common in the possession of the lord of the manor, he is not rateable in respect of the profits derived by the commoners from the common, although in rating the lands of the commoners the fact of their lands being rendered more valuable by reason of the occupiers being entitled to a right of common is taken into account. So, in the present case, the rent, and therefore the rateable value, of every house in Worcester is increased by reason of the occupier being entitled to cheap water from the waterworks of the corporation; and if the corporation in respect of the reservoir and waterworks were rated at the profit which a tenant under no restriction could get from the waterworks, the same profit would be rated twice over. If

[1] Mayor, etc., of Liverpool *v* Wavertree, L. R., 1 Q. B. Div. 55.

the waterworks were transferred to a tenant who was under no restriction as to the price he charged for water, the rateable value of the waterworks would be increased, but there would be a corresponding diminution of the rateable value of the premises supplied with the water. We may also observe that the reservoir by itself, without the power of connecting the reservoir with the houses by pipes running through the streets, is probably worth nothing, and certainly is not worth £651 a year; and it is the same Act of Parliament which gives the power to lay the pipes, and therefore creates the value of the reservoir, which contains the restrictions on the amount of profit which the occupiers of the reservoir can earn. Even in the case of the reservoirs of public companies, established by Act of Parliament to supply towns with water, in estimating the rateable value of the reservoirs, the Court only considers the amount of profit which the terms of their Act enable the company to earn, not the profits which the company might earn if Parliament had enabled the company to establish waterworks without restriction as to the price to be charged to consumers.[1] So, also, in rating a railway, or any other work made under an Act of Parliament, the calculation must always commence with the profits which are actually earned according to the terms of the Act of Parliament, not with the profits which might be earned if the company was unlimited in its charges. It follows therefore, that, according to the contention of the assessment committee, the corporation are rateable in respect of their reservoir at a higher sum than a waterworks company established by Act of Parliament would be rateable, and are rateable on an assumption which not only is not true, but which cannot be true, that a tenant is in possession of a reservoir with the monopoly of the supply of a particular town with water, and is unlimited in respect of his charges.'

On the other hand, there is here no ground for any abatement from the value on the head of tenant's profits. In valuing premises owned and occupied by a public company established for private profit, it is usual to make an allowance for the profits which a tenant might make by the business, with the view of ascertaining the sum which a hypo-

[1] L. R., 2 Ch. Div. 49.

thetical tenant would be prepared to offer for the premises. The premises are to be rated at what a hypothetical tenant could afford to give from year to year,—that is to say, a certain sum,[1] *minus* his own profit or rent, which would enable him, after he had paid it, to carry on the trade to an advantage. But in the case of a corporation established to erect works for the public accommodation, there is no room for any such deduction; and it has been observed that a demise of the property on the terms that the tenant should receive a profit beyond the expenses of collection, would, if practicable, be illegal. A claim of this nature was accordingly disallowed in the second Mersey Docks case.[2] There were no shareholders, and no person derived any personal advantage whatever from the dues received by the appellants, all the rates being appropriated to payment of the expenses, charges of collection, and the several other purposes specified in the Acts, and the residue being applied in repayment of money borrowed. The Court decided that the cost of collection was a proper item of deduction, but that any deduction beyond this could not be allowed. The same view has been taken in Scotland in the case of the Glasgow Corporation *v.* Dodds,[3] where it was held that a gas company, not worked for commercial profit, was not entitled, in fixing the value of their works as a heritable subject under the Valuation Act, to a deduction for tenant's profits. The 'tenant, in such a case as the present,' says Lord Ormidale, 'would, in reality, be little different from a collector of rates or dues, and allowance ought still to be made to him for sufficient remuneration for his risk and skill, whatever that may be, and it is of no consequence whether such an allowance is called "tenant's profits" or designated by some other expression; but if the gasworks were farmed out and let to a tenant, they could only be so subject to the provisions of the Act, and therefore no allowance can be made on the ground of trade.'

If a building is used for the purpose of carrying on a profitable business, the increased value thereby created cannot be excluded on the ground that it is referable to trade, or

[1] Regina *v.* Southampton Dock Co., 20 L. J., Mag. Ca. 155.
[2] Mersey Docks, Liverpool, L. R. 9, Q. B. 84.
[3] 2 P. L. (3) 589.

may be due to causes transitory in their operation. A person is not liable to be rated on his stock-in-trade, or on his furniture, or on anything that cannot properly be said to come under the denomination of real estate. However, in computing the annual value of property, account is directed to be taken 'of all buildings and pertinents thereof, and of all machinery fixed and attached thereto.' The meaning of this is, that when the property is either so physically united with the building that it cannot be disjoined therefrom without detriment to the subject, or when, with a less amount of physical fixture, it is essential or material to the proper enjoyment of the subject in the manner and for the purpose for which it is used, the whole subject must be taken into account in estimating the value of the occupation.[1] Thus, in the case of a tenant who leased from the burgh a grain-mill, with the whole machinery therein, for the sum of £300, and appealed against his being entered at this valuation on the ground that if the valuation were restricted to the buildings with the water-wheels and shafts, it would not exceed £100, the rest of the machinery being moveable, fixed partly to the ground and partly to the building only by means of screws and bolts,—the appeal was dismissed, and the valuation was sustained.[2] So, the tenants of a shipbuilding yard having purchased from their predecessors the erections left by them at the termination of the lease, consisting of saw-mills, sheds, and engines, it was decided that while they were properly entered as tenants, a rent being payable to the proprietors of the ground, they also fell to be entered both as proprietors and occupants of the erections in question, at the sum which appeared to be their annual value.[3] In such a case, one reason why the occupation is so valuable is the fact that a particular trade is and may be carried on within the building. The machinery itself may be moveable, but the building must be valued with reference to the advantage which it derives from its connection with the machinery; and accordingly, a steelyard being put into a

[1] Dowal and others, 11 July 1874, 1 R. 1180; Grahame *v.* Lamont, 12 Dec. 1874, 2 R. 438.

[2] Chalmers, 11 M'P. 983.

[3] Graham Brothers, 11 M'P. 982; City of Perth, 11 M'P. 983.

house, worth about £5, by a person who received twopence a ton on the goods weighed, the premises were held to be properly rated at the sum of £24.[1] So, too, possession of the subject may carry with it certain privileges which will greatly enhance the intrinsic value of the property. Thus the barren rock called Ailsa Craig, at the mouth of the river Clyde, is almost incapable of supporting animal life, except wild fowls, and has upon it no other building than a cottage, worth no more than £7, 10s. per annum; but nevertheless it was let, along with the privilege of killing the wild fowls, for £30 a year. It was objected (in a franchise case) that, the occupant's right of shooting not being rateable, its value must be deducted. But, as Lord Craighill observed, although the privilege of sporting when unconnected with a subject in its own nature heritable is not a qualification, whatever the return which it may yield, if it be joined to lands and heritages properly so called, the value of both is taken into account.[2]

The duty of the assessor is in the first place to ascertain the rent received from the premises, and if they are let in point of fact, the lease is conclusive on the subject. The statute enacts: '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.'

It will be observed that the rent here spoken of is a rent from year to year. Where the premises are let for a shorter term, the landlord is entered as both proprietor and occupant. When lands under grass are let for a 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.[3] In the next place, it is required that the relation created should be truly that of landlord and tenant. If it appear that the transaction is one between master and servant, the occupant being allowed possession of his premises at a low rent in consideration of his rendering other services to the proprietor, the

[1] Pollok, 24 D. 1457. [2] Girvan *v.* Campbell, Nov. 1875, 3 R. 1.
[3] Maitland's case, 20 D. 1536.

lease is no longer to be depended upon as a *bona fide* letting of the subject, which must be entered in the valuation roll at its true value.[1] The same follows where a proprietor, for the purpose of placing his dependants on the electoral roll, has created a fictitious tenancy at a rent in excess of the natural value of the subject.[2] It should likewise be noted that the lease is only conclusive so long as the relationship of proprietor and tenant truly subsists. Should the tenant himself become purchaser, he is not entitled to have the property entered at its old valuation, on the ground that the lease has not yet come to an end, and that the rights of both proprietor and tenant are now united in his person.[3] The lease is at an end, and the assessor is entitled to have the subjects valued independently of it, just as if the old lease had been superseded by a new one at a rise of rent. The new lease rules although the old one has not yet expired.[4]

In order to ascertain the 'rent,' notice has to be taken of the whole returns payable to the landlord under the lease; because not unfrequently, for the purpose of keeping the rateable value of the property low, a sum is stated as rent and an additional sum as something else. Thus a store and dwelling-house were let for a rent of £90, and an annual payment of £60 for goodwill. The proprietor contended that, the latter sum not being of the nature of rent, only the former should enter the roll; but the assessor entered both sums, and it was held in the appeal that in doing so he did right.[5] So, too, when a shop was let for ten years on the terms that £75 should be paid for rent, £5 for shop fittings, and £30 a year for goodwill, the entry of the premises at £95 was held to be right, under deduction of £5 for shop fittings.[6] Again, an inn said to be worth £20 per annum is let for the sum of £14, in consideration of the tenant buying all his supplies from the proprietors without the usual discount allowed in the trade. In such a case, in order to ascertain the cost of the premises, we have to add to the stipulated rent the amount of discount which the tenant would receive were he allowed to buy in the open

[1] Kerr's Trustees, 11 M'P. 983.
[2] Menzies, No. 105.
[3] Grant, 11 M'P. 989.
[4] Fraser, 11 M'P. 976.
[5] Glasgow Iron Co., 11 M'P. 989.
[6] Yule, 2 April 1877, No. 127.

market. It is part of the profit of his business which is intercepted by the landlord in addition to his rent, and therefore the premises fall to be valued irrespective of the lease.[1] Again, sometimes a house is let for £19 to escape the house-duty. It should be entered at that value unless the tenant is taken bound to do what painting and papering may be necessary, or to pay fire insurance and the like.[2] The assessor has to add the cost of the work or the premium of insurance to ascertain the true value,[3] for both together represent the price which the tenant has to pay in order to obtain beneficial use of the subject.[4]

On the other hand, if the sum payable as rent really includes something else, as when under a lease of shootings the proprietor gives the use of a furnished lodge, and undertakes to pay a gardener, a deduction has to be made for the furniture and the keep of the gardener in order to get at the worth of the heritable subject.[5]

In the converse case of a tenant being bound to repair the lodge or to erect a new one, the assessor is entitled to reject the rent as the annual value.[6] 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.[7]

No deduction is allowed to a proprietor in respect of money spent upon improvements, or of interest payable by him for money borrowed for drainage and the like. On the other hand, no additional charge can be made on the tenant, because the rent stipulated will be esteemed to be the fair worth of the lands at their improved value. So, too, with respect to the expenditure by the tenant himself, made voluntarily in the course of the lease. The land will return to the landlord at the end of the term in the improved condition, and will then fall to be valued at its increased value; but during the currency of the lease, the rent stipulated to be

[1] Jerdan's case, No. 118.
[2] Ford, 2 April 1877, No. 126.
[3] Walker's case, 24 D. 1453; Hope, *ibid.*
[4] Bell, 4 M'P. 1143.
[5] Duke of Richmond, 11 M'P. 978; Fraser, 24 D. 1452.
[6] 1 M'P. 1197.
[7] Mitchell, 4 Mc. 1142.

paid will be the measure of the liability of both parties to the contract.

When, however, the tenant, besides paying a certain sum in name of rent, has agreed to spend a further sum in building dwelling-houses or otherwise permanently improving the property, we have a consideration other than rent, and the assessor is entitled to disregard the rent as the annual value of the subjects let, adding a sum for the annual value of the buildings and other improvements; or he may value the subjects in their actual state.[1] The effect is the same when the money is furnished by the proprietor himself, or obtained by borrowing, the tenant paying an annual rent-charge of $6\frac{1}{2}$ per cent. The rent-charge is understood to be paid in respect of the value of the land as increased by the expenditure, and 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 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

[1] Macculloch, p. 90.

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

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 this part of the expenditure ought to be deducted.[1]

When it is stipulated that, the farm being in bad order, the tenant during the initial years of the term shall be allowed a certain abatement of the rent, to be spent by him in bringing it into good condition, no deduction is made from the rent fixed in the lease. The operations are carried out by the tenant, but at the landlord's expense; for it is obviously the same thing whether he pays for them directly himself, or presents the tenant with a sum of money to be spent in the manner contemplated, or allows him to retain a proportion of the rent on account of the expenditure.[2] But if a deduction is allowed without binding the tenant to spend it in making improvements, there is room for saying that the sum actually paid for each year is the true value of the possession. The meaning and effect of the lease is that the farm when put into good order will be worth a certain rent, but until that result is attained it will be worth so much less, consequently the rent, *minus* the discount, would appear to be the proper entry. The Court, however, in such a case, declined to recognise this distinction. They said that it was reasonable to assume, in the absence of explanation to the contrary, that the sums allowed in abatement were to be expended in improvements of a permanent character, and accordingly they upheld the view of the assessor, who had entered it at the full rent.[3] In making the improvements the tenant was regarded as the hand of the landlord;[4] and the money which may be annually spent by a man in improving his property cannot affect the valuation. It is, different, however, when the expenditure is made by the tenant in virtue of a stipulation to that effect, because the expenditure then becomes part of the consideration for his getting possession. Thus, when a lease was extended during its currency in consideration of a house which had been built by the tenant, the landlord agreeing to

[1] Dunlop's case, 20 D. 1355.
[2] Sir T. Hepburn, No. 120; Udny, 11 M'P. 1196.
[3] Sir D. Kinloch, No. 119.
[4] Sir T. Hepburn, No. 120; Hay, 24 D. 1451.

pay ameliorations at the end of the term, it was decided that the subjects fell to be valued irrespective of the lease, by adding to the stipulated rent 5 per cent. on the value of the house or otherwise.[1] A tenant was taken bound to pay an outgoing tenant a sum of money for building, besides being obliged to spend a certain sum himself, which would be repaid to him at the end of the lease.[2] The subjects were held to be properly assessed at the rent stipulated by the lease, *plus* 5 per cent. on the sum paid to the outgoing tenant and the sum which the tenant would receive at the end of his term.

When the proprietor is both owner and occupant, there is no lease for the assessor's guidance, and the question which he has to determine is what would be given for the land by a hypothetical tenant in the condition in which it actually is. The direction of the statute is as follows:—

'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.'[3] These words are taken from the Poor Law Act, sec. 37. They have since been adopted in the English Assessment Act, and the meaning of them is not far to seek. 'You are,' says Lord Blackburn, 'to see all these benefits that the hypothetical tenant would have by having the property which is to be rated to him, and you are to set against it all that he would have to pay and discharge in order to get that benefit, and allow him a fair tenant's profit, and then the balance would be the rateable value. That is a difficult thing to do, but it is repeatedly obliged to be done, and has been done in rating railways and other things of that sort when there is no real tenant at all.'[4]

Thus, in the case of mills and manufactories, the inquiry naturally put by an intending tenant is as to the amount of the out-turn, or the quantity of productive power. A mill capable of producing so many tons, or so many spindles, per week should yield a certain amount of profit, and may be contrasted with the rent paid for similar establishments in

[1] Grant, 24 D. 1452. [2] Skene, 11 M'P. 976.
[3] Valuation Act, 17 and 18 Vict. cap. 91, sec. 6.
[4] Grant *v.* East Dean, L. R., 7 Q. B. 334.

the neighbourhood, in order to see how much a manufacturer could afford to give for it. But where this was the only method of valuation followed, it was disapproved of by the judges. A paper-mill was entered by the assessor at £2024, or 7½ per cent. upon its cost. The owners stated that the mill was only partially in operation, and insisted that the annual value should be ascertained according to the output, taking 11s. 1d. per ton (the average of certain other mills) on an output of 1040 tons, which gave an annual value of £580. The commissioners having adopted the latter sum, the judges returned the following opinion:—'We are of opinion that the determination of the commissioners is wrong, in respect of its proceeding on the amount of the out-turn, and that the value of the works is not to be ruled exclusively either by the amount of the annual out-turn or by a percentage on the cost of erection, but is to be estimated according to the rent at which, one year with another, the premises might in their actual state be reasonably expected to let from year to year, having regard to the rent or annual value, as assessed, of other works of a like description, and taking into account the peculiar advantages or disadvantages of the Beltonford works.'[1]

Accordingly, the more common course is to allow a percentage on the total cost of the building, because it is to be presumed that capital will be invested in such undertakings only in the expectation of its yielding a certain return. The money sunk in the building represents to the manufacturer the loss of so much interest which it would have produced if laid out on mortgage. But, unlike a mortgage, the capital will return to him when it comes to be realized in a very diminished form, owing to the annual tear and wear. How much should be allowed for this depreciation is a matter on which practical men differed widely in opinion. In 1876 this percentage was investigated by the magistrates of Dundee, who, it is believed, consulted Lord Moncreiff, the author of the Valuation Act, Lord Shand, and assessors from various parts of the country. Evidence was also led before them, and the result of all their inquiries was that 7½ per cent. was not too high. This rate was accordingly settled by the magistrates, with the consent of the manufacturers, and it is

[1] Annandale and Son, 11 M'P. 977.

believed that it has been generally adopted throughout the country as a fair and moderate return on capital invested in manufacturing buildings. It is arrived at on the principle that the money invested in commercial pursuits should yield the investors 5 per cent. clear, and the additional $2\frac{1}{2}$ per cent. goes to meet the expenses of the property, such as taxes, insurance, repairs, etc. In a case as to the valuation of a linen manufactory at Perth, the assessor stated that he had made up his estimate by taking the amount of the estimate for the building, adding 10 per cent. for extras, and charging $7\frac{1}{2}$ per cent. upon the whole, which gave £1700. The judges, on appeal, reduced the valuation to £1200. They modified the 10 per cent. for extras added to the estimates for erecting the buildings, and also the $2\frac{1}{2}$ per cent. in addition to the 5 per cent. for taxes, etc., supposing that the taxes might not be so high in Perth as in Dundee.[1]

In the case of country mansion-houses different considerations have to be taken into account. A large part of the expenditure on such structures is wholly unproductive, representing as it does the additions and improvements made by successive generations without any consideration of the expense, and with no view to profit. When these houses come to be let, the rent offered bears but a slight proportion to the original outlay, and their letting value can be ascertained only by a comparison of the sums realized for accommodation of a similar description in the neighbourhood. A percentage upon the estimated cost of the building would throw an undue share of the taxation upon this description of property. In the language of Adam Smith, 'the proprietor would be taxed on a subject which would afford him neither conveniency nor revenue.' 'Houses,' says that eminent writer, 'inhabited by the proprietor ought to be rated, not according to the expense which they might have cost in building, but according to the rent which an equitable arbitration might judge them likely to bring if leased to a tenant. If rated according to the expense which they might have cost in building, a tax of three or four shillings in the pound, joined with other taxes, would ruin almost all the rich and great families of this, and I believe every other, civilised country. Whoever will

[1] Shields, No. 113.

examine with attention the different town and country houses of some of the richest and greatest families in this country, will find that at the rate of only 6½ or 7 per cent. on the original expense of building, their house rent is nearly equal to the whole net rent of their estates. It is the accumulated expense of several successive generations laid out upon objects of great beauty and magnificence, indeed, but, in proportion to what they cost, of very small exchangeable value.'[1] These principles are followed in carrying out the Valuation Act; and in investigating the value of non-mercantile property, the course followed is, irrespective of the cost of the building, to compare the rents obtained for similar accommodation in the same neighbourhood.[2]

Another description of property for which it is difficult to find any uniform and satisfactory principle of valuation is hospitals, public schools, asylums, and the like. In the case of Woodielee Lunatic Asylum, near Kirkintilloch, the question came to be discussed between the parochial board of that town and the Barony Parish, to which the asylum belongs. It appeared that the Barony paid £10,000 for the lands of Woodielee, and the cost of erection of the asylum and medical superintendent's house is £130,000. The total cost is therefore £140,000. The lands are separately valued at £180, the superintendent's house at £50, and the lodge and a small house at £15. The asylum was built solely for pauper lunatics, and is licensed for 400 patients. The appellants, the Barony Board, contended that a valuation of £4 per bed is excessive, and they referred to the cases of Rosewell Asylum, in which the Commissioners of Supply of Midlothian, on appeal, fixed the annual valuation at £2, 10s. per bed; of Gartnavel Lunatic Asylum, licensed for 600 patients, valuation £1400; and of Govan Poorhouse and Lunatic Asylum, licensed for 600 inmates, valuation £1500, cost £80,000. They also referred to their own poorhouse in Barony Parish, licensed for 1300 paupers, valuation £1500, the cost of erection of which was £43,000, and to the

[1] Wealth of Nations, Book V. chap. 2, M'Culloch's ed., vol. iii. p. 399.

[2] Cowie's case, No. 106; M'Allister's case, 107; Pollock's case, 108; Dobbie's case, 109—all from the burgh of Ayr. Binning, 11 M'P. 988; M'Farlane, 11 M'P. 985—houses in Glasgow; Thomson, 11 M'P. 984.

poorhouse of the City Parish of Glasgow, licensed for 1000 paupers, valuation £1000. The inspector of Kirkintilloch for his board maintained that valuations of poorhouses form no criterion for the valuations of lunatic asylums, the accommodation per head required in asylums being much greater than in poorhouses; and that, looking to the nature and extent of the accommodation provided, £2500, not quite 2 per cent. on the cost, is a reasonable valuation for Woodielee. He cited the following cases:— Larbert Public Lunatic Asylum, valuation £640, equal to $1\frac{3}{4}$ per cent. on cost of erection; Edinburgh Poorhouse, valuation £1300, equal to $2\frac{1}{6}$ per cent. on £60,000, the cost of erection; Dumbarton Combination Poorhouse, valuation £250, equal to $3\frac{1}{2}$ per cent. on £7000, the cost of erection; and St. Cuthbert's Poorhouse, valuation £1000, equal to about 2 per cent. on £48,000, the cost of erection. In reply, the appellants maintained that a percentage on cost of erection is no criterion for ascertaining annual value. If it were, modern buildings would be placed at a disadvantage compared with buildings erected twenty, or even ten years ago,—the cost of building having greatly increased of late,—but that a valuation based on accommodation, as ascertained by a central authority, and upon definite rules, is the only proper criterion. The commissioners concurred in the assessor's view, and confirmed the valuation at £1600; and on appeal this judgment was held to be right.[1]

Leases of Unusual Endurance.

The rule of the statute, that the rent is the value, applies only to a *bona fide* lease of ordinary endurance. If the term of the lease exceeds twenty-one years, the whole subjects are valued without regard to 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,[2] had the subjects been let for more than

[1] Barony Parish *v.* Kirkintilloch, 2 April 1877, No. 122.
[2] 10 P. L. 214, and 24 D. 1452.

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.[1] 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 Amendment 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 had no right to the produce of the soil, but merely the personal privilege of walking over the ground, and killing the wild animals which he might happen to find there. 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.[2]

[1] M'Laren *v.* Clyde Navigation Trs., 17 Nov. 1865, 4 M'P. 58.
[2] Pollok Gilmour and Co. *v.* Harvey, 5 June 1828, 6 S. 913.

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.[1] '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.[2] 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 erected under the obligation in the lease, the subjects being entered in the roll as 'shootings with buildings attached thereto.'[3]

Fishings.

The statute declares that 'lands and heritages shall extend to and include fishings.' Fishings are a separate estate, which may be held independently of the land, and are therefore treated

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

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

[3] Duke of Montrose, 1 M'P. 1197.

differently from shootings which require to be 'actually let.' 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, because they are unlet and yield no rent. Being in the owner's possession, they must be entered at the rent which, if let, they might be expected to bring.[1] In one peculiar case it appeared that, under an agreement dated in 1832, the burgh of Renfrew receives annually from the Clyde Trustees the difference between the sum which the fisheries belonging to the burgh now yield, and the rent for which they used to be let prior to the commencement of the Trustees' operations for deepening the river in 1832. The present rent is £17, 10s., and the burgh receives from the Trustees £207, 10s., to make up the sum of £225. The Trustees having been entered as occupiers at the latter sum, on appeal the decision was held to be wrong.[2]

In another case the proprietor explained that the fishings had been found not to belong to him but to the Crown, and that he had held them on a lease at a rent of £14. But it appeared that, before the right of the Crown was vindicated, the appellant let the fishings to a tenant for £25, and now sublet them for the same sum. The commissioners having ordered that he should be entered at £14, the Crown rent, it was decided that the determination was wrong, the payment by the actual tenant being, in the opinion of the judges, a good and sufficient test of value, the Commissioners of Woods and Forests being entered as proprietors.[3] The Crown lease was regarded as beneficial and not *bonâ fide*.

Woods.

'Woods, copse, and underwood, from which *revenue is actually derived*.' This is intended to cover the case of land planted with hazel, oak, etc., so as to raise successive crops on the same roots or stools, at intervals of ten, fifteen, or twenty years. These are woods for other than purely ornamental purposes, because a succession of profitable crops is taken off the land, just as in the case of other crops, though the

[1] Baird's case, 24 D. 1456.

[2] Clyde Navigation Trustees, 8 Feb. 1868.

[3] Scott, 24 D. 1455.

gathering is at long intervals. Woods cut down for sale at regular and calculable periods,[1] and of which the annual worth is capable of calculation, are therefore treated differently from ornamental timber. Where no revenue is derived from the woods, they are valued at what they might, in their natural state, be expected to let for as grazings.[2] The first case which occurred on this point was as follows:—A proprietor was *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 proprietor objected that they were worth nothing, and that 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.[3]

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 the landlord had given up everything to the game tenant, reserving to himself only a right of entry to prune the trees. The commissioners disallowed the valuation, on the ground that 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 enter the roll. The shooting rent covers no right to the use of the land or

[1] Fitzhardinge *v.* Pritchett, L. R., 2 Q B. 135, a case on the meaning of 'saleable underwoods' in the statute of Elizabeth.

[2] Dunlop's case, 20 D. 1354.

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

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. So in agricultural rents, not only the rent paid by the farmer is entered, but also the rent paid for the shootings.[1] But inasmuch as the proprietor was not sole beneficial occupant, the judges reduced the valuation from £15 to £10.

Bridges and Ferries.

It is now decided that these subjects are heritable, and fall to be entered in the valuation roll.[2] They are valued on the principle of taking the actual revenue from tolls, etc., under deduction of the cost of maintenance and collection, and dividing the remainder between the parishes on either side of the river. Thus, in the case of the bridge which spans the Nith at Dumfries, and belongs to the burgh under an old charter, empowering the magistrates to charge certain dues, it was held to be properly entered at the sum payable by the tenant, one half in the parish on one side of the river, and the other half in the parish on the other.[3]

After some fluctuation of opinion, the same rule appears to have been now laid down with regard to ferries which, under the statute, are also assessable. A ferry is a highway across a river, or arm of the sea; and a right of ferry is simply a monopoly of the traffic, granted in consideration of the grantee maintaining a proper boat, and suitable piers and landing-places for the service of the public. It may thus involve the occupation of land in two parishes on opposite sides of the water; and it follows, that the profit resulting from this occupation should be fairly apportioned between them. At first, however, the view taken was that a right of ferry being a *jus incorporale*, should be treated rather as an appurtenance 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 in the parish at the other, or partly in both, the Court decided

[1] Lord Forbes, 26 Nov. 1861, 24 D. 1458.
[2] Arthur *v.* Glasgow Police, 4 P. L. (2) 22, 18 June 1870.
[3] Burgh of Dumfries, 11 M'P. 984.

that the assessment fell to the parish where were situated the lands of which the ferry was a pertinent.[1] 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 facto* it was no part of the line, it was not a thing which could be used only for railway purposes. 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.[2] This was subsequently altered by statute. 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.'

And recently it has been held in regard to ferries generally, that where the centre of the river forms the boundary between two counties, a proportion of the annual value of the ferry falls to be entered in the valuation roll of each county. The ferry of Erskine, on the river Clyde, is a pertinent of the barony of Erskine, situated in Renfrewshire. The Clyde at this point divides the counties of Renfrew and Dumbarton, and the ferry extends into both counties. There is a pier or landing-place on each side. The ferry and appurtenances, with a hotel on the Renfrewshire side, are let for £100. When, for the first time, an entry was made of £40 as the proportion applicable to the county of Dumbarton, Lord Blantyre appealed on the ground that the barony, of which the ferry is a pertinent, is situated wholly in Renfrewshire. The commissioners sustained the entry, but

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

[2] Edinburgh, Perth, and Dundee Railway *v.* Arthur, 22 Dec. 1854, 17 D 252.

fixed the proportion of annual value applicable to Dumbartonshire at £20; and this decision was sustained on appeal.[1]

In regard to another ferry, unconnected with a railway, namely, the Tay Ferry, between Dundee and Newport, long occupied by the Scottish Central Railway Co. as mortgagees in possession, it was held that the pier and landing-place, 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 connected 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 in fixing the annual value thereof.[5]

[1] Lord Blantyre, 2 April 1877, No. 125.

[2] Scottish Central Railway Co., 23 Jan. 1863, 1 M'P. 1198.

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

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

[5] Adamson *v.* Clyde Trustees, 1 M'P. 974, H. L. 3 M'P. 101, 4 Macq. 931; Clyde Trustees, 4 M'P. 1143.

Where the harbour consists of a continuous line of docks, extending through different parishes, the valuation is apportioned on the mileage principle.[1] In one of the Mersey Docks cases, it was decided that in rating to the poor-rate, the docks on the Liverpool side were not to be treated as one system of docks with those on the Birkenhead side, but the earnings and outgoings in each set of docks must be kept distinct, and the Liverpool Docks rated according to the net earnings on that side. A question arises as to whether a tenement, built for the convenience of the traffic of the harbour, ought to be treated as separately rateable, or as part of the general undertaking. It has been decided that (1) warehouses, (2) timber and guano sheds, (3) graving-docks, and (4) workshops, offices, etc., ought to be separately rated; for, although used along with the docks, and under one management, they were still subjects which could be let, without the use of the docks, for a beneficial purpose. Moreover, they are to be entered at the enhanced value which arose from their intimate connection with the docks. 'If,' said Lord Justice Blackburn, 'you are letting one of the warehouses, supposing the docks to be already let to the highest bidder, the person who offered the highest rent would take into account the proximity of the warehouse to the docks, and would not ask how the docks were to be managed, or whether the rates to be received were more than the rent of the docks, or less. He would not inquire into that at all. He would say, "I agree to give such a rent for the warehouse because it is close to the docks, and I expect to make a trade through it." In the same way, if he were about to become the occupier of a public-house adjoining a large factory, which employed a great number of hands, from whom he expected to get a great custom, he would not inquire whether the factory was worked at a profit or loss; for, so long as it was worked, the public-house would be of value owing to the custom of the people who worked at the factory. So with regard to a shop in a public thoroughfare; the occupier would never inquire what it cost to keep up the road.'[2] There is, however, no separate occupa-

[1] Mersey Docks *v.* Liverpool, L. R. 7, Q. B. 643.

[2] Mersey Docks *v.* Birkenhead, L. R. 8, Q. B. 445.

tion, unless the board has parted with the exclusive possession of the subject. An arrangement under which a certain wharf was appropriated for the accommodation of a particular line of steamers, was held not to make the company liable as tenants.[1]

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 applicable to that portion of the subjects which is not assessable.[2]

In a case as to the valuation of Bowling Harbour, the commissioners had fixed the valuation at £541, being the amount of the actual revenue, less £15 per cent. for tenant's profits. The Court, on appeal, taking the gross revenue at £7637, deducted 20 per cent. for the charges of maintenance and the expenses of collection, and made a further deduction from the balance of 20 per cent. for tenant's profits, and reduced the value to £407.[3] But no deduction for tenant's profits is now allowed in the case of a corporation vested with an undertaking for behoof of the community.[4]

Market Dues.

Market dues which are of the nature of stallage or tolls, taken in respect of the use of the area of the market, are

[1] Allan *v.* Liverpool, L. R. 9, Q. B. 180.
[2] Clyde Trustees, 4 M'P. 1143.
[3] Clyde Navigation Trustees, 11 M'P. 979.
[4] Caledonian Railway *v.* Dods, 3 P. L. (3) 587.

rateable; but burgh customs are not.[1] In many country towns where markets are established, the right to levy the tolls or customs on persons having stances in the market is let on lease, and the rent represents the revenue derived by the burgh from the market area.[2] But in other cases the toll levied is wholly unconnected with the occupation of the ground, and is part of the taxation imposed for the use of the burgh. For example, in the city of Aberdeen, there is a public market held every Friday in Castle Street round the cross—the whole vacant space being occupied by hucksters with their stands and wares. On these persons certain dues are levied by the magistrates, and the right to collect them is leased by the tacksman of the tolls and petty customs, for the sum of £40 per annum. The assessor, maintaining that the stances were an assessable subject, of which the town council was the landlord and the tacksman the tenant, proposed so to enter them in the roll; but it was answered that the ground was a public street, incapable of appropriation; and the judges held that the magistrates had rightly decided in ordering the entry to be deleted.[3]

Mines.

Although the revenue derived from minerals cannot properly be called 'rent,'—that is, a sum paid for the use of a subject, *salva substantia*,—coal-works were at no time exempt from assessment, the rate being imposed on the actual rent or lordship paid by the tenant to the proprietor.[4] Under the existing law, they fall within the meaning of 'heritage,' along with minerals, mines, quarries, lime-works, 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.[5]

[1] Inverness, 3 June 1874, No. 110; R. *v.* Caswell, L. R. 7, Q. B. 328.

[2] Inverurie, 26 May 1875, No. 116.

[3] Magistrates of Aberdeen, 2 April 1877, No. 124.

[4] Mackintosh, etc., *v.* Playfair's Trustees, 20 May 1841, 3 D. 893. See Bell *v.* Earl of Wemyss, 16 Feb. 1805, 13 F. C. 444, where the distinction is explained between the liability of mineral rent for an annual burden, such as poor-rates, and a permanent burden, such as the assessment for building a parish church.

[5] 8 and 9 Vict. cap. 33, sec. 37; 17 and 18 Vict. cap. 91, sec. 42.

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, be sublet 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 as proprietor, and at the sum received by him from his sub-tenant.

Where the rent of a coal-field is stated at a lordship on the output and not at a fixed sum, 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.[1]

The subject to be valued in the case of a going colliery includes all those houses and buildings, sheds, steam-engines, tramways, etc., without which it could not be properly worked, and which have no intrinsic value of themselves, apart from the colliery. They are valued as a *unum quid*. Thus, where the pit-mouth buildings and engines, erected by the tenant for the extraction of coal, were entered separately from the mineral lease, the Court, on appeal by the mineral lessees, upheld their contention, that to sever the pit-buildings and engines from the mines of which the appellants were tenants, and to treat them as separate heritages, was contrary to the Valuation Act.[2] But where certain oil-works, consisting of tanks, retorts, etc., and sheds, had been erected by mineral tenants, the assessor was held to be right in valuing them, separately from the coal-field, at £15 per cent. on the original cost, being the sum which would reimburse the proprietor for erecting

[1] Waddell's case, 1861, No. 24.
[2] Summerlee Iron Co., No. 114.

the works, and the cost of keeping them in repair.[1] In a case where iron-works were entered, with a note upon the roll of the fact that so many furnaces were in blast and so many standing, disapproval was expressed of the practice of making such notes, the object being to enable the proprietors to get relief from certain local taxation by means of it. The notes did not form part of the information required by law to be given,[2] and such works required to be entered at the rent which they would bring one year with another, whether they were in blast or standing idle.[3] Although minerals are let at an increased rent, the landlord is entitled to have the value stated at the rent stipulated in the lease.[4] In the case of a quarry situated in a glebe, the judges appointed it to be entered at the full annual value in the name of the heritors of the parish, as holding in trust for the benefice, although the minister received only a part, the rest being accumulated for the benefit of the benefice. In this case they also caused inquiry to be made as to the principle followed in practice by the assessors under the Lands Valuation Acts, in valuing mines, minerals, and quarries of stone, where the payment by the tenant was by lordship. It was found that in the counties of Edinburgh, Lanark, Dumbarton, Renfrew, Ayr, Dumfries, Kirkcudbright, Wigtown, Stirling, Clackmannan, and Fife, where inquiry was made, that the value was founded upon the actual amount of lordship paid in the preceding year, or an average of such actual amount for a number of preceding years, and no distinction was made between mines and other lands.[5]

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

[1] Dungray Coal Co., 11 M'P. 977.
[2] Addie, 11 D. 979.
[3] Carnbroe Iron-works, 11 M'P. 980.
[4] Campbell, 24 D. 1427.
[5] Heritors of Kirkmabreck, 25 March 1861, 24 D. 1456.

was, in the first place, pleaded for the company 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 *per se* valueless, and could not yield either rent or 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 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, these 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 many 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 to the capital sunk in making the line, or to the traffic drawn from the parish, or to the profit earned in it? To each of these various courses there exist so many objections, that it is satisfactory to know that not one of them was ever followed.

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 of St. Cuthbert's. This gave £173, 1s. 10d. as the value of the portion of the canal in the parish; 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 these 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

[1] Anderson *v.* Union Canal Co., 7 March 1839, 1 D. 648; S. C., 14 Jan. 1847, 9 D. 402; Edinburgh and Glasgow Railway Co. *v.* Adamson, 10 March 1853, 15 D. 537; Duncan *v.* Scottish North-Eastern Railway, H. L. 9 May 1870, L. R. 2 Sc. Ap. 20.

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. But when the subject came to be reviewed by Parliament, with a view to special legislation, the principle involved in this part of the judgment was very properly rejected. 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 was affirmed by the House of Lords.[3]

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,

[1] Sec. 45.

[2] Edinburgh and Glasgow Railway *v.* Adamson, etc., 10 March 1853, 15 D. 537, 27 Sc. J. 514.

[3] 2 Macq. 331.

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.[1] 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 follows; that is to say, there shall be deducted, in the first place, from the *cumulo* yearly rent or value of the whole lands and heritages in Scotland, as aforesaid, of each such railway or canal company, a sum equal to £[5][2] 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 £[5][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.[4]

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 are all in one county, the appeal is taken to the sheriff.[5]

Following the directions of the statute (as amended by 30 and 31 Vict. cap. 80), we find that we first require to ascer-

[1] Sec. 21. [2] 30 and 31 Vict. cap. 80, sec. 4. [3] *Ibid.*
[4] Sec. 22. [5] Secs. 24, 25.

tain *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 one-half of the cost of maintaining the permanent way, charged to revenue in the company's published accounts.[1]

We next deduct five 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:—

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, *plus* five 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 assessment falls to be levied.

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 termini and the intermediate stations. The line may be used by the public 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 and 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.[2] Thus, it is no part of their business to provide sleeping and hotel accommodation for passengers when they arrive at their destination; and an hotel built by the company

[1] 30 and 31 Vict. cap. 80, sec. 3.

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

as a speculation in the station or its immediate neighbourhood, 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 railway. 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 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] and the same decision was given with respect to houses erected by a canal company for the accommodation of their workmen, but no longer required for the purposes of the canal, and let to tenants.[2] 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.[3]

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,

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

[2] Forth and Clyde Canal, 24 D. 1453.

[3] Edinburgh and Glasgow Railway Co. *v.* Adamson, 15 D. 536, 17 D. 1007, affd. 2 Macq. 331; Edinburgh, Perth, and Dundee Railway *v.* Arthur, 22 Dec. 1854, 17 D. 252.

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.[1]

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 cab-master for the exclusive privilege of being 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 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.[2] But coal depôts, auctioneers' stances, stables let by the company and occupied by tenants, and houses occupied by pointsmen, surfacemen, etc., in the employment of the company, are not included in the general valuation of the company's property.[3]

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; 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

[1] North British Railway Co. *v.* Greig and Mackay, 20 March 1866, 8 P. L. 483, 4 M'P. 645.

[2] Caledonian Railway Co., May 1872.

[3] Highland Railway Co. *v.* Dods, 21 Sept. 1876, 4 P. L. (3) 603.

all, as it is not an assessable subject. The same may be said of a way-leave, 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, the line is to be dealt with in the same manner as if the lessees had made it themselves.[1] This provision 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 999 years, and the Caledonian undertook to pay certain fixed and also certain contingent dividends 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 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.[3] But

[1] Valuation Act, sec. 6.

[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.

[3] Edinburgh and Glasgow Railway *v.* Arthur, 20 D. 677, 24 Feb. 1858, following Glasgow and Barrhead Railway *v.* Caledonian Railway, *ut supra*.

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 is subject to these various charges: (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, the assessor 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 are their own tenants; and to find the actual sum which an indifferent stranger could afford to give for a lease of the 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 representing the profit which would properly belong to a tenant. In practice, an allowance of 25 per cent. is made for interest on capital, deterioration of plant, compensation for accidents, and tenants' profits; and in addition, 25 per cent. on carting plant, 25 per cent. on canal plant, and 25 per cent. on office furniture.[1]

Gas and Water Works.

The Valuation Act 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 of the desire of the company to be

[1] Caledonian Railway Co. *v.* Dods, 21 Sept. 1875, 3 P. L. (3) 587.

assessed by the assessor of railways and canals is made by the manager, secretary, or other principal officer, to the sheriff of the county where the head office is situated, before the 15th May in each year. 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 15th 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.[1]

The business of a gas company, like that of a water company, consists mainly in distribution. The gas which they make, and the water which they collect, is of no value until it is conveyed to the premises of the consumer. They are not liable to be rated on the profits of their trade, but the net sum earned by the company is a convenient measure of the rent which a tenant would be prepared to give for the premises, including the mains and pipes. The profits are ascertained by deducting from the gross receipts the cost of production and distribution, an allowance for the renewal of apparatus and machinery, an allowance for repairs, calculated on an average of preceding years, and including insurance, the expense of collecting the rates, and charges for management.[2] For reasons already stated, no deduction is given for tenants' profits, where the gasworks are in the hands of a corporation; and it has been decided that the value of the meters in the houses of the consumers, connected by solder with private pipes, must be excluded from the computation.[3] But no deduction is 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 which contain them, and the pipes through which

[1] Sec. 23.

[2] Glasgow Gas Light Co., 23 March 1863, 1 M'P. 727, and 5 P. L. 449.

[3] Falkirk Gas Co., 11 May 1864, No. 41, 4 M'P. 1133.

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 tenants' 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]

[1] Reg. *v.* Lee, 35 L. J., M. C. 105, L. R. 1 Q. B. 241.

CHAPTER VIII.

THE IMPOSITION OF AN ASSESSMENT.

THE Act 1579, cap. 74, ratified and renewed by Act 1698, cap. 21, authorized an assessment 'of the haill inhabitants within the parish, according to the estimation of their substance, without the exception of persons;' this 'estimation to be made every year, for the alteration that may be through death, or by incres or diminution of men's gudes and substance.' We have already seen how the duty of imposing an assessment, which was at first committed to justices of the peace, came to be transferred to the heritors and kirk-session. They were, however, in no sense a representative body, and some precautions required to be taken against their doing injustice to the tenants and other parishioners over whom their right of taxation extended. It was probably for this reason that the proportion payable by the two classes of heritors and tenants was fixed by the Proclamation of 11th August 1692.[1] In imitation of the rule prescribed by an obsolete Act for raising funds for the suppression of vagabonds,[2] the assessment was divided into two parts. In country parishes, one-half of the burden was laid on the proprietors, one-half on the tenants or householders. The rate was appointed to be assessed 'conform to the old extent of their lands within the parish, or otherways as the major part of the meeting shall agree, liferenters and wadsetters always during their rights passing as heritors.' It was decided that this power of assessment 'otherways' made it discretionary to assess according to the real instead of the valued rent;[3] but in

[1] Proclamation 1692, 11 Aug.; 1693, 29 Aug., ratified by statutes 1695, cap. 43, and 1698, cap. 21.

[2] 1663, cap. 16.

[3] Scott *v.* Fraser, 19 Jan. 1773, F. C., and Mor. 10,577.

either case the rate was really an income tax, because at this time the heritors had no income except what was derived from their lands; while, as regards tenants, the true character of the rate appears from the direction that the tenants' half should be raised 'according to their means and substance.' The rule generally adopted was the rents of their respective farms, which in these rude times was a fair enough measure of a person's income. So much for country districts. In towns and burghs, according to the Proclamation 29th 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 basis of assessment, gave rise to great inequalities where the parish was partly the one and partly the other. Both town and country tenants were 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 having been found by the House of Lords to be illegal, the difficulty of finding any common measure of the means and substance of the different classes in such parishes was so great, that, notwithstanding its inconvenience, resort was had in many cases to the original mode, of imposing the assessment on an estimate of each person's income. However, 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 Poor Law Act, considerable diversity of 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 assess-

ment 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, and farms) being taken as the measure of a person's income, parochial boards which adopted the first mode of assessment were empowered by sec. 36 to distinguish lands and heritages into two or more classes, according to the purposes for which they were used or occupied, and to fix such different rates of assessment on the tenants or occupants of each class as might seem just and equitable.

2. Rental of Owners, and Income of 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 or 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.[1]

In their Report to Parliament, the Poor Law Commissioners thought it not 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 and unequal; but as many persons had houses in different parishes,

[1] For instance, on rental without any of the usual deductions, Young *v.* Scottish Central Railway Co., 16 March 1861, 23 D. 747.

or their residence in one and business premises in another, it was 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 Act 24 and 25 Vict. cap. 37.

If a parochial board resolves 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]

The right of levying the assessment at different rates, on different classes of property, is intended only for the benefit of tenants and occupants; as regards owners there is no classification. The proportions vary with the particular circumstances of each individual parish; but taking dwelling-houses, as 1, classifications have been approved by the Board of Supervision, according to which shops, manufactories, railways, mines, and quarries were set down at two-thirds, and agricultural subjects at one-fourth or one-fifth. The Board of Supervision, in explanation of the practical working of the system, says:[2]—

'This has occasionally been complained of as unjust to the occupants of dwelling-houses, particularly where they happen to be working men whose income consists of the wages of their labour, and who, by the supposed classification, are apparently more heavily burdened than the tenants of agricultural subjects.

'It is easy to see, however, that the reverse is the case. Thus, a farmer paying £100 a year of rent in Scotland is held by the Legislature, under the Income Tax Acts, to have

[1] Young *v.* Scottish Central Railway Co., 16 March 1861, 3 P. L. 444, 23 D. 747.

[2] Report, 10 Dec. 1868, p. 80.

a taxable income of only £33, 6s. 8d., equal to one-third of his rent, yet at 3d. in the pound he has to pay 25s. of poor-rates; while the working man, with an income of £39, living in a house, the rent of which is probably not more than £5 per annum, and assessed at 1s. in the pound, pays only 5s. per annum of poor-rates. The farmer, even if we suppose his income to be equal to that of the working man, would be paying five times as large an amount of poor-rates. Or, take the case of a farmer paying a rent of £300 a year, whose income is held to be equal to one-third of his rent, or £100 a year,—that is, a fraction less than three times the income of a working man earning 13s. a week, and living in a house at a rent of £5 per annum; the farmer, assessed at 3d. in the pound, would pay £3, 15s. of poor-rates, while the working man, assessed at 1s. in the pound, would pay only 5s. The farmer, with three times the amount of income, would pay fifteen times the amount of poor-rates. Even if it were supposed that the farmer's income were equal to his whole rent, or £300 a year, which would be absurd, that income would only be nine times as great as the working man's at 13s. a week, and occupying a house at a rent of £5; yet the farmer, assessed at 3d. in the pound, would pay, not nine times, but fifteen times the amount of poor-rates which the working man, assessed at 1s. in the pound, would be required to pay.

'It is thus apparent that, if there be any error in the supposed classification, it is an error against agricultural tenants rather than against the occupants of dwelling-houses; and, indeed, it may be said that the illustration given above proves too much, and shows that the proportion of the full rate which it lays upon the agricultural tenant, instead of being too small, is much too large.

'There are other considerations, however, which may be fairly taken into view, and which seem to go far towards redressing any inequity arising from the disproportion. The income of the working man is more precarious than that of the agricultural tenant. It may be assumed, also, in general, to be of smaller amount, and taxation of every kind presses more heavily upon the recipient of the smaller income. Some favour may therefore be shown to him in the adjustment of

the classification; and the Board, consequently, have not insisted upon following out rigorously the exact proportion between the probable means of the party assessed and the rate of assessment. That proportion, however, is the principle of the system, and therefore must be kept in view, subject to the modifications which have been suggested in dealing with every scheme of classification.'

This power of classification is, however, not to be confounded with the provisions of the 37th section relating to 'deductions.' According to that section, the assessment cannot be imposed on the gross value,—the rent stated in the valuation roll,—but only 'under deduction of the probable annual average cost of 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.' Thus, whether a system of classification is adopted or not, the parochial board, before imposing an assessment, requires to make up an assessment roll, in which the assessable rent is specified. In some parishes a practice has prevailed of making the assessment direct from the valuation roll, no deductions from the gross rental being allowed at all, or deductions being allowed only with respect to certain descriptions of property, and particular classes of ratepayers; but, as has been pointed out by the Board of Supervision,[1] these different methods are all illegal. The Poor Law Act gives no authority for imposing an assessment otherwise than according to the annual value of the subject, as that is defined in sec. 34 of the statute; and where the percentage allowed to cover these deductions is insufficient, a ratepayer may have relief by a suspension in the Court of Session.[2]

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

[1] Board's Circular, 30 April 1868.

[2] Edinburgh and Glasgow Railway Co. *v.* Meek, 10 Dec. 1864, 3 M'P. 229. It is understood that in some towns the scale of deductions for repairs, etc., is—Land, 12½ per cent.; houses, 20 per cent.; railways, 27½ (in addition to one-half of cost of maintaining permanent way, allowed by the railway assessor).

actually paid for rates and taxes may be easily ascertained, there is no necessity for striking an average, and this particular deduction 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.[1]

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 reconstruction of the subject by the removal of part of it, and its reproduction in a new style. If a line of railway, for 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 to last only sixteen years, the term must necessarily receive a more elastic construction than if it were applied to a landed estate, or even to 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,

[1] Edinburgh and Glasgow Railway Co. *v.* Hall, 19 Jan. 1866, 4 M'P. 1006, 8 P. L. 269.

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, on account both 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.'

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]

[1] Glasgow Gas Light Co. *v.* Adamson, 23 March 1863, 5 P. L. 449, and 1 M'P. 727.

[2] *Ibid.* [3] Greville *v.* Thomson (unreported). [4] Sec. 37.

[5] Edinburgh and Glasgow Railway Co. *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.

Till lately, a practice has prevailed of fixing the rate per pound upon the assessable rental required to bring in the requisite revenue, and dividing it between the landlord and tenant; but it has been decided that this practice is illegal, the statute requiring that one-half of the sum to be raised by assessment shall be laid on owners as a class, and the other half upon occupants as a class.[1] It is obvious that occupancy is liable to many vicissitudes from which ownership is exempt. While houses may be unlet and unoccupied, and tenants and occupants may be so poor that their taxes are irrecoverable, in the case of owners the assessment must always be paid in full, for the collector has always the value of the tenement to fall back upon. Thus the only proper way of providing against the produce of the taxes being less than is contemplated, is to divide the total amount required, and lay one half on the owners as a class, and the other half upon the tenants and occupants as a class. To borrow an illustration from the circular of the Board of Supervision,[2] the assessment falls to be allocated in this manner,—

'1. Assuming, for the sake of illustration, that the gross rental of the parish as given in the valuation roll is £10,000, the parochial board have, in the first place, to ascertain the "annual value" or assessable rent of each subject, by making the deductions from gross rental specified in the 37th section of the Poor Law Act of 1845. This may be done by fixing on a scale of percentages to be deducted from the gross rents of the several descriptions of property in the parish respectively, such as agricultural lands, houses, mills, minerals, railways, etc., care being taken that the percentage of deduction allowed in each description of property is a fair and equitable equivalent for the grounds of deduction specified in the 37th section; and that special cases, if any exist in the parish, are dealt with separately.

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, exempting them from all 'public and parish burdens,' was held to be abrogated by the provisions of the Poor Law Amendment Act, 1845; Duncan *v.* Scottish North-Eastern Railway Co., 13 Dec. 1867, 6 M'P. 152; rev. 9 May 1870, L. R., 2 Sc. App. 20.

[1] Galloway *v.* Nicolson, 2 Rettie 650. [2] R., 79, 18 June 1868.

'2. Assuming that the "annual value" or assessable rental of the parish so ascertained is £9000, and that the sum to be raised by assessment is £500, one half of the sum required (*i.e.* £250) will be raised from the owners by a rate of $6\frac{8}{12}$d. per pound upon their "annual value," and the other half (£250) will be raised from the occupants by a similar rate per pound upon the *same* "annual value," or by such higher rate per pound as may be found necessary to produce from occupants the sum of £250, after taking into account subjects which either are unoccupied, or are occupied by persons unable to pay poor-rates, and from which no part of the occupant's rate can be collected.

'3. In a parish where there is a classification in terms of sec. 36 of the Poor Law Act, it must be kept in view that the same process should be followed, and all occupants should be rated upon the same annual value as that on which the *owners* are rated.

'Effect should be given to the scheme of classification, by assessing the different classes of occupants at rates corresponding to the position of each class in the scheme of classification.

'Thus, assuming, for the sake of illustration, that there are three classes of occupants, and that they are to contribute respectively in the proportion of 1, 2, and 4, the rates upon their annual value would be 3d., 6d., and 1s. per pound respectively, or such other proportionate rates as may be necessary to produce from the whole body of occupants one half of the assessment imposed.

'The Board have already intimated to the parochial boards, in their circular letter of 30 April, that the imposition of an assessment for the relief of the poor according to gross rental is illegal.'

By sec. 31 of the Valuation Act, it is declared that in all cases where any lands or heritages shall be separately let at a rent not amounting to £4 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, 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 of such lands

and heritages for reimbursement thereof, in so far as such assessment may by law be properly chargeable upon such occupants or tenants. In some parishes it has been resolved to exempt all tenements under £4 annual value, on the ground that the occupants were a class of persons, in the sense of the 42d section of the statute, who might be lawfully relieved from assessment. That section enacts that it shall be lawful for a parochial board to exempt from the payment of assessment, or any part thereof, to such an extent as may seem proper and reasonable, any person or class of persons, on the ground of inability to pay. It is evident that this section assumes that the board shall have made inquiry into the circumstances of the person or class of persons exempted, and there is nowhere any authority in the statute for exempting from assessment any particular class or description of property. On the contrary, the assessment is required to be imposed on 'all lands and heritages;' and therefore it was decided that a resolution of the nature indicated was illegal and *ultra vires* of the parochial board, in respect that the amount of rent is no test of inability to pay poor's assessment.[1]

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 Whit-

[1] Buckles *v.* Dickie, 10 P. L. 365.

sunday to Whitsunday, the valuation roll for the year will not be completed and ready for use till, it may be, 30th September. Sec. 40 of the statute assumes that there may be this delay 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 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.

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

When a tenant enters at Whitsunday he will become liable in the assessments for that year, although the outgoing tenant may reap the crop. Practically the new tenant is in possession of the farm from his term of entry, and the right of the old tenant is simply a right of access to reap the crop which he has sown, and which he may sell or otherwise dispose of

standing in the ground.[1] But when Martinmas is the term of removal, the one tenant will get the whole of the rate for that year to pay, although he has only six months' possession. Whether there is any relief in such a case, is a question which has been much discussed in the local Courts. There is no statutory authority for making any apportionment of a personal tax, like the assessment for the poor; but the fairest and most convenient rule, in the case of a Martinmas outgo, is to divide the public burdens between the outgoing and the incoming tenant; and this accordingly has been generally done.[2] 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.'[3] The seller, therefore, has no relief from assessments which, even though unpaid, might have been legally exacted before the date of entry.

Collection and Enforcement of the Assessment.

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 to be sued, does not refer to the collection of assessment.[4] When several persons are appointed joint collectors, their powers and rights must be judged *secundum subjectam materiem*,[5] as, where two persons

[1] See Wight *v.* Earl of Hopetoun, H. L., 27 May 1864, 2 M'P. 35.

[2] See Meall's Executors *v.* Wedderspoon (Sheriff Barclay), 3 P. L. (3) 326. See 32 and 33 Vict. c. 70, sec. 89, as to quarterly tenancies in England.

[3] Bell's Lect. Conveyancing, vol. i. p. 634.

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

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

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 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 assessment may be recovered 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 are provided in regard to the land and assessed taxes, and other public taxes.[3] 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.

This procedure was introduced by the Act 52 Geo. III. cap. 95, sec. 13, empowering any two commissioners of supply, or the sheriff, upon certificate by the sub-collectors that duties payable to the Crown were resting owing, to grant warrant or warrants under their hand for recovery thereof by

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

[2] Shaw *v.* Meek, 27 Feb. 1862, 4 P. L. 367, 24 D. 609. [3] Sec. 88.

poinding, etc. The Poor Law Act in adopting the same summary form of recovery of poor-rates, has enlarged the provision by empowering justices of the peace to issue the warrants; and it has been decided that the signature of one justice is enough.[1] But although sec. 88 provides this as a summary remedy, it does not follow that an action in any of the ordinary Courts of law, at the parochial board's instance for unpaid assessment, is incompetent. The statute implies the very contrary, for it goes on to provide that it shall nevertheless be competent to prosecute for and recover such assessments by action in the Sheriff Small Debt Court; and when the amount sued for exceeds the small debt limit, the action necessarily requires to be brought in the ordinary Court. In former times, no doubt, a different rule prevailed; but the reason was that the heritors and kirk-session in imposing assessment were held to be acting judicially, and the sheriff could only act ministerially in enforcing their decrees.[2] The inferior judicature, consisting of the heritors and kirk-session, having, however, been swept away, it is now competent for the parochial board either to proceed in the summary manner authorized by sec. 88, or if there is any question between them and the ratepayer requiring judicial determination, they may bring their action in the ordinary Court or the Small Debt Court of the sheriff.[3]

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;[4] *i.e.* he may still bring a suspension or a reduction; but, to prevent the proceedings of one dissatisfied 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

[1] Oakley *v.* Campbell, 1 P. L. 263.

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

[3] M'Tavish *v.* Caledonian Canal Commissioners, 3 Feb. 1876, 3 Rettie 412, 4 P. L. (3) 202.

[4] Sec. 40.

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.

When the object of the action is to correct the practice of the parish, in the matter of assessment, on the ground that it is illegal and altogether unwarranted by the statute, the proper course is to pay under protest and raise an action of declarator; because the appeal is then to the Court of Session to exercise the jurisdiction which it holds over all inferior judicatures and other public bodies, whenever they are guilty of any excess of jurisdiction or breach of official duty. But if the ratepayer is merely resisting payment on the allegation that the rate as imposed will be unequal in its operation, the remedy is by suspension, as of a threatened charge for payment. And to entitle him to prevail it is not enough to show that the parochial board has been guilty of irregularity: he must further establish that the necessary result will be to require him to pay more than he is legally bound to pay. The matter of surcharge is the only question with which the Court is entitled to deal. Thus, where a ratepayer complained that the deductions from the valuation, which were allowed to some of the large heritors of the parish, were excessive and illegal, the Court, while expressing the opinion that an error had been committed with respect to income tax, dismissed the suspension because the complainer had the benefit of the same allowance as well as the others, and in these circumstances it could not be said that he had been unequally or unjustly dealt with. It would, however, have been different if the deduction had not been allowed to him while it had been allowed to others.[1]

In case of bankruptcy or insolvency, all assessments for the relief of the poor must be paid out of the first proceeds of the estate. In ordinary circumstances, the 'estate' of an insolvent means the estate available for distribution after the expense of administration is defrayed; but the statute makes the poor-rate a first charge on the sum recovered from the insolvent's goods and effects, meaning ap-

[1] Stewart *v.* Fraser, 20 May 1873, 1 P. L. (3) 409.

parently the amount realized from the sale of the goods and effects after the expense connected with the sale is deducted. The assessment is also declared 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 must be paid in full by the trustee, but that 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, said Lord Justice-Clerk Hope, '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 and Alexander as each a defaulter for £1, 5s. 8d. The warrant having been put in execution, the proceeding was found to be illegal and incompetent; for the collector had no right to alter in a single iota the roll of assessment given to him for recovery.

It has been decided that the statute 1579, cap. 83,

[1] Sec. 88. [2] Ferguson *v.* M'Ewan, 7 Feb. 1852, 14 D. 457.

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. 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.[1]

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 it according to his covenant, the lessee is not liable to be rated in respect of it. 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.* Mitchell, 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 sub-

[1] Monro *v.* Graham, 21 Nov. 1857, 20 D. 72.
[2] 20 D. 445.

ject.[1] But, nevertheless, 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.

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,[2] it was proposed 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. cap. 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, the lands 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

[1] See 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.

[2] 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 give each parish the power of acting within, and not beyond, its own dimensions.'

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 the 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.' 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 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.' 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; an occupant by mere sufferance would be liable in assessment; and under sec. 43 above quoted, it was held that the Barrhead Railway being leased to the Caledonian, in virtue of 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. The tenant of a furnished house is not liable—the occupancy being in the lessor.[1] Proprietors of subjects of less than £4 value are chargeable with the whole assessment; it is not necessary in this case to insert the names of the occupiers in the valuation roll, and the tenants' share may be recovered, by the proprietor making payment thereof,[2] from the party liable.

[1] Maccome *v.* Dickson, 40 Jur. 508. [2] Valuation Act, sec. 31.

Exemptions.

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;[1] but 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[2] 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 as such was not to 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.[3] 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 homes of our resident clergy, a special clause to that effect (as in the case of stipends, by sec. 47) 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.

By statute 3 and 4 Will. IV. cap. 30, no persons are rateable in respect of any churches, district churches, meeting-houses, etc., or such part thereof as is exclusively appropriated to public religious worship. This Act now extends to Scotland;[4] and a similar exemption has been enacted in favour of Sunday and Ragged Schools—at least power is given to the assessing body to exempt the occupier of a building used exclusively for these purposes.[5]

The assessment payable on certain descriptions of Govern-

[1] M'Lea *v.* Walker, H. L. 1 Bligh App. 535 (1819).
[2] Cargill *v.* Tasker, 27 Feb. 1816, 19 F. C. 203.
[3] 13 D. 341; aff. 14 June 1852, 1 M'Q. 106.
[4] 28 and 29 Vict. cap. 62. [5] 32 and 33 Vict. cap. 40.

ment property is also specially provided for in the statutes, vesting them in the Secretary of State. Thus, by 31 and 32 Vict. cap. 110, lands purchased by the Postmaster-General in connection with the telegraphs, are to be rateable only at the rateable value of the land at the time it was acquired for the purpose referred to. And by 23 and 24 Vict. cap. 112, a similar provision is made with respect to lands vested in the Secretary of State in pursuance of 'The Defence Acts.'

Scientific and Literary Societies.

By 6 and 7 Vict. cap. 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, either as tenants or owners, for the transaction of their business, '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.[1] 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 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.[2] 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.[3] In such cases, however, the rules may be sub-

[1] R. *v.* Phillips, 17 L. J. M. C. 83. [2] Sec. 2. [3] Sec. 3.

mitted 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.[1]

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;[2] 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;[3] 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.[4] (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.[5] Thus the Birmingham New Library,[6] the London Library Society,[7] the Royal Manchester Institution (museum and lectures),[8] the Linnæan Society of London,[9] the Medical Society,[10] and Bradford Library and Literary Society,[11] were held entitled to the exemption. But a society instituted for the diffusion of religious principles and sentiments, though by literary means, a musical club, a society instituted for the purposes of education, a society with library and news-room, the United Service Institution, the Russell Institution, and the

[1] Sec. 6.
[2] Reg. *v.* Jones, 8 Q. B. 719.
[3] Birmingham Churchwardens, etc., *v.* Shaw, 10 Q. B. 868.
[4] Birmingham Case, 10 Q. B. 878.
[5] Reg. *v.* Bradford Library (1858), 28 L. J. M. C. 73.
[6] Birmingham New Library, 18 L. J. 89 M.
[7] Earl of Clarendon *v.* James, 20 L. J. 213 M.
[8] Reg. *v.* Manchester, 16 Q. B. 440.
[9] St. Ann's, Westminster, 23 L. J. 149 M.
[10] Reg. *v.* Royal Medical Society, 21 J. B. 789.
[11] Bradford Society *v.* Bradford, 28 L. J. 73 M.

Cambridge Philosophical Institution, were refused the benefit of the statute.[1] 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.[2] (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.[3] 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.[4]

The only case which has occurred in this country is that of the Edinburgh Philosophical Institution *v.* Hay, 10 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

[1] See Purchas *v.* Holy Sepulchre, 24 L. J. 9 M.; Russell Institution *v.* St. Giles, 23 L. J. 65 M.; Reg. *v.* Temple, 21 L. J. 53 M.; Reg. *v.* Gaskell, 16 Q. B. 472; Reg. *v.* Braidt, 26 L. J. 119 M.

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

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

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

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 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.

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, possessed 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 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.

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

[2] 20 Dec. 1856, p. 133; and see Mayor of London *v.* Stratton, L. R. 7, H. L. 477.

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 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.'

Exemption on the ground of Poverty.

To this head also belongs the discretionary power of exemption on the ground of poverty, which is conferred by sec. 42 on parochial boards. The exemption may be total or partial; but each case, or class of cases, must be separately considered and determined on their own individual merits. A resolution to exempt all occupants of houses under £4 of rental is illegal.

RELIEF.

CHAPTER IX.

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, cap. 25; 1424, cap. 66; 1503, cap. 70; and 1535, cap. 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, cap. 22, it was enacted that no beggars 'be thoiled to beg in ane parochin that are borne in ane uther.' Then came the Act 1579, cap. 74, which is divided into two parts. The first ordained that all strong and idle beggars, above the age of fourteen and under the age of seventy, found wandering and misordering themselves, should be apprehended and dealt with by the magistrates in burghs, and justices in landward parishes. The 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 were to be differently treated; and the second part of the Act proceeds: 'Seeing charity would that the poor, aged, and impotent persons should be as necessarily provided as the vagabonds and strong beggars

repressed, and that the aged, impotent, and 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 inquisition of all aged poor, impotent, and decayed persons, born within the parish, or who were dwelling and had 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.[1] It is unnecessary to refer to the subsequent statutes. By one of them, 1672, cap. 18, correction houses were directed to be established; but this, like many others, fell into desuetude. The consequence was, that till the Act of 1845, the relief given to paupers in Scotland was essentially what is termed 'out-door relief;' and there being no such provision as was established in England by the statute of 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

[1] In the Second Book of Policy, the Church had made an unsuccessful attempt to have part of the patrimony of the Kirk applied to the support of the poor.

[2] M. 10,591, F. C., 17 Jan. 1804. In Abbey Parish of Paisley *v.* Richmond, 29 Nov. 1821, 1 S. 167 (more fully reported in Dunlop's Parochial Law, App. No. VII., 3d edition, p. 568), the claim of some able-bodied men, out of employment, to relief, was sustained by the sheriff; but the judgment was recalled on the ground that the question was one for the heritors and kirk-session, whose decision the sheriff was not entitled to review.

charitable supply; and an extraordinary assessment might for that purpose be levied. This judgment, pronounced on 19 Nov. 1802, was, after a re-hearing, adhered to in 1804. But in 1852, the contrary was decided in two cases, which were raised for the purpose of having the question fully argued and determined.[1] In the first, a cotton-spinner, fifty years of age, able-bodied, but destitute, having been for five weeks unable to find employment, with a wife in the infirmary, and four helpless children to provide for, claimed relief for his children from the inspector of Gorbals, as they were in danger of starvation. In the second, another able-bodied workman, destitute, and unable to find employment, claimed relief for himself. Both claims having been refused by the inspector, the sheriff ordered relief to be given, and the two cases were then advocated to the Court of Session, and considered together. After hearing before the whole Court, the parties were found not entitled to relief for either themselves or their children; and on appeal to the House of Lords this decision was affirmed, 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 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 able 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 substantial distinction.'

But although an able-bodied man out of employment is not entitled under the statutes, as a matter of legal right, to demand relief, there is no doubt that in former times the kirk-sessions, in seasons of unusual pressure amongst the working population, were in use to assist deserving persons, who, from no fault of their own, were temporarily deprived of the means of living, the assistance being given from the church-door collections. The persons who received this tem-

[1] M'William *v.* Adams, Court of Session, 27 Feb. 1849, 11 D. 719, 21 Jur. 253; Lindsay *v.* M'Tear, 11 D. 719; aff. 26 March 1852, 1 Macq. 120.

porary aid were called the 'occasional poor,' to distinguish them from the 'permanent poor'—the names of the latter only being entered in the register of the parish. The occasional poor, says Mr. Monypenny, comprehended 'those disabled by sickness or by want of work.'[1] The practice has been eulogized as a just and proper exercise of the discretionary power vested in the administrators of the poor law;[2] and Lord Ardmillan speaks of it as having been of the 'utmost public advantage, and as having warded off results which might have been deplorable.'[3] Not only in towns when trade was dull, but in the rural districts when, owing to the severity of the winter, agricultural labourers were suffering from the stoppage of all out-door operations, it was often found absolutely necessary to supply them with temporary aid. When the Poor Law Act was before Parliament, an effort appears to have been made to leave the matter as it then stood—namely, that while an able-bodied man should have no right to demand relief, the parochial board if they pleased might give it. Sec. 68[4] accordingly enacts: 'That 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.' Had the clause stopped there, the former usage would probably have still prevailed; but the section goes on to say: 'provided always that nothing herein contained shall be held to confer a right *to demand* relief on able-bodied persons out of employment.' And the question came to be much agitated, whether it was within the powers of the parochial board to continue the discretionary distribution, which was formerly made by kirk-sessions, amongst persons who could not enforce it by process of law. In December 1846, the Board of Supervision, in consequence of applications made to them by parochial boards on this subject, thought it advisable to take the opinion of counsel as to 'whether, in any

[1] Poor Law, pp. 28 *et seq.* and 256. Poor Law Commission Report, 1843, p. 3, 1 Supp. p. 71.

[2] General Assembly's Report, 1836. See also Sir H. Moncreiff's Life of Erskine.

[3] Isdale *v.* Jack, 31 March 1864, 2 M'P. 1003.

[4] 8 and 9 Vict. cap. 83.

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. cap. 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.'

This opinion continued to be acted on with the entire sanction of the Board of Supervision for a number of years, till the case of Petrie *v.* Meek[1] 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. 'The assessment,' his Lordship observed, 'is authorized only for the purpose of enabling the parish to discharge its legal obligations. The

[1] 4 March 1859, 21 D. 614, and 31 S. J. 334.

34th section makes it lawful for the parochial boards to raise by assessment the funds requisite for the relief of poor persons entitled to relief. No discretion is given to the parochial board to extend the legal obligations of the parish, but only to determine who are within the defined class having a legal right to relief, in whose favour the parish is under legal obligation to provide needful sustentation.' When, therefore, he added, the statute spoke of occasional as well as permanent poor, it simply meant that poor persons, entitled to relief, might be so classed; and to prevent any misconception as to what was intended, the proviso of the section expressly declared that nothing therein contained should be held to confer a right to demand relief on the part of able-bodied persons out of employment.

Some dissatisfaction having been expressed with this judgment, the case of Jack *v.* Isdale[1] was raised for the purpose of re-trying 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 decided 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 any difference in principle

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

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] But the word which really occurs in the statute is 'impotent,' which has been defined, 'any personal infirmity, either of body or mind, disabling a man from working for his bread.'[2]

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. 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.[3] The right to relief arises to every one who

[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.

[3] 1579, cap. 74.

has acquired a settlement in this country—foreigners as well as native citizens.[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 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.'[3]

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 his wife 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.[4] A woman without incumbrance may be able to support herself, but, having a child to nurse, may be 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

[1] Higgins *v.* Barony Parish, 9 July 1824, 3 S. 239.

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

[3] 1 Macq. 161.

[4] Mackay *v.* Baillie, 20 July 1853, 15 D. 974.

will afterwards appear, is of great importance in the law of settlement.[1] As was subsequently observed by Lord Deas, this principle was confirmed in the strongest way, by holding that the tender of the poorhouse to a mother, jointly with her children, was a sufficient tender of relief,[2] and that the parochial board was not bound to accede to her proposal to place the child alone in the poorhouse, she being in that event able and willing to work for herself. 'If this was a sound result,' he says, 'as regards the mother of a lawful child, it cannot, I presume, be doubted that a tender of the poorhouse to the mother, jointly with her illegitimate child, and any others of her children who are applied for, would have been a good tender of relief.' In short, these cases establish that the poor law does not deal with individuals, but with families,—the family, and not the particular members of it, being regarded as the unit for parochial relief.

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,[3] 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.'[4] 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 support herself and children; and for this presumption there is no foundation whatever.

The persons then entitled to relief are: (1) the aged poor,

[1] See Lord Deas' opinion in Hay *v.* Thomson, 28 S. J. 190.
[2] Hay *v.* Thomson, 6 Feb. 1856, 18 D. 510.
[3] 13 D. 1223. [4] Per Lord Robertson, in *loc. cit.*

meaning all who are too old to work for their own living; (2) the mentally weak, that is to say, those who are so mentally deficient as to be unable to support themselves; (3) persons incapacitated from disease or accident for going about their daily business; (4) widows, or those widows or deserted wives who may be burdened with infant children; and (5) all pupils who are orphans and friendless.

It is no answer to a claim for relief, that the claimant has sons, or other relatives, who are able if they choose to support him. Assistance cannot be refused when the applicant is in such a state of necessity, bodily or mental, as fairly entitles him to parochial aid; and if the pauper happens to be left on the hands of a stranger,—*e.g.* if the funds of a lunatic, confined in an asylum, become exhausted,—the parish in which the asylum is situated is bound to interfere in his behalf; or if the mother of an illegitimate child leaves it with the putative father, the latter is entitled so long as the paternity is undetermined to require the inspector to provide for its maintenance. In all cases it is the duty of the parish of chargeability to provide the needful sustentation in the first instance, and to seek its relief from the parish of settlement, leaving the latter to proceed against those who are bound to aliment the pauper.[1] So, where a lunatic is apprehended and committed to an asylum at the instance of the inspector of the parish in which he is found, the latter is entitled to proceed directly against the parish of his settlement; and it is no good answer that the pauper has funds of his own from which the relief may be recovered. It lies with the parish of settlement to make such funds available; but practically under the poor law, the parish of chargeability is simply agent of the parish of settlement for the purpose of affording relief in the first instance.[2]

The inspector of the poor is often asked to interfere in the matrimonial quarrels which arise amongst the labouring population. The wife is guilty of misconduct, leaves her husband, becomes destitute, and demands parochial relief. Or the spouses simply arrange to live separate. It is hardly

[1] Pryde *v.* Ceres, 5 D. 552; Hay *v.* Adams and Begbie, 23 Jan. 1851 (Lord Dundrennan), 3 P. L. (1) 173.

[2] Graham *v.* Dinwoodie, 27 Jan. 1870, 3 P. L. (2) 467.

necessary to observe that this is not what is known in the poor law as 'desertion.' Desertion means the forsaking or abandonment of the wife to the charity of the parish; and although it is not necessary that the husband should actually fly the country, he is usually found living in concealment, wholly indifferent to what becomes of his family in his absence. As already observed, desertion has the same consequences as the death of the husband. The wife is entitled to relief for herself and children just as if she were a widow. But the husband is not thereby pauperized. The relief is not given to him, and he may gain a settlement by residence in the parish to which he has fled.[1] But in all cases, to constitute desertion, there must be something more between the spouses than mere dwelling apart. Thus a woman and her children, living in the house of her father, who was in good employment, complained that her husband, who had been turned out of the house by his father-in-law, would do nothing for her support. The Court, after inquiry into the circumstances, decided that she was not entitled to parochial relief, because, although the husband was a person of lazy, indolent habits, he was neither mentally nor physically incapacitated, and was able to maintain his wife and family if willing to work. They also held that mere failure to provide for those dependent upon him, was not neglect in the sense of the statute.[2]

The imprisonment of the husband on a criminal charge entitles the family to relief. The inspector is obliged to give it from the necessity of the case, just as if they were for a time deserted by the man responsible for their maintenance. A woman with a child in her arms, apprehended in A, is sentenced and committed to prison in B. The child has then to be separated from her, and becomes chargeable, not to the parish of apprehension, but to the parish of B,[3] because it is only there that the child became actually chargeable, although, if the police had separated them at the time of their apprehension, the case would have been different. The case is similar to that of the foreigner, who, while tem-

[1] Turnbull *v.* Wallace, 20 March 1872; Cochrane *v.* Kydd, 16 June 1871.

[2] Murray *v.* Hutchison, 20 March 1867, 9 P. L. (1) 401.

[3] In a case before the Sheriff Court of Stirlingshire, 4 P. L. (2) 172.

porarily resident in a parish, became insane, and two years after, while he was still alive in an asylum, at the parish expense, his wife and children became chargeable to another parish. It was held that the first parish was not bound to repay the advances made by the second parish on account of the wife and children.[1]

A man, although able-bodied, is entitled to relief for his lunatic wife or lunatic son; because the extraordinary expenses attendant on their proper treatment is more than a man in the humbler ranks of life can be expected to bear. But he is not thereby reduced to the position of a pauper. The opinion has, indeed, been sometimes expressed, that it is not the insane persons themselves, but the person on whom they are dependent, that is truly the pauper. But it has come to be seen that this view, though theoretically correct, is really inconsistent with the actual exigencies of life, and does not sufficiently take into account the reason for the law's interference between the husband and a wife suffering from mental derangement. The relief is not given to enable the husband to be her custodier. He could not, as in the case of a mother and child, be required to accompany his wife into the lunatic ward of the poorhouse, as the condition of his receiving assistance from the parochial funds. The law interferes not only for the sake of the party immediately concerned, but for the sake of society, by insisting that the wife shall be taken from her husband, and confined in an establishment specially prepared for the purpose, and subjected to a course of treatment requiring her isolation from the rest of society. It is accordingly now an established point in poor law, that the confinement of the wife or child of an able-bodied man, as a pauper lunatic, under the provisions of the Lunacy Act, has not the effect of reducing him to the position of a pauper. The sum required for the lunatic's maintenance is not relief given to him. He remains capable of acquiring or losing a settlement.[2] He is not released from the obligation of supporting his children, and may be punished for deserting or neglecting to maintain them. The wife becomes a pauper in her own right, and if the husband is a native of Ireland,

[1] Kirkwood *v.* Knox, 20 March 1868, 2 P. L. (2) 173.

[2] Palmer *v.* Russell, 1 Dec. 1871, 10 M'P. 185.

without a settlement in Scotland, he is not removable in consequence of the wife's pauperism.[1]

Since the decision in the case of Isdale *v.* Jack, the expression 'casual' or 'occasional poor' must be taken in a more limited acceptation than formerly. The casual poor are of the same class as the permanent poor, but for various reasons not yet registered as such. The phrase includes all poor persons who have been relieved by the inspector or other officer, but whose cases have not been brought before the parochial board, the vagrant poor and their dependants, and those cases in which the parish of settlement has not been determined.

The Act of Parliament, however,[2] draws no distinction between the different classes of applications for relief, but lays down the same rule for dealing with all applicants, whether they are residents in the parish or of the vagrant class. A great source of annoyance to inspectors, is the class of beggars, tramps, and packmen, who, arriving at night in a town, try to get a bed and supper at the expense of the parish, and are off next morning. As to these, the Board of Supervision has observed that inspectors may do much to repress improper applications for relief by applying the statutory rules to families. They should bear in mind (1) that a vagrant is not entitled to parochial relief merely because he is in want of a night's lodging or food; and (2) that upon application for relief being made, the inspector is not bound, if doubtful of the applicant's claim, to return an answer to it sooner than twenty-four hours. If an applicant be an adult male or an adult female, without children, who does not allege any disability, the inspector can have no difficulty in at once refusing the application. If sickness or other disability be alleged, the inspector should, before relief is afforded, cause the applicant to be examined by the medical officer whenever it seems necessary; 'but in no case of the vagrant class should relief ever be given in money, or in any shape convertible into money, if it be possible to avoid it. Where a poorhouse is available, admis-

[1] M'Rorie *v.* Cowan, 7 March 1862, 24 D. 723; Beattie *v.* Adamson, 23 Nov. 1866, 5 M'P. 47; Palmer *v.* Russell, 1 Dec. 1871, 10 M'P. 185.

[2] 8 and 9 Vict. cap. 83, sec. 70.

sion to it is always the safest and most expedient mode of relief. If a poorhouse is not available, and applications of the vagrant class are sufficiently numerous to require a special arrangement, the parochial board would do well to provide a house of two or more apartments, in which the inspector might offer to those applicants whom he considers entitled to relief, a night's lodging, along with a plain meal, consisting of say 4 oz. of oatmeal made into brose or porridge for each person, which could be prepared by the person in charge of the house. The too common practice of giving to every vagrant applicant a ticket to a private lodging-house is highly objectionable, even when the applicant is entitled to relief, and is nearly as objectionable as that of giving a sum of money to each.'[1]

On the same subject the Board further observes :—'It is well known that imposition is frequently and in various ways practised by applicants. Sometimes illness is feigned; at other times destitution is pretended, although the applicants are possessed of money which they conceal; women or children are frequently sent forward to make application, and represent themselves as single or deserted, as the case may be, while the husband or father is at hand and keeps out of sight merely for the purpose of strengthening the application. Every such or any other instance of detected imposition should be reported to the police, with a view to prosecution. If such arrangements as these are firmly and judiciously carried through, the Board have no doubt that the number of applications by vagrants will be very soon reduced to their proper limits—*i.e.* to those in which the applicants either have a legal right to relief, or a *prima facie* case for inquiry. It is feared that many inspectors give relief to vagrants much too easily. The Board have to remind inspectors that indiscriminate relief, without inquiry, is not only prejudicial in its effects upon the recipients and unjust towards the rate-payers, but absolutely illegal.'

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

[1] R., 17 March 1869, p. 84.

his reasons.[1] 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, in the first instance, to make inquiry into the circumstances of the pauper. 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 there is a *prima facie* case for giving relief, 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, 12*th February* 1846.—Whereas it is proper that proceedings before sheriffs under the statute 8 and 9 Vict. cap. 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

[1] *Supra*, p. 83, R., 11 April 1850, 14 Oct. 1856, p. 30. The certificate may be in the following form:—

Parish of A. B. (*applicant's name*). Refused relief (*state grounds for refusal*).

Date. C. D., *Inspector.*

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 any sum whatever from the parochial funds is a confession by the parochial board that the pauper has a good *title* to get something; and all beyond that is for the determination of the Board of Supervision. Relief, however small or temporary, is parochial relief, and, 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 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 been getting relief from

the parish as a casual during the months of March, April, and May, and on the last occasion had 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 the pauper declines to be removed, his right to demand aliment from the funds of that particular parish is at an end.[3] Where the poorhouse is at a great distance, and the means of transport so difficult as in some Highland parishes, it is a manifest hardship to a pauper to be obliged to go so far, or to go without relief altogether. It has therefore been ordered that, under such circumstances, no pauper ought in any case to be removed to the poorhouse unless by the order of the parochial board duly entered in the minutes; and should an appeal be taken to the Board of Supervision on the question, whether he ought to be required to go into a poorhouse at all, outdoor relief should be given until the matter is determined.[4]

Should the sheriff consider it his duty to order relief, the inspector will at once see that the order is duly obtempered, even if an appeal to the sheriff from the decision of his substitute should be considered advisable; and although the sheriff has no jurisdiction to entertain any question as to the adequacy of the relief afforded or offered, whether as interim or

[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] R., 17 Nov. 1864 and 2 March 1865.

permanent, he is entitled to see that the orders of Court are duly implemented. An order to give the pauper bread will not be complied with by giving him a line to be presented at the poorhouse many miles away. 'Not only,' says the Board of Supervision, '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 out-door 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.'[1]

Complaints of Inadequate Relief.

The statute describes the relief which must be furnished as 'the sufficient means of subsistence,'[2] including 'medicine, medical attendance, nutritious diet, cordials, and clothing, in such manner and to such an extent as may seem equitable and expedient.'[3] There are various ways in which out-door 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 relatives 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 relatives who refuse assistance

[1] R., 17 Nov. 1864, 2 March 1865, and 12 Feb. 1855.
[2] Sec. 70. [3] Sec. 69.

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.'[1] The parochial board cannot be required to award relief for any definite period;[2] and they may at any time, on a change of circumstances, increase, modify, or withdraw the relief already granted.

When a complaint has to be made to the Board of Supervision that the relief furnished or tendered is inadequate, the inspector is bound to furnish the applicant with a printed form containing a number of queries, and, if required, to write down the answers for him 'in any terms the applicant may desire.' A column is left vacant for the inspector's remarks on the pauper's answers; and the inspector, after seeing it properly signed, causes it to be forwarded to the Board, retaining a duplicate copy for himself.[3]

The Board has directed:—

'When the inspector intimates to any pauper, or any applicant for parochial relief, that the parochial board has refused to continue or to give out-door relief, and has resolved to give him or her relief in the poorhouse, he ought, when offering in-door 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,

[1] Halliday *v.* Balmaclellan, 11 June 1844, 6 D. 1131.
[2] Robert, 3 S. 500. [3] R., 3 Oct. 1845, p. 31.

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.'

In a complaint of inadequate relief, when the inspector does not admit the pauper's statement as to the extent of his disability, or the disability of his wife, it is the duty of the inspector, without delay, to procure a medical certificate of the illness alleged, and transmit it to the Board. To enable the Board of Supervision to judge of the case, he is also required to state upon the form of application the age of the pauper's wife, and the extent of her ability to contribute to the husband's maintenance.

When the relief granted to the applicant is found to be too little, the rule is that the increased allowance shall commence from the date on which the application has been received by the Board of Supervision, and this prevents any hardship arising to the pauper by reason of the time which may elapse between the application and the time of its disposal.

When out-door relief is refused, and a schedule asked for the purpose of appealing to the Board of Supervision, but the appeal is never prosecuted, the question has been asked, 'When may a pauper be struck off the roll?' In reply, the Board of Supervision have expressed the 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 trans-

mitted 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.[1]

The question as to the best method of providing house accommodation for paupers is one of the difficulties of parochial administration. There is no doubt that lodging is an essential part of the needful sustentation with which the parochial board is bound by law to provide the pauper, and it is equally clear that this obligation is not implemented by the tender of a money allowance. When no roof to shelter him can be procured on any terms in the parish, it has been doubted whether the parochial board can require the pauper to go beyond the limits of his parish to seek for a lodging. But this can happen only in very exceptional circumstances; for, if the parish has no poorhouse of its own, it may, under sec. 65 of the statute, board its paupers in the poorhouse of another parish. This, however, must be construed in a reasonable sense. A pauper may well object to be transported to a distant part of the kingdom, —away from all his friends and kindred,—and the Board of Supervision has held that the complaint of a pauper in Thurso was not obviated by an offer to board him in the poorhouse of Dunfermline or Glasgow. But a man who refuses an offer of being comfortably lodged in a neighbouring town or village, and at no unreasonable distance from his friends, cannot be said to have much cause of complaint. In some

[1] R., 2 March 1865, p. 92.

instances parochial lodging-houses have been established for paupers, not, apparently, with much success. No control could be exercised over the inmates such as the statute authorizes in the case of poorhouses. They might come and go as they pleased; there was no proper separation of the sexes; and the whole arrangements were so defective, that the Board of Supervision has been obliged to intimate that they will not regard an offer of admission to one of these establishments as an offer of adequate relief.

Respecting the payment to paupers of rents and allowances, the Board of Supervision has issued the following instructive Minute:[1]—

> The Board, having ascertained that there still exists in some parishes a mistaken and pernicious system of paying paupers' allowances, in whole or in part, to third parties, instead of to the paupers themselves, consider it expedient to call the attention of all parochial boards to the impropriety of such a practice.
>
> Every pauper is by law entitled to receive the whole of the allowance fixed for his or her maintenance, without any deduction whatever; and the inspector of poor is bound to pay such allowance in full, and in advance, punctually on the day on which it becomes due. Payment should be made either by the inspector himself, or by some one for whom he is responsible, to the pauper, or to some member of his family authorized to receive it. The Board will hold all inspectors responsible for the strict discharge of their duty in this respect, and will not tolerate the payment of any part of a pauper's allowance to a third party, whether he be an alleged creditor or landlord, or whether he holds a 'line,' as it is termed, from the pauper or not.
>
> Parochial boards cannot fail to see that the opposite course is nearly allied to a system of truck, and must be detrimental to the interests both of the paupers and the ratepayers.
>
> With regard to the houses or lodgings of paupers, where the cost of lodging is an element in the consideration of the case, the allowance fixed by the parochial board should always include rent, except in the case of bedrid or helpless paupers, who are unable to look out for lodgings for themselves. The allowance so fixed must be paid without retention of any part for rent, and the paupers are then at liberty to procure lodgings at such rents as they may agree to pay. Experience has shown that there is no practical force in the argument, that if neither the inspector nor the parochial board guarantee the rent, paupers will, in ordinary cases, be unable to get lodgings. On the contrary, it is found that when paupers are left free to act

[1] R., 20 Oct. 1870, p. 98.

for themselves, they make better bargains, and obtain easier terms from their landlords, than when the parochial board or inspector intervene. When any question is raised as to lodging, if an alternative offer of admission to the poorhouse were made, the question of lodging would be disposed of, and the pauper's power to deal with his landlord on reasonable terms would be increased.

One result of paying or guaranteeing the rent of paupers' lodgings is, that property of that description is raised to a fictitious value, greatly to the detriment of the general body of ratepayers. Another evil consequence is, that it fosters the inclination of paupers to demand, unreasonably, a separate room or lodging for each. Throughout the country, a very large number of paupers at present occupy separate rooms, which, if shared by another pauper, would be amply sufficient for both.

The Board further desire to inform parochial boards that they not only consider the system of paying or guaranteeing rents for paupers to be vicious in itself, but they are of opinion that it is of questionable legality, where a privity of contract is thereby established between the parochial boards and landlords or house factors who are acting members of the parochial board.

In some parishes, cases may occasionally occur of an exceptional character, which will require to be dealt with so as to meet their special circumstances; but there will be no difficulty in disposing of these if the general principles indicated in this Minute are kept steadily in view.

Inspectors of the poor are under no obligation to act as the channels by which rent is to be conveyed from the pauper to the landlord, thereby becoming agents or factors for the proprietor, except in those special cases where the parochial board find it necessary to undertake to provide lodging in addition to, and separate from, a money allowance, and enters the relief to be given in the revised roll accordingly.

CHAPTER X.

EDUCATION.

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.'

To a very large extent children chargeable to parochial boards are no longer brought up in the poorhouse, but 'boarded out,' and sent to the public schools in the district where they live. While the poorhouse is suitable enough for the reception and detention of the aged and infirm, experience has shown the impolicy of gathering together in one building the orphans and destitute children of the parish, and bringing them up as a pauper race. A child trained from his earliest infancy as one of a community dependent upon public charity, is not likely to do well in after life. Association with the waifs and strays of society seems to prevent him from rising out of a state of pauperism. Generation succeeds generation, and families brought up in a poorhouse were paupers always. The unbroken continuity of the hereditary descent was remarkable. But the system of 'boarding out' has worked a marvellous change, and may be said to be at once the simplest,

easiest, and most important advance which has been made of recent years in the solution of a very troublesome question. The children are placed by the inspector with persons willing to receive them,—usually a widow or an aged couple living in the country,—to whom the weekly aliment which is given by the parish is an object of some importance, often preventing them from themselves requiring parochial support. They are well clothed and well attended to, mingle with the other children in the neighbourhood, are sent to the same school, and as they grow up are absorbed into society, free from the pauper taint. The result is a visible decrease in the number of the poor requiring to be relieved. The following extract from a Report to the Board of Supervision by John Skelton, Esq., secretary to the Board, on the returns as to boarded-out children in Scotland, dated 15th May 1875, explains the practical working of the system, and contains recommendations which the Board has earnestly urged on parochial boards for the improvement and greater safety of the practice of boarding out :—

'It now only remains for me to state, for the information of the Board, the general conclusions at which I have arrived. From a careful examination of the returns, it appears to me,—

'1*st*. That the system of boarding out pauper children, which has been extensively in operation in Scotland for more than a quarter of a century, has been attended, in so far as the children are concerned, with most beneficial results.

'2*d*. That, with rare and doubtful exceptions, the introduction of the practice has not been productive of any evil effects in the districts where the children are boarded.

'3*d*. That the success of the system depends (*a*) upon the care and judgment with which the selection of guardians is made; (*b*) upon the thoroughness of the inspection and supervision; (*c*) upon the limitation of the number of children boarded out in each dwelling or with each guardian; and (*d*) upon the limitation of the number of children boarded out in each parish. Any well-founded complaints that have been received may be traced, it appears to me, to the failure on the part of parochial boards to observe one or other of these conditions. Thus, the system has not succeeded in those cases (*a*) where the children are boarded with persons in receipt of parochial relief, or with aged and infirm relatives; (*b*) where inspection and supervision are not vigilant and habitual; (*c*) where an excessive number of children are boarded with one guardian; (*d*) where an excessive number of children are boarded in one parish.

'These are the dangers against which, under any circumstances, parochial authorities who are desirous to apply the boarding-out system to pauper children must be prepared to guard. That the complaints against the system as it exists in Scotland have been few and unimportant, and that the success which has attended it has been growing and uninterrupted, prove that the parochial boards have acted in the main with praiseworthy caution and judgment. But it appears to me that the only real and permanent check against abuse is to place the children under the official inspection and supervision of the inspector of the parish in which they are boarded. Many of the smaller parochial boards have already adopted this course; but the large parishes have provided a special machinery for the purpose; and in such circumstances even the names and addresses of the children are often unknown to the inspector within whose districts they reside. The machinery provided is, I have no doubt, most efficient of its kind, and ought not to be dispensed with; but I am strongly of opinion that *an official relation should in all cases be established between the inspector of the parish of residence and the boarded-out children in his parish; and that for the due discharge of the duties incidental to the office, he should be remunerated by the parochial board of the parish of settlement.* Such an arrangement would be in many ways of the utmost advantage.

'1. The inspector of the parish of residence would be ready to aid the inspector of the town parish in the selection of guardians, and he is probably the person best qualified to render substantial assistance. The inspector of a thinly-populated rural parish must know by head-mark every person in the district under his charge who could be safely and properly entrusted with the upbringing of a child.

'2. No supervision can be so generally effective as that of the inspector resident on the spot, if he is made responsible to the parochial authorities for the well-being of the children. But periodical visits by a special inspector (and by the children's committee) ought not to be discontinued. The most intelligent supervision will be obtained when the two are combined. The inspector of the parish will bring his local knowledge and observation to aid the special inspector, who, on the other hand, will have certain special qualifications that the other cannot possess,—*e.g.*, more general experience of, and a wider acquaintance with, the system.

'3. By the appointment of a resident inspector, the risk of a guardian undertaking the charge of an excessive number of children will be sensibly diminished. There is no reasonable likelihood of a resident inspector being misled as to the number of persons living in a house; and whenever he finds that an improper number of children are being housed by a guardian (and it might possibly be advisable to prepare a few simple rules on the subject for his guidance), it will

become his duty to communicate, without delay, with the parish of settlement. Such a system of inspection will prevent necessitous persons from embarking in this occupation as in a trade more or less lucrative; and it is clear that nothing would be more likely to bring boarding-out into discredit than the suspicion that, in any considerable number of cases, the guardian's dwelling had ceased to be a wholesome *home*, and become a species of ill-conducted hospital.

'4. And his appointment will also tend to prevent what is perhaps the most serious risk connected with boarding-out—the risk not of a house only, but of a parish becoming overcrowded with pauper children. It is indisputable, that the less the children are congregated in selected localities, the more they are distributed over the whole country, the more beneficial is boarding-out likely to prove. The intention being to merge the pauper in the general population, the system will fail to attain its main object if any parish or village is turned into a pauper colony, where the pauper is stronger than the industrial element, or where the latter cannot absorb the former. But a resident inspector cannot fail to perceive when the resources of his district, so to speak, are exhausted, and when it is essential to its welfare, and to the welfare of the immigrant pauper children as well, that no more children should be introduced; and it will then become his duty to communicate with the parishes of settlement and with the central Board.

'While making these suggestions, I must repeat that the returns are in general extremely satisfactory, and that the facts which they disclose afford ample evidence that the parochial boards of Scotland have discharged their obligations to the children, to whom they stand *in loco parentis*, with kindness, judgment, and success.'

If the place where the children are located is outside the parish, the inspector of the parish to which they are chargeable remains responsible. It is his duty to see that they are properly cared for and duly instructed. They are therefore frequently visited at the homes provided for them by the inspector, or some one on behalf of the parochial board. The inspector of the parish in which they live is not expected to look after them, except in cases of emergency, when, of course, it would be his duty to bring to the knowledge of the proper inspector anything affecting the child's welfare, which, in his opinion, requires attention.[1]

In Scotland, the affairs of the poor are now administered on principles of strict neutrality in religious matters. In former times, it was natural that kirk-sessions should wish the pauper children in the parish to be educated according to

[1] R., 13 Aug. 1863, p. 106.

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

The duty of providing elementary education in reading, writing, and arithmetic, for children between five and thirteen years of age, is imposed, by the Education Act, on the parent of the children,[2] 'meaning thereby the guardian or any person who is liable to maintain, and has the actual custody of, such child.'[3] If, from poverty, the party is unable to pay the fees, he is entitled to make application to the parochial board of the parish in which he resides to pay the fees for him out of the parochial funds.[4] This payment is not of the nature of parochial relief. The man may be an able-bodied person, not entitled to relief; but if the Board is satisfied of his inability to pay the fee, and that the inability arises from poverty, the application must be granted. Nor is it necessary that the applicant should have a settlement in the parish; the duty is imposed on the parish in which he resides at the time of the

[1] See Board of Supervision Minute, 13 Feb. 1862, R. 130.
[2] 35 and 36 Vict. cap. 62, sec. 69. [3] Sec. 1. [4] Sec. 69.

application. The sums paid are not declared recoverable from the parish of settlement, and in fact the payment comes in place of the old school law under which the heritors and minister fixed the school fees of the schoolmaster, who was obliged to teach for nothing such poor children of the parish as should be recommended by the heritors and minister at any parochial meeting.[1] The proviso that no such payment shall be made or refused on condition of the child attending any school in receipt of the parliamentary grant other than such as may be selected by the parent, practically gives the parent the right of selecting the school, provided he acts reasonably in the matter. If he insists on some particular school, without reference to convenience or locality, the board would be entitled to refuse his application.

The words 'unable from poverty' are used in a popular sense. The expression does not mean paupers only, it includes all who happen at the time not to have the means of paying the fees of the school; and the practical effect is, that the children of such parents are educated for nothing. It is simply one public board giving public money to another public board to be applied to the purpose of having the child properly educated, thus giving practical effect to the opinion which was expressed by the Poor Law Commissioners, that 'all means for suppressing pauperism would prove insufficient unless accompanied by some measures for promoting education.'[2] The Board of Supervision have impressed upon parochial boards the necessity of very strictly investigating every application made under sec. 69, and only granting those applications in which they are satisfied of the inability of the parent from poverty to pay the requisite fees. Of this matter they are the absolute judges, and their judgment cannot be questioned in a court of law.[3] The statute has invested them with a very large discretion on the subject; because unless the duty is discharged firmly and carefully, the result would be unfair to the ratepayers of the parish, and demoralizing to the population.[4] The decision of the parochial board is recorded in their minutes, and thereafter

[1] 43 George III. cap. 34, sec. 18. [2] Report, p. 64.
[3] Callaghan *v.* Paterson (Lord Deas), 4. P. L. (3) 548.
[4] Report, 21 May 1873, page 133.

entered in the Education Register, which has been appointed to be kept by the inspector, and which is distinct from the register of pauper children, and the children of persons in receipt of parochial relief, for whom, of course, the obligation to provide education remains, as formerly, upon the parochial board.

The 44th section of the Education Act also provides that in all parishes where there is an assessment for the poor imposed and levied, one-half on the owners and the other half on the occupiers, the parochial board shall impose and levy the school rate for the school board, along with the assessment for relief of the poor. When the entire parish is comprehended under one school board, they simply certify the sum which they require, and it then becomes the duty of the parochial board to lay on the assessment necessary for raising the amount, and hand it over to the proper officer when collected. But when the school district includes different parishes, the school board calculate for themselves the rate per pound of rental which will require to be imposed, and the certificate may be thus expressed:—In terms of the Act 35 and 36 Victoria, chapter 62, section 44, the School Board of the Burgh of Edinburgh hereby certifies to the Parochial Board of the City Parish of Edinburgh, that the amount of rate on each pound of rental which they shall lay on and collect for school-rate, along with their several assessments, within said parish, for the year from Whitsunday 1877 to Whitsunday 1878, in terms of said statute, is $2\frac{3}{4}$d. sterling.

On this subject the Board of Supervision has issued certain instructions to inspectors, in which they say: 'It is the duty of the parochial board to impose and allocate the school assessment among the ratepayers in precisely the same manner and proportions as the poor's assessment is imposed and allocated. The same deductions must be made from gross rental, and if there is a classification of occupants, effect must be given to it. The school-rate is to be levied and collected along with the next poor's assessment imposed and levied, after intimation of the school-rate has been made by the school board. But it must not be mixed up with the poor or any other rate. The collector should keep the *school-rate* separate and distinct from other rates in his assessment roll

and collection book; and the notices issued to ratepayers, and receipts to be given for rates, must specify, separately from the other assessments, the amount of school-rate charged and received. When the collection of the school-rate is completed, the parochial board will pay over the net amount to the school board, *i.e.* the gross amount that was certified by the school board, under deduction of unpaid arrears and the necessary cost of collection.'[1]

In enforcing the compulsory clauses[2] of the Education Act, great difficulties are experienced from the number of children who are prevented by destitution from attending school. These are the children of parents who have fallen into sickness or poverty, many of them widows who will not go to the parochial board for relief, but go out to work and try to keep a home for themselves; others, wives deserted, who are obliged to pick up a living the best way they can, but to whom parochial boards are disinclined to give assistance on the ground that to do so is to offer a premium to other husbands running away. As the children cannot go to school without food or clothing, in some towns feeding depôts have been established, by means of charitable agencies, at central stations convenient to the schools, at which the more necessitous cases are attended to without any help from the parochial board. But a more numerous and still more unfortunate class is composed of those whose destitution is caused by the incorrigible habits of the parents—children of the thriftless, drunken, and criminal classes.

It was for the benefit of this class of children that what are called 'Ragged' or 'Industrial' Schools were established about forty years ago, and which have come to be regarded as a necessary part of the educational machinery of all crowded communities. In these institutions the children are fed, clothed, and lodged, besides being taught the elements of a good education, and trained to some useful employment. They are entirely isolated from their parents, and the mis-

[1] Several school boards, however, have been advised by eminent counsel, that, where the school board certify a sum, and not a rate, the parochial board are not entitled to deduct the cost of collection. For the method of poor assessment, see Galloway *v.* Nicholson, 19 March 1875, 2 Rettie 655.

[2] Sec. 70.

chievous influences which rule at home. They are, in fact, taken possession of in the name of society, and, to some extent, deprived of their personal liberty.

As in this instance benevolence steps beyond the bounds of the common law, it is necessary to obtain a magistrate's warrant for the admission of the child to the school, and the conditions under which this may be granted are prescribed in the Industrial Schools Act of 1866.[1] It is termed an 'Order of Detention,' signed by two justices or a magistrate, and specifies the school to which the child is to be sent, and the time during which he is to be detained. The reception of the child under this order is deemed an undertaking by the managers to teach, train, clothe, lodge, and feed him during the time for which the order is expressed. An order may also be pronounced on the parent to contribute a weekly sum towards the expense of the child's maintenance, which is to operate as a decree in every week for the payment of the sum appointed to be paid, and may be enforced in the manner prescribed by sec. 40 of the statute. The parochial board is authorized from time to time, with the consent of the Board of Supervision, to contribute such sums as they think fit towards the maintenance of the children detained in a certified industrial school on their application;[2] and the Lords of the Treasury, out of monies provided by Parliament for the purpose, contribute a certain weekly sum per head for the children detained in the school. If a child has been committed under sec. 16 of the Act, on the representation of the parent, step-parent, or guardian, that he is unable to control the child, and desires that he should be sent to an industrial school, the allowance cannot exceed two shillings per week, but in other cases it is from four to five shillings per week.[3] When the child, at the time of his being so sent, or within three months thereafter, is actually chargeable to the parish, the parochial board of the parish of his settlement is bound, so long as he continues so chargeable, to repay to the Government all the expenses which they have incurred in maintaining him at school under the Act, to an amount not exceeding five shillings per week, and in default of payment these expenses may be recovered by the inspector

[1] 29 and 30 Vict. cap. 118. [2] Sec. 37. [3] Sec. 35.

of the industrial schools, or any agent of the inspector, in a summary manner, before a magistrate having jurisdiction.[1] The statute does not specifically require that notice of chargeability should be sent to the parish liable, and it is not always customary to give notice; but as the magistrate is entitled, in his discretion, to send the child for not more than seven days to the poorhouse, while inquiry into its antecedents is made,[2] there is no reason why notice should not be given to the inspector, who may then either provide for the child himself, or join in the application for his committal to an industrial school, as a child chargeable to the parish, and for which he is responsible under sec. 21 of the statute.

In a case in which the Government sued a parochial board for recovery from the parochial board of the contributions made by the Treasury for the support of a boy at an industrial school, it appeared that when of about eleven years of age he was sent to the Dundee Industrial School, in order to be detained there until he attained the age of fifteen years. His father was dead, and he lived with his mother, who was in receipt of parochial relief, chiefly on account of her being burdened with several children. It was held that the warrant being regular, the industrial school directors were entitled to act upon it. The Commissioners of the Treasury finding him there, were entitled to make the contribution, and although the parochial board had received no intimation of the boy's detention, or of the claim which was to be made against them, they were liable in the claim. The mother was present when the child was committed, and the inspector should have known the circumstances of the family.

In giving judgment, the Lord President observed that 'when an application for the committal of a child is made by the procurator-fiscal, or any one else, for the public interest, it is no doubt indispensable that some one should be called as respondent, if it is intended to make any one directly or immediately answerable for the expense of maintenance, and the proper person is usually the parent or guardian. In this case the mother herself appears to have been present, but she was quite unable to contribute to the child's support, and I do not see that any one else was a necessary party.' Lord

[1] Sec. 38. [2] Sec. 19.

Deas added—'I think that what passed between the inspector and the mother, immediately after the boy was sent to the school, shows that in this case the inspector either knew or was bound to have known where the boy was, and how he was being maintained.'[1]

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;[2] (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;[3] and (6) the young children of women convicted under the Prevention of Crimes Act, 1871.[4] 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.[5]

As regards the deaf and dumb, and children who are blind, it is the duty of the parochial board to send them to asylums for their education. To these institutions (as well as hospitals and infirmaries) the parochial board may make such contributions annually as may seem expedient.[6] To children suffering from the loss of sight or hearing no proper education can be afforded except by special means of instruction suited to their condition. Where these are available within the limits of the parish, the parochial board is under a legal obligation to place them within the reach of such pauper children as cannot receive the necessary amount of instruction in any other way. Accordingly, the Board of Supervision has intimated that they would consider failure to send a deaf and dumb pauper child to an institution for the instruction of

[1] The Lord Advocate *v.* Brown, 2 Dec. 1875, 3 R. 188, 4 P. L. (3) 375.

[2] Sec. 17. [3] Sec. 14. [4] 34 and 35 Vict. cap. 112, sec. 14.

[5] 29 and 30 Vict. cap. 118, secs. 15 and 19. [6] Sec. 67.

that class of unfortunates, where such was available in the parish, as a well-founded ground for a complaint of inadequate relief.[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 for 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]

[1] Board of Supervision Circular, 9 Feb. 1860.
[2] 12th Report, Board of Supervision, 117.
[3] Board of Supervision Minute, 9 Feb. 1862.

CHAPTER XI.

MEDICAL RELIEF.

Out of the funds raised for 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] But although, under sec. 66, the board is bound to appoint a 'medical man' 'to give regular attendance on a poorhouse,' it is only in that case the appointment of such an officer is compulsory. The manner of relieving the sick poor is left entirely to the discretion of the parochial board. In point of fact, few parishes fail to appoint a parochial surgeon; but 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, rest 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]

Since 1848 an annual sum of £10,000 has been voted by Parliament for the improvement of the supply of medical

[1] Sec. 69.

[2] 21 and 22 Vict. cap. 90, sec. 36.

[3] See Board of Supervision *v.* Menzies and M'Donald, 9 June 1855, 17 D. 827.

relief to the poor in Scotland. The sum assigned was calculated to allow an average of nine-tenths of a penny per head of the population; but inasmuch as the expense of medical attendance is proportionally greater where the population is thin and widely scattered than in crowded cities, a scheme of distribution has been prepared by the Board of Supervision under which the parishes participating in the grant are divided into classes according to the density of the population; and the parish receives as its share a varying rate per head, according to the class to which it belongs.

The term 'medical relief' includes salary of medical officer, medicines, etc., supplied to the sick poor; also medical or surgical appliances furnished by the medical officer, or procured from a laboratory on his prescription; 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.' Inspectors of the poor are required to transmit an annual return to the Board of Supervision in conformity with this rule.[1] The cost of medical certificates in connection with proceedings in lunacy cases, or with the removal of paupers, or which have been produced for information of the parochial board, as well as all payments on account of an insane pauper in a public asylum or licensed establishment, made to an officer connected with or employed by that establishment, and any expenditure incurred under the Vaccination Act and Public Health Act, are inadmissible as charges on account of medical relief; nor can a parish include in its accounts on this head the sums paid for medical attendance upon paupers chargeable or belonging to other parishes. The accounts should only include such sums as are actually and ultimately chargeable to the parochial funds of the parish, otherwise the advances which may have been repaid by the parish of settlement would be credited in the distribution of the Government grant twice over.[2]

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

[1] R., 7 Dec. 1846, p. 64, and 17 Sept. 1863, p. 849.
[2] Sec. 69.

Rules framed by the Board of Supervision under the Statute 8 *and* 9 *Vict. cap.* 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.*

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 be 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, 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.

In part 4th of the Public Health Act, certain powers are conferred on the local authority for the prevention and mitigation of disease, including amongst others a power to erect district hospitals, places for the reception of the sick, temporary or permanent.[1]

When it is resolved to build an hospital (as a permanent establishment) for the use of the inhabitants, the funds necessary may be borrowed on the credit of the assessment leviable under the statute from the Public Works Loans Commissioners.[2] It has been held that an hospital is not a nuisance at common law,[3] and the land required for the site of the building may be taken compulsorily under sec. 90.

The class of persons who may be removed by the local authority to the hospital are defined as follows: 'Any person suffering from any dangerous, contagious, or infectious disorder, and being without proper lodging or accommodation, or lodged in a room occupied by others besides those in attendance on such person, or being on board any ship or vessel.' In any such case the patient is removeable to the hospital at the cost of the local authority, and his removal is effected by means of a warrant obtained from the sheriff or other magistrate upon a medical certificate, and with the consent of the superintending body of such hospital.[4] The object aimed at

[1] 30 and 31 Vict. cap. 131, sec. 39.
[2] 34 and 35 Vict. cap. 38, secs. 2 and 3.
[3] Mutter, 23 Dec. 1848. [4] Public Health Act, sec. 42.

is the isolation of the patient with the view of preventing the spread of disease; and this, therefore, is one of the matters which are declared chargeable to the local authority itself. But as regards the cost of the person's maintenance in the hospital after his removal thither, it is apprehended that it is a good charge against the parochial funds in the case of all persons who are at the time proper objects of parochial relief. The Public Health Act does not relieve the parochial board of the duty incumbent upon it by law to make due provision for the paupers of the parish, but in effect it declares that henceforth this duty shall be subject to certain conditions—either the board must isolate the patient itself, or allow the local authority to do so. Before the Act came into force, it was an instruction by the Board of Supervision to inspectors, that when a pauper was afflicted with any disease which could not be properly treated except in a public hospital, 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,' they observed, '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 living, and made him chargeable to the parish;'[1] and the Public Health Act really does little more than facilitate the course here recommended; first, by securing that proper hospitals shall be provided, and next, by effecting the patient's removal in a very summary manner, with or without his consent. We observe, in a question which arose between a parochial board and a local authority as to the responsibility for fever patients not in receipt of parochial relief, but alleged to be proper objects of relief, the board decided that 'in cases of fever it would not be expedient or safe for the local authority to delay proceedings until an application for parochial relief was made to, and decided by, the parochial board, and that the proper course was, without delay to send the patient requiring removal to the infirmary, and simultaneously to make a claim against the parochial board.' If the claim is refused by the parochial board, the sheriff, on appeal, will decide whether the patient is a proper

[1] 2d Board of Supervision Report, p. 5.

object of relief or not, and then the cost of his maintenance in the infirmary will be no more than the needful sustentation which his condition requires, and will, in fact, be probably less than his treatment would cost at home.

The cost of interments, when the parties themselves are not able to bear the expense, is a proper charge against the parochial funds; and in this matter the Public Health Act provides that mortuaries may be established for the reception of dead bodies, to which the body of any person who has died of an infectious disease, and is likely to endanger the health of the inmates of the room where it lies, may be removed under a sheriff's order, granted upon a medical certificate. Thereafter the order may direct the body to be buried within a certain time; and unless 'the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it will be the duty of the local authority to bury such body; and it shall also be the duty of the local authority to bury any dead body within the district, and which is unclaimed, or which no sufficient person undertakes to bury; but any expense so incurred in regard to any such burial may be recovered by the local authority in a summary manner from any person legally liable to pay the expense of such burial.'[1] This, it is presumed, includes the parish of the pauper's settlement. The word 'person' in the statute applies, amongst others, to corporations and statutory boards or commissions.[2]

[1] Public Health Act, sec. 43. [2] Sec. 3.

CHAPTER XII.

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. But in 1858, attention having been drawn to the insufficient provision made in some parts of Scotland for the care and treatment of lunatics, a Board of Lunacy was established in Edinburgh, for the purpose of licensing houses for the reception of the insane, and taking general charge of their care and custody.[1] The Board consists of five Commissioners, nominated by the Queen, three unpaid and two paid. They have the assistance of two medical men, termed 'deputy-commissioners,' appointed by the Secretary of State, who visit and report upon the condition of lunatics within their respective districts, and conduct such special inquiries as may be ordered by the Board. In consequence of this change in the law, the provisions contained in the 59th section of the Poor Law Act respecting lunatic paupers were repealed,[2] and the power to dispense with the

[1] 20 and 21 Vict. cap. 71. [2] *Ibid.* sec. 113.

removal of such persons as lunatic paupers to an asylum, previously vested in the Board of Supervision, was transferred to the General Board of Commissioners of Lunacy in Scotland.

Under the Lunacy Acts, twenty-one district boards of lunacy have been established throughout the country, chosen by the commissioners of supply and magistrates of burghs,[1] who were directed, on the requisition of the Lunacy Board, to take the measures necessary for the erection of a district asylum, or the adoption of any existing asylum, to that purpose, the expense being defrayed by an assessment. The district board is, however, at liberty to 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 the district, or any portion of them, upon such terms as should be arranged.[2] The lunatic paupers of each district were to be accommodated within the limits of the district itself; but the stringency of this provision was subsequently relaxed by the Act of 1862,[3] which authorizes agreements for the reception and retention of any two or more pauper lunatics of any district or parish in any public or private, parochial or district, asylum or hospital within the limits of such county, district, or parish. It is also enacted, that where any district board fails 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]

[1] 40 and 41 Vict. cap. 53, sec. 61, repealing sec. 50 of Lunacy Act, 20 and 21 Vict. cap. 71. The districts are as follow:—Aberdeen, Argyle, Ayr, Banff, Bute, Caithness, Dumfries (comprising the counties of Dumfries, Kirkcudbright, and Wigtown), Edinburgh (Midlothian and Peebles), Elgin, Fife (comprising the counties of Fife and Kinross), Forfar, Glasgow, Haddington, Inverness (comprising the counties of Inverness, Nairn, Ross, Cromarty, and Sutherland), Kincardine, Orkney, Perth, Renfrew, Roxburgh (comprising the counties of Roxburgh, Berwick, and Selkirk), Shetland, and Stirling (comprising the counties of Clackmannan, Dumbarton, and Stirling). Caithness, Kincardine, and Shetland are dependent on the Montrose Asylum for the accommodation of their pauper lunatics; Orkney, on the Royal Edinburgh Asylum.

[2] Lunacy Act, sec. 59.

[3] 25 and 26 Vict. cap. 54, sec. 8.

[4] Lunacy Act, sec. 72.

The establishments for the reception of the insane in Scotland range themselves into six groups,—

1. Royal and district asylums.
2. Parochial asylums.
3. Private asylums.
4. Lunatic wards of poorhouses.
5. Training schools for imbecile children.
6. The department for criminal and State patients in the General Prison.[1]

The term 'lunatic,' as used in the statutes, is declared to mean[2] and include every person certified by two medical persons to be a lunatic, an insane person, an idiot, or person of unsound mind. A 'medical person' means any person registered as a practitioner in medicine or surgery, pursuant to the Act 21 and 22 Vict. cap. 90. No person can be committed to an asylum without an 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. The order is pronounced upon a petition in the form given in the Act.[3] It sets forth the name, sex, and age of the patient, states whether he is married or single or widowed, his condition of life and previous occupation, his religious persuasion so far as known, his previous place of abode, the place where found and examined, the length of time insane, and a number of other particulars. It also sets forth the degree of relationship or other capacity in which the petitioner stands to the lunatic.[4] These words are

[1] The following Statistics are given in the last Report of the General Board of Lunacy:—

	Private.		Pauper.		Total.
	M.	F.	M.	F.	
I. In 18 royal and district asylums, .	557	543	1921	2137	5158
II. In 5 private asylums, . . .	72	114	1	2	189
III. In 7 parochial asylums, . .	...	...	399	462	861
IV. In 15 poorhouses, . . .	...	...	262	347	609
V. In private dwellings, . . .	48	63	568	813	1492
VI. In lunatic department of general prison: males, 40; females, 14,	...	...	...	...	54
VII. In training schools, . . .	65	35	25	21	146
Grand total, ...					8509

[2] 25 and 26 Vict. cap. 54, sec. 1.

[3] 20 and 21 Vict. cap. 71, schedule C.

[4] 25 and 26 Vict. cap. 54, sec. 14.

wide enough to entitle the inspector of the poor, failing any relative of the lunatic, to make the application; but, as has been pointed out by the Board of Supervision, the lunatic should not be described in the petition as a pauper. He may be described as a person who is friendless, or without known means of support immediately available, or for whose relief application has been made, and the sheriff will judge whether in these circumstances the inspector has a sufficient title and interest to make the application under the statute. The Board of Supervision has recommended that, whenever it can be safely done, the inspector should make temporary arrangements, with the sanction of the medical officer, for the interim custody of the lunatic, and summon an immediate meeting of the parochial board or its committee, for the purpose of considering the application, and should not present a petition to the sheriff until the lunatic has been admitted to relief. In every case, however, in which an application or intimation is made to the inspector on behalf of a lunatic, it is indispensable that he should attend to the case, and deal with it in one or other of the modes above suggested. He cannot safely disregard such cases, or refuse relief without investigation.[1]

The application is accompanied by two certificates of insanity by registered medical practitioners, one of whom may be the medical superintendent, or consulting or assisting physician, for the asylum in which the lunatic is to be placed, provided it be not a private asylum.[2] These must bear date within fourteen days next preceding the date of the petition; and the admission of the patient is required to be within fourteen days of the date of the order, unless it has been granted by the Sheriff of Orkney and Shetland, when twenty-one days are allowed. Any lunatic, whose case is recently certified to be one of emergency by any duly qualified medical practitioner, may, without any order by the sheriff, be received into the asylum for a period not exceeding three days from the time of his being brought to the asylum, provided a petition and statement annexed to the petition be previously filled up and signed by the inspector of the poor.

The certificate granted by the medical man bears that he

[1] R., 11 Dec. 1869, p. 129. [2] 29 and 30 Vict. cap. 51, sec. 4.

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. It is understood that some sheriffs consider themselves entitled to examine the sufficiency of the evidence contained in the certificate, while others 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 more than ministerial, 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 only 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 his 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, the sheriff would have been empowered to call the alleged lunatic before him for personal examination. 'The general inconsistency of his conversation' may not *per se* be very conclusive proof of insanity; but if the medical man says 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, who, failing any amendment being made that they may deem necessary, are 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

[1] 29 and 30 Vict. cap. 51, sec. 5. [2] 20 and 21 Vict. cap. 71, sec. 38.

asylum, but that it was such a mistake as any well qualified medical practitioner might 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.[1]

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.[2]

A pauper lunatic is defined by the statute to mean and include any lunatic towards the expense of whose maintenance any allowance is given or made by any parochial board. Whenever any inspector of the poor shall become aware of any pauper lunatic being at large, or having a place of abode within the inspector's parish, whether the lunatic be chargeable to such parish or to any other, or whenever he shall become aware of any lunatic in an asylum being chargeable to such parish, he is required, within seven days, to notify the same to the secretary of the General Board of Lunacy, and to the chairman of the parochial board. Duplicates of the intimation, as well as of any application to the Board of Lunacy, to authorize the reception of the pauper lunatic as a single patient, into a private house, require to be transmitted to the Board of Supervision.[3] Any failure to send intimation of the pauper lunatic to the Board of Lunacy, etc., subjects the inspector to a penalty of £10.[4]

When it is desired that a pauper lunatic, committed to one asylum, should be transferred to another, it is necessary to apply for the sanction of the Board of Lunacy. This

[1] See M'Intosh *v.* Smith and Lowe, 2 M'P. 1261; affirmed, H. L., 9 March 1865, 3 M'P. 6.

[2] 29 and 30 Vict. cap. 51, sec. 24.

[3] R., 26 Jan. 1858, page 125.

[4] 20 and 21 Vict. cap. 71, sec. 112.

sanction is granted gratuitously by the Board, on one medical certificate from any registered practitioner who is not the medical officer or medical attendant of the asylum to which the patient is to be transferred; or the patient may be transferred on the order of the sheriff without the sanction of the Board, the order being granted on two medical certificates, one or both being signed by the medical officers of the asylum to which the patient is removed.

The sanction of the Board is also necessary for placing a pauper in the lunatic wards of a poorhouse which is licensed only for harmless and incurable patients. This sanction is obtained on the production by the inspector of the poor of a certificate of insanity by any one registered medical practitioner other than the medical attendant of the lunatic wards of the poorhouse in which it is proposed to place the patient. Patients admitted into lunatic wards of poorhouses possessing such restricted licence cannot, however, be transferred to asylums (parochial asylums) or to lunatic wards of poorhouses licensed for the reception and detention of curable and dangerous patients, except on the order of the sheriff, unless they have been previously resident in an asylum under a sheriff's order still in force, when they may be transferred with the sanction of the Board. Pauper lunatics who do not require asylum treatment may remain under the care of their own families, with the sanction of the Board, which is granted on the application of the inspector of the poor, accompanied by one medical certificate; or they may be placed singly under the care of strangers, on the order of the sheriff, with the sanction of the Board; but this may be obtained without any previous application to the sheriff. The Board of Lunacy is also empowered to grant special licences for the reception of pauper lunatics into private dwellings, in numbers not exceeding four. The conditions on which these licences are obtained are the following:—

1. The application for licence must be made by the inspector of poor of the parish to which the pauper lunatics to be accommodated are chargeable, and no pauper lunatic chargeable to any other parish shall be placed in a special licensed house without the consent of the inspector on whose application the licence was granted.

2. The Board will not in future grant a special licence for the

reception of more than two lunatics into any house in which pauper lunatics are to be placed, except on the special recommendation of a commissioner or deputy-commissioner.

3. Each house shall be licensed only for patients of one sex. Every patient shall have a separate bed, and no patient above twelve years of age shall occupy a bedroom with an adult of the opposite sex.

4. The licence, when granted, shall remain in force until the house be visited by one of the commissioners or deputy-commissioners, on whose report, if satisfactory, the licence will be continued. After which it will continue in force until again visited and reported on, and thereafter from visit to visit until recalled. But the licence shall be considered to have expired in all cases where there have been no patients in the house for a period of six months, and a fresh application will be required should it be desired to renew it. The licence may also be cancelled at any time on the representation of the inspector of poor on whose application it was granted.

5. In all cases in which an inspector of poor has made provision for a pauper lunatic chargeable to his parish, in a special licensed house not situated within such parish or within the statutory distance from it, he shall give intimation of the fact to the inspector of poor of the parish in which the pauper lunatic has been placed, as required by rule 24 of the Board's Instructions to Inspectors of Poor (1873), in order that the lunatic may at once be brought under the official inspection and supervision of the inspector of the parish of residence.[1]

6. The Board of Lunacy would at the same time strongly urge upon inspectors of poor the propriety of themselves visiting periodically all lunatics chargeable to their parishes who may be boarded out in special licensed houses, wherever such houses may be situated, in order to satisfy themselves of the efficiency of the guardianship, and the continued fitness of the lunatic for residence in a special licensed house; the date and particulars of such visits, as well as of the statutory visits to be paid by the local inspector, to be duly recorded in the visiting book provided for the purpose. In all cases where a number of special licensed houses containing patients belonging to other parishes than that of residence are situated in the same

[1] For the performance of the extra duties thus devolved upon the Inspector of Poor of the parish of residence through the action of the parish of chargeability in placing out certain of its pauper lunatics to be boarded within his district, the Board of Lunacy would gladly see some arrangement come to, on the same principle as has recently been recommended by the Board of Supervision in the case of pauper children, by which the inspector of poor of the parish of residence might be suitably remunerated by the parochial board of the parish to which the lunatics belong.

locality, the Board will consider it necessary to insist upon this as a condition of their sanction.

7. It shall be the duty of the inspector of poor of the parish of chargeability to make the requisite arrangements for the quarterly visits required to be paid by a medical man to every lunatic chargeable to his parish residing in any special licensed house; and to furnish for each patient a copy of the visiting book for patients in private dwellings, in which the particulars of these visits, as well as of those paid by the inspectors of poor, shall be recorded. This book shall be left in the house in which the lunatic resides, so that the commissioner may inspect the entries at his visit.

8. Special licensed houses shall be subject to visitation at all times by the commissioners or deputy-commissioners.

9. If any lodger, not being a lunatic, shall have been received into any special licensed house, notice of the fact shall be given to the board, and the lodger shall be produced to the visiting commissioner at his first visit thereafter. No lodger of the opposite sex from the patients, if above fourteen years of age, shall be received into any special licensed house.

10. No lunatic shall be placed in a special licensed house without the sanction of the Board; which sanction shall be obtained before the patient's removal to the house takes place.

It will serve no useful purpose to enter into further detail with respect to the provisions of the different Lunacy Acts, as to the powers of the Lunacy Board, and the manner in which this branch of law falls to be administered. We prefer to extract from one of the official publications of the General Board of Commissioners of Lunacy for Scotland the following detailed statement of the rules which fall to be observed by inspectors of the poor in their treatment of the insane:—

INSTRUCTIONS for the Guidance of Inspectors of the Poor in the Management and Disposal of Pauper Lunatics, prepared by the General Board of Commissioners in Lunacy for Scotland. 1873.

Duty of Inspectors of Poor to intimate all Pauper Lunatics.

1. Whenever an inspector of the poor shall become aware of any pauper lunatic being at large, or having his place of abode within such inspector's parish, whether such lunatic be chargeable to such parish or to any other, or whenever he shall become aware of any lunatic in an asylum being charge-

able to such parish, he shall, within seven days, notify the same to the secretary of the General Board of Lunacy and to the chairman of the parochial board, according to form I[1].

Persons Legally Recognised as Pauper Lunatics.

2. The term 'lunatic' is defined by the statute to include every person who may be certified by two medical persons to be 'a lunatic, an insane person, an idiot, or a person of unsound mind.'

3. Every lunatic is a 'pauper lunatic' on whose behalf any alimentary allowance is granted by any parochial board,—whether such lunatic be himself registered on the roll of paupers, or be the wife, child, or other dependent of any pauper, or of any other person not a pauper.

4. Any inspector of poor failing to intimate such pauper lunatic to the Board of Lunacy, and to the chairman of his parochial board, is liable to be proceeded against for the penalties set forth in sec. 112 of the Lunacy Act (20 and 21 Vict. cap. 71).

How Pauper Lunatics are to be disposed of.

5. The inspector of poor shall, within twenty-one days after intimation of a pauper lunatic has been made to the General Board of Lunacy, provide for his removal to an asylum, unless on application to the Board such removal shall have been dispensed with, and authority granted to provide for him in some other manner. In the event of the inspector of poor failing to remove the patient to an asylum, or to apply for dispensation from removal within twenty-one days after being required to do so by the Board, removal to an asylum may be carried out by the Board at the expense of the parish.[1]

[1] By the Poor Law Act[1] 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,[2] and the power formerly possessed by the Board of Supervision is transferred to the Lunacy Board.[3] By the Act of

[1] 8 and 9 Vict. cap. 83. [2] 20 and 21 Vict. cap. 71, sec. 113.
[3] 25 and 26 Vict. cap. 54, sec. 18.

6. Every pauper lunatic for whom dispensation from removal to an asylum has not been granted, or from whom it has been withdrawn, shall be sent to the asylum for the district in which the parish of settlement of such pauper lunatic is situated; or failing there being any such district asylum, to such other asylum as the parish of settlement may have provided, or agreed and arranged with, under the sanction of the Board, for the reception and treatment of its pauper lunatics.

7. In the case of a pauper lunatic being within a parish which is not the parish of settlement, and being in a state requiring immediate removal to an asylum, the inspector of poor of such parish may either remove the lunatic temporarily to the asylum of the district in which such parish is situated, or, with the concurrence of the inspector of the parish of settlement, directly to the asylum of the district to which the parish of settlement belongs.

8. In the event of the relatives of a pauper lunatic whose removal to an asylum it is desired to carry out refusing to permit of such removal, the inspector shall report the case immediately to the parochial board for instructions how to proceed.

9. Pauper lunatics for whom dispensation from removal to an asylum has been granted, may be provided for, with the sanction of the Board, in three ways: (1) in lunatic wards of poorhouses, licensed for the reception and detention of pauper lunatics who are not dangerous and do not require curative treatment; (2) in private dwellings as single patients; or

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 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.'

(3) in special licensed houses in numbers not exceeding four, on licences granted in accordance with the provisions of 25 and 26 Vict. cap. 54, sec. 5.

How Pauper Lunatics may be removed from Asylums.

1. *When Recovered.*

10. When pauper lunatics are restored to sanity, it is the duty of the superintendent of the asylum to discharge them.

2. *When not Recovered.*

a. By Minute of Parochial Board.

11. Unrecovered pauper lunatics, not being dangerous lunatics committed at the instance of the fiscal, may be removed from an asylum to a private dwelling, by a minute of the parochial board chargeable with the maintenance of such lunatic, agreed to at a duly constituted meeting. On a copy of such minute, certified as correct by the chairman of the parochial board, being produced to and left with the superintendent of the asylum, such lunatic shall within seven days thereafter be discharged, unless the superintendent shall state in writing that in his opinion such lunatic is dangerous to himself or the public, or in any other way not a fit person to be discharged; in which case the lunatic shall not be removed by the inspector without the sanction of the General Board, under a penalty not exceeding ten pounds.

12. Whenever an inspector of the poor has removed any unrecovered pauper lunatic from an asylum on the authority of the parochial board, he shall, within fourteen days, intimate to the Board the date of removal, the situation of the house to which such lunatic has been removed, the Christian name and surname of the occupier thereof, and the amount and nature of the parochial allowances made for such lunatic, under a penalty of ten pounds; and he shall also obtain the sanction of the Board to such arrangement; and no inspector shall remove any such lunatic to any other house, or make any alteration in the nature and amount of the parochial allowances, without intimating the same to the General Board within fourteen days, under a similar penalty.

b. By Order of the Sheriff.

13. For the liberation of an unrecovered pauper lunatic, committed as dangerous at the instance of the fiscal, application must be made to the sheriff, on certificates signed by two medical persons approved of by the procurator-fiscal, bearing that such lunatic may be discharged without risk of injury to the public or to the lunatic. And the inspector shall give intimation to the Board, and obtain its sanction for the arrangement made in regard to such lunatic, as is directed in the foregoing rule.

Removal of Pauper Lunatics from Asylums on Probation.

14. The sanction of the Board is granted for the removal of suitable patients on probation from asylums on petition by the inspector of poor and the certificate of the medical officer of the asylum; but no patient sent to an asylum at the instance of the procurator-fiscal shall be liberated on probation without his concurrence. During the period of probation the patient remains subject to inspection by the visiting commissioners, and no alteration can be made in the conditions on which the sanction of the Board was granted, during the same period, unless with the approval of the Board.

15. Whenever it shall appear to the inspector of poor or the medical officer of the parish of residence that the patient has become unfit for residence in a private dwelling, the inspector of poor shall, without delay, remove such patient back to the asylum; and the superintendent of the asylum shall be bound to receive the patient on the simple demand for admission, and without any fresh medical certificate, provided the period of probation be not expired.[1]

16. Pauper lunatics in private dwellings, whose period of probation has expired, must, if they continue insane, and in receipt of parochial relief, be placed on the roll of patients exempted from removal to an asylum. For this purpose

[1] Patients who have been above three years in an asylum should, if absent on probation at the close of the year, be included in the certificate granted by the medical superintendent to keep the sheriff's order in force; otherwise a fresh order by the sheriff will be required for their readmission.

application must be made to the Board of Lunacy for its sanction.

17. In cases where, during the currency of the probationary period, recovery, death, or removal from the poor-roll shall take place, or the patient is replaced in the asylum, notice of such occurrence must be sent by the inspector of poor to the Board. And in cases where the patient is not replaced in the asylum, the superintendent of the asylum must be informed by the inspector of poor whether such patient has recovered or died, or continues still insane at the end of the period of probation, in order that the necessary entry may be made in the asylum register.

Replacement of Pauper Lunatics in Asylums.

18. The inspector of the poor shall send back to the asylum any unrecovered pauper lunatic chargeable to his parish, within fourteen days after receiving the order of the General Board to that effect, under a penalty not exceeding ten pounds.

Removal of Pauper Lunatics from the Poor Roll.

19. No pauper lunatic who is resident in an asylum can be removed from the poor-roll without the authority of the parochial board granted at a duly constituted meeting, and on sufficient evidence that the party who shall undertake to provide for the care and treatment of the patient will do so in a satisfactory manner; and no lunatic who has thus been taken off the poor-roll can be removed from an asylum against the written representation of the superintendent that such removal would prove injurious to the lunatic or a risk to the public, except by the authority of the General Board.

20. No pauper lunatic shall be removed from the poor-roll during the period of probation without the sanction of the General Board, under a penalty not exceeding ten pounds.

Conditions on which Pauper Lunatics are exempted from Removal to an Asylum.

21. Pauper lunatics are only exempted from removal to an asylum on condition that the rules and orders of the General

Board in regard to their care and treatment are fully complied with.

22. If, by the neglect of the inspector of poor, or on account of the inadequacy of the allowance given by the parochial board, a pauper lunatic is insufficiently fed or clothed, or is otherwise inadequately provided for, or is placed under the charge of an inefficient or unsuitable guardian, it will become necessary for the General Board, on receiving such information, to withdraw the dispensation, and require the removal of the pauper lunatic to an asylum.

23. The sanctions granted by the Board for the reception of lunatics into private dwellings, whether singly or in numbers not exceeding four, are valid only for the particular house, and the particular guardian, named in the application, and under the circumstances detailed in the statement accompanying it; and it is necessary for inspectors of poor to give intimation, and receive the sanction of the Board for any change that may be found necessary in the above particulars.

24. Whenever an inspector of poor has provided for a pauper lunatic chargeable to his parish in a house not situated within such parish, or within the statutory distance from it, he shall give intimation to the inspector of poor of the parish in which the pauper lunatic has been placed, so that the pauper lunatic may be under the superintendence of the inspector of poor of the parish of residence.

Duty of Medical Officer and Inspector of Poor to visit Pauper Lunatics.

25. Every pauper lunatic, whose residence in any private dwelling has been sanctioned by the General Board, whether removed from an asylum on probation or otherwise, must be visited within three weeks after such sanction has been granted, and at least once every three months thereafter, by the parochial medical officer (or if resident beyond his own parish, by a medical man appointed by his parochial board), unless the General Board of Lunacy shall, on special application by the inspector of poor, otherwise regulate such visits; and the medical officer shall at every such visit enter in the visiting book for patients in private dwellings (see Appendix,

p. 16), which shall be kept in the house in which the lunatic resides, a report of the mental and bodily condition in which he found the lunatic, with any suggestions or recommendations for improving the condition of the patient which he may think desirable; and any medical person who shall make any such entry without having visited the patient within seven days previous to such entry, is liable in a penalty not exceeding ten pounds for every such offence.

26. The inspector of poor is required to inspect personally at least twice in the year, at their places of residence, all pauper lunatics resident in private dwellings in his parish, and all those belonging and chargeable thereto, who have not been placed under the superintendence of the inspector of the parish of residence, and shall satisfy himself that all the requirements of the lunatics are suitably provided for; and he shall record such visits in the visiting book kept in the house in which the lunatic resides.

Notices required to be sent by Inspectors to the Board.

27. Forms in regard to pauper lunatics chargeable to their respective parishes, which require to be sent by inspectors of poor to the secretary of the General Board of Lunacy, are printed.

By the Lunacy Act,[1] it is provided generally that any one whatever incurring expense in the maintenance of a lunatic shall, in default of other means of reimbursement, have recourse against the parish of the settlement of such lunatic. By sec. 75 it is provided that every lunatic pauper detained in a district asylum shall be deemed and held to belong and be chargeable to the parish which was the parish of his legal settlement at the time the order for his reception in the asylum was granted, his residence in the district asylum being deemed to be the residence of the lunatic in the parish legally chargeable with his maintenance. By sec. 95 it is provided that every pauper lunatic shall be sent to the asylum for the district in which is situated the parish of his settlement; but in special circumstances this may be dispensed with. As is well known, in some cases there is no

[1] 20 and 21 Vict. cap. 71, sec. 76.

district asylum to which the pauper can be sent, nor is it always expedient that he should be sent there even when a district asylum is available; and it has been decided that the statute did not intend to make any distinction between paupers confined in a district and in any other public asylum. Sec. 75 is held to rule universally the case of all pauper lunatics, whether actually confined in a district asylum or not, because the chargeability of the parish of settlement at the time relief is first afforded is equally applicable, no matter where the lunatic may reside;[1] and this right of recourse becomes available even although the person sent as a lunatic under an order for reception becomes a pauper only during his confinement. Thus a person born in Ayr in 1864, when in the possession of a residential settlement in Govan, was sent to a district asylum as a pauper lunatic on a warrant obtained in terms of the Lunacy Act by the inspector of Govan. The application was made in the belief that the lunatic was without means of her own, and that she fell to be treated as a pauper; but it was afterwards found that she had some funds, and these were expended in her maintenance. When they were exhausted, a dispute arose between Ayr and Govan as to the parish of her settlement, which involved the question whether, at the date of her being sent to the asylum, she was a pauper lunatic within the meaning of the 75th section of the statute. The Court decided that she had not become a proper object of parochial relief, within the meaning of the Act, at the time she was sent to the asylum. It was a mistake on the part of the inspector to suppose that she was so. But under sec. 75, the lunatic, when she became a pauper, became chargeable to the parish which was the parish of her legal settlement at the date of her committal to the asylum, whether she was then a pauper or not.[2]

In former times it was made a question whether the Crown was bound to aliment lunatics when they were detained by the order of the Court of Justiciary, the Government maintaining that the lunatic not being convicted, liability for his maintenance remained with the parish of his settlement. The Court of Session decided against the Crown, but the judgment

[1] Palmer *v.* Russell, 1 Dec. 1871, 5 P. L. 2, 182, 10 M'P. 185.
[2] Kirkwood *v.* Lennox, 10 July 1869, 2 P. L. 565, 7 M'P. 1027.

was reversed by the House of Lords;[1] and, as was subsequently observed by Lord Moncreiff, the fact that a lunatic has been apprehended on a criminal charge cannot affect the question of his maintenance. Guilt or conviction of a crime is out of the question. The fact of lunacy being established either by evidence in bar of trial, or by the verdict of the jury on evidence led during the trial, the result is the same. No crime has been committed on which sentence can follow. Accordingly, in an action at the instance of the collector of supply and rogue money against the parish of Kilmorich, as the settlement of a pauper who had been indicted for the crime of housebreaking, and acquitted on the ground of 'insanity,' the Court decerned against the parish where he had been apprehended for the cost of his maintenance, reserving its relief against any other parish.[2]

This matter is now regulated by sec. 20 of 29 and 30 Vict. cap. 51, appointing prisoners found not guilty of a criminal charge on the ground of insanity, to be detained in the General Prison at Perth.[3]

When it is found that a lunatic pauper is entitled to funds or property which may be applied to his maintenance, the proper course is to obtain the appointment of a *curator bonis* in the Court of Session. Failing near relatives, the petition may be at the instance of the inspector of the poor. Sec. 16 of 29 and 30 Vict. cap. 51, empowers the Lunacy Board to obtain from the accountant of the Court of Session the names of all lunatics placed under curatory, with a statement of their funds and of the sums expended on their maintenance, and to make such investigation by inspection or other-

[1] Commissioners of Supply of Wigtownshire *v.* Officers of State, 5 June 1827, F. C., revd. 4 W. and S. App. 43; Ramsay *v.* Officers of State, 3 S. 597; Heritors of St. Quivox, 21 Feb. 1823, F. C.

[2] Heritors of Kilmorich *v.* Beith, 10 July 1839, F. C., 1 D. 1231, following Scott *v.* Thomson, 13 Nov. 1818, F. C.

[3] See also 34 and 35 Vict. cap. 55. The inmates at the 31st December 1875 were classified as follow:—1. Found to be insane and not fit for trial, 14; 2. Found to be insane on trial, and not fit for punishment, 10; 3. Found to have been insane at time of committing offence, and not fit for punishment, 15; 4. Sentenced to death, but respited or sentence commuted on account of insanity, 2; 5. Imprisonment prisoners whose sentence had expired, 3; 6. Convicts whose sentences had not expired, 10: total, 54.

wise as shall in their opinion be necessary to ascertain in what manner such lunatics are cared for and treated. Accordingly, the Board is periodically furnished with a return of lunatics placed under curatory. The commissioners visit them, and make such inquiries into their condition as they deem necessary, discharging in regard to them more or less closely the same functions as are exercised in England by the visitors of the Court of Chancery. It has been repeatedly pointed out that there is a want of some economical and effective procedure for the administration of the property of lunatics when of small amount.

To assist parishes in the maintenance of pauper lunatics, an annual sum is now provided by Parliament from the Imperial revenue, which is distributed by the Board of Supervision, subject to the following conditions :—

'1. The maximum sum to be allowed from the grant in respect of any one pauper lunatic shall not exceed four shillings per week.

'2. If the cost of maintenance of any pauper lunatic to the parish during the year has not amounted to eight shillings per week, not more than one-half of the actual cost (excluding fractions of a penny) will be allowed from the grant.

'3. The cost of maintenance to the parish of any pauper lunatic during the year shall be held to be the amount which has been actually paid out of the rates, under deduction of any repayments recovered or recoverable from the relatives, or from sources other than the grant.

'4. As the grant applies exclusively to the cost of maintenance, no payments for certificates, or for removals to and from the places of detention, must appear in the claim.

'5. No claim is in any case to be made in respect of fractional parts of a week.

'6. Pauper lunatics discharged from an asylum *on probation* must not be included in the claim after date of such discharge, unless they have continued after such discharge to be in receipt of parochial relief.

'7. The claim in respect of any pauper lunatic must be made by the inspector of the parish in which the pauper lunatic has his admitted settlement as at the date of the claim, viz. 14th May 1877. If the settlement of the pauper lunatic

has not *then* been admitted, the claim will be made by the inspector of the parish of chargeability.

'8. Accounts between parishes as to the cost of maintenance of any pauper lunatic during the year or any part thereof, should be finally adjusted and settled before the case is included in the claim.

'9. Vouchers to the satisfaction of the Board for the payments made on account of pauper lunatics must be transmitted along with the claim. These vouchers must have distinct dates, must specify clearly the period to which they relate, and must be duly discharged.

'10. In the case of pauper lunatics residing in private dwellings, receipts from the persons with whom they are boarded for the payments made on the pauper's account, accompanied with extracts from the pay roll, certified by the chairman or other member of the parochial board, must be furnished.

'11. In the case of pauper lunatics in the licensed wards of poorhouses, a certificate by the governor of the weekly cost per head, as fixed by the house committee, in respect of each such inmate, and showing the period of detention, is required.

'12. When a pauper lunatic has been detained in more than one place during the year, the name of each place in which he has been detained must be stated in a separate line under column 2, and the other columns filled up with reference thereto. Separate vouchers, applicable to each place of residence, must also be produced with the claim.

'13. Where a payment has been made by a parochial board in advance for a quarter or other term, and part of the sum has been recovered, or is recoverable, by the parochial board in consequence of the death or discharge of the lunatic before the expiry of the term, or for other reason, the voucher for the original payment should be transmitted along with the subsequent letter or other document received from the asylum, showing the amount that has been or that will be repaid; and the amount so repaid or repayable should be included in column 6.

'14. The claim, together with the vouchers instructing the expenditure, must be transmitted to me on or before the 1st day of June. At the same time, you are required to transmit a duplicate of the claim to the General Board of Lunacy, Edinburgh, so that the certificate of that Board, required by

the conditions of participation in the grant, may be obtained. The Board of Lunacy will transmit the duplicate to this office with the certificate attached.

'15. No claim on account of any pauper lunatic will be recognised unless the certificate from the General Board of Lunacy is to the effect that, in their opinion, the lunatic has been necessarily detained and properly cared for in the place in which the said lunatic has been maintained during the period for which the claim is made.

'16. All claims, without exception, must be made in a form provided, and must be lodged with the Board of Supervision on or before the 1st day of June. After they have been audited and adjusted, and the arrangements for payment of the grant completed, orders will be issued to the participating parishes, entitling them to receive their respective shares through the Queen's Remembrancer of Exchequer in Edinburgh.

'17. The Board think it right to impress upon the parochial board, that the arrangement for repayment under the grant is not intended in any way to relieve the parochial board from the duty of enforcing payments by the relatives of lunatics of the cost of their maintenance, when the relatives are in a position to repay the same or contribute thereto; and if it should appear that in any case the parochial board has failed to take proper measures for the recovery of such contributions, the Board will have to consider whether all repayment from the grant should not be withheld from its parish.'

Dangerous Lunatics.

The apprehension of dangerous lunatics was formerly regulated by the Act 4 and 5 Vict. cap. 40. That Act is now repealed, and provision on the subject is made by the 25th and 26th Vict. cap. 24, sec. 15. When any lunatic has been apprehended by the police, charged with assault or other offence inferring danger to the lieges, or when he is found in a state threatening danger to the lieges, or in a state offensive to public decency, it is the duty of the procurator-fiscal or the inspector of the poor to make application to the sheriff for an order for his committal to some place of safe custody. The petition is accompanied by a medical certificate, and the sheriff having fixed a day for the inquiry into the state of the per-

son's mind, directs notice to be given by advertisement in some newspaper circulated in the county within which the lunatic is apprehended or found, and also causes intimation to be made to the inspector of the poor where he is not himself the petitioner. 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 lunatic's safe custody, the sheriff proceeds to take evidence upon the day fixed for the inquiry; and if satisfied that his confinement is expedient in the public interest, he grants an order for the transmission of the lunatic to an asylum, therein to be detained until cured, or until caution be found for his safe custody. The sufficiency of the caution tendered will be afterwards judged of on application to the sheriff; and if satisfied of the safety and propriety of the course proposed to be taken, he will authorize the delivery of the lunatic to the person finding security. When the warrant of committal is granted,[1] or at some subsequent stage, the sheriff fixes the amount of the expenses connected with the proceedings, and grants decree for the taxed sum against the parish in which the lunatic shall have been apprehended or found at large, in favour of the procurator-fiscal or other person (except the inspector of the poor) at whose instance inquiry has been initiated, and also pronounces an order against the parish in favour of the superintendent or keeper of the asylum for such sum as may be necessary for the lunatic's maintenance. It is declared that every such decree shall be final, and not subject to review or reduction.[2] The parish decerned against, in paying such expenses and cost of maintenance, has relief against the lunatic or his estate, and any of his relatives legally liable, and also against his parish of settlement. In such a case it is not competent for the parish of settlement to plead that there are relatives legally bound who are rich enough to maintain the lunatic. The parish is entitled to proceed direct against the parish of settlement, leaving it to operate its own relief against any other person who may be liable.

[1] Ruled to be incompetent at the time of committal under first Lunacy Act, sec. 85, amended by above statute. Gemmel *v.* Beattie (3 P. L. 333), 24 Jan. 1861, 23 D. 386.

[2] The grounds of appeal held to be incompetent under 20 and 21 Vict. cap. 71, sec. 85; Beattie *v.* Gemmel, 4 Feb. 1862, 24 D. 431.

CHAPTER XIII.

RECOURSE.

1*st. Against Relatives.*

In sec. 71 of the statute it is 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.' This is the qualification annexed to the obligation imposed on every inspector of the poor by sec. 70, instantly to relieve every proper case of destitution in the parish which may come to his knowledge, whether the pauper is a stranger or not. In effect, the inspector of the parish in which the pauper is found acts as agent by anticipation of the parish of the pauper's settlement, and which therefore falls to be debited with all sums expended in his maintenance. A record is kept, headed 'Book of Cases in which the Settlement has not been admitted or ascertained,'—setting forth the name of the applicant, the date when liability is determined, the amount to be recovered, and so forth. The parish of settlement may say in defence against the claim that relief was incompetently granted, the person not being a poor person in the sense of the Act. But it is no answer that the pauper has relatives in a position to maintain him. Although the relieving parish is entitled to go directly against them, it is not bound to do so; because when under a statute a double remedy is given, it is the right of the party in whose favour it is created to adopt either alternative. And

in general, it is left to the parish of settlement to enforce its recourse against the parents or other persons legally liable.

This makes it necessary to examine the claims of aliment recognised by the law. They are referable to two sources—1st, 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; 2d, The *jus representationis*, under which 'the eldest son of a family, having largely benefited by the father's succession, has been found liable on the ground of representation to support a brother or sister for whom no provision has been made.'[1]

These two grounds of liability do not, however, materially differ. In reality, the second is nothing but an application of the principle involved in the first. The duty incumbent on a parent to provide for his family is made a charge upon his estate, and is enforceable against the son in possession as his father's representative.

A claim of aliment *ex debito naturali* only arises when the parties are related in the direct line. The obligation is reciprocal, and the order of liability is as follows:—(1) The persons first liable are the man's own children; any one of them may be sued, but others, or such of them as are able, will be liable in contribution in an action at the defender's instance;[2] (2) Failing children, recourse may be had to the grandchildren; (3) When the line of descendants is exhausted, the obligation falls upon the father as the next ascendant; (4) After the father comes the mother; and (5) If both parents fail from death, incapacity, or otherwise, the direct paternal ascendants are liable in their order, the nearer before the more remote.[3]

A father is under no legal obligation to support the widow of his deceased son.[3] The contrary was found in De Courcy *v.* Agnew, 3 July 1806;[4] but that case, long regarded as a dubious authority, and opposed to other decisions,[5] is now

[1] Per Lord President in Hoseason *v.* Hoseason, 21 Oct. 1870, 9 M'P. 37.

[2] Hamilton *v.* Hamilton, 20 March 1877, 4 Ret. 688.

[3] Bankton, i. 6, 15; Ersk. Prin. iii. 1, 4; Bell's Principles, 1633; and Fraser's Parent and Child, 86, where all the important cases are noted.

[4] M. App. Aliment, 8.

[5] Duncan *v.* Hill, 28 Feb. 1809, F. C.; Yule *v.* Marshall, 21 Dec. 1815, F. C.; and Pagan *v.* Pagan, 27 Jan. 1838, 16 S. 399.

decided not to be law.[1] But a man is bound to support his wife's mother,[2] even when the wife is a natural child.[3] The reason is, that the duty of supporting her indigent parents being an obligation incumbent on the wife at the time of the marriage, the husband takes her with her burdens, even though the necessity should not arise till after the marriage. But conversely, the parents of the wife are not bound to support their son-in-law. Nor is a stepmother liable to aliment a stepson, for they are strangers in blood, and there is no natural relation out of which the obligation springs.[4] And it does not extend to brothers or sisters, or uncles or aunts.

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.[5] So it was found in Ayton *v.* Colvill, 25 July 1705, 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 son 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.[6] The same judgment was repeated in Drysdales

[1] Hoseason *v.* Hoseason, *sup.*
[2] Moir *v.* Reid, 16 July 1866, 4 M'P. 1060.
[3] Wilson *v.* Todd (Lord Jerviswoode), 10 P. L. M. 486.
[4] M'Donald *v.* M'Donald, 20 June 1846, 8 D. 830.
[5] Mor. 390 and 451.
[6] Wooley *v.* Maidment, 25 May 1815, F. C.; H. L. 27 May 1818, 6 Dow 257.

v. Drysdales, 3 Dec. 1831,[1] where children entitled to certain reversionary interests were, in the circumstances, found to have no claim against their mother, even though their mother's annuity more than exhausted the rents of the estate, and a cognition and sale was therefore necessary to realize the reversion.

(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 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. An ordinary entailed proprietor, reduced to difficulties, could not compel his son to sell his *spes successionis* in order to procure aliment for him.[2] 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 funds for their own subsistence.'[3] 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;[4] 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.[5] But in similar

[1] 10 S. 98. [2] M'Donald *v.* M'Donald, 20 June 1846, 8 D. 830.
[3] Ersk. Inst. i. 6, 56. [4] Stair, i. 5, 7.
[5] Tait *v.* White, 28 Feb. 1802, M. Aliment, App. 3.

cases the Court has repeatedly refused to sustain the claim of aliment, by reason of the party being in circumstances of great poverty;[1] 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.[2]

With regard to the manner in which the duty of aliment 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 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.'[3] In the case of an infant grandchild the rule is, 'that although infants are not to be taken from their mother during her viduity and their infancy, if she offers to keep them gratis, yet if she seek aliment for them, the grandfather may stop it by adopting them into his own family.'[4]

If a daughter is married, she appears entitled to no further indulgence. The wife of a writer to the signet raised an action against her father, a lieutenant in the Royal Navy, 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 a marriage may not absolutely have lost all claim against her father for aliment, she must in such circumstances make her option. She must either

[1] Wilson *v.* Cockpen, 3 S. 547; Stirling *v.* Heriot, M. 389; Ettrick *v.* Sword, 2 S. 715; Napier *v.* Napier, Elch. Aliment, 12.

[2] Jameson *v.* Jameson, 8 D. 86; Stair, i. 5, 9.

[3] Bain *v.* Bain, 16 Mar. 1860, 22 D. 1021.

[4] Ersk. i. 6, 56, and ii. 9, 63; M'Kissock, Hume 6, numbered M. 5927 and 16,322.

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.[1]

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 circumstances, the parent must have a separate aliment.'[2] 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.[3]

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 below,[4] but it is beyond the scope of this work to examine them

[1] Wallace *v.* Goldie, 20 July 1848, 10 D. 1510.

[2] Jackson *v.* Jackson, 17 Nov. 1825, 4 S. 188.

[3] Greig *v.* Crawford, 1817, not rep.

[4] Thom *v.* Mackenzie, 2 Dec. 1864, 3 M'P. 177; Landers *v.* Landers, 10 March 1859, 21 D. 706; Jackson *v.* Jackson, 4 S. 186; White *v.* White, 10 March 1829, 7 S. 567; Greig *v.* Crawford, Dun. 372; Ettrick *v.* Sword, 2 S. 715; Maule *v.* Maule, 1 W. and S. 266; and other cases referred to in Fraser's Parent and Child, p. 92 et seq.

more particularly, because in the case of a pauper alimented by the parochial board, the right to relief is at once destroyed whenever a relative 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 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 relative 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 destitution arises, therefore, there is neither debtor nor creditor, and consequently no enforceable obligation in existence. From this various important consequences follow:—1. The obligation to aliment is ascertained by the law of the domicile of the defender, at the time when the claim is made.[2] 2. His

[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.

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.[1]

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 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.'[2] These rights, which have been called *jura sanguinis*, are wholly beyond the pale of private paction. Aliment is presumed to be given *ex pietate*. No claim for repetition arises in the event of the party alimented afterwards becoming rich at the instance of the person liable, nor at the instance of the person liable *subsidiarie* against the person primarily bound,—*e.g.* by a grandfather against a father, —on the ground that he should have borne the burden himself, unless there was an express contract between them to that effect.[3] A distant relative, or a stranger, may recover aliment which he can show was not given *ex pietate;* but the claim prescribes in three years, except when the aliment is given to a child in circumstances which made a contract impossible.[4]

With regard to aliment *ex jure representationis*, the rule deducible from all the cases cannot be better expressed than in the terms of a note to Lord Ivory's edition of 'Erskine' (i. 6, 58): 'It would seem that in every case the representatives of a person deceased, whether the degree of relationship be nearer

[1] 13 July 1866, 4 M'P. 1060.

[2] Elchies' Annot. p. 31; Strathmore *v.* Strathmore, 1 W. and S. 402; Stair, i. 5, 1.

[3] Ludquhairn *v.* Gigt, M. 11, 425.

[4] Ligertwood *v.* Brown, 5 P. L. (2) 575, 21 June 1872, 10 M'P. 832.

or more remote, and whether the succession by which they are *lucrati* consist of heritage or moveables, are out of this succession liable in aliment to those whom the deceased himself was under a natural obligation to maintain.' The rule applies whether the representatives have succeeded to the property in the ordinary course of law, or have taken it by a conveyance from the father,[1] directly or under the form of a trust deed.

There can be little doubt that this doctrine was introduced as an equitable qualification of the law of primogeniture, under which the eldest son at a progenitor's death takes all, and the brothers and sisters get nothing.[2] '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.'[3] Erskine says that when 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 the right of primogeniture, which entitles the eldest son to the father's whole heritage, exclusive of the other children, 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.'[4] No claim for aliment lies against a father or his trust estate at the instance of a son who has been properly educated and set up in business.[5] When he divides his property with reasonable fairness among his children, he has done all that in law or reason he can be required to do; and should one of the family become unfortunate, and insist on further demands, the claim in effect is a claim on the brothers and sisters, who are in no way responsible for their brother's thriftlessness and imprudence. The spendthrift has had his share; it were most unreasonable that he should still be entitled to claim aliment after his

[1] Hastie, 10 Nov. 1671, M. 416; Scott, M. App., Parent and Child, 1. See Macintosh, 5 Nov. 1868, 7 M'P. 67, where it was held that one brother was not liable to aliment another unless he has obtained a landed or material moveable succession.

[2] Riddell, M. App. Aliment, 4; Ormiston, 22 Dec. 1838, 11 Jur. 232.

[3] Stair, i. 5, 10, and Fraser, Parent and Child, 108 et seq.

[4] Inst. i. 6, 58; *v.* Ivory's note.

[5] Hunter *v.* Macan, 25 May 1839, 1 D. 817.

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 £26,000 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 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 was entrusted the fate of the unborn grandchildren.[2] So also, a child who has received an adequate provision from 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 be satisfied only by a money payment. The one we have seen is permanent and indelible, but the other endures only 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

[1] As in 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.

Lord Succoth, 'against a brother, unless (1) the claimant is totally destitute, (2) unless he is in minority.'[1]

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 not heritable in its nature which she has or may acquire, 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,[2] a contract of separation not being revocable by either of the parties, provided the grounds on which it proceeded would have warranted separation *a mensa et thoro*.[3] (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. The sheriff has a limited jurisdiction to award interim aliment to a wife living *de facto* separate until the rights of the spouses are fixed by a competent Court.[4]

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;[5] and this 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 relative, out of her husband's estate, though she was the daughter of a gentleman of some fortune, and therefore could not be said to be indigent.[6] The rights of the spouses

[1] Strathmore *v.* Strathmore, *sup.*
[2] Shand *v.* Shand, 28 Feb. 1832, 10 S. 384, and 4 S. J. 600. [3] *Ibid.*
[4] Smith *v.* Smith, 1 R. 1010; M'Donald *v.* M'Donald, 2 R. 705.
[5] Ferguson *v.* Logan, 11 July 1809, Hume 5.
[6] Louther *v.* M'Laine, 15 Dec. 1786, M. 435.

and representatives are now not affected by the dissolution of the marriage within year and day.[1] When the wife's legal provisions of *terce* and *jus relictæ* are inadequate, an addition to them may be made out of the estate.[2] 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.[3] In one case, a woman, who was a 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 said, in the same way as before marriage;[4] but in a similar case,[5] 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.[6]

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 the child's estate. He does not succeed to the estate 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.[7] But while the law imposes this obligation on the father, it leaves him to implement it in

[1] 18 Vict. cap. 23, sec. 7. [2] Thomson, 6 March 1778, M. 434.
[3] Young *v.* Campbell, 17 Jan. 1790, M. 400.
[4] M'Cowan *v.* Paterson, 20 May 1809, F. C. 277.
[5] Smith, 11 March 1812, 16 F. C. 555.
[6] Bowie or Harvie *v.* Harvie, 6 S. 1144, 7 S. 305; M'Conochy, 26 Feb. 1830, 8 S. 604.
[7] Corrie *v.* Adair, 24 Feb. 1860, 22 D. 897.

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.'[1] 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, 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;[2] and 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 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

[1] Weepers *v.* Kennoway, 20 June 1844, 6 D. 1166.

[2] A. B. *v.* Chisholm, 12 Feb. 1842, 4 D. 670 (Lord Cockburn's note).

incapacity, always remains open up to his death.[1] *Inhæret ossibus.* There is no possible way of shaking himself rid of the obligation.[2]

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.[3] It is, however, for him to prove that the offer was made. The mere lapse of the time for which the decree runs, no movement being made on either side with a view to further arrangements, will not prevent her raising a second action for the child's maintenance.

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 a good claim for her share of the aliment against her representatives, who had intromitted with her estate.[4]

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 when reduced to poverty,[5] 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 connection between him and his father's ascendants.[6] The same principle

[1] Finlayson *v.* Govan, 7 July 1809; Pott *v.* Pott, 12 S. 183. As to the rates of aliment now given for children of the working-classes, see Sheriff Fraser's instructive note, A. *v.* B., Feb. 1875, Journal of Juris. xix. 165. But in Rae *v.* Findlay, 12 Jan. 1876, Lord Shand declined to increase the Aberdeenshire rates £6 for the first and £5 for subsequent years. The calculation is—aliment, 2s. 6d.; clothing, 6d.; education, 3d. per week: total, £8, 9s. per annum, of which the mother bears one half.

[2] Anderson *v.* Lauder, 11 March 1848, 10 D. 961.

[3] Simpson *v.* Cassels, 14 Jan. 1865, 3 M'P. 396; Ballantyne *v.* Malcolm, Hume 424.

[4] Wilson *v.* Taylor, 4 July 1865, 3 M'P. 1060.

[5] Per Baron Hume; cited Fraser, Parent and Child, 127. Cf. *sup.* p. 189.

[6] Nicol *v.* Dundee, 19 June 1832, 10 S. 670.

deprives him of all claim against the father's heir. By the law of Scotland also, no action is allowed against a grandfather for the support of the illegitimate offspring of his daughter, and the parochial board is not entitled to recover from him the sums spent in their maintenance.

Actions of Relief.

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.[1] 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.[2] 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 occasional work at a mill. The grandmother took charge of the child, and supported it by begging, and by contributions from her daughters. After ineffectual applications had been made to the kirk-session, the grandmother raised an action against them for 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 pro-

[1] Robert *v.* Fife, 5 Feb. 1825, 3 S. 500.

[2] Weepers *v.* Kennoway, 20 June 1844, 6 D. 1166.

portion 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. The remedy of the person, on whose hands a child has been thrown by its parents, is to communicate with the inspector, and insist on his providing for it.

When a person is in such a 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 relatives 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 better able 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 relatives 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 pauper'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: 1st, That the pauper was legally entitled to relief; 2d, That relief was given; 3d, That the defender is legally bound to maintain him.

But while the pauper's relatives are legally bound to reimburse the parish for the advances which they have made,

[1] Lumsden *v.* Heritors, etc., of Leslie, 18 July 1846, 8 D. 1260.

[2] Pryde *v.* Ceres, 14 Feb. 1843, 5 D. 577.

[3] Per Lord Dundrennan in Hay *v.* Adams, 23 Jan. 1856, 3 P. L. 173.

there 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 is not entitled to 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, so entirely without consideration, taken from a starving man.

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]

Stair, i. 8, 3; Ersk. iii. 3, 92; Drummond *v.* Steuart, 2 March 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, 1 P. L. 148, and 29 S. J. 559.

[4] Kirk-Session of Garvald *v.* Forrest, 14 Feb. 1817, 19 F. C. 293; Conf. Hutton, 6 Dec. 1770, M. 10,574.

Seamen's Wives.

The Merchant Shipping Act, 1854,[1] provides (sec. 192): 'That whenever, during the absence of any seaman on a voyage, his wife, children, and step-children, or any of them, become chargeable to a parish, the parish shall be entitled to be reimbursed, out of the wages earned by the seaman during the voyage, any sums properly expended during his absence in the maintenance of his said relations, or any of them, so that such sums do not exceed the following proportions, namely: (1) If only one of such relations is chargeable, one-half of such wages; (2) If two or more of such relations are chargeable, two-thirds of such wages. But if, during the absence of the seaman, any sums have been paid by the owner to, or on behalf of, any such relation, as aforesaid, under an allotment note given by the seaman in his, her, or their favour, any such claim for reimbursement, as aforesaid, shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sums so paid.'

For the purpose of obtaining such reimbursement, the statute further provides (sec. 193): 'The inspector of the poor in Scotland may give to the owner of the ship in which the seaman is serving, a notice in writing, stating the proportion of the seaman's wages, upon which it is intended to make the claim, and requiring the owner to retain such proportion in his hands for a period to be therein mentioned, not exceeding twenty-one days from the time of the seaman's return to his port of discharge; and also requiring such owner, immediately on such return, to give to such guardians, overseers, persons, or inspector, notice in writing of such return; and such owner, after receiving such notice as aforesaid, shall be bound to retain the said proportion of wages, and to give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim; and the said guardians, overseers, persons, or inspector, may, upon the seaman's return, apply in a summary way in England or Ireland to any two justices having jurisdiction in such union or parish as aforesaid, and in Scotland, to the sheriff of the county, for an order for such reimbursement as aforesaid; and

[1] 17 and 18 Vict. cap. 104.

such justices or sheriff may hear the case and may make an order for such reimbursement to the whole extent foresaid, or to such lesser amount as they or he may under the circumstances think fit; and the owner shall pay to such guardians, overseers, persons, or inspector, out of the seaman's wages, the amount so ordered to be paid by way of reimbursement, and shall pay the remainder of the said wages to the seaman; and if no such order as aforesaid is obtained within the period mentioned in the notice so to be given to the owner as aforesaid, the proportion of wages so to be retained by him, as aforesaid, shall immediately, on the expiration of such period, and without deduction, be payable to the seaman.'

Army and Navy Pensioners.

By the Act 2 and 3 Vict. cap. 51,[1] it is enacted that, when any pensioner shall apply for relief to 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 to him 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 Act 18 and 19 Vict. cap. 91 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

[1] Rep. in part but still in force. See Stat. Law Rev. Act, 1874, No. 2.

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. cap. 106, sec. 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.'

Removal to England and Ireland.

In imposing on parochial boards the duty of alimenting a person found destitute in the parish, the statute[1] 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. cap. 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. The judgment of the sheriff who hears the case is not appealable. The statute requires him to see the party himself, or the person who is the head of the family proposed to be removed, and to 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,[2] and thus the giving or withholding an order of removal is left to the discretion of the magistrate before whom the case is brought.

[1] Sec. 77 of 8 and 9 Vict. cap. 83. [2] Secs. 1, 2.

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.[1] 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, an able-bodied man without a settlement here, was obliged to ask relief for a lunatic wife, she being a Scotch woman, neither the man nor his wife was removeable to Ireland under sec. 77 of the statute.[2] As before observed, the wife's lunacy has not the effect of pauperizing the husband.

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 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.[3] 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.

[1] Beattie *v.* Mahone, 25 Jan. 1861, 3 P. L. 353, 23 D. 412.

[2] M'Crorie *v.* Cowan, 7 March 1862, 4 P. L. 421. [3] Secs. 2, 4, 5.

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;[1] 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 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 persons 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. cap. 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.[2]

Prosecutions for Desertion.

The Act 1579, cap. 74, directs that all above fourteen and below seventy years of age, who shall be taken 'wandering and misordering themselves,'—idle persons, Egyptians, seers,

[1] Circular, 25 Nov. 1858.

[2] See Board of Supervision Circular, 15 Feb. 1866.

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, 11 August 1692, and the Act 1609, cap. 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.'[1]

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.'

[1] Sec. 79.

The proceedings are in the short forms introduced by the Summary Procedure Act of 1864.[1] The complaint is in the name of the inspector as prosecutor, with concurrence of the procurator-fiscal. The inspector therefore requires to be personally present. The evidence need not be recorded; and the sentence usually imposed on a conviction is imprisonment and hard labour for any term not exceeding sixty days.

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 or neglects to maintain 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 meant such a wilful abandonment by a husband of his wife or family as necessarily results in their being thrown on the parish. The offence consists in the wrong done to the ratepayers. Therefore, if a husband cruelly beat and ill-use his wife to such an extent as to drive her from his home, and to compel her to apply for relief to prevent herself 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

[1] See Moncreiff's Review in Criminal Cases, p. 72 et seq.

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 has by his conduct compelled her to apply for relief.

In the expression 'able to maintain,' pecuniary and not physical ability 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. cap. 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 *offence punishable on summary conviction*, competent or compellable to give evidence for or against himself or herself, his wife or her husband.'

[1] M'Lachlan, 1 May 1862, 5 P. L. 25.

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

2*d. Against other Parishes.*

The recourse of the parish which relieves a stranger pauper is declared to be 'against the parish or combination within Scotland to which he may ultimately be found to belong.' Under sec. 70, the duty of giving relief continues until the parish of the pauper's settlement is admitted or otherwise determined. It follows that, if the pauper has no settlement in Scotland, or if the relieving parish is not able to obtain evidence of the pauper's settlement, it remains subject to the burden. 'It is not enough,' says Lord Cowan, 'to call two adjoining parishes, and say, "either one or other of you two is liable as the parish of birth,"[1] and then leave the question to be fought out between them. The relieving parish must make out its case against some parish.' Therefore, in the case of a lunatic, born in Scotland, the son of a native of Scotland, whose settlement could not be discovered, the relieving parish remained liable, because the only claim lay against the undiscovered settlement of the father. But, on the other hand, the parish is not bound to follow the fortunes of the pauper out of the country, and to inquire into the existence of an alleged settlement in England; it is enough to find some parish liable 'within Scotland.'

This right of recourse against the parish of settlement was always recognised by the law; but as the ratepayers are a fluctuating body, it is very necessary that the parochial officials should use due diligence in the adjustment of their accounts, and in making claims effectual which are disputed. The claim, therefore, might be cut off by *mora*, and this is still a good defence to an action against the parish of settlement.[2] 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.[3] In another case, a pauper, whose legal settlement was elsewhere, became chargeable to a parish in 1843. The inspector communicated with the parish ulti-

[1] Anderson *v.* Mackenzie, 16 Dec. 1864, 3 Mc. 353.
[2] Rescobie, M. 10,589.
[3] Hay *v.* Knox, 20 June 1850, 12 D. 1260, 22 S. J. 464.

mately 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.'[1] The same plea was given effect to in Scott *v.* Anderson, 15 July 1854,[2] 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 sec. 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 settlement 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.'[3] But the Court has not adopted this view, and 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.[4]

[1] Hay *v.* Jack, 15 Feb. 1853, 15 D. 388, 25 S. J. 234.
[2] 16 D. 10,941, 26 S. J. 594.
[3] Jack *v.* Simpson, 14 June 1864, 6 P. L. 574, 2 M'P. 1221.
[4] Brown *v.* Lemon and Cameron, 19 Jan. 1864, 6 P. L. 351, 2 M'P. 454.

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.[1] The plea of *mora* applies to a claim by an individual, as much as to a claim by a parish.[2]

As to what constitutes sufficient notice, the statute requires, 1st, that the notice shall be in writing; 2d, that it shall be sent to the inspector of the poor of the parish or combination to which the pauper belongs; 3d, that the poor person to whom the relief is being given, shall be named and described 'with a statement of the circumstances.'[3] It is immaterial in what form the notice is expressed; but it must reasonably serve its purpose, which is to enable the inspector to make inquiry into the case, and satisfy himself about the truth of the claim. He cannot, however, object that he was misled by the terms of the notice, unless the designation of the pauper was so imperfect or inaccurate

[1] 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.

[2] Duncan's Trustees *v.* Gow, 31 Jan. 1861, 3 P. L. 400, 23 D. 420.

[3] R., 29 Oct. 1845, p. 3.

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 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.

that, taken as a whole, it was insufficient to enable him to identify the party meant.[1] Where a man with two children applied for relief, the notice was sent 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]

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.[4] 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

'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.

[4] 19 D. 200, 29 S. J. 97.

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.[1]

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.[2]

So, also, where notice was sent with reference to a deserted wife in February 1869, and again on 24 August 1870, it was held that the parish was liable for the period from the date of the first notice to May 1869, when the wife was in a state of desertion; that it was not liable for the period between May 1869 and January 1870, when the husband was at home; and that, the husband having died in January

[1] Lemon *v.* Brown, 22 Jan. 1864, 2 M'P. 454.

[2] Beattie *v.* Wood, 9 Feb. 1866, 8 P. L. 441, 4 M'P. 427.

1870, it was not liable for any advances made prior to the date of the second notice in August 1870.[1]

Admission.

After notice is given, it is the duty of the parish to inquire into the facts, and admit or refuse liability. An admission cannot be withdrawn after it is made and acted upon. It is one of the methods sanctioned by the statute for establishing the claim against the parish, and, presumably, it is never given without due inquiry. As Lord Gifford has pointed out, although such admissions do not constitute *res judicata*, they are intended to have the same effect, by rendering any formal determination of the question unnecessary.[2] It may, indeed, be withdrawn if made *de recenti*, and matters are entire;[3] but it is otherwise when it has been acted on. This is especially the case where a number of years have been allowed to elapse,[4] but any considerable length of time is unnecessary.[5] When the question is once closed, it cannot be reopened on the ground that 'new legal light' has been let in by the decisions of the Supreme Court, such as Greig *v.* Miles and Simpsons, and Moncrieff *v.* Ross, which corrected the erroneous opinions formerly prevalent in respect to residential settlements. Thus, where an admission was made on 16 August 1864, after due inquiry, and on a full disclosure of all the circumstances, and was acted on by both parties until June 1869, when it was withdrawn on the ground that the admission had proceeded on a misapprehension of law, it was held that, there being no concealment or deception of any kind, and no mistake in point of fact, the liability of the parish could not be repudiated and the question retried.[6] Again, when the admission is made on the information obtained by the board in answer to its own inquiries, and is afterwards found to be erroneous, it is nevertheless binding. 'It would be exceed-

[1] Beattie *v.* Greig, 9 July 1875, 2 R. 923.
[2] Arthur *v.* Stewart, 4 P. L. (2) 278.
[3] Taylor *v.* Strachan, 8 Nov. 1864, 3 M'P. 34.
[4] Beattie *v.* Greig, 9 July 1875, 2 R. 923; Beattie *v.* Arbuckle.
[5] Gow *v.* Young, 9 February 1877, 4 R. 448.
[6] Carter *v.* Stewart, 8 Feb. 1871, 4 P. L. 278.

ingly inconvenient,' says the Lord Justice-Clerk, 'if it were not in the power of the parochial board to terminate all questions of this sort on reasonable and apparently satisfactory information.' There are circumstances in which the Courts of law will not enforce a contract if it is impeached as being the result of mutual mistake, whether a mistake of law or of fact. When parties contract under a mutual mistake or misapprehension as to their relative and respective rights, *e.g.* in ignorance of the fact that the property forming the subject of sale already belongs to the buyer, the agreement is liable to be set aside;[1] but in arranging the settlement of a pauper, the relation between the inspectors is not that of contracting parties. They could not compromise the question of liability. Each is bound to see that justice is done to his own parish according to the facts which he has elicited in the course of his investigations; and if the matter is thus settled, the arrangement is not to be disturbed by one of the parties on the ground of mistake. It must be assumed that he was himself to blame for not ascertaining the truth sooner; but if a parish obtains an admission on a statement which is either untrue or calculated to mislead, it will not be allowed to found upon it as settling the question. 'That,' said the Lord President, 'would be a plain encouragement to bad faith or recklessness of statement, and can receive the sanction of no Court.'[2]

The admission remains binding as long as the pauper is chargeable to the parish, and the circumstances remain the same. When chargeability permanently ceases, the admission comes to an end. Any break in the chargeability is immaterial unless the circumstances are sufficient to establish

[1] Bingham *v.* Bingham, 1 Ves. Sen. 127; Cooper *v.* Phibbs, L. R. 2 H. L. 149. Lord Westbury, discussing the meaning of the maxim: 'ignorantia juris neminem excusat,' points out that *jus* is here used in the sense of denoting the general law, the ordinary law of the country; and when it is used in the sense of denoting private right, the maxim has no application.[1]

[2] Innes *v.* Ironside, 8 June 1868, 1 P. L. (2) 531.

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[1] Dickson *v.* Halbert, 17 Feb. 1854, 16 D. 586, a case of discharge *sine causa*. See observations on Cooper *v.* Phibbs and Beauchamp *v.* Winn, L. R. 6 H. L. 223, by Lord Ormidale in Aitken *v.* Baird, 10 July 1877.

the convalescence of the pauper from the original pauperism. For instance, where it appeared that a pauper was supported for a short time by her sister instead of the parish, but was never self-supporting, it was held that the admission of liability ought not on that account to be disturbed.[1]

The parish is not entitled under the statute to exercise the power of removing the pauper to his own parish of settlement on the ground that the latter refuses to pay a sum in name of expenses of management. The inspector is not justified in accepting from another parish any remuneration for the performance of his statutory duties, and the practice which formerly prevailed of charging a commission is illegal. The parish of settlement will be relieved from the charges of removal by a tender of proper security for the weekly sustenance of the pauper. It also may insist that these payments should not be more frequent than quarterly and half-yearly; but it is not entitled to object to the manner of relief on the ground, for instance, that the pauper is not a proper object of out-door relief, and should be sent to the poorhouse, and would be more satisfactorily dealt with in a poorhouse. Nor is the parish entitled to remove the pauper on the ground that the relief given is in their opinion inadequate, the sufficiency of the relief being a question for the Board of Supervision.[2]

Questions have occurred as to whether the terms of a correspondence between the inspectors imported an admission or not; but these cases are usually cases of circumstances.[3] 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.[4]

[1] Arthur *v.* Stewart, 4 P. L. (2) 278.
[2] R. 105.
[3] See Scott *v.* Oliver, 8 March 1861, 5 P. L. 67.
[4] M'Donald *v.* Taylor, 3 July 1863, 9 P. L. 348.

SETTLEMENT.

CHAPTER XIV.

SETTLEMENT BY BIRTH AND SETTLEMENT BY PARENTAGE.

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 seems to have been borrowed from the law of England about the end of the last century, to express the relation which a pauper holds by birth or residence to the particular parish which is bound to relieve the rest of the community of the duty of providing for his 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 the word in this sense is 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 bodily or mental infirmity to make a living, aliment sufficient for his wants has been guaranteed him by statute, no matter where he is locally situated. The law of settlement has been framed, not for the protection or benefit of the pauper, but of the ratepayers, by distributing the burden of maintaining the poor, according to certain fixed principles, among the different parishes into which the kingdom is divided.

[1] Per Inglis, L. Pres., in Miles *v.* Simpson and Greig, 19 July 1867.

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 legislation 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, by declaring 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, cap. 74, while repeating the enactment that 'nane be thoiled to beg in an parochin that are born in ane 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.'

The principle of all these Acts was that the birthplace was the parish liable, if there had been no continuous residence elsewhere, for a definite term, and nothing could be simpler than this law of settlement. 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 the children with their father; and, consequently, that any settle-

[1] 1535, cap. 22.

ment 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 possesses 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.

The settlement of birth is that which a person has by the mere act of coming into the world. With respect to every native of the kingdom, the law is that, *prima facie*, the place of his settlement is the parish in which he was born. We say *prima facie*, because if the parish of birth can show that the pauper, at the date of chargeability, was in possession of a settlement by residence, the latter is the parish liable; but it is for the parish of birth to make this out. The relieving parish seeking reimbursement is not concerned with any controversy which may arise between them on the subject. It is bound, indeed, to prove the place of birth. It is not enough to show that the house in which he was born 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.[2] '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.'[3] 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

[1] See Adamson *v.* Barbour, 30 May 1853, 1 Macq. App. 378.

[2] Anderson *v.* Mackenzie, 3 M'P. 253; Hopkins *v.* Ironside, 3 M'P. 424.

[3] Per L. J.-C. Inglis in Hopkins *v.* Ironside, 3 M'P. 424.

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 Scotchman, must have a settlement somewhere; and till they find it out, the relieving parish must continue to bear the burden.'[1] On the other hand, when the birth is admitted, the onus lies on the birth parish to relieve itself, by showing that the pauper is in possession of a settlement elsewhere. If that settlement is the result of marriage, the latter must be proved; if of residence, it must be shown 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 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 many inconveniences. No doubt there is one case, decided in 1822,[2] 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 ground, viz. that when the child was born she was possessed of a settlement by residence in her own proper parish, and that this settlement descended

[1] Hopkins *v.* Ironside and Wallace, 27 Jan. 1865, 7 P. L. 376.

[2] Dalmellington *v.* Troqueer, 22 Jan. 1822, 1 S. 259 (N. E. 244).

to the child, appears to have been sustained, and the point is now quite fixed that, where there is no fraud, birth in a parish constitutes a birth settlement, even although the mother has been unexpectedly seized with the pains of labour when temporarily in the parish, *e.g.* attending a market.[1]

In England, by statute 54 Geo. III. cap. 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;[2] and when the birth occurs in a union workhouse, the infant is held to be born in the parish on whose account the mother was received and maintained in the workhouse.[3] But there is no similar provision in the law of Scotland, and the character of the house in which the birth takes place, *e.g.* a maternity hospital, infirmary, or jail, does not affect the question.

In proving the place of birth, declarations on the subject by the father or mother are admissible.[4] The parents may 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 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.[5] 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;[6] but all the circumstances connected with the desertion, the age, etc., have to be considered.

The rule that every native of the kingdom must have a settlement somewhere, applies, of course, only to orphan children, or persons practically in that position through the desertion of their parents. English or Irish paupers, who have no settlement in Scotland, are removable with their

[1] Craig *v.* M'Lennan, 14 May 1867, 39 S. J. 390 (Lord Ormidale).
[2] See R. *v.* Manchester, 4 B. and A. 504.
[3] R. *v.* St. Clement Danes, 32 L. J. 25, M. C.
[4] Hay *v.* Murdoch, 19 Jan. 1854, 16 D. 364.
[5] Thomson *v.* Pollok, 17 Nov. 1808, F. C.
[6] Wilson *v.* Greig (Lord Neaves), 2 P. L. M. 633.

dependants under age, even although some of these may have been born in Scotland, because it is the family which is removed. An insane wife is not removable without her husband, nor the children without the father, and the question of settlement or no settlement is answered exclusively by the facts applicable to him.

Settlement by Parentage.

To prevent the dispersion of the different members of a family through the various parishes in which they were 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.'[1]

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;[2] but for some years after the Poor Law Act, the rule was confined to the case of the derivative settlement having been so acquired.[3] 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 facts of this case were: In 1845, 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

[1] Hume *v.* Pringle and Halliday, 22 Dec. 1849, 12 D. 411.

[2] Coldingham *v.* Dunse, 28 July 1799, M. 10,582; Howie *v.* Alyth, M. Poor, Ap. 1.

[3] 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 Sc. J. 419, 1 Macq. 376.

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. In moving the judgment, the Lord Chancellor observed 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 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.' It was therefore laid down that the principle cannot be confined to a settlement *by residence*, but must extend to the father's settlement, *however acquired, by birth, by his own residence, or by his father's residence.*

The result is, that under no circumstances can a pupil child have a settlement different from his father's, when he is a native of Scotland. If his 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 Scotchman 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. To throw children on the settlement

[1] Hopkins *v.* Ironside, 27 Jan. 1865, 3 M'P. 424.

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 breaking 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[1] in which it was pleaded that a mother could not acquire a settlement for her child, 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 Fowlis 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 Fowlis Wester had the effect of conferring a settlement not only on herself, but on her daughter. So, when the father died in Linlithgow in 1840, survived by a widow who lived in Kilmallie till 1849, it was held that the settlement thus acquired was acquired for herself and an imbecile son, who became chargeable after her death in 1851.[2]

If the father, having been born out of Scotland, dies without a settlement, the maiden settlement of the widow revives for the benefit of herself and family. In an early case, a woman who, before her marriage, lived for six years in Duddingston with her father, and, on being deserted by her husband, an Englishman, returned to it with three children, claimed relief from that parish. The Court rejected the claim on a ground which cannot now be supported, namely, that a deserted wife, during the subsistence of the marriage, could not acquire for her children a residence in any parish so as to entitle them to aliment

[1] Crieff *v.* Fowlis Wester, 19 July 1842, 4 D. 1538.

[2] Grant *v.* Reid, 22 May 1860, 22 D. 1110.

from the poor's funds.[1] But it would rather appear that the true ground of judgment was, that the woman was not a proper object of relief; and the point was not determined till the case of Gibson *v.* Murray. In this case, the father of the pupil children, an Englishman, married, and died in Scotland without having acquired a settlement.[2] 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.[3] 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, the children must fall back on the parishes in which they were severally born. This argument was assented to in the opinions of Lord Curriehill, Lord Justice-Clerk Hope, and Lord Murray. But the rest of the Court thought that the mother herself being still alive, was practically 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. There was no difference in such a question between the maiden settlement of the mother *before* marriage, and a settlement acquired by her residence *after* the husband's death. 'I see no greater difficulty' (said Lord Deas) 'in holding the children's own birth settlement to be suspended by the liability of the

[1] Pennicuick, 3 March 1813, F. C.
[2] Gibson *v.* Murray, 13 June 1854, 16 D. 926.
[3] Scot *v.* Scot, M. 16,361, 5 Br. Sup. 872.

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 children are truly to be regarded as in the meantime members of the mother's family, 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.' The parish liable was therefore the parish of the mother's birth.

In the above case the father had died in this country; but as regards the settlement of the widow and children, the death and desertion of the husband are the same; and till he chooses to return, the wife is restored to those personal rights which belong to a widow or a single woman. In the case of Carmichael *v.* Adamson,[1] 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 September 1857, and died on 3d October following. The mother's native parish of Glassary 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

[1] 28 Feb. 1863, 1 M'P. 452.

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.'

In the above case, as well as in Gibson *v.* Murray, the pauperism of the family having arisen during the mother's life, practically the only question before the Court was, where was her settlement at the time of her death? and it was the necessary result of the facts to find it in her own parish of birth.

The right of a woman left a widow, with infant children, to take the husband's place as head of the family was, however, fully recognised. The principle was even carried the length of throwing on a stepfather's parish the burden of the first family, should the widow marry again.[1] This judgment, however, was carried by a narrow majority.[2] It is opposed to other cases.[3] As Lord Ormidale pointed out, it is contrary to

[1] Greig *v.* Adamson and Craig, 2 March 1865, 3 M'P. 575.

[2] The dissenting judges were Lords J.-C. Inglis, Curriehill, Cowan, Benholme, Neaves, and Ormidale.

[3] Dinwoodie *v.* Knox, Shaw's Just. 215; Hay *v.* Scott, 23 Nov. 1852.

the rule long settled in England, which has never attempted to carry the notion of family unity the extravagant length of combining two families entire strangers to each other. But it should be kept in view that the pauper was the *widow*. The settlement of the children at her death was left open.

When the father and mother are both dead before the pupil becomes chargeable, he is clearly within the description 'of orphans and other poor children within the parish, who are left destitute of all help,' and who, by the Act 1661, cap. 38, are directed to be put on the roll of ordinary paupers, *i.e.* of the parish in which they were born.[1] The child, notwithstanding his nonage, has thus by force of law a settlement in his own right; and if both parents have died without a settlement, the orphan will be chargeable to the parish in which he was born. If the mother has predeceased the husband, no question will arise as to her settlement, and the only competition will be between the husband's settlement, if any, and the birth parish of the pupil. Where it appeared that an Englishman had married a Scotchwoman, born in A, and there was a child of the marriage born in B, both parents being dead before the pauperism of the pupil arose, it was held that the parish liable was the parish of B, in which the pupil was born; because the father was, at the time of his death, the sole head of the family, and it was the only parish liable on his account, if any, which could come into competition with the child's own native parish.[2] A pupil became chargeable in 1875, when he was nine years old; the father died in 1866, and the mother (after marrying again) in 1872. Her settlement was then a residence settlement of the second husband, and this having been lost by absence, a competition arose between the child's own birth parish and that of the father. The latter was found liable, because nothing was transmitted to the pupil by the second marriage.[3]

In Scotland, the attainment of puberty effects an important change in the rights and personal status of a child. A

[1] 1663, cap. 16; 1672, cap. 18. See Lord President's opinion in Carmichael *v.* Adamson, 1 M'P. 452.

[2] Greig *v.* Hay and M'Laine, 18 May 1858 (Lord Benholme), 1 P. L. 37.

[3] Beattie *v.* M'Kenna, 8 March 1878.

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 disposing of his own person, and even of contracting marriage. 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.[2] 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 or without his guardian's will.[3] 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 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*. Both are words of doubtful meaning;[4] but they have come to be used to signify the act or occurrence

[1] Ersk. Pr. i. 7, 36. [2] *Ibid.*

[3] See Bank. i. 6, 1; Bell's Prin. sec. 1630; 2 Fraser, 27; Marshall *v.* M'Donald, M. 8930; Graham *v.* Graham, M. 8934; Anstruther, 1 Fount. 613; Ersk. Inst. i. 6, 55.

[4] 'I am not favourable to the use of the word "emancipation" in such cases (cases of settlement), because I am not sure from what a minor is emancipated by our law. It is not well settled to what extent a father has power over his minor child; but I greatly doubt whether all the earnings of a minor *pubes* belong to the father. "Forisfamiliation" is also a word of doubtful meaning. In one sense, a child is not forisfamiliate so long as he has a claim to *legitim*. The true question seems to be, Is the child still a member of the father's family, so that the person of the child is sunk in the father's as regards residence?' Per Lord Neaves in Fraser *v.* Robertson, 5 M'P. 819.

by which a child has ceased to be a member of the father's family in the sense of being a *dependant* for whom he is bound to provide. By our law, 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. In both England and Scotland, a pupil is necessarily a part of the father's family; he cannot be anything else. But when pupillarity ends and minority begins, there are, says Lord Stair,[1] 'probable reasons for holding that if a child be out of the family exercising a trade apart, he is *forisfamiliate*.' This doctrine was applied in the case of Cockburnspath.[2] A 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. There is an unfortunate looseness in the report as to the age at which the residence began to be counted; but it must have been when he was over fourteen, as, apparently, his actual residence in the parish gave him the requisite three years, and something to spare. Erskine goes still further, and says that children in minority, who set up a separate employment for themselves, may be said to be emancipated or forisfamiliated, even although they continue in the father's family.[3] But it is well known that, amongst the poorer classes, children from an early age are sent out to work, to help to swell the family income with their slender earnings, and in parochial administration we should require some distinct evidence of the original relation being severed before regarding a person as out of the class of 'dependants.' If still living with his parents, the minor should be clearly proved to be self-supporting. When, however, the minor leaves the paternal roof to enter on some independent em-

[1] Stair, iii. 8. Sec. 45.

[2] Heritors of Cockburnspath *v.* Coldingham, 9 June 1809, F. C.

[3] Inst. i. 6. Sec. 53. This is qualified by the words, 'in so far as relates to that stock,' given by the father. See also Stair, i. 5, 13.

ployment, or goes into service, or sets up a house of his own, or is married, the original relation is terminated, even although he should be constrained by the force of unexpected circumstances soon to return. The matter for inquiry is, Whether he has ceased to reside with his parents in the hope and expectation of being able to do for himself, and the result is not affected by the fact that supervening events have led to a change in his plans. Where it appeared that a young man in minority left his father's house to go into service, where he remained eight months, and then returned permanently disabled by paralysis, the Lord Ordinary (Lord Wood) held that his connection with the father's house had been so effectively broken that forisfamiliation had taken place, and 'that having once truly ceased to be a member of his father's family, the tie could not be renewed so as to enable the case, in the matter of settlement, to be taken as the same as one of an unforisfamiliated child permanently disabled.'[1]

The effect of forisfamiliation on a settlement held derivatively from the parent, is a question which has recently given rise to much controversy, and on which the cases do not all agree.[2]

In what is known as the Lasswade case,[3] the question

[1] Thomson, 13 Feb. 1851, 23 Sc. J. 304. Lords J.-C. Hope and Moncreiff, however, carefully reserved this point.

[2] The present tendency in both England and Scotland is to curtail as far as possible the operation of the principle of derivative settlements, which often works great injustice by imposing on parishes the burden of families with which they have no connection. By the English Poor Law Amendment Act, 1876 (39 and 40 Vict. cap. 61), it is enacted, sec. 35: 'No person shall be deemed to have derived a settlement from any other person, whether by parentage, estate, or otherwise, except in the case of a wife from her husband, and in the case of a child under the age of sixteen, which child shall take the settlement of its father or of its widowed mother, as the case may be, up to that age, and shall retain the settlement so taken until it shall acquire another. An illegitimate child shall retain the settlement of its mother until such child acquires another settlement. If any child in this section mentioned shall not have acquired a settlement for itself, or, being a female, shall not have derived a settlement from her husband, and it cannot be shown what settlement such child or female derived from the parent without inquiring into the derivative settlement of such parent, such child or female shall be deemed to be settled in the parish in which he or she was born.'

[3] Heritors of Lasswade *v.* St. Cuthbert's, 6 March 1844, 6 D. 956.

debated was, whether the parish liable for a woman who had fallen with child was the parish of Newlands, in which she was born. In 1834, at the date of chargeability, she was twenty-six years of age, and had been in service since she was twelve years old. Her father left her with her grandmother in 1814 (when she was about six years old), resided in Edinburgh until 1822, and then removed to St. Cuthbert's, where he died in 1832. The judgment of the Court was, that in 1820, when she attained the age of puberty, the pauper, as well as her father, acquired a legal settlement (by his residence in Edinburgh), and that her original settlement in Newlands was thereby dissolved, and was never at any after period revived. It was also found that this derivative settlement continued to her for the next fourteen years, because 'she never afterwards resided for three years continuously in any one parish, and therefore, that in her own right she never acquired any new legal settlement to disturb or displace that which she had acquired in Edinburgh.' This case occurred before the Poor Law Act; but in Hume *v.* Pringle, by which it was followed, and which raised the question of a parentage settlement equally remote,[1] the effect of the new statute had to be considered. In this case the pauper had enlisted at the age of fifteen in 1807, and forty years after, namely, in 1847, it was proposed to go back on the settlement which he then derived from his parents. The Court, however, sustained the plea that under the new law the settlement had been lost by absence, and the parish liable was the parish of birth. It was held to be incumbent on a person taking a residential settlement through his parent at the time of forisfamiliation to keep it up by continuous residence in the same manner as the parent himself is required to do, sec. 76 applying to every person claiming a residential settlement, whether original or derivative.[2] In like manner, the forfeiture is incurred by the absence of both parent and child. A father, possessed of a residential settlement, left the parish in 1852, and died in 1854. His daughter, who was emancipated by his death, became chargeable in 1857, without having in the interval returned to the parish. It was held that, although

[1] 18 Dec. 1849, 12 D. 411.

[2] Robertson *v.* Melville, 24 Feb. 1860, 22 D. 894.

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.[1]

But when the derivative settlement is the birth settlement of the father, how long does it subsist for the benefit of the child? A birth settlement being subject to no forfeiture, the logical result of the above cases is, that it subsists for ever, and thus the statutory settlement of birth is practically annihilated. If the pauper had no 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. 'I do not think,' said Lord Neaves,[2] '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 residence 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. But it was declared that the burden of maintaining a pauper who, when he becomes chargeable, is above fourteen, forisfamiliate, and 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.

In the case in which this was determined, the material facts were these: the pauper was born in the parish of Edin-

[1] Allan *v.* Higgins, 23 Dec. 1864, 3 M'P. 309.

[2] Craig *v.* Greig and M'Donald, 18 July 1863, 1 M'P. 1172.

burgh in 1851, and became chargeable at the age of sixteen. His father, who had died when the pauper was ten years old, without having acquired any residential settlement, was born in Lasswade. It did not appear that either of the lad's parents had ever become objects of parochial relief, and the question lay between the city of Edinburgh, as the parish of the pauper's own birth, and Lasswade, as the parish of the father's birth.

The doctrine (deduced from the cases to which we have referred) that a son at emancipation steps out of the family, with the settlement, whatever it may be, which then belongs to his father as its head, was rejected by a majority of the judges. They held that the judgment in Barbour's case was inapplicable when the pauper had passed the years of pupillarity, and when the father was dead. 'Looking,' said Lord Jerviswoode, 'to the position which the individual so situated occupies in law, free from parental authority, entitled to choose his own residence, and who may be bound, morally at least, to leave his original home with a view to secure his own livelihood; capable of contracting marriage, and coming under an obligation to support a wife and family, it would, I think, tend to push the principle of the case of Barbour beyond its due limits, were it to be held that the settlement of the pauper continues to be that of the deceased father.' In these opinions Lord Colonsay concurred; and the present Lord President, without hesitation, expressed the 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.' His Lordship pointed out that, '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. . . . 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 to

any other kind than an arrangement of convenience, dictated, it may be, in whole or in part, by natural affection.'

Although, in this case, the father was dead, the principle of the decision is, it is apprehended, equally applicable to a case in which the pauper has, by emancipation, ceased to be a dependant on his father. It must also apply where the settlement sought to be charged was a settlement acquired through residence. But, unfortunately, on this point the law is left in some uncertainty owing to two conflicting judgments in the Supreme Court.

In the first case, Ferrier *v.* Kennedy,[1] the father had died possessed of a residential settlement in Auchinleck when the pauper was between eighteen and nineteen years of age. A few weeks after his father's death, he enlisted, and went on foreign service, and remained abroad for about twelve years. He returned, and became chargeable at the age of thirty-one. It might have been sufficient for the decision of the case in favour of Auchinleck, that the settlement held derivatively in that parish at the father's death, when the pauper was eighteen, was lost by absence, even though that absence had been in the military service of the Crown, the man being unmarried and having no home in the parish. But it was expressly determined by the Court, that the principle settled in the cases of Craig,[2] M'Lennan,[3] and Hume,[4] was distinctly applicable. 'The result of the father's death was to emancipate the son; and if the son,' said Lord Deas, 'maintained himself during the three weeks between his father's death and his own enlistment, or if he fell into poverty towards the end of three weeks, instead of twelve years, afterwards, still, even in that case, he would have fallen into poverty after emancipation, and would have been chargeable on his own parish.' Lord President Inglis said he had no doubt on the subject. In this case the mother did not survive.

Soon after this judgment the same point was raised in the other Division of the Court, in the case of the Inspector of St. Cuthbert's *v.* Cramond.[5] The pauper was born on 18 July 1853, in the parish of Cramond, where his father then resided. At Whitsunday 1855 the father removed to St.

[1] 8 Feb. 1873, 11 M'P. 402. [2] 1 M'P. 1172. [3] 10 M'P. 908.
[4] 22 Dec. 1849, 12 D. 411. [5] 12 Nov. 1873, 1 Rettie 174.

Cuthbert's, where he continued to live with his family, including the pauper, until his death, on 12 September 1860, at which date he had a settlement by residence in St. Cuthbert's. The pauper, along with other members of the family, obtained relief from St. Cuthbert's until 1863, when she married again. He was now ten years of age, and continued to reside in the parish until 1871, when he enlisted, and, being discharged as unfit for service, he became chargeable as a lunatic. The question submitted to the Court was, whether the parish bound to support the pauper was the parish of St. Cuthbert's or the parish of Cramond. The Lord Justice-Clerk said that he was clearly of opinion that the pauper had a residential settlement in St. Cuthbert's in his own right, and that he never lost it. 'The doctrine was fixed by the case of Hume *v.* Pringle, and it has been confirmed by more than one subsequent decision, that a father who acquires a *residential* settlement for himself, not only acquires it for his children as well, but that the settlement so acquired for the children is not a mere accessory or incident of the father's settlement, but a settlement to the children in their own right, subject to be retained or lost in the same way, and under the same conditions, as if it had been acquired by themselves.' When a rule of this kind was established by solemn decision, it was his Lordship's opinion that the Court ought to adhere to it. Lord Neaves observed: 'The pauper admittedly began with a good residential settlement, and it is a startling proposition to which I cannot assent, that on his arrival at puberty he lost that settlement, though he continued to reside in the parish.' The second point contended for in the same case, was that the mother having married when the pauper was a pupil, the settlement of the second husband inured to the children by the first; but Lord Benholme observed: 'I think a derivative residential settlement derived from the father is neither lost by the child reaching the period of puberty, nor by the second marriage of the mother.' In the case of M'Lennan *v.* Waite,[1] there is a remark by Lord Kinloch to the same effect. He said that he did not consider the decision in Craig's case to interfere with the condition of children, whether below or beyond

[1] 28 June 1872, 10 M'P. 908.

puberty, who were unemancipated, and are residing in family either with their father or mother, after the father's death; but in regard to emancipated children, the case settled that their arrival at puberty *eo ipso* discharges any settlement derived from the parent, and in default of any other settlement throws them on the parish of 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 inure to the illegitimate child. This view was, however, subsequently overturned,[3] and it was decided by the whole Court that the rule was not liable to 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

[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.

[3] Hay *v.* Thomson, etc. (Campbell's case), 6 Feb. 1856, 28 Sc. J. 191, 18 D. 510.

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.*' But an illegitimate child living apart from his mother, on attaining the age of puberty becomes forisfamiliated, and has then a settlement in his own right in the parish of his birth.[1]

Lunatic Children.

While the law presumes absolutely that every able-bodied 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

[1] Greig *v.* Ross, 10 Feb. 1867, 4 Rett. 465.

family, and removed to a place of safety; and his maintenance there 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.[1] As insanity reduces a lunatic to the state of a pupil, a person who has been insane from infancy can acquire no direct settlement, save the settlement which belongs to him by birth; and this can come into operation only in the event of his holding no derivative settlement through his parents. It was so decided in Gladsmuir *v.* Preston.[2] A woman, who was a farm-servant in the parish of Saltoun, was delivered in 1791 of a female bastard child, who 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: 1st, That a natural child takes the settlement of its mother, not of its own birth; 2d, That a child living separate from its parents while in pupillarity does not acquire a separate settlement; and, 3d, That a lunatic child falls to be supported, both during 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 held 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.[3] But this judgment is no longer of authority. The settlement of 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.'[4] In

[1] 20 and 21 Vict. cap. 71, sec. 76.
[2] 11 June 1806, M. App. Poor, No. 5.
[3] Thomson *v.* Steuart and Morris, 19 July 1850, 12 D. 1266, 22 Sc. J. 598.
[4] Per L. P. in Hay *v.* Paterson, 29 Jan. 1857, 19 D. 329, 29 J. 152.

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, as a lunatic child in puberty takes the settlement of the parent, the burden devolved on the parish of the father's birth. In Hopkins *v.* Ironside [1] and Walker *v.* Russell,[2] it was held that while the father is alive, an imbecile child, though past the years of pupillarity, is still to be considered as a pupil; and in Lawson *v.* Gunn,[3] where the father died after the majority of a child imbecile from infancy who became chargeable at the age of twenty-three, it was held that the parish of the father's birth, as the parish of the lunatic's derivative settlement, was liable. But permanent disability to earn a livelihood, if not combined with mental incapacity, does not prevent a forisfamiliated minor from having a settlement in his own right.[4]

[1] 27 Jan. 1865, 3 M'P. 424.
[2] 24 June 1870, 8 M'P. 893.
[3] 21 Nov. 1876, 4 Rett. 151.
[4] Greig *v.* Ross, 10 Feb. 1877, 4 Rett. 465.

CHAPTER XV.

SETTLEMENT BY MARRIAGE.

A WOMAN, when she marries, loses her previously existing settlement. It is, however, incorrect to regard marriage as a means of acquiring a settlement for the wife. Personally she acquires nothing, but the effect of the marriage is that two individuals have now to be fed and maintained by the husband's parish instead of one. The reason is, that a married woman has in contemplation of law no existence independent of the husband, and any claims competent to her can only be made through him, and against persons liable on his account. As the *consortium vitæ* is eminently the first object and primary duty of the married relation, the spouses are legally only one person so long as the relation subsists. Between them they have only one domicile. The husband's house is her home. Her person is entirely merged in that of her husband. But, personally, she forms no relation with her husband's parish. The very fact of her absorption in the person of the husband renders such a thing needless. 'She has,' says Lord Kinloch, 'no settlement of her own of any kind whatever. In poverty it is not she that is the pauper; it is her husband, on whom constructively she forms a burden.'[1]

The rule is not affected by the circumstance that they happen to live in different parishes. They may agree to live apart, but so long as the separation does not amount to desertion, they are, for the purposes of the poor law, considered as living under the same roof. Should a woman abandon the society of her husband for the companionship of some other man, and the life, begun in dissipation, end, as it usually does, in destitution, the question for the relieving parish is not where

[1] Kirkwood *v.* Manson, 14 March 1871, 9 M'P. 693.

is the woman's settlement, but where is the settlement of the husband.

The principle now stated, that the effect of marriage is not to create or transfer a new settlement to the wife, but to extinguish the old one, has only been settled after much discussion, and the earlier cases are now of interest only as showing how completely it was ignored.

In Hay *v.* Skene,[1] the view taken was that the rule as to married women amounted to no more than this, that the woman lost her maiden settlement by getting the new one; and that, consequently, she did not lose the former unless she acquired another settlement by force of the marriage from her husband in Scotland. The facts of the case were, that a woman became chargeable as a lunatic in Edinburgh in 1847, who in 1841 had been 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. It was held, however, that as, by the poor law statutes, every person born in Scotland has 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 Scotchwoman, the wife of a foreigner who had no settlement in this country to which she could have recourse, the principle had no application. As 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

[1] 13 June 1870, 12 D. 1019.

is good to the wife, and which has truly become hers, that the parish of birth makes out a defence that relieves them.'

From this judgment Lord Moncreiff dissented; and it was subsequently decided that the opinions of the majority could not be supported. The result of the case was right enough in itself, because the liability might have been laid on the wife's birth parish on other grounds, namely, that she was a deserted wife, and therefore practically a widow at the date of pauperism. But the sound opinion is, that by the marriage the wife's settlement is not merely suspended, it is really extinguished or annulled. In the words of the present Lord President: 'A married woman is in law incapable *stante matrimonio* to have any settlement in her own right, or independently of her husband. If her husband has a settlement, that also is her settlement. If her husband has no settlement, just as little has she.'[1] It follows that a woman, born in Scotland, who marries a foreigner without a settlement, is reduced to the position of having no settlement at all.[2] This was decided in the case of M'Crorie *v.* Cowan.[3] 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, 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.

[1] M'Crorie *v.* Cowan, 7 March 1862, 24 D. 72.
[2] Carmichael *v.* Adamson, 28 Feb. 1863, 1 M'P. 452.
[3] M'Crorie *v.* Cowan, *sup.*

On her husband's death, the settlement belonging to him at the time of his death enures to the widow and her pupil children. The family is thus kept together, which, says Lord Kinloch, 'is one grand aim of the Scottish Poor Law.' The settlement thus enuring may be lost. 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, the forfeiture is incurred. 'The parish,' says 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.'[1]

If the settlement held by the widow, derivatively from her husband at the time of his death, is in his birth parish, it endures till it is displaced by the acquisition of a new one. Thus, if by marrying a second time she ceases to be a widow and again becomes a wife, her prior marriage is obliterated as a fact in her history, and all claim at her instance against the settlement of the first husband is at an end. So much is this the case, that even the children of the woman by the first husband become a burden along with her on the settlement of the step-father;[2] just as when a widow gives birth to an illegitimate child, mother and child are both burdens on the settlement which she holds derivatively from her deceased husband.[3] The settlement is hers, for both herself and children, and it is immaterial how it may have been acquired.

[1] Allan *v.* Higgins, 23 Dec. 1864, 3 M'P. 309.
[2] Greig *v.* Adamson and Craig, 2 March 1865, 3 M'P. 575.
[3] Hay *v.* Thomson, 6 Feb. 1856, 18 D. 510.

But this right to proceed against her husband's parish endures only so long as the status of wife or widow remains unchanged. If she becomes a widow, and the deceased husband has had no settlement to leave her, her maiden settlement, if she have one, will survive; but if she marry again, any settlement got from her first husband is absolutely lost by her second marriage. An Irishman died, possessed of a settlement, acquired by eight years' residence in the parish of Dailly. He left Dailly in 1862, and died in Govan in 1865. The widow was relieved by Dailly till 1868, when she married again; the second husband being another Irishman, who had no settlement in Scotland. They continued to reside in Govan, and the second husband died there in 1869. It was held that she had now no settlement in Dailly, because the only settlement which she could have derivatively, after her second marriage, whether as wife or widow, must be the settlement of her second husband.[1]

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 to 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 on which a person may fall back 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 a conditional settlement by birth. (2) That as by marriage the 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

[1] Kirkwood *v.* Manson, 14 March 1871, 9 M'P. 693.

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 may keep up; but whether she do so or not, it is the utmost measure of the inheritance which she derives 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 through his surviving widow to make 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 two derivative settlements are impossible.

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 and never returned. The husband was born in the parish of Dunse; the widow in Prestonpans.

The result of the judgment was, that this theory of a person having two co-existent rights of settlement at the same time—one defeasible, and the other contingent on the defeasibility occurring 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;

[1] Hay *v.* Waite and Carse, 24 Feb. 1860, 22 D. 872.

and that any person, *sui juris*, who has possessed a residential settlement and then lost it, falls back on the parish of his own birth.

In the chapter on Relief we have seen that, under the poor law, a deserted wife is looked on as practically a widow; and it is now quite fixed that, as regards any question of settlement, the death and desertion of a husband are the same. The point, however, has not been settled without much controversy. The question first arose between the parishes of St. Cuthbert's, Edinburgh, and St. Nicholas, Aberdeen.[1] 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. The question was, whether the wife, by her separate industrial residence for over three years in St. Cuthbert's, had acquired a residence there. 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.

The Court, however, overruled all these arguments. The husband, it was said, 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

[1] Gray *v.* Fowlie, 5 March 1847, 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.

return, it could not be said to be lost during his absence; and so their Lordships decided.

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, on the principles of the judgment, would be to bring in his parish of birth, because no distinction can be taken between a settlement acquired by residence or birth.

But an important advance was made in the next case which occurred on this subject, and the above opinions were held to be erroneous. The case referred to is that of Carmichael *v.* Adamson,[1] of which the facts have been already mentioned. 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, and died on 3d October 1857.

Some of their Lordships, including the Lord President, Lord Curriehill, and Lord Ardmillan, were in favour of the rule established by Gray *v.* Fowlie being maintained,—namely, 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. It was, however, 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 was confirmed in the later case of Mason *v.* Greig,[2] which related to the settlement of a woman, who, having been deserted by her husband in 1855, when he enlisted, and

[1] 28 Feb. 1863, 1 M'P. 452. [2] 11 March 1865, 3 M'P. 707.

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, 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.

[1] 3 March 1813, 17 F. C. p. 249.

[2] See Lord Moncreiff's remarks on this case, 9 D. 830, and *conf.* Gibson *v.* Murray, *sup.* 296. The mother was found able to support her children. Hay's Dec. 89.

In 1868, a man, born in Edinburgh, deserted his wife and family, who were assisted by St. Cuthbert's, where the husband had a residential settlement, till June 1872. They then went to the City parish of Edinburgh, and became again chargeable to St. Cuthbert's in March 1873. That parish, on the ground that the husband had now been absent for more than four years, sued South Leith as the parish of the husband's birth. The question then came to be, whether the absence of the husband was capable of destroying the residential settlement derived by the wife and children. The Court decided it was not. If, instead of deserting his wife, the husband had died, nothing had since occurred to deprive the widow of her settlement. 'The rule,' says the Lord President (as to desertion), 'admits of no qualification except in this respect, that desertion remains equivalent to death only so long as the desertion lasts. The deserting husband may return, and then a new law may come in to regulate the parish which is bound to maintain him or his wife and family. He may revive a settlement which during his desertion cannot be gone against for the support of the wife and family during his desertion, or he may put an end to the settlement which has ensued to the wife and family. But with that exception, the rule laid down is of universal application, and I should be sorry to see it disturbed.'[1]

With regard to a relieving parish, if application be made by one section of a family in the parish of A, none of them possessing any settlement in Scotland, and, subsequently, relief is given to another section in the parish of B, the latter has no relief against the former. Thus, where a foreigner resident temporarily in the parish of Stirling, and having no settlement in Scotland, became insane, and chargeable to that parish, and two years after, while the lunatic was still alive, his wife and children became chargeable to the parish of Govan, where they were then residing, it was held that the parish of Stirling was not bound to repay Govan the advances made on behalf of the wife and children.[2]

Nor, apparently, can the wife, if a lunatic, be removed when the husband is an able-bodied man. The husband is not the

[1] Greig *v.* Simpson and Craig, 16 May 1876, 4 P. L. 324, and 3 Rett 642

[2] Kirkwood *v.* Knox, 2 P. L. (2) 173.

pauper; he is not entitled to relief; and he is making no claim to it. He is willing and able enough to support himself and a sick wife, but unable, out of the slender wages of a labouring man, to comply with the requirements of the law, which insists on all insane persons being isolated from the rest of society, and treated in certain establishments under public authority. The law takes the lunatic wife from her husband against his will, and prevents him from maintaining her in the only way compatible with his means. Lunacy has therefore always been regarded as an exceptional case in the poor law. It is the wife herself who is the pauper, and the parish liable is the parish of the husband's settlement at the date of admission. The husband may shift from parish to parish, and may lose his first settlement and acquire another, but the burden of the wife's maintenance does not fluctuate with the husband's movements. This is provided for in sec. 95 of the Lunacy Act,[1] which enacts that 'every pauper lunatic, to be detained under the powers of this Act, shall be sent to the asylum for the district in which the parish of the settlement of such pauper lunatic is situated.' And in sec. 75[1] it is enacted, that 'every pauper lunatic, detained in any district asylum under this Act, shall be deemed and held to belong and be chargeable to the parish of the legal settlement of such lunatic at the time the order for his reception in such asylum was granted; and the expenses 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.' It has been decided that the effect of these various enactments is, that the rule is universal whether the pauper is confined in a district asylum or not, viz. that the parish of settlement, at the time relief is first afforded and downwards, is to continue chargeable. The facts of the case in which this important question was decided were, that the lunatic wife was born in Lochbroom in 1819, and was married in 1838 to Robert Tweedie. On the very day of the marriage she deserted her husband for another man, and afterwards maintained herself by her own industry. From 1854 to

[1] 20 and 21 Vict.

1860 she lived in the parish of Dunoon as a domestic servant. On the 23d of August 1861, she became chargeable as a pauper lunatic to the parish of Stirling, in an asylum at Musselburgh, and in 1869 she was removed to the Stirlingshire district asylum at Larbert. The husband, for twelve years prior to 1859, lived in the parish of Portree, where he had acquired an industrial settlement, and from 1859 till his death in 1871 he lived in the parish of Bracadale, without applying for or obtaining relief. The question therefore practically came to depend between the parish of Portree and the parish of Bracadale. It was decided that the parish liable was the parish of Portree, because that was the parish of the wife's settlement at the date of her first committal to the asylum; and although the husband subsequently lost his settlement in Portree, and acquired a new one in Bracadale, and thus came to have a different settlement from that of his wife, this result was the effect of the statutory provision of the Lunacy Act, by which the general principle applicable to the case was overruled. 'But,' as Lord Kinloch observed, 'there was nothing in the result more anomalous than it would be to hold, that after becoming an object of parochial relief, the settlement of the still continuing pauper lunatic shifted from one parish to another. Whether the result arising in a case like the present was contemplated by the framers of the statute, or whether they had their view confined to the case of a personal as distinguished from the case of a derivative settlement, may be fairly questioned; but so, I think, the words of the statute import, and I am not at liberty to deny the effect in any merely speculative view.'[1]

It is evident that a husband may assign a separate residence to his wife without thereby enabling her to acquire a settlement in the parish, or himself to acquire one through her. Thus, a sailor, whose wife became insane, found it necessary, being himself frequently at sea, to break up his house and send her for safe keeping to a lodging in another parish. Here, when on shore, he occasionally came to see her, and after residing in this manner for five years she was removed to an asylum. It was decided that no claim existed against the parish where she so resided, as the house of the

[1] Palmer *v.* Russell, 1 Dec. 1871, 10 M'P. 185.

friend with whom she lived was neither the residence nor the home of her husband.[1]

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 binding 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 subsequent 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.[2]

[1] Jackson *v.* Robertson, 1 R. 342.

[2] Beattie *v.* Baird, 16 Jan. 1863, 1 M'P. 273.

CHAPTER XVI.

SETTLEMENT BY RESIDENCE.

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. It was one of the recommendations of the Poor Law Commission, that the period of residence for acquiring a settlement should be extended to seven years; and to save the many difficulties which had occurred with regard to the industrial character of the residence, it was proposed that this 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 the remaining recommendations of the Commissioners in regard to settlement by residence were embodied in the 67th section of the Poor Law Act. This section in substance provides 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; 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.

Lunatics. — 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 a distant 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 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 he was boarded by his father in a lunatic asylum; it was held that these absences did not interrupt the continuity of the residence.[5] But it is mental as opposed to physical weakness

[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, 19 Dec. 1857, 20 D. 341.

[4] Watt *v.* Hannah, 19 Dec. 1857, 20 D. 342.

[5] Greig *v.* Chisholm, 19 Dec. 1857, 20 D. 339.

which is here considered. A person unable from physical weakness to earn a living is capable of forisfamiliation, and of acquiring a settlement of his own.

Husband and Wife. — We have already seen that the unity of the married relation is inconsistent with the wife having any rights of her own under the poor law. If she is destitute, the husband being able-bodied, the wife has no right to relief. If they are living apart, she has no settlement separate from him; but if he deserts her, she becomes practically a widow, and thereafter, by her own separate residence, she may acquire a settlement. Thus, where a woman, deserted in 1855 by her husband (who enlisted in the army, and went abroad with his regiment), came to Edinburgh and supported herself until 1863, it was held that she had thereby acquired a settlement in Edinburgh, the Lord President observing, that a deserted wife removing into another parish and maintaining herself for more than five years becomes chargeable to such parish on falling into destitution.[1]

On the other hand, it has also been determined that a husband may, in such circumstances, acquire a settlement in the parish to which he has betaken himself, notwithstanding the fact that, during the period of his desertion, the wife has been getting relief from the parochial funds. A married woman was deserted in 1855 by her husband, who at that time had a residential settlement in the parish of Old Machar. She received parochial relief until 1856, and then supported herself until 1860 (by which time the settlement in Old Machar was lost through the husband's absence). She again became chargeable to St. Nicholas, the birth parish of the husband, and remained chargeable until 1869. In 1868 it became known to the authorities that the husband was living in the parish of Stewarton, and had been residing there from 1863. It was held that this residence was sufficient to entitle him to acquire a settlement in Stewarton, and that parish was accordingly held liable in relief from the date of intimation.[2]

The desertion in such a case as the above is held to be

[1] Cummings *v.* Mason and Greig, 11 March 1865, 3 M'P. 707, 7 P. L. 382.

[2] Innes *v.* Ironside, 5 June 1868, 10 P. L. 531; Turnbull *v.* Walker, 20 March 1872, 10 M'P. 675, 5 P. L. 400.

equivalent to the husband's death or transportation.[1] It is desertion in the sense of sec. 80 of the statute. Such an abandonment of the wife to the charity of others indicates a wish on the part of the husband to escape from his legal responsibilities. The actual quitting of the wife by the husband, the concealment of his residence for the time, and the failure to supply her with the means of obtaining the necessaries of life, are the elements sufficient to compose desertion. But, as already observed, to constitute desertion he need not fly the kingdom. An Irishman residing in Scotland, who had no settlement, left his wife, who was a Scotchwoman, and went to reside in another part of Scotland, concealing his place of residence, and contributing nothing for the support of his wife and family. The wife having become insane, she and the family were supported by the parish in which they were found. It was held that the wife's birth parish was bound to relieve that parish of the sums expended, although the husband was able-bodied, and had never been out of the kingdom.[2]

A widow, by the death of her husband, is, of course, entirely free to act as she thinks proper. She may either keep up the settlement which she has derived from him at the time of his death, by living on in the parish, or she may acquire another settlement by removing to another parish. But if the husband has lived too short a time in the parish, she cannot eke out his residence by her own, so as to complete the period. 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, having no settlement in this country, and 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 resi-

[1] Per Lord Ardmillan in Greig *v.* Simpson, 16 May 1876, 3 R. 642.
[2] Johnston *v.* Wallace, 13 June 1873, 11 M'P. 699.
[3] Thomson *v.* Knox, 28 June 1850, 12 D. 1112.

dence, *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 time of his death.

A man died in Govan in 1859, having resided there for four years and four months. The widow, who lived on in the same parish, became chargeable in 1862. It was decided that neither of them had acquired a residence in the parish, first, because during the subsistence of the marriage there was no power in the wife to acquire a settlement of her own by her own residence, and after her husband's death the period of her own independent residence was too short for the purpose.[1]

Minor Children.—We have already seen that, as regards minor children, so long as they are *de facto* maintained as members of their father's family, no question as to their power of acquiring a settlement can arise. Their residence goes for nothing, being absorbed in that of the head of the house; and should they become entitled to relief, the question will be, What was the settlement of the parent of the pauper through whom the claim falls to be preferred? But it is only through their membership of the family that this disability arises, and it is a disability which may be brought to an end as soon as the child has reached the age of fourteen. At that age, in Scotland, a minor acquires many of the rights which, in other countries, are postponed until twenty-one. This emancipation may be effected either by his father's death, or by his betaking himself to an independent occupation in the manner already pointed out.

We have also seen how pupil children follow the settlement of the surviving parent, for the reason that the parish liable is liable for both mother and children. But when poverty occurs subsequent to fourteen, it would rather appear that the prior death of the father operates at the above date as the emancipation of the child. All legal authority over him, on the part of the mother, is now at an end. She has no power of the nature of the *patria potestas;* she has not even the right

[1] Kirkwood *v.* Wylie, 3 M'P. 398.

of a guardian over her son, unless she has been nominated curator by the deceased father, or chosen by the boy himself.

When the minor ceases to be a member of the household, he becomes entitled to acquire by his own residence a settlement for himself. The fact that he has gone into service, or enlisted in the army, or, in short, betaken himself to any employment by which he is able to earn his own living, is sufficient to indicate that he has been practically cut off from the parent stem. He has now started life on his own account, just as a daughter becomes forisfamiliated through her marriage, seeing that she becomes a member of another family through her husband. But here, again, the residence of the party before and after emancipation cannot be pieced together in order to make out a settlement. 'It is out of the question,' said Lord President Inglis, 'to say that a settlement can be acquired partly by the residence of the pupil in the family of the parents, and partly by the residence of the minor in his own right.'[1] In M'Lennan *v.* Waite, it appeared that the father died in 1857 in possession of a residential settlement in Contin, and that the widow, along with a daughter then eight years of age, removed in 1859 to the parish of Dunse, where they resided together until October 1866. In this residence of seven years the residential settlement of the father was lost to both the widow and child, and a residential settlement was acquired in Dunse for both. 'For I hold it,' said Lord Kinloch, 'to be settled by the case of Crieff *v.* Fowlis Wester,[2] that after the father's death the mother may acquire a residential settlement both for herself and for all the children residing with her, and forming along with her the family of which she is the head. I do not consider the settlement so acquired by the children necessarily to cease when each attains puberty. For puberty is not *eo ipso* emancipation, nor will the mere arrival of puberty necessarily cause the child to cease to be a child of the house. So it would unquestionably hold if it was the father who was left, and the children resided in family with him. I think it equally holds in the case of the surviving mother continuing to have her children living in family with her.' If, accord-

[1] M'Lennan *v.* Waite, 28 June 1872, 10 M'P. 908, 1 P. L. (3) 30.
[2] 19 July 1842, 4 D. 1538.

ingly, in the above circumstances, the child had become chargeable in October 1866 to the parish of Dunse, there would have been no doubt that her settlement was in that parish, although at the time she was fifteen years of age—three years above puberty. But in October 1866 she left her mother's house and went to reside in the parish of Kenmore, and, her mother dying in 1867, she did not become chargeable till June 1868, at which time she was an emancipated child past pupillarity. It was decided that her settlement was no longer in her mother's parish of settlement, but in her own parish of birth, because the effect of emancipation, combined with puberty, is, so soon as puberty arrives, to destroy the original settlement, and to place the minor's settlement in the parish of his own birth.[1]

Continuity.—It may readily be supposed, that in the first attempts to deal with the class just above pauperism, who are most likely to come under the operation of the poor law, the Legislature had particularly in view the specialties distinguishing their manner of life from that of the steady, industrious, and more settled portions of the population. They were an itinerant, thriftless, and mendicant class, taking up their abode in the large towns in winter, and wandering throughout the country in summer. It was vain to expect that they should have a house of their own, or even a permanent lodging; hence it was unnecessary to require that the manner of a man's life in a parish should answer any particular description to entitle him to be considered as settled in it. The Act 1579, cap. 74, in appointing the poor people to return to their 'ain parochin,' explains this to mean the parish in which they were born, and had their most common resort or residence seven years bypast; the Act 1672, cap. 18, speaks of the parish in which they had most haunted during the last three years; and the Proclamation 29 August 1693, of that in which they had last '*resided*.' The word 'residence,' therefore, came to be interpreted in a sense wide enough to embrace the idea which these different forms of expression would naturally suggest; and in the cases which occurred under the old law, the Court construed 'residence' or 'inhabitancy' with a considerable latitude. Thus, an itinerant dancing-master lived for four or five months every

[1] Craig *v.* Greig and Macdonald, 1 M'P. 1172.

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, and assoilzied the parish of birth.[1] But when the question came to be reconsidered in 1845, it was found necessary to draw the line with more strictness, by requiring the residence to be continuous, 'or without break,—that is to say, without such breaks as occur in the residence of every person, and are merely incidental to it.' 'It could never be meant,' said Lord J.-C. Inglis, 'that the statute should be so construed as that a person could not be away in pursuit of his ordinary business, or for an occasional visit of pleasure, or on account of some accidental occurrence interrupting the continuity of his residence. In short, the statute must be read with reference to such a kind of absence as either accidentally or incidentally occurs from time to time in the life of every one.'[2]

The new law has thus excluded from its operation all those cases of haunting and resorting which formerly were sufficient to found a settlement. For example, a hawker, who wandered about the country making and selling baskets, especially during the summer months, and always came back to Edinburgh for the winter, from which he was never absent for more than six months at a time, was held not to have acquired a settlement in Edinburgh, because, when he went away, he took his wife and family with him, and left behind him no house or place of business by which his connection with the town might be shown to have been maintained.[3]

But where there is no competing residence, it is enough to establish personal presence in the parish in such circumstances that no other place could be called his home; and if his manner of life leads him to live in one parish during

[1] Dalmellington *v.* Irvine, 3 Dec. 1800, M. Poor, App. 3.
[2] Hewat *v.* Hunter, 6 July 1866, 4 M'P. 1033.
[3] Crosby *v.* Taylor, 3 P. L. (2) 112.

one part of the year, and in another during the other, that will be preferred which is the scene of his industry or occupation. Thus, 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 usually employed as a shepherd from March to December, and that he went home to his father's in Kingussie during the winter months. Lord President M'Neill 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 his subsistence 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 man 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 Lord Justice-Clerk Hope) '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]

[1] Mackenzie *v.* Cameron, 10 Dec. 1858, 21 D. 93, where it was also said that the *onus* of showing where the pauper was during occasional absences lies on the parish of residence, and not on the parish of birth.

[2] Hay *v.* Kirkpatrick, 9 July 1851, 13 D. 1313.

The difficulty, however, is to say which of two parishes can be said to be his residence within the sense of the Act, when a man has been working in one, and his wife and children have been living in the other. He cannot have been residing in both at the same time; and it was at one time held, that unless the pauper was also shown to have been personally present in the parish, the circumstance that he had a house in it, occupied by his wife and family, was immaterial. Thus, a man who rented a house, and lived with his wife and family for eight months or so every year, hiring himself out for the season as a groom or gamewatcher in other parishes, was held not to have acquired a settlement;[1] for the residence of his family was not the residence of himself within the meaning of the Act. But latterly a different view has prevailed, and it is now agreed that a party must be held to have been residing in the parish in which he has his home, although, in the prosecution of his business, he may require to be absent for considerable intervals at a time. It has been decided by a series of cases, that when a man works in one parish, and lives, that is, has his home in another, his residence, for the purpose of the Poor Law Act, is not where he works, but where he lives.

In the case of Greig *v.* Miles and Simson,[2] a sailor became the tenant, from Whitsunday 1858 to Whitsunday 1863, of a house in North Leith, where he lived with his wife and family while he was not at sea, but in point of fact he was never at home for more than ten months at a time. One voyage lasted two years, and he was absent on voyages for more than half the whole period. The residence, however, was held by the whole Court, Lord President Inglis and Lord Benholme dissenting, to be continuous. The view which weighed with the judges in the decision of this case was, that the absence of the party was incidental to his trade, which necessarily took him much from his house and home; and if the residence was insufficient to enable him to acquire a settlement, no seafaring man could ever acquire one, and they would be reduced to the necessity of holding that the Legislature intended to exclude that numerous class of the community from the

[1] Hewat *v.* Hunter, 6 July 1866, 4 M'P. 1033.
[2] 19 July 1867, 5 M'P. 1132.

operation of the 76th section of the statute. Such a result, it was observed by Lord Curriehill, would be unjust, not perhaps to the pauper, but to the ratepayers of inland parishes, who would be burdened with the paupers of seaports and their families. Lord President Inglis and Lord Benholme differed on the ground that the judgment in effect held that a man might, through his wife and family, acquire a settlement in a parish without ever setting his foot in it; and when once the idea of home was substituted for continuous personal presence in the parish, which in their view was what the Act contemplated, the positive requirements of the Act would be lost sight of. 'I dissent,' said the Lord President, 'from the judgment to be pronounced, first, because it involves a forced and unreasonable construction of the words used in the statute in their ordinary meaning; and second, because I could not adopt it without contradicting my own words in several cases where I gave a deliberate judgment in which I understood several of my brethren now in the majority to concur.' In the above case there was no competing residence. The man's home is either in the midst of his family, or nowhere. But in the next case which arose, the Court went a step farther. A fisherman lived with his wife and family in the parish of Tingwall in Zetland, but every season he was absent for months at a time prosecuting his trade in the neighbouring parish of Bressay, where he lived on shore when he was not off in his boat at the fishing. As was pointed out by Lord President Inglis, the residence in Bressay was in fact of such a nature that, if it had been continuous, it would have been quite enough to have made a settlement, but it was decided that his absence in Bressay was to be considered as incidental and temporary; that he went there for the purpose, not of establishing a home different from the one he already held, but for the purpose of his business, and that his parochial residence was to be considered as all along in the parish of Tingwall.[1] 'During the whole time' (of his absence), said Lord Deas, 'he went backwards and forwards to his wife and family. He maintained them out of the produce of his industry. His relations all looked upon the house in Scalloway, where his wife and family lived, as his home, and

[1] Moncrieff *v.* Ross, 5 Jan. 1869, 7 M'P. 331.

there is no reason to doubt that he did so himself. That circumstance is by no means of such importance as it would be in a question of domicile, but it is not to be lost sight of in considering the character of the case.' Lord Ardmillan likened the case to that of a shepherd on a farm in Midlothian sent off to the Lammermoor hills with sheep for a certain portion of each year, but who leaves his wife and family at home until he returns. 'I humbly think,' said his Lordship, 'he would not thereby lose his settlement in the parish where his master was, where his service was, and where he had his home.' 'I do not think,' said Lord Kinloch, 'it is an accurate way of solving the question merely to count the number of hours or days during which the pauper was respectively present and absent. . . . There are many conceivable cases in which a man may be absent for much longer periods than he is present at home. For instance, the case of a commercial traveller, who may possibly be with his family little more altogether than a few weeks in the year.' In the next case which arose, Milne *v.* Ramsay,[1] the facts were that a man had a house in Lumphanan, where his wife and family lived, from August 1863 till August 1869, but he was absent for considerable periods at a time. In 1864 he worked for six months in another parish, frequently returning at night to his wife and family. In 1866 he was absent for ten weeks on an engagement in a parish 18 miles distant, and only returned twice during that time. In 1868 he worked in a parish 8 miles distant, for six months, and only returned for the night once a week or once a fortnight. Having applied for relief in August 1869 to the parish of Lumphanan, it was contended that the residence had been insufficient to satisfy the requirements of the Act. When a man was absent under a contract of service such as happened in this case, it did not matter where his wife and family resided. But the judges decided that a settlement had been acquired, Lord Cowan observing that 'where absence upon a special contract has been sustained as causing interruption, it was with regard to a servant going to a neighbouring parish for a year upon an engagement,—in such a case the continuity of his residence is certainly destroyed; but this was not absence of that cha-

[1] 23 May 1872, 10 M'P. 731, 5 P. L. (2) 460.

racter. The man's business was that of a shoemaker. He entered into the engagement when trade was slack; but it was of a temporary character, and at its termination returned to his wife and family, and resided where he lived before.' Lord Neaves said, 'the true question is, "where is this man's home?" not "where is his domicile?" In coming to a conclusion upon that point, we must necessarily be influenced by the inquiry where his wife and family resided, and where his earnings were remitted to and spent. Where men must, in consequence of their occupation, such as railway guards and commercial travellers, lead a migratory life, their true residence must be decided by the question of their *animus residendi;* and that parish must in general be liable in a pauper's relief, in which the proceeds of his industry have been spent.'

In another case the facts were these:—A farm-servant had a house in the parish of St. Fergus, occupied by his wife and family, he himself working under a half-yearly engagement on farms in the neighbourhood, and visiting his home from the Saturday and Sunday night to Monday morning as often as he could, sometimes once a fortnight, and sometimes two weeks out of every three. This continued from 1842 till 1866; and as the farms on which he worked, and the house which he rented, were always in the same parish, it was not disputed that he had thereby acquired a settlement. But during the period from 1866 to 1875, with the exception of three periods of six months each, in 1867–8, 1871, and 1873–4, he had been working as a farm-servant on six-monthly engagements on farms in various adjacent parishes, none of them more than 5 miles distant from the house containing his children, and latterly also his wife, whom he continued to give the necessary support.[1] In the case of Macgregor *v.* Watson,[2] it was decided that in such circumstances, the absence of the party being compulsory under a termly engagement, his residence must be held to be at the scene of his employment, even although he should occasionally at longer or shorter intervals, with the leave of his master, visit his

[1] Cruickshank *v.* Greig, 10 Jan. 1877, 4 Rett. 267, 5 P. L. (3) 153.

[2] 7 March 1860, 22 D. 965, where Lord Benholme distinguished the cases where there is a conflict of claims between two parishes, and where there is a want of sufficient residence in any one parish.

wife and family resident in another parish; but in the present case this judgment was practically overturned, Lord Gifford observing 'there was here no interruption of Webster's residence in St. Fergus. During the whole period he paid rent or taxes, if taxes were due, for the same house where his domestic establishment was. He does not settle down for work in one decided parish, but he wanders from one parish to another, and sometimes back to St. Fergus, and accepts work on the usual terms. The fact that he could only get the accommodation of a bothy explains why he never changed his home.' Lord Ormidale said, 'All the pauper's social ties were in St. Fergus, where his children had come into existence, and where he had all along spent his earnings to support his family, and where, in all probability, he had come to die. A humane and just interpretation of the Poor Law will not sever so close a connection as this is.'

Tradesmen living in a country village taking such employment as they can get in the neighbourhood, are often sent by their masters to a job at a distance, which may take weeks or months to finish. It is now decided that their absence on such occasions is insufficient to interrupt their residence in the original parish. In a case of this kind the facts were that a man, by trade a mason, left his home at Cardross in December 1866, and went to Arrochar, where he worked for some months at his trade. His wife, who was left behind, then locked up the house and furniture, and went to a neighbouring parish, where she supported herself by her own labour, till hearing that her husband was at Arrochar, she there joined him. On their return in May 1867 to Cardross, the lease of the house which they formerly occupied was expired, and their furniture was under sequestration for rent. In consequence they were obliged to go into lodgings; and having by arrangement with the factor subsequently got back their furniture, they took another house, where they continued to live in the parish. On the question whether their absence in Arrochar, in these circumstances, fell to be deducted in computing the residency in Cardross, the Court unanimously decided that it did not, although it was felt to be a specialty of some importance that in this case both the spouses were for some time absent from the parish.[1]

[1] Beattie *v.* Smith and Paterson, 25 Oct. 1876, 4 Rettie 19.

In contrast with this case we may here mention that of Allan *v.* Shaw and King.[1] A man, living with his wife and family in a room in her father's house in the parish of A, left and went to the parish of B to better himself. Obtaining work as a miner, he hired a lodging, and subsequently removed the few articles of furniture which he possessed, and was ultimately joined by his wife. In a few weeks they both returned to A, and resumed living in their old room, and ultimately took a house of their own. It was held that these facts amounted to a complete severance of his connection with the parish of A, 'because,' said Lord Neaves, 'whenever it is clear that a pauper had for some time, long or short, entirely given up his residence in a parish, it is of little importance how soon he may go back to it, for, in my opinion, the continuity, if once interrupted, cannot be restored; and when a person residing in one parish transfers himself by a plain overt act into another, and there goes on working in the way he did in the parish he has left, that, I think, should be held as a severance from the one parish and an adoption of the other.'

The question whether a man's connection with a particular parish is meant to be retained or severed thus does not depend on the length of his absence, but whether that absence was *intended* to be permanent or temporary. We do not mean to say that a party can be called in as a witness to say that he intended to reside in a particular parish, but in point of fact did not, for in all poor law cases the intention must be gathered from the positive acts of the party. 'Mere intention,' says Lord Neaves, 'as manifested by words only, and not carried into action, can have no effect in acquiring or losing a residential settlement.'[2] It is only admissible as an inference from such evidence as is furnished by the nature of the man's employment, and whether his house was given up or continued. As has been observed by Lord Justice-Clerk Inglis, 'what shall be held to be a party's settlement depends on matter of fact, and on that only, and the poor law regards nothing but facts in questions as to settlements, and pays no regard to the intention or purpose or will of the pauper, or to the interests of the pauper.

[1] 24 Feb. 1875, 2 Rettie 463, 3 P. L. (3) 189.

[2] Allan *v.* Shaw and King, *supra*.

The pauper has no interest in such questions. His interest is merely that he shall receive the needful sustentation which his condition requires, and it does not signify to him by what parish that sustentation is furnished. . . . The question of domicile depends upon entirely different considerations. It is essential, in considering the question of domicile, to consider what was the intention and purpose of the party, and mere physical fact alone is of no avail in a question of domicile. A man's domicile requires to be determined in order to regulate his succession or for some such purpose, and the main question in such an inquiry is, To what law did the person intend to subject himself so that it should regulate his succession or the like? I think it is from confounding these two entirely different matters that so many disputes have arisen in regard to this 76th section.'[1] There is no doubt of the entire soundness of these observations, and that it is of no consequence that a party had the intention to live in a particular parish, if he did not accomplish it. But the motive or purpose of the absence is as important as the absence itself, and thus the intention of the pauper cannot be thrown entirely out of view. Necessarily we must inquire what was the object of the party in leaving the parish at the time,—a consideration which is always material to the question whether the absence was subversive of, or merely incidental to, his residence in the original parish. 'It can hardly be doubted,' said Lord Deas, 'that, according to the course of decisions, the intention of a man to retain or abandon his residence is to be held an element to be taken into account in such cases, and that the mere fact of his bodily absence, though for a considerable period, is not of itself conclusive that the continuity of the residence has been broken. However, I fully admit,' added his Lordship, 'that the mere intention to return will not of itself preserve the continuity, and that, on the other hand, the length of absence may be such as, in some cases, to prove of itself that the continuity has been effectually broken.'[2] For example, in Hutchinson *v.* Fraser,[3] the defender laid some stress upon the fact that the pauper fully intended to return to her master's house, and resume her employment whenever her health was sufficiently

[1] Crawford and Petrie *v.* Beattie, 28 Jan. 1862. 24 D. 357.

[2] Beattie *v.* Smith, *supra.* [3] 11 Feb. 1858, 20 D. 545.

restored; 'but it seems to me' (said the Lord Justice-Clerk) '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.'

It is only of recent years that this element of the intention of the pauper himself has been allowed the significance to which it appears to be entitled. It was never doubted that, in the case of a labouring man hired by the day or week, who goes 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 so long as it was assumed that residence meant, and could only mean, the bodily presence of the person in the parish, it was supposed that when he had hired himself under a termly engagement to reside at the scene of his employment, his residence must be at the place in which he had bound himself to live, although he should occasionally, at longer or shorter intervals, with leave of his master, visit his wife and family residing in another parish. In such a case the question for decision was put by Lord Jerviswoode [1] 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 the residence was with his wife and family, and his absence at his work incidental to that residence.' And in accordance with these views, it was held that while 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[2]), without affecting his residence, it was going somewhat further than the decisions warranted, to say that the continuity of a labourer's residence was not interrupted by his engaging in service for upwards of seven months in a different parish. These cases, however, are not now law; and we find it laid down, in the recent case of Cruickshank *v.* Greig,[3] that

[1] Macgregor *v.* Watson, *supra;* Hewat *v.* Hunter, 6 July 1866, 4 M'P. 1033; Arthur *v.* Stewart, 4 P. L. (2) 278.

[2] Hastings *v.* Hughan and Semple, 27 Jan. 1866, 8 P. L. 331; and cf. Miles *v.* Simpson and Greig, 19 July 1867.

[3] *Supra.*

upon a popular construction of the statute, where a man's family is, his home is, and that is his residence, although he may have to go out of the parish in order to find his work.

The person's residence in the parish must continue for the full statutory period,—a rule which has always been strictly enforced. Thus, in a case under the old law, residence in a parish for three years *minus* a fortnight was found not to be sufficient, 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.'[1] It becomes important, therefore, to fix its commencement and termination. 'There are two points,' says Lord Cowan, 'in determining whether a residential settlement has been acquired, the *terminus a quo* and the *terminus ad quem* the period of five years has to run.' 'The statute,' said his Lordship, 'requires actual residence of five years; and if before the completion of that period the party leave the parish, whether voluntarily or compulsorily, whether of his own free will or as a convicted felon, against his will or as a lunatic having no will in the matter, whatever the cause of removal, the period not having been actually completed, no settlement is acquired.'[1] When residence is once well begun, it is a comparatively easy matter to hold that an interval which seems to be a break is really no break; but a gap at the commencement or the end cannot be got over unless it is filled up in some way, and the Court has always been very strict against any relaxation of the rule in this particular.

In general, the party's residence in a parish will be held to date from his first going into it, although his wife and family should continue living in a neighbouring parish for some time longer. Thus, a collier in May 1842 left his wife and family in the parish of A, and took temporary employment in the parish of B, where he lived in lodgings, his wife and family lodging in the same house in the former parish, and paying no

[1] Aberdeen Infirmary *v.* Watt, 15 Dec. 1858, 21 D. 117.

rent until December 1842, when they removed to B, and lived in the house along with the pauper until August 1847. Between May and December the husband visited his wife and children every alternate Saturday, remaining with them until the following Monday. It was held that the residence in B dated from May 1842, when the husband first went there, and not from December, when the whole family arrived, and that a residential settlement had in consequence been acquired. Lord Ivory says in this case, that however ambiguous might be the character of the man's own residence during the earlier months when he was living in lodgings, the after residence of the whole family in the same parish gave a character of consistency to what might otherwise be ambiguous.[1] This case shows that, in order to determine the true *punctum temporis* from which a residence may be said to begin, we must look at the question *retro*, in the light of the subsequent family history. Not unfrequently, when a change of abode occurs, the husband goes first to make the preparations for his wife and children to come after.[2] A man going into the parish of G in July 1854, lived there in lodgings, except for three weeks while absent at harvest work, until November 1854, when he brought his wife and family, and took up his house there. It was held that his residence commenced in July, at the time of his first arrival.[3] In the same case it appeared that he had continued to reside until May 1859, when, leaving his wife and family behind him, he was absent, working elsewhere, until August, when he returned to G, and finally removed with his wife and family in November. Inasmuch as it did not appear that he went for any definite time or any definite engagement, this latter absence was held to be immaterial.

Where an unmarried man'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;[4] and the English rule is the

[1] Hogart *v.* Petrie, 13 June 1851.
[2] Grant *v.* Reid and Taylor, 22 May 1860, 22 D. 1110.
[3] Hastings *v.* Hughan and Semple, 8 P. L. 331.
[4] Per Lord Justice-Clerk in Kirkwood *v.* Adamson, 24 May 1861.

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.[1]

In the computation of time, the rule which holds in this as well as other branches of the law is, *dies inceptus pro completo habetur*. The period is counted by days, not by hours;[2] and fractions of periods of twenty-four hours do not enter into the computation. The day on which the party comes into the parish, even though it be a few minutes before midnight, is the first day of his residence; and as soon as the last day of the five years is begun, the residence is complete. A pauper received relief on 4th January 1865 for the ensuing fortnight, and did not again apply for it till the 18th January 1869. Inasmuch as the first relief terminated at midnight of the 17th January, the interval between the two administrations was held to be more than four years—enough to annul a prior residential settlement.

A break during the currency of the five years will in general raise a different kind of case from that in which the party's sudden departure from the parish never allows the five years to be completed. 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

[1] Archbold's Poor Law, p. 506.

[2] Ogilvie, M. 336; Cochrane *v.* Kyd, 4 P. L. (2) 554, 9 M'P. 836.

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 had failed to prove a residential settlement in Falkirk.[1]

If a man out of work leaves his wife and family to seek for a situation elsewhere, and then returns and resumes his residence, 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.'[2] And so the result might have been different if he had died when absent;[3] 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[4] 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

[1] Beattie *v.* Leighton, 20 Feb. 1863, 1 M'P. 434.
[2] Hamilton *v.* Kirkwood, 13 Nov. 1863, 2 M'P. 107.
[3] But see per Inglis, J.-C., in Aberdeen Infirmary *v.* Watt, 21 D. 117.
[4] 6 June 1851, 13 D. 1057.

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 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 interruption, 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]

[1] 11 Feb. 1858, 30 Sc. J. 296.

[2] Hutchinson *v.* Fraser, 11 Feb. 1858, 20 D. 545, 30 Sc. J. 294.

Where there is a complete break up of the 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]

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

[1] Hay *v.* Beattie and Hardie, 1 Dec. 1857, 20 D. 146.
[2] Adamson *v.* Kirkwood, 24 May 1861.
[3] Grant *v.* Reid and Taylor, 22 May 1860, 22 D. 1110.

the residue of it as the period of actual residence.[1] 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 of a convict sentenced to transportation. In Hay *v.* Croll and Beattie,[2] 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 his 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 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 where he left his family.' The continued presence of the family in the parish constitutes a constructive residence within the meaning of recent cases. But when the man leaves neither home nor family behind, nothing remains by which his connection with the parish can be maintained; and the fact that his absence is in the service of the Crown is immaterial.[3]

Again, the residence is not held to be interrupted by imprisonment on a criminal charge.[4] A person (who had been a soldier and had deserted) resided in the parish of Rhynie from

[1] Archbold, P. L. 708. [2] 5 Feb. 1858, 20 D. 507, 30 Sc. J. 272.

[3] Mason *v.* Greig, 11 March 1865, 3 M'P. 707.

[4] Per Lord Neaves in Beattie *v.* Leighton, 1 M'P. 434; and Lord Cowan in Aberdeen Infirmary *v.* Watt.

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.[1]

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.[2] Nay, it was not even requisite that the party should have been engaged in an industrial 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, cap. 18, had permitted to reside among them a person described as a common vagrant, were bound to support her when she fell into indigence.[3] But it was always the rule, that no person who was a proper object of relief could acquire a settlement by residence for any length of time, even although he had never received aid from the parish.[4] 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

[1] Roger *v.* Macconochie, 5 July 1854, 16 D. 1005, 26 Sc. J. 549.
[2] Cockburnspath, 9 June 1809, 15 F. C. 300.
[3] Rescobie *v.* Aberlemno, etc., 28 Nov. 1801, M. 10,589.
[4] Runciman, 24 June 1784, M. 10,583.

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, being a paralytic patient, had lived with his father in the parish of St. Cuthbert's, and had 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.[1] 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 one cannot have so long as one 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.[2] 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 charity, not having become a burden on the parish, was held entitled to the benefit of her residence, and to have acquired a settlement.[3]

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,

[1] Thomson *v.* Gibson and Borthwick, 13 Feb. 1851, 23 Sc. J. 304.
[2] Hay *v.* Cumming, 6 June 1851, 23 J. 490, 13 D. 683.
[3] Hay *v.* Ferguson and Lennox, 17 Jan. 1852, 14 D. 352.

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,[1] 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] These precedents are now of doubtful application; 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 able-bodied 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 inspector, which did not prevent the pauper from acquiring a settlement.[5]

Whether a person, by residing in a parish as an inmate of a charitable institution, acquires a settlement in the parish in which it is situated is a difficult question, on which there is

[1] 23 Nov. 1852, 25 Sc. J. 33.

[2] Turnbull *v.* Kemp, 27 Feb. 1858, 20 D. 703.

[3] Craig *v.* Simpson, 19 July 1859, 2 P. L. 80, 21 D. 1363; Johnstone *v.* Black, 13 July 1859, 2 P. L. 8, 21 D. 1293. But this case is doubted in Cochrane *v.* Kyd, 9 M'P. 836.

[4] Petrie *v.* Meek, 21 D. 614; Jack *v.* Thom, 14 Dec. 1860, 23 D. 173.

[5] Porteous *v.* Blair, 19 D. 181.

no decision of the Supreme Court. Such a person is not an involuntary resident; he may leave whenever he thinks proper, just as he may be dismissed at any time by the directors of the institution of which he is an inmate. The relief given him is not parochial relief, and therefore it must be conceded that he comes within the letter of the Poor Law Act, as an inhabitant of the parish. Still it would be impossible to overlook the hardship to those parishes where such benevolent institutions have been established.[1]

Non-Retention of Settlement.

A settlement once acquired may be relinquished or abandoned; and it is conclusive proof of the pauper's having done so, that prior to his requiring relief he left the parish and remained out of it for a certain length of time. The statute enacts that,—

'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.'

This is a considerable modification of the old law, under which a settlement once acquired by residence was never lost by mere lapse of time or abandonment of the parish. An 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]

[1] See judgment of the Sheriff-Substitute of Stirling as to an inmate of Simpson's Asylum, holding that a settlement had been acquired. 2 P. L. (2) 193.

[2] Crawford *v.* Petrie, 28 Jan. 1862, 24 D. 357 (reversing Melville *v.* Flockhart, 19 Dec. 1857).

[3] Crailing, M. 10,573, and other cases in Dict. *voce* 'Poor.'

There is no reason why five years should have been taken as the period for losing a settlement, unless it be that that was the time required to gain one; but, from the manner in which the clause has been expressed, the practical effect is, that a settlement may be lost without a new one being gained, inasmuch as the forfeiture is incurred 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.[1] 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 proviso, it will be observed, really consists of two parts. It defines what absence or non-residence in a parish means, and declares what the effect of that absence is to be. If a man leaves the parish, and remains out of it for five years, his claim upon it is at an end. Should he return at any time during the five years for a shorter period than an entire year, the result is the same. The year's residence, which suffices to prevent his becoming a non-resident, must be continuous—that is, of the same character as the residence required to gain a settlement.

The first condition is, that he shall be bodily out of the parish. The argument has been sometimes offered, that as residence implies volition, a man ceases to be resident in a parish by becoming lunatic; and if a pauper were confined for more than a year in an asylum in a parish in which he had acquired a settlement, he would not retain his settlement.[2] It is apprehended, however, that a change from residence to non-residence, in the sense of the statute, can only be effected by the bodily removal of the pauper beyond the bounds of the parish. The lunacy supervening subsequent to his removal does not prevent the application of the section, but it is not the same as removal itself. In the first case which occurred on this point, it was assumed that intelligence being requisite to gain a settlement, the want of intelligence prevented its being lost after it was

[1] Johnston *v.* Black, 13 July 1859, 21 D. 1293.

[2] Per Lord President in Crawford *v.* Petrie, 24 D. 357.

gained. A party who became insane in Glasgow in 1844, where he had been living for many years, was removed to the house of a brother in the parish of Burntisland, and, after two years, was taken by warrant of the sheriff to the Lunatic Asylum of Montrose, where he was supported out of his own funds until June 1853, when, his own means being exhausted, a claim was made against his former parish of settlement. Although nine years had now elapsed since he had left the parish of Glasgow, it was held by the Court, Lord President M'Neill dissenting, that that circumstance was immaterial, because during all that time he had been incapable of either losing his former settlement or acquiring a new one.[1] The judgment may perhaps be supported on the ground that when the pauper became insane he was still residing in Glasgow, and his leaving the city was neither intelligent nor voluntary; whereas the relinquishment which the statute contemplates is that of which a man is capable, who, in changing his abode, knows what he is doing. But the above decision was subsequently overruled by the whole Court in the case of Crawford *v.* Petrie.[2] There was, indeed, this difference between the two cases—the party became insane, not before, but after he left the parish. After living for seven years in Barony parish, the pauper went in 1851 to Cambusnethan, and, becoming insane in 1854, was removed to Gartnavel, where he was supported by his father for some time, and then, supplies failing, he became a proper object of parochial relief in 1856, when he had been five years out of the parish of Barony. It was decided that the bare fact of non-residence for the statutory period was sufficient to extinguish the prior residential settlement, and that the causes or reasons of the non-residence were wholly immaterial. Lord Benholme observed: 'To this loss of settlement, I think, no intellectual purpose is required. He may fall into lunacy, and if he is out of the parish for more than four years, I think, the statutory condition not being fulfilled, loss of the settlement will follow. He is not residing in the parish either with or without intelligence, and it is that fact in the present case which leaves me no room for doubt. But suppose

[1] Melville *v.* Flockhart, 19 Dec. 1857, 20 D. 341.

[2] 25 Jan. 1862, 24 D. 357.

he had never left the parish, but after having, by means of his intelligent residence, acquired a residential settlement, he becomes a lunatic, and lives all the rest of his life in an asylum in the same parish, are we to say that in that case he has lost his residential settlement? I rather incline to think his settlement would enure to him, since he has never been out of the parish, but I refrain from expressing any decided opinion upon that question.'

The Lunacy Act has so far provided against this and other similar difficulties, by declaring that the settlement of every lunatic shall be taken to be fixed as it stood at the date of his seclusion in an asylum. Sec. 75[1] enacts that 'every pauper lunatic detained in any district asylum under this Act, shall be deemed and held to belong and be chargeable to the parish of the legal settlement of such lunatic at the time the order for his reception in such asylum was granted, and the expense of his maintenance in such district asylum shall be defrayed by such parish accordingly; and the residence of any 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.' It is assumed that, under and in accordance with the directions contained in sec. 95,[1] a pauper lunatic shall be sent to the asylum for the district in which the parish of the settlement of such pauper lunatic is situated, but in point of fact the early regulations on this subject have been relaxed by the Lunacy Board. In many instances district asylums have not been established, and sec. 75[1] has therefore been construed to apply to the case of all pauper lunatics, whether actually confined in a district asylum or not.[2]

When a person becomes a proper object of parochial relief, the running of the period requisite to destroy the settlement is stopped by his being entered on the roll, and the claim intimated to and admitted by the parish of settlement. But without such a recognition of the pauper, it would rather appear that the parish of settlement is entitled to get the benefit of his absence. The Court will not admit to proof allegations that the pauper ought to have been admitted

[1] 20 and 21 Vict. cap. 71.

[2] Palmer *v.* Russell, 1 Dec. 1871, 10 M'P. 185.

to the roll as a proper object of relief at an earlier period. A pauper received relief to the extent of 3s. in money and 4s. in coals, in the parish of Gladsmuir, and a claim was intimated against the parish of Haddington, where she had her settlement at the time. The parish of Haddington sent their medical officer to visit the woman, and upon his report that she was perfectly able to work, they refused the claim. This refusal was acquiesced in both by the parish of Gladsmuir and by the woman herself, and no further relief having been given until the lapse of more than four years and a day after the pauper's departure from the parish of Haddington, it was held that the claim was at an end.[1] Even admission to the roll is insufficient, unless the claim is intimated to and admitted by the parish liable. The parish is always entitled to say, 'You have left us more than five years ago, and we have never heard of you since. You have not kept up your connection with us.'[2] If the party is not recognised as belonging to the parish, it is evidently of no consequence whether he has received relief from another parish or not. A man, born in Oldhamstocks, lived in Ayton until 1848. At Whitsunday of that year he took a house in the parish of Coldingham, and supported himself without parochial aid until December 1851, when, having been disabled by reason of erysipelas in the hand, relief was granted, and Ayton then admitted its liability to relieve Coldingham. Relief continued to be administered to the pauper until February 1852, when it was stopped in consequence of instructions, and the defenders were afterwards repaid. The pauper continued to live in the parish of Coldingham, and to support himself without parochial relief, from February 1852 until August 1855, when he became permanently infirm, and was a proper object of relief. The question then arose, where was his settlement at the latter date? He had now been seven years out of Ayton, and the settlement was lost unless the relief given in 1853 had the effect of stopping the running of the period. It was decided that it had this effect, because the granting of relief and the admission by Ayton was in effect putting him on the roll of Ayton. 'That,' said Lord President

1 Turnbull *v.* Kemp, 27 Feb. 1858, 20 D. 703.

2 Per Lord President in Allan *v.* Higgins, 3 M'P. 307.

M'Neill, 'is a separate element altogether, and takes the case out of the class of cases in which the mere fact of physical absence is to be considered.'[1] But when there is no such admission, the clause applies, 'because,' said the Lord President, 'it has reference to the mere matter of absence, to the effects of absence, and nothing else.'

A pauper, born in Edinburgh in 1845, removed with her father to the City parish of Glasgow, where he acquired a settlement, and went into the Barony parish in May 1854. In September 1856 he left his daughter and went to England. Relief was given to the daughter in 1857, but no notice was sent at the time to the parish of settlement. The father having returned, repaid the aliment in 1858–9, and the daughter became finally chargeable in 1860, by which time the father had lost his residential settlement in the City parish by absence. It was held (1) that the daughter, when she first obtained relief, had a settlement in her own right in the City parish, in respect of her father having a residential settlement; and (2) that as she was a proper object of parochial relief, the relief given to her prevented her losing that settlement by absence either of herself or her father from that parish.[2]

When a man leaves a parish accompanied by his family, he severs the connection not only for himself, but for all claiming through him. Should he die during the running of the five years, his absence is taken to be continued by members of the family who survive. Thus, a man who possessed a residential claim in New Monkland, left it in 1852, and died in 1854. A minor daughter, by whom he was accompanied, became a pauper in 1857. Neither the father nor the daughter having resided in the parish between 1852 and 1857, it was contended that the girl on the father's death succeeded to the residential settlement of which he was then possessed, and that at his death she began a new period of absence, independent altogether of the two years she had been living out of the parish along with her father. The Court, however, rejected this view, and decided that on the father's death the child who inherits his settlement, if she remains absent, carries on the absence begun by the father, and that

[1] Johnston *v.* Black, 21 D. 1293.

[2] Beattie *v.* Adamson, 23 Nov. 1865, 5 M'P. 47.

the parish was entitled to say to the family, 'you have not kept up your connection with us, and we are entitled to the benefit of the provision of the statute.'[1]

We may observe, in conclusion, that the existence or non-existence of a settlement is determined by the facts as they exist at the date of chargeability. Were it otherwise, a relieving parish might control the decision of the question by delaying notice for a few months until a settlement was lost or acquired. But the giving or withholding of notice has no effect on the law of settlement.[2] In cases of desertion it may be different; for in the parish to which the husband has betaken himself, he is allowed to acquire a new settlement, which ultimately becomes liable for the wife and children whom he has left behind.[3] But, in the general case, the purpose of notice is not to fix the parish liable, but the amount, or rather the commencement of the claim for which it shall be liable. It does not ascertain the date down to which a settlement may be acquired, but the time from which liability is to run against the settlement already acquired. 'The effect,' says Lord Neaves, 'of not giving notice is, that the parish which delays to do so cannot recover payments made before the date of the notice. But it is not enacted that the parish of settlement is altered by giving or neglecting to give notice. The date when a man becomes a pauper is the one which fixes the liability of his parish of settlement.'[4]

[1] Allan *v.* Higgins, 23 Dec. 1864, 3 M'P. 309.
[2] Per Lord President in Beattie *v.* Adamson, 5 Mc. 47.
[3] As in Turnbull *v.* Wallace, *sup.*
[4] Beattie *v.* Adamson, *sup.*

CHAPTER XVII.

THE PUBLIC HEALTH ACT.

THE Public Health Act came into operation on the 1st of November 1867. It consolidates into one Act the whole statute law relating to public health, and confers on the Local Authorities, who, subject to the Board of Supervision, are entrusted with its execution, very ample powers for the removal of nuisances, the regulation of lodging-houses, the introduction of a proper system of drainage, the supply of wholesome water, and the adoption of other measures calculated to prevent or mitigate disease.

Local Authority and its Officers.

In Scotland, the local authority is the parochial board in places without a police or municipal authority, or beyond its jurisdiction; and where any parish is partly within and partly beyond the jurisdiction of the town council, or the police commissioners, and of a parochial board, or of any two or more of such bodies, the Board of Supervision decides which of them is to act for the parish, or how the parish is to be divided between them.[1] Should a parish or burgh be situated in more than one county, the Board also settles in which county it shall be held to be situated for the purposes of the Act.[2]

The parochial board should keep a separate record of its proceedings in this capacity.[3] The Act of Parliament adopts it as existing under the Poor Law Act for the administration of the public health, and all the rules relating to its constitution and the conduct of its business remain the same. There cannot be two chairmen,[4] one for the poor law and the other for the

[1] Sec. 5. [2] Sec. 6. [3] R. 13. [4] R. H. 12.

public health; and the heritors may vote by means of a mandatary, as under the poor law; but the functions which the Board has to perform under the two statutes are altogether distinct. The inspector of the poor is not bound to attend the meetings of the parochial board while acting under the Public Health Act, or to keep the minutes, or to take any charge of the proceedings; and cases may arise in which there is a collision of interest between the parochial board and the local authority for the public health.

In every parish containing a town or village with a greater population than 2000, the local authority is obliged to avail itself of the services of a permanent statutory officer, termed the 'Sanitary Inspector,'[1] who, except in the case where the local authority consists of a town council or police commissioners, or of a burgh with a population of 10,000,[2] is dismissible only by the Board of Supervision. In many parts of the country it may be expedient for several local authorities to have one inspector between them. A similar arrangement has been frequently found advantageous as regards the office of inspector of poor. The salary which they can afford to give enables an active, intelligent, and independent man to devote his whole time to the duties of his office; and it is obvious that, for the efficient working of any sanitary system, the detection and removal of nuisances, and the enforcement of statutory regulations, must be constant and continuous.[3]

The Board of Supervision has decided that the union of the offices of sanitary inspector and medical officer is incompetent; and they have refused to recognise appointments made without a salary, or for a limited period, as for six months.[4] Nor should the sanitary inspector act as a member of the parochial board. This is not only objectionable in itself, but would be incompetent under the rule which forbids a public body to appoint one of their number to an office of emolument under them.[5] It is not a compliance with the rule, that the inspector should be provided with a proper salary, to fix an amount which is evasive; and when a local authority, finding that they could not dismiss an officer whom

[1] R. H., 28 August 1871, p. 4.
[2] Sec. 8.
[3] R. H., 29 July 1870 and 28 August 1871.
[4] R., 1872, p. 7.
[5] R., 6 September 1872, p. 6; R., 1868, p. 6.

they had appointed, endeavoured to effect his removal by reducing his salary to a nominal sum, manifestly for the purpose of compelling him to resign, the Board of Supervision interposed. The local authority, they said, were not entitled to effect by indirect means, what they had no power to accomplish directly.[1]

With the leave of the Secretary of State, constables and officers of police may be employed as sanitary inspectors under the provisions of the Public Health Act; and the following rules have been sanctioned by the Home Office to meet the circumstances of counties or burghs having separate police forces, who may find it for their interest to employ the police in this manner:—

1. Any member of the police force of a burgh may be appointed to act as a sanitary inspector under the Public Health (Scotland) Act, within such burgh, provided the sanction of the Board of Supervision shall have been obtained to such appointment.

2. Any member of the police force of a county may be appointed to act as a sanitary inspector under the Public Health (Scotland) Act, in any parish or burgh (not having a separate police force) within such county, provided the sanction of the Board of Supervision and of the police committee of the county shall have been obtained to such appointment.

3. This order to take effect on and from the 1st January 1874.

The statute authorizes the local authority to make bye-laws to regulate various matters falling within their jurisdiction, such as the regulation of the duties of the inspector and medical officer, the regulation of newly-established trades, of lodging-houses in burghs, the removal of sick from ships, and the government of common lodging-houses; but these bye-laws are not effectual until they are approved of by the Board of Supervision. A bye-law, regularly made, has the same force within the limits for which it is made, and with respect to the persons on whom it lawfully operates, as an Act of Parliament has upon the subjects of the realm at large.[2] A pecuniary penalty is the appropriate remedy for

[1] R. H., 1872, p. 7. [2] Hopkins *v.* Swansea, 4 M. and W. 640.

its breach; and it has been laid down that, 'by necessary implication, the power to make a bye-law implies the power of enforcing it by fine.'[1] Payment of the fine may be recovered by action, or the distress of the defender's goods; but obedience cannot be enforced by the imprisonment of the offender;[2] and to be valid, the bye-law must be reasonable in itself, and entirely conformable to the statute.[3] At the same time, it may be bad in part and good in part, provided the parts are separable.[4] Further, the local authority has no power to make bye-laws for carrying out the general powers of the Act; only the special powers, as to which express authority is given, can be exercised in this manner.[5]

In the exercise of the power to make bye-laws regulating the duties of the sanitary inspector and medical officer, the following code has been adopted in many cases, with the sanction of the Board of Supervision:—

Sanitary Inspector.

BYE-LAWS recommended by the BOARD OF SUPERVISION for regulating the DUTIES of SANITARY INSPECTORS and INSPECTORS of COMMON LODGING-HOUSES.

1. The sanitary inspector shall attend, if required, meetings of the local authority and committees thereof.

2. The sanitary inspector shall make all such investigations and reports relating to nuisances and common lodging-houses, or as to the execution of the Public Health Act, as may be ordered by the local authority or the Board of Supervision.

3. The sanitary inspector shall from time to time prepare such special reports as to the sanitary condition of the parish or burgh or district to which he may be appointed, and also as to the condition of all common lodging-houses within the said parish or burgh or district, as may be required by the local authority or the Board of Supervision.

4. The sanitary inspector shall insert in a book, to be kept for the purpose (per Form No. 1), to be called the '*Sanitary Inspector's*

[1] Per Lush, J., in Hall *v.* Nixon, L. R. 10, Q. B. 152.
[2] Kidd Incorporations, vol. ii. 156.
[3] Edwards *v.* Bullock, 6 Q. B. 383.
[4] Per Baillie, Justice, in Clark *v.* Denton, 1 B. and J. p. 95.
[5] Reg. *v.* Wood, 5 E. and B. 57. Calder Navigation Co. *v.* Pilling, 14 M. and W. 76.

Journal and Report Book,' and to be provided by the local authority, notes of all his investigations and proceedings in the execution of his duty, and submit the same to every meeting of the local authority or committee thereof.

5. The sanitary inspector shall personally, or by an assistant to be appointed by the local authority, visit and inquire as to the sanitary state of all parts of the parish or burgh or district to which he has been appointed, at least once in *three months*, or oftener if required by the local authority, and report the result to the local authority.

6. The sanitary inspector shall personally, or by an assistant to be appointed by the local authority, visit and inquire as to the condition of each common lodging-house within the parish, burgh, or district to which he has been appointed, at least once every *calendar month*, or oftener if required by the local authority, and enter in his journal a report of the result.

7. The sanitary inspector shall report in writing to the local authority all unregistered common lodging-houses.

8. In addition to the stated periodical visits and inspections required by these bye-laws, the sanitary inspector shall make such investigations and visits as may be requisite, in order to ascertain the actual sanitary condition of any house or place, or premises, or lodging-house, within his parish, burgh, or district, and record the fact and the result in his journal.

9. Whenever it shall come to the knowledge of the sanitary inspector, whether by written complaint or otherwise, that a nuisance under the Public Health Act, from whatever cause arising, exists, or that any irregularity or violation of the rules and regulations in a common lodging-house has occurred, he shall intimate the same within twenty-four hours thereafter to the author of the nuisance, or to the keeper of the common lodging-house, as the case may be (per Forms Nos. 2 or 3), and on the expiry of the time allowed in the aforesaid intimation he shall ascertain and report the result in writing to the local authority, and act in accordance with such instructions as he may receive.

10. Whenever the sanitary inspector has reason to believe or to suspect that a contravention of any of the enactments of the Public Health Act (other than those referred to in the immediately preceding bye-law) has taken place, he shall immediately make inquiry, and report the result in writing to the local authority.

11. In every case in which it shall be reported or otherwise become known to him that any person in a common lodging-house is suffering from any infectious or contagious disease, the sanitary inspector shall forthwith report the same to the medical officer, and act under his instructions. But if there be no medical officer, he shall, on his own responsibility, adopt such measures for the care and proper treatment of such patient or patients as may, with the

advice of a medical man, be deemed necessary, to be reported without delay to the local authority.

12. The sanitary inspector shall be bound to observe and execute all lawful orders and instructions of the local authority and the Board of Supervision, applicable to his office; and if required, he shall attend upon the inspecting officer of the Board of Supervision, and afford him all information relating to the execution of the Public Health Act.

13. The sanitary inspector shall, if necessary, call upon the police to aid him in the execution of his duty.

14. It shall be the duty of the sanitary inspector to report without delay to the Board of Supervision and local authority the existence of any disease of an infectious or contagious kind within the district of the local authority, which, in the opinion of the medical officer, threatens to become dangerous or epidemic within the district.

Medical Officer.

BYE-LAWS recommended by the BOARD OF SUPERVISION for regulating the DUTIES of MEDICAL OFFICERS under the 'Public Health (Scotland) Act, 1867.'

1. The medical officer shall inform himself, as far as practicable, respecting all influences affecting or threatening to affect injuriously the public health within the district of which he is medical officer.

2. The medical officer shall inquire into and ascertain, by such means as are at his disposal, the causes, origin, and distribution of diseases within the district; and ascertain to what extent the same have resulted from, or may depend on, insanitary conditions capable of removal or mitigation.

3. The medical officer shall, by inspection of the district, both systematically at certain periods and at intervals as occasion may require, keep himself informed of the conditions injurious to health existing therein.

4. The medical officer shall be prepared to advise the local authority on all matters affecting the health of the district, and on all sanitary points involved in the action of the local authority; and in cases requiring it, he shall certify, for the guidance of the local authority, or of the sheriff, or any magistrate or justice, as to any matter in respect of which the certificate of a medical officer or a medical practitioner is required as the basis or in aid of sanitary action.

5. On receiving information of the outbreak of any contagious, infectious, or epidemic disease of a dangerous character within the district, the medical officer shall visit the spot without delay, and inquire into the causes and circumstances of such outbreak, and

advise the persons competent to act as to the measures which may appear to him to be required to prevent the extension of the disease, and, so far as he may be lawfully authorized, assist in the execution of the same.

6. The medical officer shall immediately report to the sanitary inspector, for the information of the Board of Supervision and local authority, the existence of any disease of an infectious or contagious kind in his district, which in his opinion threatens to become dangerous or epidemic.

7. On receiving information from the sanitary inspector that his intervention is required in consequence of the existence of any nuisance injurious to health, or of any overcrowding in a house, the medical officer shall, as early as practicable, take such steps authorized by the statute in that behalf as the circumstances of the case may justify and require.

8. The medical officer shall perform all the duties imposed upon him by any bye-laws and regulations of the local authority duly approved in respect of any matter affecting the public health, and he shall further observe and execute, so far as the circumstances of the district may require, the instructions of the Board of Supervision and all the lawful orders and directions of the local authority applicable to his office.

9. The medical officer shall attend at the office of the local authority, or at some other appointed place, at such stated times as they may direct.

10. The medical officer shall keep a book or books, to be provided by the local authority, in which he shall make an entry of his visits, and notes of his observations and instructions thereon, and also the date and nature of applications made to him, the date and result of the action taken thereon, and of any action taken on previous reports; and shall produce such book or books, whenever required, to the local authority, the Board of Supervision, and the inspecting officer of the Board.

11. The medical officer shall at least once in every half-year report, in writing, to the local authority, his proceedings, and the measures which in his opinion should be adopted for the improvement or protection of the public health in the district; and he shall append to each such report a statement as to the sickness and mortality within the district, so far as he has been enabled to ascertain the same.

12. The medical officer shall from time to time make such special reports and returns as may be called for by the local authority or the Board of Supervision.

Removal of Nuisances.

The word 'nuisance,' in law, signifies anything which unlawfully annoys, offends, or does damage to another, and a 'nuisance' is said to be either public or private. A public nuisance is such as affects or interferes with the Queen's subjects in general; a private nuisance is such as only affects or interferes with an individual in his individual capacity. In England the distinction is of some importance, because a public nuisance is punishable by indictment; but in Scotland the difference is practically unrecognised, and a nuisance of any kind is only removeable by civil action.[1] At common law it includes whatever has a tendency to injure health, or is inconsistent with the comfort of life, either to the public generally or to the neighbourhood; whether by stench, as the 'boiling of whale blubber;' or by noise, as a 'smithy on an upper floor;' or by indecency, as 'a brothel next door.'[2] 'There is, in fact, no distinction between any of the cases, whether it be smoke, smell, noise, vapour, or water, or any gas or fluid. The owner of one tenement cannot cause or permit to pass over into his neighbours' tenement any one or more of these things, in such a way as materially to interfere with the ordinary comfort of the adjacent occupier, so as to injure his property.'[3] It is true that by lapse of time and acquiescence the party complaining of the nuisance may lose his right to object, but until that time has elapsed, 'whether he comes to the nuisance, or the nuisance comes to him,' he retains the right to have the air that passes over his land pure and unpolluted, and the soil or produce of it uninjured by the passage of gas, by the deposit of deleterious substances, or by the flow of water. The spot whence the nuisance proceeded may be a fit, proper, and convenient spot for carrying on the business which produced the nuisance, but that cannot be made available as a defence.

The real question in cases of nuisance is thus a question of fact, whether the annoyance is such as materially to interfere with the ordinary comfort of human existence; and it was said

[1] Bell's Prin. 973. [2] *Ibid.* 794.

[3] Per Master of the Rolls, Lord Romilly, in Crump *v.* Lambert, L. R. 3 Eq. 409.

by Lord-Justice Knight Bruce, while Vice-Chancellor, that it might, on principle and authority, be put thus:[1]—'Ought this inconvenience to be considered in fact as more than fanciful, more than one of mere delicacy or fastidiousness, as an inconvenience interfering with the ordinary physical comfort of human existence, not merely according to elegant or dainty modes or habits of living, but according to plain and sober and simple notions among the English people?'[2]

In sec. 16 of the Public Health Act, we have a classification of the different forms of uncleanness which are dealt with as a nuisance. As regards dwellings, the word includes,—

Any premises in such a state as to be injurious to health or unfit for human habitation.

Any pool, ditch, gutter, watercourse, privy, urinal, cesspool, drain, or ashpit, so foul as to be injurious to health.

Any animal so kept as to be injurious to health.

Any dung heap in a burgh within 50 yards of a dwelling-house, or wherever situated, if injurious to health.

Any house or part of a house so overcrowded as to be dangerous or injurious to health.

The proceedings for the removal or abatement of the nuisance are directed against the owner or occupier of the premises, or both. *Prima facie*, it is the occupier who is responsible for the use to which the premises are put, and for their not being properly cleansed; but it is the owner who will have to answer when the nuisance is due to structural defects in the original building. On this point the statute seems to make liberal allowance for the imperfect sanitary arrangements which still exist in towns and villages; and while it confers ample powers to ordain the owners to provide proper drainage,[3] etc., or 'do such other works or acts as are necessary to remove the nuisance,' it assumes that these will

[1] Walter *v.* Selfe, 4 De G. and Sm. 322.

[2] This definition is adopted in Soltaw *v.* De Held, 2 Sim, N. S. 133, by Vice-Chancellor Kindersley; and by Lord Romilly in Crump *v.* Lambert, L. R. 3 Equity 409; and St. Helen's Smelting Co. *v.* Tipping, 11 H. L. C. 642. This case seems to draw a distinction between cases where injury is done to the value of land, and where only personal discomfort is suffered.

[3] Sec. 19.

be exercised subject to such reasonable limitations as the state of the property may suggest. The conditions necessary to public health are only beginning to be properly understood, and the introduction of modern improvements will be a gradual process. While it may be a great hardship to a proprietor to be required to completely reconstruct an old tenement, it will often be in his power to supply sanitary conveniences at a comparatively slight expenditure; and whenever this can be effected, he will find it for his own interest, as well as the interest of his property, to do so. The matter is left in the hands of the local magistrate, and his discretion will not be lightly interfered with. When structural works appear to be necessary, the local authority may be required to furnish an estimate of the expense, and they will then be ordered to be carried out under the direction and subject to the approval of some person to be appointed by the sheriff.[1]

When the sheriff is able to fix on satisfactory grounds who is 'the author of the nuisance,' through whose act or default it is that the nuisance exists, he will consider the means necessary for its abatement. But sometimes a nuisance is found on the premises of one person which is truly caused by the joint act or default of others; and it may be a question how far this offensive use of his property is with his consent. In such a case, the public health must not be allowed to suffer till the controversy between them is determined. The owner of the offensive drain, ditch, etc., is *prima facie* responsible, and a Court of summary jurisdiction must deal with the facts as it finds them, leaving him to operate his relief against the parties ultimately responsible. The proprietor of a mining village, built on the banks of a stream, was held responsible for the sewage which was allowed to percolate through the soil into the stream; because in erecting so many houses, to be occupied by hundreds of workpeople, he was bound to have made proper provision for carrying off the filth incident to their occupation, without interfering with the rights of others. But it might have been different if it could have been shown that the pollution was due to the wilful acts of the occupants of the houses. To the question, 'Where are they to send the sewage?' the answer of Lord Gifford

[1] Sec. 21.

was—'Wherever they like, but not into their neighbours' property. If they cannot build a village without this result, they can let the village alone.'[1]

In another case, in which complaint was made as to the sewage which issued from a number of houses feued from the same proprietor, and passing through an open drain flowing through his property, it was held that it was not the feuars, but the proprietor himself who was to blame, and who was bound therefore, at least in the first instance, to take the measures necessary for the abatement of the nuisance.[2] The stagnation took place on the ground actually in the superior's own occupancy, and it was one of the natural consequences of his building over the ground without providing proper drainage. But a man who makes a drain, either through his own land or, by permission, through the land of another, keeps it under his own control. He may have right to do so, either by grant or prescription; but under the statute no account is taken of the title to do what is complained of. The only question is whether there is a nuisance, and by whom it is caused. When, therefore, houses drain into a ditch passing through the land of another, it is the owner of the houses contributing the sewage, and not the owner of the land, against whom proceedings ought to be taken, because the remedy is to cut off the communication by means of which the offensive matter is made a nuisance, at a distance from its source;[3] and for the same reason, if the flow of an offensive stream is obstructed by some such erection as a mill-dam, it is the persons by whom the pollution is caused, not the owner of the dam, who are liable under the statute. It is only when the proximate cause cannot be found that a complaint can be made against the owner who has the misfortune to have such a noxious easement on his land.[4] A chemical company, who had right to drain into a sewer, were in the practice of sending down substances, innocuous when separate, but which evolved sulphuretted hydrogen when combined. It was contended that

[1] Caledonian Railway Co. *v.* Baird, 14 June 1876, 3 Rettie 389.

[2] Mackay *v.* Greenhill, 14 July 1858, 20 D. 1251.

[3] Brown *v.* Bussell; Francomb *v.* Freeman, L. R., 3 Q. B. 251, under sec. 12 of English Nuisance Removal Act, 11 and 12 Vict. cap. 121.

[4] Brown *v.* Bussell, L. R., 3 Q. B. 251.

they could not be responsible for what happened after the liquids complained of were no longer under their control, and that the nuisance was really caused by the failure of the local authority to cleanse, flush, and trap the sewer. The plea was, however, rejected, because the appellants discharged into the sewer matter which necessarily became noxious. They caused the nuisance 'by contributing the materials out of which it springs.' It was also held that the alleged failure of the local authority did not disentitle them to put the Act into operation, for it was clear that the chemical company assisted in creating the nuisance. If two persons take part in committing an illegal act, each is liable to the penalty inflicted by law, for they are both joint wrong-doers.[1]

As the custom of using an open burn for the outfall of the drainage of private houses has frequently come to be too inveterate to be easily remedied by complaints against individuals, power is conferred by sec. 24 to deal specially with such a case.[2] It is there enacted, that whenever any watercourse, ditch, gutter, or drain, along the side of any public road, street, or lane, shall be used or partly used for the conveyance of sewage, and cannot, in the opinion of the local authority, be rendered free from foulness or offensive smell without the laying down of a sewer or other structure, the local authority, with the approval of the Board of Supervision, shall make the structure. The expense is to be defrayed by assessment upon the owners of all the premises from which at any time thereafter any material or impure water flows into the sewer. In the course of its construction the local authority are entitled to enter upon any premises within or without their district, and use such part thereof as shall be necessary. The compensation payable is fixed by the sheriff upon the petition of the local authority; but if it

[1] St. Helen's Chemical Co. *v.* Corporation of St. Helen's, L. R., 1 Ex. D. 196.

[2] Where several parties are charged as authors of a nuisance, but the true author is not discovered, the proper course for the sheriff is to direct the local authority to construct and assess under sec. 24; and it is incompetent to order the works to be made and then to divide the expenses among the parties charged. United Kingdom Temperance Institution, etc. *v.* Parochial Board of Cadder, etc., 15 June 1877, 4 Rettie (Just. Ca.), p. 39.

should be found that the owner, without a justifiable excuse, caused or contributed to cause the foulness which rendered the structure necessary, he is not entitled to any damages. On receipt of the petition, the sheriff orders service and answers, or appoints the parties, at time and place specified, to appear before him, and thereafter the proceedings go on in a summary form.[1]

The statutory definition of a nuisance includes any stable, byre, pig-sty, or other building in which any animal or animals are kept in such a manner as to be injurious to health. The remedy appointed is not the enlargement of the building, but the removal of the animal. In England, a bye-law prohibiting the keeping of pigs within a certain short space of a dwelling-house, and requiring special provision to be made for the removal of dung and refuse, was held reasonable;[2] but in Scotland it has been decided that a similar bye-law was beyond the powers of the parochial board. The test, it is said, of what is to be held a nuisance is given by the Legislature. Injury to health must be alleged and proved ere the keeping of any animal is to be treated as a nuisance; and there may be modes of keeping pigs, as of other animals, in near proximity to dwelling-houses, so as not to be injurious to health if properly attended to; but the bye-law necessarily led to the removal of the animal without considering whether it was properly kept or not, and without considering, as required by the statute, whether it was kept so as to be injurious to health.[3]

Any accumulation or deposit of manure within fifty yards of a dwelling-house within the limits of a burgh, or, if injurious to health, wherever situated, as well as any accumulation of police manure within a quarter of a mile of the municipal boundary, is also a nuisance. The word 'burgh' includes not only royal burgh, parliamentary burgh, burgh incorporated by Act of Parliament, burgh of barony, and burgh of regality, but

[1] Sec. 24. A summary petition for payment of assessment imposed in virtue of this section falls under the provisions of sec. 105 of the statute, and is therefore appealable by case stated to the High Court of Justiciary. Local Authority of Selkirk *v.* Brodie, 16 March 1877, 4 Rettie (Just. Ca.), p. 21.

[2] Wanstead *v.* Worcester, 38 G. P. 21.

[3] Macreadie *v.* Broom, 19 January 1860, 22 D. 405. This case is under sec. 7 of the Scotch Nuisance Removal Act, 19 and 20 Vict. cap. 103.

also any populous place having a town council, police commissioners, or trustees exercising the functions of police commissioners under the general or local Act. The word 'dwelling-house,' in this section, means a house actually used at the time as a human habitation. The remedy is an order to carry away the offensive matter; and in a prosecution it is not necessary to aver or prove that the accumulation or deposit is injurious to health. Sheep-pens in a market in front of a dwelling-house caused a nuisance. It was held that the owner of the market, who had received the tolls for the sheep standing there, was the person by whose act or default the nuisance arose.[1]

Noxious Trades.

The local authority is empowered to deal also with any work, manufactory, trade, or business injurious to the health of the neighbourhood, or so conducted as to be offensive and injurious to health, or any collection of bones or rags injurious to health. In this case an application for abatement of the nuisance can be made only on medical certificate, or on a requisition made in writing under the hands of any ten inhabitants of the district;[2] but it is not necessary to aver or prove that the work is injurious to health. It is enough to establish that it is offensive, the offensiveness being such as seriously to interfere with the comfort of life in the neighbourhood, and such as may be detrimental to health, although it should be impossible to prove that it has been or necessarily must be so.[3] The remedy is an order appointing the work either to be discontinued altogether, or to be carried on subject to such regulations as may, in the opinion of the sheriff, prevent the injurious effects complained of.

In connection with this subject, it is enacted by sec. 30 that the business of—

Blood-boiler,
Bone-boiler,
Tanner,
Slaughterer of cattle, horses, or animals of any description,

[1] Draper *v.* Sperring, 30 L. J. M. C. 225.
[2] Sec. 18. [3] R. H. p. 29.

Soap-boiler,
Skinner,
Tallow-melter,
Tripe-boiler, or other business, trade, or manufactory injurious to health,

shall not be established within a certain proximity to towns or villages, or enlarged without the consent of the local authority, or, on appeal, of the Board of Supervision. The enlargement here referred to, means an increase of the nuisance through the enlargement of the premises. A man carrying on a long-established noxious business is subject to prosecution if the mischief is increased by alterations in the manner in which the business is carried on; but an increase of the mischief due simply to an increase of the business will not justify a conviction.[1] The Board of Supervision have been advised that, although the Act does not in terms empower them to do more than decide whether the consent of the local authority ought to have been given to the establishment of the trade proposed, a refusal of consent by the local authority is not final, and may be the subject of appeal. The limitation of time for appealing to the Board (twenty-one days from the date of the order) applies only where consent has been refused. Where, in the opinion of the Board, it ought to have been given, a remit to do so is made to the local authority; for it is their consent in writing which is to be given by the Act, although the Board is empowered finally to determine whether they ought to give it. It was the opinion of the counsel consulted, that 'if they have refused it, and the Board shall finally determine that they ought to have given it, they will be bound to give it on that determination being communicated to them.'[2]

The trades interdicted under the general words of the section are, of course, *ejusdem generis* with those enumerated, or those where the substances dealt with are substances which, without anything being done to them, must be, or, in the progress of time, must necessarily become, a nuisance and annoyance to the neighbourhood.[3] The propriety of issuing a licence has

[1] R. *v.* Watts [at common law in England], Moody and Malkin, 281.
[2] R. H. p. 30.
[3] Per Willes, J., Wanstead Local Board of Health *v.* Hill, 13 C. B.

to be determined by a consideration of—(1) the character of the work; (2) the locality in which it is proposed to be established; and (3) how far the interference of the Board is necessary to its proper protection. The fact that many works of a similar description are already in existence in the neighbourhood, although not conclusive, will be taken into account by the licensing body.[1]

The local authority has no power to erect slaughter-houses. Such power is only given to the Police Commissioners by sec. 358 of the Police Act, 25 and 26 Vict. cap. 101.

The law with respect to the regulation of factories is contained in the Factory Act, 30 and 31 Vict. cap. 103, and the Bakehouses Act, 26 and 27 Vict. cap. 40; but the owner of any factory, workshop, or workplace not under the operation of these statutes, and not kept in a cleanly state, nor properly ventilated, or which is so overcrowded as to be injurious or dangerous to the health of the persons employed therein, may be proceeded against under this statute.

Consumption of Smoke.

The purification of the atmosphere of large towns by the compulsory use of apparatus suitable for the consumption of smoke, was the object of an Act passed in the year 1857.[2] The offence created by that statute consisted of the 'use of a furnace not constructed so as to consume or burn its own smoke, or the negligent use of such furnace so that the smoke arising therefrom shall not be effectually consumed or burned.' The statute applied—(1) to a furnace employed in the working of engines, stationary or locomotive; (2) a furnace on board of any steam-vessel plying on a river not exceeding a quarter of a mile in breadth, or in any harbour; (3) every furnace employed in a mill, factory, distillery, brewhouse, sugar-refinery, bakehouse, gaswork, waterworks (although a steam engine is not employed therein), public bath or wash-house (although not used for the purposes of trade or manufacture). The owner or occupier was

N. S. 479 (Scott's Reports), where brickmaking was held not to fall under sec. 64 of the English Public Health Act, 11 and 12 Vict. cap. 63.

[1] St. Helen's Smelting Co. *v.* Tipping, 11 H. L. 642.

[2] 20 and 21 Vict. cap. 73.

made liable to a prosecution before the sheriff or sheriff-substitute of the county, or any two justices having jurisdiction, who were empowered to try the case in a summary form, and impose certain penalties.[1] The Act applies only to towns of a population of not less than 2000 inhabitants. The Public Health Act follows in the line of the above enactment, by declaring that any fireplace or furnace which does not, so far as practicable, consume the smoke arising from the combustible matter used in such fireplace or furnace which is used within any burgh, for working engines by steam, or in any mill, factory, dye-house, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever, shall be considered a nuisance, and the person offending shall be liable in a penalty of £5, to be doubled for each subsequent conviction. But if it appears to the sheriff that the best means then known to be available for mitigating the nuisance or the injurious effects thereof have not been adopted, he is empowered to suspend his final determination upon condition that within a certain definite time means shall be taken for mitigating or preventing the injurious effects complained of.[2]

The enactment, it will be seen, applies to every furnace in a burgh which has adopted the Police Act, or to any mill or factory wherever situated. The owner or occupier is taken bound to employ the best known apparatus for the consumption of smoke, as far as practicable, that is to say, consistently with carrying on the trade in which the furnace is employed.[3] The person causing smoke so as to be a nuisance is liable to a separate conviction[4] for each occasion on which smoke is found to issue from his chimney to an objectionable extent. It is not necessary to show that it was due to his own personal fault. He is responsible for the acts of his servants, and for their carelessness in the management of the furnace, even though it should be contrary

[1] The duty incumbent on railway companies to have their locomotives constructed on the principle of consuming, or so as to consume their own smoke, is imposed by 8 and 9 Vict. cap. 83, sec. 107.

[2] Sec. 20.

[3] Cooper *v.* Wooley, L. R., 2 Ex. 38, 36 L. J. M. C. 27.

[4] The Queen *v.* Waterhouse, L. R., 7 Q. B. 545, under the Sanitary Act, 1866, 29 and 30 Vict. cap. 90.

to order,[1] and the penalty is incurred even when the nuisance cannot be shown to be injurious to health.[2]

When the chimney complained of is a private chimney, it is necessary to prove that it is injurious to health.

The definition of nuisance in sec. 16 also includes any churchyard, cemetery, or place of sepulture so situated, or so crowded with bodies, or otherwise so conducted, as to be offensive or injurious to health. Sec. 96 declares it competent for the Board to present a petition to the sheriff, under sec. 6 of the Burial Ground (Scotland) Act of 1855, 18 and 19 Vict. cap. 68, to the same effect, and be followed out in like manner as if presented by any of the persons or parties therein mentioned; but when proceedings are taken on the ground of its being a nuisance under the Public Health Act, the sheriff will be entitled, without the intervention of the Secretary of State, to order it to be shut up and discontinued as a place of sepulture, or to be used only subject to such regulations as he may think necessary in the circumstances.[3]

When there is reason to believe that a nuisance exists in a part of his district, the inspector is entitled to visit the premises; and if unable to get access, he will, on application, obtain from the sheriff an order in writing on the occupier or person having the custody, to give him admission. Should admission again be refused, warrant is granted for his immediate forcible entrance. When it is decided to take steps for the suppression of a nuisance, the proper course is for the local authority to obtain from their medical officer a certificate that the nuisance does exist. A petition is then presented to the sheriff describing its nature and extent, and stating the terms in which an order for its removal or abatement is desired. The sheriff may either order answers to be given in, or appoint the parties to attend him in person. If he finds they are at issue, he may order a proof, or remit to a man of skill to examine the premises and report. The interlocutor may be either an order for the discontinuance and removal of the nuisance, to be enforced by the

[1] Barnes *v.* Akroyd, L. R., 7 Q. B. 474.

[2] Gaskell *v.* Bailey, 30 L. T. N. S. 516, under sec. 19 of the Sanitary Act, 1866.

[3] Sec. 19.

penalties prescribed in sec. 20, or execution of such structural works as may be necessary, at the sight and to the satisfaction of a person to be named. In cases of non-compliance with this decree, warrant may be granted to the local authority to enter the premises, and have the works executed at the owner's expense;[1] and should the sheriff be of opinion that the nuisance is of such a nature that it cannot be effectually removed without the execution of drainage works, he is empowered to suspend consideration of the complaint for such time as may seem proper, in order to enable a general system of drainage to be introduced.[2]

Drainage.

It is the duty of the local authority to take the measures which may be necessary for the proper drainage of their district, and with that view they are entrusted with the control of all the sewers which either are not private property, or are already under public management, *e.g.* commissioners of police acting under the General Police and Improvement Act of 1862.[3] The sewers, it is said, 'shall be vested in the local authority.'[4] A sewer is a main drain intended for the reception and distribution of sewage collected by means of tributary drains from private houses. The thing which is vested in the local authority is the barrel of the sewer,[5] along with the brick or iron tubing of which it consists; and their rights over it are not rights of servitude, but of property. The local authority are thus entitled to exercise over their sewers all the powers of a proprietor. They may cause them to be enlarged or altered, shut up, or destroyed.[6] No vault, arch, or cellar can be made so as to interfere with them after they are formed, and no building can be erected over a sewer without the consent of the local authority.

From the vesting clause are excepted sewers which are

[1] Sec. 22. [2] Sec. 96.

[3] See 25 and 26 Vict. cap. 101, sec. 182.

[4] Public Health Act, sec. 71.

[5] Taylor *v.* Corporation of Oldham, L. R., 4 Ch. D. 395. This refers to usual vesting clause in local Acts.

[6] Sec. 73.

private property; and questions will occur as to whether a drain claimed by the public really belongs to them. It is evident that the circumstance that it passes through private ground, or was originally made not at the public expense, is not conclusive, because in course of time it may have been dedicated to the public; and it is only when no such right of use has been acquired by the public that it does not vest in the local authority. If, in course of time, it has come to be regarded as a public drain, the local authority will be entitled to avail themselves of it as part of their system of drainage, and to assume the duty of cleansing and maintaining it. The statute expressly requires them to have all sewers kept so as not to be a nuisance; and if the sewers are allowed by their negligence to get out of repair, they will be liable to an action of damages at the instance of the party injured.[1] Local authorities have no power given to them to commit nuisances, and will be restrained by the courts of law if they attempt to do so.[2] But when an application was made to the sheriff to interdict a scheme of drainage which was objected to by part of the community, it was held that he had properly refused the interdict, as it was really an attempt to bring the resolution of the statutory authority under the review of the sheriff.[3]

Any doubt as to the right to the drain may be removed by a formal agreement for its purchase, or of the right to use it on payment of compensation under sec. 72 of the Act.

The Board are also entrusted with very ample powers for the construction, within their district, of such sewers as they may think necessary. These powers they are bound to avail themselves of whenever it appears that the public interest fairly requires it. An ill-drained town is almost necessarily an unhealthy town, and should any remissness appear on the part of the local officials to put the statute in force with respect to drainage, the Board of Supervision will take the

[1] White *v.* Hindlay, L. R., 10 Q. B. 219, where a grid had been left in a dangerous state; but the Local Board were also surveyors of highways.

[2] Cator *v.* Lewisham Board of Works, 34 L. J. Q. B. 74. On sec. 86 of the Metropolis Local Management Act, 1855; Grand Junction Canal Co. *v.* Shugar Railway, L. R., 6 Ch. 483; and Attorney-General *v.* Cockermouth Board, L. R., Equity 172.

[3] Steel *v.* Commissioners of Gourock, 11 July 1872, 10 M'P. 954.

steps necessary to compel them to do so. This is effected under sec. 97, where it is enacted, 'In case any local authority shall refuse or neglect to do as herein or otherwise by law required of them, or in case any obstruction shall arise in the execution of this Act, it shall be lawful for the Board, with the approval of the Lord Advocate, to apply by summary petition to either Division of the Court of Session, or during the vacation or recess, to the Lord Ordinary on the Bills, which Division or Lord Ordinary are hereby authorized and directed to do therein, and to dispose of the expenses of the proceedings, as to the said Division or Lord Ordinary shall appear to be just.' The Board having satisfied themselves by report from their medical officer[1] of the necessity for remedial measures being taken, pass a Minute requiring the local authority to do what is necessary for the drainage or the introduction of a proper supply of water into the burgh. Should any disposition be shown not to give immediate obedience to this order, a petition is presented to the Court of Session. An opportunity is then given to the local authority to prepare a suitable scheme; and if any unwillingness to act is still apparent, the Court will obtain from an engineer a scheme of their own, which they will forthwith order to be carried out at the ratepayers' expense.

In making the sewers, a power of entry is given to the Board on lands or premises, enforceable, if necessary, by a sheriff's warrant,[2] and they may be carried through, across, or under any turnpike or other road, or any of the streets of the town.[3] A sewer may also be carried into, through, or under any lands whatsoever; but when these are private property, the surveyor requires to report that the proceeding is necessary, and written notice has to be given to the proprietor.[4]

The theory on which this legislation proceeds is somewhat different from the similar provisions in the Lands Clauses Act with respect to the compulsory acquisition of land for under-

[1] The Board of Supervision *v.* the Local Authority of Montrose, 11 Mc. 170, 10 Scottish L. R. 98; *ibid. v.* Local Authority of Galashiels, 5 Dec. 1874, 12 Sc. L. R. 111, 3 P. L. 37; *ibid. v.* Local Authority of Pittenweem, 8 July 1874, 1 Rett. 1124, 2 P. L. 402; *ibid. v.* Local Authority of Forfar, 1877.

[2] Sec. 75. [3] Sec. 73. [4] Sec. 73.

takings of private profit. In the latter case, the promoters begin by serving a notice on the proprietor, specifying the particular part of his estate which they propose to acquire under their statutory powers, and undertaking to pay such sum, by way of compensation, as may be fixed by the statutory tribunal. The effect of this notice is to create the relation of vendor and purchaser between the company and the proprietor, with respect to the particular piece of land scheduled; and the purchase money which falls to be assessed is directed to include not only the price of the land, 'but also the damage, if any, to be sustained by the owner of the lands, by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of this or the special Act.'[1]

These words, 'injuriously affected,' received a construction from the English Courts which is now generally regarded as too narrow and technical. Instead of reading the language of the Act in a popular sense,—as meaning simply, as the Lord President has expressed it, 'deteriorated in value,'[2] or as Lord Westbury calls it, 'damnously,'[3]—judges were at pains to inquire what the law would consider 'injurious.' It was decided by the Court of Queen's Bench, when presided over by Lord Chief Justice Campbell, in the case of Penny *v.* the South-Eastern Railway Co.,[4] that the sole operation of the words 'injuriously affected' was to give a remedy for such particular injury only as could have been actionable before the company had acquired their statutory powers. This interpretation has been pronounced by Lord Westbury to be vicious and erroneous, because the word 'injuriously,' in his opinion, did not mean 'wrongfully, in the sense of illegally,' but simply 'prejudicially.' The cases, however, have all gone on the same lines, and the result of them was stated by the Lord Chancellor Hatherley, in giving judgment in the City of Glasgow Union Railway Co. *v.* Hunter,[5] to come to this,—'In the first place, no claim of statutory compensation can be made

[1] 8 and 9 Vict. cap. 19, sec. 61.

[2] Per Lord President in Hunter *v.* City Union Railway Co., 2 Sc. App. 78, 8 M'P. 156, and 7 M'P. 408.

[3] Ricket *v.* Metropolitan Railway Co., L. R., 1 H. L. 175.

[4] 7 E. and B. 660.

[5] 30 June 1870, L. R., 2 Sc. App. 78.

in respect of a damage for which the claimant would have had no action, supposing the Railway Act had never been passed. That is one point that has been settled. The second point was settled by this House in Brand's case, and it was this, that the damage must be damage done in the execution of the works, and not damage done afterwards when the railway is completed, and in the exercise of the powers vested in the company by the general Acts.' If, therefore, the statute authorizes something to be done on a man's property, which, but for the Act, would be illegal, it must be submitted to subject to the remedy which the Act of Parliament provides; and if no remedy is given, there is no remedy at all, the party not being entitled to compensation except in so far as the statute has expressly given it.

Compulsory powers which are necessary for the purposes of police and local government stand obviously on a different footing from those which are acquired by companies of capitalists associated together, no doubt for projects of public utility, but primarily for their own private advantage. There is all the difference in the world between persons acting for their own benefit and the benefit of the public. When powers are given to a local authority for the public good, the Legislature trusts that the public body by which they are to be exercised will be careful not to interfere unduly with private rights. It has therefore been decided that they are not compellable to acquire the land before making the sewers.[1] Indeed, the statute does not require them to become purchasers at all. They are entitled to enter on the land and excavate the drain, and the proprietor will be entitled to claim the soil removed, or its value, and also compensation for the inconvenience to which he is put, but nothing more. If the works are entirely underground, this may not amount to much; but it may be that the sewer will require to be carried over the surface,—above the level,—which, it has been held under the words, 'into, through, or under,' may lawfully be done;[2] and for the injury done to the property in consequence, full value must be paid.

[1] N. London Railway Co. *v.* Metropolitan Board of Works, 28 L. J., Ch. 909, 1 Johnst. 405, under the Metropolis Management Act, 1855.

[2] Roderick *v.* Aston, L. B., 14 Feb. 1877, L. R., 5 Ch. D. 328.

It has been decided that the words, 'damage sustained by reason of the exercise of the powers contained in the Act,' have the same meaning as the relative expression in the Lands Clauses Act, 'injuriously affected;' that is to say, they only entitle the proprietor to recover the damage which, apart from the Act, would have been recoverable,[1] but they do not include anything of the nature of purchase money, nor do they represent the value of the benefit gained by the entry acquired through the party's property. It is simply indemnification for the loss which he has sustained in consequence of the drainage operations; and this loss is to be tested by the value of the thing to him,—according to the extent of his interest in it,—not by the value which it may bear after the works or other public improvements have been carried out.[2]

Reading in this light the enactment of sec. 116, that full compensation shall be made out of any fund applicable to the purposes of the Act, to all persons sustaining any damage by reason of the exercise of any of its powers, except when otherwise specially provided, we see why it is that no notice is appointed to be given to the persons in whom the turnpike roads or streets of the burgh are vested; the use of the public thoroughfares for the reception of drains being in no way inconsistent with their maintenance as thoroughfares, no compensation requires to be given, except in so far as the adjacent property has been depreciated, nor does any wayleave require to be paid.[3]

In the assessment of compensation, the account has to be taken once for all, including prospective damage in so far as it can be reasonably foreseen.[4] No second inquiry can be held to assess compensation for damages which might have been foreseen, and for which compensation could have been obtained under the first inquiry.[5]

The Act provides (sec. 116) that, in case of dispute, if the

[1] Rhodes *v.* Ayrdale Commissioners, 9th May 1876, L. R., 1 C. P. D. 102.

[2] Stebbing *v.* Metropolitan Board of Works, 11 Nov. 1870, 40 L. J. Q. B. 1.

[3] Field *v.* Magistrates of Leith, 15 March 1878 (Lord Young).

[4] Uttley *v.* Todmorden Local Board, 31 L. T. N. S. 445.

[5] Croft *v.* London and North-Western Railway Co., 32 L. J. Q. B. 113; Chamberlain *v.* West End Crystal Palace Co., 32 L. J. Q. B. 173.

sum claimed do not exceed the sum of £50 sterling, the amount due may be ascertained in a summary application, by either party, to the sheriff, whose decision shall be final, and not subject to review unless pronounced by the sheriff-substitute, in which case it will be reviewed on appeal to the sheriff.[1] When the sum claimed exceeds £50 sterling, the procedure is appointed to be conducted in terms of the Lands Clauses Act, either by arbitration or before a sheriff and jury. Under this section the sheriff acts as arbiter or valuator. He may find that no damage has been done, and that the claimant is entitled to no compensation;[2] but his functions are simply those of an assessor, and he cannot go into any question of title, or the right of the claimant to recover compensation on any of the grounds stated in his claims.[3] When the title is in dispute, the local authority may proceed by suspension and interdict to stop the inquiry before the sheriff until the question is determined, or it may afterwards be tried in the form of a suspension of the sheriff's decree when it is pronounced, because an award giving compensation in no way precludes the local authority from challenging the other party's title to receive it.[4] If the sheriff awards compensation in respect of a different matter from that claimed, the award is void, as being in respect of a matter not submitted to him.[5]

The damage which falls to be assessed is damage resulting from the careful and proper execution of the statutory powers. If the local authority injure any one by their own negligence or that of their agents, in the exercise of their statutory powers, or while doing anything not authorized by statute, the remedy must be sought by action.[6] The local authority are taken bound to cause their sewers to be so constructed, cleansed, and maintained as not to be a nuisance; and the system adopted

[1] Sec. 116.

[2] Reg. *v.* Lancaster and Preston Railway Co., 6 Q. B. 659; Bradby *v.* Southampton Local Board, 24 L. J. Q. B. 239.

[3] Reg. *v.* Metropolitan Commissioners on Sewers, 1 E. and B. 694.

[4] Becket *v.* The Midland Railway Co., 1 C. P. 241.

[5] Rhys *v.* Deer Valley Railway Co., L. R., 6 X. 429.

[6] Stephen *v.* Thurso Police Commissioners, 3 Rett. 535; Virtue *v.* Alloa Police Commissioners, 1 Rett. 285; Clothier *v.* Webster, 31 L. J. C. P. 316; Queen *v.* Darlington Local Board, 35 L. J. Q. B. 45; Coe *v.* Wys, L. R., 1 Q. B. 711.

must not affect injuriously the navigation of rivers or canals, the irrigation of lands, and the supply of water required for the purposes of waterworks.[1] All drains and sewers, whether public or private, must be provided by the persons to whom they severally belong, with proper traps, etc., to prevent stench or deleterious exhalation;[2] and the owners of distilleries are required to use the best practical means for rendering the discharge from their works inoffensive or innoxious, before sending it into any river, stream, ditch, sewer, or other channel. The drains erected should be sufficient to carry off the sewage and rainfall of the district, but they need not be sufficient to carry off the extraordinary flow of water caused by a storm. For such extraordinary accidents no individual responsibility is incurred.[3]

In order that the cost of a system of drainage may not fall upon those who do not require it and derive no benefit from it, the Act allows the formation of a special drainage district.[4] On a requisition to that effect, made in writing by not fewer than ten inhabitants, the local authority are bound to meet and consider the propriety of forming part of their district into a special district for the purposes of drainage. The resolution is subject to the review of the sheriff, who is empowered either to approve or disapprove of the same, or to enlarge or limit the bounds of the district as defined by the local authority, or he may himself find that a special district should be formed, and define the limits of it. When a special district is formed, the local authority are bound to make not only the main drains, but also the branch drains along streets formed or to be formed. The Board of Supervision also require that the drains should be so constructed as to convey all the sewage of the special drainage district, as otherwise it cannot be regarded as efficient.[5] The right to drain into the public sewers belongs to any owner or occupier of premises within the district on which the general or special assessment is laid, but subject to such regulations with respect to the mode of communication as may be ordered by the local

[1] Sec. 25. [2] Sec. 82.

[3] Blyth *v.* Birmingham Waterworks Co., 25 L. J. C. B. 212; Ruck *v.* Williams, 27 L. J. Ex. 357.

[4] Sec. 76. [5] Board of Supervision, 30th Report, p. 26.

authority;[1] and when the premises are beyond the limits of the district, no communication can be made with the sewers except on such terms and conditions as the local authority may agree to.[2]

The Commissioners of Motherwell sued a proprietor in the burgh under the 190th section of the General Police Act for a reasonable sum for the use of sewers in the burgh, which they alleged were used by him, and for the expense of making which he had not been assessed. There was a private drain connected with the sewers before the proprietor in question had erected his houses, and he formed a communication between these houses and the private drain. The Sheriff of Lanarkshire held that as there was no direct communication between the houses and the sewer, the proprietor was not using the sewer in the sense of the Act, and dismissed the action. The judgment was affirmed on other grounds; but the Second Division were unanimous in holding that the proprietor in question, by making a connection with the private drain which communicated with the sewer, was using the sewer in the sense of the statute.[3]

Many cases have occurred in which it has been held that public rivers cannot be polluted to the injury of private individuals; and the principle is well established, that a public body, in the exercise of the powers conferred upon it for the public benefit, must avoid any infringement of the general law.[4] At common law, a local authority would be restrained from pouring their sewage into a public river; and now by the Rivers Pollution Act[5] the discharge of drains into rivers is prohibited, and the local authority in Scotland are the body entrusted with the enforcement of its provisions against mining and manufacturing pollution.

Water Supply.

In towns containing a population of over 10,000, or possessing a local Act for police purposes, and in which a water

[1] Sec. 77. [2] Sec. 78.
[3] Commissioners of Motherwell *v.* Barrie, Feb. 1878.
[4] Reg. *v.* Bradford Navigation, 34 L. J. Q. B. 191.
[5] 39 and 40 Vict. cap. 75.

company has been established, the local authority may contract with the company for a supply of water; or where there is no such company, they may arrange themselves to bring in a supply to such extent as may be necessary for sanitary and other public purposes.[1]

In rural parishes the Act allows a water supply district to be formed, at the expense of which such works shall be made and maintained as may be necessary for bringing in a sufficient quantity of water for the domestic use of the inhabitants. The local authority are, however, bound to make reasonable compensation for the water so taken by them, and for the damage which may be done to any lands by reason of the exercise of the powers. The resolution forming or refusing to form a district is appealable to the sheriff, who is entitled to enlarge or vary the limits proposed, according as he sees cause;[2] and the capital required may be raised on security of the rates from the Public Works Loan Commissioners.[3]

[1] Sec. 88. [2] Sec. 89. [3] 38 and 39 Vict. cap. 74.

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, or 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 three-scoir 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 them-

selves *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 landwart, *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 together 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 discourage 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 vagabounde, 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 the 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 1692, 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 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 other-

wise, 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 presby-

tery, 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 everything 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 suc-

cessors, 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 Supervision, whenever it may seem fitting to them, with the consent of one of Her Majesty's principal secretaries of state, or of Her Majesty's advocate for Scotland, or whenever the said board may be thereunto required by one of Her Majesty's said secretaries of state, or Her Majesty's said advocate, to appoint some person, not being a member of the board, but being a member of the Faculty of Advocates, or a duly qualified medical practitioner, or an architect or surveyor, or two or more of such persons, to act as a commissioner or commissioners for the purpose of conducting any special inquiry for a period not exceeding forty days, and to report thereon; and the said board shall delegate to every person so appointed for the purpose of conducting such inquiry, all such of the powers of the said board as they may deem necessary or expedient for summoning or examining witnesses and havers, and otherwise conducting such inquiry; and every such appointment shall be subject to the approval of one of Her Majesty's said secretaries of state, or of Her Majesty's said advocate; and every person so appointed as aforesaid to conduct any special inquiry, shall, before he enter on the execution of his duties, take an oath *de fideli administratione officii*, which oath may be administered to him by any member of the board, or any one of the judges of the Court of Session, or the sheriff of any county; and it shall not be necessary to notify the appointment of any such commissioner otherwise than by intimating the same by letter under the hand of the secretary, or of any member of the board, to the sheriff of the county within which the inquiry in question is to be made; and every such commissioner shall be reimbursed by the said board for all expenses necessarily incurred by him in conducting such inquiry, and shall also receive such reasonable remuneration for his time and trouble as may have been agreed upon between him and the said board, and approved of by Her Majesty's said secretary of state or advocate; and failing of any such agreement, the amount of the remuneration shall be fixed by the Lord High Treasurer, or the Commissioners of Her Majesty's Treasury, or by such person or persons as he or they shall name.

Board may allow Expenses of Witnesses, etc.

XII. And be it enacted, That it shall be lawful for the said Board of Supervision, in any case where they see fit, to order and allow such expenses of witnesses, and such expenses of or concerning the production of any books, contracts, agreements, accounts, or writings, or copies thereof, to or before the said board or committee thereof or commissioner, as such board may deem reasonable; and such expenses so ordered and allowed shall be deemed part of the incidental expenses attending the execution of this Act, and be paid accordingly.

Penalties on Parties giving false Evidence, or refusing to obey Summons of the Board.

XIII. And be it enacted, That if any person, upon any examination on oath under the authority of this Act, shall wilfully give false evidence, he shall be deemed guilty of perjury, and shall be liable to the pains and penalties thereof; and in case any person shall wilfully refuse to attend in obedience to any summons of the said Board of Supervision or committee thereof, or member or commissioner 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 the 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 mem-

bers 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

[1] Repealed by 24 & 25 Vict. cap. 37.

Parochial Board shall have resolved on the manner in which the assessment is to be imposed, such resolution shall be forthwith reported to the Board of Supervision for approval; and if the manner of assessment so resolved upon shall be approved by the Board of Supervision, the same shall be adopted and acted upon in such parish or combination, and shall not be altered or departed from without the sanction of the Board of Supervision; and if the Board of Supervision shall disapprove of the manner of assessment so resolved upon as aforesaid, the Parochial Board shall, upon such disapproval being intimated, forthwith meet and resolve upon another mode of imposing the assessment consistent with law, and shall report such resolution to the Board of Supervision; and the manner of imposing the assessment so resolved upon shall be adopted and acted upon in such parish or combination, and shall not be altered or departed from without the sanction of the Board of Supervision.

Assessment may be imposed according to local Act or Established Usage.

XXXV. And be it enacted, That if at the date of this Act an assessment for the poor shall in any parish or parishes be imposed according to the provisions of any local act, or according to any established usage, it shall be lawful for the Parochial Board or Boards of such parish or parishes to resolve that the assessment in such parish or parishes shall be imposed according to the rule established by such local act or usage; and such resolution, if approved of by the Board of Supervision, shall continue to be acted upon in such parish or parishes, and shall not be altered or departed from without the sanction of the Board of Supervision.

Parochial Boards may classify Lands.

XXXVI. And be it enacted, That where the one half of any assessment is imposed on the owners, and the other half on the 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 sup-

port particular paupers in time to come, and as to the obligations incumbent on the combination, and the shares thenceforward to be borne by the several parishes thereof, and as to any property belonging to the combination, and the division or destination to be thereafter made of it, and any claims of compensation thence arising; and generally they shall have power to dispose of all questions and claims between the several parishes in reference to the affairs of the poor in so far as affected by the dissolution as aforesaid; and all decisions and determinations by the Board of Supervision shall be final and conclusive, and shall not be subject to review by any court, whether by appeal, advocation, suspension, reduction, or otherwise.

After Dissolution, Management of Poor to proceed as if Parishes never combined.

VI. On any such dissolution taking place as aforesaid, the management of the poor in every parish which shall, in consequence, have ceased to form part of a combination of parishes, and the administration of the laws relating to the relief of the poor in such parish and to the raising the necessary funds for their relief, shall, from and after a day to be named by the Board of Supervision as the date at which the dissolution shall take effect, and subject to the decisions and determinations of the said board hereinbefore mentioned, be carried on in every such parish as if no such combination had ever been formed.

If Application refused, not to be renewed till after lapse of Five Years.

VII. If the Board of Supervision shall refuse any such application for dissolution as aforesaid, it shall not be lawful for the Parochial Board whose application has been refused, to renew such application till after the lapse of five years from the date at which it was so refused.

No. 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 assessment for raising the funds for the relief of the poor in *Scotland:* Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

So much of Sec. 34 of 8 & 9 Vict. c. 83 as relates to Means and Substance Mode of Assessment abolished.

I. From and after the first day of *January* One thousand eight hundred and sixty-two, so much of section thirty-four of the Act of the eighth and ninth years of Her Majesty, intituled 'An Act for the Amendment and better Administration of the Laws relating to the

Relief of the Poor in Scotland,' as makes it lawful for any Parochial Board of any parish or combination of parishes in *Scotland* to raise one half of the funds requisite for the relief of the poor persons entitled to relief from the parish or combination by assessment upon the owners of all lands and heritages within the parish or combination, according to the annual value of such lands and heritages, and the other half upon the whole inhabitants, according to their means and substance, other than lands and heritages situated in *Great Britain* and *Ireland*, or to raise such funds by assessment imposed as an equal percentage upon the annual value of lands and heritages, within the parish or combination, and upon the estimated annual income of the whole inhabitants from means and substance, other than lands and heritages situated in *Great Britain* or *Ireland*, is hereby repealed; and every Parochial Board of any parish or combination of parishes now raising such funds in terms of the parts of the said recited Act, which are hereby repealed as aforesaid, shall, before ceasing to raise such funds, and within two months after the passing of this Act, resolve to adopt the first mode of assessment specified in section thirty-four of recited Act, and to classify lands and heritages equitably in terms of the thirty-sixth section of the said recited Act, and shall forthwith report such resolution to the Board of Supervision, which is hereby 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 heen 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 Com-

mons, 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 from Poor Rates.

Whereas by the Act third and fourth William the Fourth, chapter thirty, it is provided that no person shall be liable to be rated for or to pay church or poor rates for or in respect of any churches, district churches, chapels, meeting-houses, or premises exclusively appropriated to public religious worship, and which (other than churches, district churches, and episcopal chapels of the Established Church) shall be duly certified for the performance of such religious worship according to the provision of any Act then in force; and that no person shall be liable to such rates, because such churches, chapels, meeting-houses, or other premises, or any vestry-rooms belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor: And whereas, according to the general practice in Scotland, churches and chapels are exempted from poor rates, but doubts have been entertained whether the recited Act extends to Scotland: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Places exclusively appropriated to Public Religious Worship in Scotland not liable for Poor Rates.—I. No person shall be rated or be liable to be rated for or to pay any poor rates for or in respect of any church, chapel, meeting-house, or premises in Scotland exclusively appropriated to public religious worship; and no person shall be liable to any such rates because such church, chapel, meeting-house, or other premises, or any room belonging thereto, or any part thereof, may be used for Sunday or infant schools, or for the charitable education of the poor.

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 assessor or assessors 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 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, to be addressed to him at the office of the clerk of supply of the county or town-clerk of the burgh, as the case may be: Provided always, that where, in making up his valuation as aforesaid, the assessor is merely to repeat an entry which occurred in the valuation of the immediately preceding year, it shall not be necessary for the assessor to transmit such copy and notice as aforesaid to the person or persons specified in such merely repeated entry.

Yearly Rent or Value, how to be estimated.

VI. In estimating the yearly value of lands and heritages under this Act, the same shall be taken to be the rent at which, one year with another, such lands and heritages might in their actual state be reasonably expected to let from year to year; and where such lands and heritages consist of woods, copse, or underwood, the yearly value of the same shall be taken to be the rent at which such lands and heritages might in their natural state be reasonably expected to let from year to year, as pasture or grazing lands; and where such lands and heritages are *bona fide* let for a yearly rent conditioned as the fair annual value thereof, without grassum or consideration other than the rent, such rent shall be deemed and taken to be the yearly rent or value of such lands and heritages in terms of this Act: Provided always, that if such lands and heritages be let upon a lease the stipulated duration of which is more than twenty-one years from the date of entry under the same, or in the case of minerals more than thirty-one years from such date of entry, the rent payable under such lease shall not necessarily be assessed as the yearly rent or value of such lands and heritages, but such yearly rent or value shall be ascertained in terms of this Act irrespective of the amount of rent payable under such lease, and the lessee under such lease shall be deemed and taken to be also the proprietor of such lands and heritages in the sense of this Act, but shall be entitled to relief from the actual proprietor thereof, and to deduction from the rent payable by him to such actual proprietor, of such proportion of all assessments laid on upon the valuations of such lands and heritages made under this Act, and payable by such lessee as proprietor in the sense of this Act, as shall correspond to the rent payable by such lessee to such actual proprietor as compared with the amount of such valuation.

Assessor may call for written Statement of Rent.

VII. It shall be lawful for any assessor acting under this Act to call upon any person being a proprietor or reputed proprietor or tenant or occupier within the county or burgh or district for which such assessor is appointed, for a written statement of the yearly rent or value and of all other particulars required by this Act of all lands and heritages within such county or burgh or district of which such

person is proprietor or reputed proprietor, or tenant or occupier; and if any such person shall, without reasonable excuse, fail to furnish such written statement to such assessor within fourteen days after he shall be called upon in writing so to do, he shall be liable to pay a penalty not exceeding twenty pounds; and if any such person shall present or cause to be presented to such assessor any false statement of such yearly rent or value or other particulars as aforesaid, he knowing the same to be false, he shall be liable to pay a penalty of fifty pounds.

Courts of Appeal.

VIII. The commissioners of supply of every county and the magistrates of every burgh shall annually, on or before the fifteenth but not earlier than the tenth day of September in each year, hold a court for hearing appeals against valuations made by such assessors as aforesaid under this Act, of which ten days' notice shall be given, which court may be adjourned from time to time; and at such court, and at latest on or before the thirtieth day of September in each year, all such appeals and complaints under this Act shall be disposed of; and such courts or adjourned courts of appeal shall be held in such and as many places within such county and burgh respectively as such commissioners and magistrates respectively shall appoint; and the deliverances of such commissioners and magistrates respectively upon such appeal and complaints shall be final and conclusive, and not subject to review.

Persons entitled to appeal.

IX. All persons whose name 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 procedings, except only a note of the assessment, appeal, and judgment; but they may, if they think proper, cause any deposition which may be made before them to be

taken down in writing, and signed by the deponent, and may authenticate it by the signature of one of their number as having been made in their presence; and every such deposition so taken down, signed, and authenticated shall be deemed and taken to be good evidence in any prosecution for perjury.

Valuation Roll to be retained by Assessor till 8th of September yearly, and thereafter to be open to Inspection.

XI. The valuation roll, when made up by the assessor, shall be retained by him until the eighth day of September in each year, when he shall transmit it to the clerk of supply of the county or to the town clerk of the burgh, as the case may be, or, if there be no town clerk, to such other person as the chief magistrate of the burgh, or if there be no such magistrate the sheriff of the county, may specially appoint for the purpose, which he is hereby required in such case to do, as occasion requires; and the said valuation roll shall thereafter remain in the office of such clerk of supply or town clerk, or other person specially appointed as aforesaid, patent to every person having interest therein, either as proprietor, tenant, or occupier.

Valuation Roll, when completed, to be authenticated, and to be in force for One Year.

XII. As soon as all appeals taken under this Act shall have been disposed of, and the valuation of the county or burgh shall have been thereby completed, the said valuation roll shall be authenticated in counties by the signature of the convener of the commissioners of supply, or of the clerk of supply, or other person whom the commissioners of supply may 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, failing him, the person who may be elected by such meeting to act as its preses shall be preses of such meeting.

Papers and Documents emanating from Commissioners of Supply, 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 commissioner of supply in any county shall be the being named as an *ex-officio* commissioner of supply in any act of supply, or the being proprietor or the husband of any proprietor infeft in liferent, or in fee not burdened with a liferent, in lands and heritages within such county, of the yearly rent or value, in terms of this Act, of at least one hundred pounds, or the being eldest son and heir apparent of a proprietor infeft in fee not burdened with a liferent in lands and heritages within such county of the yearly rent or value, in terms of this Act, of four hundred pounds; and the factor of any proprietor or proprietors infeft, either in liferent, or in fee unburdened as aforesaid, in lands and heritages within such county of the yearly rent or value, in terms of this Act, of eight hundred pounds, shall be qualified to act as a commissioner of supply in the absence of such proprietor or proprietors: Provided always, that, with reference only to the qualification of commissioners of supply under this Act, the

yearly rent or value of houses and other buildings, not being farm-houses or offices or other agricultural buildings, shall be estimated at only one-half of their actual yearly rent or value, in terms of this Act: Provided also, that all persons who shall, at the date of the passing of this Act, have been in actual possession of the qualification then required by law for a commissioner of supply, and entitled to act as such commissioner, shall, so long as he shall continue to possess such last-mentioned qualification, be deemed to be in possession of the qualification requisite for a commissioner of supply in terms 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 aforesaid of each such railway or canal company, a sum equal to three pounds *per centum* of the whole cost as aforesaid of the stations, wharfs, docks, depots, counting-houses, and other houses and places of business in Scotland of and connected with the undertaking of such railway or canal company (including as aforesaid); and the proportion of such diminished *cumulo* rent or value corresponding to the lineal measurement of the portion of the line, including ferries attached thereto, of such railway or canal company, situated in such parish, county, or burgh, as 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, 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 separately let at a rent not amounting to four pounds per annum, and the names of the occupiers thereof shall not have been inserted in the valuation roll, the proprietor of such lands and heritages shall be charged with and have to pay the whole of the assessments on such lands and heritages separately let as aforesaid; but every such proprietor charged with and paying such assessment shall have relief against the tenants and occupiers of such lands and heritages for reimbursement 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 hereinbefore made and provided as regards lands and heritages separately let at a rent not amounting to four pounds; and all acts, laws, and usages to the contrary are hereby repealed in so far as necessary to give effect to this enactment, but no further.

Valuation Roll to be Evidence in Registration and Appeal Courts.

XXXIV. In all questions and proceedings under any Act of Parliament relating to the franchise, or to the representation of the people in Parliament, it shall be sufficient to refer to an entry in the valuation roll in force for the time, or last in force under this Act in any county or burgh, and such entry shall be received and taken in all such questions and proceedings as conclusive proof that the gross yearly rent or value of the lands or heritages specified therein is at the date of such reference, and has been from the commencement of the year to which such valuation roll applies, of the amount therein set forth; and it shall be competent in all cases, notwithstanding anything in any existing Act of Parliament to the contrary, to refer to such valuation roll in such appeal court, although such valuation roll may not have been produced or referred to in the registration court; and it shall be the duty of every sheriff clerk of a county and town clerk of a burgh officiating or who ought to officiate at any registration court or court of appeal under any such Act of Parliament to have the valuation roll of the county or burgh, as the case may be, in force for the time under this Act, on the table of such registration court or court of appeal, as the case may be, for reference as aforesaid; and as soon as each annual valuation roll of a county, or of a burgh not being a burgh sending or contributing to send a member to Parliament, shall have been completed under this Act, and when the same shall be required for the purposes of any registration or appeal court, the clerk of supply having the custody of such valuation roll shall, when called upon to do so, transmit the same to the sheriff clerk of the county, by whom it shall be retained, patent to all parties having interest therein, until the business of the registration and appeal courts of the year shall be concluded, when it shall be forthwith returned by such sheriff clerk to such clerk of supply.

Valuation Rolls to be made up in prescribed Form, and to be transmitted to the General Register House for preservation.

XXXV. The valuation rolls to be made up in terms of this Act shall be, as nearly as may be, in the forms of the schedules hereunto

annexed, and shall be otherwise in such form and of such dimensions as may be prescribed by the Lord Clerk Register of Scotland, or his deputy; and at the expiration of six years from the date of the passing of this Act, and at the expiration of every subsequent period of six years thenceforward, every clerk of supply and town clerk or other person, being custodier of the valuation rolls of any county or burgh under this Act, shall transmit or cause to be transmitted to the said Lord Clerk Register or his deputy, in order to preservation thereof in the General Register House of Scotland, the whole valuation rolls of such county or burgh then completed, and not previously transmitted, other than the valuation rolls of such county or burgh in force for the time being.

Boundaries of Burghs sending Members to Parliament to be same as prescribed by 2 *&* 3 *W.* IV. *c.* 65.

XXXVI. The limits and boundaries of such burghs as send, or contribute to send, a member or members to Parliament, shall, for the purposes of this Act, be taken and held to be according to the limits and boundaries prescribed by an Act passed in the session of Parliament holden in the second and third years of the reign of His late Majesty King William the Fourth, intituled 'An Act to amend the Representation of the People in Scotland:' Provided always, that in any burgh in which the ordinary jurisdiction of the magistrates shall not extend over the whole of the said boundaries, it shall be lawful to exclude therefrom, for the purposes of this Act, such part thereof, being beyond the ordinary jurisdiction of the magistrates, as may be mutually agreed on by the magistrates of the burgh and the commissioners of supply for the county, or in case of disagreement as shall be determined by the sheriff of such county: Provided always, that where more than one burgh contributes to send a member or members to Parliament, each such burgh shall notwithstanding be held to be distinct and separate burghs for the purposes of this Act; and the magistrates of each burgh respectively shall have and exercise all the powers herein conferred on magistrates of burghs: Provided also, that where the boundaries of any burgh are not prescribed by the before-recited Act of the second and third years of the reign of His Majesty King William the Fourth, the same shall be determined by the sheriff of the sheriffdom in which such burgh is situated, or, if such burgh be situated partly in one county and partly in another, by the sheriff of that sheriffdom in which the greater part of such burgh may be situated; and, as soon as may be after the passing of this Act, every sheriff to whom such power of fixing the boundaries of any burgh for the purposes of this Act is hereby committed shall, by letter to be addressed by him to the chief or senior magistrate or other administrator on behalf of such burgh, require such magistrate or other administrator of such burgh to attend him at a time and place to be fixed in such letter, and shall likewise intimate the same to the convener or conveners of the county or counties in which such burgh is situated, and shall at such time and place, or at any time or place to which the sheriff may adjourn the inquiry, take such evidence

as may be adduced to him, or as he may think necessary, and shall thereupon, by writing under his hand, fix and determine the boundaries of such burgh for the purposes of this Act, and shall cause such written determination to be recorded in the sheriff-court books of his county, and shall furnish an official extract therefrom to such magistrate or administrator, and to the clerk or clerks of supply of the county or counties within which such burgh is situated; and such determination shall, when so recorded, fix and determine the boundaries of such burgh for the purposes of this Act.

Recovery of Penalties.

XXXVII. Every penalty imposed by this Act may be recovered by summary proceeding, upon complaint in writing made in name of an assessor under this Act to the sheriff of the sheriffdom in which the offence shall have been committed, or to the sheriff of any sheriffdom in which the offender may be found; and on such complaint being made, such sheriff shall issue a warrant or order requiring the party complained against to appear on a day and at a time and place to be named in such order; and every such order shall be served on the party offending either in person or by leaving with some inmate at his usual place of abode a copy of such order, and of the complaint whereupon the same has proceeded; and either upon the appearance or upon the default to appear of the party offending it shall be lawful for the sheriff to proceed to the hearing of the complaint, and upon proof of the offence, either by the confession of the party complained against, or other legal evidence, and without any written pleadings or record of evidence, to convict the offender, and upon such conviction to decern and adjudge the offender to pay the penalty incurred, as well as such expenses as the sheriff shall think fit, and to grant warrant for imprisoning the offender until such penalty and expenses shall be paid: Provided always, that such warrant shall specify the amount of such penalty and expenses, and shall also specify a period at the expiration of which the party shall be discharged, notwithstanding such penalty or expenses shall not have been paid, which period shall in no case exceed three calendar months.

Application of Penalties.

XXXVIII. The sheriff by whom any penalty shall be imposed by virtue of this Act shall award such penalty to be applied for the purposes of this Act within the county or burgh in which the offence was committed, and shall order the same to be paid over to the complainer, or to some other person for that purpose: Provided always, that no person shall be liable to the payment of any penalty imposed by virtue of this Act unless such penalty shall have been prosecuted for within six calendar months after the commission of the offence for which it has been incurred.

Where Assessments are levied under Local Acts on a different Valuation to that established by this Act, Sheriff of the County to fix Percentage.

XXXIX. Where in any burgh or parish or county under any

statute, any assessment, rate, or tax of a fixed amount or percentage has been assessed upon or levied from the proprietors or tenants or occupiers of any lands and heritages, but according to a different valuation from that established by this Act, it shall be lawful for the sheriff, on an application from any person or persons 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

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 1st 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 valuation roll of railways and canals in terms of this Act; and nothing contained in this Act shall exempt from or render liable to assessment any person or property not previously exempt from or liable to assessment.

Printing of Valuation Roll.

X. It shall be lawful for the commissioners of supply of any county, or the magistrates of any burgh, to resolve at any meeting of their number, ordinary or special, duly called, and by a majority of those attending and voting, that the valuation roll of such county or burgh for the current year shall be printed; and the expenses of such printing shall be deemed to be part of the expenses of making up such roll in terms of the eighteenth section of the first-recited Act, and shall be assessed for and levied accordingly: Provided always, that notice of the intention to move such resolution shall be inserted in the notice calling the meeting at which it is to be moved.

Partial Repeal of recited Act.

XI. The recited Acts, and all other laws, statutes, and usages, shall be and the same are hereby repealed, in so far as necessary to give effect to the provisions of this Act, but in all other respects they shall remain in full force and effect.

Commencement of Act.

XII. The first valuation rolls made up under the said recited Acts and this Act shall be for the year from Whitsunday One thousand eight hundred and sixty-seven to Whitsunday One thousand eight hundred and sixty-eight: Provided always, that for such year only the time allowed to the Assessor of Railways and Canals for making up his valuation roll, and transmitting copies thereof to each railway, canal, and other company, shall be and is hereby extended to the fifteenth day of September next; the time for complaining to the said assessor, or lodging a note of appeal to the Lord Ordinary officiating on the Bills, or to the sheriff, as the case may be, against any valua-

tion 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.

PUBLIC HEALTH ACT.

CAP. CI.—*An Act to consolidate and amend the law relating to the Public Health in Scotland.*—[15th August 1867.]

WHEREAS it is expedient to consolidate and amend the laws applicable to Scotland for removal of nuisances, for prevention of diseases, and for sanitary purposes generally: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Preliminary.

I. *Short Title.*—This Act may be cited for all purposes as the 'Public Health (Scotland) Act, 1867.'

II. From and after the first day of November One thousand eight hundred and sixty-seven, the Nuisances Removal (Scotland) Act, 1856, except Part V. thereof, Sections 441 to 447, both inclusive, of the General Police and Improvement (Scotland) Act, 1862, and also the Sewage Utilization Act, 1865, and the Sanitary Act, 1866, so far as these two last-mentioned Acts apply to Scotland, are repealed: Provided always, that all proceedings commenced or taken under the said Acts or any of them, in so far as hereby repealed, and not yet completed, may be proceeded with under the said Acts or any of them, or under this Act; and all orders in Council, and all directions and regulations issued by the Board of Supervision under the said Acts or any of them, and all appointments made, and all contracts or works undertaken, and generally all claims, rights, and liabilities, civil or criminal, constituted or existing under the said Acts, before the passing of this Act, with the remedies and proceedings applicable thereto under the said Acts or this Act, shall continue and be as effectual as if the said Acts had not been repealed; and where in any enactments of any Act, general or local, which shall continue in force after the commencement of this Act, any of the Acts or parts of Acts hereby repealed is cited or referred to, such enactments shall be interpreted as if this Act were cited or referred to therein, and as if the provisions of this Act were substituted for the provisions hereby repealed.

III. *Interpretation of certain Terms.*—In this Act the following words and expressions shall have the meanings hereinafter assigned to them, unless such meaning is inconsistent with the context:

The word 'board' shall signify the Board of Supervision for the Relief of the Poor in Scotland:

The word 'secretary' shall include assistant secretary:

The expression 'medical officer' shall signify a duly qualified medical practitioner appointed under the Act eighth and ninth Victoria, chapter eighty-three, or under this Act:

The word 'sheriff' shall include sheriff-substitute:

The word 'burgh' shall include not only royal burgh, Parliamentary burgh, burgh incorporated by Act of Parliament, burgh of barony, and burgh of regality, but also any populous place having a town council, police commissioners, or trustees exercising the functions of police commissioners under any general or local Act:

The word 'magistrate' shall include a magistrate or judge having police jurisdiction under the General Police and Improvement (Scotland) Act, 1862, or under any general or local police Act which may be in force:

The word 'decree' or 'decern' shall include any warrant, sentence, judgment, order, or interlocutor:

The word 'owner' shall signify the person for the time entitled to receive, or who would, if the same were let, be entitled to receive, the rents of the premises, and shall include a trustee, factor, tutor, or curator, and in case of public or municipal property shall apply to the persons to whom the management thereof is intrusted:

The word 'ship' shall include any sailing or steam ship, vessel, or boat:

The word 'premises' shall include lands, buildings, structures of any kind, streams, lakes, drains, ditches, or places open, covered, or inclosed, and any ship, lying in any sea, river, harbour, or other water, or *ex adverso* of any place within the limits of the local authority:

The word 'person,' and words applied in this Act to any person or individual, shall apply to and include women, corporations, clubs, societies, statutory boards or commissioners, joint stock companies, partnerships, joint owners, and joint occupants, and trustees:

The word 'company' shall apply to and include commissioners:

The expression 'author of a nuisance' shall signify the person through whose act or default the nuisance is caused, exists, or is continued, whether he be the owner or occupier, or both:

The expression 'common lodging house' shall signify a house or part thereof where lodgers are housed at an amount not exceedceeding fourpence per night for each person, whether the same be payable nightly or weekly, or at any period not longer than a fortnight, or where the house is licensed to lodge more than twelve persons:

The expression 'keeper of a common lodging house' shall include any person having or acting in the care and management of a common lodging house.

IV. 'The Lands Clauses Consolidation (Scotland) Act, 1845,' and 'The Lands Clauses Consolidation Acts Amendment Act, 1860,' shall, for the special purposes hereinafter mentioned, be incorporated with and form part of this Act, and shall be hereinafter referred to as 'The Lands Clauses Acts.'

PART I.—*Local Authority and Board of Supervision.*

V. *Local Authorities as herein named to execute this Act.*—The following bodies shall respectively be the local authority to execute this Act in the districts hereunder stated in Scotland:

In places within the jurisdiction of any town council, and not subject to the jurisdiction of police commissioners or trustees as after mentioned,—the town council:

In places within the jurisdiction of police commissioners or trustees exercising the functions of police commissioners under any general or local Act,—the police commissioners or trustees:

In any parish, or part thereof, over which the jurisdiction of a town council or of police commissioners or trustees exercising the functions of police commissioners does not extend,—the Parochial Board of such parish:

Board of Supervision to determine the Local Authority in Parishes not wholly within the jurisdiction of a Town Council, etc.—Provided always, that where any parish shall be partly within and partly beyond the jurisdiction of a town council and of police commissioners or trustees, and of a parochial board, or of any two or more of such bodies, the board, if application be made to them by any of these bodies, or by any person having interest, may, if they see fit, determine which of the said several bodies shall be the local authority within the whole limits or within any portion of such parish, and the board may from time to time recal or vary such determination; and provided further, that all determinations already made under the fifth section of the Nuisances Removal (Scotland) Act, 1856, shall be valid and effectual till recalled or varied under this Act.

VI. *Where District in more than One County.*—Where any parish or burgh shall be situated in more than one county, the board shall, on application being made to them by any person having interest, determine in which one of such counties such parish or burgh shall be held to be situated for the purposes of this Act, whose decision shall be final; and the jurisdiction and powers of magistrates, justices, and sheriffs, and the powers of their officers under this Act, shall be regulated accordingly, and the board may from time to time recal or vary such determination; provided always, that all determinations already made under the fifth section of the Nuisances Removal (Scotland) Act, 1856, shall be valid and effectual till recalled or varied under this Act.

VII. *Local Authorities to be Bodies Corporate. Committees may be appointed.*—The local authorities shall respectively be bodies corporate, designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of this Act; and the local authority may appoint any committee or committees of their own body to receive notices, to take proceedings, and in all or certain specified respects to execute this Act, whereof two shall be a quorum, unless a larger quorum be specified in their appointment; and such local authority or their committee, thereto

duly authorized, may, by minute or other writing signed by the chairman of such body or committee, empower any officer or person to make complaints and take proceedings on their behalf; and all acts done or proceedings taken by or against such committee or officer or person shall be as valid as if they were done by or taken in the name of all the members of the local authority; and the local authority shall have power to commence or carry on all proceedings commenced, or which might have been commenced before the passing of this Act, by the local authority under any of the before repealed Acts, and shall be vested with all property or pecuniary claims so vested in such last-mentioned local authority.

VIII. *Local Authority to appoint Sanitary Inspectors and other Officers.*—The local authority may, and where it shall be thought necessary by the board for the purposes of this Act the local authority shall, appoint a sanitary inspector or inspectors, who shall be also inspector or inspectors of common lodging houses, and a medical officer or medical officers, and may make bye-laws for regulating the duties of such inspectors and medical officers, which bye-laws shall not be effectual until they are approved of by the board; and the local authority shall appoint convenient places for their offices, and shall allow to every such inspector or medical officer on account of his employment a proper salary; and if no such inspector or medical officer is appointed the local authority shall, in all cases in which any duty is laid on them by this Act, appoint some person, where the same shall be necessary, to perform such duty, and shall remunerate him as they shall see fit; and the names and addresses and salaries of the said inspectors and medical officers shall be reported by the local authority to the board immediately on such persons being appointed and such salaries fixed; and the said inspectors and medical officers shall be bound to make such returns and special reports to the board as the board shall require them to make; and the said inspectors shall be removable from office only by the board, except in the case where the local authority is the town council or police commissioners or trustees in any burgh in Scotland having a local Act for police purposes, or having a population of ten thousand or upwards according to the census last taken, in which case the inspectors shall be removable from office by the local authority.

IX. *Powers of the Board to require Returns and examine Witnesses.*—It shall be lawful for the board, upon written application by two or more parties interested or upon the report of any of their inspecting officers, to inquire into the sanitary condition of any parish in Scotland, or into the sanitary condition of any burgh in Scotland not having a local Act for police purposes, or not having a population of ten thousand or upwards according to the census last taken, and also in these two latter cases with the consent of one of Her Majesty's principal secretaries of state, after duly considering any representation which may be made to him by any town council, stating that such consent ought not in the case of such burgh to be given; and for this purpose the board are hereby empowered to make inquiries, and require answers or returns to be made to the board upon any question or matter con-

nected with or relating to the purposes of this Act, and also by a summons, signed by one of their number or by the secretary, to require the attendance of all such persons as they may think fit to call before them upon any such question or matter, and to administer oaths to and examine upon oath all such persons, and to require and enforce the production upon oath of all books, contracts, agreements, accounts, and writings, or copies thereof respectively, in anywise relating to any such question or matter, or, in lieu of requiring such oath as aforesaid, the board may, if they think fit, require any such person to make and subscribe a declaration of the truth of the matters respecting which he shall have been or shall be so examined.

X. *Power to Board to authorize Special Inquiries to be made.*—It shall and may be lawful for the board, whenever it may seem fitting to them, with the consent of one of Her Majesty's principal secretaries of state or of Her Majesty's advocate for Scotland, to 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 as may be necessary for conducting such inquiry, and such member shall be reimbursed by the board of all expenses necessarily incurred by him in conducting such inquiry, and such expenses shall be deemed part of the expenses attending the execution of this Act, and be defrayed in the same manner as the general expenses of the board are now defrayed.

XI. *Power to Board to appoint Commissioners for conducting Special Inquiries.*—It shall and may be lawful for the board, whenever it may seem fitting to them, with the consent of one of Her Majesty's principal secretaries of state or of Her Majesty's advocate for Scotland, or whenever the board may be thereunto required by one of Her Majesty's said secretaries of state or by Her Majesty's advocate, to appoint some person, not being a member of the board, but being a member of the Faculty of Advocates, or a duly qualified medical practitioner, or an architect or surveyor or engineer, or two of such persons, to act as a commissioner or commissioners for the purpose of conducting any special inquiry for a limited period, and to report thereon; and the board shall delegate to every person so appointed for the purpose of conducting such inquiry all such of the powers of the board as they may deem necessary or expedient for summoning or examining witnesses and havers, and otherwise conducting such inquiry; and every such appointment shall be subject to the approval of one of Her Majesty's said secretaries of state or of Her Majesty's said advocate; and every person so appointed as aforesaid to conduct any special inquiry shall, before he enter on the execution of his duties, take an oath *de fideli administratione officii*, which oath may be administered to him by any member of the board, or by any one of the judges of the Court of Session, or by the sheriff of any county; and it shall not be necessary to notify the appointment of any such commissioner otherwise than by intimating the same by letter under the hand of the secretary or of any member of the board to the sheriff of the county

within which the inquiry in question is to be made; and every such commissioner shall be reimbursed by the board for all expenses necessarily incurred by him in conducting such inquiry, and shall also receive such reasonable remuneration for his time and trouble as may have been agreed upon between him and the said board, and approved of by the Commissioners of Her Majesty's Treasury, or by such person or persons as they shall name.

XII. *Power to Board to allow Expenses of Witnesses, etc.*—It shall be lawful for the board, in any case where they see fit, to order and allow such expenses of witnesses, and such expenses of or concerning the production of any books, contracts, agreements, accounts, or writings, or copies thereof, to or before the said board, or member thereof, or commissioner or commissioners, as such board may deem reasonable; and such expenses so ordered and allowed shall be deemed part of the expenses attending the execution of this Act, and be defrayed in the same manner as the general expenses of this board are now defrayed.

XIII. *Penalties on Parties giving False Evidence or refusing to obey Summons of the Board.*—If any person, upon any examination on oath under the authority of this Act, shall wilfully give false evidence, he shall be deemed guilty of perjury, and shall be liable to the pains and penalties thereof; and in case any person shall wilfully refuse to attend in obedience to any summons of the board, or member or commissioner 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 board, or member thereof, or commissioner or commissioners, or shall wilfully neglect or disobey any of the orders of the board, or member or commissioner, or be guilty of any contempt of the board or member or commissioner, such person being thereof lawfully convicted, shall forfeit and pay for the first offence any sum not exceeding five pounds, for the second and every subsequent offence any sum not exceeding twenty pounds nor less than five pounds.

XIV. *Power to Board to appoint Clerks, etc.*—The board are hereby empowered from time to time to appoint all such officers and clerks as they shall deem necessary, and from time to time, at the discretion of the board, to remove such officers and clerks, or any of them, and to appoint others in their stead; provided that the amount of the salaries of such officers and clerks shall from time to time be regulated by the Commissioners of Her Majesty's Treasury; and the name of every person so appointed or removed as aforesaid shall forthwith be intimated to one of Her Majesty's principal secretaries of state for his approval, who shall be understood to approve of such appointment or removal, if no notice to the contrary be received by the board within twenty-one days from the day of the date of such intimation.

XV. *Salaries of Legal Members of Board.*—The sheriffs of Perth, Renfrew, and Ross and Cromarty shall each receive, so long as they act as members of the Board of Supervision, the sum of one hundred and fifty pounds sterling per annum, and such allowance shall come

in place of the allowance of one hundred pounds sterling provided to the said sheriffs by the Act eighth and ninth of Her Majesty, chapter eighty-three, section four.

PART II.—*Removal of Nuisances.*

XVI. *Description of Nuisances under this Act.*—The word 'nuisance' under this Act shall include—

(*a*) Any insufficiency of size, defect of structure, defect of ventilation, want of repair or proper drainage, or suitable water-closet or privy accommodation, or cesspool, and any other matter or circumstance rendering any inhabited house, building, premises, or part thereof, injurious to the health of the inmates, or unfit for human habitation or use:

(*b*) Any pool, watercourse, ditch, gutter, drain, sewer, privy, urinal, cesspool, or ashpit so foul as to be injurious to health, or any well or other water supply used as a beverage or in the preparation of human food, the water of which is so tainted with impurities or otherwise unwholesome as to be injurious to the health of persons using it, or calculated to promote or aggravate epidemic disease:

(*c*) Any stable, byre, pigstye, or other building in which any animal or animals are kept in such a manner as to be injurious to health:

(*d*) Any accumulation or deposit of manure or other offensive matter within fifty yards of any dwelling house within the limits of any burgh, or wherever situated, if injurious to health, or any accumulation of police manure within a quarter of a mile of the municipal boundaries of any burgh (excepting the city of Glasgow), or any accumulation of deposits from ashpits or manure from town or village laid nearer than fifty yards to a public or parish road or dwelling house:

(*e*) Any work, manufactory, trade, or business injurious to the health of the neighbourhood, or so conducted as to be offensive or injurious to health, or any collection of bones or rags injurious to health:

(*f*) Any house or part of a house so overcrowded as to be dangerous or injurious to the health of the inmates:

(*g*) Any factory, workshop, or workplace, not under the operation of any general Act for the regulation of factories or bakehouses, and not kept in a cleanly state, or not ventilated in such a manner as to render harmless, as far as practicable, any gases, vapours, dust, or other impurities generated in the course of the work carried on therein, and injurious or dangerous to the health of persons employed therein, or any such factory, workshop, or workplace as is so overcrowded, while work is carried on therein, as to be dangerous or injurious to the health of those employed therein:

(*h*) Any fireplace or furnace which does not as far as practicable consume the smoke arising from the combustible matter used in such fireplace or furnace, and is used within any burgh,

for working engines by steam, or in any mill, factory, dye-house, brewery, bakehouse, or gaswork, or in any manufactory or trade process whatsoever:

(*i*) Any chimney (not being the chimney of a private dwelling house) sending forth smoke so as to be injurious to health:

Provided that in places where at the time of the passing of this Act no enactment is in force compelling fireplaces or furnaces to consume their own smoke, the foregoing enactment as to fireplaces and furnaces consuming their own smoke shall not come into operation until the expiration of one year from the date of the passing of this Act:

(*j*) Any churchyard, cemetery, or place of sepulture so situated or so crowded with bodies or otherwise so conducted as to be offensive or injurious to health.

XVII. *Power of Entry to Local Authority or their Officers.*—If the local authority or sanitary inspector have reasonable grounds for believing that nuisance exists in any premises, such local authority or inspector may demand admission for themselves, the superintendent of police, and the medical officer, or any other person or persons whom the local authority may desire to inspect such premises, or for any or all of them, to inspect the same at any hour between nine in the morning and six in the evening, or at any hour when the operations suspected to cause the nuisance are in progress or are usually carried on; and if admission be refused, the local authority or sanitary inspector may apply to the sheriff, or to any magistrate or justice of the peace having jurisdiction in the place, stating on oath such belief; and such sheriff, magistrate, or justice may, with or without intimation to the owner, occupier, or person in charge of the premises, by order in writing, require the occupier or person having the custody of such premises to admit the local authority and others foresaid; and if such occupier or person refuse or fail to obey such order, he shall on conviction of such offence be liable to a penalty not exceeding five pounds; and on being satisfied of such failure or refusal, the sheriff, magistrate, or justice may grant warrant to such person or persons for immediate forcible entry into the premises; and if no such occupier or person can be discovered, or if no person is found on the premises to give or refuse admission, the local authority or their officers may enter the premises without any order or warrant, and forcibly, if need be.

XVIII. *Proceedings by Local Authority when Nuisances are ascertained to exist.*—In any case where the existence of a nuisance is ascertained to their satisfaction by the local authority, or is certified to them in writing, signed by the medical officer, or where the nuisance in the opinion of the local authority did exist at the time when demand of admission was made or the certificate was given, and, although the same may have been since removed or discontinued, is in their opinion likely to recur or to be repeated, they may apply to the sheriff or to any magistrate or justice, by summary petition in manner hereinafter directed, and if it appear to his satisfaction that the nuisance exists, or, if removed or discontinued since the demand

of admission was made or the certificate was given, that it is likely to recur or to be repeated, he shall decern for the removal or remedy or discontinuance or interdict of the nuisance as hereinafter mentioned; provided that in the cases under the heads marked (*e*) and (*g*) in section sixteen such application shall be made only on medical certificate as aforesaid, or on a requisition in writing under the hands of any ten inhabitants of the district of the local authority, and that in these cases, and the cases under the heads marked (*h*) and (*i*) in said sections, shall be made only to the sheriff; and further, that in the cases under the head marked (*j*) in section sixteen it shall not be necessary to cite any person as the author of the nuisance, but such application shall be proceeded with by the sheriff (to whom alone it shall be made) after such intimation to the collector of the churchyard or other dues, or to such other person as to the sheriff shall seem meet; and such person or persons as shall appear after such intimation shall, if the sheriff think proper, be allowed to be heard and to object to such application in the same manner as if he or they were the author of the alleged nuisance within the meaning of this Act.

XIX. *Form of Interlocutor.*—It shall not be necessary to restrict such decree to any special remedy prayed for in the petition, but as the case shall require, the author of the nuisance or owner of the premises may be ordained to provide sufficient privy or watercloset or ashpit accommodation, means of drainage or ventilation for, or to repair, make safe, and habitable, or to floor, pave, cleanse, whitewash, disinfect, or purify the dwelling house, building, or premises, or to drain, empty, cleanse, fill up, cover, repair, or remove any pool, ditch, gutter, watercourse, privy, cesspool, drain, or ashpit, or to shut up or purify any well, or to provide a substitute for that complained of, or to abstain from any operation which may pollute a well or stream from which the inhabitants obtain a supply of water, or to cease to use the water of any well or stream as a beverage or in the preparation of human food, or to remove the animal, or to carry away the offensive matter, or to discontinue the work, trade, manufactory, or business, or prevent the injurious effects thereof (according to the nature of the case), or to limit the number of persons who may be accommodated in any house or part thereof overcrowded, or the number of separate dwellings into which such house or part thereof may be divided or let for the use of separate families or persons, or to increase the means of ventilation, or to shut up or regulate the use of any churchyard, cemetery, or place of sepulture, or to do such other works or acts as are necessary to remove the nuisance complained of, in such manner and within such time as in the interlocutor shall be specified; and if the sheriff, magistrate, or justice is of opinion that such or the like nuisance is likely to recur, he may further grant interdict against the recurrence of it, or do otherwise, as the case may in his judgment require; and if the nuisance proved to exist be such as to render a house or building unfit for human habitation, he may prohibit the using thereof for that purpose until it is rendered fit for that purpose, or do otherwise as the case may in his judgment require.

XX. *Penalty for Contravention of Decree and of Interdict.*—If the said decree be not complied with in good and sufficient manner, and within the time appointed, the author of the nuisance, or the owner, as the case may be, shall be liable, in the case of nuisances specified in clauses (*a*), (*b*), (*c*), (*d*), (*f*), (*i*), and (*j*) in section sixteen of this Act, to a penalty of not more than ten shillings per day during his failure so to comply; and if the said interdict be knowingly infringed by the act or authority of the owner or occupier, such owner or occupier shall be liable for every such offence to a penalty not exceeding twenty shillings per day during such infringement; and in the case of nuisances specified in clauses (*e*), (*g*), and (*h*) in the said section, the party not complying with or infringing such decree shall be liable to a penalty not exceeding five pounds nor less than two pounds for the first offence, and of ten pounds for the second, and for each subsequent conviction a sum double the amount of the penalty in the last preceding conviction, but no penalty shall exceed two hundred pounds: Provided always, in the case of such last-mentioned nuisance (*h*), that if it appears to the sheriff that the best means then known to be available for mitigating the nuisance, or the injurious effects thereof, have not been adopted, he may suspend his final determination upon condition that the author of the nuisance shall undertake to adopt within a reasonable and definite time such means as he shall judge to be practicable, and order to be carried into effect, for mitigating or preventing such injurious effects.

XXI. *Order when structural Works are required.*—When it shall appear to the sheriff, magistrate, or justice that the execution of structural works is required for the removal or remedy of a nuisance, he may appoint such works to be carried out under the direction and subject to the approval of any person he may appoint; and he may, before making his order, require the local authority, within a time to be specified by him, to furnish him with an estimate of the cost of the required works.

XXII. *Local Authority to do Works on Owner's or Occupier's Default, or if Person causing Nuisance cannot be found.*—In case of noncompliance with or infringement of any decree aforesaid, the sheriff, magistrate, or justice may, on application by the local authority, grant warrant to such person or persons as he may deem right to enter the premises to which such decree relates, and remove or remedy the nuisance thereby condemned or interdicted, and do whatever may be necessary in execution of such decree; or if in the original application it appears to his satisfaction that the author of the nuisance is not known or cannot be found, then such decree may at once ordain the local authority to execute the works thereby directed; and all expenses incurred by the local authority in executing the works may be recovered from the author of the nuisance or the owner of the premises.

XXIII. *Manure, etc., to be sold.*—Any article or articles removed by the local authority in pursuance of this Act may be sold by public roup, after not less than five days' notice by printed handbills posted in the locality, except in cases where delay would be prejudicial to health, or in which the article or articles are not of the value of two

pounds or upwards, in which case the sheriff, magistrate, or justice may, by writing under his hand, order the immediate removal, sale, or destruction of the thing, and the proceeds of the sale shall be retained by the local authority, and applied *pro tanto* in payment of all expenses incurred under this Act with reference to such nuisance; and the surplus, if any, shall be paid, on demand, by the local authority, to the owner of such thing; and the balance of such expenses shall be defrayed, if such proceeds are insufficient for that purpose, by the author of the nuisance or the owner of the premises.

XXIV. *Foul Ditches, etc., may be replaced by Sewers.*—Whenever any watercourse, ditch, gutter, or drain along the side of any public road, street, or lane shall be used or partly used for the conveyance of any water, sewage, or other matter from any premises, and cannot in the opinion of the local authority be rendered free from foulness or offensive smell without the laying down of a sewer or of some other structure, such local authority shall and they are hereby required, subject to the approval of the board, to lay down such sewer or other structure within the limits of their district, or, where necessary for the purpose of outfall or distribution of sewage, without their district, and to keep the same in good and serviceable repair; and they may enter any premises for such purposes, and use such part thereof as shall be necessary, and for such use shall pay such damages as may be assessed by the sheriff on a summary application, and to such party as the sheriff may direct: Provided always, that no damage shall be payable to any person who has caused or contributed to cause such watercourse, ditch, gutter, or drain to become foul or offensive, unless such person shall satisfy the sheriff that he had justifiable excuse for so doing; and such local authority are hereby authorized and empowered to assess the owners of all the premises (according to the yearly value thereof) from which then or at any time thereafter any material other than pure water flows, falls, or is carried into the said sewer or other structure, for payment of all expenses incurred in making and maintaining the same, and that either in one sum or in instalments, as they shall think just and reasonable, and after fourteen days' notice at the least left with the said owners, if resident within the district, and if not so resident with the occupiers of the said premises, to levy and collect the sums so assessed, with the same remedies in case of default in payment thereof as are hereinafter provided with reference to the general charge and expenses incurred by the local authority under this Act.

XXV. *Act not to affect Navigation of Rivers or Canals, or Irrigation of Lands.*—Nothing in this Act contained shall enable any local authority or other person to injuriously affect—

(1.) The irrigation of lands in a rural district, or the supply of water used for such irrigation;

(2.) The supply of water required for the purposes of any waterworks established by Act of Parliament, or of the compensation water required to be given by the owners of such waterworks, unless the local authority shall have previously obtained the consent of such owners;

(3.) The navigation on or use of any river, canal, dock, harbour, lock, reservoir, or basin in respect of which any persons are by virtue of any Act of Parliament entitled to take tolls or dues, or the supply of water to the same, or any bridges crossing the same, or any towing-path thereon:

Provided always, that it shall not be lawful for the local authority to execute any works in, through, or under any wharves, quays, docks, harbours, locks, reservoirs, or basins without the consent in writing in every case of the persons entitled by virtue of any Act of Parliament to take tolls or dues in respect thereof, and such persons may at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the inspector to the local authority, take up, divert, or alter the level of any sewers and drains, culverts or pipes, constructed by any local authority, and passing under or interfering with such rivers, canals, docks, harbours, reservoirs, or basins, or the towing-paths thereof, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

XXVI. *Penalty on Sale of unwholesome Meat.*—The sanitary inspector may at all reasonable times enter any premises to inspect and examine any carcass, meat, poultry, game, flesh, fish, fruit, or vegetables exposed for sale, or which there is probable cause for believing to be intended for human food; and in case any such carcass, meat, poultry, game, flesh, fish, fruit, or vegetables appear to him to be unfit for such food, the same may be seized without any warrant; and if it appear to the sheriff, or any two magistrates or justices, that any such carcass, meat, poultry, game, flesh, fish, fruit, or vegetables are unfit for the food of man, he or they shall, by a writing under his or their hand or hands, order the same to be destroyed, or to be so disposed of as to prevent the same being exposed for sale or used for such food; and the person to whom such carcass, meat, poultry, game, flesh, fish, fruit, or vegetables belong, or in whose custody the same are found, shall be liable to a penalty not exceeding ten pounds for such carcass, piece of meat or flesh, or for any quantity of fish, poultry, game, fruit, or vegetables, or any refuse thereof, and also to pay all expenses caused by the seizure, detention, or disposal thereof.

XXVII. *Penalty for causing Water to be corrupted by Gas Washings, etc.*—Any person engaged in the manufacture of gas, naphtha, vitriol, paraffine, or dye stuffs, or any other deleterious substance, or in any trade in which the refuse produced in any such manufacture is used, who shall at any time cause or suffer to be brought or to flow into any stream, reservoir, aqueduct, well, or pond, or place for water, constructed or used for the supply of water for domestic purposes, or into any pipe or drain communicating therewith, any product, washing, or other substance produced in any such manufacture, or shall wilfully do any act connected with any such manufacture whereby the water in any such stream, reservoir, aqueduct, well, pond, or place for water shall be fouled, and any person who shall wilfully do or permit to be done any Act whereby the water in any stream, reservoir,

aqueduct, well, pond, or place constructed for the supply of water for domestic purposes shall be fouled, shall forfeit for every such offence a sum not exceeding fifty pounds.

XXVIII. *Such Penalties, etc., to be sued for within Six Months.*—Such penalty may be recovered, with expenses, by the person into whose water such product, washing, or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid, or in default of proceedings by such person, after notice to him from the local authority of their intention to proceed for such penalty, or if there be no such person, by the local authority; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

XXIX. *Daily Penalty during the Continuance of the Offence.*—In addition to the said penalty (and whether such penalty shall have been recovered or not), the person so offending shall forfeit a sum not exceeding five pounds (to be recovered in the like manner) for each day during which such product, washing, or other substance shall be brought or shall flow as aforesaid, or during which the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on such person by the local authority, or by the person into whose water such product, washing, or other substance shall be brought or flow, or whose water shall be fouled thereby, and such penalty shall be paid to the local authority or person from whom such notice shall proceed; and all monies recovered by the local authority under this or the preceding section shall, after payment of any damage caused by the act for which the penalty is imposed, be applied towards defraying the expenses of executing this Act.

XXX. *Offensive Trades to be subject to Regulations.*—The business of a blood boiler, bone boiler, tanner, slaughterer of cattle, horses, or animals of any description, soap boiler, skinner, tallow melter, tripe boiler, or other business, trade, or manufacture injurious to health, shall not, after the passing of this Act, be newly established or enlarged in any building or place within any burgh or village, or within five hundred yards therefrom, without the consent in writing of the local authority previously had and obtained, and published in one or more newspapers circulating within the district; and if any question arises under this section as to the existence or limits of a burgh or village, or as to the extent included within the said five hundred yards, or as to whether a business, trade, or manufacture, other than those above specified, is injurious to health, or as to whether such consent ought to have been given, any such question shall be finally determined by the board; and the party dissatisfied may bring the same before the board within twenty-one days after the resolution or order of the local authority has been published as aforesaid; and any person contravening this enactment shall, in addition to discontinuance of such business, trade, or manufacture, be liable for each offence to a penalty not exceeding fifty pounds, and a further penalty of not exceeding forty shillings for each day during which the offence is con-

tinued; and the local authority may from time to time make such bye-laws with respect to any such businesses so newly established as they may think necessary, and in order to prevent or diminish the noxious or injurious effect thereof.

PART III.—*Prevention and Mitigation of Diseases under Order in Council.*

XXXI. *Privy Council empowered to issue Orders for Prevention of Diseases.*—Whenever any part of the United Kingdom appears to be threatened with or is affected by any formidable epidemic, endemic, or contagious disease, the Lords and others of Her Majesty's Most Honourable Privy Council, or any three or more of them (the Lord President of the Council or one of Her Majesty's Principal Secretaries of State being one), may, by order or orders by them from time to time made, direct that the provisions for the prevention of diseases contained in Part III. hereof be put in force in Scotland, or in such parts thereof or in such places therein as in such order or orders may be expressed, and may from time to time, as to all or any of the parts or places to which any such order or orders extend, and in like manner, revoke or renew any such order; and, subject to revocation and renewal as aforesaid, every such order shall be in force for six calendar months, or for such shorter period as in such order shall be expressed; and every such order of Her Majesty's Privy Council or any members thereof as aforesaid shall be certified under the hand of the clerk in ordinary of Her Majesty's Privy Council, and shall be published in the *Edinburgh Gazette*, and such publication shall be conclusive evidence of such order.

XXXII. *When Order is issued, Board to be vested with certain Powers. Power to appoint a Medical Officer and additional Clerks.*—When any such order has been issued, the board shall be vested with the powers after provided; and it shall be lawful for Her Majesty to appoint the sheriff of any county in Scotland, other than Renfrew, Perth, or Ross and Cromarty, to be an additional member of the board during the subsistence of such order, and such sheriff shall receive such remuneration as the Commissioners of Her Majesty's Treasury may think proper, not exceeding one hundred and fifty pounds per annum, to be paid out of money to be voted for that purpose by Parliament; and the board may also appoint a general or superintending medical officer to act under their directions during such period, and such officer shall receive a salary to be fixed and paid in like manner; and the board may, with the sanction of the said Commissioners of Her Majesty's Treasury, employ such additional clerks as may be necessary during such period; and the salary of such clerks and the office expenses incurred under this Act shall be defrayed in the same manner as the general expenses of the board are now defrayed.

XXXIII. *Power to Board to issue Regulations to carry out such Provisions of Order. Local Extent and Duration of the Regulations of the Board. Publication of Rules and Regulations.*—From time to time, after

the issuing of any such order as aforesaid, and whilst the same continues in force, the board may issue such directions and regulations as they shall think fit for the prevention, as far as possible, or mitigation of such epidemic, endemic, or contagious diseases, and from time to time may revoke, renew, and alter any such directions and regulations; and the same shall extend to all parts or places in which the provisions of this Act for the prevention and mitigation of disease shall, for the time being, be put in force under such orders as aforesaid, unless such directions and regulations be expressly confined to some of such parts or places, and then to such parts or places as therein are specified; and (subject to the power of revocation and alteration herein contained) such directions and regulations shall continue in force so long as the said provisions of this Act shall, under such order, be applicable to the same parts or places; and all such directions and regulations shall be published by being inserted in the *Edinburgh Gazette*, which publication shall be conclusive evidence thereof, and may be further published, and may be specially communicated to any local authority, by the secretary of the board, as the board may direct.

XXXIV. *Orders of Council, Directions and Regulations of Board, to be laid before Parliament.*—Every order of Her Majesty's Privy Council, and direction and regulation of the board under Part III. of this Act, shall be laid before both Houses of Parliament forthwith upon the issuing thereof, if Parliament be then sitting, and if not, then within fourteen days next after the commencement of the then next session of Parliament.

XXXV. *Matters to be provided for by such Regulations.*—The board, by such directions and regulations, may provide,

For the speedy interment of the dead:

For house-to-house visitation:

For the dispensing of medicines, and for affording to persons afflicted by or threatened with such epidemic, endemic, or contagious diseases such medical aid and such accommodation as may be required:

For any such matters or things as may to them appear advisable for preventing or mitigating such diseases:

Local Authority shall execute Regulations, and may direct Prosecution for violating the same.—And the local authority shall superintend and see to the execution of such directions and regulations, and shall do and provide all such Acts, matters, and things as may be advisable for mitigating such disease, or for superintending or aiding in the execution of such directions and regulations, or for executing the same, as the case may require, and may direct any prosecutions or legal proceedings for or in respect of the wilful violation or neglect of any such directions and regulations, and such wilful violation or neglect shall be deemed to be an offence under this Act.

XXXVI. *Power for Local Authority, etc., to enter Premises.*—The local authority acting in the execution of such directions and regulations, or the officers or persons by them in this behalf authorized, may enter at reasonable times in the daytime and inspect any pre-

mises where they have ground for believing that any person has recently died of any such disease, or that necessity may otherwise exist for executing in relation to the premises any of such directions and regulations.

XXXVII. *When Order in Council in force, overcrowded Houses to come under Common Lodging Houses Provisions.*—When any such order of Council is in force in any place, on the certificate of a sanitary inspector, or of a medical officer, or of two duly qualified medical practitioners, or other sufficient evidence, that any house or part of a house is so overcrowded as to be dangerous to health, the local authority shall have power to regulate the same according to the provisions of this Act in reference to common lodging houses.

XXXVIII. *Order in Council to extend to Ports and Arms of the Sea.*—All orders of Council for executing this Act shall extend to ports and arms of the sea lying within the jurisdiction of the Admiralty, and adjacent to the places to which such orders relate; and the board may issue, under the said orders, directions and regulations for cleansing, purifying, ventilating, and disinfecting, and preventing disease in ships and vessels, as well upon arms and ports of the sea aforesaid as upon inland waters.

Part IV.—*General Prevention and Mitigation of Disease.*

XXXIX. *Power to provide Hospitals.*—The local authority may provide within their district hospitals or temporary places for the reception of the sick, for the use of the inhabitants.

Such authority may build such hospitals or places of reception, provided the board approve of the situation and construction thereof, or they may make contracts for the use of any existing hospital or part of an hospital, or for the temporary use of any place for the reception of the sick.

Such authority may enter into any agreement with any person or body of persons having the management of any hospital for the reception of the sick inhabitants of their district, on payment by the local authority of such annual or other sum as may be agreed upon.

Two or more contiguous local authorities having respectively the power to provide separate hospitals may combine in providing a common hospital, provided the board approve of the situation and construction thereof, and all expenses incurred by such authorities in providing such hospital shall be deemed to be expenses incurred by them respectively in carrying into effect the purposes of this Act, and if any question shall arise as to the allocation of expenses, the same shall be determined by the board, whose decision shall be final; and such common hospital shall be deemed to be for the purposes of this Act an hospital within the district of each of the local authorities so combining.

XL. *Power to provide Means of Disinfection, and Carriages for Conveyance of infected Persons.*—The local authority in each district may provide a proper place, with all necessary apparatus and attendance,

for disinfection of woollen or other articles, clothing, or bedding which have become infected, and they may cause any articles brought for disinfection to be disinfected free of charge; and it shall be lawful at all times for the local authority to provide and maintain a carriage or carriages suitable for the conveyance of persons suffering under any contagious or infectious disease, and to pay the expense of conveying any person therein or otherwise to an hospital or place for the reception of the sick or to his own home; and further, if the local authority shall be of opinion, upon the certificate of any legally qualified medical practitioner, that the cleansing and disinfecting of any house or part thereof, and of any articles therein likely to retain infection, would tend to prevent or check contagious or infectious disease, it shall be the duty of the local authority to give notice in writing, requiring the occupier or owner of such house or part thereof to cleanse and disinfect the same; and if the person to whom notice is so given fail to comply therewith within the time specified in the notice, he shall be liable to a penalty not exceeding one pound for every day during which he continues to make default; and the local authority shall cause such house or part thereof to be cleansed and disinfected, and may recover the expenses incurred from the occupier or owner; and when such occupier or owner is from poverty or otherwise unable, in the opinion of the local authority, effectually to carry out such cleansing and disinfection, the local authority may, at their own expense, cleanse and disinfect such house or part thereof, and any such articles therein.

XLI. *Local Authority may erect public Waterclosets, etc.*—The local authority may erect such public waterclosets, privies, and urinals, and in such situations, as they may think fit, and may defray the expense thereof, and of keeping the same in repair and in good order, and shall cause such privies to be cleansed daily; and the local authority may also, by written notice to the owner or occupier of any schoolhouse or of any factory or building in which more than ten persons are employed at one time in any manufacture, trade, or business, require them or either of them, within a time specified, to construct a sufficient number of waterclosets or privies for the separate use of each sex; and any person failing to comply with such notice shall be liable for each offence in a penalty not exceeding twenty pounds.

XLII. *Removal of Persons sick of infectious Disorders, and without proper Lodging, in any District.*—Where an hospital or place for the reception of the sick is provided or exists within the district of a local authority, the sheriff or any magistrate or justice may, on the application of the local authority, with the consent of the superintending body of such hospital or place, by order on a certificate signed by a legally qualified medical practitioner, direct the removal to such hospital or place for the reception of the sick, at the cost of the local authority, of any person suffering from any dangerous, contagious, or infectious disorder, and being without proper lodging or accommodation, or lodged in a room occupied by others besides those in attendance on such person, or being on board any ship or

vessel, or may direct the removal from the room occupied by such person of all others not in attendance on him, the local authority providing suitable accommodation for such other persons.

XLIII. *Places for the Reception of Dead Bodies may be provided at the Public Expense. Burial of Dead Bodies.*—Any local authority may provide a proper place for the reception of dead bodies, and where any such place has been provided, and any dead body of one who has died of any infectious disease is retained in a room in which persons live or sleep, or any dead body which is in such a state as to endanger the health of the inmates of the same house or room is retained in such house or room, the sheriff or any magistrate or justice may, on a certificate signed by a legally qualified medical practitioner, order, by a writing under his hand, the body to be removed to such proper place of reception at the cost of the local authority, and direct the same to be buried within a time to be limited in such order; and unless the friends or relations of the deceased undertake to bury the body within the time so limited, and do bury the same, it shall be the duty of the local authority to bury such body; and it shall also be the duty of the local authority to bury any dead body found within the district, and which is unclaimed, or which no sufficient person undertakes to bury; but any expense so incurred in regard to any such burial may be recovered by the local authority in a summary manner from any person legally liable to pay the expense of such burial.

XLIV. *In Burghs, etc., the Local Authority may make Regulations as to Lodging Houses, with consent of the Board.*—The local authority having jurisdiction under this Act in any burgh or populous place containing, according to the census last taken, a population of not less than one thousand inhabitants, may, after publication of the proposed regulations in one or more newspapers circulating in the district for one month, make, with consent of the board, regulations for all or any of the following matters; that is to say,

1. For fixing the number of persons who may occupy a house or part of a house which is let in lodgings or occupied by members of more than one family:
2. For the registration of houses thus let or occupied in lodgings:
3. For the inspection of such houses, and the keeping the same in a cleanly and wholesome state:
4. For enforcing therein the provision of privy accommodation, or watercloset accommodation, and other appliances and means of cleanliness in proportion to the number of lodgings and occupiers, and the cleansing and ventilation of the common passages and staircases:
5. For the cleansing and limewhiting at stated times of such premises:
6. For the enforcement of the above regulations by penalties not exceeding forty shillings for any one offence, with an additional penalty not exceeding twenty shillings for every day during which a default in obeying such regulations may continue.

XLV. *Rules as to underground Dwellings.*—It shall not be lawful to let separately, except as a warehouse or storehouse, or to suffer to be occupied as a dwelling place, any cellar whatsoever, or any vault or underground room (not being entirely open on one or other of its sides), which vault or room shall be less in height from the floor to the ceiling than seven feet in the case of houses built prior to the passing of this Act, or less in height than eight feet in the case of houses built subsequently to the passing hereof, or which shall be less than one-third of its height above the level of the street or ground adjoining the same, or otherwise shall not have three feet at least of its height from the floor to the ceiling above the said level, with an open area of two feet six inches wide from the level of the floor of such vault or room up to the level of the said street or ground, or which shall not have appurtenant thereto the use of a watercloset or privy and ashpit, or which shall not also have a glazed window made to open to the full extent of the half thereof, the area of which is not less than nine superficial feet clear of the frame, and a fireplace with a chimney or flue, or which vault or underground room being an inner or back vault or cellar let or occupied along with a front vault or room, as part of the same letting or occupation, has not a ventilating flue (unless such inner or back vault or room shall be part of a house built before the passing of this Act), or which shall not be well and effectually drained by means of a drain, the uppermost part of which is one foot at least below the level of the floor of such vault, cellar, or room, after the local authority have given notice to the owners thereof that the letting of such cellars, vaults, or underground rooms as dwelling places is prohibited from that time forth; and it shall be the duty of the local authority to issue such notices from time to time, as soon as is convenient, until such notice has been given with respect to every cellar, vault, or underground room occupied as a dwelling house within the district; and it shall not be lawful, after such notice, to let or continue to let, or to occupy or suffer to be occupied, separately, as a dwelling house, any such cellar, vault, or underground room.

XLVI. *Penalty on letting underground Dwellings.*—Every person who lets separately, or who knowingly suffers to be occupied for hire as a dwelling, any vault, cellar, or room contrary to the provisions of this Act, shall be liable to a penalty not exceeding twenty shillings for every day during which such vault, cellar, or room is so occupied after conviction of the first offence.

XLVII. *Cases in which two Convictions have occurred within Three Months.*—Where two convictions against the provisions of this Act relating to the overcrowding of any house, or the occupation of any cellar, vault, or underground room as a separate dwelling place, shall have taken place within the period of three months, whether the person so convicted were or were not the same, it shall be lawful for the sheriff or any magistrate or justice to direct the closing of such premises for such time as he may deem necessary, and, in the case of cellars occupied as aforesaid, to empower the local authority to permanently close the same in such manner as they may deem fit.

XLVIII. *Penalty on Person suffering from infectious Disorder entering public Conveyance without notifying to Driver that he is so suffering.*—If any person suffering from any infectious disorder shall enter, or any person in charge of a person so suffering shall place such person in any steamboat, sailing vessel, railway carriage, stage coach, hackney carriage, or other public conveyance, without previously notifying to the owner or person in charge thereof that such person is so suffering, the person so contravening this provision shall, on conviction thereof before any sheriff, magistrate, or justice, be liable to a penalty not exceeding five pounds; and no owner or person in charge of any public conveyance shall be bound to convey any person so suffering.

XLIX. *Penalty on any Person with infectious Disorder exposing himself, or on any Person in charge of such Sufferer causing such Exposure.*—Any person suffering from any infectious disorder who wilfully exposes himself, without proper precaution against spreading the said disorder, in any street, public place, or public conveyance, and any person in charge of one so suffering who so exposes the sufferer, and any owner or person in charge of a public conveyance who does not immediately provide for the disinfection of his conveyance after it has, with the knowledge of such owner or person in charge, conveyed any such sufferer, and any person who, without previous disinfection, knowingly gives, lends, sells, transmits, or exposes any bedding, clothing, rags, or other things which have been exposed to infection from such disorders, shall, on conviction of such offence before the sheriff or any magistrate or justice, be liable to a penalty not exceeding five pounds: Provided that no proceedings under this section shall be taken against persons transmitting with proper precautions any such bedding, clothing, rags, or other things, for the purpose of having the same disinfected.

L. *Penalty on Persons letting Houses in which infected Persons have been lodging.*—If any person knowingly lets any house, room, or part of a house in which any person suffering from any infectious disorder has been to any other person without having such house, room, or part of a house, and all articles therein liable to retain infection, disinfected to the satisfaction of a qualified medical practitioner, as testified by a certificate given by him, and lodged with the sanitary inspector or other person appointed to perform the duties of sanitary inspector, such person shall be liable to a penalty not exceeding twenty pounds. For the purposes of this section the keeper of an inn or hotel shall be deemed to let part of a house to any person admitted as a guest into such inn or hotel.

LI. *Removal of Manure in Mews, etc.*—Where notice has been given by the local authority or their officer or officers for the periodical removal of manure or other refuse matter from mews, stables, or other premises (whether such notice shall be by public announcement in the locality or otherwise), and subsequent to such notice the person or persons to whom the manure or other refuse matter belongs shall not so remove the same, or shall permit a further accumulation, and shall not continue such periodical removal at such intervals as the local authority or their officer or officers shall direct, he or they shall be

liable, without further notice, to a penalty of not exceeding twenty shillings per day for every day during which such manure or other refuse matter shall be permitted to accumulate, such penalty to be recovered in a summary manner.

LII. *Provision as to Ships within the Jurisdiction of Local Authority.*—Any ship lying in any river, harbour, or other water shall be subject to the local authority of the district within or *ex adverso* of which such river, harbour, or other water is situate, and to the sheriff, magistrates, and justices of the peace having jurisdiction in such district, and shall be within the provisions of this Act in the same manner as if such ship were a house within such district, and the master or other officer in charge of such ship shall be deemed for the purposes of this Act to be the occupier of such ship; but this section shall not apply to any ship belonging to Her Majesty or to any foreign government.

LIII. *Provision as to District of Local Authority extending to Places where Ships are lying.*—For the purposes of this Act, any ship that is in a place within three miles of the coasts of Scotland, and not within the district of a local authority, shall be deemed to be within the district of such local authority as may be prescribed by the board, and until a local authority has been prescribed then of the local authority whose district nearest adjoins the place where such ship is lying, the distance being measured in a straight line.

LIV. *Medical Officer of Parish to be allowed to charge for attending Sick on board any Ship, and to be paid by Captain.*—Whenever, in compliance with any regulation of the board which they may be empowered to make under this Act, any medical officer shall perform any medical service on board of any ship, such medical officer shall be entitled to charge extra for any such service, at the general rate of his allowance for his services for the parish or place for which he is appointed, and such charges shall be payable by the person in charge of the ship, on behalf of the owners, together with any reasonable expenses for the treatment of the sick; and if such services shall be rendered by any medical practitioner who is not a medical officer, he shall be entitled to charge for any service rendered on board, with extra remuneration on account of distance, at the same rates as those which he is in the habit of receiving from private patients of the class of those attended and treated on shipboard, to be paid as aforesaid; and in case such charges be not paid, the medical officer or practitioner may bring an action against the person in charge of such ship for the same, and the ship, cargo, and tackle thereof shall be subject to a lien for the amount of such charges.

LV. *Power to remove to Hospital sick Persons brought by Ships.*—Any local authority may, with the sanction of the board, lay down rules for the removal to any hospital to which such authority are entitled to remove patients, and for keeping in such hospital so long as may be necessary, any persons brought within their district by any ship who are infected with an infectious disorder, and they may by such rules impose any penalty not exceeding five pounds on any person committing any offence against the same.

LVI. *Description of Ships within Provisions of* 6 *G.* IV. *c.* 78, *and*

Power to reduce Penalties imposed thereby.—Every ship having on board any person affected with a dangerous or infectious disorder shall be deemed to be within the provisions of the Act of the sixth year of King George the Fourth, chapter seventy-eight, intituled *An Act to repeal the several Laws relating to Quarantine, and to make other Provisions in lieu thereof*, although such ship has not commenced the voyage, or has come from or is bound for some place in the United Kingdom; and nothing in this Act contained shall interfere with or prevent the execution of any orders, regulations, or restrictions to be made by the lords and others of Her Majesty's Privy Council pursuant to the said Act; and any expenses incurred by any local authority in carrying into effect such orders, regulations, or restrictions shall be deemed to be expenses incurred by them in carrying into effect this Act; and all penalties imposed by the said Act of the sixth year of King George the Fourth, chapter seventy-eight, may be reduced by the justices or court having jurisdiction in respect of such penalties to such sum as the justices or court think just.

LVII. *Power to defray Cost of Vaccination in certain Cases.*—The local authority may defray the cost of vaccinating such persons as to them may seem expedient, not being paupers or the children of paupers, or persons ordered to be vaccinated in terms of the eighteenth section of the Act twenty-six and twenty-seven Victoria, chapter one hundred and eight.

LVIII. *Power to Provide Grounds for public Recreation.*—The local authority may provide, maintain, lay out, and improve grounds for public recreation, and support or contribute towards any premises provided for such purposes by any person whomsoever.

Part V.—*Regulation of Common Lodging Houses.*

LIX. *Common Lodging Houses to be registered.*—The local authority shall cause a register to be kept, in which shall be entered the names and residences of the keepers of all common lodging houses within the district of the local authority, and the situation of every such house, and the number of lodgers authorized according to this Act to be kept therein, and in each apartment thereof; and the local authority may refuse to register as the keeper of a common lodging house any person who does not produce to the local authority a certificate of character, in such form as the local authority shall direct, signed by three inhabitant householders of the parish respectively assessed for the relief of the poor of the parish within which such lodging house is situate; and the local authority may, from time to time, on the approval of the board, raise or diminish the sum payable per night, according to which, as hereinbefore mentioned, it is ascertained whether a house or part thereof is a common lodging house, but so as not to exceed sixpence per night.

LX. *No Lodger to be received in Common Lodging House till it has been inspected and registered.*—From and after the date when this Act shall come into operation, it shall not be lawful to keep or use as a

common lodging house any house, not being a licensed victualling house, or to receive or retain any lodgers therein, unless such house shall have been inspected and approved for that purpose by the inspector of common lodging houses for the district, and shall have been registered as by this Act provided; and if any person shall contravene this enactment he shall be guilty of an offence under this Act.

LXI. *Evidence of Register.*—A copy of an entry made in a register kept under this Act, purporting to be certified by the person having the charge of such register to be a true copy, shall be received in all courts and on all occasions whatsoever as evidence, and shall be *primâ facie* proof of all things therein registered, without the production of the register, or of any document, act, or thing on which the entry is founded, or proof of the signature; and every person applying at a reasonable time shall be furnished by the person having such charge with a certified copy of any such entry for payment of twopence.

LXII. *Power to Local Authority to make Rules and Regulations respecting Common Lodging Houses, to take effect when confirmed by the Board.*—The local authority may from time to time make rules and regulations respecting common lodging houses within its jurisdiction for the well ordering of such houses, and for the separation of the sexes therein, and for fixing the number of lodgers which may be received in each such house, and in each room therein, and for promoting the cleanliness and ventilation of such houses, and with respect to the inspection thereof, and the conditions and restrictions under which such inspection may be made; and the said local authority may, by any such rules and regulations, impose upon offenders against the same such reasonable penalties as they shall think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding the sum of forty shillings for each day after written notice of the offence from the said local authority; and the said local authority may alter or repeal any such rules and regulations: Provided always, that all such rules and regulations imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty: Provided also, that such rules and regulations shall not be of any force or effect until the same be submitted to and confirmed by the board, who are hereby empowered to confirm or disallow the same as they may think proper: Provided further, that no such rules and regulations shall be confirmed unless notice of the intention to apply for confirmation of the same shall have been given in one or more of the public newspapers usually circulated within the parish or place to which such bye-laws relate one month at least before the making of such application; and for one month at least before any such application a copy of the proposed rules and regulations, in writing, signed by the chairman of the meeting at which they were made, shall be kept at the office or usual place of meeting of the local authority, and be open during business hours thereat for the inspection of parties assessed to the relief of the poor in such parish or place, without fee, and the local authority shall cause every such party assessed as aforesaid who shall

apply for the same to be furnished with a copy thereof, on payment of sixpence for every one hundred words contained in such copy.

LXIII. *Such Rules and Regulations, when confirmed, to be printed, and furnished gratis to Keepers of Common Lodging Houses.*—All such rules and regulations made by the local authority in pursuance of this Act shall, when confirmed as aforesaid, be printed, and hung up in the office or usual place of meeting of the said local authority, and copies thereof shall be furnished gratis to every keeper of a common lodging house, and such keeper shall be bound to keep a copy thereof hung up in some conspicuous place in each room in which lodgers are received, and copies shall also be furnished to any party assessed as aforesaid, upon application, and payment of one penny each for the same; and a copy of such rules and regulations, purporting to be signed by the secretary of the board, shall be received in evidence of such regulations, and of the duly making and confirming thereof, without proof of the signature.

LXIV. *Power to Local Authority to require an additional Supply of Water to Common Lodging Houses.*—Where it appears to the local authority that a common lodging house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, the local authority may, by notice in writing, require the owner or keeper of the common lodging house, within a time specified therein, to obtain such supply, and to execute all works necessary for that purpose; and if such notice be not complied with accordingly, the local authority may remove the common lodging house from the register until it be complied with.

LXV. *Power to Local Authority to order Reports from Keepers of Common Lodging Houses.*—The keeper of a common lodging house shall from time to time, if required by any order of the local authority served on such keeper, report to the local authority, or to such person or persons as the said local authority shall direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the persons so ordered to report, which schedules they shall fill up with the information required, and transmit to the local authority.

LXVI. *Local Authority may remove sick Persons from Common Lodging Houses to Hospitals, etc.*—When a person in a common lodging house is ill of fever or any infectious or contagious disease, the local authority may cause such person to be removed to an hospital or infirmary, with the consent of the authorities thereof, where different from the local authority, and on the certificate of the medical officer of the parish, or of any qualified medical practitioner, that the disease is infectious or contagious, and that the patient may be safely removed; and the local authority may, so far as they think requisite for preventing the spread of disease, cause any clothes or bedding used by such person to be disinfected or destroyed, and may pay to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation for the injury or destruction thereof, the amount of such compensation being first certified in writing upon a list of such articles.

LXVII. *As to giving Notice of Fever, etc., occurring in Common Lodging Houses.*—The keeper of a common lodging house shall, when a person in such house is ill of fever or any infectious or contagious disease, give immediate notice thereof either to the medical officer or to the inspector of common lodging houses, or the inspector of the poor of the parish in which such common lodging house is situated, who shall forthwith inform the local authority and the medical officer that such notice has been received, and thereupon the medical officer shall forthwith visit and report on the case.

LXVIII. *As to Inspection of Common Lodging Houses.*—The keeper of a common lodging house shall, at all times when required by any officer of the local authority, give him free access to such house and every part thereof.

LXIX. *As to Cleansing of Common Lodging Houses.*—The keeper of a common lodging house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, ashpits, cesspools, and drains thereof, to the satisfaction of the inspector, and so often as shall be required by or in accordance with any regulation of the local authority, and shall well and sufficiently, and to the like satisfaction, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year, and at such other times as the local authority may by special order appoint or direct.

LXX. *Conviction for Third Offence, etc., to disqualify Persons from keeping Common Lodging Houses.*—Where a keeper of a common lodging house is convicted of a third or any subsequent offence under this Act, it may be adjudged as the punishment or part of the punishment for such offence that he shall not, at any time within five years, or any shorter period after such conviction, keep or have or act in the care or management of a common lodging house, without the previous licence in writing of the local authority, which licence the local authority may withhold, or may grant on such terms and conditions as they think fit.

Part VI.—*Sewers, Drains, and Water Supply.*

LXXI. *Sewers to be vested in Local Authority.*—All sewers presently existing within a district, and not being private property, or not being and continuing under the management of persons appointed by the Crown or by Act of Parliament, shall be vested in the local authority: Provided always, that nothing in this Act contained shall affect the rights of any person or persons to the property or management of any sewers in virtue of any existing local or general police statute.

LXXII. *Power to purchase Sewers.*—The local authority may, in terms of the Lands Clauses Acts, acquire the rights and powers vested in any person to make sewers, or to use any sewer, with or without the buildings and other things thereto pertaining; provided that they shall make compensation for the rights so acquired, and shall also make compensation to the proprietors and occupiers of any

lands and heritages which may be damaged by reason of the exercise of the powers hereby conferred, in terms of the said last-mentioned Acts.

LXXIII. *Power to make Sewers. Sewers to be cleansed.*—The local authority shall have power to construct within their district, and also, when necessary for the purpose of outfall or distribution of sewage, without their district, such sewers as they may think necessary for keeping their district properly cleansed and drained, and may carry such sewers through, across, or under any turnpike or other road, or any street or place, or under any cellar or vault which may be under the foot pavement or carriageway of any street or road, and after reasonable notice in writing (if upon the report of surveyor it should appear to be necessary), into, through, or under any lands whatsoever, and from time to time to enlarge, lessen, alter, arch over, or otherwise improve, or to close up or destroy all sewers vested in them, provided no nuisance is created by such operations; and if any person is thereby deprived of the lawful use of any sewer, the local authority shall provide another sufficiently effectual for his use. The local authority shall cause their sewers to be so constructed, kept, and cleansed as not to be a nuisance, and for the purpose of cleansing and emptying them may construct and place either above or under ground, such reservoirs, sluices, engines, or other works as may be necessary, and may cause such sewers to communicate with and be emptied into such places as may be fit and necessary either within their district, or, if necessary for the purpose of outfall or distribution of sewage, without their district, and to cause the sewage and refuse therefrom to be collected for sale or for any purpose whatsoever, but so as not to create a nuisance.

LXXIV. *Powers of utilizing Sewage.*—The local authority may from time to time, for the purpose of utilizing sewage, agree with any person as to the supply of such sewage or the distribution thereof over land, and as to the works to be made for the purpose of such supply or distribution, and as to the parties to execute the same and to bear the costs thereof, and as to the sums of money, if any, to be paid for that supply; provided that no contract shall be made for the supply of sewage for a period exceeding five years, unless with the authority of the board, and not for any period exceeding twenty-five years; and the local authority may contract for, purchase, or take on lease any lands, buildings, engines, materials, or apparatus for the purpose of receiving, storing, disinfecting, or distributing sewage.

LXXV. *Power of Entry.*—In case it shall become necessary to enter, examine, or lay open any lands or premises for the purpose of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, making or repairing, altering or enlarging sewers or drains, or other purposes ancillary to the powers herein given as to sewers and drains, and the owner or occupier of premises refuses or withholds access and leave to perform the said operations, the local authority may apply to the sheriff, who, if no sufficient cause be shown to the contrary, shall grant warrant to the local authority, their officers and others thereby authorized, to enter and do all or any of the works or operations foresaid.

LXXVI. *Formation of Special Drainage District.*—Upon requisition to that effect made in writing by not fewer that ten inhabitants of the district, the local authority shall be bound to meet, after twenty-one clear days' notice, and shall consider the propriety of forming part of their district into a special drainage district, and the resolution of the local authority at such meeting shall be published in one or more newspapers circulating in the district; and the production of such newspaper, or a certificate under the hand of the chairman or acting clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution; and within ten days after the date of such resolution it shall be competent for any person interested to appeal against the resolution to the sheriff, and the sheriff, not being a sheriff-substitute resident within the district, may either approve or disapprove of such resolution, and if he disapproves thereof he may either find that no special drainage district should be formed, or may enlarge or limit the special district as defined by the resolution of the local authority, or may find that a special drainage district should be formed and may define the limits thereof; and the decision of the sheriff shall be binding upon the local authority, and shall be final, except where it is pronounced by a sheriff-substitute, in which case it may be appealed to the sheriff.

LXXVII. *Power to drain into Sewers of Local Authority.*—Any owner or occupier of premises within the district of a local authority liable for general or special sewerage or drainage assessment shall be entitled to cause his drains to empty into the sewers of such local authority, on condition of his giving twenty days' previous notice of his intention so to do to the local authority, and of complying with their regulations in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the local authority to superintend the making of such communications.

LXXVIII. *Use of Sewers by Persons beyond District.*—Any owner or occupier of premises beyond the limits of the district of a local authority or within said limits who is not liable for general or special sewerage or drainage assessment may cause any sewer or drain from such premises to communicate with any sewer of the local authority, upon such terms and conditions as may be agreed upon between such owner or occupier and such local authority, or, in case of dispute, shall be settled by the sheriff.

LXXIX. *Penalty for making unauthorized Drains.*—Every person not being authorized by the local authority who shall make any drain into any sewer vested in the local authority shall be liable in a penalty not exceeding five pounds, besides shutting up said drain or paying the expense of shutting it up.

LXXX. *Estimates for Work.*—Before entering into any contract for executing any such work as hereinbefore or after mentioned, falling under Part VI. of this Act, or connected with sewage or drainage, if the expense thereof may exceed thirty pounds, the local authority shall procure from a surveyor an estimate of the probable expense of constructing the same in a substantial manner, and of the yearly

expense of maintaining the same in repair; and such surveyor shall accompany such estimate with a report as to the most advantageous mode of constructing such work, whether under a contract for constructing the same merely, or a contract for constructing the same and maintaining it in repair during a given term of years.

LXXXI. *Not to build over Sewers.*—Unless with consent of the local authority, no building shall be erected over any sewer belonging to the local authority, and no vault, arch, or cellar, shall be made so as to interfere with any such sewer.

LXXXII. *Sewers to be trapped.*—All sewers and drains, whether public or private, shall be provided by the persons to whom they severally belong with proper traps or other coverings or means of ventilation, so as to prevent stench or deleterious exhalation.

LXXXIII. *Distilleries, etc., to deposit Refuse.*—The owners or occupiers of distilleries, manufactories, and other works shall be compelled, where possible, to dig, make, and construct pools or reservoirs within their own ground, or as near their works as possible, for receiving and depositing the refuse of such works, so far as offensive or injurious to the health of those living in the vicinity thereof, or to use the best practical means for rendering the same inoffensive or innoxious before discharging it into any river, stream, ditch, sewer, or other channel.

LXXXIV. *Drain discharging below High-water Mark.*—If the local authority shall consider it necessary for public health that any drain should discharge itself below high-water mark, they shall be entitled, with the consent of the Board of Trade (without prejudice to any question as to the right to the foreshores), to construct the requisite works for that purpose.

LXXXV. *As to the Drainage of Houses.*—If a dwelling house, distillery, manufactory, or other work, or any erection, or enclosure for the keeping of live stock within the district of a local authority is without a drain, or without such drain as is sufficient for effectual drainage, the local authority may, by notice, require the owner of such house, distillery, manufactory, work, erection, or enclosure, within a reasonable time therein specified, to make a sufficient drain emptying into any sewer which the local authority are entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred feet from the site of the said premises of such owner; but if no such means of drainage are within that distance, then emptying into such covered cesspool or other place, not being under any house, as the local authority may direct; and if the person on whom such notice is served fails to comply with the same, the local authority may, at the expiration of the time specified in the notice, do the work required, and the expenses incurred by them in so doing may be recovered from such owner in a summary manner.

LXXXVI. *Power of borrowing for Sewers.*—It shall be lawful for the local authority to borrow for the purpose of making, enlarging, or constructing sewers, and on the security of the after-mentioned special sewer assessments, where such exist, and general assessments,

or either of them, such sums of money, and at such times, as the local authority shall deem necessary for that purpose, and to assign the said special sewer assessments and general assessments or any of them in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignations and discharges thereof may be in or near to the forms contained in the schedule hereto annexed, and such bonds shall be signed by the chairman and two members of the local authority, and shall constitute a lien over the special sewer assessments and general assessments thereby assigned, and shall entitle the creditors therein to recover the sums thereby due from the local authority out of the first and readiest of the said special and general assessments; but no member or officer of the local authority shall be personally liable for the repayment of such money so borrowed, and all such obligations shall be deemed and taken to be granted on the sole security of the assessments assigned; and the money so borrowed shall be repayable either in one sum or by instalments as may be arranged between the local authority and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within thirty years from the date of the loan, but the amount of such loans, including interest, shall form a charge against the assessments of the years intervening between the date of such loans and the date of full repayment in equal proportions; and the money so borrowed as aforesaid shall be applied wholly in defraying the expense of making, enlarging, and reconstructing sewers, and to no other purpose whatsoever.

LXXXVII. *Local Authorities may combine.*—Two or more local authorities may, with the sanction of the board, combine together for the purpose of executing and maintaining any works by this Act authorized in regard to sewerage or drainage that may be for the benefit of their respective districts; and all monies which they may agree to contribute for the execution and maintenance of such common works shall, in the case of each local authority, be deemed to be expenses incurred by them in the execution of works within their district.

LXXXVIII. *Supply of Water for Burghs above* 10,000.—With respect to burghs having a population of ten thousand or upwards according to the census last taken, or having a local Act for police purposes, it shall be lawful for the local authority, if they think it expedient so to do, to contract or arrange with any water company established by Act of Parliament for a supply of water, or, where there is no such company, themselves to provide a supply of water, to such extent as may be necessary for the sanitary and other public purposes of this Act hereinbefore provided.

LXXXIX. *Supply of Water for Burghs under* 10,000.—With respect to the improvement of burghs having a population of less than ten thousand, according to the census last taken, and not having a local Act for police purposes, and with respect to parishes (exclusive of any parts of such parishes as are situated within the district of any local authority other than the parochial boards of such parishes),—

(1.) The local authority, if they think it expedient so to do, may

acquire and provide or arrange for a supply of water for the domestic use of the inhabitants, and for that purpose may conduct water from any lake, river, or stream, may dig wells, make and maintain reservoirs, may purchase, take upon lease, hire, construct, lay down, and maintain such waterworks, pipes, and premises, and do and execute all such works, matters, and things as shall be necessary and proper for the aforesaid purpose, and may themselves furnish a supply of water, or contract or arrange with any other person to furnish the same; and for the purposes aforesaid the local authority shall be held to have all the powers and rights given to promoters of undertakings by the Lands Clauses Acts: Provided always, that they shall make reasonable compensation for the water so taken by them, and for the damage which may be done to any lands by reason of the exercise of the powers hereby conferred in terms of the said Acts; and further, that for the purposes of this Act the words 'lands' and 'land' in the said Acts and in this Act shall include 'water' and the right thereto: Provided also, that it shall not be lawful for the local authority to provide or supply water in any burgh, parish, or district which any company, established by Act of Parliament, is authorized to supply with water, unless the local authority shall previously have purchased or acquired the undertaking of such company:

(2.) *House without Supply of Water.*—If any house within the district is without a proper supply of water at or near the same, the local authority shall compel the owner to obtain such supply, and to do all such works as may be necessary for that purpose:

(3.) *Water for Baths, etc.*—The local authority, if they have any surplus water after fully supplying what is required for domestic purposes, may supply water from such surplus to any public baths and wash-houses, or for trading or manufacturing purposes, on such terms and conditions as may be agreed on between the local authority and the persons desirous of being so supplied: Provided, that when water is thus supplied from such surplus, it shall not be lawful for the local authority to charge the parties obtaining the same both with the special water assessment and also for the supply of water obtained by them; but the local authority may either charge the special water assessment leviable on such premises, or charge for the supply of water furnished to the same, as they shall think fit:

(4.) *Cisterns, etc., to be supplied with Water.*—The local authority may cause all existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued, maintained, and plentifully supplied with water, and may, if they shall think fit, provide and gratuitously supply water for any public

baths or wash-houses established otherwise than for private profit or supported out of any burgh rates:

(5.) *Special Water Supply District.*—Upon requisition to that effect made in writing by not fewer than ten inhabitants of the district, the local authority shall be bound to meet, after twenty-one clear days' notice, and shall consider the propriety of forming part of their district into a special water supply district, and the resolution of the local authority at such meeting shall be published in one or more newspapers circulating in the district; and the production of such newspaper, or a certificate under the hand of the chairman or acting clerk of the local authority (whose signature need not be proved), shall be sufficient evidence of such resolution; and within ten days after the date of such resolution it shall be competent for any person interested to appeal against the same to the sheriff; and the sheriff, not being a sheriff-substitute resident within the district, may either approve or disapprove of such resolution; and if he disapproves thereof he may either find that no special water supply district should be formed, or may enlarge or limit the special district as defined by the resolution of the local authority, or may find that a special water supply district should be formed, and may define the limits thereof; and the decision of the sheriff shall be binding upon the local authority, and shall be final, except where it is pronounced by a sheriff-substitute, in which case it may be appealed to the sheriff:

(6.) *Power to borrow for Water Supply.*—It shall be lawful for the local authority to borrow for the purpose of constructing, purchasing, enlarging, or reconstructing such works as are herein authorized for providing a supply of water for the use of the inhabitants of the district, or for the purpose of entering into and implementing any contract or arrangement with any person for such supply, and on the security of the aftermentioned special water assessments, where such exist, and of general assessments, or either of them, such sums of money and at such times as the local authority shall deem necessary for that purpose, and to assign the said special water assessments and general assessments, or either of them, in security of the money to be so borrowed; and the bonds to be granted on such borrowing and transferences or assignations and discharges thereof may be in or near to the forms contained in the schedule hereto annexed; and such bonds shall constitute a lien over the assessments thereby assigned, and shall entitle the creditors therein to recover the sums thereby due from the local authority out of the first and readiest of the said assessments; but no member or officer of the local authority shall be personally liable for the repayment of such money so borrowed, and all such obligations shall be deemed and taken to be granted on the sole security of the assessments thereby assigned, and the money so borrowed shall be

repayable either in one sum or by instalments as may be arranged between the local authority and the lender, but so that the same shall be wholly repaid, together with the accruing interest, within thirty years from the date of the loan; but the amount of such loans, including interest, shall form a charge against the assessments of the years intervening between the date of such loans and the date of full repayment in equal proportions; and the money so borrowed as aforesaid shall be applied wholly in defraying the expense of purchasing, making, enlarging, and reconstructing such works, and to no other purpose whatsoever.

XC. *Regulations as to the Purchase of Land, etc. Publication of Notices. Service of Notices.*—The following regulations shall be observed with respect to the purchase and taking of land otherwise than by agreement by local authorities for the purposes of this Act:

(1.) The local authority before putting in force any of the powers of the said Lands Clauses Acts with respect to the purchase and taking of land shall

Publish once at the least, in each of three consecutive weeks in the month of November in some newspaper circulated in the district or some part of the district within which such local authority has jurisdiction is situate, an advertisement describing shortly the purpose for which the land is proposed to be taken, naming a place where a plan of the proposed works may be seen at all reasonable hours, and stating the quantity of land that they require; and shall further in the month of December

Serve a notice in manner hereinafter mentioned on every owner or reputed owner, lessee or reputed lessee, and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer, stating whether the person so served assents, dissents, or is neuter in respect of taking such land; such notice to be served

By delivery of the same personally to the party on whom it is required to be served, or, if such party is absent abroad, to his agent; or

By leaving the same at the usual or last known place of abode of such party as aforesaid; or

By forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such party:

(2.) *Power to Local Board to petition Secretary of State upon Matters herein stated.*—Upon compliance with the provisions hereinbefore contained with respect to advertisements and notices, the local authority may, if they shall think fit, present a petition to one of Her Majesty's principal secretaries of state; the petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented,

dissented, or are neuter in respect of the taking such land, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such land, be allowed to put in force the powers of the said Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, and such prayer shall be supported by such evidence as the secretary of state requires:

(3.) *Secretary of State may direct Inquiry.*—Upon the receipt of such petition, and upon due proof of the proper advertisements having been published and notices served, the secretary of state shall take such petition into consideration, and may either dismiss the same or direct an inquiry in the district in which the land is situate, or otherwise inquire as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made in the district, after such notice as may be directed by the secretary of state, no provisional order shall be made affecting any land without the consent of the owners, lessees, and occupiers thereof:

(4.) *And may make Provisional Order.*—After the completion of the inquiry as last aforesaid, the secretary of state may, by provisional order, empower the local authority to put in force, with reference to the land referred to in such order, the powers of the said Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as he may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and upon the person in which and upon whom notices in respect of such land are hereinbefore required to be served:

(5.) *No Provisional Order valid until confirmed by Parliament.*—No provisional order so made shall be of any validity unless the same has been confirmed by Act of Parliament, and it shall be lawful for the secretary of state, as soon as conveniently may be, to obtain such confirmation, and the Act confirming such order shall be deemed to be a Public General Act of Parliament:

(6.) *Costs how to be defrayed.*—All costs, charges, and expenses incurred by the said secretary of state in relation to any such provisional order as last aforesaid shall, to such amount as the Commissioners of Her Majesty's Treasury think proper to direct, become a charge upon the assessment or special water supply assessment levied in the district or special water supply district, as the case may be, to which such order relates, and be repaid to the said Commissioners of Her Majesty's Treasury by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in

respect of the said costs, charges, and expenses as may from time to time remain unpaid.

XCI. *Loans from Public Works Loan Commissioners.*—The Public Works Loan Commissioners as defined by 'The Public Works Loan Act, 1853,' may advance to the commissioners mentioned in the one hundred and ninety-sixth section of 'The Police and Improvement (Scotland) Act, 1862,' for the purposes mentioned in that section, and upon the security therein mentioned, and to any local authority for the purposes mentioned in Part VI. of this Act, such sums of money as may be recommended by one of Her Majesty's principal secretaries of state.

XCII. *Execution and Maintenance of Works as to Water Supply.*—Two or more local authorities may combine together for the purpose of executing and maintaining any works by this Act authorized in regard to water supply that may be for the benefit of their respective districts; and all monies which they may agree to contribute for the execution and maintenance of such common works shall, in the case of each local authority, be deemed to be expenses incurred by them in the execution of works within their district.

Part VII.—*Assessments.*

XCIII. *Special Drainage Assessment.*—Where any special drainage district has been formed as hereinbefore provided, the expense of the sewerage and drainage incurred by the local authority within the same, or for the purposes thereof, and the sums necessary for payment as before mentioned of any money borrowed for sewerage purposes as hereinbefore provided, shall be paid out of a special assessment which the local authority shall raise and levy on and within such special district, in the same manner and with the same remedies and modes of recovery as are herein provided for the district of the local authority.

XCIV. *Assessments in Burghs under* 10,000.—With respect to burghs having a population of less than ten thousand according to the census last taken, and not having a local Act for police purposes, and with respect to parishes (exclusive of any parts of such parishes as are situated within the district of any local authority other than the parochial boards of such parishes),—

(1.) *Special Water Supply Assessment.*—Where any special water supply district has been formed as hereinbefore provided, the expense incurred for water supply within the same, or for the purposes thereof, and the sums necessary for payment as before mentioned of any money borrowed for water supply purposes as hereinbefore provided, shall be paid out of a special assessment which the local authority shall raise and levy on or within such special district, in the same manner and with the same remedies and modes of recovery as are herein provided for the district of the local authority:

(2.) *Assessment for general Expenses incurred in executing this Act.*—All charges and expenses incurred by the local authority in

executing this Act or any of the Acts hereby repealed, and not recovered as hereinbefore or after provided, may be defrayed out of an assessment to be levied by the local authority along with but as a separate assessment from any one of the assessments hereinafter mentioned in this section; that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under like powers (which powers are hereby given and are declared to extend over the whole and every part of the district of the local authority) as—

The prison assessment or police assessment, as the local authority shall resolve, where the local authority is a town council or police commissioners, or trustees acting as police commissioners; or, if there be no prison or police assessment, an assessment levied in like manner as is hereinafter authorized, where the local authority is a parochial board:

The assessment for the relief of the poor, where the local authority is a parochial board, or, where there is no such assessment, by an assessment levied in such manner as an assessment might have been levied for the relief of the poor:

Provided always, that where the local authority is a town council or police commissioners, or trustees acting as police commissioners, or where a parochial board is the local authority in a district, including, as well as the landward part of a parish, a burgh or town having a town council or police commissioners, or trustees acting as police commissioners, the annual value of the following lands or premises shall for the whole assessments under this Act be held to be the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll, made up and completed in terms of the Acts in force for the valuation of lands and heritages in Scotland,—viz.,

1. All lands and premises used exclusively as a canal or basin of a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, excepting the stations, depôts, wharfs, and buildings, which shall be assessable on their full annual value:
2. All the underground water or gas pipes or underground works of any water or gas company:
3. All woodland, arable, meadow, or pasture land, or other land used for agricultural purposes:
4. All mines, minerals, and quarries:

And in the event of any dispute arising as to the lands and premises falling under the above exceptions, it shall be lawful to the owner or occupier of such lands and premises to present a petition to the sheriff, praying to have the same declared for the time being liable to assessment upon the said proportion of their value only, and the sheriff shall

thereupon order the petition to be served on the local authority upon a short *inducia*, and, after hearing parties and taking such evidence as he shall think necessary, shall pronounce such judgment as to him shall seem just and right, and which judgment shall be final, except that where pronounced by a sheriff-substitute it shall be subject to appeal to the sheriff: Provided also, that where a special drainage district has been formed as hereinbefore provided, and the drainage works therein have been executed and are maintained under the authority of this Act, the lands and premises situated within such special district shall not be liable to assessment for the expense of making sewers and drainage works in other parts of the district of the local authority; and where a special water supply district has been formed as hereinbefore provided, and a sufficient supply of water has been obtained and is maintained therein under the authority of this Act, the lands and premises situated within such special water supply district shall not be liable to assessment for the expense of supplying water for other parts of the district of the local authority:

(3.) The assessments specified in this and the preceding section shall not in any year exceed the rate of one shilling and threepence in the pound where the enactments with respect to water for the domestic use of the inhabitants have been put in force, or the rate of threepence in the pound where such enactments have not been put in force.

XCV. *Assessments in Burghs above* 10,000, *etc.*—With respect to burghs having a population of ten thousand or upwards according to the census last taken, or having a local Act for police purposes,—

(1.) All charges and expenses incurred by the local authority in executing this Act or any of the Acts hereby repealed, and not recovered as hereinbefore provided, may be defrayed out of an assessment to be levied by the local authority along with but as a separate assessment from any other assessment which they may be entitled to levy; that is to say, the said assessment shall be assessed, levied, and recovered in like manner and under the like powers (which powers are hereby given and are declared to extend over the whole and every part of the district of the local authority) as—

The prison assessment or police assessment, as the local authority shall resolve, where the local authority is a town council or police commissioners, or trustees acting as police commissioners; or, if there be no prison or police assessment, an assessment levied in like manner as is hereinafter authorized where the local authority is a parochial board:

The assessment for the relief of the poor where the local authority is a parochial board, or, where there is no such assessment, by an assessment levied in such manner

as an assessment might have been levied for the relief of the poor:

Provided always, that the annual value of the following lands or premises shall for the whole assessments under this Act be held to be the nearest aggregate sum of pounds sterling to one-fourth of the annual value thereof entered in the valuation roll, made up and completed in terms of the Acts in force for the valuation of lands and heritages in Scotland,—viz.,

1. All lands and premises used exclusively as a canal or basin of a canal, or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, excepting the stations, depôts, wharfs, and buildings, which shall be assessable on their full annual value:
2. All the underground water or gas pipes or underground works of any water or gas company:
3. All woodland, arable, meadow, or pasture land, or other land used for agricultural purposes:
4. All mines, minerals, and quarries:

And in the event of any dispute arising as to the lands and premises falling under the above exceptions, it shall be lawful to the owner or occupier of such lands and premises to present a petition to the sheriff, praying to have the same declared for the time being liable to assessment upon the said proportion of their value only, and the sheriff shall thereupon order the petition to be served on the local authority upon a short *inducia*, and, after hearing parties and taking such evidence as he shall think necessary, shall pronounce such judgment as to him shall seem just and right, and which judgment shall be final, except that where pronounced by a sheriff-substitute it shall be subject to appeal to the sheriff: Provided also, that where a special drainage district has been formed as hereinbefore provided, and the drainage works therein have been executed and are maintained under the authority of this Act, the lands and premises situated within such special district shall not be liable to assessment for the expense of making sewers and drainage works in other parts of the district of the local authority:

(2.) The assessments specified in this section and in the ninety-third section hereof shall not in any year exceed the rate of threepence in the pound.

PART VIII.—*Enforcement of and Procedure under this Act.*

XCVI. *Procedure if Local Authority neglect its Duty under this Act.*—If any nuisance shall exist upon or in premises possessed or managed by the local authority, or in which the local authority have any interest, or if the local authority shall fail or neglect to perform any duty imposed upon them by this Act, or to take all due proceedings

in this Act authorized for the removal of nuisances or preservation of health, or due regulation of lodging houses, or for any other of the purposes of this Act, it shall be competent for any two householders residing within the district, or for the inspector of the poor of the parish, or for the procurator fiscal of the sheriff or justice of the peace court of the county, or of the burgh court, or for the board, to give written notice to such local authority of the matters in which such neglect exists; and if the local authority do not within fourteen days after such notice, or, in the case of neglect to enforce any regulation or direction of the board under Part III. of this Act, within two days after such notice, remove or remedy the nuisance referred to, or in any other case neglect to take the steps authorized or required by or under this Act, it shall be competent for the parties aforesaid, or any one of them, to apply to the sheriff by summary petition, and the sheriff shall thereupon inquire into the same, and may make such decree as shall in his judgment be required to enforce the removal or remedy of the nuisance, or otherwise to compel execution of or carry out the provisions and purposes of this Act, and may appoint the same to be carried into effect by and at the sight of such persons as he may think fit, and at the expense of the local authority, or of other parties on whom the expense ought in his opinion to be laid, and for payment of the expenses of such application by the petitioners or by the local authority or other party, as justice may require; and further, it shall be competent for the board to present a petition to the sheriff, under the fourth section of the 'Burial Grounds (Scotland) Act, 1855,' to the same effect, and to be followed out in like manner as if presented by any of the persons or parties therein mentioned: Provided always, that in regard to any nuisance for the removal of which drainage works are necessary, the sheriff or other judge or court may suspend consideration of the complaint for such time as may seem proper, in order to enable a general system of drainage under any general or local Act or otherwise to be carried out, the better to remove such nuisances.

XCVII. *Provision for Refusal or Neglect of Local Authority.*—In case any local authority shall refuse or neglect to do what is herein or otherwise by law required of them, or in case any obstruction shall arise in the execution of this Act, it shall be lawful for the board, with the approval of the Lord Advocate, to apply by summary petition to either division of the Court of Session, or during vacation or recess to the Lord Ordinary on the Bills, which division or Lord Ordinary are hereby authorized and directed to do therein, and to dispose of the expenses of the proceedings as to the said division or Lord Ordinary shall appear to be just.

XCVIII. *Procurator Fiscal may sue by Directions of the Board.*—In any place within the jurisdiction of a local authority the procurator fiscal of the sheriff court, on the board being satisfied that the local authority have made default in doing their duty, may, with the approval of the Lord Advocate, institute and follow out proceedings against the local authority for compelling them to do their duty, and may institute and follow out in all respects any proceeding which

the local authority of such place might institute with respect to the removal of nuisances or otherwise; and the expense as between agent and client of all such proceedings shall be paid by the local authority, but with such relief to them against the author of any nuisance or any other party as may be competent.

XCIX. *Duties of Local Authorities as to Inspection of Nuisances, etc. Procedure where Nuisance beyond District.* — It shall be the duty of the local authority to make from time to time, and also when required by the board, either by themselves or by their officers, inspection of the district, with a view to ascertain what nuisances exist calling for abatement under the powers of this Act, and to enforce the provisions of the Act in order to cause the abatement thereof, also to enforce the provisions of any Act that may be in force within its district requiring fireplaces and furnaces to consume their own smoke: Where a nuisance is situated in a district the local authority of which does not cause the same to be abated, and which nuisance is offensive or injurious to another district, the local authority of the latter district may call on the first-mentioned local authority to take all competent steps for removal of such nuisance, and the said first-mentioned local authority shall be bound to do so accordingly; and any expense thereby occasioned to the said second-mentioned local authority shall be reimbursed by the first-mentioned local authority, the amount of such reimbursement in the case of dispute to be finally determined by the board.

C. *Local Authority may require Payment of Costs or Expenses from Owner or Occupier, and Occupier paying to deduct from Rent.*—It shall be lawful for the local authority, at their discretion, to require the payment of any costs or expenses which the owner of any premises may be liable to pay under this Act, either from the owner or from any person who then or at any time thereafter occupies such premises, and such owner or occupier shall be liable to pay the same, and the same shall be recovered in manner authorized by this Act, and the owner shall allow such occupier to deduct the sums of money which he so pays out of the rent from time to time becoming due in respect of the said premises, as if the same had been actually paid to such owner as part of such rent: Provided always, that no such occupier who shall not be the author of a nuisance shall be required to pay any further sum than the amount of rent for the time being due from him, or which, after such demand of such costs or expenses from such occupier, and after notice not to pay his landlord any rent without first deducting the amount of such costs or expenses, becomes payable by such occupier, unless he refuse, on application being made to him for that purpose by or on behalf of the local authority, truly to disclose the amount of his rent and the name and address of the person to whom such rent is payable, but the burden of proof that the sum demanded from any such occupier is greater than the rent due by him at the time of such notice, or which has since accrued, shall lie upon such occupier: Provided also, that nothing herein contained shall be taken to affect as between the contracting parties any contract made or to be made between any owner, tenant, or occupier

of any house, building, or other property, whereby it is or may be agreed that the tenant or occupier shall pay or discharge all rates, dues, and sums of money payable in respect of such house, building, or other property, or to affect as between the contracting parties any contract whatsoever between landlord and tenant.

CI. *Penalty for wilful Damage of Works.*—If any person wilfully damages any works or property belonging to any local authority, he shall be liable to a penalty not exceeding five pounds, in addition to the cost of repairing such works or property.

CII. *Appearance of Local Authorities in Legal Proceedings.*—Any local authority may appear and plead before any sheriff, magistrate, or justice, or in any legal proceeding by any officer or member, or other person authorized generally, or in respect of any special proceeding, by resolution of such authority, and such person being so authorized shall be at liberty to institute and carry on any proceeding which the authority is authorized to institute and carry on under this Act; and it shall not be necessary for the local authority to appear in any other manner in any prosecution or proceeding at their instance.

CIII. *Recovery of Penalties.*—All penalties under this Act, and also all sums of money and expenses herein directed to be recovered in a summary manner, may, unless otherwise provided in this Act, be recovered at the suit of the local authority, and may be applied for the purposes of this Act: Provided always, that nothing contained in this section shall impair or affect any other mode of recovery allowed by this Act: Provided also, that all contraventions of the provisions contained in this Act relating to overcrowding of houses, and all contraventions of the provisions in this Act or of the rules and regulations made under the authority of this Act relating to common lodging houses, may be prosecuted as police offences before any judge or magistrate having police jurisdiction, and in the same way and manner as police offiences are prosecuted before him under any General or Local Police Act; and in the event of the offender being convicted, and failing to make immediate payment of the penalty which may have been imposed, he shall be liable to imprisonment for any period not exceeding fourteen days, without prejudice to diligence by poinding or arrestment, if no imprisonment has followed on the conviction.

CIV. *Powers of Act cumulative.*—All powers given by this Act shall be deemed to be in addition to, and not in derogation of, any powers conferred by Act of Parliament not hereby repealed, or any law or custom; and such last-mentioned powers may be exercised in the same manner as if this Act had not passed, but without prejudice to the powers conferred by this Act.

CV. *Form of Applications to the Sheriff.*—All applications to enforce any provision of this Act, or for the recovery of penalties herein imposed, or other sums of money becoming due to the local authority in virtue of this Act, in so far as not herein otherwise provided for, may be by summary petition, and such petition may refer to the clauses of this Act on which it is founded, without setting forth the same; and the sheriff, magistrate, or justice shall thereupon, if he see fit, appoint

the petition to be answered within three days after service, or may order the parties to attend him in person, and on advising such answer, or hearing the parties, or on the respondent failing to appear, he may at once decern, or may appoint any competent person to examine the premises and report to him, and may decern on such report, or he may, if either party desire it, order proof to be led before himself on any specified points, and shall in that case appoint a day, not more than five days thereafter, for hearing such proof, and if the proof be not on that day completed may adjourn the same from time to time until completed, and within three days after such completion he shall give decree, and he may find either party liable in expenses, or in any modified sum of expenses, and may, without prejudice to diligence by poinding or arrestment, grant warrant for the imprisonment of the person convicted or found liable in a penalty or sum of money, unless he shall pay the whole sums found due within a specified time, until the same be paid, such imprisonment not to exceed a specified time, but the judgment shall not be invalidated by any deviation from any of the said periods of time.

CVI. *No written Pleadings, etc., allowed.*—No written pleadings, other than the petition and answers (when ordered), shall be allowed, and the sheriff, magistrate, or justice shall have power to grant diligence in common form to cite witnesses and havers, and in cases under the heads marked (*h*), (*i*), and (*j*) in section sixteen the sheriff shall take notes of the evidence in like manner as in civil proofs: Provided always, that no decree under this Act against any party shall bar his right to relief against any other party legally liable therein.

CVII. *Appeal in certain Cases.*—Where in cases under the heads (*h*), (*i*), and (*j*) in section sixteen it shall appear to the sheriff that the true value of the subject complained of as a nuisance, or the cost of the operations necessary to remove or amend it as ordered, or the value of the trade or business interfered with, exceeds the sum of twenty-five pounds or the sum of fifty pounds respectively, he shall certify his opinion to that effect in his decree, and the parties shall thereupon be entitled to appeal from the sheriff-substitute, where the judgment has been pronounced by him, to the sheriff, on lodging, within three days after the decree, a note of appeal with the sheriff-clerk, and serving the same on the opposite party or the agent acting in such proceedings for such party, and such note shall operate as a sist of execution until the appeal be determined; and on such note being lodged, the sheriff-clerk shall transmit the process, together with the sheriff-substitute's notes of evidence, to the sheriff, whose decision thereon shall be final where the value certified is not above fifty pounds; and in the event of such value or cost being so certified to exceed the sum of fifty pounds, the parties shall be entitled to present a note of appeal to the Lord Ordinary on the Bills against the judgment either of the sheriff-substitute or of the sheriff, whether this last be an original judgment or an appeal, provided that, along with such note, the appellant shall lodge a sufficient bond of caution by one or more obligants, to the amount of fifty pounds sterling, for payment or per-

formance of any judgment that may be pronounced under his appeal; and also provided that such note be lodged in the Bill Chamber, and a copy thereof served on the opposite party or his said agent within eight days after the date of the sentence or judgment complained of, which note shall in like manner operate as a sist of execution until a judgment be pronounced by the Lord Ordinary, which judgment shall be final unless the Lord Ordinary shall allow a reclaiming note to the Inner House, and the judgment of the Inner House shall be final.

CVIII. *No Appeal otherwise.*—No appeal shall be competent from any decree or order of any magistrate or justices, or from the decree or order of any sheriff, except in cases certified in terms of the preceding section; and no decree or order, or any other proceeding, matter, or thing done in the execution of this Act, shall, excepting as herein provided, be subject to review in any way whatever.

CIX. *Justices being Members of Local Authority may act.*—The sheriff, justices of the peace, or magistrates may in all cases, notwithstanding their being members of the local authority or the board, exercise the jurisdiction vested in them under this Act.

CX. *Service of Notices, Petitions, and Orders.*—Notices, petitions, and orders under this Act may be served by any person by delivering the same to or at the residence of the parties to whom they are respectively addressed, or by being put into the post-office duly addressed to the parties; and where addressed to the owner or occupier of premises they may be served by any person delivering the same or a true copy thereof to some person upon the premises, or, if there be no person upon the premises who can be so served, by fixing the same upon some conspicuous part of the premises; and service of such notices, petitions, or orders may be proved by a certificate under the hand of the person who posted or delivered or affixed the same, attested by one witness who was also present.

CXI. *Proof of Resolutions of Local Authority and Board.*—Copies of any orders or resolutions of the local authority or their committee purporting to be signed by the chairman of such body or committee, and all directions and regulations, or orders or resolutions of the board, signed by their secretary or clerk, shall, unless the contrary be shown, be received as evidence thereof without proof of their meeting, or of the official character or signature of the person signing the same.

CXII. *One or more Joint Owners may be proceeded against alone.*—In case of any demand or complaint under this Act to which two or more parties, whether as owners or occupiers of premises, may be jointly answerable, it shall be sufficient to proceed against any one or more of them without proceeding against the others or other of them; but nothing herein contained shall prevent the parties so proceeded against from recovering relief in any case in which they would now be entitled to relief by law.

CXIII. *Penalty on Occupier obstructing Owner.*—If the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, the sheriff or any magistrate or justice to whom application is made shall, by order in writing, require

such occupier to permit the execution of the works required to be executed, provided that such works appear to such sheriff, magistrate, or justice to be necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within a reasonable time after the making of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such refusal.

CXIV. *Penalty for violating Act or obstructing its Execution.*—Whoever wilfully violates or contravenes any provision of this Act to which a pecuniary penalty is not herein attached, obstructs any person acting under the authority or employed in the execution of this Act, or wilfully violates any direction or regulation issued by the board under this Act, shall be liable for every such offence to a penalty not exceeding five pounds; provided that nothing in this Act shall exempt any person from any penalty or liability to which he may otherwise be subject.

CXV. *Works of Distribution of Sewage to be deemed a Land Improvement.*—The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an improvement of land authorized by the Land Improvement Act, 1864, and the provisions of that Act shall apply accordingly.

CXVI. *Compensation to be made.*—Full compensation shall be made, out of any fund or assessment applicable to the purposes of this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act, except when otherwise specially provided; and in case of dispute, if the sum claimed do not exceed the sum of fifty pounds sterling, the same may be ascertained on a summary application by either party to the sheriff, whose decision shall be final and not subject to review, unless when pronounced by the sheriff-substitute, in which case it may be reviewed by the sheriff on appeal; and when the sum claimed exceeds fifty pounds sterling, such compensation shall be ascertained and disposed of in terms of the Lands Clauses Acts.

CXVII. *Convictions not void for Want of Form.*—No conviction or other legal proceeding under this Act shall be void for want of form, or for want of any previous notice, provided in this latter case the party proceeded against or convicted has appeared or the charge had come to his knowledge; and the charge may be amended at any time, and the proceedings may be adjourned on the ground of want of sufficient notice, or for other good cause.

CXVIII. *Local Authority or Board not liable for Irregularity of their Officers.*—The local authority and the board shall not be liable in damages for any irregularity committed by their officers in the execution of this Act, or for anything done by themselves in the *bonâ fide* execution of this Act; and every officer acting in the *bonâ fide* execution of this Act shall be indemnified by the local authority under which he acts in respect of all costs, liabilities, and charges to which he may be subjected; and every action or prosecution against any person acting under this Act on account of any wrong done in or by

any action, proceeding, or operation under this Act shall be commenced within two months after the cause of action shall have arisen.

CXIX. *As to Forms to be used.*—The forms contained in the schedule to this Act annexed, or any forms to the like effect, may be used for the purposes of this Act, and shall be sufficient therefor, and all written proceedings or documents under this Act may be wholly or partly printed.

CXX. *Exemption from Stamp Duties.*—All bonds, assignations, conveyances, instruments, agreements, receipts, or other writings made or granted by or to or in favour of the local authority under this Act shall be exempt from all stamp duties.

CXXI. *Police Constables to aid in executing Act.*—The constabulary and police force in their respective jurisdictions shall aid the authorities and officers acting in execution of this Act, or any directions or regulations issued as aforesaid.

CXXII. *Act not to impair Right of Action, etc.*—Nothing in this Act shall be construed to impair any right of action in respect of nuisances at common law.

SCHEDULE.—*Bond for Borrowed Money.*

WE, the local authority of the burgh [*or* parish] of considering that, by resolution of the said local authority passed on the day of , it was resolved to borrow the sum of pounds, under the powers contained in 'The Public Health (Scotland) Act, 1867,' section , for the purpose of [*specify purpose*], and on security of the after-mentioned assessments, and further considering that we have accordingly borrowed and received the sum of from [*name and designation of the lender*], therefore we bind the said local authority to repay the said sum of pounds [*here insert obligation to repay in accordance with the arrangement made between the local authority and the lender*], and in security of the said loan, we hereby assign to the said and his foresaids the [*specify the assessments on the security of which the money is borrowed*], and we consent to the registration hereof for preservation and execution. In witness whereof, etc.

Transfer.

I, *A.B.* [*designation*], in consideration of the sum of paid to me by *C.D.* [*designation*], do hereby assign and transfer to the said *C.D.*, and his heirs, executors, and successors, a certain bond, number , granted by the local authority of the burgh [*or* parish] of in favour of bearing date the day of for securing the sum of and interest thereon, and all my right and interest in and to the money thereby secured, and in and to the [*here specify the assessments on the security of which the money was borrowed*]

thereby assigned; and I consent to registration hereof for preservation. In witness whereof, etc.

Discharge.

I, *A.B.* [*designation*], in consideration of the sum of paid to me by *C.D.* [*designation*], do hereby discharge a certain bond, number , granted by the local authority of the burgh [*or* parish] of in favour of , and all interest due thereon, and I declare the assessments thereby assigned to be freed and discharged thereof; and I consent to registration hereof for preservation. In witness whereof, etc.

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38 & 39 VICTORIA, CHAPTER 74.

An Act to amend 'The Public Health (Scotland) Act, 1867,' *and other Sanitary Acts, in respect of Loans for Sanitary Purposes.*—[11th August 1875.]

WHEREAS by the 'Public Health Act, 1872,' the Public Works Loan Commissioners are authorized to make loans to sanitary authorities in England at the rates of interest, and reyayable within the periods therein mentioned:

And whereas by the 'Public Health (Ireland) Act, 1874,' the Commissioners of Public Works in Ireland are authorized to make loans to sanitary authorities in Ireland at the rates, and repayable within the periods therein mentioned:

And whereas it is just that the Public Works Loan Commissioners should be authorized to make loans to sanitary authorities in Scotland at the same rates and repayable within similar periods:—

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. *Short Title.*—This Act may be cited for all purposes as the Public Health (Scotland) Act, 1867, Amendment Act, 1875.

2. *Definitions.*—The expression 'Sanitary Acts' shall mean the Public Health (Scotland) Act, 1867, and any Acts amending the same; and also Part IV. sections 7 and 10, and Part VI. section 2, of the General Police and Improvement (Scotland) Act, 1862.

The expression 'local authority' shall mean and include any local authority under the Public Health (Scotland) Act, 1867, and any Acts amending that Act, and also the commissioners acting under the General Police and Improvement (Scotland) Act, 1862.

The expression 'Board of Supervision' shall mean the Board of Supervision for Relief of the Poor in Scotland.

3. *Repeal of* 30 *&* 31 *Vict. c.* 101, *s.* 91, *and* 34 *&* 35 *Vict. c.* 38, *s.* 3.

—Section ninety-one of the Public Health (Scotland) Act, 1867, and section three of the Public Health (Scotland) Amendment Act, 1871, are hereby repealed, and in lieu thereof it is enacted as follows :—

Power to Public Works Loan Commissioners to lend to Local Authority in Scotland for Sanitary Purposes.—The Public Works Loan Commissioners may, with the consent of the Commissioners of the Treasury, on the recommendation of the Board of Supervision, make any loan to any local authority in pursuance of any powers of borrowing conferred by the Sanitary Acts, whether for works already executed or yet to be executed, on the security of any fund or rate applicable to any of the purposes of these Acts, and without requiring any further or other security, such loan to be repaid within a period not exceeding fifty years, and to bear interest at the rate of three and a half per centum per annum, or such other rate as may, in the judgment of the Commissioners of the Treasury, be necessary in order to enable the loan to be made without loss to the Exchequer.

Provided as follows :

(1.) That in determining the time when a loan under this Act shall be repayable, the Public Works Loan Commissioners shall have regard to the probable duration and continuing utility of the works in respect of which the same is required :

(2.) That this Act shall not extend to any loan required for the purpose of defraying expenses incurred in enforcing the performance of or in performing the duty of a defaulting local authority :

(3.) That in the case of any loan already made to any local authority in pursuance of any powers conferred by the Sanitary Acts, the Public Works Loan Commissioners may, if they think fit, reduce the interest payable thereon to the rate of not less than three and a half per centum per annum.

4. *Period of Repayment of Sums borrowed by Local Authorities for Sanitary Purposes.*—The provisions of the Sanitary Acts enabling local authorities under the same to borrow money for the purposes of such Acts shall be read and construed as if they provided that any sums of money borrowed from the Public Works Loan Commissioners by such local authority for the purposes of the said Acts shall be repaid within a period not exceeding fifty years.

PRACTICAL FORMS.

THE FOLLOWING FORMS HAVE BEEN FRAMED BY THE BOARD OF SUPERVISION :—

I.

REMOVAL OF POOR TO ENGLAND AND IRELAND.

II.

PROCEEDINGS UNDER PUBLIC HEALTH ACT.

I.—REMOVAL OF POOR TO ENGLAND AND IRELAND.

No. 1.

[*Case of Pauper having Wife and Children.*]

[1] Sheriff or two Justices.

UNTO[1] _____

THE PETITION AND COMPLAINT

OF

INSPECTOR OF THE POOR FOR THE PARISH OF

Humbly Sheweth,

That by Statute Eighth and Ninth Victoria, Chapter Eighty-third, intituled, 'An Act for the amendment and better Administration of the Laws 'relating to the Relief of the Poor in *Scotland*,' it is enacted, Section Seventy-seventh:—'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 ascer-'taining 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 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 Prac-'titioner, 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 In-'spector 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.'

And that, by Statute Tenth and Eleventh Victoria, Chapter Thirty-third, intituled, 'An Act to amend the Laws relating to the Removal of poor Per-'sons from *England* and *Scotland*,' it is enacted, Section Second:—'That it 'shall be lawful for any Inspector of the Poor, or other Officer appointed by 'the Parochial Board of any Parish or Combination in *Scotland*, to take and 'convey before the Sheriff or any two Justices of the Peace of the County 'in which the Parish or Combination for which such Inspector or Officer

'acts, or any portion thereof, is situated, without previous Complaint or 'Warrant in that behalf, every poor Person who shall be in the course of 'receiving Parochial Relief in any Parish or Combination in *Scotland*, and 'who, he may have reason to believe, is liable to be removed from *Scotland* 'under the secondly recited Act (8 and 9 Vict. c. 83, s. 77); and the 'Sheriff or Justices before whom any such Person shall be so brought shall 'make such examination, and proceed in the same manner in all respects, 'as if such Person had been brought before him or them under and in the 'same manner directed by that Act.'

That by the Act 25 and 26 Vict. cap. 113, further provision was made in reference to the Removal of Paupers from *Scotland* to *England* and *Ireland*. By said Statute it is provided in Sections First, Second, and Fourth thereof as follows, viz.:—

'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 Magis-'trate 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 'Magistrate, 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.

'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 '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 re-'moved 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 afore-'said, 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.'

'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 Combi-'nation, and in the case of a Removal to *England* or *Ireland*, at the Work-'house 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.'

That now or lately residing at was born in the Parish of within the Union of in , (or) last resided for three years in the Parish of within the Union of in : That the said has become chargeable to and is in course of receiving Parochial Relief from the Parish of : That the said has not acquired a settlement in any Parish or Combination in Scotland, or, if acquired, has not retained such settlement: That the said has a wife named and children, whose names are as follow, viz.,

who have not gained a settlement in Scotland: That the said[1] having actually become chargeable to the said parish of it has become necessary to remove the said[1] and his wife and children to where he was born, (or) to where he last resided for the space of three years.

That the reputed age of the said[1] is and the reputed age of the said his wife, is , and the reputed ages of his children are as follow,

May it therefore please your to inquire into and consider what is before set forth, to see the said and and ; and it being proved in the manner prescribed by the said Statutes, that[1] was born in (or) last resided for three years in *and has not acquired, or, if acquired, has not retained a settlement in any Parish in Scotland, and that the said has actually become chargeable to the said Parish of and that the health of the said is such that they would not suffer bodily or mental injury by their removal, to grant the necessary order for their removal to the Workhouse at accordingly; or to do otherwise in the premises as your may see cause, all in terms of the aforesaid Acts of Parliament.

According to Justice, &c.

[2] _____

[1] The father.

[1] The father.

[1] The father.

[1] The father.

Note.—Insert names of pauper, and wife, and children.

[2] To be signed by Petitioner.

CERTIFICATE BY A REGULAR MEDICAL PRACTITIONER.

I HEREBY declare, on soul and conscience, that the health of aforesaid, is such as to admit of removal, as above craved, either by land or water.

Dated

* Alter this prayer to meet the circumstance of the birth parish not being known, or of no residence for three years capable of being proved.—*See Note at the end of this sheet.*

[1] _____ [1] Place and Date.

DEPOSITION of the said[2] who, being [2] The father.
solemnly sworn, Depones that

Note.—To be signed by the party and by the Sheriff or Justices; and, if other parole evidence is taken, substance to be inserted by the Sheriff or Justices, and similarly attested.

TO INSPECTOR OF THE POOR FOR THE PARISH
OF
AND
TO THE GUARDIANS OF THE (UNION OR PARISH)
OF

ORDER FOR *REMOVAL* TO _____

[1] _____ [1] Place and Date.

I,[2] , Sheriff of the [2] Alter the sentence if the order be granted by two Justices and not by the Sheriff.
County of , having considered the foregoing Petition and Certificate, and the Deposition of the said[3] and having examined into the state of the health of the said[4]

find that the said[3] is of the reputed age of ; [3] The father.
that the said[5] is of the reputed age of ; *Note.*—And 'further proof,' if any led.
that the said[6] [4] The father, wife, and children.
are of the reputed ages of ; find that the [3] The father.
said[3] was born in the Parish of [5] The wife.
within the Union of in , (or) [6] The children.
that the said last resided for three years in [3] The father.
within the Union of ;*
find that the said[3] has become, and is now actually [3] The father.
chargeable to the Parochial Board of the Parish of ; [3] The father.
and that the said[3] has not acquired and retained
a settlement in Scotland; find that none of the said persons would suffer bodily or mental injury by being removed as herein ordered: Therefore, I do hereby order that[3] be removed with [3] The father.
, his said wife, and
his said children, and conveyed to, and delivered safely at, the Workhouse at
and I do order you, the said Inspector of Poor, to cause the said persons to be so safely conveyed and delivered, and you, the said Guardians of , to receive the said persons.

_____

* This part of the order must be altered if the Sheriff or Magistrates 'shall not be able to ascertain, upon the evidence before them, the place of birth, or such continued residence;' in which case the Statute enacts that the Sheriff or Magistrates 'shall order the Pauper to be removed to 'the Port or Union or Parish in *England* or *Ireland*, as the case may be, which shall, in the judg-'ment' of the Sheriff or Magistrates, 'under the circumstances of the case, be most expedient.' But in every case where the Union to which an *English* or *Irish* Pauper is chargeable can be discovered, such Union should be specified in the warrant; and no warrant ought to be signed by a Magistrate unless proof be led that due inquiries had been made on this point. Inquiries may be addressed to the Poor Law Commissioners, London, and to the Poor Law Commissioners, Dublin.

No. 2.

[*Case of Pauper having Wife, but no Children.*]

[1] Sheriff or two Justices.

UNTO [1]_____

THE PETITION AND COMPLAINT

OF

INSPECTOR OF THE POOR FOR THE PARISH OF

Humbly Sheweth,

That by Statute Eighth and Ninth Victoria, Chapter Eighty-third, intituled, 'An Act for the Amendment and better Administration of the Laws 'relating to the Relief of the Poor in *Scotland*,' it is enacted, Section Seventy-'seventh:—'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 re-'quired, 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 'Family, then such Sheriff or Justices shall, and they are hereby em-'powered, 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 Arrange-'ments 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.'

And that, by Statute Tenth and Eleventh Victoria, Chapter Thirty-third, intituled, 'An Act to amend the Laws relating to the Removal of Poor 'Persons from *England* and *Scotland*,' it is enacted, Section Second:— 'That it shall be lawful for any Inspector of the Poor, or other Officer 'appointed by the Parochial Board of any Parish or Combination in *Scot-*

'*land*, to take and convey before the Sheriff, or any two Justices of the 'Peace of the County in which the Parish or Combination for which such 'Inspector or Officer acts, or any portion thereof, is situated, without pre- 'vious Complaint or Warrant in that behalf, every poor Person who shall 'be in the course of receiving Parochial Relief in any Parish or Combina- 'tion in *Scotland*, and who, he may have reason to believe, is liable to be 'removed from *Scotland* under the secondly recited Act (8 and 9 Vict. c. 83, 's. 77); and the Sheriff or Justices before whom any such Person shall be 'so brought shall make such examination, and proceed in the same manner 'in all respects, as if such Person had been brought before him or them 'under and in the same manner directed by that Act.'

That by the Act 25 and 26 Vict. cap. 113, further provision was made in reference to the Removal of Paupers from *Scotland* to *England* and *Ireland*. By said Statute it is provided in Sections First, Second, and Fourth thereof, as follows, viz. :—

'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 Magis- 'trate 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 'Magistrate, 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.

'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 In- 'spector 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 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 Magis- 'trate, 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 re- 'moved 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.

'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 Per- 'sons 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 Com- 'bination, 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.'

That now or lately residing at was born in the Parish o within the Union of in , (or) last resided for three years in the Parish of within the Union of in : That the said has become chargeable to and is in course of receiving Parochial Relief from the Parish of : That the said has not acquired a settlement in any Parish or Combination in Scotland, or, if acquired, has not retained such settlement : That the said has a wife named who has not gained a settlement

[1] The husband. in Scotland : That the said [1] having actually become chargeable to the said Parish of , it has become necessary

[1] The husband. to remove the said [1] and his wife to where he was born, (or) to where he last resided for the space of three years.

[1] The husband. That the reputed age of the said [1] is , and the reputed age of the said his wife, is

May it therefore please your to inquire into and consider what is before set forth, to see the said and ;

[1] The husband. and it being proved in the manner prescribed by the said Statutes, that [1] was born in (or) last resided for three years in * and has not acquired, or, if acquired, has not retained a settlement in any Parish in Scotland, and

[1] The husband. that the said [1] has actually become chargeable to the said Parish of , and that the health of the said

Note.—Insert names of pauper and wife. is such that they would not suffer bodily or mental injury by their removal, to grant the necessary order for their removal to the Workhouse at accordingly ; or to do otherwise in the premises as your may see cause, all in terms of the foresaid Acts of Parliament.

According to Justice, &c.

[2] To be signed by Petitioner. [2] _____

CERTIFICATE BY A REGULAR MEDICAL PRACTITIONER.

[3] The pauper and wife. I HEREBY declare, on soul and conscience, that the health of [3] aforesaid, is such as to admit of removal, as above craved, either by land or water.

Dated

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* Alter this prayer to meet the circumstances of the birth parish not being known, or of no residence for three years capable of being proved.—*See Note at the end of this sheet.*

[1] _____ [1] Place and Date

DEPOSITION of the said [2]
who, being solemnly sworn, Depones that

[2] The husband.

Note.—To be signed by the party and by the Sheriff or Justices; and, if other parole evidence is taken, substance to be inserted by the Sheriff or Justices, and similarly attested.

TO INSPECTOR OF THE POOR FOR THE PARISH
OF

AND

TO THE GUARDIANS OF THE UNION OR PARISH
OF

ORDER FOR *REMOVAL* TO _____

_____ [1] Place and Date.

I,[2] , Sheriff of the County of , having considered the foregoing Petition and Certificate, and the Deposition of the said [3] , and having examined into the state of the health of the said [4]

find that the said [3] is of the reputed age of ; that the said [5] is of the reputed age of ; find that the said [3] was born in the Parish of within the Union of in ; (or) that the said last resided for three years in within the Union of ;* find that the said [3] has become and is now actually chargeable to the Parochial Board of the Parish of ; and that the said [3] has not acquired and retained a settlement in Scotland; find that neither of the said persons would suffer bodily or mental injury by being removed as herein ordered: Therefore I do hereby order that [3] be removed with his said wife, and conveyed to, and delivered safely at, the Workhouse at ; and I do order you, the said Inspector of Poor, to cause the said persons to be so safely conveyed and delivered, and you, the said Guardians of , to receive the said persons.

[2] Alter the sentence if the order be granted by two Justices and not by the Sheriff.

[3] The husband.

Note.—And 'further proof,' if any led.

[4] The husband and wife.

[3] The husband.

[5] The wife.

[3] The husband.

[3] The husband.

[3] The husband.

[3] The husband.

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* This part of the order must be altered if the Sheriff or Magistrates 'shall not be able to 'ascertain, upon the evidence before them, the place of birth, or such continued residence;' in which case the Statute enacts that the Sheriff or Magistrates 'shall order the Pauper to be 'removed to the Port or Union or Parish in *England* or *Ireland*, as the case may be, which shall, 'in the judgment' of the Sheriff or Magistrates, 'under the circumstances of the case, be most 'expedient.' But in every case where the Union to which an *English* or *Irish* Pauper is chargeable can be discovered, such Union should be specified in the warrant; and no warrant ought to be signed by a Magistrate unless proof be led that due inquiries have been made on this point. Inquiries may be addressed to the Poor Law Commissioners, London, and to the Poor Law Commissioners, Dublin.

No. 3.

[*Case of Pauper having Children, but not a Wife.*]

[1] Sheriff or two Justices.

UNTO[1]_____

THE PETITION AND COMPLAINT

OF

INSPECTOR OF THE POOR FOR THE PARISH OF

Humbly Sheweth,

That by Statute Eighth and Ninth Victoria, Chapter Eighty-third, intituled, 'An Act for the Amendment and better Administration of the 'Laws relating to the Relief of the Poor in *Scotland*,' it is enacted, Section Seventy-seventh :—'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 Settle-'ment 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 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 Certifi-'cate, 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.'

And that, by Statute Tenth and Eleventh Victoria, Chapter Thirty-third, intituled, 'An Act to amend the Laws relating to the Removal of poor Per-'sons from *England* and *Scotland*,' it is enacted, Section Second:—'That it 'shall be lawful for any Inspector of the Poor, or other Officer appointed by 'the Parochial Board of any Parish or Combination in *Scotland*, to take

'and convey before the Sheriff or any two Justices of the Peace of the 'County in which the Parish or Combination for which such Inspector or 'Officer acts, or any portion thereof, is situated, without previous Com- 'plaint or Warrant in that behalf, every poor Person who shall be in the 'course of receiving Parochial Relief in any Parish or Combination in *Scot- 'land*, and who, he may have reason to believe, is liable to be removed from '*Scotland* under the secondly recited Act (8 and 9 Vict. c. 83, s. 77); and 'the Sheriff or Justices before whom any such Person shall be so brought 'shall make such examination, and proceed in the same manner in all 'respects, as if such Person had been brought before him or them under and 'in the same manner directed by that Act.'

That by the Act 25 and 26 Vict. cap. 113, further provision was made in reference to the Removal of Paupers from *Scotland* to *England* and *Ireland*. By said Statute it is provided in Sections First, Second, and Fourth thereof, as follows, viz.:—

'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 'Magistrate, 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.

'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 Parish or Combination to which such poor Per- 'son 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 con- 'tinued 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.

'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 Per- 'sons charged with the execution thereof to cause such poor Person, with 'his Family (if any), to be safely conveyed to such Place in *England*, *Ire- 'land*, 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 Com- 'bination, 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.'

That now or lately residing at was born in the Parish of within the Union of in (or) last resided for three years in the Parish of within the Union of in : That the said has become chargeable to and is in course of receiving Parochial Relief from the Parish of : That the said has not acquired a settlement in any Parish or Combination in Scotland, or, if acquired, has not retained such settlement : That the said has children, whose names are as follow, viz., who have not gained a settlement in Scotland : That the said[1] having actually become chargeable to the said Parish of it has become necessary to remove the said[1] and his children to where he was born, (or) to where he last resided for the space of three years.

That the reputed age of the said[1] is , and the reputed ages of his children are as follow,

[1] The father.

[1] The father.

[1] The father.

May it therefore please your to inquire into and consider what is before set forth, to see the said and and ; and it being proved in the manner prescribed by the said Statutes that[1] was born in (or) last resided for three years in *and has not acquired, or, if acquired, has not retained a settlement in any Parish in Scotland, and that the said has actually become chargeable to the said Parish of and that the health of the said is such that they would not suffer bodily or mental injury by their removal, to grant the necessary order for their removal to the Workhouse at accordingly ; or to do otherwise in the premises as your may see cause, all in terms of the aforesaid Acts of Parliament.

[1] The father.

Note.—Insert names of pauper and children.

According to Justice, &c.

[2]

[2] To be signed by Petitioner.

CERTIFICATE BY A REGULAR MEDICAL PRACTITIONER.

I HEREBY declare, on soul and conscience, that the health of[3] aforesaid, is such as to admit of Removal, as above craved, either by land or water.

Dated

[3] Father and children.

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* Alter this prayer to meet the circumstances of the birth parish not being known, or of no residence for three years capable of being proved.—*See Note at the end of this sheet.*

[1] _____

[1] Place and Date.

DEPOSITION of the said[2] who, being solemnly sworn, Depones that

[2] The father.

Note.—To be signed by the party and by the Sheriff or Justices; and, if other parole evidence is taken, substance to be inserted by the Sheriff or Justices, and similarly attested.

TO INSPECTOR OF THE POOR FOR THE PARISH
OF

AND

TO THE GUARDIANS OF THE (UNION OR PARISH)
OF

ORDER FOR *REMOVAL* TO _____

[1] _____

[1] Place and Date.

I,[2] , Sheriff of the County of , having considered the foregoing Petition and Certificate, and the Deposition of the said [3] and having examined into the state of the health of the said[4] find that the said [3] is of the reputed age of ; that the said [5]

[2] Alter the sentence if the order be granted by two Justices and not by the Sheriff.

[3] The father.

Note.—And 'further proof,' if any led.

[4] The father and children.

are of the reputed ages of ; find that the said[3] was born in the Parish of within the Union of in , (or) that the said last resided for three years in within the Union of ;* find that the said[3] has become, and is now actually chargeable to the Parochial Board of the Parish of ; and that the said[3] has not acquired and retained a settlement in Scotland; find that none of the said persons would suffer bodily or mental injury by being removed as herein ordered: Therefore, I do hereby order that[3] be removed with

[3] The father.

[5] The children.

[3] The father.

[3] The father.

[3] The father.

his said children, and conveyed to, and delivered safely at, the Workhouse at ; and I do order you, the said Inspector of Poor, to cause the said persons to be so safely conveyed and delivered, and you, the said Guardians of to receive the said persons.

[3] The father.

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* This part of the order must be altered if the Sheriff or Magistrates 'shall not be able to 'ascertain, upon the evidence before them, the place of birth, or such continued residence;' in which case the Statute enacts that the Sheriff or Magistrates 'shall order the Pauper to be 'removed to the Port or Union or Parish in *England* or *Ireland*, as the case may be, which 'shall, in the judgment' of the Sheriff or Magistrates, 'under the circumstances of the case, be 'most expedient.' But in every case where the Union to which an *English* or *Irish* Pauper is chargeable can be discovered, such Union should be specified in the warrant; and no warrant ought to be signed by a Magistrate unless proof be led that due inquiries have been made on this point. Inquiries may be addressed to the Poor Law Commissioners, London, and to the Poor Law Commissioners, Dublin.

No. 4.

[*Case of Pauper not having Wife or Children.*]

[1] Sheriff or two Justices.

UNTO[1] _____

THE PETITION AND COMPLAINT

OF

INSPECTOR OF THE POOR FOR THE PARISH OF

Humbly Sheweth,

That by Statute Eighth and Ninth Victoria, Chapter Eighty-third, intituled, 'An Act for the Amendment and better Administration of the Laws 'relating to the Relief of the Poor in *Scotland*,' it is enacted, Section Seventy-seventh, '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 author-'ized and required, upon Complaint made by the Inspector of the Poor or 'other Officer appointed by the Parochial Board of such Parish or Combina-'tion, 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 neces-'sary 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 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.'

And that, by Statute Tenth and Eleventh Victoria, Chapter Thirty-third, intituled, 'An Act to amend the Laws relating to the Removal of poor Per-'sons from *England* and *Scotland*,' it is enacted, Section Second, 'That it 'shall be lawful for any Inspector of the Poor, or other Officer appointed by 'the Parochial Board of any Parish or Combination in *Scotland*, to take and 'convey before the Sheriff or any two Justices of the Peace of the County in 'which the Parish or Combination for which such Inspector or Officer acts, 'or any portion thereof, is situated, without previous Complaint or Warrant 'in that behalf, every poor Person who shall be in the course of receiving

'Parochial Relief in any Parish or Combination in *Scotland*, and who, he 'may have reason to believe, is liable to be removed from *Scotland* under 'the secondly recited Act (8 and 9 Vict. c. 83, s. 77); and the Sheriff or 'Justices before whom any such Person shall be so brought shall make such 'examination, and proceed in the same manner in all respects, as if such 'person had been brought before him or them under and in the same 'manner directed by that Act.'

That by the Act 25 and 26 Vict. cap. 113, further provision was made in reference to the Removal of Paupers from *Scotland* to *England* and *Ireland*. By said Statute it is provided in Sections First, Second, and Fourth thereof, as follows, viz.:—

'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 Magis-'trate, and Sheriff or Justices (as the case may be) shall see such poor Per-'son, 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.'

'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 In-'spector 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 re-'puted 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 In-'spector 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 Magis-'trate, 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 re-'moved 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.

'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 Com-'bination, 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.'

That now or lately residing at was born in the Parish of within the Union of in , (or) last resided for three years in the Parish of within the Union of in : That the said has become chargeable to and is in course of receiving Parochial Relief from the Parish of : That the said has not acquired a settlement in any Parish or Combination in Scotland, or, if acquired, has not retained such settlement: That the said having actually become chargeable to the said Parish of it has become necessary to remove the said to where he was born, (or) to where he last resided for the space of three years.

That the reputed age of the said is

May it therefore please your to inquire into and consider what is before set forth, to see the said , and it being proved in the manner prescribed by the said Statutes that [1] was born in (or) last resided for three years in * and has not acquired, or, if acquired, has not retained a settlement in any Parish in Scotland, and that the said has actually become chargeable to the said Parish of and that the health of the said is such that would not suffer bodily or mental injury by removal, to grant the necessary order for removal to the Workhouse at accordingly; or to do otherwise in the premises as your may see cause, all in terms of the foresaid Acts of Parliament.

According to Justice, &c.

[2] _____

[1] The pauper.

[2] To be signed by Petitioner.

CERTIFICATE BY A REGULAR MEDICAL PRACTITIONER.

I HEREBY declare, on soul and conscience, that the health of aforesaid, is such as to admit of removal, as above craved, either by land or water.

Dated

[1] _____

[1] Place and Date.

DEPOSITION of the said [2] who, being solemnly sworn, Depones that

[2] The pauper.

Note.—To be signed by the party and by the Sheriff or Justices; and, if other parole evidence is taken, substance to be inserted by the Sheriff or Justices, and similarly attested.

* Alter this prayer to meet the circumstances of the birth parish not being known, or of no residence for three years capable of being proved.—*See Note at the end of this sheet.*

TO INSPECTOR OF THE POOR FOR THE PARISH
OF

AND

TO THE GUARDIANS OF THE (UNION OR PARISH)
OF

ORDER FOR *REMOVAL* TO _____

[1] _____ [1] Place and Date.

I,[2] , Sheriff of the County of having considered the foregoing Petition and Certificate, and the Deposition of the said and having examined into the state of the health of the said find that the said[3] is of the reputed age of ; find that the said[3] was born in the Parish of within the Union of in , (or) that the said last resided for three years in within the Union of ;* find that the said[3] has become and is now actually chargeable to the Parochial Board of the Parish of ; and that the said[3] has not acquired and retained a settlement in Scotland; find that the said would not suffer bodily or mental injury by being removed as herein ordered: Therefore, I do hereby order that the said be removed and conveyed to, and delivered safely at, the Workhouse at ; and I do order you, the said Inspector of Poor, to cause the said persons to be so safely conveyed and delivered, and you the said Guardians of , to receive the said persons.

[2] Alter the sentence if the order be granted by two Justices and not by the Sheriff.
Note—And 'further proof,' if any led.
[3] The pauper.
[3] The pauper.
[3] The pauper.
[3] The pauper.

---

* This part of the order must be altered if the Sheriff or Magistrates 'shall not be able to 'ascertain, upon the evidence before them, the place of birth, or such continued residence;' in which case the Statute enacts that the Sheriff or Magistrates 'shall order the Pauper to be 'removed to the Port or Union or Parish in *England* or *Ireland*, as the case may be, which 'shall, in the judgment' of the Sheriff or Magistrates, 'under the circumstances of the case be 'most expedient.' But in every case where the Union to which an *English* or *Irish* Pauper is chargeable can be discovered, such Union should be specified in the warrant; and no warrant ought to be signed by a Magistrate unless proof be led that due inquiries have been made on this point. Inquiries may be addressed to the Poor Law Commissioners, London, and to the Poor Law Commissioners, Dublin.

II.—PROCEEDINGS UNDER PUBLIC HEALTH ACT.

No. 1.—*Petition for Order to admit Local Authority and others, with Procedure, under sect.* 17.

[1] Sheriff, Magistrate, or Justice.

Unto[1] _____

THE PETITION OF

_____

*NOTE.—This petition may run in name of the Local Authority.

SANITARY INSPECTOR* OF THE DISTRICT OF

_____

Humbly Sheweth,—

That the petitioner verily believes, on reasonable grounds, that within or near the following premises, situated within the said district, viz.[2] _____

[2] Describe the premises. (See § 3, *voce* Premises.)

_____

_____

there exists a nuisance within the meaning of the Public Health (Scotland) Act, 1867, viz.[3] _____

[3] State the nuisance, in terms of § 16; *as*, That the said premises are so overcrowded while work is carried on therein as to be dangerous or injurious to the health of those employed therein; or other nuisance; or any other nuisance not specifically mentioned in that section.

_____

_____

_____

_____

That the petitioner, on _____

at _____ o'clock ____ M., demanded admission for himself[4]

[4] Here may be inserted the Local Authority; also the Medical Officer, the Superintendent of Police, etc., naming them. (See § 17.)

_____

_____

_____

to inspect the same, but admission was refused. Wherefore this

application is made under sect. 17 of the said Act, for admittance to inspect the premises this day, or any of the next_____days, at any hour between nine in the morning and six in the evening, and at any time betwixt the hours of_____and_____ during which period the petitioner believes that the operations suspected to cause the nuisance are in progress, or are usually carried on; or at such other times as may seem fit; and the petitioner therefore

Prays for an order in writing requiring the occupier or person having the custody of the aforesaid premises to admit the Local Authority of the said district and the petitioner[1]_____ _____at the times foresaid, or such other times as may be fit; and, in case of opposition, to find the opposing party liable in expenses.

[1] State others *ut supra*, if wished.

According to Justice, etc.

_____

DEPOSITION OF THE AFORESAID PETITIONER.

At_____

the_____day of_____in presence of_____

_____compeared the said_____

_____ _____

petitioner, who, being solemnly sworn, depones that the whole statements in the foregoing petition are true.

[2] _____

[2] Signatures of deponent and judge.

_____

WARRANT FOR INTIMATION.[3]

[3] The order, etc., *infra*, may be granted with or without intimation, § 17.

[4] _____

[4] Place and date.

Appoints a copy of the foregoing petition and deposition, and of this deliverance, to be served on the owner, or occupier, or person in charge of the premises therein mentioned, and appoints appearance to be made by him or them before the undersigned at_____

_____on_____at_____o'clock____ M.,

[5] _____previous service being made.

[5] State so many hours or days.

_____

CERTIFICATE OF SERVICE.

NOTE.—Service may be made by any person, § 110.

I, _____

hereby certify that on _____ at _____ o'clock _____ M., I served a copy of the foregoing petition, deposition, and deliverance upon[1] _____

_____

_____

_____

all in presence of _____

witness hereto subscribing.

_____

_____ *Witness.*

[1] State the person or persons on whom service is made, and the mode of service (see § 110), and whether owner, occupier, or in charge.

ORDER FOR ADMITTANCE.

[2] Place and date.

[2] _____

[3] Sheriff, Magistrate, or Justice.

I,[3] _____

having considered the foresaid petition and deposition, hereby, in terms of sect. 17 of the aforesaid Act, ordain and require the occupier or person having the custody of the aforesaid premises, to admit the Local Authority and Sanitary Inspector foresaid[4]

[4] State if others.

_____

_____

to the said premises, for the purpose of inspecting the same, and that on this present day, or any of the next _____ days, at any hour between nine in the morning and six in the evening, and also between the hours of _____ and _____

NOTE.—Expenses may be found due in case of opposition.

_____

CERTIFICATE OF FAILURE OR REFUSAL TO GIVE ADMITTANCE.

I, _____

hereby certify that on the _____ at _____ o'clock _____ M., I demanded admittance, in terms of the foregoing order, but admittance was refused and withheld.

_____

WARRANT FOR IMMEDIATE FORCIBLE ENTRY.*

I,[1] _____

being satisfied of the failure or refusal to give admittance, in terms of the foregoing order, hereby grant warrant to the said Local Authority and Sanitary Inspector[2] _____

_____

or any of them, for immediate forcible entry into the foresaid premises.

_____

[1] Sheriff, Magistrate, or Justice.

[2] Here insert any others.

* Besides this warrant for forcible entry, the prosecutor may insist for a penatly not exceeding £5; but this should be on a separate petition, in the appropriate form, No. 21.

No. 2.—*Requisition for Application to the Sheriff for Removal of Nuisance, under sect.* 18.

Unto the Local Authority of

_____

THE REQUISITION OF THE UNDERSIGNED,

BEING NOT FEWER THAN TEN INHABITANTS OF THE DISTRICT OF THE LOCAL AUTHORITY.

We, the undersigned inhabitants of the said district, hereby, in terms of sects. 16 and 18 of the Public Health (Scotland) Act, 1867, require you, the said Local Authority, to apply to the Sheriff for removal, or remedy, or discontinuance, or interdict of the following nuisance existing within the said district, viz.[3] _____

_____

_____

_____

_____

_____

[3] Here state the nuisance in terms of § 16 (*e*) or (*g*); *as*, That the manufactory of _____ carried on at _____ by _____ is injurious to the health of the neighbourhood.

[4] _____

_____

_____

_____

_____

_____

_____

[4] Signatures, mentioning place of residence.

No. 3.—*Medical Certificate of the Existence of a Nuisance, and Petition for Removal thereof, with Procedure, sect.* 18.

CERTIFICATE BY THE MEDICAL OFFICER OF THE DISTRICT OF

_____

[1] Place and date.

[1] _____

I hereby declare, on soul and conscience, to the Local Authority of the aforesaid district, that within or near the following premises, situated within or near the said district, viz.[2] _____

[2] Describe the premises. (See § 3, *voce* Premises.)

_____

_____

there exists a nuisance within the meaning of the Public Health (Scotland) Act, 1867, viz.[3] _____

[3] State the nuisance; *as*, A stable in which animals are kept in such a manner as to be injurious to health, &c. &c.

_____

_____

_____

_____

NOTE.—The certificate of the Medical Officer may be used in all cases; and where the nuisance falls under heads (*e*) and (*g*) of § 16, either the certificate or a requisition of not fewer than ten inhabitants is essential.

(Signature) _____

Unto[4] _____

[4] Sheriff, Magistrate, or Justice. Under § 16, heads (*e*), (*g*), (*h*), and (*i*), the petition must be to the Sheriff.

THE PETITION OF

_____

SANITARY INSPECTOR OF THE DISTRICT OF

_____

Humbly Sheweth,—

That within or near the following premises, situated within the said district, viz.[5] _____

[5] Describe the premises. (See § 3, *voce* Premises.)

_____

_____

there exists a nuisance within the meaning of sects. 16 and 17 of the Public Health (Scotland) Act, 1867, viz.[6] _____

[6] State the nuisance as in the prefixed certificate (margin).

_____

_____

_____

That the author of said nuisance is [1] _____

_____

_____

_____

_____

[2] _____

_____

_____

_____

_____

_____

The petitioner therefore

Prays your[3] _____ to ordain service of this petition, and the deliverance thereon, on the said _____, and thereafter to ordain [4] _____ to remove and discontinue the said nuisance, and for that purpose to [5] _____

_____

_____

_____

_____

_____

[6] _____

_____

_____

_____

_____

According to Justice,

[7] _____

_____

[8] _____

[9] _____

Appoints a copy of the foregoing petition, and of this deliverance,

[1] State the author or authors of the nuisance, and whether owner or occupier, or both. (See § 3, *voce* 'author of a nuisance.')

[2] If the nuisance falls under § 16 (*f*), the author of the nuisance will not be stated; but the name of the collector of the churchyard or other dues will be set forth. If the nuisance falls under the heads (*e*) and (*g*) of § 16, set forth here that this application is made on a certificate by the Medical Officer, dated _____ or that it is made on a requisition, in writing, under the hands of not fewer than ten inhabitants of the district, and the certificate or requisition should be produced. In case of suspected discontinuance of the nuisance, and of its probable recurrence, it may be set forth: That if the said nuisance is now discontinued, it is likely to recur or be repeated; and the same existed in _____ when a medical certificate thereof was granted (or when a demand for admission to the premises was made on behalf of the Local Authority).

[3] Lordship or Honours

[4] Him or them.

[5] State any special order.

[6] Add if desired: And to prohibit and interdict (him or them) from, &c., in time to come.

[7] Signature of petitioner or agent.

[8] Place and date.

[9] The Sheriff, Magistrate, or Justice.

to be served on the said _____, and appoints [1] _____

_____

_____

_____

_____

_____

_____

[1] The parties to appear before the said _____ at _____ the _____ day of _____ at _____ o'clock.

or,

Answers to be lodged within _____ after service.

NOTE.—Answers must be appointed not more than three days after service. Service may be made by any person, § 110.

CERTIFICATE OF SERVICE.

I, _____

_____

hereby certify that on _____ at _____ o'clock __ M. I served a copy of the foregoing petition and deliverance upon [2] _____

_____

_____

_____

all in presence of _____ witness hereto subscribing.

_____ *Witness.*

[2] State the person or persons upon whom service is made, and the mode of service. (See § 110.)

INTERLOCUTOR.

[3] _____

_____

Remits to _____

to examine the premises, and report as to the alleged nuisance.

_____

[3] Place and date. NOTE.—It is at the discretion of the judge to pronounce this interlocutor, § 105.

OR,

[4] _____

_____

Allows the petitioner a proof of his averments, and the respondent a conjunct proof. Appoints the proof to take place before the undersigned, at _____ day of _____ at _____ o'clock.[5]

[4] Place and date. NOTE.—It is at the discretion of the judge to pronounce this interlocutor, § 105.

[5] The day for proof must not be later than five days after the date of the interlocutor. If the case falls under § 16, heads (*h*), (*i*), or (*j*), the Sheriff must take notes of the evidence as in civil cases, § 105.

INTERLOCUTOR ON THE MERITS, IF THE PARTY DOES NOT APPEAR.

If structural works are required, the provisions of sect. 21 *will fall to be attended to.*

[1] _____

The [2] _____

in respect the respondents have failed to [3] _____

and having heard the Sanitary Inspector, and considered the matter,

ordains the said _____

to discontinue and remove the said nuisance [4] _____

_____

_____

_____

Finds the said _____

liable in expense of process, and modifies the same to the sum of _____ and decerns.

[1] Place and date.

[2] Sheriff, Magistrate, or Justice.

[3] Appear or lodge answers.

[4] Here may be inserted, 'and for that purpose to' (do whatever may be deemed necessary), 'and that within _____ from this date; and failing of this order being duly implemented, authorizes the Local Authority, at the expense of the said _____ to perform the said operations, and for that purpose to enter the premises, and prohibits and interdicts the said _____ from renewing or repeating the,' &c.

INTERLOCUTOR ON THE MERITS, AFTER APPEARANCE OF THE RESPONDENTS.

See supra as to structural works.

[5] _____

The [6] _____

having [7] _____

_____

_____

Ordains the said _____

to discontinue and remove the said nuisance [8] within _____ days

_____

_____

_____

and appoints the petitioner to report on or before the _____

_____ day of _____

whether this judgment has been complied with: Finds the said

_____

_____

[5] Place and date.

[6] Sheriff, Magistrate, or Justice.

[7] 'heard parties,' or 'considered the petition and answers,' or 'considered the proof and whole process.'

[8] See note 4, *supra*.

liable in expenses of process[1] _____

_____

_____

and decerns.

[1] 'modifies the same to the sum of————,' or 'appoints an account thereof to be lodged, and remits the same to ———— to tax and report.'

NOTE.—In the event of the above interlocutor not being complied with, the Sheriff or Magistrate will pronounce judgment in his discretion, in terms of sect. 20.

INTERLOCUTOR ON REPORT OF AUDITOR.

[2] _____

Approves of the report of the auditor on the petitioner's account of expenses; modifies the same to the sum of _____, for which and expense of extract, decerns.

[2] Place and date.

INTERLOCUTOR REFUSING THE PETITION.

[3] _____

The [4] _____

[5] _____

_____

_____

_____

[3] Place and date.

[4] Sheriff, Magistrate, or Justice.

[5] Refuses or dismisses the petition; finds the petitioner liable in the sum of———— of modified expenses, and decerns.

No. 4.—*Petition to the Sheriff for Assessment of Damages, sect.* 24.

Unto the Honourable the Sheriff of

_____

THE PETITION OF THE LOCAL AUTHORITY OF

_____

against _____

Humbly Sheweth,—

That, under sect. 24 of the Public Health (Scotland) Act, 1867, they lately caused a certain structure, viz. _____

_____

to be laid down, and in the course of doing so they entered the

premises at[1] _____

_____

_____

occupied by _____

and belonging to _____

and used a certain part or parts thereof; and they are now desirous that your Lordship shall assess the damages due in respect of such entry and use, and direct the same to be paid to such person or persons who may be justly entitled thereto, in terms of the said Statute.[2] _____

_____

_____

_____

May it therefore please your Lordship to appoint this petition, and the deliverance thereon, to be served on the said _____

_____

and to appoint answers to be lodged within three days after service, or appoint the parties to attend your Lordship, at a time and place specified, and thereafter to assess the damages occasioned by the aforesaid entry and use of the said premises, and to direct such damages to be paid to such party as your Lordship may find entitled thereto.

According to Justice, etc.

_____

[1] Describe the premises. (See § 3, *voce* Premises.)

[2] Here may be introduced, if required: 'The petitioners, however, submit that the said ——— ——— should be found to be not entitled to any damages, he having, without justifiable excuse, caused, or contributed to cause, the foulness of a _____ whereby such structure was rendered necessary.

INTERLOCUTOR.

[3] _____

The Sheriff _____

appoints the foregoing petition and this deliverance to be served on

_____

therein mentioned, and appoints[4] _____

_____

_____

_____

_____

[3] Place and date.

[4] Answers within three days; *or*, Appearance of parties at time and place specified.

CERTIFICATE OF SERVICE.

I, _____

certify that I served a copy of the foregoing petition and deliverance on _____

therein mentioned, at _____ the _____

day of _____ at _____ o'clock ___ M.

by[1] _____

_____

_____

_____

in presence of the undersigned witness, viz. _____

_____

_____ *Witness.*

[1] State mode of service, § 110.

No. 5.—*Order for the Destruction or Sale of Unwholesome Meat, etc., sect.* 26.

ORDER FOR DESTRUCTION OR DISPOSAL OF UNWHOLESOME MEAT, &c.

[2] Place and date. See note to *infra*.

[2] _____

_____

on the application of _____ the Sanitary Inspector for

_____

whose signature is accordingly hereto subjoined, and being satisfied that[3] _____

seized by him on _____

and to have been found in the possession of, or on the premises occupied by _____

at _____[4]

unfit for human food, hereby, in virtue of sect. 26 of the Public Health (Scotland) Act, 1867, ordain the said Sanitary Inspector to destroy the same, or to sell or otherwise dispose of the same in such manner and with such precautions as to prevent the same being exposed for human food, or used for such food.

Judge[5] _____

Inspector _____

[3] The carcase of a cow (or the like).

[4] Is *or* are.

[5] Signature of Sheriff or two Justices, or two Magistrates.

NOTE.—If it is desired to recover the penalty or expenses mentioned in § 26, a summary petition must be presented. The form No. 21 may be adopted for this purpose, and it would be advisable to found on § 26, as well as the general section 105.

No. 6.—*Notice by the Local Authority to the Person by whom any Product produced in the Manufacture of Gas or other substance is caused or permitted to flow into any Well, etc., sects. 27 and 29.*

NOTICE.

The Local Authority of _____

hereby give notice to you _____

that you have caused or suffered, and are now causing and suffering,

_____

or other substance produced in the manufacture of _____

to flow into[1] _____

_____

_____

or into a pipe or drain communicating therewith; also that you have wilfully done an act connected with the said manufacture in which you are engaged, viz.[2] _____

_____

whereby the water in the said _____

is fouled; also, that you the said _____

have wilfully done, or permitted to be done, viz.[3] _____

_____

whereby the water in the said _____

is fouled; and that you are liable in the penalty of a sum not exceeding £50, under sect. 27 of the Public Health (Scotland) Act, 1867, and that you will further be liable, under sect. 29 of the said Act, to forfeit a sum not exceeding £5 for each day during which such substance shall be brought or shall flow as aforesaid, or during which the act by which water shall be fouled shall continue after the expiration of twenty-four hours from the time when this notice shall have been served upon you.

This notice served on the _____ day of _____

at _____ o'clock _____ M.

_____

Sanitary Inspector.

[1] Stream, well, etc., at _____ constructed for the supply of water for domestic purposes; *or*, which is used for the supply of water for domestic purposes, etc.

[2] State the act.

[3] State the act.

CERTIFICATE OF SERVICE.

I, _____

certify that I served a notice, of which the foregoing is a copy, on

_____

therein mentioned, on the _____ day of _____ at _____ o'clock _____ M., by[1] _____ _____ _____ _____ in presence of the undersigned witness _____ _____ _____ _____ _____ *Witness.*

[1] State mode of service; *as*, By putting the same into the Post Office at _____ addressed (give address, etc.).

No. 7.—*Notice as to Penalty for Polluting Water, sects.* 27, 28, 29.

NOTICE BY THE LOCAL AUTHORITY OF

_____

TO

_____

AS TO WATER BELONGING TO HIM BEING FOULED, ETC.

The Local Authority of _____ hereby, in terms of sect. 28 of the Public Health (Scotland) Act, 1867, give you _____ notice that they intend to proceed against _____ _____ for the penalties provided by the said Act, sects. 27, 28, and 29, incurred by him for contravention of sects. 27 and 29 of the said Act, in regard to the[2] _____ _____ _____ _____ belonging to you, unless you shall, within _____ days after the serving of this notice, proceed to recover the said penalties.

This notice is given on the _____ day of _____ at _____ o'clock _____ M.

_____

Sanitary Inspector.

[2] Well, stream, etc.

CERTIFICATE OF SERVICE.

I,_____

certify that I served a notice, of which the foregoing is a copy, on

_____

_____

therein mentioned, on the_____day of_____

at _____ o'clock_____M., by[1] _____

_____

_____

_____

in presence of the undersigned witness, viz._____

_____

_____

_____ *Witness.*

[1] State mode of service; *as*, By putting it into the Post Office at _____ addressed (state address, etc.).

No. 8.—*Medical Certificate for Disinfecting House, etc., and Notice thereon, sect.* 40.

CERTIFICATE BY A LEGALLY QUALIFIED MEDICAL PRACTITIONER.

I hereby certify, on soul and conscience, that the cleansing and disinfecting of the[2]_____

situated at_____

_____

and occupied by_____

and of the[3]_____

_____

therein contained, would tend to prevent or check the spreading of a contagious or infectious disease, viz._____

of which[4]_____

_____

recently occurred therein[5]_____

_____

[2] Describe the house or part of house.

[3] State articles requiring to be disinfected.

[4] A case or cases.

[5] State when patient removed, or other particulars.

NOTICE BY THE LOCAL AUTHORITY OF

_____

TO

[1] Occupier or owner. [1] _____

[2] Place and date. [2] _____

You are hereby required immediately to cleanse and disinfect the premises and articles mentioned in the foregoing certificate, in terms of sect. 40 of the Public Health (Scotland) Act, 1867, and that under the penalty and subject to the consequences therein contained.

_____

Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____

certify that I served a notice, of which the foregoing is a copy, on

_____

therein mentioned, on the _____ day of _____

[3] State the mode of service, § 110. at _____ o'clock _____ M., by[3] _____

_____

in presence of the undersigned witness, viz. _____

_____

_____

_____ *Witness.*

No. 9.—*Notice by the Local Authority to the Owner or Occupier of a Schoolhouse, Factory, etc., to construct Water-Closets or Privies, sect.* 41. *(If this notice be not complied with, the form* No. 21 *may be employed for the recovery of the penalties.)*

NOTICE TO CONSTRUCT WATER-CLOSETS OR PRIVIES.

[4] Name and designation; *and add*, Owner (or occupier) of a schoolhouse at ——— ——— *or*, of a factory or building, situated at ——— in which more than ten persons are employed at one time, in the manufacture of ——— etc.

The Local Authority of _____

hereby give notice to you[4] _____

_____

_____

_____

and require you[1] _____

_____

_____

_____

_____

and that within _____ from the service of this notice, all in terms of and under the penalties specified in sect. 41 of the Public Health (Scotland) Act, 1867.

This notice served on the _____ day of _____

_____

Sanitary Inspector.

[1] to construct ——— water-closets or privies for the separate use of male persons therein employed, and ——— water-closets or privies for the separate use of the female persons therein employed, etc.

CERTIFICATE OF SERVICE.

I, _____

certify that I served a notice, of which the foregoing is a copy, on _____ therein mentioned, on the _____ day of _____ _____ o'clock __ M., by[2] _____

_____

_____

in presence of the undersigned witness, viz. _____

_____

_____

_____ *Witness.*

[2] See § 110. State mode of service; *as*, By putting the same into the Post Office at _____ addressed to (give address); *or*, By leaving the same, addressed to him, with a person or with a man on the premises, etc.

No. 10.—*Certificate by Medical Practitioner for Removal of Sick Persons where an Hospital or Place for the Reception of the Sick exists, with Procedure thereon, sect. 42., or for Removal of other Persons.*

CERTIFICATE BY A LEGALLY QUALIFIED MEDICAL PRACTITIONER.

[3] _____

I hereby certify, on soul and conscience, that _____

_____ is at present suffering from

[3] Place and date.

[1] Insert dangerous, or contagious, or infectious. (See § 42.)

[2] Without proper lodging or accommodation; *or*, Lodged in a room occupied by others besides those in attendance on him; *or*, Is on board the ship or vessel _____ lying at _____

a[1] _____ disorder, viz. _____ and is[2] _____

_____

_____

(Signature) _____

CONSENT BY THE SUPERINTENDENT OF AN HOSPITAL OR PLACE FOR THE RECEPTION OF THE SICK EXISTING WITHIN THE DISTRICT OF THE LOCAL AUTHORITY OF _____

[3] Place and date.

[3] _____

[4] State his name and Office, and the hospital or place for reception of the sick.

I,[4] _____

_____

consent to the reception in the said _____ of _____ mentioned in the foregoing certificate.

_____

APPLICATION FOR WARRANT.

[5] Place and date.

[5] _____

I, _____

Sanitary Inspector of the district of _____ hereby, in terms of sect. 42 of the Public Health (Scotland) Act, 1867, crave a warrant for the removal of the said _____

_____

to the said _____

_____

OR,

[6] Place and date.

[6] _____

I, _____

Sanitary Inspector of the district of _____ hereby, in terms of sect. 42 of the Public Health (Scotland) Act,

1867, crave a warrant and direction to remove from the room occupied by the said _____ all others not in attendance on him, the Local Authority providing suitable accommodation for such other persons.

ORDER.

[1] _____ [1] Place and date

I,[2] _____ [2] Sheriff, Magistrate, or Justice.

hereby direct the removal by the said Local Authority of the said _____ to the said _____ at the cost of the said Local Authority.

OR,

[3] _____ [3] Place and date.

I,[4] _____ [4] Sheriff, Magistrate, or Justice.

hereby direct the removal by the said Local Authority from the room occupied by the said _____ of all other persons not in attendance on him, the Local Authority providing suitable accommodation for such other persons.

No. 11.—*Certificate by a legally qualified Medical Practitioner for the Removal of a Dead Body where a Place for the Reception of Dead has been provided, with order thereon, sect.* 43.

CERTIFICATE BY A LEGALLY QUALIFIED MEDICAL PRACTITIONER.

[5] _____ Place and date.

I hereby certify that _____

_____

_____

died on or about _____

_____

_____

and that [1] _____

_____

_____

_____

_____

_____

and that the body ought to be buried [2] _____

_____

[1] He died of an infectious disease, viz. _____ and the body is retained in a room in which persons live or sleep; *or*, The dead body is retained in the house (or room)—(describe it), and is in such a state as to endanger the health of the inmates of that (house or room).

[2] This day (or other time specified).

ORDER FOR REMOVAL.

[3] _____

[3] Place and date.

I, [4] _____

[4] Sheriff, Magistrate, or Justice.

hereby, in terms of sect. 43 of the Public Health (Scotland) Act, 1867, order the before-mentioned dead body to be removed to the place of reception for dead bodies within the district of the said Local Authority, by or at the cost of the said Local Authority, and to be buried within _____

_____

_____

_____

No. 12.—*Notice to the Owners of Underground Dwellings, sect.* 45.

NOTICE.

The Local Authority of _____

hereby give notice to you _____

owner of the vaults, cellars, or rooms following, viz. _____

_____

_____

_____

that in terms of sect. 45 of the Public Health (Scotland) Act, 1867, the letting of the foresaid premises as a dwelling-place or dwelling places is prohibited from and after the date hereof, under the penalties provided by the said Act. This notice given on the _____ day of _____

CERTIFICATE OF SERVICE.

I _____

certify that I served a notice, of which the foregoing is a copy, on _____ therein mentioned, on the _____ day of _____ at _____ o'clock _____ M., by[1] _____

in presence of the undersigned witness, viz. _____

_____

_____ *Witness.*

[1] State the mode of service, § 110.

No. 13.—*Notice by the Local Authority to provide Water to a Common Lodging-house, sect.* 64.

NOTICE TO PROVIDE WATER TO A COMMON LODGING HOUSE.

The Local Authority of _____

hereby give notice to you[2] _____

of a common lodging-house at _____

and hereby require you, within _____ from the date of service hereof, to obtain a proper supply of water for the use of the lodgers in said common lodging-house,[3] _____

otherwise the Local Authority may remove the said common lodging-house from the Register until it be complied with; all in terms of sect. 64 of the Public Health (Scotland) Act, 1867.

[2] State name and designation, and add owner *or* keeper, as the case may be.

[3] Add here, if necessary, And to execute all works necessary for that purpose.

CERTIFICATE OF SERVICE.

I, _____

certify that I served a notice, of which the foregoing is a copy, on _____

therein mentioned, on the_____ day of_____ at _____ o'clock____ M., by [1] _____

[1] State mode of service; as, By putting the same into the Post Office at_____ addressed (give address); *or*, Delivering it to him personally at the premises, etc.

_____

_____

_____

in presence of the undersigned witness, viz._____

_____

_____

_____

_____ *Witness.*

No. 14.—*Notice to the Keeper of a Common Lodging-house, to report to the Local Authority, etc., sect.* 65.

NOTICE TO THE KEEPER OF A COMMON LODGING-HOUSE, TO REPORT TO THE LOCAL AUTHORITY, ETC.

The Local Authority of_____ hereby order and require you, _____ keeper of a common lodging-house at_____ to report to_____ daily for the next_____ days, every person who resorted to the said house during the preceding day or night; and, for that purpose, daily to fill up and transmit as aforesaid one of the schedules, of which_____ copies are herewith furnished to you, all in terms of sect. 65 of the Public Health (Scotland) Act, 1867.

_____

Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____ certify that I served a notice, of which the foregoing is a copy, and also_____ copies of the schedule therein mentioned, on _____ therein mentioned, on the_____ day of_____

at _____ o'clock _____ M.,[1] _____

_____

in presence of the undersigned witness, viz. _____

_____

_____

_____ *Witness.*

[1] State mode of service; *as*, By putting the same into the Post Office at _____ addressed to him (give address); *or*, By leaving the same with him personally at the premises, etc. (See § 110).

No. 15.—*Certificate by Medical Officer, or qualified Medical Practitioner, as to Removal of Patient from a Common Lodging-house, sect.* 66.

CERTIFICATE BY MEDICAL OFFICER OR QUALIFIED MEDICAL PRACTITIONER.

[2] _____

I,[3] _____

hereby certify that _____

presently residing in the common lodging-house kept by _____

_____

at _____

is ill of _____

and that his disease is infectious or contagious, and that the patient may be safely removed.

_____

[2] Place and date.

[3] Medical Officer of the district of _____ or legally qualified Medical Practitioner.

No. 16.—*Application for Power to enter Lands in reference to Sewers or Drains, with Procedure thereon, sect.* 75.

PETITION.

To the Honourable the Sheriff of

_____

THE PETITION OF THE LOCAL AUTHORITY OF

_____

AGAINST

_____

Humbly Sheweth,—

That the petitioners find it necessary to enter[4] _____

[4] Examine and lay open.

[1] State in terms of § 75.

the following lands or premises, viz.[1] _____

_____

_____

[2] State in terms of § 75.

for the purpose of[2] _____

_____

but access and leave to the petitioners to do as aforesaid is refused or withheld by the said _____ whereby this application has become necessary under sect. 75 of the Public Health (Scotland) Act, 1867.

May it therefore please your Lordship to appoint this petition and the deliverance thereon to be served on the said _____ and to appoint the parties to attend your Lordship personally, at a time and place specified, and thereafter to grant warrant to the petitioners and their officers, and such other persons as they may employ, to[3] _____

[3] Prayer in terms of § 75.

_____

_____

and, in case of opposition, to find the said _____ liable in expenses of process.

According to Justice,

_____

INTERLOCUTOR ORDERING SERVICE.

[4] Place and date.

[4] _____

The Sheriff appoints the foregoing petition, and this deliverance, to be served on the said _____

[5] Answers within three days; *or*, Parties to attend personally. (See § 105).

and appoints[5] _____

_____

_____

CERTIFICATE OF SERVICE.

I, _____

certify that on the _____ day of _____

I served a copy of the foregoing petition and deliverance on

_____

therein mentioned, by[1] _____ [1] State mode of service in terms of § 110.

_____

in presence of the undersigned witness, viz. _____

_____

_____

_____ *Witness.*

INTERLOCUTOR.

[2] _____ [2] Place and date.

The Sheriff[3] _____ See § 75.

_____

_____

No. 17.—*Petition to Sheriff by Owner or Occupier to fix terms of communicating with Drains, sect.* 78.

PETITION TO THE SHERIFF.

Unto the Honourable the Sheriff of

_____

THE PETITION OF

_____

against the Local Authority of _____

Humbly Sheweth,—

That the petitioner is the[4] _____ [4] Owner or occupier, &c., as in § 78. State if without district, or not liable to assessment.

_____

_____

_____

_____

and he is desirous that a[5] _____ [5] Sewer or drain, describe it.

_____

from the said premises shall, as provided by the Public Health (Scotland) Act, 1867, be made to communicate with a sewer of the Local Authority, viz.[1] _____

[1] Describe it.

_____

_____

but the petitioner and the Local Authority have been unable to agree on the terms and conditions on which such communication is to be allowed, whereby this application becomes necessary under this Act. The petitioner is ready to agree to the following terms, viz.[2] _____

[2] State what petitioner proposes

_____

or such other terms or conditions as your Lordship may deem just.

May it therefore please your Lordship to appoint this petition and the deliverance thereon to be served on the said Local Authority, and appoint answers to be lodged within three days, or appoint the parties to appear before your Lordship at a time and place specified, and thereafter to find that the petitioner is entitled to make the aforesaid communication betwixt[3] _____

[3] Specify the two drains or sewers.

_____

on the terms and conditions before specified, or such others as your Lordship may deem just.

According to Justice,

_____

INTERLOCUTOR.

[4] Place and date. [4] _____

[5] See prayer. The Sheriff[5] _____

_____

_____

_____

_____

CERTIFICATE OF SERVICE.

I, _____

certify that I served a copy of the foregoing petition and deliverance on _____

therein mentioned, on the_____day of _____
at_____o'clock___M., by[1] _____
_____
_____
in presence of the undersigned witness, viz._____
_____
_____
_____
_____*Witness.*

[1] State mode of service under § 110.

No. 18.—*Notice by the Local Authority to the Owner of Premises, to make a Drain, sect.* 85.

NOTICE.

The Local Authority of_____
hereby, in terms of sect. 85 of the Public Health (Scotland) Act, 1867, give notice to you_____
owner of _____
_____
_____
and require you, within_____
from the date of service hereof, to make a sufficient drain from the said premises[2] _____
_____
_____
_____
and if you fail, the Local Authority will proceed in terms of the said Act.

[2] State how the drain is to empty itself, in one of the modes mentioned in § 85.

_____
Sanitary Inspector.

CERTIFICATE OF SERVICE.

I, _____
certify that I served a notice, of which the foregoing is a copy, on _____therein mentioned, on

[1] State mode of service, *as*, By putting the same into the Post Office at _____ addressed (state address); *or*, By delivering the same to him personally at _____ etc. (See § 110.)

the _____ day of _____ at ____ o'clock ____ M., by[1] _____ _____ _____ in presence of the undersigned witness, viz._____ _____ _____ _____

_____ *Witness.*

No. 19.—*Requisition to form a Special Drainage District, sect.* 76, *or Water District, sect.* 89, *and Appeal to the Sheriff.*

Unto the Local Authority of _____

THE REQUISITION OF THE UNDERSIGNED,

BEING NOT FEWER THAN TEN INHABITANTS OF THE DISTRICT OF THE SAID LOCAL AUTHORITY.

We, the undersigned inhabitants of the said district, hereby, in terms of[2] _____ of the Public Health (Scotland) Act, 1867, require you, the said Local Authority, to meet and consider the propriety of forming, and thereafter to form, the following part of your district into a special[3] _____ district, viz._____ _____ _____ _____

or according to such other description or boundaries as may seem fit.

[2] § 76, if for drainage; § 89, if for water.

[3] Drainage or water.

[4] Signatures, mentioning place of residence.

[4] _____ _____ _____ _____ _____ _____ _____ _____ _____ _____

APPEAL TO THE SHERIFF OF THE COUNTY OF

_____

Appeal for _____

_____

_____

in terms of[1] _____ of the Public Health (Scotland) Act, 1867.

[1] § 76 or § 89. (See *supra.*)

We appeal against the resolution of the Local Authority of _____ adopted on or about _____ relative to the formation of a special[2] _____ district, and

[2] Drainage or water.

Pray your Lordship to _____

_____

_____

or to do otherwise in the premises as may seem fit.

_____

_____

No. 20.—*Requisition by Local Authority on the Occupier of Premises for Payment of Costs, etc., due by the Owner, sect.* 100.

NOTICE AND REQUISITION.

The Local Authority of _____ hereby, in terms of sect. 100 of the Public Health (Scotland) Act, 1867, give notice to, and require you _____ occupier of the following premises, viz. _____

_____

_____

_____

to pay to the said Local Authority the sum of _____ _____ with interest at _____ per cent. from _____ till payment, due to them by _____ _____ owner of the said premises[3]

[3] State nature of claim; *as*, By decree at their instance against him by the Sheriff of _____ dated _____

_____

_____

_____

_____

such payment by you not to exceed the amount of rent due or to become due by you; and that you are not to pay any rent to the said owner without first deducting the aforesaid amount and interest.

This notice, given on the _____ day of _____

_____

Sanitary Inspector.

CERTIFICATE OF SERVICE

I, _____ certify that I served a notice, of which the foregoing is a copy, on _____ _____ therein mentioned, on the _____ day of _____ at _____ o'clock _____ M., by[1] _____ _____ _____ in presence of the undersigned witness, viz. _____ _____ _____ _____

_____ *Witness.*

[1] State mode of service; *as*, Putting the same into the Post Office at _____ addressed (state address); *or*, Delivering it to him personally in the premises.

No. 21.—General Form.—*Petition to recover Penalties or other Sums due to Local Authority, sect.* 105. *This form may be made available for recovery of any Penalty, under any section in the Act. The special section should be founded on as well as sect.* 105.

PETITION.

Unto[2] _____

THE PETITION OF THE LOCAL AUTHORITY OF _____

AGAINST

_____

[2] Sheriff, Magistrate, or Justice. Must be to the Sheriff, if under § 16, heads (*h*) and (*i*).

Humbly Sheweth,—

That the said _____

[1] _____

In these circumstances, this application is made under sect. _____ and sect. 105 of the said Act.

May it therefore please your _____ to appoint this petition to be served on the said _____

and to appoint answers to be lodged within three days after service hereof, or to appoint the parties to appear in person before you, at a time and place specified; and thereafter, in the case of the said _____

failing to appear, or after such inquiry or other proceeding as may be deemed fit, to[2] _____

According to Justice, etc.

[1] State the ground of the petition; *as*, Has contravened § ——— of the Public Health (Scotland) Act, 1867, by (state the act of contravention), whereby he has become liable (state shortly the penalty or forfeiture, or other consequence); *or*, Failed to construct a drain at ——— pursuant to notice served on him by the petitioners, on or about ——— under § 85 of the Public Health (Scotland) Act, 1867, and the petitioners caused the drain to be constructed, whereby expense has been incurred by the petitioners, amounting to £——— conform to account produced; which sum, with interest, the said ——— is bound to repay.

[2] Here state the remedy prayed for; *as*, To convict him of the alleged contravention, and adjudge him to forfeit and pay to the petitioners the sum of £——— of penalty, together with expenses of process, and, in default of immediate payment (or payment within ——— days from this date) of the whole foresaid sums, adjudge him to be imprisoned for such time as may be specified; *or*, Find the said ——— liable to the petitioners in the sum of £——— with interest at five per cent. from the ——— till payment, and to find him liable in expenses of process, and to decern; *and there may be added*, Or to give such other remedy as may be just.

INTERLOCUTOR ORDERING SERVICE.

[1] Place and date. [1] _____

The _____ appoints the foregoing petition and this deliverance to be served on the said _____

_____

_____

and appoints _____

_____

_____

_____

CERTIFICATE OF SERVICE.

I, _____

certify that I served a copy of the foregoing petition and deliverance on _____

_____

_____

therein mentioned, on the _____ day of _____

[2] State mode of service (See § 110.) at _____ o'clock _____ M., by[2] _____

_____

_____

in presence of the undersigned witness _____

_____

_____

_____

_____ *Witness.*

INTERLOCUTORS.

NOTE.—Where proof is taken in cases under § 16, heads (*h*), (*i*), and (*j*), the Sheriff must take notes of the evidence. (See § 106.)

_____

_____

_____

_____

CIRCULAR to LOCAL AUTHORITIES, with Forms of Procedure under Section 24 of the Public Health Act (laying down SEWERS in lieu of OPEN DITCHES).

Board of Supervision, Edinburgh, February 1868.

SIR,—I am directed to inform you that the Board of Supervision have resolved that all applications for their approval, in terms of Section 24 of the Public health (Scotland) Act, 1867, shall be made in the form of Minute (A) hereto annexed, and that, before they will consider any such application, they will require evidence that the intention to make such application has been intimated by publishing a notice in the Form (B) hereto annexed, once in each of two successive weeks in two newspapers circulating in the district.—I am, Sir, your obedient servant,

(Signed) *W. S. Walker*, Secretary.

(A copy of the Forms for Minute and Notice is sent herewith in duplicate for the use of the Local Authority.)

Public Health Act, Section 24.]

(*FORM A.*,

MINUTE.

Whereas a[1]_____ along the side of a[2]_____ being[3]_____ is used or partly used for the conveyance of water, sewage, or other matter from the premises at[4]_____ owned by[5]_____ and occupied by[6]_____ and cannot, in the opinion of the Local Authority of_____ be rendered free from foulness or offensive smell without the laying down of a[7]_____ the said Local Authority do hereby resolve to apply for the approval of the Board of Supervision, in terms of Section 24 of the Public Health (Scotland) Act, 1867, to the laying down of a[8]_____ from[9]_____ to[9]_____ as indicated by a line on the plan which is marked as relative hereto, the said[10]_____ being within the limits of the district of the said Local Authority.*

Signed by order and on behalf of the Local Authority of_____

(Place)_____

(Date)_____

[1] Insert, as the case may be, 'water-course,' 'ditch,' 'gutter,' or 'drain.'

[2] Insert, as the case may be, 'public road,' 'street,' or 'lane.'

[3] Describe the road, street, or lane by its name (if any) and by its position.

[4] Describe the premises by their position and by their name (if any).

[5] Specify owner or owners.

[6] Specify occupier or occupiers.

[7] Insert, as the case may be, 'sewer,' or whatever 'other structure' is required.

[8] Insert, as the case may be, 'sewer as aforesaid,' or 'structure as aforesaid.'

[9] Specify the point from which, and the point to which, the sewer or other structure is to run.

[10] Insert, as the case may be, 'sewer' or 'structure.'

* If the proposed sewer or other structure is to be laid down partly beyond the limits of the district of the Local Authority, add 'and also without the said 'limits and within the district of the Local Authority of_____ the same being necessary for the purpose of outfall,' or, as the case may be 'distribution of sewage.'

Public Health Act, Section 24.

FORM (B.)

NOTICE.

Notice is hereby given, that on the[1] _____ of[1] _____ next, the Local Authority of _____ will apply to the Board of Supervision to approve, in terms of Section 24 of the Public Health (Scotland) Act, 1867, of a[2] _____ as set forth in the subjoined Minute, and that the plan mentioned in said Minute may be inspected at the office of _____ on any lawful day between the hours of 10 A.M. and 6 P.M.

[1] Insert a day not less than three weeks nor more than six weeks after the date of notice.

[2] Insert, as the case may be, 'sewer,' or 'structure.'

Objections to the proposed structure must be lodged with the Clerk to the Local Authority before the[3] _____ day of[3] _____ and they will be transmitted to the Board of Supervision along with the application.

[3] Insert a day not less than three weeks after the date of notice.

(Place) _____

(Date) _____

(*Copy Minute to be subjoined.*)

PARISH OF_____ COUNTY OF_____

RETURN of RECEIPTS and EXPENDITURE under the PUBLIC HEALTH ACT, from 15th May to 14th May
by the Local Authority of_____

RECEIPTS FROM					EXPENDITURE ON					
Assessment.	Penalties.	Authors of Nuisances, &c.	Other Sources.	TOTAL.	Drainage.	Water Supply.	Removal of Nuisances.	Hospitals.	Other Purposes, including Salaries, &c.	TOTAL.
£	£	£	£	£	£	£	£	£	£	£

*Date*_____

Signature _____
Clerk to Local Authority.

FORM of ANNUAL RETURN of OFFICIALS under PUBLIC HEALTH ACT.

RETURN to be made to the BOARD of SUPERVISION.

Parish of _____ County of _____

Name of Sanitary Inspector appointed under Public Health Act.	Residence.	Post Town.
Date of Appointment. _____		

Name of Medical Officer appointed under Public Health Act.	Residence.	Post Town.
Date of Appointment. _____		

Name of Clerk to the Local Authority (if Clerk has been appointed).	Residence.	Post Town.

Name of Chairman of Local Authority.	Residence.	Post Town.

Annual Salary of Sanitary Inspector . . . . £			
Annual Salary of Medical Officer . . . . . £			

The above is a true Return.

Signature _____

Clerk to Local Authority.

Board of Supervision, Edinburgh, 15th May 18 .

NOTE.—Any change which may occur in reference to the contents of the above Return between the 15th of May 18 and 14th of May 18 , should be intimated to the Board of Supervision without delay.

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