corrected, are not of the nature of mere clerical errors, and it is clear they are not so. It is also plain, the Lord Ordinary thinks, that the alterations referred to do not relate to matters falling under the category of *res noviter venientes*, and accordingly the form of proceeding applicable to matters of that description, has neither been adopted or proposed to be adopted by the claimant Wilson. The recent case of Campbell *v.* Campbell, 10th February 1865, 3 M'P. 501, cited by the claimant Wilson, appears to the Lord Ordinary to be adverse rather than favourable to him. That case was treated by the Court as an exceptional one, in respect of a principle which has no application to the present."

The party Wilson reclaimed against this interlocutor, but the Court to-day adhered to the same, and found Wilson liable in additional expenses to each of the other claimants modified to £4, 4s. to each.

Wilson declined a proposal to which the other claimaints assented, that he should be allowed to make the proposed alterations, on his paying expenses since the date of revisal of his claim.

Counsel for Wilson—Mr Brand. Agent—Robert Denholme, S.S.C.

Counsel for the Society—Mr Orr Paterson. Agents—J. & A. Peddie, W.S.

Counsel for the other Claimants—Mr MacLean, Agent—William Miller, S.S.C.

SECOND DIVISION.

FORSYTH *v.* NICOLL.

Poor—8 and 9 Vict., c. 83, s. 73—Offer of Poorhouse—Competency of Application to Sheriff.

A pauper having applied for relief, and been offered admission to a poorhouse, which he declined, held that he could not competently apply to the Sheriff on the ground that he had been refused relief.

This was an advocation from the Sheriff Court of Elgin. The advocator had been for several years in receipt of outdoor parochial relief from the parochial board of Duffus. In June 1865, this outdoor relief was discontinued, and an offer was made to him of admission to the Morayshire Union Poorhouse, which is a poorhouse erected under section 61 of the Poor-Law Act of 1845, by Duffus and other contiguous parishes. The advocator refused this offer, and applied to the Sheriff-Substitute, who, proceeding on the ground that poorhouses erected under the Act 1845 were for the relief of the "aged, and other friendless, impotent poor," and that this pauper did not come within the enumerated class (he not being friendless in the sense of the Act, inasmuch as he had a wife able to earn her own subsistence, who resided with him) held that the Parochial Board was not entitled to insist on the pauper entering the poorhouse, but was bound to furnish him with outdoor relief in the parish of his settlement. The Sheriff (B. R. Bell) reversed this judgment, holding that the offer of the poorhouse was a valid tender of relief, and that therefore, there being no refusal of relief, the pauper's application to the Sheriff, under sec. 73 of the Act, was incompetent. Forsyth advocated.

RETTIE, for him, argued—Before the passing of the Poor Law Amendment Act, the parochial relief provided by law for the poor was out-door relief—"needful sustentation." In cases where it was necessary to provide house accommodation, the parish was bound to provide it also, but under the old law a parish was not entitled to say to a proper object of relief, You shall not get sustentation unless you also take lodging. This was clear from the terms of the proclamation of the Privy Council of 11th August 1692, as ratified by Act of Parliament in 1698, which, after providing for raising funds in every parish for the maintenance of the poor, proceeds thus, "and such poor as are not provided of houses for themselves or by their friends, the heritors are to provide them with houses on the expense of the parish." This was the last provision on the subject prior to the present Act. The subsequent proclamation of 1698 referred to correction houses for beggars, vagabonds, and idle persons. There were houses for the poor in existence when the present Act was passed, but the Report of the Royal Commissioners on the Poor-Laws in 1844 showed that they were used for those helpless persons who were unable to take care of themselves. The Commissioners stated that the Scottish system was essentially one of outdoor relief. This being the state of the law at the date of the present Act, that Act provided for the erection of poorhouses in populous places where none already existed; and it carefully described the classes of poor for whose benefit they were to be erected; (1) the "friendless, impotent poor," and (2) those poor persons who, from weakness or facility of mind, or from dissipated or improvident habits, were "unable or unfit to take charge of their own affairs." It was plain from this careful description of classes, that the Legislature did not intend the poorhouse to be used for all classes of the poor at the discretion of the parish. What was called the poorhouse test could only be legally applied to the dissipated and improvident. It was not alleged that the present applicant fell under that class, and seeing that his wife was able to take care of him, he was not so "friendless" that the benefit of the poorhouse could be forced upon him as a condition of his receiving parochial relief. The cases of Watson *v.* Welsh, 26th Feb. 1853, 15. D. 448; and Mackay *v.* Baillie, 20th July 1853, 15 D. 975 were cited.

GIFFORD and C. G. SPITTAL, for the respondent, were not called upon.

The reasons of advocation were repelled.

At advising,

LORD JUSTICE-CLERK—This application was presented to the Sheriff under the 73d section of the Act of Parliament, and it was impossible for the applicant to go to the Sheriff under any other section. In order to justify the application, it was necessary for the applicant to establish that he was a proper object of parochial relief; and the Sheriff has found that he was such an object of relief, but that relief had not been refused.

The only ground of objection to the Sheriff's judgment is that the relief offered was relief which the Parochial Board could not insist on the applicant taking—that it was not legal relief. For a pauper is a poor person entitled to the relief which law provides, and with a legal claim to demand it, and if a parochial board has attached an illegal condition to the relief offered, the poor person is entitled to apply to the Sheriff on the ground of a refusal of relief. The question in this case is whether the offer of the poorhouse to the applicant was a satisfaction of his legal claim to relief.

I concur in a remark that was made in the course of the argument by my brother on my left (Lord Benholme), as to the sentimental matter in the preamble of the 60th section of the Act, and that the enacting part of the clause is alone of importance. The notion that the poorhouse system was introduced into Scotland for the first time by

the 8th and 9th of Victoria is quite a novelty. It was well known in Scotland long before then, and indeed had grown up with the whole system of our poor-law. It would have been strange had it been otherwise. For when the impotent poor are to be maintained, it is as necessary to provide them with a house to live in as with food and clothing. As regards the question of expediency, whether in a good many cases the poorhouse test should not be applied, we are not entitled to express an opinion. The question before us is not one of propriety of administration, but of pure law—Is any one of the legal poor entitled to refuse to go to the poorhouse and insist for out-door relief? And to that question I have no hesitation in giving the answer, that it is in all cases a legal tender of relief to offer admission to the poorhouse. I think the case of Mackay is strictly in point. It is true that what I now say was not formally decided in that case, but it was assumed throughout the opinions of the Judges.

It has been said that the workhouse was intended, under the provisions of 8 and 9 Vict., only for a certain class of poor persons. That is to me quite a new proposition. What class of poor would be entitled to relief and not fall within the description of the class in the 60th section, I am at a loss to know. Who are the poor who are not "friendless, impotent poor?" None are entitled to relief who are not "impotent" in the sense of being unable to support themselves, and "friendless" in the sense of having no friends able and willing to support them.

On the whole, I agree with the view of the case taken by the Sheriff.

Lord COWAN—Whether the offer to receive the applicant into the poorhouse was a legal tender of relief is one question, and whether the relief offered was adequate and suitable, is another and totally different question. The first is for this Court to decide, but as regards the second, the remedy is an application to the Board of Supervision. On the question of legality in this case, I have do doubt. The specialty founded on is that the applicant is a married man. Now, that may be very important in the question of propriety of offering the poorhouse, but it is of no moment in the question of legality. For once it is held that the offer of the poorhouse is a legal tender of relief, the fact of the applicant being married or unmarried is quite immaterial.

Another objection has been stated—viz., that the poorhouse, admission to which was offered, was a combination poorhouse, and that the building was outwith the parish to which the pauper belonged. But that is no answer to the offer, for the statute authorises parishes to combine and erect a common poorhouse, which, once erected, must be dealt with exactly on the same footing as if it were actually situated within each of the parishes to which the paupers sent to it belong.

Lord BENHOLME—I concur, and wish only to add, that in the case of Watson, the poorhouse offered to the applicant was not a union poorhouse to which the parish of the applicant's settlement belonged, but the applicant was there sent to a foreign union under an arrangement which had received the sanction of the Board of Supervision. It was this specialty which alone created the difficulty in that case. I agree with the opinions of the Judges who decided it, which are very strong. Here the pauper is offered admission to a union poorhouse to which his parish belongs, which is assumed as a clear case in Watson. The present case is one of no doubt.

Lord NEAVES—The description of "aged and other friendless impotent poor" just means all sorts of poor. "Impotent" means impotent so that they cannot maintain themselves, and friendless means that there are no other persons willing and able to support them. "Friendless" cannot mean that there is no one to look after them, although unable to maintain them, for that construction is negatived by the case of Watson. Both according to the spirit of the law and the terms of the 60th section, I think the case is clear.

Agent for Advocator—J. D. Bruce, S.S.C.

Agents for Respondent—Mackenzie, Innes, & Logan, W.S.

Tuesday, Jan. 22.

SECOND DIVISION.

BELL *v.* SIMPSONS.

Reparation—Relevancy. An action of damages at the instance of one mineral lessee against another, on the ground of encroachment on coal seams, held relevant, although the pursuer had renounced his lease.

In this case, which is an action of damages at the instance of Robert Bell, coalmaster at Wishaw, against the defenders, who were tenants of Mr Houldsworth, of Coltness, on the ground of encroachment on two coal seams which the pursuer leased from Lord Belhaven, the Court to-day, affirming a judgment of Lord Barcaple, held the action relevant. It was alleged by the defenders that the pursuer had executed a renunciation of his lease, and it was contended that he had no interest to maintain the action; but the Court held that a renunciation of the lease did not imply renunciation of claims of damages arising during the subsistence of the lease. The Lord Justice-Clerk took occasion to observe, in answer to an argument maintained for the defenders, that, according to the law of Scotland, a person had a right of action wherever he alleged a legal wrong, and that he, in consequence of said wrong, had sustained damage. The amount of damages to which he might be found entitled did not in any way affect the relevancy of the action.

Counsel for Pursuer—Mr Young and Mr Gifford. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defenders—Mr Thomson. Agent—Alexander Morison, S.S.C.

Wednesday, Jan. 23.

FIRST DIVISION.

SHEPHERD AND CO. *v.* BARTHOLOMEW AND CO.

Proof—Bill—Writ or Oath—Pro ut de jure. Circumstances which, being disclosed by the pursuers on record, held sufficient to entitle the defenders to a proof *pro ut de jure*, that bills sued for had been superseded and extinguished.

The question raised in this case was whether averments by the defenders, that certain bills accepted by them and now sued for by the pursuers, had been superseded and extinguished by other bills, subsequently accepted by them, were proveable *pro ut de jure*, or only by writ or oath of the pursuers.

The pursuers are merchants in Manchester, and in December 1864 they sold to Mr R. O. Cogan, cotton to the extent of £18,362, 10s. 9d. Of this