the deduction of the money expended on the education and upbringing of that child. What the truster directed was that the residue should be held for the children equally, and what we must aim at in the ultimate distribution is to bring out an equal share to each child. I agree with the Dean of Faculty when he says that the payments already made for each child were provisional payments, and were paid towards the prospective share of each child. If a share ultimately vested in each child, then I think the payments were made as payments to account of the share of each. That being so, I think that in making the division the sum of £1719 should be deducted from the individual share now payable.

LORD M'LAREN—On the first and main question argued I am clearly of opinion that nothing further was decided under the previous application than that the sums which the Court authorised to be expended on maintenance and education were proper charges against the trust funds in a question with the trustees—that is, no question could be taken to the trust accounts on the ground that this money was improperly expended. If we had been asked to go further, no doubt a finding could have been made regarding the incidence of these payments, but I am satisfied by the argument of the Dean of Faculty and his junior that that question was not argued, and was never considered by us, and is therefore open to consideration now. That being so, it appears to me that whether as regards past or future expenditure the just and proper mode of accounting is that whatever sums have been applied to the benefit of any individual child should be a charge on that child's succession in the event of his surviving the period of distribution. If any misfortune should happen to the family, of course the money advanced could be spread over the shares of the survivors.

LORD KINNEAR—I entirely agree and have nothing to add except that the construction of the interlocutor authorising the first payments of the class in question appears to me to be perfectly clear. I cannot say that the interlocutor creates any difficulty in my mind. I think it was quite rightly understood by the Dean of Faculty, and therefore I cannot say that I think it would have been necessary or appropriate to have added anything to the terms in which it is expressed.

The interlocutor of the Court, besides granting authority to the trustees to make advances as craved, contained the following clause:—

> "(5) Direct and ordain the said trustees, in ascertaining the share of said trust-estate to be set apart and held for behoof of or paid over to any child of the said William Campbell Muir in whom a right to a share has vested or may vest, to deduct from said share the sums paid or advanced for behoof of such child under authority of this interlocutor or of said interlocutors of 23rd June 1891 and 31st January 1893, without charging interest on the said sums so paid or advanced, such sums to be deducted from the first portion of the shares of capital to be paid to or set apart for the respective children of the said William Campbell Muir."

Counsel for the Trustees—Jameson, Q.C. —Grainger Stewart. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for the Minuters—Dean of Faculty (Asher, Q.C.)—Watson. Agents—Alex. Morison & Co., W.S.

Saturday, December 23.

FIRST DIVISION.

(Without the Lord President.)

THE GRIANAIG SHIPPING COMPANY, LIMITED, PETITIONERS.

Company—Reduction of Capital—Capital Lost or Unrepresented by Available Assets —Assets Consisting of Ships of Diminishing Value—Companies Act 1877 (40 *and* 41 *Vict. cap.* 26), *sec.* 3.

In a petition by the Grianaig Shipping Company Limited for confirmation of a resolution to reduce its capital by writing off capital lost and unrepresented by available assets to the extent of £25,116, the Court, there being no opposition, remitted the petition to Sir Charles B. Logan, W.S., to report.

Sir Charles Logan submitted a report, containing, *inter alia*, the following passage —"I have examined the audited and published balance-sheets, and profit and loss accounts of the company since its incorporation, and I am satisfied that the loss of capital which it has sustained, as therein shown, and as referred to on page 2 of the petition, is correctly stated at £24,167, and to this extent the proposed reduction of capital appears to be competent. It will be observed, however, that the petitioners propose to write off capital to the extent of £25,116, being £6 per share on 4186 issued and fully paid-up shares, or nearly £1000 above the total loss set forth in the petition. Looking at the assets which the company still hold, I find that these consist of 56/64th shares of the ship 'Lady Wentworth,' which were acquired during the financial year 1896-97 at the price of £17,477, 5s. 1d. These shares are stated in the petition to be worth, at the date when the reduction of capital was resolved on, £17,508, and if to that sum there be added a small balance on hand, the assets of the company exceed the capital as proposed to be reduced by about the sum of £1000. In view of this difficulty the petitioners have obtained from Messrs Lachlan & Company, valuators for the English Admiralty Court, a valuation as in May last (when the proceedings for the proposed reduction of capital were instituted) of the shares of the 'Lady

Wentworth' held by the company. That valuation is lodged in process, and your Lordships will observe from it that Messrs Lachlan & Company value the shares at that date at £16,748, being £760 below the estimate in the petition. In these circumstances it will appear that the proposed reduction of capital paid up exceeds the amount of capital which has been lost, or is unrepresented by available assets by a sum slightly exceeding £200. I have thought it necessary to bring this fact under your Lordship's notice, as the Companies Act of 1877 appears to authorise the reduction of capital in cases of loss only to the extent of that loss, or so far as the capital is unrepresented by available assets; but looking to the fluctuating values of shipping property, your Lordship may be disposed to disregard the comparatively small sum by which the assets of the company exceed the capital as reduced."

By the Companies Act 1877, section 3, it is provided—"The word capital as used in the Companies Act 1867 shall include paid-up capital, and the power to reduce capital conferred by that Act shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company."

Counsel for the petitioners submitted that, looking to the fact that the property of the company consisted of ships, which tended to diminish in value, the whole £25,116 should be regarded as lost or unrepresented by available assets, within the meaning of the section quoted above.

The Court, without giving opinions, granted the prayer of the petition.

Counsel for the Petitioner — Lorimer. Agent—W. B. Rainnie, S.S.C.

Saturday, December 23.

FIRST DIVISION.

(Without the Lord President.)

[Lord Low, Ordinary.

PARISH COUNCIL OF CATHCART *v.* PARISH COUNCIL OF HOUSTON.

Poor—Relief—Liability of Parish of Settlement—Notice—Regulations of Board—Ultra vires—Poor Law Act 1845 (8 *and* 9 *Vict. cap.* 83), *secs.* 71 *and* 90.

Section 71 of the Poor Law Act 1845 provides that where a parish affords relief to a destitute person, the charge thereby incurred may be recovered from the parish in which such person has a settlement, provided that "written notice of such poor person having become chargeable shall be given to the inspector of poor of the parish or combination to which such poor person belongs; and the parish or combination affording relief shall not be entitled to recover for any charges or expenses incurred in respect of such poor person, except from and after the date of such notice."

By section 90 of the same Act it is provided—"That in all cases in which, by the provisions of this Act notice or intimation is required to be given, without prescribing the particular form of the notice or the manner in which the same is to be given, it shall be lawful for the Board of Supervision from time to time to fix the form of such notice or intimation, and the manner in which the same is to be given."

Under this latter section the Board issued a regulation providing that notices under section 71 should be sent "with a statement of the circumstances."

The parish of A relieved a pauper belonging to the parish of B, and sent a notice to the inspector of B, stating the name of the pauper claiming relief, and promising that the grounds of this claim would be sent at an early date.

In an action of relief by the parish of A against the parish of B, *held* (1) that the notice given was sufficient under section 71; (2) that the regulations by the Board under section 90 were merely administrative, and their non-observance could not involve the forfeiture of the right of relief; but (3) that the defenders were entitled to a proof of their averment that they had been prejudiced by the form of the notice, in support of a plea of *mora*.

On October 29th 1845 a circular was sent by the Board of Supervision to all inspectors of poor, containing "rules instructions, and recommendations to parochial authorities," which included the following clause:—"If an inspector shall have relieved a poor person found destitute and belonging to another parish, it is the duty of such inspector, immediately on discovering to what parish such poor person belongs, to send a notice in writing with a statement of the circumstances to the inspector of that parish."

On 14th January 1894 Mrs Marion M'Lean or Gardiner residing at Braehead, Cathcart, applied to the Inspector of Poor of the parish of Cathcart for parochial relief, and was allowed 6s. 6d. a week for herself and two children.

The Inspector of Poor of Cathcart sent, on 23rd January 1894, to the Inspector of Poor of the parish of Houston, a post-card in the following terms—"Case of *Marion M'Lean or Gardiner, Braehead, Cathcart.*—"Sir,—In terms of the Act 8 and 9 Vict. cap. 83, sec. 71, I hereby give you notice that the above-named poor person, whose settlement appears to be in the parish of Houston, has, as a pauper, become chargeable to the Parochial Board of this parish, which claims relief and repayment of all advances and charges incurred, or that may be incurred, in respect of said poor person, from you as representing the parish of settlement. The grounds of this claim will be sent to you on an early date."