Thursday, January 6.

FIRST DIVISION.

[Sheriff-Substitute of Lanarkshire.

BEATTIE (INSPECTOR OF POOR OF BARONY PARISH, GLASGOW) *v.* WALLACE (INSPECTOR OF POOR OF GOVAN) AND HIGHET (INSPECTOR OF POOR OF MUIRKIRK).

Poor—Residential Settlement—Act 8 *and* 9 *Vict. cap.* 83, *sec.* 76.

The wife and family of a marine fireman resided for four and a-half years in a certain parish. During a period of over six months immediately previous they had occupied lodgings in the same parish. Through the whole of these periods the husband had visited them from time to time on return from his voyages, and had sent his wife allotments of his pay. He having subsequently become insane, *held* that the time during which his family occupied the lodgings must be taken into account in computing the residence necessary for his acquisition of settlement in said parish, and that he had therefore acquired a settlement by residence there, and was chargeable thereto.

Observed per Lord Shand, that it would make no difference in the legal result of the case whether the lodgings were taken by himself for his family, or by his wife, he subsequently adopting her act.

Andrew Wallace, Inspector of Poor of Parish of Govan Combination, raised a Sheriff Court action against Thomas Highet, Inspector of Poor of the Parish of Muirkirk, and Peter Beattie, Inspector of Poor of the Barony Parish of Glasgow, concluding that the defenders, either or both, should relieve him of all past or future payments for behoof of an insane pauper named David Ross.

From the proof which was led in the case it appeared that Ross was a marine fireman, that he had been born about 1838 in the parish of Muirkirk, and had married Jane Lindsay in 1862. In the end of 1872 his wife and family went to lodge with a Mrs M'Inally, whose house was in Barony parish, and stayed there till the following April, being visited by Ross on the two occasions of his return from sea during that period. In April 1873 they all removed to lodgings in the house of a Mrs Devine in the same parish. There was some conflict of evidence as to whether these lodgings were taken by Ross himself or by his wife. Mrs Devine's evidence on the matter was as follows:—"I know the David Ross referred to in this action. They came from Mrs M'Inally's, next close to my house. I think they came to me in April. They would be with me from April to June of the following year. It was David Ross who took the lodgings with me. I can't say whether he was often at home while they stayed with me, but she got his money all the time he was away. Her husband was at home sometimes. From my house they removed to Clyde Street. They had no furniture in my house except bedding. *Cross-examined.*—Mrs Ross had the privilege of the kitchen while she stayed in my house. She did not work outside. I can't say how often her husband was with her, but I know he was home several times. She drew his money all the time he was away. I think he would be more away than at home." On 6th June 1873 Mrs Ross took a house in Clyde Street, Anderston, also in Barony parish, where she and the children, and also Ross when he happened to be at home, lived four and a-half years, till December 1877. During the whole period from 1872 to 1878, with slight exception, Ross supplied his wife regularly with allotment-notes for half his pay. After leaving Clyde Street the Ross's went in 1878 to live in Govan parish, and subsequently quarreled and separated. In July 1879 Ross became insane and chargeable to Govan Combination, which now sued for the maintenance of him and his youngest child, the rest being self-maintaining — Muirkirk being sued as his parish of birth, and Barony on the ground that he had acquired a residential settlement there which was not lost at the time of his chargeability

The Sheriff-Substitute (Erskine Murray), after findings in fact, found, "on the whole case and in law, that the pauper David Ross acquired a residential settlement in the Barony parish which was not lost at the date of chargeability," and therefore assoilzied Muirkirk and decerned against Barony parish.

He added the following note—"The point whether a sailor can acquire a residential settlement by holding as tenant a house of his own, in which he is only personally present at intervals between his voyages, was finally settled in the affirmative by the whole Court, only two dissenting, in the case of *Greig* v. *Miles and Simpson*, July 19, 1867, 5 Macph. 1132. But the present case offers certain differences from that of *Greig*, which fall to be considered. . . . .

" . . . If David Ross acquired a residence settlement in Barony, it must be by counting, along with the above four and a-half years, part of the time that he and his family held lodgings at Mrs Devine's. Now, it has never yet apparently been held that a sailor can acquire a settlement by taking lodgings. That point has never arisen. In the only decided cases he was tenant of a house. . . . .

"But as regards Mrs Devine's, these lodgings were actually taken by David Ross for himself and his family. Further, it was more than a case of mere lodgings; it was practically a sublet of a room, for which the Ross's themselves supplied bedding. Altogether the habitancy there had a more permanent character, and being initiated and maintained by David Ross himself, the Sheriff-Substitute thinks that on the whole, though undoubtedly the question is a narrow one, it must be dealt with on the same footing as if David Ross had been a regular tenant there.

"On this footing, as five years and nine months elapsed between David Ross's taking the room at Mrs Devine's and his leaving Clyde Street, he must, in the opinion of the Sheriff-Substitute, be held to have acquired a residential settlement in the Barony parish."

Beattie for Barony parish appealed to the Court of Session.

Authorities—*Greig* v. *Miles and Simpson*, July 19, 1867, 5 Macph. 1132; *Moncreiff* v. *Ross*, Jan.

5, 1869, 7 Macph. 331; *Jackson* v. *Robertson*, Jan. 7, 1874, 1 R. 342.

At advising—

Lord Deas—I do not think it necessary to say anything in this case, except that the Sheriff-Substitute's judgment seems to me to be perfectly right both in fact and in law. It explains itself, and I have nothing to add to it.

Lord Mure—I think the Sheriff-Substitute is quite right. It is not disputed that the four and a-half years during which the house was taken in Clyde Street must be computed in calculating as to the acquisition of a settlement by the pauper, but the question is, whether the half-year immediately preceding is to be so calculated so as to complete five years of continuous residence? The defenders' evidence depends mainly on that of Mrs Devine, and it appears from what she says that David Ross, the pauper, came with his wife and family and took lodgings in her house in April 1872. She says—"I know the David Ross referred to in this action. They came from Mrs M'Inally's, next close to my house. I think they came to me in April. They would be with me from April to June of the following year. It was David Ross who took the lodgings with me. I cannot say whether he was often at home while they stayed with me, but she got his money all the time he was away. Her husband was at home sometimes. From my house they removed to Clyde Street. They had no furniture in my house except bedding. *Cross-examined.*—Mrs Ross had the privilege of the kitchen while she stayed in my house. She did not work outside. I cannot say how often her husband was with her, but I know he was home several times. She drew his money all the time he was away. I think he would be more away than at home." Into Mrs M'Inally's evidence as to the earlier period it is not necessary to go, if Mrs Devine's is sufficient; and I think the Sheriff-Substitute is quite right in holding substantially that the pauper by having placed his wife and children in Mrs Devine's house during his absence, and having occasionally visited it himself, made it his own house and that of his family.

Lord Shand—I am of the same opinion, and think it a very clear case. There is no dispute that for four and a-half years there was residence in Barony parish, but it is said that for the six months before that time residence has not been made out. The evidence seems to show that it was the husband who took the lodgings in Mrs Devine's house, where his family were accordingly placed; but I think it is of no consequence whether that was so, for if the wife took the lodgings, and her husband adopted the act, the legal effect would be just the same, and there is no doubt that he did adopt it. He placed his wife and family in the lodgings, he paid for their maintenance there, and he made it their home, and his own also on the occasions when he returned; and between April 1872 and June 1873 he seems to have resided there for several months. Now, the real test in cases of this sort is, where is the person's home as a matter of residence? I have no doubt that his home and that of his family was in Mrs Devine's house, and that that period must be included in calculating the residence necessary to the acquisition of a settlement.

Lord President—I am of the same opinion.

The Court refused the appeal.

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

Counsel for Respondent (Highet) and for Pursuer (Wallace)—J. G. Smith—J. A. Reid. Agent—John Gill, S.S.C.

HIGH COURT OF JUSTICIARY.

Tuesday, February 1.

(Before the Lord Justice-Clerk—Lord Moncreiff).

THE QUEEN'S ADVOCATE *v.* GRAY OR M'INTOSH.

Justiciary Cases — Indictment — Competency of Striking out Words contained in an Indictment.

Where it is proposed at a pleading diet to strike words out of an indictment, it is in the power of the Court to allow this to be done if the charge made is not thereby varied.

Barbara Gray or M'Intosh was charged with "culpable homicide, as also the culpable and wilful neglect and bad treatment of a child of tender age by a person who has the custody and keeping of it, whereby such child is injured in its health," in so far as a woman, named and designed, having been delivered of an illegitimate female child, "and you the said Barbara Gray or M'Intosh having, on or about the 10th day of August 1876, or within a few days thereafter, at the Royal Maternity Hospital, agreed to nurse and upbring the said child, in consideration of the sum of £22 sterling or thereby, then and there paid to you . . . . to enable you to do so in a proper and sufficient manner, and having, time and place last libelled, received the said child, and thus become her custodier and guardian, and it being your duty accordingly to maintain, upbring, and keep the said child in a proper, sufficient, and careful manner, and the said child being in a sound state of health when so received by you, you the said Barbara Gray or M'Intosh did, in breach of your duty as custodier or guardian aforesaid, in or near the house or premises at or near Firth, in the parish of Lasswade and county of Midlothian, in which you then resided, or at some other place or places to the prosecutor unknown, during the whole of the period from on or about the 10th day of August 1876 to the 29th day of November 1876, or part thereof, culpably and wilfully neglect to supply the said child with wholesome and sufficient food and clothing, and did feed her with improper and deleterious food, and keep her, or allow her to be kept, in a dirty and damp condition, and expose her, or allow her to be exposed, to cold, and otherwise fail to give her such care and attention as were necessary to preserve the health of a child of such tender age; by