Friday, March 6.

SECOND DIVISION.

[Lord Fraser, Ordinary.

CAMPBELL (INSPECTOR OF KILMARTIN) *v.* MACFARLANE.

Poor—Lunatic Pauper—Advances in Relief by Parochial Board—Right to Repayment on Pauper acquiring Estate by Succession or otherwise—Lunacy (Scotland) Act 1857 (20 *and* 21 *Vict. c.* 71), *sec.* 77—*Lunatics (Scotland) Act* 1862 (25 *and* 26 *Vict. cap.* 54), *sec.* 15.

A parochial board is not entitled to repayment of sums expended by it on maintaining a pauper, whether lunatic or not, on his subsequently succeeding to means.

Observed that a parochial board when applied to for relief by a person who is a proper object of relief under the Poor Law Acts, must give relief unconditionally, and is not entitled to exact from him a disposition to means and estate which he may thereafter acquire.

Christina Macfarlane became chargeable to the parish of Kilmartin as a pauper lunatic in 1865, and was after that date maintained by that parish, the sum of £380, 13s. 9d. having been expended in her maintenance down to 18th December 1883. On 24th March 1880 John Bell, china manufacturer in Glasgow, died intestate leaving a considerable fortune. Christina Macfarlane was one of his next-of-kin, and so became entitled to a share of his moveable estate. A *curator bonis* (T. C. Hanna, C.A.) was appointed to her, and in January 1884 received in part payment of her share of the succession an *interim* payment of £600. This action was raised by the Parochial Board of Kilmartin to have her and her *curator bonis* ordained to repay the sum of £380, 13s. 4d. as the sum expended on her down to 18th December 1883. The pursuer averred that Macfarlane when taken charge of by the Board was and had continued to be a lunatic within the provisions of the Act 25 and 26 Vict. c. 54, sec. 15 (quoted *infra* in the opinion of the Lord Ordinary), and also referred to sec. 77 of 20 and 21 Vict. c. 71, Lunatics (Scotland) Act 1857, which provides that, "the expense incurred . . . for or in relation to the examination, removal, and maintenance of any lunatic shall be defrayed out of the estate of such lunatic, or if such lunatic has no adequate estate, and if such expense shall not be borne by the relations of such lunatic, then the lunatic shall be treated as a pauper lunatic, and such expense shall be defrayed by the parish of settlement of such lunatic, and the . . . party disbursing such expense shall be entitled to receive the same from or out of the parties or estate liable to defray the same as aforesaid."

The pursuer pleaded—"(1) The said Parochial Board having disbursed the sum sued for, for behoof of the said Christina or Christian Macfarlane, is entitled to repayment out of her estate. (2) The said estate being fully adequate to meet the present claim, the defenders the said Christina or Christian Macfarlane and her *curator bonis* are liable in payment thereof. (3) The pursuer is entitled under the provisions of the Lunacy Act, as well as at common law, and on a sound construction of the Poor Law Act, to decree as concluded for."

The *curator bonis* offered to repay all advances subsequent to the date when he received the £600, and pleaded—"(1) The defenders being under no obligation to repay the advances made prior to the date when the *curator bonis* of said Christina or Christian Macfarlane came into possession of funds belonging to his ward, should be assoilzied from the conclusion of the summons."

The Lord Ordinary (FRASER) pronounced this interlocutor—"Finds that the defender Christina Macfarlane became chargeable as a pauper lunatic to the parish of Kilmartin on the 1st January 1865, and has ever since been maintained as such by that parish: Finds that the payments made on her behalf for maintenance down to 18th December 1883 amount to £380, 13s. 9d.: Finds that Christina Macfarlane succeeded, as one of the next-of-kin of John Bell, china manufacturer in Glasgow, who died on 24th March 1880, to a large sum of money, and her *curator bonis*, the defender Mr Hanna, has received part payment thereof to the extent of £600, which he holds for behoof of the defender Christina Macfarlane: Finds in law that the defenders are not liable in repayment to the Parochial Board of any sums expended for the maintenance of the pauper prior to the 24th March 1880, but that they are liable for all sums expended on her maintenance subsequent to said date and down to 18th December 1883, being the date to which the claim is limited in this action, but this only in so far as the funds to which Christina Macfarlane has right as one of the next-of-kin of the said John Bell extend: Appoints the pursuer to lodge in process within eight days an account of the expense to which the Parochial Board has been put by maintaining the pauper from said date down to December 1883; and reserves all questions of expenses."

"*Opinion.*—The defender Christina Macfarlane became chargeable to the parish of Kilmartin as a pauper lunatic in the year 1865, and she has been maintained ever since by that parish. The Parochial Board have expended in her maintenance down to December 1883—a period of nearly nineteen years—the sum of £380, 13s. 9d., and they now demand repayment of that sum from the pauper and her *curator bonis*, on the ground that through the death of a relative on 24th March 1880 she succeeded to a considerable sum of money, sufficient to repay the expense of her past maintenance and to maintain her comfortably in future. The *curator bonis* has received, in part payment of her share of the succession, £600. He does not state at what date he received this, but he admits liability for the aliment of the pauper subsequent to the time when he did receive it. The right vested in the pauper at the date of her kinsman John Bell's death in March 1880, and from that date, and not from the actual date of the receipt of the money, the liability for future aliment arises. The *curator bonis*, however, refuses to recognise any liability for maintenance afforded to the pauper prior to his receipt of the £600, or at all events prior to March 1880, and the question now is whether the claim for prior aliment can be maintained.

"In the year 1857, Lord Ardmillan, in the case

of *Henderson* v. *Alexander*, 18th July 1857, 29 Jur. 559, decided that it could not, there being, however, this difference in the two cases, that the pauper in this case is a lunatic, whereas the pauper in the case of *Henderson* was not. Whether under the Lunacy Laws this makes any difference in regard to the rule to be adopted will be considered immediately.

"The Lord Ordinary has come to the same conclusion as Lord Ardmillan did; and if he were of the same opinion as to the grounds of judgment, it would be unnecessary to do more than to refer to the reasons assigned by the learned Judge for his decision. But as the Lord Ordinary does not concur in the grounds of judgment stated by Lord Ardmillan, it is necessary to say something more than merely express concurrence.

"Upon the general question (apart from the specialty of lunacy) decided by Lord Ardmillan, there is no direct authority other than his own decision. The Lord Justice-Clerk in the case of *Tevendale* v. *Duncan*, 20th March 1883, 10 R. 857, makes a remark, which was, however, *obiter*, to the effect that he can 'conceive an action brought under the Poor Law Act against a person who had succeeded to property for bygone aliment.' A more direct expression of opinion is given by Mr Dunlop in his Treatise on Parochial Law, chap. iv. sec. 104, p. 397, 3d ed., as follows —'Where a parish has alimented an individual having some property of his own, without taking from him a conveyance thereto, they cannot after his death have recourse upon his property, *except in the case of a fatuous person who can grant no conveyance—M'Lachlan*, January 25, 1828, 6 S. and D. 443. On the principle which led to this decision it would probably be held, that though a pauper succeeded to funds after having been for some time supported by the parish, he would not be liable to a claim at their instance for repetition of the sums advanced for his support.'

"This opinion seems to imply that the parochial board have a right to demand, as a condition of granting relief, a disposition *omnium bonorum quoad* both *acquisita et acquirenda*, and if such deed had been granted—or held in the circumstances to be the same as if granted—then the claim for repetition of the expense of maintenance of a pauper could be made as against any property to which he afterwards succeeded. The soundness of this opinion will be hereafter considered when the ground is ascertained upon which relief to paupers is granted.

"The view most commonly presented is that upon which Lord Ardmillan based his judgment. 'In every case,' said his Lordship, 'where the claimant has no funds or means, present or prospective, which can be made available, or of which a conveyance can be demanded, the relief is given as aliment to a poor and destitute person, on the footing of charity.' And the conclusion which the learned Judge reaches is inevitable—if his premises be correct—that repayment of anything given on that footing cannot under any circumstances be demanded.

"On the other hand, Lord Pitmilly (after he had retired from the bench) published a volume, headed 'Remarks on the Poor Laws and on the Method of Providing for the Poor in Scotland;' and in this volume he devoted a considerable space to the refutation of the view that the relief given in Scotland under the statutes applicable to the poor was based upon charity. He maintained these two propositions—'*First*, That the idea of the statutory law in favour of the poor being an attempt to enforce by Act of Parliament the natural duties of charity and benevolence, is altogether without foundation. *Secondly*, That the true ground-work of the Poor Laws is an inherent right in the poor, who have not the means of subsistence, to be supplied with the necessaries of life.' This, says Lord Pitmilly, appears to be the nature, and these the limits, of the right that belonged to the poor antecedently to the Acts of Parliament which established it. . . . This right, and the corresponding obligation, were evidently of such a description that they could not have been enforced without the aid of Acts of Parliament; but they were such that the Legislature was plainly called upon in duty, when the necessity for its interposition occurred, to establish and confirm them. This right and obligation, with their plain and well-defined limits, are to be considered as the true foundation of our Poor Laws.' And he further argued that 'if it should be held, as some have insisted, that the Poor Laws are rested on the idea of compelling, by the force of statute, the performance of the natural duty of charity, then do these laws assume powers which, according to the highest legal authorities, are opposed to rules that are fundamental and universally acknowledged' (Monypenny's Treatise on the Poor Laws, pp. 134, 142, 145).

"*Lastly*, Mr Dunlop throws over altogether these two views. The basis of the relief given is, according to him, not charity on the part of the parish, nor right on the part of the claimant, but simply State policy and expediency. 'I cannot,' said Mr Dunlop, 'concur with Lord Pitmilly's proposition that the poor have any right antecedent to statute, and forming the groundwork of our legislative enactments, but conceive that these are founded solely on policy and expediency.' His view is, that when the Legislature prohibited poor persons from obtaining relief by begging, there arose then a necessity for making a provision for them by a tax. 'Such right,' he adds, 'was not antecedent to the statutes, but arose from the enactments themselves, which rendered a provision for the impotent poor a necessary counterpart of the restraint imposed on their natural liberty and inherent right of appealing to the charity of their fellow men' (Dunlop's Parochial Law, 3d ed. p. 333).

"Lord Pitmilly founds his doctrine of right on the part of the impotent poor to demand relief upon a passage in Lord Stair's Institutions, part of which he adopts and part of which he ignores. 'Yea,' said Lord Stair, 'there is implied in property an obligation to give, in cases of necessity, to those who have not wherewith to exchange, and cannot otherwise preserve their life, but with the obligation of recompense when they are able, for human necessity doth also infer this; but it must be a real, and not a pretended and feigned necessity; so David, being hungry, ate the shewbread, though appropriated to God, and the disciples being hungry ate the ears of corn, and this is the ground of the obligation to aliment the poor, which though it also floweth from the obligation of charity, yet, as hath been shown before, that obligation hath

no determinate bounds, but is left to the discretion of the giver, not of the demander, and so can be no warrant for taking by force, and without the proprietor's consent' (Stair, ii. 1, 6.)

"From this mixture of Scripture and speculation as to the obligation of property, contained in the section of which this is a portion, Lord Pitmilly extracts the doctrine that property is under an obligation to give to the poor in all cases of necessity. And from this passage of Stair the pursuer of this action extracts the doctrine that all such givings must be recompensed when the people who receive them become at any time able to pay,

"Whether a person in possession of property is under an obligation to give relief which can be enforced by the civil law merely because he possesses property, is a question which Lord Stair answers very inconsistently. He lays it down expressly that no man can be entitled to take the property of another merely on the ground of charity, and he immediately proceeds to say that there is an implied obligation to give relief because of the possession of property. Now, this notion is one that has no support from authority or reason. No doubt a man is urged by the natural instincts of humanity, if he has the means, to save another from starvation; but because he has the means, there is no civil law (apart from positive enactment) that can compel him to afford relief to his starving brother.

"Lord Pitmilly entirely ignores, in the whole of his treatise, the doctrine of Stair, that the relief given must be recompensed when the recipient of it is able to do so. Indeed, to recognise this part of Stair's doctrine would be inconsistent with his view that the impotent poor had a right to relief according to the common law, and which right, he insists, the statutes did not give for the first time, but only declared it. Stair's notion of recompensing or reimbursing a parochial board who have afforded relief is one that has received the support of no lawyer or decision since his time, and is inconsistent with the nature of the gift.

"The three different opinions now stated are attempts to define the basis upon which relief to the poor is given, according to the law of Scotland. But the question cannot be so limited; for in this matter Scotland acted upon no different principles from those which lie at the root of Poor Law legislation in other countries. The details of Poor Law relief differ in different countries, but the object is the same, and the ground upon which it is granted is traceable to the same causes. M'Culloch (Political Economy, 376) dealing with the Poor Law, is of opinion that the relief given is not upon the footing of charity. The pauper, he says, 'is merely sharing in a public provision made by the State.' . . 'Without it,' he says, 'the peace of society could not be preserved; and those who possess property would, every now and then, have to defend it at the point of the sword, against myriads of paupers, impelled by necessity and made desperate by despair.' The history of the Poor Laws in Scotland illustrates this very forcibly. When the four proclamations of the Privy Council in the years 1692, 1693, 1694, and 1698 (which guided the administration of poor relief till the passing of the Act of 1845) were issued, Scotland was in the condition described by Fletcher of Saltoun—writing in the year 1698—'There are at this day in Scotland (besides a great many poor families very meanly provided for by the church-boxes, with others who by living upon bad food fall into various diseases) two hundred thousand people begging from door to door. . . . No magistrate could ever discover, or be informed which way one in a hundred of these wretches died, or that ever they were baptised. Many murders have been discovered among them them; and they are not only a most unspeakable oppression to poor tenants (who if they give not bread, or some kind of provision to perhaps forty such villains in one day, are sure to be insulted by them), but they rob many poor people who live in houses distant from any neighbourhood' (p. 144).

"The four proclamations were the result of this state of things. To afford relief to destitution and to repress begging was a matter of necessity if Government were to exist, and civil society be held together. It is unnecessary to search beyond this for the grounds of the relief given by the State by means of a Poor Law.

"Whichever of the views be adopted,—charity, or right, or State policy,—the result must, it is thought, be the same, with reference to the question here to be determined. Lord Ardmillan's decision was well founded upon the footing that relief is given as charity. The same decision must necessarily be given if it be held to be money paid in satisfaction of a right on the part of a recipient to demand it. And again, if it be State policy that is at the foundation of the law,—a policy inducing Government for its own security to grant relief from the general funds of the State, or from taxes raised within a limited parochial area,—the relief so granted is absolute and unconditional. There is no implied contract to the effect that upon the return of more prosperous times the money advanced for relief shall be repaid. Unless this conclusion were come to, the consequence would be, that the recipient of relief would be kept in a constant state of pauperism, or on its borders. A workman who had been made impotent in consequence of bad health, and who has received parochial relief, would, upon returning health and renewed ability to earn a weekly wage, be obliged to repay from his wages the whole surplus he could spare. If the claim of the pursuer in the present case be well founded, where the pauper has succeeded to a considerable sum of money at once, it would be equally good against the workman in the case supposed; and yet no-one has suggested that the claim of repetition should be carried to this extent.

"The Lord Ordinary does not say, however, that in no circumstances can an action be brought against a pauper for the expense of his maintenance. If, for example, a pauper is put upon the poor's roll, upon the footing that he is destitute, and it turns out that he has hidden away in a stocking the savings of years, in such a case the parochial board would be entitled to demand from these savings, which he had from the beginning of his alleged destitution, repayment of the moneys which they had expended on his behalf. This was a fraud on the part of the alleged pauper, of which neither he nor his representatives could take advantage. But this is a different case altogether from that of an ac-

cession of fortune, as we have now to deal with, during the period of destitution.

"The 71st section of the Poor Law Act (8 and 9 Vict. cap. 83) enacts,—'That where in any case relief shall be afforded to a poor person, found destitute in a parish or combination, it shall be lawful for the parochial board of such parish or combination to recover the monies expended on behalf of such poor person from . . . his parents or other persons who may be legally bound to maintain him.' From this it is argued, that if the relatives must repay the monies expended by the parochial board, so ought the pauper himself. But then this argument overlooks the rule that the parochial board is ultimately liable for relief given, only when the pauper has no means of his own at the time of application, or no relatives then bound and able to support him. If there be an existing source from which the pauper can obtain maintenance, without coming upon the parish, that must be drained dry before the parish can be burdened. But that is a totally different case from what we are here dealing with,—of a pauper who had nothing at the time relief was granted, either in the shape of property of her own or of relatives who could support her. The argument would be of force if a claim could be made against a relative of a pauper for repayment of the expense of the maintenance of the pauper for nineteen years, on the ground that the relative had succeeded at the end of that time to a fortune. But no such claim can be made against the relative if it could not be against the pauper himself. This is indeed *idem per idem*. The past aliment has been absolutely given, at a time when neither the relative nor the pauper had estate to meet it. Whatever may be the case as to maintenance given after the fortune has been acquired by either, the past maintenance grounds no claim for repetition.

"But now, adverting to the opinion of Mr Dunlop, and to the ground of judgment in the case of *M'Lachlan* v. *Kirk-Session of Stevenston* (25th January 1828, 23 F.C. 469), to which he refers, the question remains, whether the claim of the pursuer can be maintained because the pauper is insane. In the case of *M'Lachlan* a claim had been made by the Kirk-Session for the maintenance of a man who possessed some heritable property, and who also was burdened with an idiot son. The claim was made after the pauper's death, and the Court held in the circumstances that it could not be sustained. One of the grounds of judgment was, that seeing no 'disposition *omnium bonorum* was obtained, nor any demand made during the life of old M'Lachlan, the presumption was that any sums that had been advanced had been afforded as occasional aid on account of his idiot son, and without any view of repayment' (F.C. Rep. 474). Apparently the view of the Court was, that such a disposition could be demanded; and Mr Dunlop intensifies this opinion, and carries it further, when he says that if the pauper was fatuous, and therefore could not grant a disposition, the case must be treated in the same way as if it had been granted, and consequently that funds subsequently accruing to the pauper could be claimed in repayment by the parochial board.

"Now, with all respect to these opinions, it seems to the Lord Ordinary that a parochial board is not entitled to demand as a condition of granting parochial relief such a disposition *omnium bonorum*, and consequently if such a disposition be taken it would be ineffectual for its intended purpose. The claim to relief is absolute if the condition of impotency exist. It is not a case for bargaining between the two parties at all, and a refusal to grant such a disposition would not be a valid ground for refusal of relief.

"But it is further said, that the pauper being a lunatic, a claim for repayment may be sustained in virtue of the provisions of the Lunacy Acts. This is a mistake. These, it may be said at once, have no bearing upon the present question. The 77th section of 20 and 21 Vict. cap. 71, enacts that the expenses incurred by the superintendent of a Lunatic Asylum, 'or by any other party' [meaning private party] 'for or in relation to the examination, removal, and maintenance of any lunatic, shall be defrayed out of the estate of such lunatic, or if such lunatic has no adequate estate, and if such expense shall not be borne by the relations of such lunatic, then the lunatic shall be treated as a pauper lunatic, and such expenses shall be defrayed by the parish of settlement of such lunatic.' This enactment gives no right to the parish of settlement to recover from the pauper lunatic the expenses of his maintenance on his subsequent accession to a fortune.

"The 15th section of 25 and 26 Vict. cap. 54, deals with the case of dangerous lunatics, and provides for their apprehension and inquiry as to their condition. It lays the expense in the first place upon the parish where the lunatic was found; and then it proceeds as follows:—'But the parish so decerned against and paying such expenses and cost of maintenance shall have relief and recourse therefor against the lunatic and his estate, and any of his relatives legally liable for his maintenance, and also against the parish of settlement of such lunatic in the event of the parish in which the lunatic was apprehended or found at large not being the parish of settlement.' There is no provision here to the effect that the parish of settlement shall recover payment against the lunatic for his maintenance; nor is there any other section of the Lunacy Laws further bearing upon the question."

The pursuer reclaimed, and argued—On a sound construction of the 71st section of the Poor Law Act (8 and 9 Vict. cap. 83), the pursuer was entitled to repayment of the pauper's past maintenance. Lord Stair (Inst. i. 8, 2) stated that "entertainment to weak persons doth ever infer recompence according to the true value of the benefit received;" and the import of the decision in *M'Lauchlan* v. *Kirk-Session of Stevenston*, Jan. 25, 1828, 6 S. 443, was that whereas a claim for part maintenance would not be sanctioned in the case of a sane pauper, such claim would be admitted in the case of an idiot. In the adverse case of *Henderson* v. *Alexander*, July 18, 1857, 29 Jur. 559, the pauper was not a lunatic. The case of *Thomson* v. *Wilkie*, July 23, 1678, M. 419, was an authority in support of the pursuer's contention. But while the course of Scotch authority on the subject was meagre, the contention was sustainable under the Lunacy Acts 20 and 21 Vict. cap. 71, sec. 77, and 25 and 26 Vict. cap. 54, sec. 15, cited by the Lord Ordinary, and there was a series of cases in England supporting the contention—*re Phelps' Trust*, March

14, 1873, 28 Law Times, 350; *re Buckley's Trust*, March 29, 1860, Thomson's Rep. 700; *in re Gibson*, Nov. 25, 1871, 7 L.R. Ch. App. 52; secs. 97 and 104 of 16 and 17 Vict. cap. 97, prescribed the procedure adopted in England in such cases. *In re Drewery's Trust*, May 6, 1853, 2 Weekly Rep. 436; *Upfell's Trust*, April 25, 1851, 3 Macnaughton and Gordon, 281; *in re Pink*, May 5, 1873, 23 L.J. Ch. Div. 577.

The defender replied—The basis of the pursuer's contention was unsound. To entitle him to succeed he would have to show that he had acquired from the pauper a disposition of all he had or ever should have by succession or otherwise. The payment made in compliance with the statutes was made on no such basis as this. It was truly an absolute and unconditional payment made to a person who otherwise had no means of subsistence. The English cases proceeded on the express terms of the English Poor Law Acts. These did not correspond at all with the Scottish Acts. Further, in several of them the lunatic was not truly a pauper at all when the advances were made.

At advising—

Lord Young—The facts of this case are simple. A woman called Christina Macfarlane has been in confinement as a pauper lunatic since 1865. On the 24th March 1880, Mr John Bell, a china manufacturer in Glasgow, died intestate, and this pauper lunatic is one of his next-of-kin. A *curator bonis* was appointed to her by this Court, and he has received of Mr Bell's estate on account of his ward a sum of £600. The Parochial Board of the parish of Kilmartin, which has been maintaining her since 1865, make a claim of £380, 13s. 9d. as the cost of maintaining her from that date to 18th December 1883. The Lord Ordinary has held that claim good for the cost of her maintenance since her succession to the money, but bad with respect to the previous period. It has been argued to us that he is wrong, because every pauper maintained by a parish is a debtor for the amount of his maintenance, and if ever he happens to come into possession of means, through succession or his or her own efforts, the pauper is bound to discharge the debt, and if it is not so in the case of an ordinary pauper, it is at least so in the case of a pauper lunatic, by virtue of the provisions of the Lunacy Acts. Now, I am of opinion that there is no claim of debt by any parochial authority for the maintenance of a pauper against the pauper on his emerging from poverty, whether by succession or his making money by his own efforts. It is not necessary to enter into any inquiry as to the true character of the relief afforded by the parochial authority to the pauper. Nothing, in my view, depends upon whether it is due to charity or to mere policy or expediency. The parochial authority pays the money to or for the pauper, who would be otherwise destitute, and who in the language of the statute "must of necessity live by alms," by virtue of Act of Parliament. It may collect money from the lieges by assessment, and it is, in execution of the statute, employed in maintaining alive people who are utterly destitute, and must of necessity live by alms, whether they get it by begging or whether it is afforded them under the statute by those who administer the assessments. Now, I am clearly of opinion that the relation of debtor and creditor never subsists between them. The money is properly expended, and no claim arises in respect of it. I put the case to Mr Campbell of a child maintained at his birth till he had successfully prosecuted some useful trade and acquired some money, and I asked Mr Campbell whether the parochial authority who had maintained the child could then present to him a bill the items of which were extracted from their ledger, and force him to repay them what they had expended on him? The reply was that the claim would be good with only this qualification, that it could not be urged so far as to reduce this successful young tradesman to poverty. Now I think that that is not law, and everyone will acknowledge it is not common-sense. Mr Campbell was quite eloquent on there being no distinction between estate which was available and estate which was not. There are, however, certain kinds of property not available and tangible, but the estate nevertheless exists. But, at any rate, there is a distinction between an estate and none at all. The pauper has none at all, and if he have, though it is not available, then the word "pauper" is not applicable. We do not need to enter into such considerations at all, for Christina Macfarlane had absolutely nothing before 24th March 1880. The estate came to her then, and raised the question whether she had not all along been a debtor for her maintenance, beginning in 1865. It might just as well have begun at her birth. I am, then, clearly of opinion that there is no debt. Now, the specialty presented to us is that this is a lunatic pauper, and the argument is founded on the Lunacy Acts, and I am of opinion with the Lord Ordinary that there is no foundation for it at all. The Statute is 25 and 26 Vict., c. 54, and the first important clause is the 15th.—[*His Lordship quoted the portion of the 15th section quoted* supra *in the Lord Ordinary's note*]. Now, I think that the pauper lunatic is on the same footing as other lunatics with respect to the obligation of the parish of settlement to maintain them. On account of the disease of lunacy the cost is somewhat greater, but it is put on the parish of settlement exactly as in the case of an ordinary pauper, and in the district asylum where he is maintained he is esteemed a pauper of the parish of settlement. The only other statutory provision relied on by Mr Campbell was the 77th section of the Lunatic (Scotland) Act 1857—[*His Lordship here quoted the 77th section*]. I am of opinion with the Lord Ordinary that it does not vary the question in the least. If the lunatic has estate, that must be liable for charges properly incurred. If he has relations willing to defray them they may do so. If he has none, then the charges are payable by his parish of settlement. It does not affect the question in the least. I am therefore of opinion that there is no specialty in the case, and there is no reason why there should be. There is no authority for it, and I can hardly regard the observations of Mr Moneypenny and others, quoted by the Lord Ordinary in his note, as of any material bearing on the matter. There is no distinction as regards the running of debt between maintaining an ordinary pauper and a lunatic pauper. That disposes of the whole case so far as concerns the law of Scotland. But we have been referred to English cases. Clause 104 of the English Act has been considered

in argument, but I do not feel called upon to interpret it. It is not a Scottish Act, and we have nothing analogous to it in our Scottish Act. I do not think it could be satisfactorily or safely construed without considering the whole statute, and I do not feel called upon to undertake the task. I am not prepared to say in what cases or circumstances the justices are authorised thereby to issue a warrant to attach the estate of a lunatic, and with respect to the cases in the Court of Chancery, in one of them certainly the lunatic was not a pauper but was in right of property during the immediate period in question there. But I should observe generally that I do not feel competent to say what rules govern the Court of Chancery in the administration of the estate of a lunatic which comes into their hands for administration. That is a branch of English rule and Chancery practice, and I do not feel called upon to enter upon that, nor should I deem it safe or satisfactory, where the principles of our own law are sufficiently clear, to act otherwise than they seem to dictate out of respect—and we have an unfeigned respect—for the Chancery Judges applying their own rules to the administration of lunatics brought under their cognisance. On the whole matter I am satisfied that the Lord Ordinary is right, and right in all respects.

Lord Craighill—I am of the same opinion. I think the decision arrived at by the Lord Ordinary is consistent with the true view of our Poor Law administration, and I feel that the giving effect to the pursuer's contention would introduce the plainest inconvenience into it. The idea that every pauper entitled to relief may be called upon to repay advances made to him if ever he cease to be a pauper, is inconsistent with the motive which induced the Legislature to secure to the pauper a right to be maintained in the place where pauperism supervened. The conditions on which the advances have been made are inconsistent with the idea of debtor and creditor. I agree in thinking there is no distinction between a pauper who is lunatic and a pauper who is sane. The former costs more than the latter, but that is the only difference. Personally, I may say that I feel indebted to your Lordship for an able exposition of the law on this subject, and I think it will be of great use to the public in determining the rights of persons in the position of the pursuer.

Lord Rutherfurd Clark—I am of the same opinion. In January 1865 Christina Macfarlane was undoubtedly a pauper, that is to say, she had no means of her own, and was from affliction unable to earn her own living. She continued in that condition down to the year 1880, when she became wealthy by the succession then opening to her from her relative Mr John Bell. During that period she was also a lunatic but did not cease in any sense to be less a pauper; on the contrary, it was lunacy which prevented her from earning her bread, and the only difference between a pauper who is sane and a pauper who is lunatic is this, that in the one case the law lays a heavier burden on the parish of settlement than in the other. Now, when Christina Macfarlane became a pauper in January 1865, her parish of settlement became bound to furnish parochial relief. The obligation to do so was absolute, and could not be made conditional. It was not entitled to stipulate that it should not furnish relief unless the pauper executed a disposition not only of all the estate which she then possessed but which she might ever acquire. It was bound by statute to give relief to her and all like her. It seems impossible therefore to hold that money advanced in performance of a statutory duty can create a debt on the part of the recipient, and therefore no claim can lie against Christina Macfarlane on her emergence from poverty, as is the case here, by succession. As to the distinction between a pauper and a pauper lunatic, I cannot see it, nor do I think that the pauper derives any aid from the statute. The English cases cannot be construed by us, and I prefer to proceed on the very plain principles of our own law.

The Lord Justice-Clerk was absent.

The Court adhered.

Counsel for Pursuer—Guthrie Smith—R. V. Campbell. Agent—David Cook, S.S.C.

Counsel for Defenders—J. A. Reid. Agent—J. B. M'Intosh, S.S.C.

Friday, November 7, 1884.

OUTER HOUSE.

[Lord Kinnear.

GUILD (KETTLE & COMPANY'S TRUSTEE) *v.* YOUNG.

GUILD *v.* HANNAN.

Bankruptcy — Preference — Latent Transfer of Shares—Act 1696, *cap.* 5—*Bankruptcy Act* 1856 (19 *and* 20 *Vict. c.* 79), *sec.* 6.

A trader executed and delivered in security for certain advances transfers of shares belonging to him, remaining himself the registered owner and in receipt of the dividends till he was on the eve of sequestration, when the creditor had the transfers registered. In order to this being done the bankrupt did and could do nothing. The trustee in the sequestration challenged the transfers as illegal preferences under the Act 1696, c. 5, and maintained that the date of the transaction must, under the Bankruptcy Act 1856, section 6, be taken as the date of registration. *Held* that the transfers were not illegal preferences, and that the date of registration was not to be taken as the date of the security.

On the 25th January 1884 the estates of Robert Kettle & Company, cotton yarn merchants and agents in Glasgow, and Andrew Hislop Maclean, sole partner of that firm, were sequestrated, and Mr Wyllie Guild, C.A., Glasgow, was appointed trustee.

This was an action by Mr Guild as trustee to reduce (1) a transfer by Maclean in favour of James Young, the defender, of certain shares in the Eglinton Chemical Company dated 24th October 1882, and registered in the company's register of members 21st January 1884; (2) another transfer by Maclean to the defender of shares in the same company, dated 31st January