The first ground on which the appellants asked a recall of the Sheriff's judgment was that the report of the trustee did not satisfy the requirements of sect. 146 of the Bankrupt Act, in respect it only stated what the trustee *believed* to be the fact, not what *was*. In the next place, it was maintained that the petitioner's bankruptcy had not arisen from innocent misfortunes but from culpable conduct. His and his firm's transactions in iron were not within the limits of legitimate trade. As an illustration it was stated that during the month of April preceding their sequestration they had purchased 224,000 tons of iron, the price of which was £859,307, 5s. 10d. It was also averred that the petitioner's firm, or at least his brother, in name of the firm, and with the petitioner's knowledge, had been guilty of frauds upon Mr Dixon's trustees.

YOUNG and THOMSON for the appellants.

GIFFORD and WATSON for the bankrupt.

The Court to-day recalled the Sheriff-Substitute's interlocutor, and remitted to him to refuse the discharge *hoc statu*. The application had not been opposed in the Sheriff Court.

The LORD PRESIDENT said—This firm of Campbell Brothers was sequestrated in May last; and in November last, just six months after the sequestration, the petitioner, John Campbell, applied for his discharge; and after the usual preliminary proceedings, the Sheriff-Substitute, on 2d January last, found him entitled to his discharge, and appointed him to appear and make a declaration in terms of the statute. Now, the petitioner required, in terms of section 146, to lay before the Sheriff-Substitute a report by the trustee in the sequestration, and the first objection stated by the appellants is that the trustee's report is not in terms of the Act of Parliament. I am not prepared to sustain that objection. The report is not just what it should be, but I don't think it is so far a departure from the statute as to induce me to refuse the discharge on that ground. I think the true form in which such a report ought to be framed is an expression of the trustee's judgment in the matter after making the fullest inquiry. I don't think it is sufficient for him to say that he "believes" a thing to be so and so, or that it is so "so far as known" to him. I think he ought to make himself master of the subject and express his opinion. But I am rather inclined to proceed on the second objection—that the report is not well founded when it says that the bankruptcy arose from innocent misfortune. There are a few facts which it is important to keep in view. It appears that these brothers had been in business for some time prior to 1864, but in that year they became bankrupt, and settled with their creditors by a composition. Their liabilities then were £60,000, and they undertook to pay a composition of 5s. a pound. I presume that the instalments of that composition were only in course of being paid when the second sequestration took place; but this is clear, at all events, that when they started the second time they did so with borrowed capital. They came down again last year with enormous liabilities as compared with their assets. It is quite true that, so far as the London house is concerned, the assets and liabilities look more favourable, and I am willing to believe John Campbell when he says that the London house was solvent. But in Glasgow the position of the firm was quite the reverse. Now, if John Campbell, living in London and managing only the London business, and having no knowledge of the kind of business going on in Glasgow, only became involved through the misconduct of his brother, of which he had no knowledge, he might be entitled to his discharge; but the question is whether he was in that state of innocent ignorance. *Prima facie*, I think it highly improbable that he was; but I further think there is pretty conclusive evidence of the contrary. What, then, was going on in Glasgow? It was about as reckless speculation as any merchant could possibly engage in, and the correspondence between the brothers discloses this to my mind, that John Campbell was perfectly aware of the nature of the speculations in which his brother David was engaged as representing the house in Glasgow. I do not say he knew their amount, but he knew that they were of very large amount, and he also knew this, that his brother was enabled to carry on his speculations by means of assistance derived from his father, which assistance I will not characterise further than by saying that it was illegitimate, and a betrayal of his employer's trust. On these grounds, I think the Sheriff Substitute ought to have refused this discharge. The petition may be renewed at a greater distance of time and under more favourable circumstances, but at present it cannot be entertained.

Lords CURRIEHILL and ARDMILLAN concurred.

Lord DEAS declined, being a shareholder of the Commercial Bank.

Agents for Appellants—Melville & Lindesay, W.S.
Agent for Bankrupt—James Webster, S.S.C.

MURRAY *v.* HUTCHISON.

Poor—Relief—Proper object. Held that a married woman whose husband was able-bodied and had not deserted her was not a proper object of parochial relief.

This was an advocation from the Sheriff Court of Lanarkshire. The question at issue was whether or not Mrs Marion Frame or Hutchison is entitled to aliment for herself and her children who are under age. She claimed aliment as a pauper from the parish of Carstairs, her parish of settlement, on the ground that, although she is a married woman, her husband is unable to support her, not being an able-bodied man, and besides has deserted her. A proof was led before the Sheriff Court, and the Sheriff-Substitute (Dyce) pronounced an interlocutor, in which he "finds that the applicant has failed to establish her averments, and, on the contrary, finds it proved that she and her children reside in the house of her father, who is in good circumstances; that the applicant's husband is of lazy indolent habits, is neither mentally nor physically incapacitated, but fully able to maintain his wife and family if willing to work; that the applicant's husband was desired to quit her father's house; and that neither she nor her children are in a destitute condition: Finds, in point of law, that the petitioner is not a fit object of parochial relief, recalls the order of 12th April 1865, and dismisses the application."

The Sheriff (Alison) took a different view. By his interlocutor he "finds it pleaded that the husband of the pursuer is of weak mind and feeble in body, and only earning 1s. 9d. a week, and is unable to maintain his children: Finds that the inspector pleads that the petitioner's father is a wealthy *cadger*, and bound to support the petitioner: Finds it stated in reply that the petitioner's father is an insolvent cadger, labouring under asthma, with a bedridden wife entirely dependent on him: Finds it proved that the petitioner at one time received parochial relief from the parish of Hamilton, and is now living on the 1s. a week

awarded under this application as interim aliment: Finds that the petitioner's father, the cadger, for some time took the petitioner and her children into his family, but he now refuses to aliment her any longer, has turned her out of his house, and she is now utterly destitute: Finds, in these circumstances, that the petitioner is entitled to parochial relief in respect of her infant children and the desertion of her by her husband, whatever claim of relief the parish may have against the husband: Therefore alters the interlocutor complained of, finds the petitioner entitled to relief for herself and her children, and ordains the defender to give her suitable relief accordingly."

The inspector of poor advocated.

MACKENZIE for advocator.

BALFOUR for respondent.

Before answer a remit was made to Dr Littlejohn to examine the petitioner's husband, and report as to his mental and bodily state.

The Court to-day held that the petitioner was not a proper object of parochial relief, her husband being able-bodied and not in desertion. Sheriff Alison's interlocutor was therefore altered.

Agents for Advocator—Mackenzie & Kermack, W.S.

Agents for Respondent—Maclachlan, Ivory, & Rodger, W.S.

Wednesday, March 20.

SECOND DIVISION.

PLUMMER *v.* MACKNIGHT.

Teinds—Decree of Valuation. Circumstances in which held that certain lands were included in a decree of valuation.

This is a question between the common agent in the locality of Selkirk, and Mr Charles Scott Plummer of Middlestead. In making up a rectified state of teinds the common agent held, (1) that the teinds of certain lands of Blackmiddings, held by Mr Plummer along with the lands of Middlestead, were not included in a valuation of "the lands of Middlestead," dated 25th July 1636. (2) That Mr Plummer's share in the commonty of Selkirk, which had been divided by Act of Parliament in 1681, was unvalued. To this state Mr Plummer objected. He alleged, (1) that Blackmiddings was valued along with and included under the name of Middlestead in 1636, the lands being separately mentioned in the titles from 1628 downwards. On the other hand, no separate teind had been paid to the titular for Blackmiddings. It is now distinguishable as a separate subject; and in a valuation roll dated 1643, the deduction from Middlestead for feu-duty (no mention being made of Blackmiddings) is £30, 6s. 8d., being exactly the amount of the feu-duty which appears from the Crown titles to have been payable for both of the lands—viz., £24 for Middlestead and £6, 6s. 8d. for Blackmiddings. (2) That the lands of Sunderland, Sunderlandhall, and Yair were also valued by the same valuation of 1636. In 1676, there was a settlement of the boundaries of the commonty of Selkirk between the burgh and the heritors, afterwards ratified by Act of Parliament, by which parts of the commonty were allotted to the said lands now belonging to the objector. There was no subsequent addition to the titles.

The Lord Ordinary (Barcaple) found (1) that the objector had sufficiently established that the teinds of the lands of Blackmiddings mentioned in his titles are included in the valuation of the teinds of the lands of Middlestead in the decree of valuation dated 25th July 1636 founded on by him, and are included in the tack of the teinds of the said lands of Middlestead, contained in a deed of tack between the Duke of Roxburghe and Wiliam Plummer of Middlestead, dated 26th August 1709, also founded on by the objector; (2) that the objector had sufficiently established that the teinds of the portion of ground which was by decreet-arbitral dated 7th October 1676, and ratified by Act of Parliament in 1681, decerned to belong to William Kerr of Sunderlandhall, as part and portion of the common of Selkirk, and which now belong to the objector, are included in the valuation of the teinds of the objector's lands of Sunderland and Sunderlandhall, contained in the said decree of valuation, and are included in the tack of the teinds of the said lands of Sunderland and Sunderlandhall contained in the said deed of tack.

His Lordship's judgment was rested as to the first point mainly on the inference to be drawn from the valuation roll of 1643, by which he held that the *onus* on the heritor had been discharged; and, on the second point, he held that the proceeding of 1676 was rather a settlement of boundaries than a proper division of commonty.

The common agent reclaimed.

COOK and HALL for him.

SOLICITOR-GENERAL and WEBSTER for the objector.

The Court adhered to the judgment of the Lord Ordinary on the first point; and on the second, as raising an important question in teind law, ordered written argument.

Agent for Common Agent—James Macknight, W.S.

Agents for Objector—Hughes & Mylne, W.S.

CUNINGHAME *v.* WEBSTER AND ROYSTON.

Lease—Agricultural Tenant—Tenant of Game—Plantation—Right of Pasturage. Circumstances in which held that an agricultural tenant who had a right to pasture in the plantations adjoining his farm, was entitled as a pertinent of his right to trap or kill rabbits there as well as in other parts of the farm.

This is an advocation from the Steward Court of Kirkcudbright, and raises an important question as to a tenant's right in regard to game. It arises out of the following circumstances:—The advocator, who is tenant of the shootings on the estate of Kells, presented a petition to the Steward against the respondents, Robert Webster, who is tenant of the farm of Airds, and Thomas Royston, a rabbit-catcher there, craving to have them interdicted from trapping or killing game or rabbits in the Airds plantation, and from hunting or trapping game on the farm of Airds. The respondents denied that they had ever trapped or killed game on any part of the ground libelled, and to that extent objected to the interdict as groundless and unwarrantable. So far as it was directed against killing or trapping of rabbits, they maintained that the tenant of a farm had right to kill these to the extent of preserving his crops. Some correspondence had taken place between the parties, the general import of which was that the agricultural tenant was willing not to interfere with the rabbits if the game tenant kept them down within reasonable bounds; but he complained that that had not been done. The agricultural tenant had a right to pasture within the