decerned against the defenders, conjunctly and severally, and in favour of the pursuer, for the sum of £26, 13s. 1½d., as concluded for in the summons, but under deduction of the sum of 10s. 6d., as the value of the pack-sheets and bags, forming the last two items of the said account, and returned as aforesaid: Found the pursuer entitled to expenses as against both defenders, and decerned against them, conjunctly and severally, and in favour of the pursuer, for the sum of £3, 9s. 6d. as the amount of the same.

Both defenders appealed to the Court of Session.

BLACK, for appellants. No argument was offered in support of the appeal of the defender Mackay.

M'LENNAN, for respondent, was not called on.

LORD PRESIDENT—If I thought there was any difficulty on the sixth section of the Mercantile Law Amendment Act, I would have heard more argument. I am satisfied that the obligation in this case was one of direct obligation for the price of the goods furnished, and not one of guarantee. The question is whether, in the circumstances, the defender Sutherland did undertake as a principal debtor? Now I am of opinion that the whole circumstances disclosed in the evidence lead to the conclusion that Sutherland, having become deeply interested in the affairs of the defender Mackay, interposed as a principal debtor. I think that the statements of the pursuer are true, and that the interlocutor of the Sheriff should be affirmed.

The other judges concurred.

Agent for Appellants—David Forsyth, S.S.C.

Agent for Respondent—Murray, Beith, & Murray, W.S.

Saturday, November 30.

SECOND DIVISION.

THOMSON (POLICE COMMISSIONERS OF WISHAW) *v.* BELL.

Property—Assessment—Boundaries of Burgh—Police and Improvement (Scotland) Act 1850—*Collector—Error in fact*—Condictio indebiti—Bona fide *consumption—Corporation—Commissioners.* A party returned his property as within the assessable limits under the Police and Improvement Act, and paid the assessment levied upon him for several years. He afterwards discovered that it was not so situated, and brought an action of repetition for the sums paid in error against the collector of the assessment as representing the Commissioners by whom it was imposed. *Held* that a *condictio indebiti* did not lie, in respect the sums having been in *bona fide* consumed, and the Commissioners not being a corporation, and the obligation of one set of ratepayers not transmitting to another, there was not that concurrence of a fund extant and a person to whom the debt had been paid and who improperly retained, that were involved in the nature of that equitable claim.

This was an advocation from the Sheriff-court of Lanarkshire of an action in which the question was, whether the pursuer was entitled to recover from the defenders, the Police Commissioners of the burgh of Wishaw, certain sums paid by him as assessments upon a brick-work belonging to him for the year from 1859 to 1863. The ground of the demand was, that the sums in question had been paid in error, viz., upon the erroneous assumption that the brick-work assessed was within the burgh; and the claim accordingly resolved itself into one of *condictio indebiti;* and the question was, whether such a claim could lie in the circumstances of this case, and against the present Police Commissioners. The action was brought as a set off to a claim by the Commissioners for arrears of assessment alleged to be due for different subjects within the burgh.

The defender made the following statements:—That Wishaw was some time ago created a burgh under the Police and Improvement (Scotland) Act 1850, and the provisions of that Act were afterwards adopted. That in carrying out the Act under section 69, there is annually made up a roll or book of assessment showing the yearly rent or value of the whole premises in the burgh liable to be assessed under the Act, and according to which the assessments under the Act are levied, if not appealed against. This roll or book of assessment is made up from the valuation roll of the burgh, compiled by the county assessor under the Valuation Acts. Under the Valuation of Lands (Scotland) Act 1854 (17 and 18 Vict., c. 91, sec. 5) the assessor transmits yearly to each person included in his valuation, whether as proprietor, tenant or occupier, a copy of every entry in such valuation roll, wherein such person is set forth either as proprietor, tenant, or occupier. At the same time there is also sent a notice to such person that if he considers himself aggrieved by such valuation he may appeal, in the manner set forth in the Act, or he may obtain redress by satisfying the assessor that he has well founded ground of complaint. Should there be no ground of complaint, these notices are returned to the assessor signed by the party to whom they were sent. Immediately after the appeals against the valuation are disposed of, the valuation roll is authenticated under the Act, and is in force for the year from the Whitsunday preceding to the Whitsunday following. It is from the valuation roll so authenticated that the assessment roll of the burgh is made up. In pursuance of his duty, the assessor sent to the pursuer the returns necessary by the Act for the years 1859–60, 1860–61, 1861–62, 1862–63, 1863–64, in which the property of the Green Brick-work was entered as in the burgh of Wishaw. In due course he received these returns from the pursuer duly signed as correct. After having made up the assessment roll of the burgh, the collector, in pursuance of his duty, sent a notice each year to the pursuer, informing him of the amount assessed, and giving him notice that should he have any ground of complaint he must lodge an appeal within a certain time. As no appeal was lodged until the assessment for the year 1863–64 was imposed, the roll each preceding year was in terms of the Act authenticated, and the assessments levied. It was not till July 1863, after he had paid the assessment for the year 1862–63, that the pursuer discovered or pretended to discover his error in having returned the brick-work as being within the boundaries of the burgh of Wishaw, and he then demanded back the assessments that he had paid during that and the three previous years. That the pursuer was a Commissioner of Police of the said burgh during the years 1859–60, 1860–61, 1861–62, and laid on the assessment which he afterwards paid, and the effect of including the brick-work in the burgh was to relieve him from the police assessment of the county in respect of these premises. That the error of including the said brick-work in the valuation roll of the burgh

was committed by the pursuer himself, and he is not entitled, by repayment of the assessment paid thereon, to take advantage of his own wrong. That each year's assessment is imposed for the purposes of that year, and the accounts of the burgh are closed at the end of each financial year, and cannot be gone back again. That the Commissioners of the burgh have no power under the Act to apply the assessment for any year in repayment of assessments of former years alleged to have been erroneously exacted, as the only mode under the Act is by appeal when the assessment is imposed, and before it was levied, and the pursuer recognised this rule by appealing against the assessment of 1863–64, when he was relieved.

The defender pleaded:—The pursuer is barred *personali exceptione* from insisting in this action. There is a mode of appeal pointed out by the statute, and no other mode of redress is competent. The error of including the brick-work in the valuation roll of the burgh was committed by the pursuer himself, and he is not entitled, by repayment of the assessment paid thereon, to take advantage of his own wrong. The pursuer had the means of the knowledge of the fact within his power, and he is not entitled to take advantage of his own gross negligence in not having used these means.

A proof was allowed by the Sheriff-substitute (Veitch) of an averment made by the defender, that the pursuer had returned his brick-work as within the assessable limits after he discovered the mistake upon which his action was founded. The Sheriff (Alison) extended this proof to one to each party, of their respective averments that were not admitted.

The Sheriff-substitute assoilzied the defender by the following interlocutor: — "The Sheriff-substitute having considered the interlocutors of the 16th June and 23d November last, and heard parties' procurators on the proof led, and closed record: Finds it proved that the pursuer was assessed on the brick-work in question from 1859 to 1863 as being in the burgh of Wishaw: Finds that the pursuer appealed against the assessment in 1863 on the ground that the subjects assessed were not within the burgh, and was successful in his appeal, and was relieved: Finds that he now claims repetition for the assessment of the four preceding years on the same grounds on which he appealed: Finds, in point of law, that the assessment having been laid on under an Act of Parliament, which provides the mode of relief, if any of those assessed feel aggrieved by the imposition, and that the pursuer not having availed himself of these means, and having the same opportunity as others of ascertaining whether his lands were within the burgh, that he is barred now from claiming repetition of those bygone assessments: Therefore dismisses and assoilzies the defender from the conclusions of the action; finds him entitled to expenses, of which allows an account to be given in, and remits the same, when lodged, to the depute-clerk of court, as auditor, to tax and to report, and decerns."

The pursuer appealed.

The Sheriff (Alison) recalled this interlocutor, holding that the plea under the statute was inept in respect it was a remedy only applicable to those within the assessable limits. In regard to the second plea for the defender, his Lordship found—"That the present pursuer was legally negligent in not ascertaining the fact, which, by due diligence, he might have done, that the property assessed was *beyond* the burgh of Wishaw, and that, in consequence of that negligence, he is barred from suing for repetition of the assessments under the present action; that this plea is also, in the circumstances, inapplicable, seeing the Wishaw collector of rates is here substantially *in petitorio* striving to maintain an assessment which has been paid for a property not liable thereto; and that, supposing there was negligence on the pursuer's side in not declining to pay the sum assessed for, and explaining the reasons of said declinature, there was at least equal negligence on the part of the collector in making the demand, which, in the circumstances, was unauthorised and not legally exigible, and therefore that the negligence, being equal and opposite on the two sides, may be thrown out of view altogether, and there remains only to the defender the untenable plea that he is entitled to recover and retain money which he was not legally entitled to have demanded and received: Finds, *separatim*, that it is decided law that the plea of ignorance and *bona fides* in making a demand for an assessment will not furnish a defence to a burgh against an action for repetition of its amount—*Magistrates of Dunbar* v. *Kelly*, 26th November 1826: Therefore alters the interlocutor complained of in point of law; and, in respect the sums sued for are not disputed, except on the legal grounds above disposed of, decerns against the defender in terms of the conclusions of the libel: Finds the pursuer entitled to expenses, of which allows on account to be given in, and remits the same to the clerk of court at Hamilton to tax and report, and decerns."

His Lordship added the following note:—"The question of law involved in this action has not met with much discussion in the Scotch courts, where the maxim of the Roman law, *ignorantia juris neminem excusat*, has been held to let in all other pleas in support of an action *debiti condictis*, which are founded merely on ignorance of circumstances. But in England it has been the subject of much and learned discussion, and very considerable variation of decision. It was at one time held that not only ignorance of *law* but ignorance of *fact*, which might by due diligence have been discovered, afforded no ground for an action for repetition, or for money had and received, as they call it in England. But in this, as in so many other similar cases, experience has driven the English Judges into the practical adoption of the rule adopted in the Scotch law from the Roman. Thus, in the case of *Bell* v. *Gardner*, 21st April 1842, which was an action for repetition of £203 by Mr Bell, the public officer of the National Provincial Bank of England, the question came to be, whether the money *in debiti soluta* had been paid under a mistake, and whether that mistake *might have been discovered* on the plaintiff's part. Mr Justice Bayley said—'There is no doubt as to the rule of law applicable to this case. If a party pay money under a mistake of the law he cannot recover it back; but if he pay money under a mistake of the real *facts*, and no *laches* is imputable to him in respect of his omitting to avail himself of the means of knowledge within his power, *he may recover back such money.* There being here nothing on the face of the bill to lead him to suppose it was drawn in Ireland, *he was not bound to make any such inquiry.*'—1V., *Manning* v. *Granger*, p. 11. So also in the case of *Kelly* v. *Solari*, 18th November 1841; *Meason* v. *Wellsby*, ix., 54, it was held by the Court of Queen's Bench, in the words of Lord Abinger, who, in expressing the opinion of the Court, admitted that he, in a pre-

vious case, had stated the law erroneously to the jury in regard to the amount of ignorance that would bar a party from recovering:—'That the knowledge of the facts which disentitles the party from recovering must mean *a knowledge existing in the mind at the time of payment.*' And Justice Park said in the same case—'If the money is paid under the impression of the truth of a fact which is untrue, *it may, generally speaking, be recovered back, however careless the party paying may have been in omiting to use the diligence to inquire into the fact.* In such a case the receiver was *not* entitled to it, nor intended to have it.' This dictum, which was adopted by all the Judges, seems to be decisive of the present case, especially when it is recollected that the burgh of Wishaw is of so very recent erection, and that the pursuer had no reason to suspect that the collector, who best knew the limits of his own burgh, had fallen into any mistake regarding them in the pursuer's case."

The defender advocated.

Gifford and R. V. Campbell for them argued, in addition to the pleas relied upon in the inferior Court:—The assessments for the years specified in the summons were constituted as debts against the pursuer by entries in the annual county valuation rolls and burgh rolls of assessment, and repayment of said assessments is incompetently demanded, so long as the said entries are unreduced. The pursuer's claim for repetition, if competent at all, could only be made while the assessments for each of the years specified in the summons remained in the hands of the Commissioners, and since the said assessments have been *bona fide* expended, it is incompetent for the pursuer to seek re-imbursement from the funds of the present Commissioners, derived by assessment from the present ratepayers. The error having been mutual, and the pursuer having, in respect of the assessments complained of, been exempted from assessment in the county, and received the other benefits intended by the act for occupants of subjects within Wishaw, he is not entitled to claim repetition of said assessments. The defender having been himself concerned officially as commissioner in imposing the assessments complained of, and having himself returned his brick-work as within the burgh, has no claim for repetition. Pursuer having no case in fact or in law relevant and sufficient to found *a condictio indebiti*, the cause ought to be advocated, and the defender is entitled to absolvitor, with expenses.

Young and Scott in answer.

Lord Justice-Clerk—The circumstances under which the case arises are these:—The pursuer of the original action, and respondent in the advocation, is proprietor of subjects lying in the county of Lanark, and partly without and partly within, the limits of what is called the burgh of Wishaw. Under proceedings before the Sheriff of Lanarkshire, a portion of the county, embracing Wishaw, was marked off, within which, according to the provisions of the General Police (Scotland) Act, 13 and 14 Vict., a rate was leviable, and was raised, for police purposes. It appears that there is no separate valuation made of subjects within and without this boundary line. Both are valued under the proceedings for valuing county property, and the valuations when made are entered in the county roll. They are subsequently extracted from the county roll by the collector of the police rate in Wishaw, and entered in a book according to which the rate is levied, and which may be corrected where there is error, according to certain provisions of the General Police Act. It does not very clearly appear how the premises in question, which are a brick-work, came at first to be entered as premises within the burgh of Wishaw, and not as in the county. It may have been that the collector, asking a return from the pursuer as to subjects held by him in the county and burgh, got none, and put down the premises as in the burgh; or it may have been that the parties in charge of the property sent in a wrong return: but it is certain that in the other years to which the question relates, the collector having sent two schedules, one marked as for the burgh of Wishaw, and intended to have filled up in it subjects belonging to or occupied by the pursuer in Wishaw, the other marked as in the parish of Campbelton, and intended to be filled up with the subjects similarly occupied or owned which were in the county, the pursuer, or the party intrusted by him with the management of his brick-work, entered that subject along with other property locally situated within the burgh of Wishaw, inserting other property only in the county property schedule. He, or the parties in charge of his property, whose actings must be regarded as his by thus returning his property in Wishaw, may be said to have invited the assessment. There is no doubt that four years' rates were paid, and paid on the footing of the brick-work being in Wishaw, which it was not. It was equally certain that the sums so paid were expended for the police purposes of the particular years for which they were levied. It was said for the defender that the pursuer's property shared the benefit of the tax thus paid by having his premises watched, cleaned, and lighted out of the burgh rates; but this cannot be admitted as an element of judgment, as it is not proved. It is said that it may be presumed, but it is not clear which way the presumption may be, and in order to raise a question as to presumption it would require to be averred, which it is not. But it must be held that the subjects did receive the benefit either of the town or county police, and the pursuer did not pay rates for these subjects to the county, the error being that the premises were erroneously transferred from the county to the burgh roll.

The case came before the Sheriff-substitute at Hamilton, who dismissed the action on the ground that the rate had been imposed by a statute which allowed an appeal, and declared the assessment roll to be final, that when appeals had been disposed of they must be held conclusive, and that no courts of law could interfere to give any remedy involving a condition of fact involving any assumption of the roll being wrong. This ground appears to me untenable. The statute allows no rate to be levied beyond the boundaries of Wishaw, and no opinion of the commissioners, upon an appeal as to the extent of the boundaries of their jurisdiction or their offering no opinion, could definitely settle that. Beyond a doubt, such an objection could be maintained in a suspension, although the commissioners had actually decided that the premises were within the burgh. Here there was no question raised before them. The finality in the amount of the assessment, in point of amount—assuming an assessment to have been legally imposed—would raise a totally different question.

After stating the question his Lordship proceeded:—We must, therefore, deal with the question as one in which payment of these rates was made by mistake — the payer and the recipient being both in error as to the fact of the locality

of the brick-work, and the question as to whether there is room for a claim of repetition against the defender must be dealt with on the merits. The action is *a condictio indebiti*, and the pursuer must make out the presence of all the necessary elements under which such an action can be supported. I do not consider that the fact of an arrear of rates for another year's assessment on different subjects within the burgh is being sued for in separate proceedings has any relevancy in the present question. It seems clear enough that no such plea could have been relevantly maintained in answer to such a demand, or we should not have had the present action instituted. The legal position of a party demanding restitution of payments made for particular years for a particular subject, cannot be affected by the fact of a case being in dependence for payment of a rate in a different year for subjects quite different. That case falls to be decided on its own merits, as the present does. The question, then, is whether, under the circumstances disclosed in this case, there is room for the action of repetition? The pursuer averring—and, as we must hold, truly averring—that the payments were made under error, claims repayment. He says that the defender received the payments, and must refund what he had no right to have received, and what would not have been paid but through error. In this statement of the case, the defender receiving, and the defender called upon to repeat, are treated as identical. He is assumed to be in the same position as an individual would be who, having taken money from another person paid by mistake, retains it in his coffers, and withholds repayment. It seems to me that the Sheriff has proceeded on this assumption in the interlocutor under consideration. I think the assumption erroneous. The defender happens to be the same individual who received the payments, but he then acted as collector of rates for the ratepayers of the particular year for which the assessment was laid on, and he now acts for a different body. *De facto*, it is quite clear that the ratepayers of these years, and the ratepayers of the present are wholly different, and in the present question that is a vital fact, for the plain and necessary result of a decree in the pursuer's favour would be not to get back money paid to and in the pockets of the present ratepayers, who are defenders through their officer, but to cause these parties to raise a rate by assessing themselves for payment of money which they never touched, and from which *de facto* they never received any benefit whatever. A party who has acquired property in Wishaw last year is sought to be made liable to rates for the purpose of satisfying a demand founded on the receipt of money, under error, by a collector of rates seven years ago, when he had no connection whatever with Wishaw, and may never even have heard of its name. No such demand has been hitherto heard of in our courts of law, and I think that to entertain such demand would be opposed to the well recognised principles applicable to the determination of such questions. The *condictio indebiti* in the civil law, and in the systems of law derived from it—of which our law is one—is rested upon equitable considerations. It is a remedy *ex æquo et bono introducta*. It is not a contract, but a quasi-contract in which, the parties not desiring or intending to contract, there is reared up an implied obligation from equitable considerations. It is controlled as to the extent to which it is carried by the same equity to which it owes its origin. A debt paid, which is not due *in law*, cannot be recovered if made where there was moral or natural considerations for the payment.

Pothier, in his treatise on *Condictio*, after laying down the fundamental principle on which action rests, deduces from it two results (§ 141)—one that the action is *personal;* and the second that it holds good only to the amount of the benefit actually received by the party against whom it is maintained. He says [*reads*]. Applying this principle, there is no case for repetition. The ratepayers against whom the action is maintained have not, directly or indirectly, touched one farthing of the fund which it is sought to recover from them. It would be against equity that they should be subjected in a supposed re-payment of what truly they never obtained. Viewing the question, as I think it must be regarded, as one to be decided with a view to equitable considerations—while great hardship would be inflicted upon the present ratepayers by giving effect to the demand—I do not think that the pursuer stands in a situation favourable for maintaining any such plea in his favour. I hold that in returning his property as a subject in the burgh, he was clearly guilty of negligence. The Sheriff has held the negligence of the collector equal, and to neutralise the negligence of the pursuer. I do not agree in that view. A collector of assessment charging a property returned for consecutive years by the proprietor as within the limits over which the assessment extended, seems to me to have a strong case to justify his acting upon that information. In general, where heavier burdens are leviable on one view of the situation of property than another, it is a safe conclusion on the part of the collector of the heavier burden that the proprietor who says that his property is liable to that burden is right. No suggestion is made as to any reason why the proprietor should have made the mistake. It is not necessary in this case to consider whether such negligence would or would not be enough to bar the claim, but it is impossible, I think, to discard from consideration the fact, that there was negligence on the part of the pursuer; while, if there was any neglect on the part of the collector, the act of the pursuer made it excusable. Another fact is worthy of consideration, and it is this, that the sums were *de anno in annum bona fide* expended, and are no longer extant. Had the objection been taken when it should have been, the rate might have been corrected by levying the amount from the parties truly liable. If the pursuer was negligent, and his negligence led to results rendering a right adjustment of the amount among the proper parties impossible, the consequences must be visited on himself. As to the argument addressed to us as to the legal identity of the ratepayers of 1867, as a body, with the ratepayers of 1859 and subsequent years, and the supposed consequent transmission of the obligations of debt alleged to have been transmitted, there appear to me to be various sufficient answers. (1) I do not regard the body of Police Commissioners as an incorporation, but as a simple board with administrative powers, having specific purposes assigned to them, and these falling to be exercised within the year of their appointment; (2) I see no power on the part of the statutory board, except in execution of proper statutory purposes, to contract debt. The obligation arising from an erroneous receipt of money on the part of the collector, is not an act of the body of commissioners, and is certainly not of the nature of an authorised contraction of debt, but

is plainly outwith the statute. It is said that in the case of poor-law rating, obligations incurred by one set of ratepayers are enforced against future bodies where the enforcement of the obligations have been delayed. In such cases the demand enforced rests upon legal obligation, and not upon equity; and the statute in the 71st clause recognises the obligation of relief as one to be enforced, subject to the condition of notice, against parishes, an enforcement which must necessarily be against the actual ratepayers at the time of enforcement. The fact that provision is made by the Police Act for the case of the surplus or deficiency of one year's assessment affecting that of the immediately subsequent year, seems to fortify the defender's view as statutory authority to mix the accounts of these successive years. On these grounds, and holding that, in the circumstances of the present case, the demand made is against equity, and in the absence of the necessary fact on which a proper *condictio indebite*—viz., a fund extant in the hand of the party from whom the repetition is demanded, which that party unconscientiously withholds, I am for recalling the interlocutor of the Sheriff, and assoilzing the defender.

The other judges concurred.

The interlocutor of the Sheriff was accordingly recalled.

Agent for Advocator—A. Wylie, W.S.

Agent for Respondent—A. Kelly Morrison, S.S.C.

COURT OF JUSTICIARY.

Monday, December 2.

HER MAJESTY'S ADVOCATE *v.* ALEXANDER BISSET.

Insanity—Special Plea—20 *and* 21 *Vict., c.* 71, § 88 *—Special Verdict.* A panel charged with murder acquitted on the ground of insanity at the time of committing the offence charged. Form of verdict and sentence.

Alexander Bisset was charged with the murder of his sister. This special plea was lodged—"The panel pleads generally not guilty, and, specially, that he was not of sane mind at the time when the alleged crime was committed."

SOLICITOR-GENERAL (MILLAR) and MONTGOMERIE, A.-D., for the prosecution.

SPITTAL for the panel.

Euphemia Bisset, examined by SOLICITOR-GENERAL, deponed—I am a power-loom worker, and reside in Annfield Road, Dundee. I resided there in October last, along with my sister Margaret, her daughter, and my brother Alexander. My brother's age is twenty-six, and he was a mason to trade. I recollect a change coming over him about the month of June last. He was very unsettled, and we could not manage him. At times he spoke rationally, but not constantly. In consequence of that I applied to the Parochial Board for them to make inquiry as to his condition. They sent two doctors, and he was sent at the time to the asylum at Dundee. The expense of his maintenance was paid by the Parochial Board. He was removed on the 10th October last. I was told the night before that my brother was to be brought home. I was not at home when my brother arrived. When I got home, my brother Alexander was not in the house. My sister Margaret was in the house, and gave me an account of my brother's arrival and his behaviour. She said he was home, and had run away again. She said he wanted some money to pay for lodgings, as he could not stay among us. She said she gave him no money. He returned home about eight o'clock. I was in the house when he came in. He was in a very raised state. He asked for money after he came home. We would not give him money, because we were afraid he would go away by some train, and get out of our hands. He took some coppers from us, and went away again, and did not come back till twelve o'clock. He was very excited. He said he could not live with us because we had put him in the asylum when he was right enough. We sent for our brother Peter about twelve o'clock. He came to the house, and saw Alexander and spoke to him. Peter wished to stay all night, but Alexander said he would not stay in the house if Peter stayed. Peter asked Alexander to go home with him, but Alexander would not go. Peter asked Alexander if he would stay all night if he left, and he would not promise to do so. Peter remained with us, and Alexander then went away and did not come back till nine o'clock in the morning. Peter went to Lochee to seek for him, but did not find him. When Alexander came back in the morning at nine o'clock he seemed weary, tired, and restless. In consequence of his condition, I remained at home from my work for a week. Alexander kept going out and in that day in a restless manner. He always said to me that he was lost, and that there was no hope for him in a future state. On the evening of the 11th he left the house at six o'clock, and it was between eleven and twelve when he came back. He was very wearied and fatigued like when he came back. I endeavoured to prevail on him to go to bed. He said he would go to bed if he got leave to keep the key beside his bed. I consented to that arrangement, and the key was taken out of the door and given to him. He said he wanted the key because he was afraid that Peter would come in and kill him. For several nights after that he kept the key beside him. During that period his condition was unchanged. I knew no difference in his state from what he was when he went to the asylum; he seemed to me, if anything, worse. I applied to Dr Rorie of the asylum, and he referred me to the Parochial Board. I called on Mr Brown, at the Parochial Board, on the Tuesday or Wednesday after my brother came home. Nothing was done by the people at the Parochial Board. I saw the clerk, as Mr Brown was not in, and he said they would need to see Dr Rorie. After this time my brother became a little quieter. In consequence of that, I called at the Parochial Board, and said we would not put him away if we could manage him. That was on the day after I first called at the Parochial Board. My brother got worse on the Saturday, and I called at the Parochial Board to try to get him away. They said that nothing could be done till the Monday, and I agreed to go back on the Monday. My sister kept a small shop. My brother wanted to get the shop shut before eleven o'clock on that Saturday night. I suppose his reason was to give time to prepare for church on Sunday. Two or three people came to the door after the shop was shut; but we did not open the door, for fear of startling my brother. Margaret's daughter went to bed between eleven and twelve, and my sister and I went to bed a little after that. We had a room and a kitchen besides the shop. My sister and her