of the turnpike road, and the advocators allege that by erections and additions made to her house in May 1865 the respondent has brought it within the distance disallowed by the Act. The proceedings were by petition upon six days' *inducicæ*, under sections 109 and 110 of the General Turnpike Act, which was incorporated with the Ayrshire Act. The case having been brought before the Justices of the county, was by them dismissed. On behalf of the respondent it was pleaded, that no appeal having been taken to Quarter Sessions from the judgment of the Justices, as provided by section 114 of the Turnpike Roads (Scotland) Act, 1 and 2 William IV., c. 43, their decision is now final and conclusive; and that by section 28 of the Summary Procedure Act, 26 and 27 Vict., c. 53, the jurisdiction of this Court is excluded, in respect that the proceedings are, in the sense of that section, of a criminal nature.

The Lord Ordinary, after having heard parties, dismissed the advocation as incompetent, on the ground of the finality of the Justices' decision in respect of want of appeal therefrom to the Quarter Sessions (Campbell *v.* Strathern, Feb. 9, 1848, 10 D. 655). In regard to the other plea the Lord Ordinary observed in his note—

"Upon considering the provisions of the 28th section of the Act 26 and 27 Vict., c. 53, upon which the plea is rested, the Lord Ordinary has come to be of opinion that, assuming the proceedings of the Justices in such a case as the present to be open to review, the jurisdiction of the civil court is not excluded. At the date of the above Act it had been authoritatively settled that the Court of Justiciary had not jurisdiction to review proceedings under the Act 1 and 2 William IV., c. 43 (Campbell, 33d November 1847, Arkley, p. 386), so that the present question turns upon whether, by the above section of the Summary Procedure Act, the jurisdiction has been taken away from the civil and transferred to the criminal court. Now the provisions of that section are restricted to proceedings "upon summary complaint before sheriffs, justices," &c., and if the present complaint had been brought under sect. 111 of 1 and 2 William IV., c. 43, which authorises prosecutions in a summary form, the Lord Ordinary would have been disposed to hold, notwithstanding the decision in the case of Campbell, that the advocators had applied to the wrong tribunal for redress. The proceedings complained of, however, were not taken in the summary form of procedure prescribed in that section, but upon petition, with a citation on six days' *inducicæ*, under sections 109 and 110 of the statute, as expressly distinguished from the summary procedure provided by section 111. And such being the nature of the complaint, review, if competent in such a case at all, must still, it is thought, be in the civil court."

HOUSE OF LORDS.

Monday, Feb. 12.

JACK *v.* ISDALE.

*Poor—Relief—Able-Bodied Poor—*8 *and* 9 *Vict. cap.* 83. Held (aff. Court of Session) that a parochial board has no power to apply the funds raised by assessment under the Poor Law Act towards the relief of the able-bodied poor.

Counsel for Appellant—The Lord Advocate and Mr Rolt, Q.C. Agents—Mr John Galletly, S.S.C., and Messrs Martin & Leslie, London.

Counsel for Respondent—Mr Anderson, Q.C., and Mr Neish. Agents—Messrs J. & H. Cairns, W.S., and Mr William Robertson, London.

This is an appeal against an interlocutor of the First Division of the Court of Session, deciding that the Poor Law Amendment Act of 1845 (8 and 9 Vict., cap. 83) confers no discretionary power upon parochial boards to apply the funds raised by assessment to the relief of able-bodied persons out of employment. The sections of that Act material to the present question are the 33d, 54th, 68th and 91st. The 33d declares it competent to the parochial board to resolve that the funds requisite for relief of the poor persons entitled to relief from the parish or combination, including the expenses connected with the management and administration thereof, shall be raised by assessment. The 54th enacts that in all parishes in which it has been agreed that an assessment shall be levied for relief of the poor, all monies arising from the ordinary church collections shall, from and after the date at which such assessment shall have been imposed, belong to, and be at the disposal of the kirk-session of each parish; but provides that nothing therein contained shall be held to authorise the kirk-sessions of any parish to apply the proceeds of such church collections to purposes other than those to which the same were then in part or wholly legally applicable. The 68th section provides that, from and after the passing of the Act, all assessments imposed and levied for relief of the poor shall extend and be applicable to the relief of occasional as well as permanent poor; and provides that nothing therein contained shall be held to confer a right to demand relief on able-bodied persons out of employment. Lastly, the 91st section declares that all laws, statutes, and usages shall be, and the same are thereby repealed, in so far as they are at variance or inconsistent with the provisions of the Act, but that the same shall continue in force in all other respects. Previous to this Act of 1845 the Scottish statutes concerning the regulation of begging and the suppression of vagrancy—enacted as they were in days when work was to be readily had by all who were willing to undertake it—refer to two classes of people only, the one as the "puir, aged, and impotent persons who of necessity must live by alms," and the other as "strong and idle beggars." The former class constituted the permanent poor entitled to claim and receive parochial relief; while the latter class were liable to be scourged and burned on the ear for the first offence, and for the second ordained to be put to death as thieves. In a report, however, made to the House of Commons in 1820 by the General Assembly of the Church of Scotland regarding the parochial administration of the poor laws, mention is made of "occasional" or "industrious" poor as a class who were only assisted when laid aside from work or accidental causes. A subsequent report made by the same venerable body in 1839, after fully explaining that no provision is made by any of the old statutes for relief of the able-bodied poor, proceeds to say that an arrangement was introduced, and for a length of time established by usage only, but in time sanctioned by a proclamation of the Privy Council, and afterwards ratified by Act of Parliament, by which a certain proportion of the church collections were placed at the disposal of the kirk-sessions in order that they in their discretion might be able to afford assistance for a time to such industrious persons within their bounds as should happen owing to temporary sickness, or to a casual failure of work, to be in difficulty and straits. In 1863, and for some time previously, there existed great distress in certain branches of the weaving trade in the manufacturing town of Dundee, and a consequent inability on the part of some portion of the weaving population of the town to find full employment by their labour. In these circumstances applications for relief were made to the Parochial Board by persons, who though perfectly able to maintain themselves and their families by their labour could employment have been found, were reduced to distress by the want of such employment. To two applicants—both able-bodied men, but in difficulties from inability to obtain employment—the board granted relief; to the one for six weeks at the rate of three shillings and sixpence a week, and to the other four shillings a

week for the same period. The respondent, who is a member of the Parochial Board and of the Acting Committee thereof, was present at the meeting when these resolutions were passed, and protested against such an application of the parish funds as illegal. He subsequently presented a note of suspension and interdict to the Court of Session, praying that the Parochial Board of Dundee might be prohibited from acting in pursuance of their resolution, and from affording casual relief to any other able-bodied man. A record having been made up on the reasons of suspension and interdict, and revised answers thereto, Lord Kinloch, Ordinary, after debate, pronounced an interlocutor finding that the Parochial Board of Dundee was not entitled to give relief, whether permanent or occasional, to persons who being able-bodied were in destitution or poverty merely from want of employment; suspending the proceedings complained of; granting interdict as craved, and declaring such interdict perpetual. Against this judgment the appellant presented a reclaiming note to the Judges of the First Division of the Court, who appointed parties mutually to lodge cases on the whole cause. Their Lordships having resumed consideration of the cause, appointed copies of the printed papers to be boxed to the Judges of the Second Division, and to the permanent Lords Ordinary, in order to obtain the written opinions of the consulted Judges as to whether the interlocutor of the Lord Ordinary should be adhered to or altered. On the 31st of March 1864, their Lordships of the First Division, upon advising the reclaiming note and the opinions of the consulted Judges, pronounced an interlocutor, adhering — in terms of the opinion of the majority of the whole Judges—to the interlocutor submitted to review refusing the desire of the reclaiming note, and finding additional expenses due.

In the Court below the learned Judges of the First Division—the Lord President, and Lords Curriehill, Deas, and Ardmillan; and also two of the consulted Judges — Lords Neaves and Barcaple — were unanimously of opinion that able-bodied persons in distress from want of employment had, long previous to the Act of 1845, received assistance from a fund composed of half the church collections, and placed at the free disposal of the kirk-session for the relief, in their discretion, of the occasional poor; that as the kirk-sessions were responsible for the proper administration of that fund, it was to be presumed that able-bodied persons out of employment were proper recipients of relief, formed part of the class denominated occasional poor, and were therefore entitled to the benefit conferred upon occasional poor, by the 68th section of the Act of 1845, the proviso in which constituted this difference only between them and others of the same class, that the latter had a legal right to claim relief, while they had none. Upon the other hand, the remainder of the consulted Judges — the Lord Justice-Clerk, Lords Cowan, Benholme, Mackenzie, Kinloch, Jerviswoode, and Ormidale—considered that the cases of Petrie *v.* Meek, 4th March 1859 (21 D. 614), and Adams *v.* M'William, 26th March 1852 (1 Macqueen, 120), were authorities compelling them to a directly opposite conclusion; that though some persons not permanently entitled might have received relief, yet that there was no authoritative recognition of a right to spend sixpence in other than a legal way; that to entitle able-bodied persons out of employment to relief from the poor's assessment, was to introduce a radical change into the Scottish poor-law system, which express words would undoubtedly have been made use of in the Act to sanction; that "occasional" was used merely as a term in contradistinction to that of "permanent," to signify the difference in the period during which a person stood in need of relief; that it was impossible to understand an application of funds, authorised by statute for a beneficial public object, which did not create a corresponding legal right in the person intended to be benefited to claim the benefit, were it improperly withheld from him; and that as the Act authorised an assessment sufficient only to relieve those persons legally entitled to claim relief, the 68th section, in express terms, excluded the able-bodied persons destitute from want of employment.

The LORD ADVOCATE, after stating the facts of the case, proceeded to say that the error which lay at the root of the respondent's whole case was that of supposing that the term "occasonal poor" was unknown previous to the Act 1845. The class of occasional poor was repeatedly referred to in the reports of the General Assembly; and in a work of great authority upon the subject of the poor laws—written by Mr Monypenny, formerly Lord Pitmilly, in 1836—there was a distinct heading under which the subject of the occasional, as distinguished from the permanent, poor was treated.

Lord CHELMSFORD — The Act uses the terms "occasional" and "permanent" as if they were well known.

The LORD ADVOCATE said it would never have occurred to any one but the respondent that that was otherwise, and went on to say that the Scottish poor law was based upon the statute of 1579, which took no notice of able-bodied persons destitute from want of employment, but contemplated two classes of persons only—the "puir, sick, impotent" person, entitled to permanent relief, and the "masterful strang beggar," for whom scourging, burning, and death were assigned as punishments. For three hundred years that statute continued to be law, and assessment was very rare, the church collections being usually sufficient for the relief of the poor. A practice grew up that the kirk-session, while devoting one-half of their collections to the permanent poor, set aside the other half for relief of occasional poor, thus giving rise to the distinction between permanent and occasional. His Lordship then referred fully to the reports of the General Assembly and of the Poor-Law Commissioners to show not only that the term "occasional" poor was well known, but that persons coming under that denomination were relieved by the kirk-sessions. The term included not only those who were destitute from sickness, but those also who were destitute from want of employment, and he submitted that the same meaning ought to be attached to it when used in the Act of 1845. He contended that the only difference between the able-bodied and other occasional poor was that instituted by the proviso to the 68th section—namely, that they could not *demand* relief. Putting aside historical deduction, the words of the section by referring to the able-bodied, showed that they were contemplated as forming a portion of the occasional poor. The case of Adams *v.* M'William did not decide the point raised in the present case, but the observations of the noble and learned Lords who decided it showed that they appreciated the distinction between a right to give and a right to demand relief. His Lordship then referred to the case of Petrie *v.* Meek, and concluded by reading the opinions of the Judges in the Court of Session.

Mr ROLT then followed on the same side. He submitted that it might possibly be wise legislation to make a difference between a right to give and a right to demand; and if so, the question was whether that distinction was to be found in the Act. Upon its construction he would submit two propositions:—1st, That whatever might have been the former state of the law, that Act gave the parochial boards a discretion to relieve able-bodied persons; and 2d, If that were doubtful, that the parochial boards had that power previous to the Act, and retained it now. The learned counsel then commented upon the different sections of the Act.

Lord KINGSDOWN—Is there any other clause but the 33d which speaks of the amount authorised to be raised?

Mr ROLT believed there was not, but submitted that the 33d section did not exclude the able-bodied poor, because in a certain sense they were entitled

to relief, though their title did not become absolute until the discretion of the board had been exercised in their favour. The 68th clause of the Act distinctly said that the assessment to be levied should be for the benefit of the occasional as well as the permanent poor. It then only remained to see who were so understood. The first rule of construction was that the clause or proviso should have some effect; and able-bodied poor must be considered as falling within the class of occasional poor, else no reference to them was requisite. He was quite willing to accept the light of surrounding circumstances in order to explain the word "occasional." No statute which had ever been enacted made mention of the able-bodied person destitute from want of employment. Such a class had no existence then, and therefore it could not be said that their right to receive relief was negatived. It would be monstrous in construing the Act of 1845 to exclude this third class which had sprung up, on the ground that they represented the "sturdy beggars fleeing from work," against whom the statutes enacted such penalties. There was not the trace of the extension of the term "vagrant" to the poor man who was willing to work. His second proposition had been so fully illustrated by the Lord Advocate that he would add no more, but would conclude by submitting that both according to the construction of that Act and in virtue of previous usage, an able-bodied person destitute from want of employment was a proper subject for relief from that assessment for the poor, though he had no right to demand it.

Without calling on the respondents, the LORD CHANCELLOR then rose and moved the judgment of the House. He said:—My Lords, a question of very great importance has been raised by the present appeal—namely, whether a large number of persons in Scotland are capable of receiving relief from the funds which parochial boards are authorised to raise by Act of Parliament for relief of the poor. The question is to be determined wholly by the Act, beyond which we cannot look for any other legitimate purpose than that of interpreting the words "permanent" and "occasional." I think it perfectly fair to refer to the reports of the General Assembly of the Church of Scotland, and also to those of the Poor Law Commissioners, upon the subject of the regulation and management of the poor, in order to show that persons reduced to destitution from temporary sickness were included in the term "occasional" poor; and I also consider that under that term were included able-bodied persons reduced to destitution from want of employment. The 68th section of the Act, my Lords, enacts—"That from and after the passing of this Act, all assessments imposed and levied for relief of the poor shall extend and be applicable to the relief of the occasional as well as permanent poor." Now, stopping there, Mr Rolt was quite right in arguing that able-bodied persons reduced to destitution from want of employment were thereby enabled to receive relief from the assessment; but then there is a proviso to the clause, that "nothing herein contained shall be held to confer a right to demand relief on able-bodied persons out of employment." Now, it has been decided by the Court of Session, and also by your Lordships' House, that no able-bodied person has a right to demand relief; but it is said *that* is not the present case; that while it is not competent for such persons to *demand* relief, it is still quite competent to the administrators of the fund raised by assessment to admit them to its benefit. That contention, my Lords, I consider quite inconsistent with a proper notion of the due administration of a fund levied compulsorily and for certain specific purposes. The 33d section of the Act authorises the parochial boards to raise by assessment such funds only as are requisite for the relief of the poor persons entitled to relief from the parish or combination. Is, then, an able-bodied person entitled to relief? Clearly not, unless he be in a position to demand it. It is impossible not to see, that though this precise question was not before your Lordships' House in Adams *v.* M'William, both Lord Truro and Lord Brougham considered it quite clear that no one could claim to participate in a rate, made under the authority of an Act of Parliament, but those to whom the right was given by the Act; that the administrators of the rate could not say to persons not so entitled—We think you are objects of charity, and therefore we shall grant you relief. It is also important, my Lords, to observe, that when it is intended that parochial boards should exercise their discretion in the administration of the funds, that discretion is conferred upon them in express words, as in the 67th section. My Lords, in common with yourselves—if I may be permitted to say so—I do not like to decide a case until it has been fully heard, and more particularly where, as in the present case, the opinions of the learned Judges in the Court below are almost equally balanced; but this is simply a question of the construction to be placed upon two or three clauses in an Act of Parliament, and I am, besides, quite unable to distinguish it from that question which was decided by your Lordships' House thirteen years ago. I therefore move your Lordships that this appeal be dismissed, and the interlocutors of the Court below affirmed.

Lord CHELMSFORD—I entirely agree with my noble and learned friend, and had it not been for the difference of opinion in the Court below, should have felt no difficulty whatever. Previous to the passing of the 8 and 9 Vict., cap. 83, relief was provided for the poor by assessment and by church collections. A moiety of the latter, blended with the former, was set apart for the benefit of the permanent poor, while the remaining moiety was left to the disposal of the kirk-sessions for relief of the occasional poor, and amongst them, I have no doubt, able-bodied persons in distress for want of employment were included. Then the 8th and 9th of the Queen, cap. 83, was passed, the 54th section of which provides—"That in all parishes on which it has been agreed that an assessment shall be levied for relief of the poor, all monies arising from the ordinary church collections shall, from and after the date at which such assessment shall have been imposed, belong to, and be at the disposal of, the kirk-session of each parish: Provided always that nothing herein contained shall be held to authorise the kirk-sessions of any parish to apply the proceeds of such church collections to purposes other than those to which the same are now in whole or in part legally applicable." There was, therefore, no longer a moiety of the church collections to be blended with the assessment for relief of the permanent poor. The 33d section declares it competent to the parochial board to resolve that the funds requisite for the relief of the poor of the parish shall be raised by assessment. It is clear that the assessment is to be applied for the benefit of those only who are entitled to relief; and had the Act contained nothing more, the occasional poor would not have been entitled to relief. It was, however, the intention of the Legislature that certain classes should have relief though not entitled; and, accordingly, the 68th section provides that all assessments imposed and levied for the relief of the poor shall extend and be applicable to the relief of occasional as well as permanent poor. The parochial boards are therefore empowered to relieve the occasional poor out of the assessment which was set apart for these legally entitled to relief. But then able-bodied persons would have been included, and to guard against this, a proviso was added to the section expressly excluding them. I am perfectly clear that I cannot for a moment hesitate to concur with the noble and learned Lord on the woolsack.

Lord KINGSDOWN—I entirely concur with my noble and learned friends.

Interlocutors affirmed and appeal dismissed.

Mr ANDERSON intimated that the respondent did not ask for costs.