tions, and leads to the fourth question being answered in the negative.

The other Judges concurred.

Agents for the Trustees—T. & R. B. Ranken, W.S.

Agents for the Curator—Mackenzie & Kermack, W.S.

Friday, June 16.

FIRST DIVISION.

COCHRANE (INSPECTOR OF POOR FOR THE PARISH OF LIBERTON) *v.* KYD AND GUNN (INSPECTORS OF POOR FOR THE PARISHES OF BARRY AND CRAMOND).

Poor — Settlement — Parochial Relief — Poor Law Amendment Act, § 76. Where a man, whose birth settlement was in the parish of B., had acquired a residential settlement in the parish of C., and had left that parish in 1862, with his wife and family, and never returned to it again, but between 30th August 1864 and 4th January 1865, had received relief from the parish of N. L. (the relief given upon the 4th Jan. being "for the ensuing fortnight"), which relief the parish of C. repaid, on the ground that he still retained his residential settlement in it. And where, after supporting his wife and family for some time, he thereafter deserted them, and they were ultimately relieved upon 18th January 1869 by the parish of L.—

Held (1) that relief given upon the 4th January for the ensuing fortnight included the 4th itself, the day on which relief was given, and expired at midnight of the 17th.

And (2), without either impugning or maintaining the soundness of the decision in the case of *Johnston* v. *Black* (21 D. 1293), that four years had expired between midnight of the 17th January 1865 and the administration of relief on 18th January 1869, so as to render the retention of the residential settlement in the parish of C. impossible, and therefore B. the parish of birth, and not C., the parish of the former residential settlement, was liable to relieve the parish of L.

This was an action of relief brought by the parish of Liberton against the parishes of Barry and Cramond, to recover the amount of relief given to the wife and family of Peter Low.

Low was born in the parish of Barry, near Carnoustie, in Forfarshire, but early removed to the parish of Cramond, where he resided for some years, and acquired a residential settlement by five years' industrial residence prior to the year 1862. In 1862 he left Cramond with his wife and family, and removed to North Leith. Here he remained from 1862 to 1864, and in the spring of 1864 he left his wife and family there, and went to Egypt to work on the Suez Canal. He returned from Egypt in bad health in August of the same year, and came back to North Leith, where his family had remained. From August 30th 1864 to January 4th 1865 he received relief from North Leith in consequence of continued ill health, which relief that parish recovered from Cramond as the parish of his then residential settlement. The last relief received at this time was on 4th January 1865, and was given for "the ensuing fortnight." In May 1865 he removed to Cockpen, and thence in 1866 to Lasswade. Here he left his wife and family and returned himself to work at Granton, living in St Cuthberts and elsewhere, but not returning to Cramond. From September 1866 he practically deserted his wife, and towards the end of 1868 went off to Glasgow. His wife supported herself for some time, but on 4th January 1869 applied for and received temporary relief from Lasswade, consisting of three or four shillings and some coals. She then removed to Liberton, and applied for and received relief from that parish on 18th January 1869, which has been continued since that date.

The parish of Liberton accordingly raised this action, concluding alternatively against the parish of Barry, that of the husband's birth, and the parish of Cramond, that of his last residential settlement.

These two parishes, without taking sufficient steps to ascertain the residence and circumstances of Low himself, in order to avoid expense put in a minute whereby they admitted that the parish of Liberton was entitled to obtain decree against one or other of them in terms of the conclusions of the summons.

After a proof was led, in which the circumstances above narrated were established, the Lord Ordinary (MACKENZIE) pronounced an interlocutor, finding that Peter Low had not resided since 1862, or since 18th January 1865, in the parish of Cramond, during every subsequent period of five years, continuously for at least one year, and that neither he nor his wife and children, to whom the relief in question was given, can be held to have retained a settlement in the parish of Cramond. That Peter Low had not acquired a settlement by residence in any other parish, and that the settlement of the said Peter Low, and of his said wife and children, was on 18th January 1869, and still is, in the parish of Barry, where he was born. And accordingly decerned against David Kyd as inspector of poor of the parish of Barry, in terms of the conclusion of the summons.

Against this interlocutor the parish of Barry reclaimed.

FRASER and HALL, for the parish of Barry, argued that the case of *Johnston* v. *Black*, 13 July 1859, 21 D. 1293, really decided this, that a new period of five years in terms of the statute began to run on 18th January 1865, and that, consequently, upon 18th January 1869 it was still possible for the Lows to reside a whole year in Cramond, or, which was equivalent, to receive parochial relief at its expense.

WATSON and BURNET, for the parish of Cramond, also referred to the case of *Johnston* v. *Black*, which laid down the rule that relief administered during the four years following upon removal from a parish of residential settlement prevented the loss of that settlement, and gave a new point of departure from which to calculate a new period of five years, during which, as required by the 76th section of the Act, one year's residence in the parish would preserve the residential settlement. They contended that this decision stood alone in the books, and was contrary to principle. They farther contended that, even assuming its correctness, the relief given upon the 4th January 1865 for the ensuing fortnight expired on the 17th January, and that between 17th January 1865 and 18th January 1869 more than four years had elapsed; and therefore the settlement acquired in 1862, and assumed to have been retained in 1865, was lost in 1869.

Authorities referred to—*Simpson* v. *Allan*, 19 July 1859, 21 D. 1363; *Turnbull* v. *Kemp*, 20 D. 703; *M'Crorie* v. *Cowan*, 24 D. 723; *Hay* v. *Skene*, 12 D. 1019; *Carmichael* v. *Adamson*, 1 Macph. 452; *Keay* v. *Stewart*, 21 D. 89; *Beattie*, 5 Macph. 47.

At advising—

Lord President—The object of this action is to recover the amount of certain sums paid by way of parochial relief to a deserted wife and children, by the pursuer, the Inspector of the parish of Liberton; and the action is directed against the birth parish of the husband of the deserted wife, and also against another parish—the parish of Cramond—which is said to be the parish of his industrial settlement. The husband is not only not a pauper, but he is an able-bodied man in constant employment, and receiving good wages. He is now resident in Glasgow, and his employment and residence is well known; and I must say I would have had great hesitation in sustaining the action against the defending parishes, without any attempt having been made to get the sums concluded for out of him; but the parties came to an arrangement at an early stage of the case, whereby the defenders admitted that "the pursuer, the Inspector of Liberton, was entitled to obtain decree against one or other of the said defenders in terms of the conclusions of the summons, according as the liability of one or the other of them shall be ascertained." From the date of that agreement, therefore, the case resolved itself into a contest between the parishes of Barry and Cramond, as to which of them was to relieve the parish of Liberton; and as they have agreed to accept that position, we have no alternative but to decide between them just as if liability properly attached to one or other of them.

Of course the parish of birth is the parish liable, unless there is some residential settlement established. Now, no doubt at one time the husband had a residential settlement in the parish of Cramond, acquired by industrial residence there for more than five years previous to 1862. But in the year 1862 he left the parish of Cramond with his wife and family, and neither he nor they have resided there since. This is at first sight a strong obstacle in the way of Cramond being held to remain his parish of settlement, for the 76th section of the Poor Law Act lays down that no person "who shall have acquired a settlement in any parish by having resided therein for five years continuously, and have maintained himself without recourse to common begging, and without having received or applied for parochial relief, shall be held to have retained that settlement, if during any subsequent period of five years he shall not have resided in that parish continuously for at least one year." But it is said that in the present case the period from which the five years subsequent to the cessation of residence in Cramond began to run is not the year 1862, when this man left the parish of Cramond, but a much later date, namely, the beginning of 1865, when he and his family last received parochial relief at the expense of Cramond, as the then parish of residential settlement. It is said that he ceased to receive relief on 18th January 1865, and became thenceforth once more an able-bodied man; and, on the authority of the case of *Johnston* v. *Black*, it is contended that from the 18th January 1865 another period of five years begins to run, during which he must reside one year at least in Cramond in order to preserve his settlement there. I am not sure I understand the principle upon which that case was decided, but the rule laid down by it is, that if a man has acquired a residential settlement in a parish, and then leaves it, and in the course of the next four years receives parochial relief at the expense of the parish, that that receipt of relief gives a new point of departure for calculating the five years, during which he must reside one year at least within the parish in order to retain his settlement there. Now, without saying anything more on the case of *Johnston* v. *Black*, to which I might adhere or I might not, I find on looking into the circumstances of this case that it does not avail the parish of Barry, for even accepting the contention that the connection of Low with the parish of Cramond began to cease at 18th January 1865, I am of opinion that he has lost that settlement. The question is,—whether by lapse of time from the 18th January 1865 he has lost his residential settlement in Cramond, and I think he has. The way this 18th of January 1865 is obtained as a starting point is this. It is said that the Inspector of North Leith, through whose hands the relief administered to him at that time passed, gave him his last payment upon 4th January 1865 for the ensuing fortnight, and therefore it is contended that he must be considered a pauper down to and including the 18th January. This, however, is, I think, a mistaken contention on the part of the parish of Barry. When the relief was given on the 4th January for the ensuing fortnight, that fortnight comprehended the 4th of January itself, else it would have been given for an entirely prospective period, which is contrary to the practice of the parochial board. The relief was given on the 4th, because upon the 4th the pauper was in a state of destitution, and the relief given was intended to supply the needs of the 4th and the thirteen following days. The period for which relief was given was therefore one of fourteen days, ending at midnight on the 17th January. The five years therefore, accepting the rule laid down by *Johnston* v. *Black*, would begin to run from midnight of 17th January 1865. The relief given by the parish of Liberton was on 18th January 1869, and therefore before that relief was given, and assuming that relief was given on the 18th January, for the 18th and following days, there had elapsed a period of four years after the cessation of the former relief from Cramond, and before receipt of this relief from Liberton. There was no longer a possibility of this man residing one year out of the five, which commenced on 18th January 1865, in the parish of Cramond, and therefore that settlement was lost, and the relief given by Liberton on the 18th January 1869 did not avail to retain it. Accordingly the conclusion I come to is,—that even assuming *Johnston* v. *Black* to govern the case, the settlement of Low in the parish of Cramond was lost, and liability must fall on Barry, the parish of birth.

Lords Deas and Ardmillan concurred.

Lord Kinloch—The findings, in point of fact, of the Lord Ordinary are, I think, supported by the proof; and leave only a question of law. The question is, Whether Peter Low, the husband of the pauper, had lost the residential settlement admittedly acquired by him in Cramond parish? If he had, the parish of Barry, which is the parish of his birth, is admittedly chargeable.

Peter Low left the parish of Cramond with his wife and children in the year 1862. And this

fact would in other circumstances be at once sufficient to infer a loss of settlement in that parish on 18th January 1869, when the relief of which payment is now sued for by the parish of Liberton was first given to his wife. But it appears, and is found by the Lord Ordinary, that he received parochial relief as a pauper from the parish of North Leith from 30th August 1864 to 18th January 1865, the last payment of 12s. being made on 4th January 1865 for the ensuing fortnight; and that of these payments repayment was made to North Leith by Cramond, as the parish continuing liable. It is contended that this prolonged his settlement in Cramond parish down to this period of 18th January 1855, after which a new course of five years' absence commenced to run; of which four years had not elapsed on 18th January 1869. This is said to follow from the principle ruling the judgment in *Johnston* v. *Black*, 13th July 1849, 21 D. 1293.

I think a judgment may be pronounced in the present case without impeaching the soundness of the decision in *Johnston* v. *Black;* and although I think the grounds of that decision open to question, I shall assume its authority in the present case. I assume that Low's settlement in Cramond lasted till 18th January 1865. I still think that settlement was lost before the claim now in question emerged. And here I am clearly of opinion that no payments made to Low's wife in consequence of his desertion, he himself not being a pauper, can be stated as affecting his settlement one way or other. Low is proved not to have been a pauper at the period in question—on the contrary, to have been an able-bodied man, earning a sufficient subsistence. His wife required support for herself and her children in consequence of his deserting them; and the support afforded them of course gave a claim of relief against Low the husband. But Low was not himself a pauper; and his settlement in Cramond was not, either expressly or constructively, prolonged by the relief so afforded. It equally expired by the lapse of the statutory period. His absence from Cramond, which has lasted from at least 18th January 1865 down to the present date, had the effect of destroying his settlement in that parish, whether such payments were made or not. In this way his settlement in Cramond was, I think, so lost as to bar the present claim against Cramond; and to throw it entirely on Barry, the admitted parish of his birth.

The only difficulty occurring as to the matter lies in the question, Whether on the 18th January 1869 the four years had in truth not fully expired, and did not expire till the 19th January, the following day? I have no doubt that the requirement ordinarily expressed by the term of four years and a day is satisfied by the lapse of four years and any part of a day; for the principle is, that so soon as the four years are fully out and a fifth year fairly begun, it is impossible to have a whole year's continuous residence within the period of five years. Supposing that the four years did not expire till the 19th January, the whole result would be that Cramond is liable in the first aliment supplied; for before another sum of aliment became due, the four years were unquestionably gone, and the settlement in Cramond lost. There would be no anomaly in Cramond being liable for the first aliment on the ground of the settlement not being then lost, and not being liable for the second in consequence of the loss of settlement having emerged in the interval. Low, as already said, was not pauperised by the money given to his wife; and the giving of this money did not prolong the settlement then in course of being lost. So soon as the settlement was lost the claim on Cramond ceased. But I think there are sufficient grounds for holding that even this subordinate claim does not lie against the parish of Cramond. The relief afforded by North Leith on the 4th January 1865, and which, the inspector says, must have been paid between the hours of eleven and one of the day, is, I think, fairly to be held to have been given for the 4th itself as much as for the subsequent days. The fortnight's aliment was therefore out and exhausted by midnight of the 17th January. The four years expired at midnight of the 17th January 1869; and on 18th January, when the first aliment sued for was given, four years and more had elapsed.

On these grounds, I am of opinion that the Lord Ordinary's interlocutor should be adhered to.

The Court adhered.

Agents for the Parish of Liberton—Keegan & Welsh, S.S.C.

Agents for the Parish of Cramond—W. & J. Burness, W.S.

Agent for the Parish of Barry—John Galletly, S.S.C.

Friday, June 16.

GRIGOR OR FORSTER *v.* FORSTER.

(*Ante* vol. vi, p. 519.)

Petition—Appeal—House of Lords—Interim Execution—Declarator of Marriage—Aliment. Circumstances in which the pursuer of a declarator of marriage, who had obtained judgment in the Court of Session declaring the marriage, and decerning for aliment in the event of non-adherence, was allowed interim execution pending appeal to the House of Lords, without caution, to the effect of enabling her to recover arrears of aliment due before the appeal was presented.

This was a petition for execution, pending appeal to the House of Lords.

On June 12th 1867 the petitioner raised an action of declarator of marriage against James Ogilvie Tod Forster, then residing at Findrassie House, near Elgin. On the 5th January 1867 the Lord Ordinary (MANOR) pronounced an interlocutor, in which he found the marriage proved, ordained the defender to adhere to the pursuer as his wife, and in the event of non-adherence to make payment to her of the sum of £60 per annum, as aliment for herself and their lawful child, beginning the first term's payment at Whitsunday 1866; and found the defender liable in expenses.

The defender reclaimed; but the Court, on the 25th May 1869, adhered, with additional expenses; and on July 7th 1869 decerned against the defender for the taxed amount of expenses (£215, 7s. 2d.) in name of the agents disbursers.

On 16th May 1871, nearly two years after the judgment of the Court of Session, the defender presented an appeal to the House of Lords against the interlocutors of 5th January and 25th May 1869, and sundry other interlocutors pronounced in the cause, but not against the decerniture for expenses.

On the 14th June 1871 the present petition was presented. It narrated the procedure in the cause,