were never asked to do so, and the Lord Ordinary thinks that there was no failure of duty on their part. Reference may be made to the cases of *Kirkcaldy* v. *Dalgairns*, June 16, 1809, 15 F.C. 318; *Berry*, Dec. 15, 1827, 6 Shaw, 256, and 9 Shaw, 337; *Alston* v. *Chappell*, Dec. 17, 1839, 2 D. 248; *Ferrier* v. *Alston*, Jan. 28, 1843, 5 D. 456, H.L., 4 Bell, 161; *M'Donald* v. *M'Donald*, Dec. 8, 1843, 6 D. 186; *Mowbray* v. *Dickson*, June 2, 1848, 10 D. 1102; *Mitchell* v. *Cable*, June 17, 1848, 10 D. 1297; *Millar* v. *Millar*, March 10, 1855, 17 D. 689.

Mr Tennant reclaimed.

Dean of Faculty and Lee for him.

Solicitor-General and Balfour in answer.

At advising—

The Lord Justice-Clerk said that the argument raised no questions in the law of arbitration. The grounds for reduction were good if the facts upon which they depended had been made out. He agreed with the Lord Ordinary in thinking that these allegations had not been proved.

The other Judges concurred.

The Court adhered.

Agents for Pursuer—Dalmahoy & Cowan, W.S.
Agents for Defender—Macrae & Flett, W.S.

Thursday, November 30.

JOSEPH THOMPSON *v.* JOHN G. MUIR AND THE PAROCHIAL BOARD OF INVERESK.

Mandate—Parochial Board—Erasure. The meeting of a parochial board for the purpose of electing an inspector of poor for the parish was fixed for a certain day, and mandates were printed to be used of that date. The day of meeting was changed, and anterior to the day fixed the printed date was erased, and the proper one substituted. *Held* that these mandates were valid for the reason that the date was not "*inter essentialia*" of the mandate, and the words written on erasure being held "*pro non scripto*" the mandate became a general one to be used at a meeting convened for the purpose of electing an inspector of poor.

Mandate—Parochial Board—Adjourned Meeting. *Held* that mandates bearing to be used at a meeting of the parochial board of a parish to be held on 2d August for the election of an inspector of poor, or on any subsequent day to which said meeting might be adjourned, were validly used at a meeting held on a later day for the same purpose, although there had been no meeting on 2d August, and consequently no adjournment.

Thompson brought this action for the purpose of having it judicially declared that he had been duly elected inspector of poor-rates for the parish of Inveresk, and also for the purpose of reducing certain minutes of the parochial board of the same parish which bore that the defender John G. Muir had been duly elected to that office.

The Lord Ordinary (Mackenzie) assoilzied the defender, and found that John George Muir had been duly elected.

He remarked in his note:—"According to the report of the scrutiny committee, appointed at the adjourned meeting of the Parochial Board of Inveresk, held on 5th September 1870, for the election of an inspector of poor and collector of poor-rates, the defender Mr Muir had 54 votes, and the pursuer Mr Thompson 49. Of these 54 votes in favour of Mr Muir, the pursuer maintains that 14 votes given by Dr Sanderson on mandates, the first four votes stated in the second head of the list No. 13 of process, and the vote of Mr Spence, mentioned in article 13 of pursuer's condescendence, being in all 19 votes, are illegal and invalid, and fall to be disallowed.

"The Lord Ordinary is of opinion that the pursuer has failed to establish that there is any good objection to the votes given by Dr Sanderson on the mandates granted in his favour, in so far as sustained by the scrutiny committee. These mandates were obtained from the granters by Mr Bolton, an intended candidate; they bear to be in favour of Dr Sanderson, whom failing Mr Millar, whom failing Mr Chalmers. These mandates were delivered by Mr Bolton to Mr Chalmers, one of the mandatories. Mr Chalmers took these mandates to the meeting for the election of an inspector and collector held on 5th September 1870, and as he was obliged to leave the meeting, he delivered them to a person of the name of Doleman, with instructions to hand them to the clerk of the meeting, and to get them recorded at the voting in favour of Mr Fernie, one of the candidates. Mr Doleman, after Mr Chalmers left, handed these mandates to the clerk of the meeting when he called for mandates, with a request to that effect, but as he was not the mandatory, and as Dr Sanderson, the mandatory first named in the mandates, was present, this request was refused, and the votes on the mandates were recorded for the defender Muir as directed by Dr Sanderson.

"The Lord Ordinary is of opinion that neither Mr Chalmers nor Mr Doleman were entitled to act or vote on these mandates; that their request on behalf of Mr Fernie was properly refused, and that Dr Sanderson was entitled to vote upon them.

"The pursuer also objects to the act of the scrutiny committee in admitting 4 of these 14 mandates, viz., those of Mrs Boak, Thomas Moran, William Stewart, and John Slight, and maintains that they fell by reason of later mandates having been granted in favour of Mr George Smith, who voted on them in his favour. But these four mandates in favour of George Smith do not bear the date of granting, and they all refer to a meeting to be held on 2d August 1870, or any adjournment thereof, except that of John Slight, in which the date of the meeting for which it was granted is written on an erasure. The meeting called for 2d August was not held in consequence of a mistake made by the pursuer in calling the meeting, and there never was any adjournment thereof. Another meeting was called for 15th August 1870, but that also was abandoned owing to another mistake in calling the meeting. The meeting of 16th August, being the first meeting held for the election of an inspector and collector, was duly called, and was an entirely separate and independent meeting from that of 2d August 1870. The mandates in Dr Sanderson's favour are all dated, and confer authority to act and vote upon any matter relating to the appointment of an inspector and collector, not only at the meeting of 2d August 1870, but at any subsequent meeting. These four mandates were, it appears to the Lord Ordinary, rightly given effect to by the scrutiny committee.

"The scrutiny committee admitted the votes of Catherine Young, A. J. Christie, Charles Pearson,

and Agnes Legat (being the four names first mentioned in head 2 of the list No. 13 of process), in favour of the defender Mrs Muir. The pursuer objects that these persons had no qualification; that they were not on the assessment roll of the parish; and further, that in any view Charles Pearson and Agnes Legat were merely joint proprietors, and were therefore not entitled to vote. The qualification for membership of the Parochial Board of Inveresk, under section 22 of the Poor Law Act (8 and 9 Vict. c. 83), is being owner of lands and heritages in the parish of the yearly value of £20 and upwards.

"The scrutiny committee sustained the votes of the four persons above mentioned as possessing the statutory qualifications, and the pursuer has failed to prove that they do not possess it. His objection that they are not on the assessment roll of the parish, and that they are therefore not entitled, under section 21 of the statute, to vote, is untenable. The assessment roll is not proof of ownership under the statute, and the 21st section of the statute, which relates to the mode of voting in burghal parishes and combinations, only provides that the assessment books of the collector shall be taken as evidence of the annual value, 'for the purpose of ascertaining the number of votes to which each person is entitled.'

"In like manner, the pursuer has failed to prove that Mr A. O. Spence did not possess the statutory qualification.

"There were 97 votes given in favour of the pursuer. Of these 49 or thereby were struck off by the scrutiny committee for the following reasons:—There were erasures in 15 of the mandates of the date of meeting for which they bore to be granted. This, the Lord Ordinary thinks, was a good objection. Ten were struck off for want of qualification. The pursuer has not proved that they had the requisite qualification. Nine were struck off on the ground that they fell under section 25 of the statute, as joint owners or companies, and were not qualified as therein provided. Twelve mandates were disallowed, on the ground that they were granted for a meeting to be held on 2d August 1870, or on any subsequent date to which said meeting might be adjourned, whereas, as already stated, there was no meeting held on that day, and consequently there was no adjournment thereof, so that the mandates fell. The vote of a *curator bonis* was properly disallowed. So also was the vote on a mandate on which the mandatory was not named, and the vote on a general mandate to attend and vote at all meetings of the Parochial Board, which was dated 6th May 1871.

"Deducting these 49 votes from the 97 given for the pursuer, there remained 48. But of these 48 votes there were no less than 33 given on mandates which are *ex facie* of the mandates invalid in respect of the date of the meeting for which they bear to be granted being printed on an erasure. They were originally granted for 15th August, a day fixed for the election, but which had to be abandoned in consequence of some mistake in calling the meeting. The figure '5' was erased and the figure '6' was printed in its place. In consequence of having been skilfully done and printed, it escaped the notice of the scrutiny committee. These 33 votes on mandate fall, the Lord Ordinary conceives, as vitiated and erased *in essentialibus*, to be rejected in the present inquiry, seeing that the pursuer concludes to have it found and declared that he was duly elected inspector and collector. Of these 33 mandates 5 are also objectionable as not having been writings under the hands of the respective mandants, as provided by section 22 of the statute, but as having been subscribed in their names by third persons, with their authority.

"According to the view taken by the Lord Ordinary, there were given at the adjourned meeting of 5th September 1870, in favour of the defender Mr Muir, 54 valid votes, and there were given in favour of the pursuer Mr Thompson, only 15 valid votes.

"It is averred on record that the pursuer was declared duly elected at the adjourned meeting of 5th September 1870, and that the meeting was dissolved before a scrutiny of the votes was demanded, and the scrutiny committee appointed. But he entirely failed to prove this; and it is clearly established by the proof that at the close of the voting a scrutiny was demanded, and a committee was appointed for that purpose.

"The Lord Ordinary has only further to remark, that, even on the assumption that Dr Sanderson had no right to vote on the above mentioned mandates, and that the pursuer had succeeded in showing that he consequently had a majority of legal votes over the defender Muir, the pursuer could not obtain decree of declarator that he was the duly elected inspector of poor and collector of poor rates of the parish of Inveresk; because, if Dr Sanderson had no right to vote on these mandates in his favour, Mr Fernie would have been higher in the second voting than Mr Muir. Mr Muir ought to have been struck off, and the last or third vote ought to have been taken between the pursuer and Fernie. A new election would therefore, on that assumption, require to take place."

The pursuer reclaimed.

SCOTT and GUTHRIE for him.

SOLICITOR-GENERAL and ASHER in answer.

On the question of the validity of the thirty-three mandates which had their dates written upon erasures, the Court held that the Lord Ordinary was wrong, and that these mandates were good.

LORD COWAN said that this objection to these mandates had not been stated either to the board or to the scrutiny committee, and was not mentioned in the record. He thought that the mandates were well tendered on the 5th September, and were valid at any subsequent meeting. The date of the meeting was not "*inter essentialia*" of the mandate, and therefore the word written on the erasure was to be held "*pro non scripto.*" When this course was followed the mandate became a general mandate to vote at a meeting of the board to be held on blank day of August, and was a good mandate for a meeting held on the 16th August. The question whether mandates should be holograph or tested had been waived by the parties, and in his opinion the mandates were valid.

With regard to those mandates which bore to be granted for the meeting of the 2d August, or to be used on any subsequent day to which that meeting might be adjourned, the Court held that it was of no consequence that no meeting took place on that day, and consequently there could be no adjournment. It was the plain intention of the mandants that the mandates were to be used at the meeting for the election of an inspector of poor, and they were unwilling to give effect to any merely technical difficulty which would defeat that intention.

The consequence of these two decisions was that

Thompson had a majority of legal mandates at the meeting of the board.

The Court accordingly gave effect to the conclusions of the summons, and remitted to the Parochial Board of Inveresk to declare that Thompson had been duly elected inspector of poor of said parish.

Agent for Pursuer—W. K. Thwaites, S.S.C.

Agents for Defenders—Gillespie & Paterson, W.S.

Friday, December 1.

FIRST DIVISION.

PALMER *v.* RUSSELL AND OTHERS.

Poor—Settlement—Pauper Lunatic—Statute 20 *and* 21 *Vict. c.* 71, §§ 75 *and* 95.

Process—Expenses.

Held (1) that under no circumstances can a married woman have a settlement which is not derived from her husband.

(2) That when the wife of an able-bodied man is dealt with by the parochial board as a pauper lunatic in terms of the Poor Law and Lunacy Acts, the result is not to make the husband a pauper, though the wife may become chargeable to the parish.

(3) That the lunatic wife becoming chargeable on the parish of her husband's settlement, at the date of her confinement, continues, in accordance with § 75 of the Lunacy Act, to be chargeable upon that parish throughout the whole term of her confinement, though the husband's parish of settlement may have changed during that period.

And (4) That where there is no district asylum, or where from peculiar circumstances the pauper lunatic is, by consent of the lunacy board, confined in some other than a district asylum, the requirements of § 75 are satisfied, and the above result equally follows.

Margaret M'Intosh or Tweedie was born in the parish of Lochbroom, in Ross-shire, in 1819. On 27th January 1838 she was regularly married at Lochcarron to Robert Tweedie, and the marriage was duly recorded in the parochial register. Tweedie and M'Intosh, however, never lived together as man and wife. Within a few hours after the marriage ceremony she deserted him. She never afterwards returned to him, but went into service and supported herself, until the date of her becoming chargeable, as after mentioned. For more than five years previously to 1861 Margaret M'Intosh or Tweedie maintained herself industrially as a domestic servant in the parish of Dunoon, so that on 23d August 1861 she would have had a residential settlement in Dunoon parish if she had been unmarried and capable of acquiring one. Having shortly before removed to the parish of Stirling, she was, on said 23d August 1861, by order of the Sheriff, on application of the Inspector of the Poor for the parish of Stirling, confined as a lunatic. There being at that time no district asylum in the Stirling district, she was sent to Hallcross Asylum, Musselburgh, where she remained until 5th February 1869, when, a district asylum having been erected at Larbert for the Stirling district, she was removed there, and continued an inmate until her death on 2d February 1871.

In the meantime, her husband Robert Tweedie, who was born in the parish of Manor, in Peebles-shire, had resided industrially in the parish of Portree for twelve years prior to 1859, and had therefore obtained a residential settlement there. At Whitsunday 1859 he went to the parish of Bracadale where he afterwards resided continuously and industrially down to the day of his death in 1871.

The inspector of the parish of Stirling being under the impression that Margaret M'Intosh or Tweedie was an unmarried woman, sent the statutory notice of chargeability to the parishes of Dunoon and Lochbroom only in August 1861. But having obtained farther information, he, on 5th April 1865, sent notice to the parish of Bracadale, the then parish of the husband's settlement, and still later, on 24th August 1869, to Portree, the settlement of the husband at the date of the lunatic's first confinement.

In the present action, raised by the Inspector of the Poor for the parish of Stirling, on April 18, 1871, the whole other parishes of Dunoon, Lochbroom, Portree, and Bracadale were called as defenders.

The pursuer pleaded—"The pauper is chargeable upon either (1) the parish of Dunoon, as the parish of her residential settlement; or (2) Lochbroom, as the parish of her birth settlement; or (3) Portree, as the parish of her husband's settlement at the date of her becoming chargeable; or (4) Bracadale, in which her said husband has had a settlement since Whitsunday 1864; and the pursuer, as representing the parish of Stirling, by which the sums sued for were disbursed, is entitled to have decree against one or other of the said parishes, as concluded for, with expenses."

For the parish of Dunoon it was pleaded—"(2) The said Margaret M'Intosh or Tweedie was incapable of acquiring *stante matrimonio* any settlement apart from that of her husband. (3) The said Margaret M'Intosh or Tweedie never having acquired a settlement in the parish of Dunoon, the present defender is entitled to be assoilzied."

For the parish of Lochbroom it was pleaded—"(2) The pauper having been until her death a married woman, and it not being alleged that her husband has no settlement in Scotland, or that he has or ever had a parochial settlement in the parish of Lochbroom, the present defender is entitled to absolvitor, with expenses."

For the parish of Portree it was pleaded—"(2) The residenttal settlement of Robert Tweedie in Portree having been lost by him in 1863 by reason of non-residence for the statutory period, that parish is not liable to repay the advances sued for, made since that date. (3) The parish of Portree is not liable for advances made prior to 1863, in respect no statutory notice was sent to it until after that date. (4) In no view is Portree liable for any advances prior to 24th August 1869, when it received statutory notice."

For the parish of Bracadale it was pleaded—"(1) The parish of the pauper Margaret M'Intosh or Tweedie's legal settlement, at the date of her being placed in the Hallcross Asylum as a pauper lunatic, was the parish then chargeable with her maintenance and other relative expenses, and the said parish continued to be the parish of her settlement, and to be chargeable with her maintenance as a lunatic for the rest of her life, and is now liable for such maintenance and expenses. (2) The parish of Bracadale, represented by the defender, not having been the parish of the said pauper's settlement at the said date, the defender is not liable in the sums sued for, or any part thereof."