defenders, on the other hand, have sought to establish that the pursuer was the worse of liquor, and that his fall was due to that cause. The evidence, it seems to me, preponderates heavily in favour of the view that the pursuer was not under the influence of liquor; and it is a noticeable fact that of the three neutral witnesses who stated that they had taken the impression that he was under the influence of liquor, not one knew that he was lame; and further, as some of them admit that the conductor came into the car after the accident and said that the pursuer was the worse of liquor, one can the more readily understand the witnesses having taken the impression that they did. If it be not true that the pursuer was under the influence of liquor, then the defence wholly fails. If, on the other hand, it be true, then the conductor of the car discredits his own evidence to some extent, for he admits that he was well aware that the laws of the company forbid their servants to allow any person into the cars in a state of intoxication, and he asserts that before the pursuer came into the car he noticed the condition in which he was and yet allowed him to come in. He therefore is a witness who tries to screen himself and his employers from liability by the plea that he wilfully broke the rules of the company, to the possible risk and annoyance of the passengers, and to the risk of his own employers also.

"Taking the evidence as a whole, I do not think that the alleged condition of the pursuer removes liability from the defenders. All the persons who were with him that night say he was perfectly sober; and the fact which I have already mentioned, that the Caledonian Railway Company have not only had him ten years in their service, but paid him his wages during his disablement, seems to me to be strong evidence of the excellence of the pursuer's character."

The defenders appealed to the Court of Session. In their argument they withdrew all imputation upon the pursuer's sobriety at the time of the accident, attributing the accident to his having himself rung the bell of the car in circumstances which induced the driver to think that a signal to proceed was intended.

The pursuer argued that the driver and conductor of the car ought to have stopped as desired, and that the former ought not to have concluded that the bell rung by the pursuer before he had obeyed the signal to stop was intended as a signal to proceed.

At advising—

Lord Young—This does not seem to me to be a difficult case. The pursuer I shall assume to have been perfectly sober, although his appearance conveyed the impression to more than one witness that he had been drinking, and he certainly had been in a public-house. He wanted to leave the tramway car at Bath Street, and he told the conductor to stop there, and his friend who was with him gave similar directions.

I think, according to the evidence, that the conductor did all that it was his duty to do. He rang the bell, and thereupon the driver did all that it was his duty to do—he pulled up his horses and applied the brake. The pursuer's companion jumped off after the car had slowed, and the pursuer followed him on to the platform, and descended on to the step, and standing there while the car was slowing, through agitation, as the Sheriff-Substitute says, at being carried past his destination, he rang the bell. He was in a position where he had placed himself, and it was a dangerous one. Upon hearing the bell the driver thought that the purpose of the signal to stop had been served, and that the ring by the pursuer was the signal to go on again, and it is for going on that fault is attributed. It is a pity that he went on. But he was attending to his duty, and if he thought the bell was the signal to go on, I cannot attribute any blame. I think the idea in accordance with which he acted was that which would most naturally occur to him when occupied in the performance of his duty. I am therefore of opinion that the pursuer had himself to blame.

Lord Craighill—I am of the same opinion. And while I differ from the Sheriff-Substitute, I think the findings in the early part of his interlocutor lead to a result different from that at which he has arrived. He finds that the pursuer, being lame, requested the conductor to stop the car; that the conductor accordingly rang the bell, and that the driver slackened his pace. It is not suggested by the evidence that the car would not ultimately have come to a standstill. Impatient at the car not stopping, the pursuer puts his hand to the bell. The question is, What conclusion did the driver come to? The pursuer's accident arose from the dangerous position in which he had placed himself. In my opinion both driver and conductor did all that could be expected of them, and all fault there was is to be attributed to the pursuer himself.

Lord Rutherfurd Clark concurred.

The Lord Justice-Clerk was absent.

The Court sustained the appeal and assoilzied the defenders.

Counsel for Defenders (Appellants)—Solicitor-General (Asher, Q.C.)—Shaw. Agents—Millar, Robson, & Innes, S.S.C.

Counsel for Pursuer (Respondent)—R. Johnstone—Keir. Agent—John Gill, S.S.C.

HOUSE OF LORDS.

Monday, July 16.*

(Before Lords Blackburn, Watson, and Fitzgerald.)

POE *v.* PATERSON.

Succession—Husband and Wife—Husband's Right to Succeed to Wife's Moveable Estate—Married Women's Property (Scotland) Act 1881 (44 *and* 45 *Vict. c.* 21), *secs.* 3 *and* 6.

Held (*aff.* judgment of First Division) that sec. 6 of the Married Women's Property (Scotland) Act 1881, which gives to a husband of a woman dying domiciled in Scotland the same share and interest in her moveable

* Unavoidably omitted from Vol. XX.

estate as is taken by a widow in her husband's moveable estate, is applicable to all marriages, whether contracted before or after the passing of the Act.

This case is reported in Court of Session, *ante* 13th December 1882, vol. xx. p. 252, and 10 R. 356.

The defender appealed to the House of Lords.

At delivering judgment—

Lord Blackburn—I think that, notwithstanding all the ingenious arguments which have been addressed to us, the judgment of the Court below is perfectly right, and that this interlocutor should be affirmed and the appeal dismissed with costs.

The whole case stands upon the construction of a statute not very carefully or skilfully drawn, but in construing which according to the general rules we must see what is the intention of the Legislature as appearing from the words it has used. Now, section 6 of the Act (44 and 45 Vict. c. 21), to which the main question applies, says—"After the passing of this Act the husband of any woman who may die domiciled in Scotland shall take by operation of law," &c. If that had stood alone and unqualified, words could hardly have been devised which would more clearly express that it depends upon whether the woman is domiciled in Scotland at the time of her death or not. So far as regards the wording of the section it is quite irrespective of whether the marriage took place since the passing of the Act or long before it. That much is perfectly clear.

But it is contended (and if that were made out it would be a good answer) that although these words in section 6 would apply in the case, which is the one that has happened, of a woman dying domiciled in Scotland after the Act, her marriage having taken place before it, yet there are words in a prior section which have the effect of cutting down and controlling this enactment and making it in fact say that it shall apply only to cases where she shall die after the passing of the Act, having been married after the passing of the Act. To support the argument it is necessary to make out that the Act is cut down to meaning that. It is said that that is effected by the 3d section. Now, the 1st and 2d sections are in express terms confined to saying that in cases where the marriage is contracted after the passing of this Act certain effects are produced upon property in Scotland, and the reason why these two sections are confined to that purpose is obvious enough, for the 5th sub-section of clause 1 is—"Nothing herein contained shall exclude or abridge the power of settlement by antenuptial contract of marriage," so that it is pretty plain that it was meant to say, "When you are marrying after 1881—that is, after this Act has come into force—it is your own fault if you do not by an antenuptial contract provide for what is expedient."

But then comes the 3d section—"In the case of marriages which have taken place before the passing of this Act—(1) The provisions of this Act shall not apply where the husband shall have, before the passing thereof, by irrevocable deed or deeds, made a reasonable provision for his wife in the event of her surviving him." That is not the case which has now happened, but it has of course to be taken into account in construing the 2d sub-section. It goes on to say—"(2) In other cases"—that is to say, where the parties are married prior to the Act, and a reasonable provision has not been made by irrevocable deed—"the provisions of this Act shall not apply except that the *jus mariti* and right of administration shall be excluded to the extent respectively prescribed by the preceding sections from all estate, moveable or heritable, and income thereof, to which the wife may acquire right after the passing of the Act."

Now, the whole argument, as it seems to me, which prevailed with the Lord Ordinary, and which has been urged again before us now, is that "the provisions of this Act" *prima facie* mean all the provisions of the Act, which is true. If there is nothing whatever to show that the words are used in any narrower sense, they would mean that no part of the Act shall apply. But that "the provisions of this Act" cannot be used in that sense appears, because it is said "the provisions of this Act shall not apply except," and when we come to look at the provisions of the Act with the exception it shows at once that, however stupid and blundering the draftsman was when he used the words, the provisions of the Act of which he was talking were such provisions as include at least those which bring in his exception; and when we find that he says that the provisions of the Act shall not apply except that the *jus mariti* and the right of administration shall be excluded, it amounts in reality to showing an intention, which is to be carried into effect by moulding the words of the Act so as to be a positive enactment that the provisions of the preceding sections (sections 1 and 2), so far as they exclude the *jus mariti* and the right of administration, shall apply to all estate, moveable or heritable, to which the wife may acquire right after the passing of the Act unless there has been by irrevocable deed a reasonable settlement made in favour of the wife, in which case they shall not apply. The whole question comes to be, whether or not we are obliged to mould section 3 in that way in order to carry out the object and intentions of the Legislature? Are we to mould it in that way, giving a sense to "the provisions of this Act" as meaning those previous provisions in sections 1 and 2, excepting the enactments which are excepted; or are we to interpret it as saying that none of the provisions of this Act shall apply to such a marriage, but that it shall be as if the Act had not passed at all? The latter construction seems to me to be an unreasonable one to put upon the words of the Legislature, for it is admitted that the very next provision (sec. 4) of the Act cannot be included in the "provisions of this Act" which are not to apply. That is a provision by which it is competent to all persons married before the passing of the Act to make an agreement by which they can bring the wife's whole estate under the regulations of the Act. That could never have been intended to be excluded from application, but on the face of it it would be so according to the appellant's contention. Now comes the provision of the 5th section, by which, where the wife is deserted by her husband, the Court or Sheriff may dispense with his consent to any deed relating to her estate. That could hardly have been intended to be excluded from application. It could hardly matter for that purpose whether the marriage was before the passing of the Act or since.

Then comes the section in question, the words of which say expressly that where a married woman dies domiciled in Scotland her property shall be disposed of in a particular way. Now, when we are remodelling section 3 in a way which is necessary in order to give it the effect which the Legislature intended, why should we not remodel it in such a way as to say that sections 6 and 7, which are evidently on the face of them expressed in general terms, and apply to marriages either before the Act or afterwards, shall have their full operation? Why are we to put in words which would exclude this case? I do not think that the Legislature intended to exclude it. If I saw that the Legislature intended to do so, and that there would be some obvious reason for their doing so, I might strain the words a little in order to exclude the case. But it seems to me a most natural thing to say that such an alteration in the law of succession shall apply to marriages whether before or after the Act provided the wife dies domiciled in Scotland after the passing of the Act.

My Lords, entertaining that view, I think we must necessarily say that the ground upon which the Court below proceeded is right, and that the interlocutor ought to be affirmed and the appeal dismissed with costs. I accordingly so move your Lordships.

Lord Watson—I also am of opinion that the interlocutor of the Inner House is right, and that the appeal ought to be dismissed with costs.

The judgment of the Lord Ordinary in this case was in favour of the appellants, but his Lordship seems to have decided against the respondent unwillingly, and contrary to the bent of his own mind. He thought that the policy of this Act, as he felt himself compelled to construe it, was somewhat harsh in its effect upon the interests of the husband. I do not think it necessary at present to consider the policy of the Act, but it appears to me that the view taken of its provisions by the Lord Ordinary began at a wrong point. He goes first to the two sub-sections of section 3, and finding there the expression "the provisions of this Act," he at once comes to the conclusion that the expression must necessarily include the whole other enactments of the statute, and it is upon that inference that the judgment of his Lordship proceeds. Now, I am unable to accept the view thus put forward by the learned Lord Ordinary. It appears to me that the proper way to look at this case is first of all to consider the terms of those enactments which are said to be inapplicable to persons whose marriage has been celebrated prior to the passing of the Act. As has already been noticed by my noble and learned friend, the terms of sections 6 and 7 of the Act are absolute, and the only condition upon which they give a right, in the one case to the surviving husband, in the other case to the surviving children, is that the wife and mother shall die domiciled in Scotland after the passing of the Act. There is not a word about the place of marriage or the time of marriage—all is made dependent upon that one circumstance, her dying a domiciled Scotchwoman.

In the next place, it is necessary to consider whether the positive and unambiguous enactments of these two sections are not to receive effect in the case of a wife dying domiciled in Scotland after the Act, but whose marriage took place prior to the Act. That is a case which is said to be excluded from the operation of section 6 by virtue of section 3 of the Act. Now, in some respects section 3, if it was intended to have the effect contended for by the appellants, is not happily expressed, for, unlike those clauses which it is said to cut down, which are expressed in plain and intelligible language, the language of section 3 is not plain. I will hardly go the length of saying that it is unintelligible: it is awkward and inappropriate language, and does not seem very well calculated to have the effect for which the appellants contend. Where you have a proviso of this kind it is generally introduced in order to meet cases to which but for the proviso the other provisions of the Act would apply. Now, there are provisions of this Act which would not have applied to marriages contracted before the Act even if section 3 had never been enacted. Though section 3 had never been enacted, a husband under a marriage contracted before the Act would not have lost any right of *jus mariti*, because the positive enactments of the statute, apart from section 3, only take away their *jus mariti* from husbands married after the passing of the Act. But the exception attached to the proviso plainly shows that it was meant to be a positive and direct enactment, to the effect that in the case of the husband of a marriage contracted before the Act he should lose his *jus mariti* as to *acquirenda* after the date of the Act, and all this roundabout language was introduced for that purpose. But, as has been pointed out by my noble and learned friend, it shows what was in the mind of the framer of the clause—it shows what he was referring to as "the provisions of the Act;" and the only specimen which he gives us of the provisions of the Act is with reference to the provisions of sections 1 and 2 of the statute. I entirely concur in the observations which have been made by my noble and learned friend upon that point.

There is another matter which to my mind is not altogether without weight, and that consideration is, that we find here the subject-matter of enactment of the 3d clause and its sub-sections described as "the case of marriages." The question is, In what sense did the Legislature use the word "marriage?" Did they mean a marriage after its dissolution, or did they mean by it a subsisting contract between two living spouses? I am strongly inclined to think that it was intended to bear the latter of these meanings —that the Legislature did not intend by that enactment to make provision for anything except the rights and interests of spouses *stante matrimonio*, and that is precisely the object and scope of clauses 1 and 2.

But, my Lords, I am content with the reasoning in the Court below as to the inapplicability of sub-section 2 of clause 3 to the case of this pursuer. Nothing can be more clear than that the words "provisions of this Act" cannot apply to the whole provisions of the Act. It is out of the question to suggest that the expression includes clause 4—admittedly it does not. It appears to my mind to be equally out of the question to suggest that it applies to section 5, which is a remedy given to deserted wives whose husbands refuse to come forward and give that consent which is necessary to the due and proper ad-

ministration of their estates. On what conceivable ground should a deserted wife who had the misfortune to have been married before the passing of the Act be refused this remedy?

I shall not go through the whole of this statute. I concur in the observations which were made by the learned Judges of the Inner House in the Court below and by your Lordship.

LORD FITZGERALD concurred.

Interlocutor appealed against affirmed, and appeal dismissed with costs.

Counsel for Appellants—Lord Advocate (Balfour, Q.C.)—Ure. Agents—Andrew Beveridge—Douglas, Kerr, & Smith, W.S.

Counsel for Respondents — Solicitor-General (Asher, Q.C.)—J. F. Clerk. Agents—Grahames, Currey, & Spens—Webster, Will, & Ritchie, S.S.C.

TEIND COURT.

Monday, October 29.

GILMOUR, PETITIONER.

Teinds — Augmentation — Decree in Absence—Reponing—Act of Sederunt 12*th Nov.* 1825, *sec.* 24.

A heritor reponed, on payment of previous expenses, against interlocutors finding a minister entitled to an augmentation, modifying the same, and appointing the heritor to lodge a scheme of locality, which were pronounced in absence.

The Rev. James Buchanan, minister of the parish of Eaglesham, raised a summons and process of augmentation, modification, and locality of his stipend, setting forth that the persons whom it was necessary to call as defenders were Allan Gilmour of Eaglesham, as late patron of the parish, as titular of the teinds, and also as one of the heritors of the parish, and also two other heritors in the parish.

On 16th July 1883 the pursuer's stipend, no opposition being made, was modified at 22 chalders, being an augmentation of 3 chalders.

On 20th July the Lord Ordinary on Teinds, in respect it was stated that Mr Gilmour was the only heritor in the parish who fell to pay the augmentation modified, dispensed with the appointment of a common agent *in hoc statu*, and appointed Mr Gilmour to lodge a scheme of locality of the pursuer's stipend. This was a note presented by Mr Gilmour in terms of the Act of Sederunt (Teind Court) of 12th Nov. 1825, sec. 24, in which he asked to be heard on the pursuer's right to an augmentation, and on the modification, and prayed the Court to recal the interlocutors of 16th and 20th July, and to find that the pursuer was not entitled to any augmentation, and to dismiss the action.

By sec. 24 of the said Act of Sederunt it is provided, *inter alia*, . . . "When decree of modification has been pronounced in absence the defender may give in a note praying to be heard, and the Court may thereon either hear parties or proceed in such way as they think fit, on payment of expenses."

The note set forth that the total rental of the parish was, with the exception of £37, payable to Mr Gilmour from lands belonging to him, and that any augmentation would fall to be borne entirely by him. Further, that the summons was not served on, nor intimated directly to, Mr Gilmour, that neither he nor his agents were aware that the summons had been raised until after the interlocutors of 16th and 20th July had been pronounced, and that he was not heard against these interlocutors, which were thus pronounced in absence.

It was not disputed, however, that the procedure in the case, by advertisement and by announcement in the parish church on the required occasions, had been regular and proper, and it was also stated for the minister that he had been in communication with Mr Gilmour's agent previous to raising his summons. The minister offered no opposition to the prayer of the note being granted on payment of expenses.

The Court reponed Mr Gilmour on payment of all previous expenses.

Counsel for Mr Gilmour—Dickson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Minister—Mackintosh. Agents—W. & J. Cook, W.S.

HIGH COURT OF JUSTICIARY.

Friday, November 2.

(Before Lord Justice-General, Lord Justice-Clerk, Lords Young, Mure, Craighill, and Adam.)

LEE *v.* THE LOCAL AUTHORITY OF LASSWADE.

Justiciary Cases — Nuisance—Appeal—Prosecution for Offence or for Recovery of a Penalty—Public Health (Scotland) Act (30 *and* 31 *Vict. c.* 101), *secs.* 16, 18, 19, *and* 20—*Summary Procedure (Scotland) Act* 1864 (27 *and* 28 *Vict. c.* 53), *sec.* 3—*Summary Prosecutions Appeals (Scotland) Act* 1875 (38 *and* 39 *Vict. c.* 62), *secs.* 2 *and* 3.

A local authority presented a petition to the Sheriff under section 18 of the Public Health Act 1867 to have the proprietor of certain houses in their district ordained to remedy an alleged nuisance there existing, and for interdict against its recurrence. The Sheriff granted decree, finding the nuisance to exist, and ordaining the defender to execute certain operations for its removal within a certain time, "under certification that if the said decree be not complied with within the time appointed, the defender shall be liable in the penalties enumerated in section 20" of the Public Health Act, and found the defender liable in expenses. *Held* that an appeal to the High Court of Justiciary against