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."

No answer to this intimation was received.

On 3rd March 1897 another post-card in the same terms was sent, and on 11th March 1897 a letter asking for an admission of liability, and having annexed a statement of particulars of Mrs Gardiner's case.

In June 1898 the Parish Council of the parish of Cathcart brought an action against the Parish Council of Houston, concluding for £87, 4s. 11d., being the amount disbursed by the parish of Cathcart in relieving Mrs Gardiner from 23rd January 1894 to 3rd May 1898.

The defender admitted that Mrs Gardiner had a settlement in the parish of Houston, but denied liability, and made the following averments:—"Mrs Gardiner was not at the date of the notice on 23rd January 1894 properly chargeable as a pauper, and the notice was invalid and inept to confer a right of relief under the statute. Further, the said notice contained no particulars which would enable the defenders' predecessors to verify the claim, but stated that the grounds of the claim would be sent on an early date. It is customary when a pauper becomes chargeable on a parish in which he has no settlement, for the inspector in such parish to send out preliminary notices to all the parishes with which the pauper has been connected, pending the ascertainment of the particular parish which is liable to maintain him, and to follow up such notice by a statement of particulars to the parish actually found to be liable. If no such particulars are sent, it is understood by the inspectors receiving such preliminary notices that some other parish has been fouud liable, and no further attention is paid to the notice. In the present case the inspector of the defenders' parish received no other or further communication from the parish of Cathcart until the notice of 3rd March 1897, and in the circumstances above stated the defenders and their predecessors understood, and it was the case, that the claim against them was waived."

The pursuer pleaded, *inter alia*—"(1) The settlement of the said Mrs Marion M'Lean or Gardiner being in the parish of Houston, and she having been since the 14th January 1894 a proper object of parochial relief, the pursuers are entitled to decree of declarator as concluded for."

The defenders pleaded—"(1) The defenders are not liable to reimburse the pursuers for their expenditure on the pauper prior to 3rd March 1897, in respect (*a*) that no notice was given in terms of the statute after the pauper became chargeable; (*b*) that the alleged notice of 23rd January 1894 was inept and invalid; and (*c*) that in any case the pursuers are barred by their actings and delay from founding on said notice."

On 15th June 1899 the Lord Ordinary (Low) pronounced the following interlocutor:—"Finds that the parish of Houston is the parish of settlement of the pauper Mrs Marion M'Lean or Gardiner, described in the summons, and that the said parish is bound to refund the monies expended by the parish of Cathcart in behalf of said pauper from and after the date when notice was sent to the Inspector of Poor for the parish of Houston in terms of the 71st section of the Act 8 and 9 Vict. c. 83: Finds that such notice was not sent until the 3rd March 1897, and that the amount expended by the pursuers on behalf of said pauper between that date and 3rd May 1898 amounts to the sum of £17, 18s. 9d.: Therefore decerns and ordains the defenders to make payment to the pursuers of the said sum of £17, 18s. 9d., with interest thereon at the rate of five per centum per annum from said 3rd May 1898 until payment; and further, decerns and ordains the defenders to free and relieve the pursuers in all time coming of all alimentary and other advances or disbursements that have since May 3rd 1898 been or may hereafter require to be made by the pursuers on account of the said Mrs Marion M'Lean or Gardiner during the time she continues a proper object of parochial relief, and decerns," &c.

Opinion.—"The form in which notice was given in this case was one which was very commonly used, although I doubt whether it was in conformity with the Poor Law Act.

"When an inspector of poor relieved a pauper who did not belong to his parish, he commonly sent notices, without giving particulars of the case, to all the parishes in which he thought the pauper might possibly have a settlement. Then when he had inquired into the circumstances and discovered which of the parishes to which he had sent notices was truly the parish liable, he sent a note of the circumstances to the inspector of that parish, and made no further communication to the inspectors of the other parishes to whom he had originally sent notices. If therefore an inspector to whom a notice had been sent did not soon thereafter receive a note stating the circumstances under which it was maintained that his parish was liable, he assumed that upon inquiry it had been found that the pauper was not chargeable to his parish.

"The reason for giving notice in that form was that the parish of settlement was only liable from the date of notice from the relieving parish.

"The matter is regulated by the 71st section of the Poor Law Act 1845. It is there provided that the relieving parish may recover the moneys expended on behalf of the pauper from any parish 'to which he may be ultimately be found to belong,' provided that written notice of the pauper having become chargeable shall be given to the parish 'to which such poor person belongs.'

"It appears to me that these provisions contemplate that only one notice shall be given, namely, to the parish which the relieving inspector shall ascertain to be the parish of settlement. Of course cases do arise in which it is impossible for the relieving inspector to say which of two or more parishes is truly liable, and in such a case it is necessary to send notices to both or all of these parishes. But I can see no warrant in the Act for the scattering of random notices before the relieving inspector has had an opportunity of making such in-

quiries as are necessary to enable him to form an opinion as to the true parish of settlement.

"By the 90th section of the Act the Board of Supervision was empowered to fix the form of any notice or intimation required to be given by the Act.

"The Board do not appear to have fixed a precise form of notice, but in a circular issued to inspectors of poor soon after the passing of the Poor Law Act, containing rules and directions upon a variety of matters, the notice to be given by a relieving parish is dealt with (section 20) as follows:—'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.'

"I think that that was a rule which the Board were entitled to make under the 90th section of the statute. The direction that the notice should be sent 'on discovering to what parish such poor person belongs' is just what the statute provides, and the direction that the notice should be accompanied 'with a statement of the circumstances' was obviously a reasonable provision in the working out of the statute.

"But further, I think that the notice sent by the Inspector of the parish of Cathcart on 23rd January 1894 was, upon the face of it, incomplete.

"It concludes with the words — 'The grounds of the claim will be sent to you at an early date.' These words seem to me to recognise the obligation of the inspector making the claim to put the inspector against whom the claim was made in possession of the circumstances alleged to infer liability on the part of his parish, and I think that the latter was entitled to assume that if the claim was to be persisted in particulars would be sent within a short period.

"That also appears to have been the view taken by the Inspector of Cathcart, because the matter having been allowed to lie over until March 1897, what was then sent to the Inspector of Houston was not a statement of circumstances applicable to the notice of January 1894 but a new notice.

"The latter notice consisted of a partly printed post-card in precisely the same terms as that sent in 1894, and it was followed in a few days by a detailed statement of the circumstances under which the claim was made.

"The defenders admit their liability from the date of the second notice, but they contend that they are not liable to relieve the pursuers of the sums expended prior to that date. I am of opinion, for the reasons which I have given, that the contention of the defenders is well founded."

The pursuers reclaimed, and argued—The notice sent in 1894 was a good notice under sec. 71 of the Poor Law Act (quoted in rubric). All that was there required was that the notice should be in writing. No precise form had been laid down by the Board of Supervision under sec. 90 (quoted in rubric). Even if the excerpt from the rules and regulations, quoted *supra*, was an exercise of the powers of the Board under section 90, it was merely an administrative direction to inspectors of poor, not a condition of the right to relief. It did not expressly state that non-compliance with its terms would bar the relieving parish from recovering its advance; if it had, it would have been *ultra vires* of the Board. The mere fact that the notice promised further information could not affect the right of relief if the notice without that promise was good. At the most it might support a plea of *mora* or personal bar if as a matter of fact the parish of Houston could prove that they had been in any way prejudiced.

Argued for the respondents—The Board acted under statutory authority, and the observances of their regulation was obligatory. A notice not complying with that regulation did not satisfy the provisions of section 71. The Board in issuing the regulations quoted above was acting under the authority of section 91, and their regulation had the authority of statute. The vagueness of the regulations might cover vagueness in the information supplied, but here there was no information whatever. The defenders had been prejudiced by the form of the notice. It led their inspector to believe that if no further particulars arrived it was not necessary for him to take any action in the matter. Otherwise he would have investigated the matter and diminished the expense incurred. That was sufficient to relieve the parish of settlement from liability—*Jack* v. *Chisholm*, June 14, 1864, 2 Macph. 1221; *Jack* v. *Fraser*, July 19, 1861, 4 Poor Law Mag. 22.

LORD ADAM—Where a person becomes a proper subject of parochial relief in a parish which is not his or her parish of birth or parish of settlement, it is the duty of the parish in which he or she is found to give relief, and the law provides that the parish in which he is found and which gives relief shall recover from the parish which is ultimately found to be the parish of settlement, and it is coupled with this condition, which is set forth in the 71st section of the Poor Law Act of 1845, that "in all such cases where relief has been afforded by one parish or combination to a poor person having a settlement in another parish or combination, written notice of such poor person becoming chargeable shall be given to the inspector of such parish or combination to which such poor person belongs, and the parish or combination affording relief shall not be entitled to recover either any charges or expenses incurred in respect of such poor person except from and after the date of such notice." In this case a woman of the name of Mrs Marion M'Lean or Gardiner is alleged to have become a proper subject of relief in the pursuers' parish of Cathcart. That parish gave her relief, and they now sue for repetition of the sums so expended. The question which has been raised and argued before us, and which we have to

decide, is whether or not the notice which was professed to be given by the parish of Cathcart to the parish of Houston was in such terms as are required by the 71st section of the Act to be given. I have read the terms of the 71st section. The notice which was given is—"The case of Mary M'Lean or Gardiner. 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;" and then it is said, "The grounds of this claim will be sent you on an early date." The question is, whether or not that notice is in the terms required by the 71st section of the Act. It appears to me that that notice gives everything that is required by the 71st section. All that the 71st section seems to me to require is that in a case as here, where relief has been afforded, notice of such person having become chargeable shall be given to the inspector of the other parish. That has been given. Notice was given that the person had become chargeable, and I do not see that, so far as the statutory notice is concerned, the notice given by the parish of Cathcart is not exactly in terms of it. And therefore, unless there be some reason for saying that something more is required, it appears to me that the notice is sufficient. But the argument has been maintained to us that the notice given here was not sufficient because it was not accompanied by a statement of the circumstances or particulars which led the inspector of the parish of Cathcart to say that this person's settlement was the parish of Houston, and that because such a statement of circumstances or particulars was not made part of the notice, as I understand, therefore the notice was insufficient. As to the particulars or circumstances which it is said the parish of Cathcart was bound to give, the argument of the Solicitor-General is that the parish of Cathcart were themselves aware of such particulars at the time, having obtained such information, as I understand, from the mouth of the pauper. That was pointed out as being information which was necessary in order to make the notice complete. All I can say is that if the statute had required that, it would have said so. But it says nothing of the sort. All that the statute requires is that notice shall be given that such and such a person has become chargeable, and that the claim is upon the parish to which notice is to be given. Now, it would have been very easy for the statute to have said that besides the notice of the claim they were to state the particulars on which the alleged claim is founded. And it appears to me that the real object of the requiring of this notice in the terms in which it was to be was to let the parish know that a claim was to be made, and the inspector of the parish who received it would put himself into communication with them. What more natural than for the parish of Houston to write to the parish of Cathcart and say—"You have made a claim; let me have the particulars as soon as you can furnish them," and so on. I think that was the idea—to allow the two parishes to put themselves into communication with each other about the matter, and not that in the first stage of the matter the claim should contain particulars, because it immediately suggests—what particulars? The particulars, for anything the inspector would know at the time, might be perfectly insufficient; they might be perfectly erroneous. They might not get any particulars; it might be a lunatic pauper, who could give no particulars. I think that the statute meant to reserve all these matters for further communication between the two parishes. I have no doubt that in the actual administration of that provision there would be no difficulty, and therefore it humbly appears to me that the notice which was given complied with the terms of the statute. But it is said that under section 90 the Board of Supervision of that date, now the Local Government Board, had power to provide the form and manner in which such notices are to be given, that they have provided the form and manner in which notices are to be given, and that that form requires that particulars be given. I do not find any specified form in which this particular demand is to be made. There are certain directions—the Board of Supervision—the Local Government Board—very properly give instructions, but I do not find any statutory form for them under section 90. But even if there were, I should demur to its being *intra vires* of either the Board of Supervision or the Local Government Board to attach conditions to their instructions so as to limit the statutory right of one parish as to recovering relief from another parish, if we find upon a consideration of the Act of Parliament that all that is required to entitle one parish to recover the relief which has been afforded to another parish is, that notice of chargeability shall be given. It humbly appears to me that the Board of Supervision, or the Local Government Board, had no power to attach that condition; and to say that you have not only to give notice, but that you must give notice of this and that other matter, I do not think would be within the power of the Board of Supervision, and I do not think that is what the Board of Supervision or the Local Government Board have done. All that they have done is to issue very sensible and proper directions to the inspectors who are under their charge and who are bound to obey them, as to how this matter should be administered; and accordingly I think all these directions issued by these Boards are very right and very proper, and the inspectors are all bound to obey them. That appears to have been the view taken by the Board itself; but however that may be, I think that if it is professed that these directions introduce other conditions than the statute does—conditions-precedent to a

right to recover—then I should say it is *ultra vires*. I think that is all I have to say upon the construction of the statute. But there was another point raised, and decided by the Lord Ordinary, and referred to in the argument. It was—"The notice concluded with these words, 'The grounds of the claim will be sent to you at an early date;'" and the Lord Ordinary considers that the notice was incomplete in respect of that. I cannot agree with that. I think Mr Campbell's argument was very sound upon that point. If the notice given complied with all the requirements of the statute, the mere addition of the words that 'the grounds of the claim would be sent on an early date,' cannot make it a bad notice under the statute. I can see that this may be material when we come to the question, which we possibly may have to consider or the Lord Ordinary may have to consider at a future date, viz., the question of what effect is to be given to that in the matter of delay or abandonment. I can quite well see the force of that if we have the defenders the parish of Houston coming forward and saying—"Oh; we were misled by this; we made no inquiry; we trusted in the promise of that notice that we should get particulars, and we thought the claim had been abandoned." I can see the force of that as a subsequent question in this case; I can see no force in it in a question of whether or not this was a good notice. Therefore upon that I am also for recalling the interlocutor of the Lord Ordinary. But, so far as I can see, the only matter upon which we can decide here is as to the sufficiency or insufficiency of this notice—whether it complied with the terms of the statute. I am of opinion, contrary to the Lord Ordinary, that the notice was sufficient.

LORD M'LAREN—Were it not that the policy of the statute has been made the subject of discussion, I should have thought it sufficient to say that the notice which was given in January 1894 satisfies the requirements of the statute. But if we are to consider the policy of the Act at all, I see nothing in the policy of the Act that would lead me to alter my opinion. The parish of settlement is, of course, the parish which is liable to give permanent aliment to a "poor person," but as it was not intended that the poor person should starve or be dependent on private charity until his settlement is discovered, he is given a right of maintenance against the parish to which he applies, which again has relief against the parish of settlement, or against the relatives who may be liable to give aliment to the poor person. Now, as the obligation to give aliment is an obligation which can always be specifically performed by taking the poor person into the house, it would be most unjust that the relieving parish should be entitled to go on maintaining the pauper, it may be for years, without giving notice to the parish against which they conceived they had a claim of relief. But for the purpose of putting the parish which is alleged to be the parish of settlement on their inquiry, I fail to see that anything more is necessary than the bare statement—"We are relieving a person who belongs to your parish, and we claim relief." No doubt, as a matter of regulation, the Board of Supervision require particulars to be sent, but if the necessary particulars are not sent, there can be no hardship, because it is open to the inspector who has received the notice, to write and demand the necessary particulars, such as can be obtained from the pauper himself, or from any other sources of inquiry. I grant that a relieving parish may so act as to mislead the parish or the relatives upon whom the claim of relief is to be made; and in the inquiry which must take place it will be open to the defender to show, if he can, that as particulars had been promised, and were never sent, he was misled, and believed the claim to have been departed from. It does not follow as a matter of fact that he will be able to make such a case, because it may turn out that Houston knew all along that the pauper was settled in that parish, and that it ought at once to have admitted liability. I agree with your Lordship that the interlocutor should be recalled with a view to inquiry.

LORD KINNEAR—I also agree. I think the notice satisfies the requirements of the statute. But then that, unfortunately, does not enable us to dispose of the whole case, because the defenders say that, assuming the statute to be satisfied, the notice is in terms which are not consistent with the instructions of the Board of Supervision, and they say that—"The conduct of the parish giving the notice, after it had been given, was such as, taken along with the terms of the notice itself, to mislead us, to our prejudice." Now, I do not suppose it to be open to question that it was quite competent for the Board of Supervision, as matter of administration, to require their inspectors to do more than the statute made imperative upon the relieving parish, under penalty of forfeiture of its right to recover; although I quite agree with what your Lordship has said, that the Board of Supervision could not add any condition to the right of relief, which the statute had not annexed to it; but still, they were quite entitled to require their own officers to carry out the public business in what they thought the most just and business like manner, and there is no doubt, I think, that they did so. And therefore it is possible that a relieving parish which has disregarded the instructions of the Board may be barred from recovering from the parish of settlement if it be shown that the parish of settlement has been misled and has suffered prejudice from the conduct of the relieving parish. But then Mr Campbell says, quite justly, that raises a question of bar. The defenders will have to prove that they were misled and that their position was altered to their disadvantage in consequence of the conduct of the relieving parish. And therefore I quite agree with the course which I understand your Lordship to indicate, that we

should decide the question of the construction of the statute only, leaving the parties to proceed with the case for the purpose of determining the question of fact if they find it necessary and prudent to do so.

The Court pronounced this interlocutor:—

"Recal the said interlocutor [of 15th June]: Find that the notice sent by the pursuers on 23rd January 1894 to the defenders was a sufficient notice under the 71st section of the Act 8 and 9 Vict. c. 83: *Quoad ultra* allow to the parties a proof of their averments, and remit to the Lord Ordinary to proceed: Find the pursuers entitled to expenses," &c.

Counsel for the Reclaimers—W. Campbell, Q.C.—Hunter. Agents—J. & J. Galletly, S.S.C.

Counsel for the Respondents—Solicitor-General (Dickson, Q.C.)—Constable. Agents—Constable & Johnstone, W.S.

Tuesday, January 9, 1900.

FIRST DIVISION.

[Sheriff Court of Wick.

CHARLESON *v.* STEWART.

Process—Sheriff—Appeal for Jury Trial—Question of Relevancy Left Open for Determination at Trial.

In an action raised in the Sheriff Court for damages in respect of breach of promise of marriage, the defender made certain averments as to the insanity of various relations of the pursuer. The Sheriff-Substitute held that these averments were irrelevant, and allowed the parties a proof of their remaining averments. The pursuer having appealed for jury trial, the Court, of consent, recalled the interlocutor of the Sheriff-Substitute, and without expressing any opinion as to the relevancy of the averments in question, sent the whole case to trial.

An action was raised in the Wick Sheriff Court by Miss Jessie Charleson, Pulteneytown, Wick, against David Stewart, for payment of £1000 as damages for breach of promise of marriage.

The pursuer averred that in or about August 1898 the defender asked her to marry him, and that she had consented to do so, but that the defender in January 1899, without any reason, ceased to pay the pursuer attention, and now refused to implement his promise to marry her.

The pursuer pleaded, *inter alia*—"(1) The averments in statement of facts No. 4 for defender are irrelevant."

The defender denied that he ever promised to marry the pursuer, and made the following statement of facts which he averred justified him in terminating his intimacy with her:—"(Stat. 4) Several of the pursuer's relatives both on the father's and mother's side have suffered and suffer from insanity. Her paternal grandfather died in a lunatic asylum, and a relative of her mother is presently confined there. An uncle on the father's side is very weak-minded, and a brother of the pursuer is a lunatic or subject to insane delusions. The pursuer failed to inform the defender of this taint of insanity in her family."

The Sheriff-Substitute (MACKENZIE) on 30th October 1899 pronounced the following interlocutor:—"Sustains the first plea-in-law for the pursuer: *Quoad ultra* allows to both parties a proof of their respective averments so far as not admitted, and to the pursuer conjunct probation: Appoints the case to be put to the roll that a diet may be fixed for taking said proof."

The pursuer appealed to the First Division for a jury trial.

The defender contended that the averments in statement 4 were relevant, and that in any event the interlocutor of the Sheriff-Substitute should be recalled, and the question of relevancy left to be considered at the trial.

The pursuer consented to this course being taken.

LORD PRESIDENT—I understand that no objection is now offered to our recalling the Sheriff-Substitute's interlocutor of 30th October 1899, but however that may be I am of opinion that it would be a very inconvenient course to send the case to trial upon the ordinary issue allowing the Sheriff-Substitute's finding to stand. The case ought in my judgment to be sent to trial in the ordinary way without any expression of opinion as to the relevancy of the averments in question, and it will be for the Judge who presides at the trial to give a direction as to the admissibility of evidence bearing upon the question if he is asked to do so.

LORD M'LAREN—I am of the same opinion. If the matter of the relevancy of any statements made in defence had been the subject of a counter issue, it would be necessary for us to consider their relevancy, but as it is not pressed to that effect, there is no necessity for expressing any opinion upon the relevancy at this stage.

LORD ADAM and LORD KINNEAR concurred.

The Court pronounced this interlocutor—

"Of consent recal *hoc statu* the interlocutor of the Sheriff-Substitute dated 30th October 1899: Approve of the issue No. 86 of process as the issue for the trial of the cause, and appoint the expenses of the discussion upon the preliminary pleas to form part of the expenses in the cause."

Counsel for the Pursuer — G. Watt—Laing. Agent—S. F. Sutherland, S.S.C.

Counsel for the Defender—A. Jameson, Q.C.—M'Lennan. Agent—Alex. Mustard, S.S.C.
