

the Sheriff's judgment and admitting the claims of all the parties in this case. I see no distinction which can be drawn with regard to the four officers. I may add that in disposing of the *Crieff* case we were referred to certain English cases, and that I have again consulted them. They are in point here, and indeed some of them deal with the very question of soldiers, which has been settled in their favour, so that we are following in our judgment that of the English Judges.

LORD CRAIGHILL—I entirely concur.

LORD KINNEAR—I concur. I think the question here was directly decided in the case of *Atkinson v. Collard* in the Queen's Bench Division, to which we were referred.

The appeal was sustained and the judgment reversed.

Counsel for the Appellants—Ferguson. Agent—Andrew Ross, S.S.C.

COURT OF SESSION.

Wednesday, September 21.

OUTER HOUSE.

[Lord Fraser, Lord Ordinary
on the Bills.

HAY v. HAY.

Process—Procedure in Vacation—Decree in Absence—Power of Lord Ordinary on the Bills—Court of Session Act 1868 (31 and 32 Vict. c. 100), sec. 93.

Held that the authority given by sec. 93 of the Court of Session Act 1868 to the Lord Ordinary on the Bills to grant decrees in absence in vacation extends to actions of choosing curators.

Miss Catherine A. Halkett Hay and John T. Halkett Hay, children of the late Charles H. Halkett Hay of Balendoch, Perthshire, who were minors, raised on 5th July 1887 this action of choosing curators, calling as defenders their next-of-kin on their father's and mother's side respectively. No appearance was made for the next-of-kin, and the pursuers put into process a deed nominating a Mrs Yeats to be their curator during their minority. On 21st September 1887, on which day the Lord Ordinary on the Bills sat in Court, in virtue of the 93rd section of the Court of Session Act 1868, his Lordship was moved to sustain the deed of nomination by the pursuers.

It was pointed out by the Clerk that in practice in summonses of choosing curators such an order had never been granted, it being the understanding that such a decree as that moved for did not fall under the provisions of section 93 of the Court of Session Act 1868, which provides that " . . . on the fifth lawful day after each box-day, the Lord Ordinary officiating on the Bills shall sit in Court for the purpose of granting or recalling decrees in absence, and hearing and disposing of motions in any cause in reference to the preparation of the record, or for the granting

of commission and diligence for the recovery of writings to lie *in retentis*, or for any other purpose which the Court may specify by any Act of Sederunt which they are empowered by the Act to make."

The Lord Ordinary (FRASER) sustained the nomination, and in respect of the curator's acceptance of office, and of the failure of the next-of-kin to compare and concur in making up inventories, nominated a delegate at whose sight inventories in triplicate should be made up, and these being lodged at the bar approved thereof, and appointed two of them to be lodged with the Clerk, and the remaining one to be given up to the curator along with the act of curatory.

Counsel for the Pursuers—Hay. Agents—Reid & Guild, W.S.

Friday, November 25.

FIRST DIVISION.

[Sheriff of Aberdeen.

LEMON (INSPECTOR OF POOR OF THE PARISH OF EASTWOOD) v. WALLACE (INSPECTOR OF POOR OF THE PARISH OF ST NICHOLAS).

Poor—Settlement—Proof—Parish Register.

A child was born in Aberdeen, which consists of two parishes, St Nicholas, or the city parish, and Old Machar. Her father was a militiaman, and at the time of her birth his regiment was quartered in barracks which were in St Nicholas parish. There was no evidence as to whether he and his wife lived in barracks or not. There was an entry of the child's baptism in a register of baptisms kept in a church within St Nicholas parish, and a register of births and baptisms for the parish of St Nicholas also contained an entry of her baptism. Held that the evidence was sufficient to prove that the child was born in St Nicholas parish.

Beattie v. Nish, 5 R. 775, distinguished.

Isabella M'Farlane having for some time previous to her death in November 1885 been chargeable as a pauper in the parish of Eastwood, this action of relief was raised after her death at the instance of the inspector of poor of that parish against the inspector of poor of St Nicholas, Aberdeen, as the parish of her birth.

The facts of the case were these—The pauper was born in Aberdeen in the year 1811. There are two parishes in Aberdeen, St Nicholas and Old Machar. Andrew M'Farlane, the pauper's father, was a weaver and a soldier in the Fifeshire Militia, which was quartered in the barracks at Aberdeen, in St Nicholas Parish, from August 1810 to March 1812. There was no evidence that the pauper's mother had lived in barracks with her husband, and no evidence that she had ever lived in Old Machar.

There was produced this extract from the register of births and baptisms for the city parish of Aberdeen, *i.e.*, St Nicholas parish—"Aberdeen, 11th April 1811.—Andrew M'Farlane,