Holding, then, that the settlement of the husband is in the parish of Stewarton, what is the right of the parish of St Nicholas? If the wife had lived in the same parish as her husband, she would not have been a proper subject of relief. But the Poor Law Act gives no power to remove the pauper to another parish until that parish acknowledge its liability to relieve the pauper. If the parish of St Nicholas had refused to acknowledge their liability, Old Machar had no power to remove the pauper. I think St Nicholas was not bound to go against the husband.

The parish of St Nicholas has given relief in an administrative capacity, and, having given the statutory notice, I think their claim for relief must be sustained.

The other Judges concurred.

Agents for Pursuer—Webster & Will, S.S.C.
Agents for Defender—M'Ewen & Carment, W.S.

HOUSE OF LORDS.

Monday, February 19.

ERSKINE BEVERIDGE & CO. *v.* ROBERT BEVERIDGE.

Partnership—Trustees of deceased Partner—Manager, powers of.

Held that the trustees of a deceased partner, who under the deed of copartnery succeeded to his place in the firm, were not each individually, but only as a body collectively, entitled to the position and rights of a partner as in a question with the surviving partner, and that one of the trustees, who was also manager of the firm, was not entitled to act as an individual partner, but as a manager only, and had, under the circumstances, overstepped his powers of management.

This was an appeal from a decision of the Second Division of the Court of Session. The litigation began with an action of declarator and interdict at the instance of the appellants, the firm of Beveridge & Co., against Robert Beveridge and the trustees of the late Erskine Beveridge. In 1857 the late Erskine Beveridge, and his son James Adamson Beveridge, entered into a co-partnership, which was dissolved in 1860 by mutual consent. In 1862 Mr Erskine Beveridge entered into a partnership for three years with Mr Cance, and in 1864 Mr Robert Beveridge, brother of Mr Erskine Beveridge, was appointed manager of the factory business at a salary of £1200 a-year. At the same time, or soon after, James Adamson Beveridge was again taken into the firm, which still retained the original name of Erskine Beveridge & Co., the agreement being that all contracts, bills, &c., should be entered into and given under the name of the firm. The business was to be more particularly under the charge of Erskine Beveridge during his life, and after his decease under the charge of his brother, the respondent Robert Beveridge, and the firm became bound to grant the necessary procuration and authority to Robert Beveridge which might be required by him in the office of manager for subscribing obligations for the firm. Erskine Beveridge died in 1864, and Robert Beveridge was left one of his trustees. It was alleged that the respondent then assumed to act as a partner instead of a mere manager, and that James Adamson Beveridge, the surviving partner, resisted this. That the respondent assumed to sign the name of the firm in his dealings without his nephew's consent or knowledge. That he also made alterations in the works, and, *inter alia*, ordered forty-four power-looms in place of the hand-looms formerly used, and persisted in purchasing these in spite of his nephew's remonstrances, alleging that this was one of the acts of his ordinary administration as manager. The respondent, also without the consent, and against the wish of the firm, cancelled existing contracts between the firm and many of the clerks and managers of departments, and entered into other arrangements, thereby adding to the liabilities of the firm. He also withdrew a sum of £20,000, being the funds of the firm, from one investment, and invested it elsewhere. The appellant, as representing the firm, now wanted to put a stop to these actings and method of proceeding on the part of the respondent.

The defender and respondent, Robert Beveridge, in answer, set up the defence that under his agreements with the firm he was entitled to superintend and manage the business of the firm, and to exercise all the rights and powers of a partner, and, in particular, was entitled to use and sign the company firm and style to all deeds and documents.

The Lord Ordinary held that James Adamson Beveridge was not entitled to sue in the name of the firm, and dismissed the action. This interlocutor was, however, recalled by the Second Division, and judgment delivered in the following terms:—The Court agreed that the pursuer had no title to sue in the name of the firm, but was entitled to sue as a partner; that the defender had no right to sign the name of the firm, but ought to sign in his own name; that he was not entitled, without James Adamson Beveridge's consent, to sign cheques binding on the company; that he had no right to lend or deposit the funds of the firm without James Adamson Beveridge's consent. They therefore granted decree of declarator and interdict in terms of the conclusions; but they also found that the defender acted within his power as manager in ordering the power-looms, and in fixing the salaries of clerks; and therefore assoilzied Robert from those conclusions of the action.

Both parties now appealed from the parts of the judgment decided against them respectively.

Sir R. PALMER, Q.C., for the appellant James Adamson Beveridge, said that this was an important question as to the proper management of a large and prosperous business, the income of the firm having been upwards of £29,000 a-year; and much of the difficulty arose out of the various deeds and contracts between the parties. The law of Scotland made trustees a *quasi* corporate body; and as the partnership deed provided that after Mr Erskine Beveridge's death his trustees should take his place and represent him in the partnership, this no doubt led to considerable difficulty in ascertaining the mutual rights of the parties. But at all events the main contention of the appellant was that he was admittedly a partner, and that therefore things could not be done by the manager of the firm against his wish and in opposition to his orders. The points on which the Court below decided against the appellant were wrongly decided. The firm being a separate person according to the law of Scotland, and these alleged injuries having occurred to the partnership, there was a

title to sue in the firm, or at least the firm was properly made a party to the action, and if so, the appellant, as a partner, was entitled to make the firm a party. The Court below had not properly disposed of part of the action by declaring that the respondent had the powers of a partner. There was no foundation for that contention, and the Court ought to have distinctly declared that he was not a partner, and had not, as manager, any right to control and impair the right of the appellant as a partner. The respondent had no right to sign bills to bind the firm, and in order to do so legally ought to have a procuratory from the firm. But this he had not got. The same reason applied as to the right to order looms and alter salaries of clerks in spite of the remonstrances of one of the two partners. This was making the manager control the firm, instead of the firm controlling the manager. It was a complete disorganisation of an establishment for one of two partners of the firm to be overruled by the manager, and to have his own servants ordered and his own business carried on in a way that he expressly repudiated. The House ought therefore to reverse those portions of the interlocutor which assoilzied the respondent, and interdict him on all the points.

Mr C. G. Wotherspoon followed on the same side.

Mr Pearson, Q.C., for the respondent, said he regretted much, in a case like this, that their Lordships should be asked to decide an abstract question as to a manager's powers, when it is admitted that the respondent Robert Beveridge has so ably and successfully managed this business. The main questions were, what were the powers and the position of Robert Beveridge, and had he exceeded those powers? Now, according to the partnership deeds, Robert was a partner, and something more —the partnership was to go on after the death of Erskine Beveridge just as before, and his trustees succeeded him as partners. It was not the law of Scotland any more than the law of England that the trustees were a *quasi* corporate body. They were, as in England, each and all on the footing of partners.

Lord Westbury—Surely, I thought it well understood in Scotland that a partnership was a separate person, and, if so, the trustees would collectively be one partner, at least *inter se*.

Mr Pearson—There is no authority for that, and in England it has never been so held. It might be so as regards the collective share of the profits, but not otherwise.

Lord Chelmsford—Surely, if all the trustees were partners the surviving partner would be smothered.

Mr Pearson—So it is, and that is unavoidable. If each of these trustees was not a partner, who would be the partners? Each would be separately and individually liable for the partnership debts, and, if so, each must be a partner.

Lord Chelmsford—There is a material difference between the liability of partners to extraneous persons, but, *inter se*, it is a question as between them and him, how far they can overrule and control the surviving partner. The partners can limit their liability *inter se*.

Mr Pearson—I contend that Robert was a partner and something more. He was also invested with powers of management before he was made by his brother's trust-deed one of the trustees. It is not competent or usual for a court of equity to interfere between partners, and lay down some abstract declaration when there is no allegation that one of their number has mismanaged the business.

Lord Westbury—The reason for our courts not interfering may be that we have no suit of declarator, which is a very rational process, and enables illegal acts of a partner to be checked as is now proposed to be done here.

Lord Chelmsford—Whether it is worth while to carry on this litigation or not is another thing; but we are called on to say whether a manager of works has the powers which the respondent claims. I see, for example, the manager engaged workmen for a term of years, and so made the firm bound to keep them all that time. Surely that is not a very usual thing for a manager to do.

Mr Pearson—It may seem so, but it was the practice in that business at that time, and may have been wise notwithstanding. The manager in this matter really did not do anything beyond his powers. All that a court of equity will do when partners cannot agree, and one countermands whatever another partner does, is to wind up the partnership. All that was complained of here is frivolous and unfounded, and the House should reverse those findings the respondent complains of, and assoilzie him from the conclusions of the action, and reverse the judgment as to costs.

Mr Cotton, Q.C., followed on the same side.

At advising—

Lord Chancellor—In this case, which has been argued very fully, a dispute has arisen as to the management of an extremely flourishing business, which business is still in full vigour, notwithstanding the proceedings taken on one side and the other, and as the points have been raised it becomes the duty of the House to decide them. This valuable business was founded many years ago under the title of Erskine Beveridge, & Co., and the facts immediately anterior to the present dispute were these—Mr Erskine Beveridge, the father of James Adamson Beveridge, was in bad health, and he arranged that the son should be brought into the partnership at a date subsequent to the termination of the then existing partnership between him and a Mr Cance. A new partnership was thereafter to be formed between father and son. The father, however, died before that date—viz., in December 1869. The deed had provided that Robert Beveridge, the uncle of James Beveridge, should be the manager of the business, with very large powers; but this was not to prejudice the rights of the son James, who was the other partner. The son was to have one-fourth share of the business at the father's death, and the remaining three-fourths were, for the benefit of the family, vested in the trustees, of whom Robert was made one. That arrangement, no doubt, was a source of much of the present difficulties. The trustees were in the place of Erskine Beveridge, and joined to James, the surviving partner. Unfortunately, though nothing has been complained of against the manager or his success, it appears that he has arrogated powers which, beyond all doubt, exceed what the deeds allow to him. He went great lengths, according to our notions of managing a business, though it was admitted he acted for the benefit of the firm, and all turned out fortunately. He, for example, signed blank cheques, and left them in the hands of the clerks to be used in his absence. That was held by the Court of Session to be beyond his powers as a manager. He also took a large sum of money belonging to the firm, and placed it in another investment. He also signed the name of

the firm to documents. All these things the Court held to be beyond the manager's powers, but there were two points which the Court held to be within the manager's power, and of which the appellant now complains. One point was that the manager had taken upon him to enter into contracts binding the firm for a term of years to employ certain clerks. and the other point was that he had ordered a large number of power-looms, at great expense, to supersede the hand-looms then in use. These things were done without and against the assent of the appellant James Beveridge. Now, these were things which no manager had any right to do; and this gentleman clearly mistook his position, which, perhaps, was not to be wondered at, considering the deeds and mutual relations constituted thereby between him and his nephew James Beveridge. It appears to me that such things could not be done without the express concurrence of the partners, or either of them. What Robert Beveridge could really do, in respect of being one of the trustees, who were partners jointly with James Beveridge, may be a more difficult question, but, at all events, as a manager, he was not entitled to do such things. No doubt, what the manager did in the present instance turned out to be for the benefit of the firm. Still, such things must be done with the consent of the firm and each of the partners. That being so, another question is, whether the manager was entitled to sign the name of the firm to deeds and documents? The Court below held it would be better for him to write his name as manager of the firm. But the proper course undoubtedly was, that the firm should execute a procuratory or special mandate authorising him to do this, and defining the circumstances under which he should do it. Another point raised is, whether the surviving partner James Beveridge could use the name of the firm in pursuing this action? That is a point which the Court below said it was unnecessary to decide, and your Lordships also do not think it necessary to decide it. The appellant's counsel has handed in a form of order from the House embodying the points already alluded to, and this form the House proposes to adopt. As regards the costs of the appeal, the Court below reduced the appellant James Beveridge's costs by one-fourth. Your Lordships think that all the questions raised have been matters peculiarly for the benefit of the partnership; and that it is not unreasonable that all the costs of settling these questions should be paid out of the partnership funds, and, of course, as the appellant has only one-fourth share of the profits, he will bear only that proportion. The order drawn up will thus substantially reverse the parts of the of the interlocutor complained of by the appellant, and the cause will be remitted to the Court of Session to settle the terms of the special mandate which the firm should execute, defining the powers of the manager.

Lord Chelmsford—I cannot help regretting that these parties should not have been able to agree amicably upon some mode of carrying on this prosperous business without resorting to a court of law. The business has certainly prospered under the management of Robert Beveridge, but it is equally clear that he has taken an erroneous view of the powers which he can exercise as manager, and those powers exercised as he has exercised them might have ended in hazard and loss. It was therefore most natural that James Beveridge, who had been reduced to a cypher by this course of management, should want to know how far these things were legal and competent, and what was his own position. The manager clearly was not entitled to the powers of a partner, for the deed expressly treated his powers as distinct from those of a partner, and though the trustees were to represent the deceased Erskine Beveridge, yet they were not each partners, but were only collectively one partner. That was clearly intended by the deeds to be the mutual position of the parties. The manager had claimed to leave blank cheques to be filled up by his clerks, but he had not only no right to do so, but he had no right even to fill up cheques for small sums and leave them at the disposal of clerks, and, more especially, as the other partner, James Beveridge, was at hand ready at any time to sign such cheques as were needed. For similar reasons, the manager was not entitled to order, as he had done, the power-looms, and to engage for a term of years certain clerks, which might have involved the firm in serious liabilities. The proper course, therefore, was to reverse the findings of the Court below, and to remit the case, that the terms of a procuratory might be granted by the firm to Robert Beveridge, settling his powers as regards the signing of the name of the firm to deeds and documents hereafter.

Lord Westbury concurred.

Sir R. Palmer, for the appellant, reminded their Lordships that there was a cross appeal, and that it ought to be dismissed with costs.

Lord Westbury said, that having regard to the future conduct of the business, it would be much better for the parties to agree to merge this cross appeal in the principal appeal, so that the costs might all go together in one sum. Without weighing minutely the conduct of the parties during the past, it would be better to let all the costs of both appeals come out of the partnership funds.

Interlocutors reversed, and cause remitted with direction. Costs of all parties to be paid out of the partnership funds.

Agents for Appellant—Wotherspoon & Mack, S.S.C.

Agent for Respondent—T. J. Gordon, W.S.

Thursday, February 22.

HARVEY *v.* FARQUHAR.

(*Ante*, vol. viii, p. 441.)

Husband and Wife—Divorce—Adultery.

Held (affirming the judgment of the Court of Session) that a husband divorced for adultery forfeits all the rights under his contract of marriage.

This was an appeal against a judgment of the Second Division of the Court of Session, as to the forfeiture by a husband of his rights under a marriage-settlement by reason of adultery. The appellant was the third son of the late John Harvey of Kinnettles, who died in 1830. By the father's settlements, the estate of Kinnettles was left to the eldest son, and the rest of the property divided equally among the younger children. In 1812 the appellant married Miss Rachael Hunter, the eldest daughter of William Chambers Hunter, of Tillery and Auchiries, Esq., and her father was a party to a marriage-contract executed before marriage. By this contract the appellant bound