Lord Gifford—The true criterion with reference to the right of property in these shares is the being received as a shareholder. In that view I cannot hold that the fact of intimation is any criterion, and if so, then the whole argument for the reclaimer is displaced. The Bankruptcy Statute makes the act of sequestration, as regards the right of the trustee in the effects of the bankrupt, equivalent to delivery, possession, and intimation. Here we have not a case of delivery or of possession, but it is said that the act of sequestration operated as intimation of a transfer to the trustee. Now, even at common law, I should doubt whether intimation alone, though it may be effectual for some purposes, would complete the trustee's right. The matter is, however, rendered clear when we turn to the Companies Statutes. Until registration no one incurs the liabilities of a shareholder, nor is entitled to share in the benefits of the company. The trustee has chosen to lie out and remain unregistered for twenty years, during which the responsibilities have rested on Mr Harrison. And then, after perhaps the value of these shares has risen, he seeks to come in and cut out the man who has borne the heat of the day. Such a proceeding would be very inequitable.

The Court adhered with additional expenses, which were awarded both to Mr Harrison and to the Railway Company.

Counsel for Pursuer—Balfour—Keir. Agents—H. & A. Inglis, W.S.

Counsel for Defender (Harrison)—Dean of Faculty and M'Laren. Agents—Millar, Allardice, Robson, & Innes, W.S.

Counsel for the Railway Company—R. V. Campbell. Agents—A. J. & J. Dickson, W.S.

Friday, February 4.

FIRST DIVISION.

[Sheriff of Argyll.

CALEDONIAN CANAL *v.* M'TAVISH (AS REPRESENTING THE PAROCHIAL BOARD OF THE PARISH OF NORTH KNAPDALE).

Sheriff — Jurisdiction — Assessments — Poor-Law Amendment Act, 1845 (8 & 9 *Vict. c.* 83)

Held that in an action in the ordinary Sheriff-court for recovery of assessments for poor-rates, the Sheriff is entitled to entertain a defence on the merits, and that his duties are not merely ministerial.

The Parochial Board of North Knapdale laid certain assessments for poor-rates on the Commissioners of the Caledonian Canal for that portion of the Crinan Canal belonging to the Commissioners which lay in the parish of North Knapdale. The Commissioners at first refused to pay, on the ground that the canal was Crown property, and not liable in parochial assessments; but on that being decided against them in 1872, they still maintained their refusal, on the ground that if all deductions were made to which they were entitled there remained no assessable value. In January 1874 the Parochial Board raised an ordinary action in the Sheriff-court of Argyllshire, concluding for payment of the assessment from 1865 to 1873 inclusive, to which the Commissioners stated the above defence on the merits, and also stated as a preliminary plea that the Sheriff had no jurisdiction to try the question.

On 29th April 1875 the Sheriff-Substitute pronounced an interlocutor, in which he found "that as regards the conclusions for poor-rates the Sheriff's duties are only ministerial, and that the defender's pleas as to the assessments being imposed on too large a valuation cannot therefore be entertained in the Sheriff-court;" and decerned for the assessment.

This was appealed to the Sheriff, who adhered.

The Commissioners appealed to the Court of Session.

Argued for them—Before the Poor-Law Amendment Act, 1845, the Sheriff always acted ministerially in matters connected with the Poor-Law. The heritors and kirk-session who previous to that Act imposed the assessment were a quasi-judicial body, but the Parochial Board, substituted for the kirk-session by that Act, was no longer a quasi-judicial body, and if the Sheriff acted ministerially he only did so when acting in the way specified in section 88 of the Act. If section 88 was a code of procedure beyond which it was incompetent to go, then the action here was incompetent from the beginning; if section 88 was not a code, then they not having availed themselves of that section, but having raised an ordinary action, were liable to be met by ordinary defences.

Argued for the Parochial Board—It was quite clear that before 1845 (1) an ordinary action was competent, and (2) the Sheriff could not get behind the poor-roll, but must pronounce decree. By Act 1845 the Parochial Board came into the places of the heritors and kirk-session. The heritors and kirk-session were not a court, but if they were, so was the Parochial Board—*vide* sections 32, 33, 34, 38 of the Act. Jurisdiction must not be raised by implication; in reference to this matter there was none given to the Sheriff in section 88, while in another matter in section 73 it was expressly given him. The proper remedy for the Commissioners if they wanted to get to the merits was suspension.

Appellant's authorities—The various Poor-Law proclamations to be found in Appendix to Dunlop on the Poor-Laws; Poor-Law Amendment Act, 1845 (9 and 10 Vict. cap. 83, sec. 88); 52 Geo. III, cap. 95, sec. 13.

Respondents' authorities—*Calder* v. *Trotter*, 8th June 1833, 11 S. 694; *Pollok* v. *Robertson*, 12th November 1833, 12 S. 14.

At advising—

Lord Deas—The Parochial Board of North Knapdale raised an action against the Commissioners of the Caledonian Canal in January 1874, concluding, *inter alia*, for assessments which they had laid on them for relief of the poor from Whitsunday 1865 to Whitsunday 1873 inclusive. A record was made up in this action, and certain pleas, both preliminary and on the

merits, were stated for the defenders. The first plea for the defenders is, or rather would have been, of the greatest importance had it been pled by the pursuers, as it is admitted on both sides that the question raised under it was whether the Sheriff had jurisdiction here to go into the merits, or whether his duty was ministerial; and it was consequently imperative to pronounce decree without entering into the merits.

The Commissioners of the Caledonian Canal maintain that when all deductions to which they are entitled are made, nothing remains of revenue which could be assessed. That is what may be called the merits of this question if they could be gone into, but the leading plea was that they could not be gone into at all.

The first interlocutor that deals with the question as we are now speaking of it is that of the Sheriff-Substitute — "*Inveraray, 29th April* 1875. — The Sheriff-Substitute having heard parties' procurators, and made avizandum, Finds, as regards the conclusion for poor-rates, that the Sheriff's duties are only ministerial, and that the defenders' pleas as to the assessments being imposed on too large a valuation cannot therefore be entertained in the Sheriff-court." And in a note he adds — It seems to the S.-S. sufficiently settled by the cases of *Calder* v. *Trotter*, 8th June 1833, 11 S. 694, and *Pollok*, 12th November 1833, 12 S. 14, that the Sheriff's duties as regards the recovery of assessments under the Poor-Law are purely ministerial, and he sees no reason to doubt that the law as laid down by these decisions is as much in force as ever, though he understood the defenders' procurator to suggest that this was not the case. It is therefore beyond his power to inquire into the justice of the assessment; the defenders' objections to it may possibly enough be perfectly good, but they cannot be entertained in the Sheriff-court."

So, that not merely by opinion, but by the very words of the interlocutor, the thing determined on is that here the duties of the Sheriff are purely ministerial, and that it is a matter into the merits of which the Sheriff cannot enter. Thus, the only question for us to decide is whether that is or is not a correct finding. Matters may remain behind, but that is all we have to do with here.

No doubt this is an important question. My opinion is that the finding is not well founded; that the Sheriff here is not acting ministerially, but judicially; and consequently is not precluded from entering into the merits of the question.

It is plain enough that, but for the decisions of *Calder* and *Pollok*, the Sheriff, at all events, would have hesitated in arriving at the conclusion he did. He says—"It appears to the Sheriff that there would be much force in this argument could the question be considered as still open; but the plea was urged unsuccessfully in two cases already referred to in the course of these proceedings, viz., *Calder* v. *Trotter*, June 8, and *Pollok* v. *Robertson*, November 12, 1833. In the latter case the plea maintained for the defender had the high sanction of the Lord Ordinary (Fullerton), but failed to convince the Judges of the First Division, who unanimously altered the interlocutor. It is true that these judgments were given before the passing of the Poor Law Amendment Act of 1845, but it does not appear that this affects their application. The Parochial Board comes substantially into the place of the heritors, and minister in matters relating to the relief of the poor; and by section 40 of the Act remedy is reserved to any one who considers himself aggrieved by any assessment—'in the like form and *on the same grounds* as at the date of the passing of the Act was competent to any party who considered himself aggrieved by any assessment imposed under the statutes then in force for the relief of the poor.' Nor is it unimportant to observe that for the thirty years during which the Act has been in force, and amidst the many questions that have arisen under it, no decision has been pointed out contraverting the principle involved in the earlier cases referred to."

The only material question is whether this is so or not, whether these two decisions of *Calder* and *Pollok* are in point or not. That leads us to examine what were the grounds of those decisions, and I think it very clear that the grounds of those decisions were these, viz., that the heritors and kirk-session, in the matters committed to them with respect to the administration of the Poor Laws, were substantially acting as a court; that they had, properly speaking, a jurisdiction conferred on them; and that, as they were a court, and there was no law and no statute conferring power on the Sheriff to review the decisions of that court, the Sheriff, if he interfered at all, could only act ministerially, and the Supreme Court alone could review the decisions of the heritors and kirk-session—not in virtue of any statute, but of its own inherent power to review all decisions where there is no statutory exclusion. I think also that the above ground of judgment was a sound and right ground, and that the whole series of proclamations go to show that this was a sound view, and that, in point of fact, the Supreme Court here had jurisdiction, because its jurisdiction was not excluded, and the Sheriff had not, because on him jurisdiction was not conferred. There is no law that the Sheriff can review the judgments of other inferior courts. Unless conferred on him by statute, the power does not exist in him, and in that case though he may have ministerial functions (and he has many ministerial functions), yet he cannot have judicial functions. I do not propose to go over the proclamations, but I have come to the same conclusion as the Court did in the case of *Calder*, viz., that the judgments of the heritors were subject to advocation, which could not have been the case unless they were of a judicial character. This leaves the question whether the Parochial Board now is in the same position as the heritors and kirk-session were before 1845, that is, whether they act as a Court. The Sheriff assumes that they are, but it is a serious thing to assume. There is no presumption that what they do is final and not subject to the review of the ordinary courts of the country. It is a strong thing to say the Sheriff cannot review the proceedings of any board. There is nothing in the nature of the Parochial Board to exclude their being set right, and the only plausible argument in their favour is that they come in the place of a body who had such powers and privileges. But it does not follow that they succeed to these powers and privileges.

It would be a great misfortune if it were so. There is no reason *prima facie* why the Sheriff should not have power to correct these errors just like any others. If he goes wrong, there is the Supreme Court above him to set him right.

Then there is the suggestion that section 88 of the Poor Law Amendment Act contains a code of procedure in reference to this matter beyond which you cannot go. The plausibility of this rests on the fact that that section introduces by way of enactment that the machinery employed in recovering the land and assessed taxes shall be applicable to assessments for the relief of the poor, and then provides that it shall, nevertheless, be competent to sue in the Small Debt Court, and the inference drawn is, that therefore no other court is permitted. If that be so, it certainly seems an unlikely result. The Sheriff quite misapprehended this section, for he says—"The Poor Law Amendment Act expressly providing by section 88 that all such assessments 'shall be recoverable in the Sheriff Courts.'"

This is quite wrong. It seems to me impossible to hold that this section was meant as a code, with all the expense and oppression which might result sometimes from the use of these summary warrants. Section 88 really goes all the other way. When you have a special provision as to the Small Debt Court, and you infer from that that other courts are excluded, you must remember that the inference also is very strong that if the Small Debt Court is specially put in, the jurisdiction of the others would require to be specially excluded, for in that case the presumption would be that they had jurisdiction before. The real reason was to remove all doubts of *competency* in the Small Debt Court. I do not know if it would have been, but it might have been thought that it was incompetent to proceed in the Small Debt Court.

It was argued ingeniously by Mr Mackintosh that in the new Act you must find the new jurisdiction of the Sheriff expressly conferred. But that is not sound. The Sheriff always has jurisdiction, and why he had it not here was because it had been given to another inferior court. But when that inferior court is swept away, then his jurisdiction revives. It is quite clear that is the reason. I can only add that I think the decisions of *Calder* and *Pollok* were perfectly correct, and are perfectly reconcileable with the judgment of to-day. I am therefore of opinion that the findings of the Sheriff and Sheriff-Substitute should be recalled.

Lord Ardmillan—I cannot say this matter is unattended with difficulty. The action commences in the Sheriff's ordinary Court at the instance of a party seeking to recover assessments. This action was met by a defence that the assessments were not due. Into that question I do not go. The Sheriff-Substitute decided for the pursuers, and gave decree, and when he does so he states that the duties of the Sheriff as regards the administration of the Poor Law are purely ministerial. That judgment is appealed, and the Sheriff affirms it. The ground of the judgments of both was, that this action was one where the Sheriff was bound to proceed in a purely ministerial capacity. At first sight this seems to involve a rather peculiar position for a British subject. I have always thought that assessments should be laid on by a party whose acting is reviewable or recorded by a decree of a Judge whose decisions are so also—for to say that here there is no power in the way of resisting the demand for payment is very startling. Is it, then, the case? But for the cases of *Calder* and *Pollok* the Sheriff indicates that he would have come to another decision.

My view of these cases is, that prior to 1845 the heritors and kirk-session were in the position of a party coming to a resolution reviewable by this Court, and not by the Sheriff, and therefore that when the Sheriff proceeded, he was acting in a ministerial way as regarded the heritors. That is the result of the finding of the Court in the cases of *Calder* and *Pollok*. But when we come to 1845, then I do not see that the Parochial Board occupies the same position in this matter that the heritors and kirk-session did. A judgment of the Parochial Board has never been brought directly here. The Parochial Board may go to the Sheriff and get him to enforce their judgment; and if they do that the Sheriff proceeds ministerially. But the Act of 1845 gives them power to go otherwise; they may go for judicial interposition in his Small Debt Court. Does section 88 then create a code of procedure? The present respondents cannot possibly say it does, for they brought their action in the Sheriff's ordinary Court. A Sheriff of a Scotch county in his ordinary Court is in that Court a Judge, and his character is judicial, unless the contrary clearly appears from statute. His decision is a judicial decision, because he is a Sheriff. In his ordinary Court he dealt with this matter, and was asked for expenses. If the contention of the respondents be correct, why did they ask for expenses? Does the Sheriff act half in a judicial and half in a ministerial capacity? They crave expenses, and then say the judgment is purely ministerial. If taking the cause to the ordinary Court was competent at all, it was competent only on the footing that justice should be done. I think the Sheriffs have here taken an erroneous view.

Lord Mure—I come to the same conclusion. I agree substantially that the Parochial Board, created by the statute of 1845, is not to be conconsidered as acting in a quasi-judicial capacity; that prior to that the heritors and kirk-session did act in a quasi-judicial capacity; and that consequently the decisions of *Calder* and *Pollok* have here no application. The whole procedure as regards assessments was altered by the Act.

Formerly the Sheriff acted simply ministerially in anything connected with the poor-rates levied by the heritors and kirk-session, and his duties were limited to enforcing their decrees. But by Act of 1845 all this was set aside, and by section 88 a change was made in the mode of procedure, for the machinery used in recovering the land and assessed taxes was made available here, and in acting with respect to that he was only to act ministerially. But the 88th section further gives a method of proceeding in the Small Debt Court. This necessarily involved judicial determination by the Sheriff in it, and that shuts out the idea of holding the Sheriff to act ministerially in all cases. At first sight section 88 looks like a code of procedure, but from the above fact I think it would be dangerous to exclude the Sheriff's ordinary jurisdiction. In

disposing of a case in the Small Debt Court he might find it necessary to transfer it to his ordinary roll, and therefore I agree in thinking that his common law powers should here be exercised.

The LORD PRESIDENT was absent.

The Court pronounced the following interlocutor:—

"Recal the interlocutor of the Sheriff-Substitute of 29th April 1875, and the interlocutor of the Sheriff of 7th July 1875, in so far as relate to the finding that, as regards the conclusion for poor-rates, the Sheriff's duties are only ministerial, and that the defender's pleas as to the assessments being imposed on too large a valuation cannot therefore be entertained in the Sheriff-court: Find that, as regards the registration assessments, the findings of the Sheriff-Substitute and Sheriff are not objected to, but, on the contrary, are mutually acquiesced in: Recal *in hoc statu* the decerniture for the sum of £555, 18s. 3½d. sterling of poor-rates, and also the finding as to expenses: Reserve all other questions *hinc inde* between the parties, and continue the cause in the roll; and reserve also all questions of expenses in the Sheriff-court and this Court."

Counsel for Respondents (Pursuers)—Asher—Mackintosh—Maclachlan. Agents—Maclachlan & Rodger, W.S.

Counsel for Appellants (Defenders)—Dean of Faculty (Watson)—Pearson. Agent—James Hope jun., W.S.

Saturday, February 5.

FIRST DIVISION.

[Sheriff of Lanarkshire.

CAMERON *v* M'LEAN.

Paraphernalia.

Circumstances in which a wardrobe was held to be *inter paraphernalia.*

Mr and Mrs Cameron, three months after their marriage, ordered a wardrobe, which was delivered in three months. For the first three months the clothes of both the spouses were kept in it, but on the birth of the first child the husband's clothes were removed to another place, and ever afterwards the wardrobe was used only for the clothes of the wife and the infant. The wife had no other receptacle for her clothes. Four years after the marriage the husband became bankrupt, and his furniture was taken possession of by the trustee. The wife brought a petition for the restitution of the wardrobe as being *inter paraphernalia.*

The Sheriff-Substitute and Sheriff held that in the above circumstances it was not so, and refused the prayer of the petition.

The petitioner appealed to the Court of Session.

Appellant's authorities—*Dicks,* M. 5822; *Pitcairn,* M. 5825.

Respondent's authorities—Erskine, i. 6-15; *Hewatt,* Hume's Decisions, 210.

At advising—

LORD DEAS—It was quite right in the trustee to retain this article and not include it in the general sale. The question is whether this wardrobe is paraphernal or not. There has been no case of the sort for a considerable period. They were more common in old times, for the ladies of those days were very jealous of certain rights of this class. But the law on this subject was perfectly well understood, and I take it to be this—*First,* That those articles are in their nature paraphernal which are adapted for the use and enjoyment of the female spouse as distinguished from promiscuous use. *Second,* That articles of promiscuous use may be made paraphernal by being gifted to the wife before or on the day of the marriage, either by the husband or by friends, and either by express or implied gift, if they are not out of keeping with the rank of the recipient. It is with the first branch only that we have to do here. It is admitted that the wife's clothes are adapted for her own, and not for promiscuous use. It seems naturally to follow that she must have some place to put them in. If this wardrobe had been used by her alone from the beginning there could not have been the slightest doubt. The only room for doubt arises from the fact that it was used by both for the first three months. But it does not appear that at first the husband had any place to put his clothes in, and I do not think that this partial use by him for the first three months is sufficient to alter the legal character of the article. It is not suggested that it is inconsistent with the rank of the spouses. The case reported by Hume is quite different. There there was a quantity of furniture, of which the chest of drawers was an article. I am therefore for recalling the interlocutor of the Sheriffs, and granting the prayer of the petition.

LORD ARDMILLAN—I concur. I do not think that the occasional use by the husband here could destroy the paraphernal character of the article.

LORD MURE concurred.

The LORD PRESIDENT was absent.

The Court granted the prayer of the petition.

Counsel for Petitioner (Appellant)—R. V. Campbell. Agents—T. & W. A. M'Laren, W.S.

Counsel for Respondent—Lang. Agents—Campbell & Smith, S.S.C.

Saturday, February 5.

SECOND DIVISION.

[Lord Young.

M'GILL *v.* BELL AND OTHERS.

Process—Poor's Roll.

Circumstances in which the Court admitted to the benefit of the poor's roll a pursuer who was earning £1 a-week, and who had only one child residing in family with him, who was earning 6s. a-week.