issues were adjusted on the 5th December 1865, and the trial took place on the 28th of the same month. It occupied only one day. Six witnesses were examined for the pursuer, eight for the defender, and my notes of their evidence fill only 17 pages, These facts, I think, require no comment."

WEMYSS *v.* WEMYSS.

Husband and Wife—Divorce—Adultery—Lenocinium —Condonation. Circumstances in which defences of *lenocinium* and condonation in an action of divorce held (aff. Lord Kinloch) not proved. Observations (per Lord Justice-Clerk) as to these defences.

Counsel for Pursuer—Mr Patton and Mr Dundas Grant. Agent—Mr James Barton, S.S.C.

Counsel for Defender—Mr Mackenzie and Mr Rhind. Agents—Messrs D. M. & J. Latta, S.S.C.

This is an action of divorce on the ground of adultery. Two acts of adultery were admitted by the wife; but she pleads as an answer to the action (1) *lenocinium*, (2) condonation. The fact on which these pleas were maintained, as the facts were held established by the Court, was that the husband had taken his wife up to a brothel, and had there slept with her. The explanation of that circumstance offered by the husband was that he had taken the wife to the house for the purpose of verifying suspicions which he entertained as to her conduct. The Lord Ordinary repelled the defences, and pronounced decree of divorce. To-day the Court adhered.

The LORD JUSTICE-CLERK, at advising, said—This is a peculiarly disagreeable case, both in its general nature and in the details of the evidence. But we are saved from the consideration of one part of it by the concession on the part of the defender that two acts of adultery are established against her. Her defence is confined to the special pleas of *lenocinium* and condonation. As regards the first plea, it is of great importance that we should understand exactly what the plea means, because it appears to me to have been the subject of a good deal of misconstruction. In the first place, I don't see that any light is to be derived from the cases which were cited from the law of England, where the plea of *connivance* has been stated and sustained in the consistorial courts of that country, in answer to suits of separation. That plea in the consistorial law of England is founded on the principle *volenti non fit injuria*, but the law of Scotland as to *lenocinium* is not founded upon that. I do not say that they don't resemble one another, and that practically they may attain the same end; but it is always unsafe to accept analogies of that kind. But, further, it is necessary to notice that it has been observed that the law as to *lenocinium* has changed, that under the old law it was necessary to establish that the husband had reaped gain through the adultery of his wife. That is a mistake. There is no trace of that in the old law. No doubt it is quite true that some writers mention that the argument had been maintained that *lenocinium* only holds when the husband has made *quaestum de corpore uxoris*. But they only mention it to condemn it. His Lordship then quoted from Sir George Mackenzie, remarking that the passage must be read by light of the fact that adultery in the old law was a crime, and that *lenocinium* was an answer to that. The significance of the answer was that the husband who prosecuted the wife for adultery was himself art and part in the crime. According to Sir George Mackenzie, *lenocinium* was punishable as a crime, and it was punishable as such in the Roman law under the *lex Julia*. His Lordship proceeded—That I conceive to be the law of Scotland now, and there never has been any variance. Bankton has been supposed to state an opinion in support of the proposition that the husband must make gain out of the adultery of the wife to constitute *lenocinium*. (His Lordship quoted from Bankton to show that he held the same opinion as Sir George Mackenzie.) The case of Lander in 1693 expresses the same opinion. Mackintosh *v.* Mackintosh is another authority to the same effect. These are all the authorities, and they are clear that it is not necessary to constitute the crime of *lenocinium*, or to ground the plea, that the husband should make gain from the adultery. It is not necessary to define *lenocinium*. For practical purposes in cases of this kind it is safer to keep to the general definition. But there is no doubt that when a husband is accessory to the commission of adultery, or participant in it, or the occasion of it directly by his conduct, he is obnoxious to the plea of *lenocinium*. His Lordship proceeded to apply these principles to the evidence in the case, holding that the mere fact of the husband having taken his wife to a brothel and slept with her there, did not in presence of the explanation that he had taken her there for the purpose of verifying suspicions which he himself had in regard to her conduct, set up the plea. As to condonation, his Lordship said—It is necessary for a defender in an action of divorce setting up such a plea to prove (1) that the act of condonation was subsequent to the adultery of the wife, and (2) that the act of condonation was done in the knowledge or belief that the adultery had been committed. The evidence instructs neither of these propositions, and I am therefore of opinion that both the defences fail.

Friday, Feb. 9.

BEATTIE *v.* WOOD.

Poor — Relief — Recourse — Statutory Notice — Mora. Held (1) (alt. Lord Jerviswoode) That under section 71 of the Poor Law Act it is necessary to give a statutory notice to the parish of settlement, in order to preserve recourse against it, in the case of a pauper becoming a second time an object of parochial relief, after having ceased for a considerable time to be so; and (2) (aff. Lord Jerviswoode) That the lapse of eleven years is not sufficient of itself to found a plea of *mora*.

Counsel for Pursuer—Mr Fraser and Mr Burnet. Agent—Mr John Thomson, S.S.C.

Counsel for Defender—The Solicitor-General and Mr Millar. Agents—Messrs Patrick, M'Ewen, & Carment, W.S.

This is an action by the Barony parish of Glasgow against the parish of Dailly, for repayment of advances to the wife and children of Peter Carlyle, whose settlement was in the parish of Dailly, made betwixt 1853 and 1864, and for relief from the expense of supporting them in time coming. The action was defended at first on the grounds that Peter Carlyle was not the husband and father of the paupers, and that even though he were, he had a residential settlement in the parish of Girvan. On revisal these pleas were given up and the settlement in Dailly was admitted; but it was urged that during the period from 1853 to 1864 the paupers had on several occasions ceased for some time (the longest period being twenty months) to require parochial relief, and that a new notice, in terms of section 71 of the Poor-Law Act ought to have been given to Dailly on each occasion of re-chargeability; and that this not having been done, Barony could not recover. Statutory notice was given on 24th August 1853, from which date it was sought to recover advances. The defender also pleaded that the claim was excluded by reason of *mora*.

Lord Jerviswoode repelled these defences, and decerned for payment and relief as concluded for. The pursuer had been called on to pay for the support of paupers which rightfully the defender ought all along to have borne, and must have borne, had not a ground of defence been set up and maintained which is now admitted to have no sound foundation. Dailly reclaimed, and the Court to-day altered the Lord Ordinary's interlocutor, and sustained the