Statement for the Caledonian Railway Co., and relative Answer for the Wemyss Bay Co. The Statement of the former is:—"The petitioners have no power to control or interfere with the fixing of the rates, tolls, duties, and charges to be levied on said railway; and the joint committee have only the power of fixing the fares to be paid by the respondents to the petitioners for the portion of the Wemyss Bay Railway run over. Neither the petitioners nor the said joint committee have the power of fixing or interfering with the through rates charged by the respondents—the respondents remaining liable to the petitioners for the rate fixed, or to be fixed, for the distance run over the Wemyss Bay Railway." The Answer of the latter is:—"Denied. The through rates, as well as the local rates, on the petitioners' line, are subject to the regulation of the joint committee,"—the proposition which we negatived last July.

But it is contended by the Solicitor-General that, though the petitioners are not entitled to interdict in terms of the prayer of the petition, they may be entitled to some remedy within the prayer, because he thinks they have not been properly treated by the Caledonian Co. in the way of due notice of the alterations. The letter of 13th March 1871, by Mr Ward, the general superintendent of the Caledonian Co., to the secretary of the Wemyss Bay Co., announces, in the first place, what was doubtless well known to the latter, that the Glasgow and South-Western Co. and the Caledonian Co. had resolved to alter their fares between Glasgow and Greenock. Each of these Companies had a station in Greenock. Besides that, there was the station at Upper Greenock belonging to the Wemyss Bay Co., which is the first place of stoppage on leaving the Caledonian line and going on to the Wemyss Bay line. It is obvious that the fares charged to the upper and lower stations at Greenock must be the same. Mr Ward proceeds to state the new charges, and, in particular, that the third-class fares from Glasgow or Paisley to Greenock was to be 9d. single, and 1s. 6d. return. It followed that if the Wemyss Bay Co. were not satisfied with the proportion of the fares which they were at present receiving, they must go to the joint committee (who have the power of determining what proportion of the gross fare is to go to the Wemyss Bay Co.) and obtain an alteration. It is said that this was not timeous notice of an alteration to take effect on 1st April. I think a fortnight's notice was ample. But it is not want of notice that is complained of at the time. The complaint was that the Caledonian Co. were not entitled to make the announcement at all. We have now held that the Wemyss Bay Co. were wrong in their position. They could not refuse to concur in raising the fares. All that they were entitled to was a new apportionment of the fares. In short, from that date I think the Wemyss Bay Co. were entirely in the wrong, and that we should refuse this petition.

Lord Deas—I think there might have been a competent question, whether the Caledonian Railway Co. were entitled to make the alteration without due notice to the Wemyss Bay Co. It is plain that, if the Caledonian Railway Co. had raised the rates on their own line, while the rates on the Wemyss Bay line remained as they were, the Caledonian Co. would be reaping all the advantages of the higher rates, and the Wemyss Bay Co. all the disadvantages. But want of notice is not the thing complained of. We must take the case as it stands.

Lord Ardmillan concurred.

Lord Kinloch—I have arrived at the same conclusion. The prayer of this petition is in the teeth of our former judgment. No doubt that judgment was not pronounced when this petition was presented; but as soon as it was pronounced the petition ought to have been withdrawn.

The Court recalled the interlocutor of the Sheriff, and refused the prayer of the petition.

Agents for Caledonian Co.—Hope & Mackay, W.S.

Agents for Wemyss Bay Co.—M'Ewen & Carment, W.S.

Friday, June 28.

CALEDONIAN RAILWAY COMPANY *v.* GREENOCK & WEMYSS BAY RAILWAY COMPANY.

Arbitration—Reference.

Circumstances in which it was held that a clause of arbitration did not exclude an action, but only made it necessary to refer to arbitration any questions which might arise in the course of the proceedings falling within the scope of the arbitration clause.

Held that an arbiter has no power conclusively to determine the extent of his own jurisdiction, but that the question what falls within the reference is one ultimately for the Court.

Where the A railway company, out of the balance of its gross receipts, after paying working expenses at a specified rate to the B railway company, was taken bound to pay the charges for maintenance of its line, the government duty, taxes, passenger duty, and rents and feu-duties of land held by it, and also the "general charges," and after providing for those payments to pay over one-fourth of the balance to the said B company (interest on money borrowed being a charge on its own remaining three-fourths of the said balance), and where the said interest on borrowed money exceeded not only the three-fourths but the whole divisible balance as above stated, the A company contended that there was no sum divisible between them and the B company in terms of their agreement. *Held* that this question was "a difference arising between the parties respecting the true meaning or effect of the agreement," and that it touched directly "on the mode of carrying the same into effect," and so fell under a clause referring all such questions to arbitration.

The defenders in this action, the Greenock and Wemyss Bay Railway Company, were incorporated by the Act 25 and 26 Vict., c. 160, 17th July 1862. The share capital of the company was fixed at £120,000, and the borrowing powers at £40,000. By an agreement, dated 1st and 2d April 1862, entered into by the pursuers, the Caledonian Railway Company and the provisional directors of the Greenock and Wemyss Bay Railway Company, and afterwards confirmed by the latter company's Act (1862), it was agreed that the Caledonian

Railway Company should contribute and hold in perpetuity £30,000, or one-fourth of the capital stock of the Wemyss Bay Company, but that only under the conditions, stipulations, and provisions thereinafter written. It was also provided that the Greenock and Wemyss Bay Company should make and maintain the line, and that when completed the Caledonian Company should supply the necessary rolling stock and work it on the terms set forth in Article 8th of the said agreement, which is as follows:—"That the cost of working the traffic upon the said railway and pier, and of the stock and plant to be provided by the said Caledonian Railway Company as aforesaid, shall be borne and defrayed by the said Caledonian Railway Company, in respect whereof the said Caledonian Railway Company shall be entitled, from time to time, to receive and retain for their own use £50 out of every £100 of the gross amount of money earned, realised, and levied on the said railway and pier, until, from time to time, the said gross receipts shall so far exceed £8000 in the year, as at £45 per cent thereof to yield for the said working a sum not less than £4000, in which case £45 out of every £100 of the said gross receipts shall be received and retained by the Caledonian Railway Company for the said working, instead of £50 per cent. as aforesaid, and the remainder of the said gross receipts shall belong to the Greenock and Wemyss Bay Railway Company."

The charges upon the balance of the gross receipts, after paying the working expenses in terms of Article 8th, and the manner in which the residue is to be divided, are thus settled by Article 9th of the said agreement:—"That out of the said Greenock and Wemyss Bay Railway Company's share of the gross receipts there shall be paid by them—*First*, The whole charges and expenses of maintaining the said railway, pier, and other works, and also all public and parish burdens, including poors-rates, county-rates, prison assessment, and taxes generally that may be chargeable upon the said railway and pier in respect of the said line and works, also the government-duty on passengers, and all payments, if any, to be made for land to be held by the said Greenock and Wemyss Bay Railway Company in feu or lease. *Second*, The 'general charges' to be incurred in conducting the ordinary directorial and financial business of the company; and *Third*, After providing for these payments, one-fourth of the balance shall belong to and be paid to the Caledonian Railway Company, in respect of their said contribution of £30,000, as further provided for in Article 14th hereof, and the remaining three-fourths of the said balance shall belong to the other shareholders in said Greenock and Wemyss Bay Railway Company." And it is further provided by Article 14th:—"That in respect of the payment of the said £30,000 of capital, and the other provisions above-written, the Caledonian Railway shall, in perpetuity, have right to one-fourth part or share, neither more nor less, of the nett revenue, as defined in Article 9th hereof, of the proposed company, whatever may be their expenditure in making the intended railway, pier, and works connected therewith, or otherwise; and the said first parties shall be bound to provide for all excess of cost beyond the amount of capital above specified necessary for completing the said undertaking; and the interest or dividend payable in respect of the said excess of expenditure, and the interest on all money borrowed, shall form a charge on the remaining three-fourths of the nett revenue of the said company, but that, subject to the above condition, the proposed company may borrow on mortgage of the whole of the proposed undertaking any sum not exceeding £40,000."

The foresaid sum of £30,000 was contributed by the Caledonian Company to the capital stock of the Wemyss Bay Company, and the line was opened in the first half of 1865, and has since been worked by the Caledonian Company in terms of the foresaid agreement. For the half-years ending 31st July 1865, 31st January 1866, and 31st July 1866, there were paid by the Wemyss Bay Railway Company to the Caledonian the several sums of £317, 13s. 5d., £351, 7s. 6d., and £440, 0s. 7½d., "being one-fourth of nett receipts, after deducting working expenses, in terms of Act and agreement." In the reports and accounts of the Wemyss Bay Company, from half-year ending 31st January 1867 to half-year ending 31st July 1869, there were similarly brought out various sums, amounting in all to £2498, 1s. 3½d., as due to the Caledonian Company as one-fourth of the nett revenue. Although thus credited to the pursuers, these sums were never paid. The present action was brought to recover payment of the said sum of £2498, 1s. 3½d., as also of £428, 11s. 4d., and £538, 19s., being the one-fourth of the nett revenue for the half-years ending 31st January and 31st July 1870.

The defenders stated that the payments made as averred by the pursuers in 1865 and 1866 were made in error, and that the sums credited to the pursuers in the accounts for 1866 to 1869 were erroneous entries, and that the sums sued for were not due, as during those years there was truly no available revenue out of which the pursuers could claim one-fourth—as the working expenses, maintenance, passenger-duty, rates, and taxes, payments on account of land and interest, exceeded the gross receipts of the line. The dispute between the parties thus depended upon the reading of Articles 9th and 14th of the agreement.

By Article 18th of the said agreement it was provided that "all differences which may arise between the parties hereto respecting the true meaning or effect of this agreement, or the mode of carrying the same into operation, shall, from time to time, so often as any such questions or differences shall arise, be referred to arbitration, in terms of the Railways Clauses Consolidation (Scotland) Act, 1845, and the provisions with respect to the settlement of disputes by arbitration contained in such Act shall be held to be incorporated with this agreement, and be operative in the same manner as if they were *verbatim* inserted therein."

The defenders accordingly pleaded, *inter alia*—"(1) The present action is excluded by Article 18 of the agreement libelled; (2) The defenders ought to be assoilzied, in respect that in none of the half-years in question did any balance of revenue remain after meeting the requisite charges, and that thus there was no sum divisible between the pursuers' and the defenders' shareholders, in terms of Article 9th of the said agreement."

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh*, 3*d August* 1871.—The Lord Ordinary having heard counsel for the parties on the

defenders' first plea in law, and having considered the argument and proceedings, sustains said plea in law, and in respect thereof dismisses the action, and decerns: Finds the defenders entitled to expenses; allows them to lodge an account thereof, and remits it, when lodged, to the auditor, to tax and report.

"*Note.*—The parties have agreed that all differences which might arise between them 'respecting the true meaning and effect of the agreement' libelled, 'or the mode of carrying the same into operation' should be referred to arbitration. These terms are very comprehensive. Not only do all differences between the parties regarding the '*meaning*' of the agreement, but also regarding its 'effect' and the mode of carrying it into operation, fall within its scope. Keeping this in view, and that the clause of arbitration also directly provides that the machinery of the Railways Clauses Act is to be applied for the purpose of working it out, the Lord Ordinary has been unable to see any good reason why that clause should not in the present instance be given effect to."

Against this interlocutor the pursuers reclaimed, and on 13th December 1871, "the Lords having heard counsel on the Reclaiming Note for the Caledonian Railway Company against Lord Ormidale's interlocutor of 3d August 1871, recall the interlocutor of the Lord Ordinary, reserving the effect of the arbitration clause founded on by the defenders, if any question shall arise in the course of the cause which falls within the obligation to refer to arbiters: Of consent appoint the defenders to lodge, by the Box day in the recess, the accounts on which they now rely, showing the gross and nett revenue of the defenders' company during the years mentioned on record: Find the pursuers entitled to expenses since the date of the interlocutor reclaimed against, and remit the account of said expenses, when lodged, to the auditor to tax and report."

The case was again heard, when the Court directed it be re-heard before seven Judges, under the following interlocutor:—

"*Edinburgh, 24th May* 1872.—The Lords appoint this cause to be argued on the day of next, before the Judges of this Division, with the assistance of three Judges of the Second Division, in order to it being determined 'Whether the question raised by the defenders' second plea, in the circumstances disclosed on the record, and in the accounts produced by the defenders, falls to be settled by arbitration under the 18th Article of the agreement libelled?' and appoint copies of the printed papers in the cause, and of this interlocutor, to be boxed for the said Judges of the Second Division."

Lord Advocate (YOUNG), WATSON, and JOHNSTONE for the pursuers and reclaimers.

Solicitor-General (A. R. CLARK), BALFOUR, and ASHER for the defenders and respondents.

At advising, Lord Kinloch pronounced the judgment of the Court.

LORD KINLOCH—The present action has been raised by the Caledonian Railway Co. against the Greenock and Wemyss Bay Railway Co. for payment of a debt alleged to arise under the Act of Incorporation of the latter Company, passed in July 1862. Anterior to the passing of this Act, an agreement had taken place between the Caledonian Co. and the provisional directors of the Wemyss Bay Co., which was sanctioned by the Act, and a copy of which was attached to the Act by way of schedule. By this agreement, it was arranged that the Greenock and Wemyss Bay Railway, thereby authorised to be constructed, should be worked by the Caledonian Co., who were also to hold £30,000 of the capital of £120,000 authorised to be raised by the Wemyss Bay Company, the borrowing powers of the Company being limited to a further sum of £40,000. Various provisions were made as to the division of profits between the two Companies, to which I shall afterwards allude more particularly. The present action is raised by the Caledonian Co. for certain sums said to be due to them, year by year, from 1867 to 1870, as the share of profits falling to them under this agreement.

It was stated, as a preliminary defence against this action, that the action was excluded by the 18th article of the agreement, by which it was provided—"All differences which may arise between the parties hereto respecting the true meaning or effect of this agreement, or the mode of carrying the same into operation, shall, from time to time, so often as any such questions shall arise, be referred to arbitration in terms of the Railway Clauses Consolidation (Scotland) Act, 1845; and the provisions with respect to the settlement of disputes by arbitration contained in such Act shall be incorporated with this agreement, and be operative in the same manner as if they were inserted therein."

The Lord Ordinary sustained this plea, and dismissed the action. On a reclaiming note, his interlocutor was recalled, the Court being of opinion that the effect of the clause of arbitration was not to exclude the action, but simply to make it necessary to refer to the arbiters any question which might arise in the course of the proceedings, falling within the scope of those to which the arbitration clause referred. By their interlocutor of the 13th December 1871, they "recall the interlocutor of the Lord Ordinary, reserving the effect of the arbitration clause founded on by the defenders, if any question shall arise in the course of the cause which falls within the obligation to refer to arbiters."

The parties then proceeded to a discussion before the Court of the merits of their case. Under their second plea in law the defenders pleaded—"The defenders ought to be assoilzied, in respect that in none of the half years in question did any balance of revenue remain after meeting the requisite charges, and that thus there was no sum divisible between the pursuers' and the defenders' shareholders, in terms of article 9th of said agreement." With special reference to this plea, they now contended that the arbitration clause took effect to the extent of making it necessary the plea should be disposed of by the arbiters. In this state of things the case has been sent to seven Judges, "in order to its being determined whether the question raised by the defenders' second plea, in the circumstances disclosed in the record, and in the accounts produced by the defenders, falls to be settled by arbitration under the 18th article of the agreement libelled." On this question we are now to give judgment.

The question is of some practical importance, as such arbitration clauses are now extremely common. It is clear, as I think, that when such a question arises, it is one for the determination of the Court; it is not a question for the determina-

tion—that is to say, not for the effectual or conclusive determination—of the arbiter. Each arbiter will, of course, proceed in the submission according to his own best views. But his decision on this point will not be binding upon the parties. To hold that an arbiter was entitled not merely to decide the questions actually submitted to him, but conclusively to decide what questions were within his determination—in other words, to determine the extent of his own jurisdiction—would be as unwarrantable in principle as I think it would be inexpedient in policy. The question, whether a particular point of controversy is or is not within the submission, is not a question in the submission. It is a question on the contract of the parties; and what, and to what effect is this contract, it is for the Court exclusively to decide.

The question may be sometimes one of difficulty for the Court. For it is reasonably urged that some things in the contract must be axiomatic; that is to say, that some things must be held fundamental conditions of the contract, clearly settled by its terms, and subject to no reference to arbitration. It would be absurd in the present case to make it a question for the arbiter whether the Caledonian Co. had agreed to work the railway in question, although *how* the working was to be carried on might reasonably be matter of submission. So of other questions which may be figured. It is clearly not enough that the parties differ about something. But that something must be one of the things reserved by the contract for arbitration. The Court must decide whether the particular question is one of the questions reserved for arbitration, on a sound consideration of the whole deed, and the circumstances in which it was executed, sometimes even of the position and profession of the arbiters named. They must decide, on such a consideration, whether the question is one which the parties are, on a fair and reasonable construction, to be held as having intended to make the subject of prospective arbitration.

Applying to the present case this principle of decision, I am of opinion that the question raised by the defenders' second plea is a question to be determined by the arbiters under the arbitration clause of the contract. This involves a consideration of what that question truly is.

By the 8th article of the agreement it is provided, "that the cost of working the traffic upon the said railway and pier, and of the stock and plant to be provided by the said Caledonian Railway Co. as aforesaid, shall be borne and defrayed by the said Caledonian Railway Co., in respect whereof the said Caledonian Railway Co. shall be entitled, from time to time, to receive and retain for their own use £50 out of every £100 of the gross amount of money earned, realised, and levied on the said railway and pier, until, from time to time, the said gross receipts shall so far exceed £8000 in the year as, at £45 per cent. thereof, to yield for the said working a sum not less than £4000, in which case £45 out of every £100 of the said gross receipts shall be received and retained by the Caledonian Railway Co. for the said working, instead of £50 per cent. as aforesaid, and the remainder of the said gross receipts shall belong to the Greenock and Wemyss Bay Railway Co."

There is no question raised as to this clause. It simply provides for payment to the Caledonian Railway Co. of the cost of working the line, by a lump sum of one-half of the gross receipts being retained by them, reducible in a certain event from £50 to £45 per cent. After this deduction the clause bears—"The remainder of the said gross receipts shall belong to the Greenock and Wemyss Railway Co."

The 9th clause goes on to provide for the mode in which the sum of gross profits so belonging to the Wemyss Bay Co. shall be divided. It enacts thus—"That out of the said Greenock and Wemyss Bay Co.'s share of the gross receipts there shall be paid by them (*First*) the whole charges and expenses of maintaining the said railway, pier, and other works, and also all public and parish burdens, including poors rates, county rates, prison assessment, and taxes generally that may be chargeable upon the said railway and pier in respect of the said line and works; also the government duty on passengers, and all payments, if any, to be made for land to be held by the said Greenock and Wemyss Bay Railway Co. in feu or lease. (*Second*) The general charges to be incurred in conducting the ordinary directorial, and financial business of the Co.; and (*Third*) after providing for these payments, one-fourth of the balance shall belong to and be paid to the Caledonian Railway Co., in respect of their said contribution of £30,000, as further provided for in article 14th hereof; and the remaining three-fourths of the said balance shall belong to the other shareholders in said Greenock and Wemyss Bay Co."

In connection with this is to be read the 14th clause, which runs thus—"That in respect of the payment of the said £30,000 of capital, and the other provisions above written, the Caledonian Railway Co. shall, in perpetuity, have right to one-fourth part or share, neither more nor less, of the net revenue, as defined in article 9th hereof, of the proposed Company, whatever may be their expenditure in making the intended railway, pier, and works connected therewith, or otherwise; and the said first parties shall be bound to provide for all excess of cost beyond the amount of capital above specified, necessary for completing the said undertaking; and the interest or dividend payable in respect of the said excess of expenditure, and the interest on all money borrowed, shall form a charge on the remaining three-fourths of the net revenue of the said Company, but that, subject to the above condition, the proposed Company may borrow on mortgage of the whole of the proposed undertaking any sum not exceeding £40,000."

The defenders, the Wemyss Bay Co., raise no controversy as to the meaning and effect of these clauses in the event of the profits, remaining after deduction of the cost of working, being sufficient to pay not only the expenses of maintaining the line, and other charges primarily referred to in clause 9th, but also the interest of the debt. In such a case they admit that the interest must, in terms of the 14th clause, "form a charge on the remaining three-fourths of the net revenue of the said Company;" and the one-fourth of this net revenue must be paid to the Caledonian Co. without having any part of the interest of the debt laid on it. But the case which actually has occurred, and which is evidenced by the accounts produced, is that this three-fourths is not sufficient for payment of the interest on the debt, which would require for its payment not merely an encroachment on the Caledonian Co.'s one-fourth share of the profits, but would swallow up that fourth, leaving no divisible profit whatever. What the Wemyss Bay Co. maintain is, that according to "the true meaning and effect of the agreement," the Cale-

donian Co. had right to the one-fourth of the profits only when the remaining three-fourths were sufficient to meet the charge of the interest on the debt. If it is not sufficient for this purpose, they maintain that the rule common to all partnerships must be applied, viz., that the charge of the debt, as well as all other charges, must be deducted before there is any division of profit, or any claim for a share of profits, on either hand. The contract, as they contend, did not contemplate that the Caledonian Co. should be entitled to carry off a clear one-fourth, to the effect of leaving an amount of interest on debt unpaid out of the revenue of the Company, and apparently without means of paying it, except a declaration of bankruptcy and disposal of the whole concern. Or, if the creditors in this interest, who of course were not affected by private arrangements of the Companies *inter se*, should help themselves to their interest out of the revenue, the defenders say that they cannot be held bound to pay, or raise money, to make good to the Caledonian Co. a sum of profits which never was earned. They maintain that the contract cannot legitimately be construed so as to sanction this claim by the pursuers. The reverse of this is maintained by the pursuers, who contend that the words of the contract clearly import an allocation of one-fourth to the Caledonian Company, irrespectively of all consideration of the interest of the debt.

I am of opinion that the question thus raised is, in the sound sense of the agreement, a "difference arising between the parties respecting the true meaning or effect of the agreement;" and that it touches directly on "the mode of carrying the same into operation." The question is one of undoubted practical importance in reference to the working out of the agreement. It regards the obligation or non-obligation of the Wemyss Bay Co. to pay, year after year, to the Caledonian Railway Co. a sum which the revenue of the Company does not yield after satisfying the demands of its creditors. An obligation to this effect cannot but have a paralysing influence on the operations of the Company, if indeed it does not issue in necessary bankruptcy. This being so, I am of opinion that, on a sound construction of the agreement, the question must be held to be amongst those intended by the parties to be referred to arbitration under the 18th clause. It is a question directly bearing on the execution of the agreement, and is just such a question as might form a difference arising, in terms of the clause, "from time to time." It is a question which, whenever or however it may be decided, must be determined according to "the true meaning and effect of the agreement." I am of opinion that the question must go to the arbiters.

It is scarcely necessary to say that, in arriving at this conclusion, I take no judicial cognizance of the merits of the question to be referred; nor allow my mind to be in the least influenced by a consideration of how I would myself decide the question if it was before me for determination. Even if I had a clear opinion as to the validity of the claim of the Caledonian Co., this opinion, one way or other, would be no ground whatever for withdrawing the question from the tribunal chosen by the parties. The controversy whether the question is to go to the arbiters or not cannot be solved by the consideration whether the point at issue be a clear or an obscure one. If the question is one which, in the fair construction of the agreement, falls to be determined by the arbiters, I have no other course except to send it to the arbiters.

The practical conclusion at which I arrive is an affirmative of the question sent to us, and that the Court should find, "that the question raised in the defenders' second plea, in the circumstances disclosed on the record, and in the accounts produced by the defenders, falls to be settled by arbitration under the 18th article of the agreement libelled."

In accordance with this judgment their Lordships sisted procedure in the case until the question raised in the defenders' second plea should be submitted to arbitration.

Agents for the Pursuers—Hope & Mackay, W.S.
Agents for the Defenders—M'Ewen & Carment, W.S.

Friday, June 28.

SPECIAL CASE—M'LENNAN & WAITE.

Poor—Settlement—Minor.

A girl, who was born in the parish of A in 1851, and whose father died in 1857, resided in family with her mother in the parish of B from 1859 till 1866. She then left her mother and resided in the parish of C till 1868, when she became a subject of parochial relief in that parish.

Held that she had acquired no settlement in the parish of B, but was chargeable upon A, the parish of her own birth.

The object of this case was to determine whether the parish of Contin or the parish of Dunse was liable for the support of a pauper in the following circumstances.

The pauper, Jane Elizabeth M'Gregor, was born in the parish of Contin on 15th July 1851, and was the daughter of the schoolmaster in that parish. In 1857 the father died, and in February 1858 Mrs M'Gregor, his widow, and her family, including the pauper, left Contin, and went to Glasgow, where they remained for about a year and a-half. In 1859 they left Glasgow and went to Dunse, where the pauper resided in family continuously with her mother until October 1866, when she removed to Kenmore. Mrs M'Gregor died in Dunse on 10th December 1867. During their residence in Dunse, neither the pauper nor her mother applied for or obtained parochial relief. After leaving Dunse in 1866, the pauper did not again reside there, but on 6th June 1868 she applied for and obtained parochial relief from the Inspector of the Poor of the parish of Kenmore. She continued to be relieved by the parish of Kenmore up to 1871, when the Inspectors of Poor of the parishes of Contin and Dunse jointly repaid the sum which had been so expended, and brought this action to determine which of the two parishes was ultimately liable. The question presented for the opinion and judgment of the Court was—

"Whether the parish of Contin or the parish of Dunse was the parish in which the pauper had her legal settlement on 6th June 1868, when she became chargeable?"

MILLER and BURNET, for the parish of Contin, argued that there was no reason why the attainment of puberty by the pauper should be held to prevent the settlement which the mother acquired in Dunse being acquired by her for her daughter.