livery of the trial cargo, they were obliged to dispose of it otherwise, and that it was not until 30th July 1872, when the price of gas coal had risen greatly, that the pursuers wrote offering to take delivery of coal in lots of 100 tons.

The Lord Ordinary pronounced the following interlocutor:—

"*Edinburgh, 12th June* 1873.—The Lord Ordinary, having heard parties' procurators, and having considered the Closed Record, proof adduced, and whole Process: Finds that, according to the true construction of the contract between the pursuers and defenders, the sale by the defenders to the pursuers of 1000 tons of gas coal was conditional, and subject to approval by the pursuers of a trial cargo of 100 tons, which were to be furnished in addition to or separate from the 1000 tons: Finds that the pursuers failed to take delivery of the trial cargo although offered to them under the contract and failed to intimate any approval thereof, or to intimate that they waived the condition of approval, or held the bulk as approved, till 31st July 1872, being upwards of five months after the contract was made; Finds that this delay on the part of the pursuers was undue, and that the defenders were thereupon entitled to refuse to supply the 1000 tons of gas coal: Finds that the defenders are not chargeable with breach of contract: Therefore assoilzies the defenders from the whole conclusions of the action, and decerns: Finds the pursuers liable in expenses, and remits the account thereof, when lodged, to the Auditor of Court to tax the same, and to report.

"*Note.*—It was strenuously contended by the pursuers' counsel that the Lord Ordinary and the Court were not entitled to read any part of the correspondence between the parties, excepting only the three letters dated 12th, 20th, and 23d February 1872. These three letters, it was urged, constituted the contract, which could not be explained by anything else.

"The Lord Ordinary cannot assent to this view. He thinks that in the present case, as in most cases of mercantile contracts embodied in correspondence, it is essential to see the whole letters in order to decide what the true contract was, and without any hesitation he admitted the whole letters as evidence in the present case.

"Reading the correspondence as a whole, the Lord Ordinary thinks that the contract for the 1000 tons of gas coal was conditional on the pursuers' approval of a previous trial cargo. It was only subject to such approval that the pursuers were open to an offer at all, as is expressly mentioned in their letter of 9th February. The defenders stated in their letter of the 12th, that they would not contract for more than 1000 tons in all, and the trial cargo of 100 tons could only have reference to the 1000 tons. There was nothing else in view of which it could possibly be a trial cargo.

"If this be so, the pursuers were bound to take the trial cargo and declare their approval or disapproval within a reasonable time. They could not keep the defenders in suspense, and hold them bound to deliver the whole 1000 tons at any time the pursuers pleased. The 1000 tons were to be delivered during the course of one year, and a few weeks should have sufficed for declaring the result of the trial cargo.

"It is sufficiently proved that the defenders tendered the trial cargo repeatedly in February and March, and that the pursuers failed to send for it. It is clear that the pursuers' letter of 26th February never reached the defenders, and the pursuers should have known this from the terms o the defender's successive letters. The result is that the trial cargo, though ready, was never sent for by the pursuers, who did nothing whatever for five months and a-half, and then, when the price of coal had greatly risen, and half the currency of the intended contract had elapsed, the pursuers, without a trial cargo at all, at once demanded the 1000 tons. The Lord Ordinary thinks they were not entitled to do so. In a contract like the present, five months and a-half was certainly an undue delay in taking the trial cargo, and declaring approval thereof, or in waiving the necessity of a trial cargo at all. To hold the defenders liable after such unjustifiable delay on the part of the pursuers would be unjust. It would be to give the pursuers the benefit of a rise in the price of coal without any risk of a falling price. There was therefore no breach of contract on the part of the defenders, and they are entitled to absolvitor."

The pursuers reclaimed.

The Court unanimously adhered.

Counsel for Reclaimers—Lord Advocate (Young), Trayner, and Miller. Agents—Miller, Allardice & Robson, W.S.

Counsel for Respondents—Balfour and Watson Agents—Hamilton, Kinnear & Beatson, W.S.

Wednesday, November 19.

SECOND DIVISION.

SPECIAL CASE—MRS E. C. DUNDAS OR STIRLING AND CAPT. STIRLING'S TRUSTEES.

Succession—Marriage-Contract—Construction.

Terms of settlement and codicil under which a surviving spouse found entitled to payment of interest upon a capital sum which belonged to herself prior to her marriage, in addition to certain special provisions out of her husband's estate.

This was a Special Case submitted for the opinion and judgment of the Court by the widow and the trustees of the late Captain James Stirling of Glentyan, R.N. On the marriage of Captain Stirling and Mrs Stirling in 1844, he became bound by ante-nuptial contract to pay her a jointure of £600 a-year for her life, in the event of her surviving him, but under a condition that the income arising from £5000 then belonging to her should be imputed *pro tanto* in the payment of the jointure The contract contained a further liferent provision to Mrs Stirling of the house and grounds of Glentyan, and furniture of the house. The £5000 was conveyed of consent to the marriage-contract trustees, for payment of the interest thereon to her during life, the capital to be held by them for the Captain if he should survive her and should there be no issue of the marriage, who were otherwise to get it. There was no issue, and Captain Stirling died on 23d December last, and at his death the whole sum of £5000 formed a debt due by him to the marriage-contract trustees, and secured partly on his estate. By a trust-settlement of 30th December 1870, the Captain left Mrs Stirling the option of taking for life the whole income of his trust-estate, and of continuing to reside at Glen-

tyan, instead of taking the marriage-contract provisions in her favour; and by a codicil of June 1872 she was given the further option, in the event of her leaving Glentyan, of accepting other special provisions made thereunder, in which case she must relinquish her claim to the general liferent of her husband's trust-estate, and to any other provisions from that estate beyond those specially set forth in the codicil. In these circumstances, a question arose between Mrs Stirling and the trustees under the settlement of December 1870, as to the extent of her rights under the third alternative, she contending that she was entitled to the interest of the £5000 in question independently of the codicil provisions, and the trustees maintaining that, as the money had been paid into Captain Stirling's hands, and was in point of fact merged in or mixed up with his estate at the time of the execution of the codicil, and he himself had the sole beneficial right to the capital of that sum, subject only to her liferent right to the interest, the declaration in the codicil was intended to exclude any claim on her part to receive the interest of the marriage trust-fund from the Captain's trust-estate. The question put to the Court was—Whether the trustees were bound, in the event specified in the codicil of June 1872, to pay Mrs Stirling, or the marriage-contract trustees for her behoof, the interest of £5000 over and above payment to her of the special provisions made for her by the codicil?

The Court answered the question in the affirmative.

Counsel for Mrs Stirling—Mackay. Agent—John M. Bell, W.S.

Counsel for the Trustees — Keir. Agents—Dundas & Wilson, C.S.

Thursday, November 20.

SECOND DIVISION.

[Sheriff of Caithness.

INSPECTOR OF POOR OF THE PARISH OF LADY *v.* INSPECTOR OF PARISHES OF ST CUTHBERTS, &C.

Poor—Settlement—Evidence.

In a question with the parish of A, whether the parish of B or C was the birth parish of a party and as such, liable in repayment to A of the cost of maintaining his widow, a pauper lunatic, proof *held* sufficient to establish liability on the parish of C.

This was an appeal in an action of relief brought by the Inspector of St Cuthbert's against the Inspector of Cross and Burness, or otherwise the Inspector of Lady, for payment of advances made by him as Inspector of St Cuthbert's for the maintenence of a pauper lunatic, the widow of John Manson, lighthouse keeper. From the time of her husband's death until her own death, in 1870, the pauper was confined in Morningside Asylum. John Manson at the time of his death had no residential settlement, and the question came to be, whether the parish of Lady or Cross and Burness parish was the parish of his birth settlement, upon which the burden of maintaining his widow was admitted to fall.

The Sheriff-Substitute (ROBERTSON), after a proof, pronounced the following interlocutor:—

"*Kirkwall, 29th May* 1873.—The Sheriff-Substitute having considered the closed record in this case, proof led by the parties respectively, both oral and documentary, productions and whole proceedings, and having heard parties' procurators thereon, Finds—1st, That it is proved and admitted that Flora M'Eachran was born in the parish of Campbeltown, Argyleshire, and was married at Greenock in 1830 to John Manson, who was a light-keeper in the service of the Commissioners of Northern Lights from 1837 to 1859; that the said Flora M'Eachran became a lunatic, and was confined in Morningside Asylum, where she was maintained as a patient by her husband, John Manson, until his death in 1859, and afterwards from the amount of a policy of insurance and sundry other monies left by him, till the same became exhausted; that on 26th October 1869 she became chargeable as a pauper lunatic on the Parish of St Cuthbert's, where the asylum is situated, and that her board had subsequently been defrayed by the Parochial Board of St Cuthbert's; that her husband, John Manson, had no residential settlement at the time of his death, and that the expense of the maintenance of the said pauper lunatic falls to be defrayed by the parish of his birth. Finds, secondly, That it is proved or admitted that David Manson, the father of the said John Manson, was lighthouse-keeper in the island of North Ronaldshay in 1806, and for a few years previously; that he had several legitimate children, and two illegitimate children born to him in North Ronaldshay; that he removed with his wife and family in 1806 from the North Ronaldshay Lighthouse to be keeper of the Start Point Lighthouse in Lady Parish, in the Island of Sanday, where he lived until the year 1814, when he and his family removed from Sanday. Finds, thirdly, that James Work, a native of Sanday, and cited as a witness for the pursuer, who in 1806 was ten years of age, depones, that David Manson had a family of five daughters and two sons with him when he arrived in the Start Point Lighthouse in Sanday in 1806, named William and John, that he knew them both, and that John was then about two years old. That Janet Guthrie or Dearness, a witness for the pursuer, also a native of Sanday, and who was seven years old in 1806, depones that she remembers that the said David Manson had two sons with him 'by his wife Sibella Baikie' on his arrival at the Start Point Lighthouse, William and John, and that John might be from one to two years of age; that William Angus, a witness for the pursuer, depones that he heard his father, James Angus, who died in July 1870 at the age of seventy-seven or seventy-eight, tell the defender William Harvey through the witness, some months before his death, that he remembered of David Manson and his family coming over from North Ronaldshay to the Start Point Lighthouse, and that the family consisted of two sons and some daughters, and that the youngest son was a child of one or two years old: That Mary Tulloch, wife of William Muir, North Ronaldshay, aged eighty, a witness for the pursuer, depones:—'I do not know whether David Manson had a son called John born of his marriage in North Ronaldshay.' That Isabella Cutt or Kelday, aged eighty-two, residing in North Ronaldshay, and witness for the pursuer, depones that she knew David Manson, that he had a son who died in North Ronaldshay, and that he had no other son born to him there. That Mary Turfis