Friday, June 11.

FIRST DIVISION.

[Lord Craighill, Ordinary.

YOUNG *v.* JOHNSON AND WRIGHT.

Process—Expenses—Objections to Auditor's Report—Fees to Counsel.

Held that fees which by indulgence of counsel, and owing to a client's poverty, have not been paid at the time, may subsequently be recovered from an unsuccessful opponent.

Wright, one of the unsuccessful defenders in the action reported *ante*, p. 545, objected to the Auditor's report, *inter alia*, that charges to the extent of £78, 8s. had been allowed for fees to pursuer's counsel, no such fees having been admittedly lent at the time. It was stated for the pursuer that the fees had not been paid owing to the pursuer's inability to advance money at the time.

Authority — *Tough's Trustees* v. *Dumbarton Water Commissioners*, May 14, 1874, 1 R. 879.

At advising—

LORD PRESIDENT—Mr Wright's first objection is founded merely on the fact that fees to counsel have not been paid. That is plainly a bad objection. The fees were not paid originally because the pursuer was in a poor condition in life and could not advance the money; and it has been sanctioned more than once as a rule of practice that an agent may in such circumstances, if counsel extend such indulgence, send the fees afterwards when the account of expenses has been paid by the opposite party. Mr Wright suggested that in such a case the agent might not send on the fees to counsel, having received them; I can only say that if an agent were found to have so acted, his name would not long remain on the rolls of Court, and that is the best security against such conduct.

Mr Wright's other objections are objections to detail, of which the Auditor is the best, and indeed the only judge.

LORD DEAS, LORD MURE, and LORD SHAND concurred.

The Court refused the objections for defender Wright.

Counsel for Pursuer—J. M. Gibson. Agent—D. Howard Smith, L.A.

Counsel and Agent for Wright—Party.

Saturday, June 12.

FIRST DIVISION.

[Sheriff of Lanarkshire.

BEATTIE (INSPECTOR OF BARONY PARISH) *v.* M'CULLOCH.

Poor—Relief—Able-bodied—Minor Pubes.

In a question of poor-law administration there is no general rule that a minor *pubes* is merely on account of his age, not to be considered an able-bodied workman, but each case is to be determined according as the particular applicant for relief is or is not shown to be fairly embarked in a trade from which he may earn a livelihood.

A lad sixteen years old, who was considered by a medical man not to be in a condition to look after himself although in good health, had, six months before applying for relief, been for three months in a bottle manufactory at six shillings a-week, but had on no other occasion before or since been in work of any kind. He was discharged from the bottle-work owing to a strike, and had since been unable to find employment in that trade. *Held* that he was not in the position of having been fairly established in a trade, and therefore that he was a proper object of parochial relief.

This case related to a claim for relief from the Barony Parish, Glasgow, by John M'Culloch, a boy aged sixteen. The inspector stated "that he refused relief because the applicant is a young and strong able-bodied man, and has for some time been supporting and is now able to support himself, and is therefore not a proper object of parochial relief." M'Culloch denied that he was "able to support himself. Admitted he is young, being sixteen years of age. Explained that he has a mother and a sister deriving relief from the poorhouse. Admitted he worked in a bottling-store for three months."

The following was the proof in the case:—"John M'Culloch, the pauper, aged sixteen, sworn—I do not know the day when I was born. I am older than my sister, who is fifteen years of age and two months. I was working in a bottle-house a good while since—six months since. I was there for three months. I was getting 6s. a-week. The bottle-blowers came out on strike, and we all were put away. I have been looking for a situation of late, and there is no place to go to. I have been at two or three bottle-houses for work, and they do not need any just now. I could not get work. (Q) Are you in good health just now?—(A) I cannot complain.

"Dr M'Ewan, sworn—I do not know whether I have examined the pauper boy or not. I do not remember anything at all about the boy. I have a copy of a certificate that I gave, and I find the name is John M'Culloch, but I cannot say whether the pauper is the boy or not. Although the boy is in good health he requires attention, and he ought to be sent to the parochial board to inquire into the circumstances, as he is not in a condition to look after himself. He has no parents, and the parochial authorities would look

after him as a parent would do under the circumstances. *Cross-examined*—(Q) From his appearance what would you judge his age to be?—(A) If I am wanted to give medical evidence on the point I would have to examine him more closely, but I would say that he is very likely to be about sixteen or seventeen years of age.

"It is admitted that the younger sister of the applicant was born on the 15th July 1865, and that M'Culloch is in good health."

The Sheriff-Substitute (SPENS) found "that the inspector of poor has failed to prove that the applicant John M'Culloch is an able-bodied person, but, on the contrary, finds that the said applicant is not able-bodied, and therefore finds him entitled to relief." He added this note:—

"*Note.*—The inspector of poor has not proved the age of the pauper. He is, however, a lad of apparently about sixteen. I know of no authority for holding that a lad of this age is an able-bodied man; indeed, a lad of sixteen is not a man in the eye of the law; and the law which has established that no able-bodied man is entitled to relief, either for himself or family, is, I take it, wholly inapplicable to the present case. The rule of law as to able-bodied poor proceeds, I understand, upon the assumption that a man with no physical or mental disability is always able to get some kind of work. If the particular trade which he is working at becomes slack, he can always go elsewhere, it is presumed, and get work of some kind or other; but this presumption is based upon his having come to his full size and strength, *i.e.*, that he is a man. It is perfectly clear that an apprentice lad whose particular trade has come to a standstill has not equal power of getting work elsewhere that a full-grown man has. The definition of an able-bodied man, namely, as a man even in bad health, but yet able to earn wages, as given effect to in *Jack* v. *Thom*, December 14, 1860, 23 D. 173, and other cases, is not, as I have said, a definition applicable to a lad who is not a man. In this case the lad explains that he has tried to get work of some kind and failed; and as there is no evidence to rebut this his statement must be assumed to be true."

The defender appealed to the First Division of the Court of Session, and argued—After fourteen years of age the test for deciding who were and who were not able-bodied workmen was not age, as the Sheriff had laid down, but ability to work. Here the applicant was able to work, and had been in work, which he had given up owing to slackness in trade, not because he himself was physically unfit.

Authorities—*Petrie* v. *Meek and Hunter*, March 4, 1859, 21 D. 614; *Jack* v. *Thom*, December 14, 1860, 23 D. 173; *Craig* v. *Greig and Macdonald*, July 18, 1863, 1 Macph. 1172; Act 1424, c. 25; 8 and 9 Vict. c. 83, sec. 68.

The respondent was not called on.

At advising—

LORD PRESIDENT—If the question here had been whether we should adhere to the Sheriff-Substitute's interlocutor, I am very clearly of opinion that we could not, because that interlocutor contains a finding in which he lays down a general principle in which I cannot concur. The finding is that the applicant is not an able-bodied man, and is therefore not entitled to relief, and it proceeds on this ground simply, that being a boy of sixteen years old he is not an able-bodied workman. Now, that appears to me to be a most dangerous doctrine which I cannot affirm, and therefore I cannot agree with the Sheriff-Substitute in his ground of judgment. But while I am of this opinion, I do concur in the result at which he has arrived in the special circumstances of this case.

The parochial board has refused relief "because the applicant is a young and able-bodied man, and has for some time been supporting and is now able to support himself, and is therefore not a proper object of parochial relief." Now, if that statement had been well founded in fact, we should have given effect to it, but when we turn to the evidence we find that not only is it not supported, but, on the contrary, I think it is completely disproved by the evidence. For while it is not every boy of sixteen who is not an able-bodied workman, one can easily conceive of circumstances in which a boy or lad of such an age may not be an able-bodied workman, and so may be a proper object of parochial relief. When a young man, no matter what his precise age may be, is once fairly embarked as a workman in any trade, and is in receipt of regular continuous wages, he has attained to the position of an able-bodied workman; and after that it would be quite impossible to hold that he ceases to be an able-bodied workman merely because there happens to be a slackness in the particular trade to which he has devoted himself. But that is not the account which the applicant gives of himself. He says—"I was working in a bottle-house a good while since—six months since. I was there for three months. I was getting 6s. a-week. The bottle-blowers came out on strike, and we all were put away. I have been looking for a situation of late, and there is no place to go to. I have been at two or three bottle-houses for work, and they do not need any just now. I could not get work." Now, therefore, this young man upon his own statement—and that statement is the inspector's evidence—has been in work for a period of three months, but that is the only occasion on which he has been in work, and his wages for that time were 6s. a-week. That does not appear to me to be an established trade by any means. It shows that he is willing to work, but that is all that you can say. Then the evidence of the doctor corroborates this, for he says that although the boy is in good health yet he requires attention, and is not in a condition to look after himself. In these circumstances I think that the inspector has failed to prove his case, and that the judgment of the Sheriff-Substitute, although not the grounds of that judgment, should be affirmed.

LORD MURE and LORD DEAS concurred.

LORD SHAND—I concur. I cannot say that I have much objection to the interlocutor of the Sheriff-Substitute, the findings in which are confined entirely to the individual case. But in his note he puts these findings on a ground with which I cannot agree. Age is not the element which will necessarily determine a question of this kind. It may be that at the age of 14 or 16 the claimant is so unformed or immature in

physical condition as to be unable to work for his livelihood, or at least to earn a livelihood. On the other hand, he may at that age have physical strength and health to enable him to work, and ability to earn wages sufficient to support him, and if it be shown either that he can get work to enable him to support himself, but will not have it, or that he has had work for such a time continuously as to show that his ability is of a permanent character, then although he may, from want of trade or want of will, be out of work for the time, I should regard him as a workman and able-bodied. There is nothing amounting to this in the present case. The lad about six months before the date of the application was engaged for about three months in a bottle-house earning wages of six shillings a-week, and this seems to have been the only occasion on which he earned anything for his own support. I cannot concur in the view that this single circumstance, and the fact that the applicant, who is really without parents to look after him, is 16 years of age, and in good health, is sufficient to bring him within the definition of an able-bodied man. In the special circumstances of the case, therefore, I agree in the result at which the Sheriff-Substitute has arrived, while I do not concur with him in thinking that in other circumstances a lad about or somewhat above the pursuer's age might not fairly enough be held to be able-bodied.

The Court recalled the interlocutor of the Sheriff-Substitute, and found that in the special circumstances of the case the respondent was for the present entitled to relief.

Counsel for Appellant—J. Burnet—Ure. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Respondent—J. A. Reid—G. Burnet. Agent—Thomas M'Naught, S.S.C.

Tuesday, June 15.

FIRST DIVISION.

FORLONG, PETITIONER.

Process—Petition—Authority to Change Surname.

A petition for authority and sanction to change his surname by a person holding no public office *refused* as unnecessary.

Thomas Alexander George Forlong of South Erins, in Argyleshire, petitioned the Court to authorise him to assume and bear the name Thomas Alexander George Gordon, and to ordain the petition, with the deliverance thereon, to be recorded in the Books of Sederunt. The petitioner's mother Mrs Craufurd Gordon or Forlong, who died on 17th March 1880, had appointed him her sole residuary legatee, with the special request that he should assume the surname of "Gordon" instead of "Forlong" in remembrance of her. Mr Forlong held no public office, but he stated that he was "possessed of heritable property and other funds and effects acquired by him under the surname of 'Forlong,' and titles and other writs were conceived in his favour under that name. He had also been appointed as trustee and executor under various writs, and had been confirmed executor under the name of Forlong. He was also a commissioner of supply for the county of Argyle under the name of 'Forlong.' Moreover, that he was married, and had issue of the marriage, the births of his children being all registered under the name of Forlong." In these circumstances the petitioner was desirous to obtain the sanction and authority of the Court "to carry out the said request by assuming the name of 'Gordon' instead of 'Forlong,' so that no doubt of the identity of the petitioner or of his family might thereafter arise; and that full effect might be given to titles, trusts, and other writs conceived in his favour under the name Forlong, and to deeds and other writs executed by him or his said family, or any of them, under the surname Gordon; and to acts and votes of the petitioner as a commissioner of supply, trustee, executor, or otherwise." He stated that such authority had in many cases been given by the Court, and cited two instances in particular—those of *Sempill*, 30th June 1757, and of *Mrs Elizabeth Grant and others*, 10th June 1841—where the Court sanctioned a change of name by parties holding no public office. The Court having taken time to consider the petition, it was put out in Single Bills for advising.

At advising—

LORD PRESIDENT—The petitioner here asks the Court to authorise the alteration of his name from Forlong to Gordon. From the time when I first read the petition, I felt great doubt whether we have any proper jurisdiction in the matter. The petitioner holds no office under the Crown, nor any public office at all. The only reason why he desires to change his name is that the lady from whom he has derived considerable property expressed a wish that he should do so. Now, very many people change their names on coming to successions—*e.g.*, heirs of entail—and if we were to grant the prayer of this petition we might have all such heirs of entail bringing similar applications for authority to change their names in terms of the deed of entail. That would be quite a novelty.

The petitioner refers to two precedents, and says there are many others, but he does not tell us what they are. One of these is more than a hundred years old, and occurred at a time when the Court was much more disposed to extend its jurisdiction than it is now; and though the other is more recent, it does not appear what induced the Court to grant the application. On the best consideration which I can give to the matter, I think it would be unwise, if not absolutely beyond our power, to entertain this application. The petitioner may, however, consider how far the Lyon King-at-Arms might be able to give him any aid.

LORD DEAS—I am of the same opinion. I do not see what is to hinder the petitioner changing his name if he likes. Many people do so without our authority, and if we were to grant this application it might throw doubt on the present practice.

LORD MURE—This case is just the ordinary one where parties make a family arrangement as to a change of name on succession. It is frequent in cases of entail, and it is not necessary to come here for authority to carry such an arrangement into execution.