Saturday, July 3.

FIRST DIVISION.

[Sheriff of Lanarkshire.

BEATTIE *v.* SCOTT.

Poor — Relief — Lunatic — Able-bodied Married Woman.

Held that a husband's confinement in a lunatic asylum as a pauper lunatic did not thereby render his wife a fit object for parochial relief, she being able to work and having no children.

This was an appeal from the Sheriff Court of Lanarkshire at Glasgow in an application for parochial relief made by Mrs Mary Paterson or Scott against Peter Beattie, Inspector of Poor of the Barony Parish of Glasgow, on behalf of the parochial board of that parish. Relief was refused on the ground that the applicant was a young and able-bodied woman, in good health, and having no dependents. In answer it was denied that the applicant was able-bodied, and stated that she was a woman of delicate constitution, and that she had been unable for five years to do any work beyond attending to her husband's house. It was further stated that in September last her husband was admitted as a pauper lunatic to Woodilee Asylum.

A proof was led in which the material facts brought out were as follows—The woman although not robust, was free from organic disease of any kind. Five or six years ago she had rheumatic fever, and was still at times afflicted with rheumatic pains. She had been in the poorhouse for four weeks, and when there had been able to engage in light work. She admitted that although unable to perform heavy she could undertake light work. She had no children, and was not impotent or maimed in any way.

The Sheriff-Substitute (SPENS) found that the applicant was an able-bodied married woman, that her husband was presently chargeable to the Barony Parish of Glasgow, and that as matter of law she was legally entitled to relief. He added the following note:—

"*Note.*—It appears that the applicant some years ago suffered from rheumatic fever, but the medical evidence shows that there is nothing organically wrong with her. She is certainly not a strong or robust woman, and it appears in evidence that she was sometimes assisted by her neighbours in scrubbing a floor, &c., on the ground of being thought delicate by them, as a friendly turn; but as matter of poor-law I am of opinion that she must be regarded as an able-bodied woman. . . .

"But the applicant being held to be an able-bodied woman, the question arises, although she has nobody to support except herself since her husband is in point of fact chargeable as a pauper to the Barony Parish—is the parochial board entitled to deal with her as separable from her husband, and to refuse her relief? The point, so far as I am aware, is a novel one, and seems to me of considerable importance. The husband is in this case a lunatic, but the case was argued to me on the footing that whatever the description of infirmity which had rendered the husband liable to be supported by the parish, the wife, if without children and able-bodied, was not as matter of law entitled to relief from the parish. I will first discuss the general question thus raised, and thereafter advert to the question of whether the particular infirmity of lunacy raises any valid distinction.

"(1) There is no doubt that the woman, if a widow, would not be legally entitled to relief; and I take it also that a deserted wife, able-bodied and without dependents, and whose husband was not chargeable to a parish, would also not be legally entitled to relief. The fact, however, of the applicant being the wife of a pauper presently chargeable to the Barony Parish seems to me to raise a wholly different question, the consideration of which must be viewed with reference to the effect of the marriage relationship, and the decisions in connection with poor-law questions which have proceeded upon the effect of the marriage tie. It has been recognised in various decisions that, *stante matrimonio*, a married woman cannot have a settlement apart from her husband. (See, among other cases, *Macrorie* v. *Cowan*, March 7, 1862, 24 D. 723; and *Palmer* v. *Russell*, 10 Macph. 185). In the case of *Barbour* v. *Adamson*, Lord Cranworth (Lord Chancellor), in moving that the judgment of the Court of Session be reversed (and Lord Brougham concurred), said—"Both in England and in Scotland there was no positive statute law making any provision as to derivative settlements; but though there was no statute law, the Courts held such settlements were necessary to be understood. It was assumed that the wife must be with her husband; that children must remain with their father; that any settlement gained by him was gained not for himself alone but for all his family." . . . . The result of these authorities seem to me to be that an able-bodied married woman is regarded as her husband's dependent, and her *status* is lost in his. And where the husband has become chargeable to the parish through bodily infirmity, that the parish is not entitled to separate the wife from him, and refuse her relief while maintaining him.

"(2) But it is said, *esto*, this is sound law as regards chargeability through bodily infirmity; where there is mental infirmity there must of necessity be separation between the husband and wife, and she is to be regarded *in pari casu* with a widow or divorced wife; and further, the distinction made by lunacy is one which has been recognised by the decisions of the Court. In the first place, lunacy does not operate as divorce, and as matter of fact the wife's settlement and *status* still remain merged in those of her husband. In the second place, the fact of his lunacy and his chargeability to the Barony Parish undoubtedly pauperises him; and if it pauperises him, the grounds I have adverted to in the preceding paragraph as to her being necessarily a dependent would seem equally to pauperise her. In the case of *Palmer* v. *Russell* it was held that a married woman who lived apart from her husband, and who became chargeable as a pauper lunatic, did not thereby pauperise her husband. The Lord President said—"It is the general rule that every pauper lunatic shall be sent to an asylum. That being so, when a married woman comes to be a lunatic, being the wife of a labouring man, this difficulty occurs—he himself is not

a proper object of parochial relief, but the law takes away his wife from his family and sends her to be maintained at a lunatic asylum, at an expense far greater than he can bear. It is reasonable that the law which deprives him of his marital rights, should provide for the maintenance of the wife in the asylum, the confinement in which is prescribed on grounds of public policy.' That then is the ground for holding that an ordinary labouring man is not pauperised by his wife's lunacy and consequent chargeability; but the converse by no means holds. The lunatic wife, on grounds of public policy, is removed from the husband's house and taken to the asylum of the parish; but when he becomes a lunatic he also necessarily becomes a pauper, and unless the law is to step in and say—which so far as I am aware, there is no authority for holding — the lunacy of the husband makes the wife *sui juris quoad* poor-law questions, then she still remains the dependent of her husband, and his pauperisation makes her also a pauper."

On appeal the Sheriff (CLARK) adhered and stated his grounds of judgment in the following note:—

"*Note.*—I have had very considerable difficulty in deciding this case, and have made every inquiry which I conveniently could into the decisions and the practice which has hitherto prevailed, but have been unable to obtain any direct light on the subject. On the fullest consideration it seems to me that the case depends simply on the principle that when a husband is pauperised, his wife also becomes chargeable to the parish—the wife taking the *status* of the husband, and being in contemplation of law one person with him. The only exception I can well see to the operation of this principle would arise where a woman had separate estate of her own, which could not be made responsible for the debts and obligations of her husband, and out of which she might be able to provide for her own maintenance. No element of that kind exists in the present case. An attempt was made on the part of the defender to draw a distinction between the case where a husband was received as a pauper into the poorhouse, and one like the present, where he is lodged at the public expense in an asylum. It was said that in the former the woman was also entitled to be taken into the poorhouse, because the husband and the wife were not to be separated, but that this rule did not apply where, from the nature of the disease by which he was pauperised, a separation between him and his wife was inevitable. I am not able to give effect to this distinction. The ground upon which, where a husband is taken into the poorhouse, the wife must also be provided for by the parish, is not that the parties are not to be separated, but that they are regarded as one person in law, and that the husband being pauperised the wife must be held to be so also."

The Barony Parochial Board appealed to the Court of Session, and argued—(1) The principle that *stante matrimonio* husband and wife are one is not here applicable. No doubt the settlement of wife and children is the settlement of the father, but in every case you have in the first instance some one who is a proper object of relief. Given a person entitled to relief, then arises the question who must grant it. It has never yet been held that able-bodied majors are pauperised by any person connected with them. The cases quoted in the Sheriff-Substitute's note do not carry the principle of non-separability so far as the Sheriffs hold. In the case of *Palmer* v. *Russell* (quoted *supra*) it was held that the pauperisation of the wife did not necessarily entail pauperisation of the husband. In *Knox* v. *Hewatt*, 8 Macph, 397, the doctrine of non-separation in the family was departed from in the case of a daughter 17 years of age and her father. The true test to be applied in the case is, whether or not the applicant is a fit object of relief? (2) Case of insanity raises no exception to the rule applicable here. The principle laid down in *Palmer* v. *Russell* goes a long way to support this view. But the lunacy of the husband, although not equivalent to divorce or desertion, does make a break in the marriage tie. It throws to the ground, so long as it lasts, the husband's curatorial and marital rights.

Argued for respondent—(1) The facts here disclosed in evidence showed that the applicant was not able-bodied in the sense of being able to earn her own subsistence. (2) An able-bodied wife deserted and left with children is entitled to relief for herself and them, and the principle of non-separation applied in such a case is applicable universally. The case of *Hay* v. *Scott*, 15 S. 67, shows that desertion is in matters of poor-law equivalent to the death of the husband. Therefore it will not do to refer to a deserted woman as in *pari casu* with one whose husband is, as here, removed from her by force of law.

At advising—

LORD PRESIDENT—The question before us is whether the claimant is a proper object of parochial relief, and the first fact that we have before us is the finding of the Sheriff-Substitute, adhered to by the Sheriff, that this woman is an able-bodied woman, and that she has no children or encumbrance of any kind. Now, what is the ground upon which an able-bodied woman without either children or encumbrances can become a proper object of parochial relief? It is to me a very startling proposition to say that a woman is able-bodied and is yet a proper object of parochial relief. Of course, if her husband had become a proper object of parochial relief in the ordinary sense of the term, if he had been struck down by illness which entirely incapacitated him from working, he would have become a proper object of relief, and his wife and family would have become pauperised with him; but in this case the special fact on which the whole case turns is this, that the husband is a pauper lunatic in confinement in an asylum. The wife, therefore, is practically *sui juris*, and the curatorial power and right of administration of the husband are in abeyance, so that she is for all practical purposes in the position of an unmarried woman. The law stated by the Sheriff, and which I cannot understand at all, is that there is no case in which a woman can be dealt with as a separate person to be judged of upon her own merits as to whether she is able-bodied or not unless she has a separate estate. Now I do not know any law for that. A married woman who is deserted by her husband, if she is an able-bodied woman and has no children, would, I apprehend, be obliged to work just like any other able-bodied woman, and would not be a proper object of parochial relief. I see

no reason why any married woman left to her own resources, but able to work, should her husband become incapacitated, or should she be left a widow, or should she be living separate from her husband under a contract of separation, should not earn her own subsistence. I cannot see why this able-bodied woman should be an object of parochial relief. If she had had separate estate the Sheriff seems to thiuk that would have been enough. But though she has no separate estate in one sense, yet she has a separate estate in so far as she is able to work and earn her own subsistence, and that is what the Poor-Law Act looks at in determining what is a proper object of parochial relief—Is she able to work to maintain herself as a woman of this kind should; and assuming that she is an able-bodied woman, the law applicable to the case is as clear as can be.

It has been urged by Mr Dickson that though she is in reality an able-bodied woman she is in very delicate health, and not able for heavy work. I think it is right to say that upon the evidence which we have before us this woman is in that state of health in which it becomes the duty of the inspector to look after her, and see that she does not fall into such a state of bad health that she will be unable to support herself. But as the case stands at present I do not see any such incapacity for work on the part of this woman as to make it necessary to extend the general rule to the effect of holding that this woman, if able to work for herself, should be considered and dealt with as a proper object of parochial relief. I am therefore of opinion that the interlocutors appealed against should be recalled.

Lord Deas—Upon what may be called the general doctrine I have no doubt any more than your Lordship has. If we assume, or if we find, that this woman is able-bodied in the sense of being able to perform some kinds of work which would be sufficient for her own maintenance, then I am of opinion that the position in which her husband is—viz., a pauper lunatic—does not free her from the necessity of earning her own subsistence. I think it is just the same case in point of law as if she were deserted by her husband, in which case there could be no doubt, I think, that if she was perfectly able-bodied she would be bound to earn her own subsistence, and she might be able even to make money. There is no question or dispute about the state of this woman's health. She is not a strong woman—in fact she is in such delicate health as to prevent her from doing all kinds of work, and it is quite possible that this general incapacity prevents her from doing anything like heavy work, but so far as I can see she is perfectly able to do housework of the lighter kind, and I may say that I do not think she is so much incapacitated as to be unable to earn her own subsistence. It was a pity that when she was doing some little work in the poorhouse, scrubbing floors and the like, almost sufficient to pay for her maintenance, she was not allowed to continue to do so. I do not think this is a favourable case by any means in which to raise a general question of this kind, and I therefore entirely agree that the inspector is bound to look after this woman. I also think it would have been well to let her remain where she was, and not raise the general question with a delicate woman like this. I think the inspector had power to leave her where she was, and his duty now is to take care that she does not turn out not to be able-bodied in the full sense of the term.

Lord Mure—Looking to the law of this case, and assuming this woman to be able-bodied—and in point of fact I think she is so—I think the state of the law is quite plain that she cannot be looked upon as being in any other position than that of a widow with no family. Now, then, the question comes to be, whether a person so situated as this woman is entitled to parochial relief. Her husband has become a lunatic, and is confined in an asylum, and she is said to be, and I assume her to be, an able-bodied woman. There is no rule of law laid down in any of the decisions dealing with cases of separation of husband and wife to the effect that a woman separated from her husband from whatever cause, and even though he himself may be a pauper, is entitled as a matter of right to parochial relief, and I do not think it would be a rule that should be acted on supposing it to exist. In judging whether a person is a proper object of parochial relief the test which the law applies is this—Is the applicant an able-bodied person? And if he is, then he is not a proper object of parochial relief. And so in this case, this woman, although not a strong woman—for she has been ill of rheumatic fever—cannot be said to be anything else than able-bodied, and so is not entitled to be looked on as a proper object of parochial relief. That is the law as I take it, and it does not appear to me to make any difference that she is separated from her husband because he has become insane. She is not totally disabled, but on the contrary she can do certain kinds of work for herself, and the mere fact that her husband is a pauper does not make her a pauper too, because in the ordinary case the position of the woman is not considered at all in disposing of the husband's application for relief. The husband is the pauper and the wife goes with him in the ordinary case.

But although this woman is not an object of relief at present, I also think the inspector will require to keep his eye on her and take care that she does not from illness become in want of proper parochial relief.

Upon the evidence to which I have briefly adverted, and upon the law, therefore, I am of opinion with your Lordships that the interlocutors of the Sheriff-Substitute and Sheriff are wrong and ought to be recalled.

Lord Shand—It appears to me to be very plain that the Sheriff-Substitute and Sheriff in this case have taken a very erroneous view of the effect of the decisions upon which their judgment proceeds. There can be no doubt that the effect of these decisions really is, that the settlement of a woman follows the settlement of the husband, and I do not think the decisions go further.

On this question being ascertained where the settlement is, the question must always remain,—Is the pauper a proper object of parochial relief? I am clearly of opinion, on the basis of these interlocutors of the Sheriffs, which find that this applicant is an able-bodied woman without incumbrance, that she is not a proper object of parochial relief. The case is in no degree the same as if the husband was struck down by illness and thereby pauperised, not only in himself, but

in his wife and family, for in that case the invariable effect is that the wife has thereupon to attend to him and to those in the house with her, and he becomes a proper object of parochial relief with his wife and family in addition. A wife in such a position could do very little for the support of her husband, and any earnings she can make must be applied to the maintenance of herself and her husband and family. In this case the circumstances are quite different. The wife is entirely freed from any liability to maintain her husband out of her earnings, and she is just as much the party who is bound to maintain herself as a widow or deserted wife or an unmarried woman, and therefore it appears to me that the simple answer to the question whether this woman is a proper object of parochial relief is the fact that she is an able-bodied woman. I am therefore of opinion that the inspector was right in not treating this woman as a proper object of relief. I am disposed to think with the Sheriffs that she is an able-bodied woman, but in this sense only, that though she is unfit for heavy work she is quite able for the performance of light work from which she can derive means for her subsistence. But it is said for her that though she is able to perform light work she is not able, owing to her weak health, having had an attack of rheumatic fever some years ago, to continue to do so for any length of time. Even taking that statement as correct, I do not think she is a proper object of relief, although she may be a fitting object for casual relief. It is proper and necessary to look at the general principle of the case and to decide it on the general principle, viz., that she is an able-bodied woman and not a proper object of parochial relief, and being of that opinion I agree with your Lordships in the opinion that the interlocutors of the Sheriffs should be recalled.

But while I am of that opinion, I further think that the case is one in which the inspector should look after the woman and give her such casual relief from time to time as her circumstances may render necessary.

The Court recalled the interlocutors of the Sheriffs and found that the applicant was not entitled to relief.

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

Counsel for Respondent—Robertson—Dickson. Agent—Thomas M'Naught, S.S C.

Saturday, July 3.

SECOND DIVISION.

[Lord Craighill, Ordinary.

MP.—GOWANS AND OTHERS.

Process—Multiplepoinding—Competency—Beneficiary.

Held that a beneficiary under a trust who disputed with the trustees as to the validity of the claim of one of the creditors of the trust, could not competently bring an action of multiplepoinding in name of the trustees to settle the question.

John Robb, a builder and contractor at Tynecastle, Dalry, Edinburgh, died on 30th October 1875, leaving a trust-disposition and deed of settlement in favour of James Gowans and others as trustees, by which he conveyed to them his whole estate, giving them full power to carry on his business. The trustees accordingly entered on the management of the estate on his death, and proceeded to realise it though it was heavily burdened with debt. This they did at fair prices with the exception of two tenements of houses situated at Tynecastle, for which they were unable to find a purchaser. As it was evident that the estate would not pay the ordinary creditors in full, and as there was thus a danger that the widow and children might be left wholly unprovided for, they arranged with all the creditors except one that they should receive six and eightpence per pound in full of their claims. In consequence of further embarrassments, however, it was found impossible at once to raise the money. Towards the end of 1879 they received an offer for the tenements at Tynecastle of £4000, which they accepted, and the result of this improved condition of the trust-funds was that they were enabled to arrange with most of the creditors to accept 10s. per pound as in full of their claims. On this footing most of the claims were discharged, the only creditor whose claim was of considerable amount as yet unpaid being Mr Gowans, whose claim amounted to £1010, 17s. 2d. This claim was made up of six bills granted by the truster amounting to £955, 12s. 9d., and an open account due by him at the date of his death of £55, 4s. 5d. In this claim Mr Gowans had agreed to accept the composition of 10s. per pound.

Mrs Robb, the widow of the truster, in virtue of her interest in the fund *in medio* under the terms of her husband's trust-deed, and her sons in virtue of their legal rights, disputed the claims of Mr Gowans, and raised an action of multiplepoinding in the name of the trustees as pursuers and nominal raisers against the beneficiary and the trustees, and pleaded—"(3) There being no foundation for the claim of James Gowans, the trustees have no right to retain the funds in their hands to meet the same, or to pay the claims, in the face of the real raisers' objections to such claims."

The trustees in their third plea-in-law pleaded that the action was incompetent, in respect—(1) That *ex facie* of the summons there was no double distress. (2) That the averments in the condescendence contained only the assertion of a claim against the holders of the fund which might have formed the ground of an ordinary petitory action.

The Lord Ordinary (CRAIGHILL), in respect of the decision of the Inner House in the case of *Kyd* v. *Waterson*, recently pronounced, found that from the statements on the record there had been no double distress, and therefore dismissed the action. His Lordship appended the following opinion to his interlocutor:—

"*Opinion.*—I have listened with great attention to the arguments advanced on both sides, and have been somewhat reluctantly led to the conclusion I have come to. Notwithstanding all that has been so ably presented by Mr Guthrie, I cannot see that there is any distinction between this case and the case of *Kyd*