among them of the said £500, and answered the second question in the negative.

Counsel for the First and Second Parties — Dickson — Ure. Agents — Ronald & Ritchie, S.S.C.

Counsel for the Second Parties—H. Johnston — Dewar. Agent—W. J. Johnstone, S.S.C.

Friday, January 29.

SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

MUIR *v.* BEATTIE.

Poor—Relief—Poor Law Amendment Act 1845 (8 *and* 9 *Vict. cap.* 83), *secs.* 70 *and* 72.

Held that a parish which had granted relief to two paupers and a pauper lunatic belonging to another parish, was entitled, in making its claim of relief against the parish of settlement, to charge it with a proportion (1) of the expense of the salaries and wages of the officials of the poorhouse and asylum in which the paupers had been maintained, and (2) of interest at 3 per cent. on the debt outstanding on the poorhouse and asylum buildings at the time the relief was granted.

This was an action of relief at the instance of Peter Beattie, Inspector of Poor of the Barony Parish of Glasgow, on behalf of the Parochial Board of that parish, against James Muir, Inspector of Poor of the Parish of Bothwell, for payment of £41, 7s. 4d. as the amount due to him for relief given (1) to Hugh White, a pauper lunatic, and (2) to Elizabeth Shaw, and the illegitimate child of a woman named Bridget M'Guire, paupers.

In the case of Hugh White the pursuer averred that he had made advances, after deduction of the Government grant, to the amount of £35, 12s. 9d., the principal item in the account being a charge of 13s. a week for the pauper's board in Woodilee Asylum from 17th August 1887 to 17th October 1888.

In the case of the other paupers a charge of 5s. 6d. a week was made for the board of each in the Barony Poorhouse during part of the years 1888-9.

In stating his account for relief given to Hugh White, the pauper lunatic, the pursuer included therein, *inter alia*, (1) a charge of 2s. a week for "salaries and wages less tradesmen," and (2) a charge of 4s. 2¼d. a week for "interest at 3 per cent. on total indebtedness," representing the amount charged for house accommodation. Similar charges were included in the account for relief given to each of the two other paupers, viz., (1) a charge of 1s. a-week for "salaries of officials," and (2) a charge of 6d. a-week for "property account" or house accommodation.

It was admitted in a joint-minute lodged by the parties that in the case of Hugh White the charge for "salaries and wages less tradesmen" included the salaries and wages of the official staff of the asylum and, *inter alios*, of the medical officers, and that a proportion of the medical grant was applicable to the salaries of the latter, leading to a deduction of 2½d. a week from this charge. The charge for house accommodation was calculated in this way:—Prior to May 1888 sums amounting to £210,477, 15s. 6d. had been borrowed, and expended by the pursuer's board in acquiring and building the asylum. By May 1889 the total amount borrowed had been increased to £212,642, 13s. 6d.. The charge of 4s. 2¼d. per week was the cost per head of the average number of inmates of the asylum of interest at 3 per cent. on these sums. It was admitted that the actual indebtedness outstanding on the loans had been reduced by May 1888 to £145,916, 13s. 6d. and by May 1889 to £144,081, 13s. 6d. In the case of the ordinary paupers the item "salaries of officials" consisted of the salaries of the official staff of the poorhouse, excluding (1) the medical officers, and (2) tradesmen, gardeners, and sewing mistress; and the rate charged for house accommodation was the cost per head of interest at 3 per cent. on the sum of £62,107, 12s. 8d., being the total capital sum expended on the poorhouse buildings up to May 1889. It was admitted that at the same date the outstanding debt amounted only to £17,910.

The defender admitted that Bothwell was the parish of the paupers' settlement, and that he was liable to reimburse the pursuer for the "monies expended on their behalf," but he objected *in toto* to the charges for salaries and wages in the case of all the paupers, and to the charge for "property account" or house accommodation in the case of the ordinary paupers. In the case of Hugh White, the pauper lunatic, he objected to the charge for interest at 3 per cent. on total indebtedness to the extent that that charge exceeded the rate of rental shown in the valuation roll, or at all events so far as it exceeded 3 per cent. on the actual amount of indebtedness outstanding at 14th May 1888 and 14th May 1889.

Besides the charges mentioned, certain other charges made by the pursuer were objected to by the defender, but as no question of importance was raised as to these charges they need not be further referred to.

The pursuer pleaded—"(2) On a just construction of the 71st section of the Poor Law Act 1845, and the 76th section of the Lunacy Act 1857, the pursuer is entitled to recover from the defender, as part of 'the monies expended in behalf of' the said paupers, a proportion of the charges set forth in articles 3 and 5 of the condescendence."

On 19th December 1891 the Lord Ordinary (STORMONTH DARLING) decerned against the defender for payment to the pursuer of the sum of £33, 3s. 4d. in full of the sum sued for and interest.

"*Opinion.*—Counsel on both sides explained that what they desired in this case

was not so much an ascertainment of the sum due by the defender to the pursuer in respect of the particular paupers mentioned on record, as a determination of the principles on which the parish of a pauper's settlement is bound to reimburse the relieving parish for the relief afforded (1) in a parochial lunatic asylum, and (2) in a poorhouse. The questions raised are thus of general interest to poor law authorities.

"The material sections of the Act 8 and 9 Vict. c. 83, are the 70th, 71st, and 72nd, and I shall first state what I conceive to be the result of these sections as bearing on the matter in hand.

"Destitute persons are entitled to be relieved by the parish in which they apply for relief, first by the inspector till the first meeting of the parochial board, and then by the board until the parish of settlement is ascertained and the pauper's claim upon it is admitted or otherwise determined, or until he is removed. When relief is thus afforded, the relieving parish is entitled to 'recover the monies expended on behalf of such poor person' from the parish of settlement, or from parents or other persons legally bound to maintain him. If within a reasonable time after notice the parish of settlement does not either remove the pauper or make provision to the satisfaction of the relieving parish for his constant weekly subsistence, the relieving parish may remove him to the parish of settlement at the expense of the latter, unless from sickness or infirmity he is incapable of being removed, in which case the relieving parish is bound to go on relieving him, and may recover from the parish of settlement the amount so expended, provided such amount does not exceed the rate expended for the relief of other poor persons in the relieving parish.

"There are in these sections various expressions denoting the relief to be afforded, *e.g.*, 'sufficient means of subsistence,' 'such interim maintenance as may be adjudged necessary,' 'necessary means of support,' 'constant weekly subsistence;' but the very variety of these expressions serves to indicate that there is no magic in any one of them, and they seem to me to be all synonymous with the single word 'relief,' which, of course, means relief according to law.

"It is obvious that the inquiries necessary for the determination of the question of settlement may often be of a protracted nature, and that thus, apart altogether from any voluntary arrangement for the continuance of relief by one parish to a pauper belonging to another, the relieving parish may often be compelled, by force of the statute, to give relief to an extraneous pauper for a very considerable time. The pauper lunatic in the present case remained in the pursuer's asylum for fourteen months, and one of the ordinary paupers for four months.

"*Prima facie*, it seems to me that the policy of the statute, as expressed in these sections is to make no distinction between paupers belonging and paupers not belonging to the relieving parish, and, in the case of the latter, to lay on the parish of settlement the full burden of the relief afforded, subject only to the condition that the relieving parish shall not make a profit out of the transaction by charging a higher rate than the rate expended on its own poor.

"When the relief afforded is out-door relief no difficulty can arise except as regards the cost of the inspector's office and staff. For it is plain that in the case of out-door relief the weekly payments cover board, lodging, service (if any), and generally the whole expenses incurred in maintaining the pauper, with the single exception I have mentioned.

"It is otherwise where the pauper is accommodated in a poorhouse or lunatic asylum. There it is impossible to ascertain precisely, or otherwise than by way of average, what the cost of maintaining any particular pauper is, and the moment an average comes to be struck the question arises, What heads of expenditure are to enter the average?

"The extreme view for the parish of settlement would be, that as the relieving parish has its poorhouse or asylum built, furnished, and provided with a staff of officials and servants for the accommodation of its own poor, no extra expense is incurred by the admission of an extra-parochial pauper beyond the food which he consumes, and the clothing (if any) which is supplied to him, and that therefore the average rate should be limited to those articles of actual consumption. I could understand that view, although I should think it very inequitable, and not warranted by any words in the statute.

"But the defender does not put his case so high as that. He concedes that in the case of the asylum he must pay an average rate, covering not merely provisions, clothing, and medicines (so far as not met out of the medical grant), but fuel, light, and water, furniture, furnishings, and bedding, sundry supplies and expenses, and a sum corresponding to rent. In the case of the poorhouse, he conceded the same charges except rent, which he disputes altogether. As regards both asylum and poorhouse, the principal items which he challenges are those covering the salaries and wages of officials and servants connected with the two institutions.

"I can find no intelligible principle in these distinctions. I do not understand why the defender should be willing to pay for the roof which covers a pauper lunatic, and not for the roof which covers an ordinary pauper. I am equally at a loss to know why, in the case of the latter, he should pay for his bed and not for his bedroom. And as regards both classes of paupers, I fail to see why he should pay for the kitchen-range in which their food is cooked, and not for the services of the cook who uses the range.

"The defender seeks to justify his position by referring to the case of *Hay* v. *Melville*, 20 D. 480. But it is necessary to examine precisely how far that judgment went. It arose out of a case of out-door relief, and had nothing to do with relief

afforded in a poorhouse or asylum. A system had sprung up under which inspectors of poor repudiated all responsibility for paupers belonging to other parishes, and failed to visit or take charge of them. The Board of Supervision had condemned this system, and had insisted that it was the duty of inspectors to treat paupers from outside parishes exactly as they treated their own. The City Parish of Edinburgh, being dissatisfied with the Board's decision, raised an action to have it found, either that they were not bound to visit and inspect such paupers, or that, if they were so bound, they were entitled to charge a commission for doing so. There was also a question about the right of removal, which need not here be noticed, but apart from that the only two propositions established by the judgment were (1) that the relieving parish was bound to take entire charge of the pauper, and perform all the duties of inspection; and (2) that it was not entitled to make any charge for inspection against the parish of settlement.

"Had the second point not been raised in the rather invidious connection of the relieving parish first refusing to do what it was clearly bound to do, and alternatively proposing to make a charge 'in name of commission and agency' for performing its statutory duty, I confess I think there would have been a great deal to be said for the view that the parish of settlement, whose paupers were to be dealt with exactly as if they belonged to the relieving parish, should reimburse that parish in a rateable share of the cost of inspection and management. But the judgment is authoritative, and has long been acted on, and the pursuer of this action acknowledges its authority by not proposing to make any charge applicable to the cost of the inspector's office and staff.

"It by no means follows that the parish of settlement is to be exempt from bearing its fair share of the general cost of a poorhouse or asylum, including the salaries and wages of officials and servants attached to the establishment. These charges correspond to items which in the case of out-door relief are admittedly due, and in *Hay* v. *Melville* were not disputed. They seem to me to form as truly part of 'the moneys expended in behalf of' the pauper as the food which he consumes or the clothing which he wears.

"It remains for me to deal with some of the subsidiary questions raised by the parties.

"Under the head of 'Medicines' supplied to the asylum, the defender objects to being charged with a proportion of the item for tobacco and snuff, on the ground that these are luxuries. I have not been informed under what circumstances or to what extent they are supplied to inmates of the asylum, and I think I must assume that the charge for them is lawfully made—that is to say, is such that no ratepayer of the Barony Parish could successfully challenge it. If so, I think the defender must bear his proportion of it.

"The same observation applies to the charge for farm expenses. It happens that no charge can properly be made under this head for the two years in question, because there was a profit on the working of the farm. But if it were otherwise I should assume that the outlay was lawful as for a curative agent, and I am informed not only that the Board of Lunacy requires, as a condition of granting its annual licence to an asylum, that a considerable extent of arable land should be attached to it, but that the particular farm connected with the Woodilee Asylum is regarded by the Board as not more than sufficient for its requirements.

"There are three methods of ascertaining the annual cost of house accommodation, whether in the case of asylums or poorhouses, and I have felt some difficulty as to which of these ought to be adopted. The first method, being that claimed by the pursuer, is to take the total cost on capital account incurred by his board from the beginning in acquiring and building the asylum or poorhouse, and to charge 3 per cent. thereon. The second method is, to take the same percentage on the actual indebtedness outstanding on capital account, in the two years over which the claim extends, after allowing for the repayments of capital which have been made from time to time out of the yearly rates. The third method (being that favoured by the defender in the case of the asylum, for as regards the poorhouse he denies liability altogether) is to take the assessed value as entered in the valuation roll. I have come to the conclusion that the second method is the right one, on the ground that it represents the actual cost of the buildings at the date of contribution. It may be said that repayments of capital have been made mainly at the expense of the relieving parish, and that the parish of settlement ought to bear its share of them. But section 72 of the Act of 1845 provides that where a lunatic, from sickness or infirmity, is incapable of being removed, the relieving parish shall be entitled to recover a sum not exceeding the rate expended for relief of its own poor, which means, I think, the rate expended in the year of charge. It would be absurd to hold that the rate was different in the case of detention through sickness or infirmity from that recoverable down to the time when liability was established, and if so, section 72 affords a reason for taking the cost of house accommodation as it stands at the date which the liability to contribute arises. The first method would result in the relieving parish making a profit out of the transaction, and the third seems to be purely arbitrary. In the case of the poorhouse, as it happens, the sum in the valuation roll is higher than 3 per cent. on the total cost, and a great deal higher than 3 per cent. on the actual indebtedness.

"The defender appeals to the form of annual return issued by the Board of Supervision, in which a distinction is drawn between 'management' and 'maintenance,' and under the former head are included in the case of a poorhouse or

parochial asylum, the salaries of officials and other 'establishment charges.' But this return is made for statistical purposes, and not for the ascertainment of the contribution due to a relieving parish by a parish of settlement, the amount of which must, I think, be determined, in the first place, by the actual outlay (as here set forth in the states appended to the joint-minute of admissions), and in the second place, by the terms of the statute.

"The result of my opinion on the disputed items is as follows:—1. As regards the asylum—From the item of 'Medicines,' 2-13ths of a penny per week must admittedly come off, as being covered by the medical grant. The rest remains. From the item of 'salaries and wages,' 2½d. per week admittedly comes off for the same reason, and the balance remains. The charge for 'farm' must be struck out in respect that there was a profit in each of the two years in question, otherwise I should have allowed it. The item of 'interest on indebtedness' must be limited to interest at 3 per cent. on the actual indebtedness in each of the two years.

"2. As regards the poorhouse—The 'land charges' and 'funeral charges' admittedly come off, for the reasons stated in the joint-minute. The 'salaries of officials' stand. The 'property account' must be limited to 3 per cent. on the actual indebtedness, as in the case of the asylum."

The defender reclaimed, and argued—The defender was not liable to be charged for the expense of the salaries and wages of the staff of the asylum and poorhouse. It was a duty imposed by statute that one parish should relieve any poor of another parish who might become destitute within its bounds, and to employ its officials for that purpose. In the case of *Hay* v. *Melville*, February 3, 1858, 20 D. 480, it had been decided (1) that the relieving parish was not entitled to make any separate charge against the parish of settlement for the expense of inspection. This charge was practically one of the same sort, and therefore ought not to be allowed. The sum allowed as proportion of rent ought to be calculated on the principle that the relieving parish paid interest on the amount of debt existing on the buildings at the time of relief, and could not charge more to the parish of settlement.

The pursuer argued—*Hay* v. *Melville* was not in point as the item objected to here had nothing to do with inspection charges, and the defender was clearly liable to pay a due proportion of the expense of the salaries and wages of the staff of the asylum and poorhouse in which relief had been given to paupers for whose maintenance he was responsible. The sum in respect of which the defender should be charged for house accommodation was 3 per cent. upon the total cost of the buildings in which relief had been given. The sum raised to erect the buildings had been got on loan at more than 3 per cent., the debt had to be paid off in thirty years, consequently the board had to raise from the rates not only the interest due, but also what formed a sinking fund to pay the principal. The ratepayers were the poorer by the money they had paid, and the pauper or the parish of his settlement would thus get all the benefit of these buildings without paying any share of the expense of their construction.

At advising—

Lord Justice-Clerk—I think that the Lord Ordinary has come to a right result. The only difficulty is with reference to the case of *Hay* v. *Melville*. I am clearly of opinion that it does not so bear upon the present question as to lead us to think that the Lord Ordinary has fallen into error. Every parish must have its inspector, and that whether there are any persons on the roll of paupers in the parish at any particular time or not. The inspector's salary must be paid whether there is any pauper to be maintained or not. The case of *Hay* v. *Melville* settled that the duties of inspection must be carried out by the parish, and that that duty includes the looking after a casual pauper belonging to another parish, and that the relieving parish can make no charge for that in settling with the pauper's own parish. As to the question whether the maintenance of a pauper is to include charges necessarily going to maintenance, such as the wages and salaries of the necessary officials who fulfil the duty of maintenance, I think that these charges are part of the expense of maintenance. They are necessarily incurred in performing the duty of maintaining the paupers.

The only other question is, whether the parish which gives relief is entitled to charge for the building in which the pauper is maintained. When a parochial board is required in the discharge of its statutory duty to erect a new building for its paupers, they are required to recover from the ratepayer, first, a sum which may be represented as equivalent to the expense of rent, and, second, a sum which is applied to form a sinking fund, whereby the expense of building is paid off and the building eventually freed from debt. That just means that when the whole of the sinking fund has been raised, and the debt has been paid off, then in future that board is not put to expense for maintenance under that head. But the parish must deal with the pauper belonging to another parish in this matter exactly as it deals with the paupers belonging to its own district. If the expense of buildings has ceased to be a part of the annual cost of dealing with pauperism, and no longer constitutes a proportion of the estimated charges on which assessment is levied, then it has ceased to be in any sense part of the expense of maintenance, and no charge can be properly made against another parish in respect of the cost of such buildings.

I concur in the judgment of the Lord Ordinary.

Lord Young, Lord Rutherfurd Clark, and Lord Trayner concurred.

The Court adhered.

Counsel for the Appellant—J. A. Reid. Agents—Curror, Cowper, & Curror, W.S.

Counsel for the Respondent — Lees. Agents—Mackenzie, Innes, & Logan, W.S.

Saturday, January 30.

SECOND DIVISION.

[Sheriff-Substitute of the Lothians and Peebles.

NELSON *v.* SCOTT CROALL & SONS, AND OTHERS.

Reparation—Personal Injury—Responsibility of Auctioneer for Plant in his Employer's Premises—Fault—Relevancy.

A firm of auctioneers who had been engaged to sell some bankrupt stock, employed a workman to raise the goods to the upper storey of the bankrupts' premises, where the sale was to take place, by a hoist which was on the premises. When the workman was lowering some of the goods after the sale, the hoist came down with a run and injured him severely. He brought an action against the auctioneers and the purchaser of the goods which were being lowered when the accident occurred, averring (1) that the accident would not have happened but for the faulty construction of the hoist, which was not furnished with a brake, and that his employers, the auctioneers, were responsible for its insufficiency; and (2) that the accident would not have happened unless the hoist had been overloaded; that this had been done under the superintendence of the purchaser; and that though he knew the load was too heavy for the appliance used by the pursuer as a brake, he had given him the order to lower it.

Held that the pursuer had not stated a relevant case against either of the defenders.

This was an action of damages for personal injury brought by William Nelson in the Sheriff Court at Edinburgh against Messrs Scott Croall & Sons, job and postmasters and auctioneers, and Messrs H. & D. Cleland, coachbuilders in Edinburgh. The pursuer sought decree against the defenders "conjunctly and severally, or severally, or according to their liability, as the same may be ascertained in the course of the process to follow hereon."

The pursuer averred, *inter alia*—"(Cond. 2) The pursuer was employed by the defenders Scott Croall & Sons, in the beginning of April last, to prepare the bankrupt stock, carriages, and other material, belonging to the late firm of Drew & Burnett, coachbuilders, which was to be sold by them by public auction on 23rd April 1891. The said stock was conveyed by means of a hoist from the ground floor to the upper storey of Drew & Burnett's premises in Fountainbridge, Edinburgh. The hoist is an ordinary carriage hoist, and is worked by a chain and passing over an overhead pulley, and round a drum on the ground floor. A carriage pole was the only brake appliance for said hoist, a bolt was driven through it to prevent its being pushed out by the drum while in motion. . . . (Cond. 3) On 23rd April 1891, the day of the sale, the pursuer was engaged, as the servant of the defenders Scott Croall & Sons, in lowering the several lots to the ground floor after the sale, and while letting down the second lot (which had been bought by the defenders Messrs Cleland) the pursuer felt a strain on the pole, and he shouted to some person to help him to put more leverage on the pole, when Mr Cleland senior jumped forward and put his weight on the pole, and it immediately snapped, and the hoist came down with a crash, causing the drum to fly round at a great speed, and broke off both the handles of the hoist, one of them striking Mr Cleland on the breast, and the other the pursuer on the left hand and wrist, and thereby smashing the bones of the hand and wrist, and lacerating the flesh, reducing them almost to a pulp. The goods had been loaded on the hoist under the superintendence of Mr Cleland, who is a partner of the defenders H. & D. Cleland, who (the pursuer afterwards ascertained) grossly overweighted it or permitted it to be overweighted. . . . (Cond. 4) There was no means of lowering the goods to the ground floor excepting the said hoist, which the defenders Scott Croall & Sons are responsible for, both at common law and under sub-section 1 of section 1 of the Employers Liability Act 1880. The hoist in question was for carriages only, and was not suitable for the work the defenders put it to. It was on 23rd April 1891 being used by the defenders Scott Croall & Sons, and by no one else, and had it not been for its faulty construction in not being supplied with a brake, the accident to the pursuer would not have happened. Further, the accident to the pursuer would not have happened had the hoist not been overweighted. It is usual for such machines to have brakes. The said Cleland, who superintended the loading of the hoist, was well aware of the way in which it was worked, as he served his apprenticeship with the said Drew & Burnett. It was he who ordered the pursuer to lower the hoist, and he saw that the pursuer was to brake it with the pole used for the purpose. He knew, or ought to have known, that the weight was far too heavy to allow it to be lowered in safety by the pole, but though he was aware that the pursuer did not know the weight of the load, he permitted him to proceed to lower it in the way he did."

The pursuer pleaded—"(1) The hoist in question having been in use by the defenders Scott Croall & Sons at the time of the accident, they were responsible to their servants for its sufficiency, and are liable at common law to the pursuer in reparation. (2) If not liable at common law, they are under the Employers Liability Act