assaulted her. This occurred, be it observed, a year after she became chargeable along with her mother. The mother was not pauperised by the expense of Joan's maintenance in an asylum. She was a pauper apart from and before that, and therefore I have not to consider how the case would have stood if the mother had not been already pauperised. Dr David Longwill, one of the medical men who certified Joan to be of unsound mind, says—'I adhere to the opinion I then formed, that she was a person of unsound mind. That is one of the definitions of "lunatic" in the Lunacy Acts. I considered her fit for certification under those Acts as a person of unsound mind. I was aware that immediately prior to her being sent to the asylum there was a charge against a man for having assaulted her. I certified her at that time as incapable of giving evidence in Court. She appeared to me to have no sense of modesty or shame. I consider her as an imbecile of a marked type. (Q) Not an absolute idiot, but the next thing to it.—(A) Yes.'

"Thus we have not merely skilled evidence as to this girl's low mental condition, but the fact that for her own protection and good she has been certified and detained in an asylum as a pauper lunatic. In the case of *Cassels* v. *Somerville and Scott*, in which the pauper was not certified as a lunatic, the Lord President Inglis, contrasting his case with that of a certified lunatic confined in an asylum, said (12 R. 1159)—'The pauper here was not sent to be boarded in Lesmahagow because he was insane, but because, his mind being weak, he was not capable of earning a livelihood like other men in his position. He was not in any sense a lunatic. Mr Smith contended that the condition of this man was such that he was under the Board of Lunacy, and the officials might have visited him to see what condition he was in. I never so understood the Lunacy Acts, and a reference to them has satisfied me that he was not a lunatic within the meaning of those Acts. Under the Statute 25 and 26 Vict. c. 54, a "lunatic" is held to be "every person certified by two medical persons to be a lunatic, an insane person, an idiot, or a person of unsound mind." Now, this man was not certified to be any one of these things, and therefore he cannot be said to have been sent to Lesmahagow as a lunatic.' Now, the certification which was awanting in the case of *Cassels* exists here, and it is sufficient, in my opinion, to stamp Joan Ralston as a lunatic in the sense of the Lunacy Acts, and as such incapable of having a settlement other than that which was liable for her support when chargeability commenced, viz., her mother's birth settlement.

"In this view it is not necessary to consider whether, assuming that she was capable of having a settlement in her own right, she was forisfamiliated on attaining puberty. She certainly would not have been held to be forisfamiliated if her father had been alive, and I believe it is still an open question whether the same rule does not apply where a child who has attained puberty remains in family with, and is dependent on, the surviving mother. See the opinions of Lord Kinloch in *M'Lennan* v. *Waite*, June 29, 1872, 10 Macph. 910, and of Lords Mure, Deas, and Shand in *Beattie* v. *M'Kenna*, March 8, 1878, 5 R. 740-741, and *Mackay* v. *Munro*, January 21, 1892, 19 R. 396.

"The result is that I find the pursuer entitled to relief against the Parish of Glenbucket.

"It was suggested on behalf of the Parish Council of Glenbucket that the rights of parties may be altered on the death of Joan Ralston's mother. As to that, it is not necessary that I should express an opinion; my judgment applies to existing circumstances."

Counsel for Glenbucket—Reid. Agents—Henderson & Clark, W.S.

Counsel for Dalziel—Salvesen—Cullen. Agents—Bruce & Kerr, W.S.

Thursday, January 16, 1896.

OUTER HOUSE.

[Lord Moncreiff.

PARISH COUNCIL OF RUTHERGLEN *v.* PARISH COUNCILS OF GLENBUCKET AND DALZIEL.

(*Ante*, p. 366.)

Process—Expenses—Extract.

The successful party in an action, whether pursuer or defender, who has obtained decree with expenses in his favour, is entitled to extract at the expense of his opponent.

The facts of this case are sufficiently set forth in the opinion of the Lord Ordinary (MONCREIFF):—

Opinion—"In this case, which raised a question as to liability for the maintenance of a pauper lunatic, the Parish Council of Dalziel was assoilzied, and the Parish Council of Glenbucket (which was held liable for the pauper's maintenance) was found liable in expenses to the Parish Council of Dalziel. The expenses of the latter were taxed by the Auditor, who allowed the expenses, amounting together to 11s. 6d., for the cost of copy of interlocutor for extractor and ordering and procuring extract. He also, as usual, allowed certain charges connected with the approval of the Auditor's report by the Court. The unsuccessful defender, the Parish Council of Glenbucket, maintain that this motion for approval and decree is unnecessary, because they tendered payment of the taxed amount under deduction of the sums allowed for obtaining approval of the Auditor's report and decree for expenses and the said sum of 11s. 6d. The Parish Council of Dalziel, on the other hand, maintain that the offer should have included the full taxed expenses (less expenses of approval) and dues of extract.

"The Parish Council of Glenbucket maintain that a defender who obtains decree of

absolvitor is not entitled to an extract at the expense of his opponent. But I think it is settled by authority and practice that this is not so. In the case of *Hunter* v. *Stewart*, 20 D. 60, the defender in an action of declarator, who was assoilzied, was found entitled to an extract of the decree of absolvitor at the pursuer's expense—'The Court hold the rule quite established that the successful party, whether defender or pursuer, was entitled to an extract at the expense of his opponent.'

"Again, in *Scott* v. *North British Railway Company*, 22 D. 922, an action for implement or damages, the defenders having been assoilzied and found entitled to expenses, the pursuer objected to the defenders being allowed the expense of approving the report and obtaining decree, the amount of expenses incurred having been tendered. The defenders answered that the expense of extracting the decree of absolvitor was not tendered, and that therefore the defenders were entitled to proceed in the usual way, and this answer was sustained by the Court. Again, in *Williams* v. *Carmichael*, 11 S.L.R. 530, Lord Gifford said—'It is quite fixed in law and practice that a defender who obtains decree of absolvitor with expenses is entitled to an extract of that decree at the expense of the unsuccessful pursuer. This is a matter of everyday practice, and was recognised in *Hunter* v. *Stewart*, 20 D. 60.'

"In view of those decisions I think that Mr Mackay is amply justified in stating the practice as he does at page 317 of his Manual on Practice, as follows:—'21. The party who has obtained decree with expenses in his favour is entitled to extract at the expense of his opponent, and that whether he is defender or pursuer. Decree for expenses is held to include a decree for the expense of extracting. . . . When a motion for approval of the Auditor's report would be otherwise necessary, the unsuccessful party is entitled to save the expense of this motion for which he would be liable by tendering the expenses found due along with the dues of extract. But if he does not include the dues of extract in his tender he will be found liable in the expense of the motion for approval of the Auditor's report.'

"The case of *Allan* v. *Allan's Trustees*, 13 D. 1270, does not touch the point, because there the unsuccessful party tendered the amount of the taxed account under deduction only of the expense of obtaining approval and decree.

"The Parish Council of Glenbucket also referred to the case of *Bannatyne* v. *M'Lean*, 11 R. 681. That case is very shortly reported, and it can only be reconciled with the previous cases by supposing that the cost of ordering an extract was not included in the account taxed by the Auditor. This may be so, because it is stated that the defender tendered the whole amount of the account of expenses, and the only authority noted as having been referred to is a case of *Allan* v. *Allan's Trustees* in 13 D. Perhaps by some oversight the point was not brought under notice of the Court. I cannot believe that the Court intended, without comment or reference to previous decisions, to overrule the previous decisions upon the point. The case of *The Magistrates of Leith* v. *Gibb*, 19 S.L.R. 399, merely decided that approval by the Court of the Auditor's report and decree for expenses were not necessary to enable a defender to extract a decree on the merits previously pronounced in his favour. And therefore where the unsuccessful party tendered the amount of the taxed account, less expenses for approval and decree, the Court only gave decree for the taxed amount under deduction of those expenses.

"It will be seen from the authorities which I have quoted that it is a recognised practice that a defender who obtains decree of absolvitor even in an ordinary petitory action is entitled to an extract at the expense of his opponent if he is found entitled to expenses. It may be that in such cases the defender usually has no interest, and does not care to obtain an extract of the decree; and I desire to say nothing to encourage unnecessary expense in this matter. But his right according to the authorities is as I have said. But this is not an ordinary petitory action. It is an action brought by a relieving parish to have what will probably prove to be a continuing liability established against one or other of two parishes. I think that on principle (apart from the matter being concluded by authority) the successful defender in such a case is entitled as a reasonable charge to obtain at the expense of his unsuccessful opponent an extract of the decree by which his exemption from liability is established.

"I shall therefore approve of the Auditor's report as it stands and grant decree for the amount. According to practice that decree will be sufficient authority to the extractor to include the dues of extract in the warrant to charge. As discussion was rendered necessary by the action of the Parish Council of Glenbucket, I shall find them liable in two guineas expenses."

Counsel for Parish Council of Dalziel—Cullen. Agents—Bruce & Kerr, W.S.

Counsel for Parish Council of Glenbucket—J. A. Reid. Agents—Henderson & Clark, W.S.

Saturday, January 25.

OUTER HOUSE.

[Lord Kincairney.

WEBSTER *v.* WEBSTER.

Process — Mandatory — Divorce — Interim Aliment—Liability of Mandatory.

In an action of divorce, a party pursuing as mandatory of the husband is not personally liable for *interim* aliment to the wife.

Mr G. A. Webster brought an action of divorce against his wife, Mrs M. Campbell