the capital, it was incompetent in a summary application of this nature to grant decree against the trustees in absence, and that in the event of their failing to appear it would be necessary for the petitioner, if she desired to press her claim, to raise an ordinary action against them. Without pronouncing any interlocutor, the Court continued the case, in order that it might be ascertained whether the trustees were willing to appear.

On 18th November a minute was lodged by the trustees stating that they consented to decree being pronounced against them in terms of the first branch of the prayer of the petition.

On 20th November the Court, the Lord President being absent, pronounced the following interlocutor:—

"Ordain the respondents, the trustees of the late George Elder, Esq., of Knock Castle, Wemyss Bay, to make payment to the petitioner, for behoof of her children mentioned in the petition, of the capital sum of £3000 mentioned in the petition, and the interest accrued thereon, and of any further sum when ascertained of the residue of the estate of the said George Elder, to which the late Austin Alison Elder mentioned in the petition would have been entitled had he survived the said George Elder, and decern."

Counsel for the Petitioner—Cowan. For George Elder's Trustees—Orr. Agents—Cowan & Dalmahoy, W.S.

---

*Friday, December* 5.

## SECOND DIVISION.

[Lord Stormonth Darling, Ordinary.

## KIRKINTILLOCH PARISH COUNCIL *v.* EASTWOOD PARISH COUNCIL.

*Poor — Settlement—Residential Settlement —Capacity to Acquire Residential Settlement — Pauper not an Idiot although Weak-Minded — Hydrocephalus — Residence in Charitable Institution Supported at Expense of Charity—Poor Law (Scotland) Act* 1898 (61 *and* 62 *Vict. cap.* 21), *sec.* 1.

In an action by the parish of K. against the parish of E. as to liability for a pauper, it was proved that the pauper was born in 1880, and in his third year contracted hydrocephalus, which became chronic and resulted in total blindness, paralysis in both legs, and partial loss of power in the right hand, besides the characteristic enlargement and motion of the head. He was totally unable to do anything to support himself. His father died in 1887, having a settlement in E, and in that year he was admitted to a home for incurables in the parish of K. He remained there entirely supported by the funds of the institution till 1899, when he was taken to the poorhouse on a medical certificate, which certified that he was neither "lunatic, insane, idiot, or of unsound mind." While in the poorhouse he was treated as an ordinary hospital patient, and was never removed to the lunatic ward. The Court found as the result of the evidence that although weak-minded he was neither a lunatic nor an idiot.

*Held* (*diss.* Lord Young) (1) that the pauper having a weak but not a disordered mind, and not being an idiot, was capable of acquiring a settlement by residence, and (2) that the pauper not having during his residence in K. had recourse to common begging or received or applied for parochial relief, he was not prevented from acquiring a residential settlement in that parish by the fact that throughout the period of his residence he had lived in a charitable institution and had been entirely supported at its expense.

The Poor Law (Scotland) Act 1898 (61 and 62 Vict. c. 21), sec. 1, enacts as follows;—"From and after the passing of this Act no person shall be held to have acquired a settlement in any parish in Scotland by residence therein, unless such person shall, either before or after or partly before and partly after the commencement of this Act, have resided for three years continuously in such parish, and shall have maintained himself without having recourse to common begging either by himself or his family, and without having received or applied for parochial relief."

In February 1901 the Parish Council of Kirkintilloch raised an action against the Parish Council of Eastwood to have it declared that on 28th September 1899, when Peter M'Parlane M'Cann, then an inmate of the Dumbarton Poorhouse, became a proper object of parochial relief, the parish of Eastwood was the parish of his settlement, and as such was liable to relieve the pursuers of all sums incurred on account of him; and to have the defenders ordained to pay the pursuers £27, 2s., being the amount of advances made on behalf of M'Cann, and all further sums that the pursuers might thereafter pay on his behalf.

The pursuers pleaded—"(2) The parish of Eastwood is liable as concluded for, in respect that (1st) it is the parish of the pauper's birth; (2nd) it was the residential settlement of his father; (3rd) the pauper has all along been mentally and physically incapable of losing his settlement in said parish of Eastwood, and of acquiring a settlement by residence in the parish of Kirkintilloch, and has not acquired a settle- in Kirkintilloch; (4th) he has never during the whole period of his residence in said parish maintained himself, but has been entirely supported by charity; (5th) he has never, since October 1887, when his mother was a pauper chargeable to Eastwood parish, resided with, been dependent on, or received any support from his mother.

(4) The pursuers having expended on the aliment of said pauper the sum mentioned in the petitory conclusion of the summons, they are entitled to decree against the defenders for said sum, and such further sums as they may advance."

The defenders pleaded—"(1) The said Peter M'Parlane M'Cann having resided for more than three years continuously in the parish of Kirkintilloch after having attained the age of fourteen years, without having recourse to common begging, and without having received or applied for parochial relief, and having thus acquired a settlement by residence in the said parish, the defenders are not liable for his maintenance or to relieve the pursuers. (3) The said Peter M'Parlane M'Cann not having been an imbecile during his residence in the pursuers' parish, was capable of acquiring and did acquire a settlement by residence in said parish."

A proof was led. The facts proved are fully stated in the opinions of the Lord Ordinary and the Inner House Judges.

On 24th January 1902 the Lord Ordinary (STORMONTH DARLING) assoilzied the defenders from the conclusions of the summons, and decerned.

*Note.*—"This case relates to the liability for a pauper Peter M'Cann, who is an inmate of Dumbarton Poorhouse. He was born (in Eastwood Parish) on 12th April 1880, and when in his third year he contracted hydrocephalus, which is said to have been brought on by a fall on his head. The disease became chronic. Its results were total blindness, paralysis in both legs, and partial loss of power in the right hand, besides the characteristic enlargement and motion of the head. His father died on 6th April 1887, having at that time a residential settlement in the parish of Eastwood, and the widow received parochial relief from that parish between 17th May 1887 and 29th April 1889. The pauper resided with his mother until October 1887, when he was admitted to Broomhill Home for Incurables, in the parish of Kirkintilloch. He remained there, supported entirely by the funds of the Institution, until 28th September 1899, a period of nearly twelve years. His removal was due partly to his having been found somewhat difficult to manage, but mainly to the directors having resolved to enforce more strictly than formerly a rule of the Institution against the admission of mental cases. He was then taken to Dumbarton Poorhouse, on a medical certificate which answered 'No' to the question whether he was 'lunatic, insane, idiot, or of unsound mind.' The doctor who gave the certificate explains that he answered the question in that way in order to get him into the poorhouse, but it is a significant fact that since he went there he has never been removed to the lunatic wards nor treated as other than an ordinary hospital patient, helpless from his physical infirmities, and irritable at times, as many chronic patients are, but otherwise not difficult to manage.

"His mental state has been the subject of a good deal of evidence presenting considerable difference of opinion. Dr Yellowlees and Dr Clouston class him as a hydrocephalic imbecile whom they would have no hesitation in certifying as insane. Others again, particularly Dr Carswell, attribute his limited intelligence mainly to his physical infirmities and his consequently defective education. But even Drs Yellowlees and Clouston admit that he is articulate in speech, that his words convey his meaning, that he has no delusions, and that he has 'a wonderful memory,' for he can repeat whole psalms on being told their numbers. I think the fair result of the evidence is that his mind is weak but not disordered, and that he is not by any means an idiot.

"These being the facts, the first question is whether he has been mentally capable of acquiring a settlement by residence in the parish of Kirkintilloch since he emerged from pupilarity on 12th April 1894? And if so, the second question is whether his residence in a charitable institution, and at the expense of the charity, was of such a character as to satisfy the provisions of section 1 of the Poor Law (Scotland) Act 1898 (61 and 62 Vict. c. 21), or, in other words, whether he can be said during his residence there of more than three years to have maintained himself without having recourse to common begging and without having received or applied for parochial relief?

"Now, in all poor law questions it is of much more importance to preserve uniformity of decision than to make any particular case square exactly with one's own notions of logic or even equity. I am alive to the difficulty of holding that a residential settlement which involves the idea of a certain amount of volition and choice has been acquired by one so absolutely helpless as this lad, whose very livelihood depends on his going wherever he is sent by those who are either willing or bound to support him. But it seems to me that a rule has been established by the cases of *Cassels* v. *Somerville and Scott*, June 24, 1885, 12 R. 1155, 22 S.L.R. 772; and *Nixon* v. *Rowand*, December 20, 1887, 15 R. 191, 25 S.L.R. 175, to the effect that where a person has not been certified as a lunatic mere weak-mindedness or congenital imbecility not amounting to idiocy, though coupled with incapacity to earn a living, will not prevent his acquisition of a residential settlement. In the second of these cases Lord Kinnear treated the first as establishing 'a general rule;' and in the case of *Rutherglen* v. *Glenbucket and Dalziel*, October 24, 1875, 33 S.L.R. 366, Lord Moncreiff expressed the general rule thus — 'When a pauper of weak mind has not been certified as a lunatic, and where it is not proved that she is in point of fact a dangerous lunatic or an absolute idiot, the Court will not inquire too closely into the precise degree of imbecility, but if she is proved to possess a certain amount of intelligence and power of work though under supervision, the Court will as a general rule hold that she is not in such a mental condition as to be incapable of having a settlement of

her own.' Now, the conditions stated by Lord Moncreiff apply precisely to the present case, with the single exception that this lad has no power of work. But that arises from physical not mental disability, and it seems to me that a power of work so slight that it does not aid in earning a livelihood cannot possibly affect the principle.

"The second point is one of considerable general interest, and it has not been in terms decided by this Court. There is undoubtedly some hardship in a parish within which benevolent persons have set up a charitable institution being thereby saddled with liability for imported paupers. Possibly such a case may be a fit subject for parliamentary consideration. But I have to deal with the statutes and decisions as they stand, and it seems to me that the words in section 1 of the Act of 1898 (which are the same as in the repealed section 76 of the Act of 1845) requiring that the pauper shall have maintained himself without having recourse to common begging and without having received or applied for parochial relief, do not mean that he shall have maintained himself by his own industry or out of his own proper funds, but are satisfied if he receives from charitable people the means of maintaining himself without begging and without recourse to the parochial funds. That, I think, is the result of the cases of *Thomson* v. *Gibson*, February 13, 1851, 13 D. 683; *Hay* v. *Cumming*, and *Forbes* v. *Marshall*, June 6, 1851, 13 D. 1057; and *Hay* v. *Ferguson*, January 17, 1852, 14 D. 352. It was argued that in the first of these cases the pauper had been supported by his father, who was under obligation to do so, and that thus the pauper's means of livelihood might be said to have been his own. But in the later cases there was the element of charity supplied by strangers, and I read the cases as resting on the broad principle that the statute imposes no obstacle to the acquisition of a residential settlement except the two which it expresses. In *Hay* v. *Ferguson* Lord Cowan (who was the Lord Ordinary) construed the statute as meaning that 'a person by residence for five years shall be held to acquire a settlement, provided only he has maintained himself without deriving the means of his maintenance from common begging or from the parochial funds. If not derived from either of these sources his means of subsistence may, for anything that is contained in the enactment, be derived from any other source whatever without affecting his right by five years' residence to acquire a residential settlement within the parish.' And Lord Justice-Clerk Hope in the same case said—'Can there be any other test applied than this—whether she was or was not a burden on the parish? If she was not, what is there to exclude her from acquiring a residence in the parish where she resided for more than five years without having recourse to common begging?'

"If that be the principle, I cannot see any distinction either between charity which entirely and charity which almost entirely supports the recipient, or between charity which is given by individuals and charity which is dispensed in an institution. The cases are alike in this that there is no burden on the parochial funds and that there is no preying on the individual inhabitants of the parish, such as common begging involves. Indeed, if the true test be the absence of any burden on the parish, it may be said that the parish and its inhabitants derive a certain benefit from the presence in their midst of a charitable institution which spends money and pays rates.

"It seems to me that no question of forisfamiliation arises.

"I am therefore of opinion that the pauper has acquired a settlement in Kirkintilloch, and that the defenders must be assoilzied."

The pursuers reclaimed, and argued—The pauper was mentally incapable of acquiring a settlement. The evidence showed that he had dangerous paroxysms and a total lack of self control. Both his mental and his physical condition were such that it was impossible for him to do any work. In the case of *Cassels*, *supra*, and that of *Nixon*, *supra*, the pauper was able to do some work. In *Boyd* v. *Beattie*, July 12, 1882, 9 R. 1091, 19 S.L.R. 812, the pauper had also been able to do something for himself. In these cases ability to do work of some kind had been one of the main reasons for holding that the pauper could acquire a settlement. A residential settlement had in consequence been frequently called an "industrial" settlement. In the present case the pauper had neither intelligence enough to choose a residence nor ability to maintain himself in whole or in part. How could such a person be held to "have maintained himself" in terms of the statute. A pupil could not acquire a residential settlement, and this pauper was on a lower plane both mentally and physically than a pupil. His confinement in the charitable institution might be likened to imprisonment. He had never been *sui juris* or in a condition to exercise any civil rights. In such circumstances it was impossible for him to acquire a settlement—*Lawson* v. *Gunn*, November 21, 1876, 4 R. 151, 14 S.L.R. 118.

Argued for the defenders—The Lord Ordinary's judgment was sound, and was the necessary result of the authorities quoted in his note. In order to prevent a person being able to acquire a residential settlement nothing short of absolute idiocy would do; the person must be mindless and his imbecility of a very pronounced character—*Watson* v. *Caie*, November 19, 1878, 6 R. 202, 16 S.L.R. 121, and cases quoted by Lord Ordinary. Total incapacity for work did not prevent a person being in a position to acquire a settlement—*Greig* v. *Ross*, February 10, 1877, 4 R. 465, 14 S.L.R. 346; *Keir* v. *M'Kie*, November 1, 1895, 5 P.L.M. (new series), 657; *Thomson* v. *Gibson*, 13 D. 683. Some certification that the person is of unsound

mind was necessary to evidence incapacity to acquire a settlement—*Parish Council of Rutherglen* v. *Parish Council of Glenbucket*, October 24, 1895, 33 S.L.R. 366. In the present case the pauper was never a certified lunatic. On the contrary, he had been taken to Dumbarton Poorhouse on a certificate that he was not insane. If a person not an absolute lunatic or idiot had been maintained by any means, so long as it was not by common begging or parochial relief he was in a position to acquire a residential settlement. The maintenance did not need to be by his own work or by his relations or friends, any maintenance was sufficient which was not either common begging or parochial relief.

At advising—

LORD JUSTICE-CLERK—This is a case of a most unusual kind. The pauper to whom it relates became affected early in life with water in the head, the result of an injury, and is disabled by paralysis in his lower limbs, and is blind. He has no relations who are able to assist him, and of his parents the father is dead and the mother cannot support him.

For many years he was provided for by being maintained in the Broomhill Incurables Home, he having entered the establishment when he was seven years old and remained there until the autumn of 1899. During that period his whole support was provided by the charitable funds by which the Home is maintained.

He was in 1899 removed to the poorhouse for the parish of Kirkintilloch, in which parish the Broomhill Home is situated, and he has been an inmate of that poorhouse ever since. Kirkintilloch parish now demands relief from Eastwood, in which the pauper's father had a residential settlement, it being contended by Kirkintilloch that the pauper could not and did not acquire a residential settlement in Kirkintilloch by his long residence in that parish. I am of opinion that this contention is ill founded, and that the Lord Ordinary has rightly held upon the evidence that the pauper though physically incapacitated for doing anything for his own maintenance is not devoid of some intelligence although weak, and was quite capable of having and giving expression to a desire as to his residence had his physical condition enabled him to give effect to his desire. That this is so is, I think, established by the evidence, and obtains a remarkable corroboration from the fact that his presence in the poorhouse to-day rests upon a certificate of a medical man, by which it is declared that he is not lunatic, not an idiot, and not of unsound mind. Now, it is remarkable that the Parish Council of Kirkintilloch, who are upholding him in the poorhouse on the strength of that certificate, are here endeavouring to have his case dealt with as if that certificate was untrue. Without the pauper's being in the condition certified by that certificate they could not legally keep him in their poorhouse, yet in the question of settlement they endeavour to go past the certificate and make his case out to be different from what is so certified. In these circumstances I come to the conclusion that the pauper was capable of acquiring for himself a residential settlement.

But it is said that as he was during the years of his residence in Kirkintilloch supported by a charitable institution, the words of the statute do not apply to him, viz., that he has "maintained himself." If these words meant that he had not out of means belonging to himself, or means acquired by him, maintained himself, then this contention would be sound. But I cannot so read the words. I think they are not to be taken as isolated but in connection with the words which follow, and that it is "common begging" or "receiving or applying for parochial relief" by which alone the acquiring of a settlement is barred. I hold that the question how he got his maintenance, if none of it was got in either of these ways, is of no consequence. In my opinion, if a person not insane or an idiot resides in a parish for the requisite period, and does so in such circumstances that it cannot be asserted of him that he has not maintained himself, by whatever assistance he has done so, so that he has not required to resort to common begging or to seek relief from the parish, it cannot be successfully contended in law that he has not acquired a settlement for himself. That, as it appears to me, is the practical result of the decisions already pronounced in this Court, and I am of opinion that the law must be held to be settled as regards interpretation and application of the Poor Law Act.

I would therefore move your Lordships to adhere to the Lord Ordinary's interlocutor.

The Lord Justice-Clerk read the following opinion of LORD ADAM, who had been present at the hearing but was absent at the advising—

LORD ADAM—The pauper Peter M'Cann is a most unfortunate object. He has been suffering from hydrocephalus since he was about three years of age, with the result that he is totally blind, paralysed in both legs, with partial loss of power of the right hand. He is consequently now and has all along been totally unable to maintain himself by his own exertions. His father is dead and his mother is quite unable to contribute to his support, and apparently he has no friends capable of doing so.

In 1887, when about seven years of age, he was removed to the Broomhill Home for Incurables, which is situated in the pursuers' parish of Kirkintilloch. He remained there until September 1899 when he was removed to the poorhouse of the parish where he still is. During the whole period of residence at the Home he was entirely supported by the charitable association to whom the Home belongs.

When removed in 1887 to the Broomhill Home M'Cannhad a settlement in the defenders' parish of Eastwood, which continued to be his settlement until he ceased to be a pupil in April 1894.

The question in this case is whether the parish of Eastwood, in which M'Cann was born and in which his father had a residential settlement, has continued to be his settlement and so liable for his maintenance, or whether M'Cann by his continued residence at Broomhill Home after attaining pupilarity has thereby acquired a residential settlement in the parish of Kirkintilloch.

It is maintained by that parish that M'Cann's mental and physical condition was such as to render him incapable of acquiring a settlement by residence in that parish or of losing the settlement which he had in Eastwood parish. On considering the evidence which has been led in the case I have come to the same conclusion as the Lord Ordinary—that M'Cann's mind is weak but not disordered, and that he is not by any means an idiot. I think that he shows a considerable amount of intelligence, and I think that if he had been asked whether he wished to remain at the home or to go to the poorhouse he was not only capable of expressing but would have expressed the desire to remain at the Home. It is also to be observed that he is now in the poorhouse on a medical certificate certifying that he is neither lunatic, insane, an idiot, or of unsound mind. I think that certificate is true, and he could not legally be kept in the poorhouse on any other terms. I am therefore of opinion, following the cases referred to by the Lord Ordinary, that M'Cann, in so far as regards his mental condition, was capable of acquiring a settlement by residence in the parish of Kirkintilloch. There is no question as to the duration of the residence being sufficient.

It was further, however, contended by that parish that M'Cann had not acquired a settlement by his residence therein because he had not "maintained himself" during that period, meaning thereby, as I understand, that he had not maintained himself either wholly or partially from his own means or by his own exertions, but had been maintained solely by charity. I agree, however, with the Lord Ordinary that it is not necessary to the acquisition of a settlement by residence that M'Cann should have maintained himself wholly or partially from his own means or by his own exertions. I think the cases referred to by the Lord Ordinary, and others which were cited, conclusively establish that it is not material to the acquisition of a settlement by residence from what source a person has been maintained during his residence provided only he has not had recourse to common begging or received or applied for parochial relief.

It is true that the means by which M'Cann has been maintained have not been contributed by friends or relatives, but have been provided by a charitable association, and that others in a similar situation have also been supported by the association, and that they all reside together in the same Home. But if M'Cann, had he resided alone in the Home and had been alone supported by the association, would have acquired a settlement in the parish, as I think he would, I cannot see that it makes any difference in the application of the law that others also resided there and were supported by the association.

I am of opinion that the Lord Ordinary's interlocutor should be adhered to.

LORD YOUNG—It is admitted that the parochial settlement of the pauper Peter M'Cann is in the parish of Eastwood unless he acquired a residential settlement in the parish of Kirkintilloch. The defenders' contention, which has been sustained by the Lord Ordinary, is that he did so, having resided therein for a period of more than three years and "maintained himself without having recourse to common begging and without having received or applied for parochial relief." The question is whether upon the facts proved the pauper did thus acquire a residential settlement in Kirkintilloch, having regard to the provision of the Poor Law (Scotland) Act 1898, sec. 1.

I accept the account which the Lord Ordinary gives of the pauper from his birth in 1880 to the raising of this action in 1901, from which it appears that since he was three years of age he has been a stone-blind paralytic cripple, and although not altogether destitute of intelligence incapable both mentally and physically of occupation or employment of any kind. His father died in 1887, leaving his widow, the pauper's mother, destitute, so that she and her son the pauper had to be and were supported as paupers by the parish of their settlement, Eastwood. In that year (1887) the pauper was admitted to Broomhill Home for Incurables, an eleemosynary institution in the parish of Kirkintilloch, and remained there, maintained, that is to say fed and clothed and a bed provided for him, by the institution till 1899, when he was removed to the poorhouse of the parish of Kirkintilloch. That he was consulted or indicated any consent or choice in the matter when taken to the Home, or during his stay in it, or when carried from it to the poorhouse of the parish is not averred. There is, indeed, nothing in the case to suggest the notion that he was capable of forming any opinion, or that any of those about him ever thought of consulting him. He was both bodily and mentally unable to move himself or to aid others in moving him from one place to another. When brought to the Home in 1887 his condition was such that he must of necessity live by alms, and he was in the same condition although twelve years older when removed to the poorhouse in the year 1899. When, therefore, the Governors of the Home had him carried to the poorhouse, of course on an arrangement with the Poor Law authorities, the propriety of the proceeding is not questioned, whether he had by that time acquired a settlement in Kirkintilloch or not. If he had, Kirkintilloch was bound to support him; if he had not, their obligation was temporary, enduring only till the parish of his settlement was ascertained. Kirkintilloch has accordingly brought the present action against

the parish of Eastwood, maintaining that his settlement is in that parish, which as I have already said it admittedly is, unless the facts show the acquisition of a residential settlement in Kirkintilloch.

The defenders do not maintain that the pauper could begin to acquire a settlement in Kirkintilloch before the year 1894, when he emerged from pupilarity. So that the question is reduced to this—whether on attaining the age of fourteen he chose the Home for Incurables as his residence, and in pursuance of that choice he resided there, and maintained himself therein until he was removed to the poorhouse. I am of opinion that he was incapable of choosing a place of residence, and there is nothing proved in the case to suggest the idea that by motion, of which indeed he was incapable, or by language, or in any possible way, he ever indicated any choice of residence. I cannot indeed conceive the idea that in the condition in which he has been from his infancy he could and did choose a place of residence. Of course, if he was incapable it follows that he never did choose a home, but if it could be assumed that he was capable there is nothing whatever to indicate that he did.

It does not appear to me that the language of section 1 of the Poor Law Act is applicable to a blind paralytic imbecile who is charitably maintained in a home for incurables; clearly it is inapplicable to pupil children, and that because, and only because, they are assumed to be incapable of choice in the matter of residence, and must go and remain where those who maintain them desire. It is also admittedly inapplicable to prisoners in jails or penal settlements. Compulsion or force which excludes the exercise of choice or free will is not stronger in these cases than it is in cases of infirmities, bodily and mental, and the destitution of such a patient as the pauper here when maintained in a home for incurables.

Then to say that the pauper here maintained himself in the charity home is, I think, extravagant. He had food put before him, and possibly into his mouth daily, and was lifted into bed every night, and lifted out again every morning, but to call that self-maintenance is, I think, absurd. It was argued that the important words of section 1 of the Poor Law Act are not the words "maintained himself," but the words "without having recourse to common begging, and without having received or applied for parochial relief." I am not of that opinion. I think the important words are "maintained himself," and that self-maintenance is essential to the acquisition of a residential settlement. I do not, of course, mean that the resident must have a fortune sufficient for his maintenance, or acquires the means which he uses for his maintenance by his own industry. The means may be furnished by an allowance or allowances of moderate or very large amount supplied by relatives or friends. In my opinion, however, the recipient of the means must have capacity to employ them, and in fact employ them, in maintaining himself during the three years of residence required by the statute. A common and familiar case is that of a man who can by his own exertions acquire the means of maintaining himself to some extent, although probably and even certainly receiving kindly help from relatives or friends or even strangers, but without having recourse to common begging or making application for parochial relief.

LORD TRAYNER was absent.

LORD MONCREIFF, who had been absent at the hearing, gave no opinion.

The Court adhered.

Counsel for the Pursuers and Reclaimers — Watt, K.C. — M'Lennan. Agents — Donaldson & Nisbet, S.S.C.

Counsel for the Defenders and Respondents—Orr Deas—Mercer. Agents—Macandrew, Wright, & Murray, W.S.

---

*Saturday, December* 6.

## FIRST DIVISION.

[Sheriff Court at Glasgow.

## BANNATYNE *v.* THOMSON (BANNATYNE'S TRUSTEE).

*Bankruptcy — Sequestration — Summary Decree Ordaining Bankrupt to Hand over Sums of Money—Competency—Bankruptcy (Scotland) Act* 1856 (19 *and* 20 *Vict. c.* 79), *sec.* 81—*Debtors (Scotland) Act* 1880 (43 *and* 44 *Vict. c.* 34), *sec.* 12.

A trustee on a sequestrated estate presented a petition craving that the bankrupt should be ordained, under penalty of imprisonment, to hand over to him certain sums of money which he alleged that the bankrupt had in his possession in loose cash. *Held* that the petition, being for a summary decree ordaining the payment of money, was not authorised either by section 81 of the Bankruptcy Act 1856, or section 12 of the Debtors Act 1880, or otherwise, that an interlocutor pronounced thereon, ordaining the bankrupt within forty-eight hours to hand over the sums of money referred to, was incompetent.

*Bankruptcy — Sequestration — Appeal — Review of Prior Interlocutors Declared Final by Statute—Bankruptcy (Scotland) Act* 1856 (19 *and* 20 *Vict. c.* 79), *sec.* 71.

In the Sheriff Court the Sheriff-Substitute by interlocutor confirmed the appointment of a trustee on a sequestrated estate. Thereafter on a petition presented by the trustee the Sheriff pronounced an interlocutor against which the bankrupt appealed. *Held* that while the appeal was competent as an appeal against the last mentioned interlocutor, it did not competently