

families, and exclude children attending schools within the Square. These minutes, in my opinion, and the usage following on them, define the pursuers' rights, and disentitle them to the declarator concluded for in the present action."

I am therefore for affirming the Lord Ordinary's interlocutor.

LORDS DEAS, MURE, and SHAND concurred.

The Court adhered.

Counsel for Pursuers—R. V. Campbell—Pearson. Agent—A. Kirk Mackie, S.S.C.

Counsel for Defenders—Trayner—Jameson. Agents—Fyfe, Miller, Fyfe, & Ireland, S.S.C.

Wednesday, December 19.

## SECOND DIVISION.

[Sheriff of Lanarkshire.

MUIR v. TWEEDIE.

*Parent and Child—Bastard—Filiation—Presumption—Admission by Defender of Intercourse with Pursuer.*

This was an action of filiation and aliment of a child born in November 1882. The pursuer and defender were fellow servants at a farm from Martinmas 1881 till the summer of 1882, and were the only servants on the farm. The pursuer alleged intercourse with the defender in January, February, and March 1882. The defender admitted intercourse with the pursuer on a single occasion in May 1882, being six months before the birth of the child. There was some evidence of familiarity between the parties in the spring of 1882, and also evidence of familiarity to which the witness who deposed to it could attach no date. The defender led evidence to show that the pursuer and the farmer in whose service the parties were, were on terms of improper intimacy in March 1882. The pursuer did not accuse the defender of the paternity till at least ten days after the birth, though she had an opportunity of seeing him.

The Sheriff-Substitute (BIENIE) assailed the defender. On appeal the Sheriff (CLARK) adhered.

The pursuer appealed, and argued that the admitted intercourse in May raised a presumption against the defender, which, taken with the opportunity at the date of conception, was as strong as the presumption arising from admitted intercourse prior to the date of conception, together with opportunity at that date—*M' Donald v. Glass*, 27th October 1883, ante, p. 45, and *Milne v. Thomson*, 24th October 1883, there cited. There was also strong evidence of familiarity, and the pursuer was entitled to complete the case by her oath.

The defender replied—No doubt the presumption from an admission of intercourse must be regarded as almost equally strong whether the admission applied to a term after or before the date of conception, provided there were opportunity at that date. It was still necessary, however, that the pursuer's should be an "unsuspicious deposition"—Lord Benholme in *Ross v. Fraser*, 13th May 1863, 1 Macph 783. In this case the pursuer's deposition was not reliable, and the case was therefore not proved.

The Court refused the appeal and affirmed the judgment of the Sheriff.

Counsel for Pursuer—Strachan. Agent—T. F. Weir, S.S.C.

Counsel for Defender—Sym. Agent—David Milne, S.S.C.

Wednesday, December 19.

## SECOND DIVISION.

Lord Lee, Ordinary.

ROBERTSON AND OTHERS v. PAROCHIAL BOARD OF MIDCALDER.

*Public Burden—Public Health (Scotland) Act 1867 (30 and 31 Vict. cap. 101), sec. 8—Powers of Parochial Board—Assessment.*

The parochial board of a parish in which there was a considerable village, acting as local authority, arranged to pay part of the wages of a scavenger to clean the village streets, the remainder being paid by the district road trustees. Held that such an arrangement was within the powers of the parochial board under the Public Health Act.

The village of Midcalder, situated in the parish of Midcalder, contained at the date of this action a population of 657, the population of the whole parish being 1698. The population was insufficient to make the inhabitants of the village to adopt the General Police Act (the Act 30 and 31 Vict. c. 101). The Public Health (Scotland) Act 1867, sec. 5, constitutes the parochial board of the parish the local authority thereof for executing the Act in such parishes. Under sections 16 to 30 of the Act the parochial board, as the local authority, are clothed with extensive powers in the way of prevention of nuisances, and for proceeding against the authors of the nuisance, to ordain them to remove it, or to pay the cost of its removal by the local authority.

Section 8 provides—"The local authority may, and where it shall be thought necessary by the Board [of Supervision] for the purposes of this Act, the local authority shall, appoint a sanitary inspector or inspectors . . . and make byelaws for regulating the duties of such inspectors."

For some years prior to 1878 the Parochial Board of Midcalder had employed a scavenger to clean the streets. He was paid partly by themselves and partly by the Road Trustees of the district. In 1878, after the employment had been intermitted for a short time, the Board resolved that an arrangement should again be made for the purpose with the surveyor of roads, the sum to be expended by the Board not to exceed 3s. 9d. per week, and it being understood that owners of property were not to be relieved of their responsibility under the Public Health Act.

This was an action by certain ratepayers, who were proprietors and tenants of property in the landward part of the parish, against the Parochial Board for declarator that the defenders were not entitled, as Parochial Board or local authority of