tion shall not be allowed "on account of diminution of capital." Now, having these provisions in the statute, and it being stated in the case that what is here claimed is in reality a diminution of the capital, I think that is an additional reason to those stated by your Lordship for holding that this claim ought not to be sustained.

LORD SHAND was absent.

The Court therefore pronounced a deliverance affirming the decision of the Commissioners on the first point, and reversing it on the second.

Counsel for Inland Revenue—Lord Advocate (Watson) — Solicitor-General (Macdonald) — Rutherfurd. Agent—Solicitor of Inland Revenue.

Counsel for Farie (Respondent) — Balfour. Agents—Hamilton, Kinnear, & Beatson, W.S.

Friday, November 29.

SECOND DIVISION.

[Sheriff of Renfrewshire.

DEMPSTER (INSPECTOR OF POOR OF CITY OF GLASGOW PARISH) *v.* LEMON (INSPECTOR OF EASTWOOD PARISH).

Poor—Liability for Relief—Admission—Mora.

The parish of G claimed relief for the support of a pauper from the parish of E. In reply E said—"I have to admit she was born in this parish. Please let me know if she is still chargeable." It was answered that the pauper was no longer chargeable, but previously to the date when E paid the sum then due she had again become chargeable, and a second intimation was sent by G. That was in 1870, and no reply was sent. But there was a correspondence from 1873 onwards, without, however, a further admission of liability. After seven years G brought an action of relief. *Held* that the orginal admission of liability on the part of E must be held to operate, and decree given accordingly.

This was an appeal from the Sheriff Court of Renfrewshire in an action at the instance of Archibald Dempster, inspector of poor for the city of Glasgow, against Alexander Lemon, inspector of poor for Eastwood parish, asking payment of past expenses incurred in the relief of a pauper named Mary Jane Smith, and freedom from future liability.

The pauper, who was about twenty years of age, was born in Eastwood parish, of Irish parents, and had always been weak mentally, and unable to work for her own support. She had resided with her parents in various places in and around Glasgow, and in virtue of that residence application was made on 31st May 1870 on her behalf to the city parish of Glasgow for parochial relief, and she was on that date admitted into the ordinary wards of Glasgow Poorhouse. She remained there till 18th June 1870, when she was removed under order of the Sheriff to Gartnavel Asylum, where she continued till 6th July 1870.

On 17th June 1870 statutory notice of the chargeability was sent to the inspector of Eastwood, and relief claimed from that parish "as the parish of settlement," which was followed next day by the particulars upon which that claim rested. On 12th July 1870 the City parish by letter reminded the parish of Eastwood of the notice that had been sent, and requested an early answer to the claim, to which the defender as representing Eastwood, on 10th August 1870, replied —"In answer to your claim of 20th June in this case I have to admit she was born in this parish. Please let me know if she is still chargeable." The city parish sent the following answer—"I have yours of 10th instant. She ceased to be chargeable 6th July, having been removed from roll by her mother."

Shortly after the pauper had been so removed she was incarcerated in Glasgow Prison on a criminal charge for assaulting her mother, and on 17th September 1870 the authorities of that prison made application to the inspector of the City parish to take charge of her on the ground of insanity. She was accordingly removed to the ordinary wards of the poorhouse, where she remained till 28th September 1870, when she was again sent to Gartnavel Asylum under warrant from the Sheriff. She remained there till 26th March 1875, when she was removed to the Glasgow Parochial Asylum, where she remained until 26th May 1877, when she was transferred to Woodilee Asylum, in which she still remained as a lunatic pauper. On 17th September 1870 the statutory notice of chargeability was duly sent to the inspector of Eastwood, followed by the usual statement of facts. On 10th November 1870 Eastwood parish paid the City parish £3, 1s. 9d., the amount of the advance made on the pauper's behalf prior to her ceasing for the first time to be chargeable. Subsequently, on 8th December 1870, in answer to the second claim, the defender questioned his liability, on the ground that the pauper never having left her father and not being self-supporting was not *forisfamiliated*. Correspondence took place at intervals between the parties during the following years regarding the question of liability until the raising of this action in January 1878.

The Sheriff-Substitute (COWAN), and afterwards the Sheriff (FRASER), on appeal assoilzied the defender, holding, on the authority of the case of *Greig* v. *Young*, June 21, 1878, 15 Scot. Law Rep. 645, that the parish of birth could not be made liable. In a note the Sheriff stated that he concurred with the Sheriff-Substitute "in thinking that there was no such admission of liability in this case by Eastwood as to preclude the statement of the plea for that parish which has now been sustained."

The pursuer appealed, and argued—That though the question of settlement was undoubtedly settled by *Greig* v. *Young*, this was really not a point of that kind, but all turned on the letter of August 10, 1870, which was an admission of liability—*Beattie* v. *Arbuckle*, January 15, 1875, 2 R. 330.

The defender argued that the admission of birth in that letter was no admission of liability.

At advising—

LORD JUSTICE-CLERK—At first sight in this case it would strike one that the delay on the part of Glasgow parish might have a material bearing on the issue, but a full consideration of the whole facts cannot leave a doubt as to the true position of the parties.

An ingenious argument was submitted to us, based upon the correspondence, but the actual point is one beyond doubt, for it is clear that Glasgow made the demand for relief, and stated the particulars of the case. It is also reasonable to presume that Eastwood made all the inquiry deemed necessary previously to making the admission. The pauper had, however, ceased meanwhile to be chargeable, and yet in face of a second notice that the chargeability had been renewed this admission was made. The letter of 10th August is the answer of Eastwood to the claim from Glasgow. On a reference to the terms of that letter it is evident that Eastwood wished to know whether the liability was still continuing. Why should they do this if not liable? The whole question really is, Whether this letter was or was not an admission of liability. It is in fact a question of construction of the letter aided by the circumstances under which it was written.

Two points for inquiry occur to me in this view—Firstly, what did the inspector of Eastwood mean by his letter? As to this we learn from the minutes of the parochial board of Eastwood that they had directed him to "admit to Glasgow." Secondly, what did Glasgow understand by this letter? I think it is clear that throughout Glasgow regarded this letter as an admission of liability, and that they referred to it in their correspondence as such. Now the inspector of Eastwood knew well enough that he could only follow out the orders of his board, and whatever reservation was made must have been in his own mind. Till 1873 the matter fell out of sight, but in April of that year it was revived—still nothing can get over that letter of August 10, 1870. Throughout the correspondence the inspector of Eastwood never said that he did not mean to admit liability—that position was never taken up until July 1877. That being so, the principle of *Beattie* v. *Arbuckle* seems to apply. To me such a principle appears very necessary in order to check litigation. In cases like the present the parties are, as it were, playing at litigation, for those who contest them have really no personal interest in the matter. The object of the rules laid down upon this branch of our law is to facilitate settlements and prevent such legal contest. I am of opinion that the interlocutor of the Sheriff should be recalled and the appeal sustained.

Lord Ormidale—There are two points in this case—(1) was the admission made? (2) if made, has it been waived or effectually retracted?

Now, as to the first point, I am clear that the admission of liability was made by the inspector of Eastwood in his letter of August 10, 1870.

Then, as to the second, it is said that there was rather a waiver than a retractation. But I cannot think we have enough even for this. The mode adopted by Eastwood was to answer no letters, and accordingly the correspondence erelong died out; but that is not sufficient. I concur with your Lordship in the opinion that this appeal should be sustained.

Lord Gifford—I concur. I think the authorities absolutely establish the doctrine that an admission once asked and obtained cannot be gone back upon. Of course it is possible to imagine exceptions in cases of fraud and so forth, but here we have nothing exceptional of that nature. Such an admission of liability is held by the law to be a conclusive bargain in all time coming between the parties with reference to the particular pauper to whom the question has arisen. Both the Sheriff and Sheriff-Substitute have treated this point as of small importance, whereas in reality it is the turning point in my opinion of the case. We cannot permit a parish by the use of vague expressions to evade a reply to the statutory demand for an admission of liability. Now the admission if made for a certain amount of liability was an admission for all, provided there had been no charge of circumstances. Here there was no change. Glasgow plainly relied on the first admission, and the fact that owing to Eastwood's silence the matter dropped for seven years should offer no bar to the effectual nature of the admission.

The Court pronounced this interlocutor:—

"Find that by the letter of 10th August 1870, No. 7 of process, the parish of Eastwood admitted liability for the support of the pauper: Therefore sustain the appeal, recal the judgment appealed against, and decern against the defender and respondent for payment to the pursuer and appellant in terms of the conclusions of the action; Find the pursuer and appellant entitled to expenses in both Courts, under deduction of the expense of the second day's appearance in the appeal, and remit to the Auditor to tax the expenses and to report."

Counsel for Pursuer (Reclaimer)—Lord Advocate (Watson) — Trayner. Agents — W. & J. Burness, W.S.

Counsel for Defender (Respondent)—Asher—J. P. B. Robertson. Agents—Carment, Wedderburn, & Watson, W.S.

Saturday, November 30.

SECOND DIVISION.

[Lord Young, Ordinary.

STEPHEN *v.* THE LORD ADVOCATE.

(*Cf. Sharp* v. *The Lord Advocate*, October 31, 1878, *ante*, p. 49);

Lease—Where Tenant of Crown Fishings Incurred Expense in Defending Small Debt Action—Right of Relief against Crown where Eviction did not follow.

In a small-debt action brought by a proprietor against a Crown tenant of salmon-fishings claiming rent for the use of his land in the prosecution of the fishing, decree was given against the tenant. The Crown, while willing to give him advice, had warned him to expect no relief. Subsequently in the Court of Session the Crown established a right to use the land in question for the purposes named. *Held* that the tenant had no right of relief against the Crown for payment of the sum decerned for in the small-debt action, nor for the expenses incurred therein.

Prior to 26th March 1875 Robert Stephen, the