into the area that was previously given by His Grace to these valued-rent tenants. There was a question which was long agitated among the schoolmen, how many thousand angels could dance on the point of a needle? How many feuars can sit in the Abercorn loft would seem to be a question of the same kind, except that they are human beings instead of incorporeal substances. However, that is out of the question. Now, these parties who retained it up to the time when this church was again to be repaired are the persons who plead now that they have no allocation; but they only do so when the burden comes upon them, and they seek the Presbytery to disregard the allocation and to disregard the possession; to assume that there has been no allocation; and to call into the field and attempt to assess the whole heritors of the parish, in the sense of embracing the feuars of Portobello and everybody else in the parish. Now, in a question with these parties, I think that is an unreasonable demand. No one can doubt that if the Presbytery had taken that course they would have been met by the most serious opposition; and I humbly think it was not their business to unsettle the position of things. None but the Supreme Court can enter into these questions of permanent right. The Presbytery is only an inferior judicatory, and the question of titles and of permanent rights is not in general within the scope of these judicatories. The Sheriff must take things as they are possessed, and I cannot blame the Presbytery for doing the same, and for saying we know nothing of the history of these beyond this—that as far back as we can go, we find you four valued heritors who were at one time the sole heritors of the parish,—because if the whole valued rent was at one time divided among them, they and their ancestors must be the sole heritors,—you have kept possession of the church notwithstanding that you have been granting feus, you have not called us feuars to sit along with you, or to take shares with you; you do not bring an action calling for the division of the church, but you ask us, the Presbytery, to do a thing which virtually challenges your possession and seeks to oust you of that which you are in. I cannot think the Presbytery were bound to do that. They were entitled to say, we find you in possession of this church, when it is repaired—it might be merely putting on slates to keep out the rain—you will sit there as before, and we will lay on you the burden according to the possession you have had. When it comes to be a new church that is a totally different matter. Other elements may come in there. The question of *quoad sacra* may come in in a very singular way, and I give no opinion upon that. I doubt if these things have been well considered in the Act of Parliament; because when you come to build a new church the question being whether the inhabitants of the *quoad sacra* parish are to share in the expense of building the church, that will involve this other question—is the new church to be built of such magnitude as to provide for the examinable persons in the *quoad sacra* parish? If it is to do that, they will bear a share. But it would be a very odd thing to have people provided with two places of worship. On the other hand, if the new church, when it comes to be built, is to exclude the *quoad sacra* parish, and only to be built of a magnitude such as will comprehend the examinable persons within the original parish as diminished by the *quoad sacra* parish, then of course it will be confined to those heritors, because those who participate in the burden will be entitled to divide the area, and the questions of the possession and division of the area are the questions that are commensurate with the incidence of that burden. Now I think that the parties who had the exclusive possession are the parties on whom the Presbytery was entitled to lay the burden as it had been before. If you can raise up a case, and throw the church open, bringing a new action of allocation as if there never had been one, we shall consider that on a future occasion of repairs; but in the meantime we proceed on the *prima facie* and possessory view of the question. The long possession, established in a way that is quite undeniable so far as regards the fact, is equivalent to an allocation. They were entitled to proceed upon that, and it would be most unreasonable to expect that they should have done otherwise and have brought a nest of hornets about them of a different kind, contrary to the practice that has hitherto prevailed.

SOLICITOR-GENERAL — Would your Lordships allow me to make an explanation, it seemed to be thought by one of your Lordships that the complainers had said that there could be no present allocation of the church. Now, what the complainers have contended is that there has as yet been no allocation of the church.

LORD JUSTICE-CLERK—I quite understood that the argument of the suspenders was that there had been no allocation at all.

SOLICITOR-GENERAL—I was referring to something which Lord Cowan said which rather implied that we admitted that there could be no present allocation.

LORD COWAN—I referred to the statement made by the Lord Ordinary, that there was no evidence of allocation, and I adopted his view of the proof as to that matter.

The Court accordingly recalled the Lord Ordinary's interlocutor, repelled the reasons of suspension, found the letters and charge orderly proceeded, and found the respondents entitled to expenses. The Court at the same time inserted in the judgment a reservation of any right competent to the suspenders against the feuars.

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

Agent for Presbytery—William Mitchell, S.S.C.

Friday, March 18.

FIRST DIVISION.

LYELL *v.* INSPECTOR OF KINNELL.

Poor—Relief—Expenses. Held that a pauper was not entitled to incur unnecessary expense by enforcing relief by legal proceedings from the parish on which she was chargeable, but in which she was not resident.

Isabella Lyell presented a petition to the Sheriff of Forfar, craving for an order upon the respondent for relief, and for the expenses of her application. Kinnell is the birth settlement of Lyell, and it, admittedly, is the parish on which she is chargeable. For some time past she had obtained relief, first from the parish of St Vigeans, and latterly from the parish of Arbroath, but the payments made by

them were only in behalf of Kinnell. In September she removed to Forfar, and on the 15th she went to Kinnell and applied for relief. The respondent was at the time in Edinburgh on duty, but his wife saw Lyell, and learned from her that she was going into service. The respondent's wife took a slate to write her address on, but "the slate," she said, "was pre-occupied." On her husband's return on the 20th she informed him of Lyell's application, but could not recollect her address, and on 16th October the petition was served upon him. He stated in his defence that the minister acted for him in his absence; but his wife said she had not understood any one was acting for her husband.

The Sheriff-Substitute (ROBERTSON) pronounced the following interlocutor:—

"*Forfar, 25th November*, 1869.—The Sheriff-substitute having made avizandum with the petition, answers thereto, proof, and whole process, Finds, in point of fact, that at the date when the petitioner applied for parochial relief from the respondent, she was admittedly a proper object of parochial relief, and that her parish of settlement was admittedly that of Kinnell: Finds that at the date when she applied for relief she was not residing in the parish of Kinnell, but in the parish of Forfar: Finds that the application to the respondent was uncalled for, and that the petitioner might have applied for relief in the parish of Forfar, where she was residing: Finds that the petitioner has failed to prove that she was refused relief by the respondent: Finds that the circumstances under which her application to the respondent received no response do not warrant the raising of the present action: Therefore dismisses the petition; finds no expenses due to or by either party; and decerns.

"*Note.*—The petitioner, when resident in Forfar, instead of applying to the inspector there, takes an unnecessary journey to the parish of Kinnell. She happens to find the Inspector from home, and, unfortunately, his wife forgets the address left by the petitioner, who returns to Forfar. Then, instead of writing to the respondent, or instead of applying to the Forfar inspector, she appears to have done nothing for a month, and then to have raised this action.

"All this might have been obviated by the petitioner doing what she was quite accustomed to do before,—namely, by applying to the inspector of the parish she resided in.

"The Sheriff-Substitute thinks that it would be straining the equitable reading of the statute to say there was a refusal of relief in this case, and he is not inclined to allow the petitioner her expenses."

The petitioner appealed.

BURNET for her.

FRASER in answer.

The Court adhered.

The law recognised no right in a pauper to enforce relief in this manner. It provided a way. And it was the duty of the Court to discourage the incurring of expense. There had been an irregularity no doubt; the inspector should not have been absent without appointing a substitute to act for him. But it was doubtful whether the respondent really needed relief as she was in service, and had waited a month before renewing her application.

Agent for Petitioner—John A. Gillespie, S.S.C.

Agent for Respondent — Neil M. Campbell, S.S.C.

Friday, March 18.

GLASGOW UNION RAILWAY CO. *v.* M'EWEN AND CO.

Compensation — Notice — Landlord—Lease—Tenant.

Held a landlord could not, by granting a lease to a tenant subsequent to receiving notice that a railway company were going to take part of his property, give the tenant a right to get compensation from the company.

The City of Glasgow Union Railway Act, under which the complainers' company is incorporated, embodies the Lands Clauses Consolidation Act 1845; and in compliance with its provisions, the complainers served a notice upon the proprietors of certain subjects on 22d October 1868, that the premises would be required for the purposes of the railway. The respondents are tenants under these proprietors; and on 29th January 1869, they were duly warned to remove at Whitsunday following. Shortly before Whitsunday the respondents intimated to the complainers that they were lessees of the subjects for a longer period than a year, and made a claim for compensation. The complainers refused to grant this compensation, alleging that when the respondents received notice of removal they were only tenants by the year under a verbal lease. The respondents replied that though their lease was only dated 4th February 1869, it was in implement of a prior promise to grant a three years' lease from Whitsunday 1868. A note of suspension and interdict was thereon presented by the Railway Company to have the respondents interdicted from proceeding with the claim.

The Lord Ordinary (NEAVES) pronounced the following interlocutor:—

"*Edinburgh, 5th January* 1870.—The Lord Ordinary having heard counsel for the parties, and considered the closed record and proof, sustains the reasons of suspension, suspends the proceedings complained of, declares the interdict formerly granted perpetual, and interdicts, prohibits, and discharges, in terms of the prayer of the note of suspension and interdict, and decerns: Finds the respondents liable in expenses; allows an account thereof to be given in, and, when lodged, remits to the Auditor to tax and report.

"*Note.*—The suspenders' company was established by their Act of 1864, and in 1867 their time for taking lands was prolonged till the 29th July 1869. On 22d October 1868 the suspenders gave notice to Stewart & Co. that they were to take for their railway the property belonging to them, of part of which the respondents allege themselves to be lessees under a three years' lease from Whitsunday 1868.

"In October 1868, when the suspenders gave their notice, no written lease was in existence. The respondents had been tenants of the premises under a lease for three years from Whitsunday 1865, but no second lease had been made out, and after Whitsunday 1868 the respondents were possessing without a written lease. It appears that, in the end of 1867 and beginning of 1868, communings took place between the respondents and Stewart & Co. with a view to a new lease for another three years. But, even if there had been a definite verbal agreement, it seems to be clear that, in that state of matters, neither party was bound for more than a year; and thus, that the respondents began to possess at Whitsunday 1868,