London, she came to Leith, where Macgregor & Co. carried on their business, and in consequence of that Messrs Adamson & Ronaldson, who carry on their business in London and not in Leith, agreed to make them their agents for the collection of the freight. Perhaps the expression "trustee" used by the defenders is not strictly speaking applicable to such circumstances, but considering the popular sense in which this word is often used, I do not wonder at their using it to authorise Messrs Macgregor & Co. to collect these freights until this advance was repaid. Macgregor & Co. accepted, as I think they were bound to accept, the position of agents for the defenders in the collection of this freight which belonged to them, and I therefore agree with the Lord Ordinary when he says in the last sentence of his note—"The real meaning of the transaction was that the advance should be paid from the inward freight, and this and no more was done."

A point was made upon the fact that Macgregor & Co. having collected the freight, placed the money in bank to the credit of their general account, and had drawn it out thereafter by means of cheques. It is not of the slightest consequence how they dealt with the money before remitting it. The footing on which they were employed to collect the freight was, that they as agents were to transmit the freight to the defenders, or at least to the extent of the amount of their advances. There was nothing unusual in their transmitting the freight to the defenders, nor was there anything unusual in placing the money in bank the one day and until all the freight was collected and then drawing it out the next. Therefore I agree in thinking that the judgment which the Lord Ordinary has formed is right. In the view which I take of this case it does not appear to me that it would make any difference that the original transaction had even been within the sixty days. If a merchant advances money to another a month before bankruptcy, on the footing that it will be repaid within a fortnight or so, and at the same time gets a security that will enable him to recover the amount of his advance, and if he recovers the amount through that security, it appears to me to be unchallengeable under the statute.

The Court adhered.

Counsel for Pursuer (Reclaimer)—Kinnear—Trayner — Jameson. Agent — H. B. Dewar, S.S.C.

Counsel for Defenders (Respondents)—Dean of Faculty (Fraser), Q.C.—Brand. Agent—Robert Finlay, S.S.C.

Saturday, July 3.

FIRST DIVISION.

[Lord Lee, Ordinary.

URQUHART (DEMPSTER'S TRUSTEE, PETITIONER).

Bankruptcy — Trustee — Discharge — Unclaimed Dividends—Expenses—Statute 54 *Geo. III. c.* 137 (19 *and* 20 *Vict. c.* 79).

A petition for exoneration and discharge by a trustee appointed in a sequestration awarded under the Act 54 Geo. III. c. 137, set forth that the estate in his hands consisted of unclaimed dividends, the interest arising thereon, and a cash balance; that the only provision of the said Act relating to the disposal of unclaimed dividends was contained in section 45—"that the shares of creditors not called for at the time of distribution shall again be forthwith deposited, as before, on their risk, at such interest as can be got for the same;" and that a meeting of creditors held in terms of sections 72, 75, and 76 of the Act had approved of the petitioner's actings and intromissions and authorised the petition. The petition accordingly craved (1) authority to charge the expenses of the proceedings for discharge (so far as not covered by the cash balance) against the interest accrued on unclaimed dividends; (2) authority to deposit the unclaimed dividends and balance of interest thereon in bank in terms of the Bankruptcy (Scotland) Act 1856, section 153 (according to which no creditor is entitled to interest on unclaimed dividends, but such interest is carried to a general account and ultimately applied to public purposes); (3) decree of exoneration and discharge; (4) that the Court should (in terms of the said Act 54 Geo. III. c. 137, section 76) fix a reasonable time, at the expiry of which the sequestration should be held to be at an end. The Court remitted to the Lord Ordinary, who, on a report made by the Accountant in Bankruptcy, verbally reported to the Court that the prayer of the petition might be granted, one year being fixed as the reasonable time for the closing of the sequestration, and a declaration being added in terms of section 3 of the Bankruptcy (Scotland) Act 1856, that the proceedings in the sequestration should thenceforth be regulated by the provisions of that Act. The last-mentioned declaration was for the purpose of enabling creditors to apply in terms of section 153 of the Bankruptcy Act 1856.

Counsel for Petitioner—W. C. Smith. Agents—Mackenzie, Innes, & Logan, W.S.

Saturday, July 3.

FIRST DIVISION.

[Sheriff of Lanarkshire.

BEATTIE *v.* SCOTT.

Poor — Relief — Lunatic — Able-bodied Married Woman.

Held that a husband's confinement in a lunatic asylum as a pauper lunatic did not thereby render his wife a fit object for parochial relief, she being able to work and having no children.

This was an appeal from the Sheriff Court of Lanarkshire at Glasgow in an application for parochial relief made by Mrs Mary Paterson or Scott against Peter Beattie, Inspector of Poor of the Barony Parish of Glasgow, on behalf of the parochial board of that parish. Relief was refused on the ground that the applicant was a young and able-bodied woman, in good health, and having no dependents. In answer it was denied that the applicant was able-bodied, and stated that she was a woman of delicate constitution, and that she had been unable for five years to do any work beyond attending to her husband's house. It was further stated that in September last her husband was admitted as a pauper lunatic to Woodilee Asylum.

A proof was led in which the material facts brought out were as follows—The woman although not robust, was free from organic disease of any kind. Five or six years ago she had rheumatic fever, and was still at times afflicted with rheumatic pains. She had been in the poorhouse for four weeks, and when there had been able to engage in light work. She admitted that although unable to perform heavy she could undertake light work. She had no children, and was not impotent or maimed in any way.

The Sheriff-Substitute (SPENS) found that the applicant was an able-bodied married woman, that her husband was presently chargeable to the Barony Parish of Glasgow, and that as matter of law she was legally entitled to relief. He added the following note:—

"*Note.*—It appears that the applicant some years ago suffered from rheumatic fever, but the medical evidence shows that there is nothing organically wrong with her. She is certainly not a strong or robust woman, and it appears in evidence that she was sometimes assisted by her neighbours in scrubbing a floor, &c., on the ground of being thought delicate by them, as a friendly turn; but as matter of poor-law I am of opinion that she must be regarded as an able-bodied woman. . . .

"But the applicant being held to be an able-bodied woman, the question arises, although she has nobody to support except herself since her husband is in point of fact chargeable as a pauper to the Barony Parish—is the parochial board entitled to deal with her as separable from her husband, and to refuse her relief? The point, so far as I am aware, is a novel one, and seems to me of considerable importance. The husband is in this case a lunatic, but the case was argued to me on the footing that whatever the description of infirmity which had rendered the husband liable to be supported by the parish, the wife, if without children and able-bodied, was not as matter of law entitled to relief from the parish. I will first discuss the general question thus raised, and thereafter advert to the question of whether the particular infirmity of lunacy raises any valid distinction.

"(1) There is no doubt that the woman, if a widow, would not be legally entitled to relief; and I take it also that a deserted wife, able-bodied and without dependents, and whose husband was not chargeable to a parish, would also not be legally entitled to relief. The fact, however, of the applicant being the wife of a pauper presently chargeable to the Barony Parish seems to me to raise a wholly different question, the consideration of which must be viewed with reference to the effect of the marriage relationship, and the decisions in connection with poor-law questions which have proceeded upon the effect of the marriage tie. It has been recognised in various decisions that, *stante matrimonio*, a married woman cannot have a settlement apart from her husband. (See, among other cases, *Macrorie* v. *Cowan*, March 7, 1862, 24 D. 723; and *Palmer* v. *Russell*, 10 Macph. 185). In the case of *Barbour* v. *Adamson*, Lord Cranworth (Lord Chancellor), in moving that the judgment of the Court of Session be reversed (and Lord Brougham concurred), said—"Both in England and in Scotland there was no positive statute law making any provision as to derivative settlements; but though there was no statute law, the Courts held such settlements were necessary to be understood. It was assumed that the wife must be with her husband; that children must remain with their father; that any settlement gained by him was gained not for himself alone but for all his family." . . . . The result of these authorities seem to me to be that an able-bodied married woman is regarded as her husband's dependent, and her *status* is lost in his. And where the husband has become chargeable to the parish through bodily infirmity, that the parish is not entitled to separate the wife from him, and refuse her relief while maintaining him.

"(2) But it is said, *esto*, this is sound law as regards chargeability through bodily infirmity; where there is mental infirmity there must of necessity be separation between the husband and wife, and she is to be regarded *in pari casu* with a widow or divorced wife; and further, the distinction made by lunacy is one which has been recognised by the decisions of the Court. In the first place, lunacy does not operate as divorce, and as matter of fact the wife's settlement and *status* still remain merged in those of her husband. In the second place, the fact of his lunacy and his chargeability to the Barony Parish undoubtedly pauperises him; and if it pauperises him, the grounds I have adverted to in the preceding paragraph as to her being necessarily a dependent would seem equally to pauperise her. In the case of *Palmer* v. *Russell* it was held that a married woman who lived apart from her husband, and who became chargeable as a pauper lunatic, did not thereby pauperise her husband. The Lord President said—"It is the general rule that every pauper lunatic shall be sent to an asylum. That being so, when a married woman comes to be a lunatic, being the wife of a labouring man, this difficulty occurs—he himself is not