very long and elaborate, and involved the consideration of a complicated and an old pedigree, but this only renders it the more inexcusable in the pursuers not leading proof as they were bound to do, for if the minute of 19th March be held unwarranted and out of the case, then the original order for proof against the present pursuers stands binding and undischarged.

"(4.) It is unnecessary to criticise the statements of the pursuers in the present record, but they are open to criticism. The say the minute in question was lodged by a John Hogarth, the father of a claimant in the same position as the present pursuers. They say Mr Hogarth took a leading interest in the conduct of the case, but they do not say that he was not allowed to do so. For aught that is said, he may have instructed the lodging of the pursuers' claim along with that of his own daughter. If he employed the agent who acted for all, this implies a mandate of a very ample kind. The pursuers' other statements are unsatisfactory. The say they never heard of the Lord Ordinary's final judgment till it appeared in the newspapers, but even then they were in time to reclaim or to remonstrate. Silence for four months more is inexplicable. This suggests,—

"(5.) That the pursuers' proper course was to have reclaimed immediately after the judgment of 30th July 1872, and that an attempt to reclaim by way of action of reduction is incompetent as well as unprecedented. The action of multiplepoinding still depends; and even if the decree of preference has become final by mistake, there is provision made for that; it may still be reclaimed against on payment of expenses. It is by no means clear, however, that the decree may not be reclaimed against yet, for under the recent statute all interlocutors may be brought under review by reclaiming against any final decree for payment or otherwise. The decree of preference in really an interlocutory judgment. It is true the pursuers would have, besides, to get the proof opened up and a new proof allowed, and payment of expenses would probably be imposed as a condition of this; but a party is not entitled to escape an award of expenses merely by resorting to an action of reduction. See *Smyth* v. *Walker*, 21st Nov. 1863, 2 Macpherson 126. And this leads the Lord Ordinary to observe,—

"(6.) That even if the pursuers got over all other objections, they would require to pay expenses before they could get a new proof. These expenses would necessarily be serious, for it is now proposed to go into the whole evidence of pedigree *de novo*. The fact that expenses have been paid out of the fund makes no material difference, for that was just a way of taking them from the preferred claimants, and the pursuers would have to replace the fund partially or wholly before they could be allowed to open new claims upon it. There are some indications that this reduction is, in part at least, a device to escape expenses.

"(7.) There are other objections, which it is needless to notice in detail. For example, the petitory conclusion against the judicial factor is, to say the least, very anomalous. He and the trustees have long ago been found liable only in once and single payment. He might have consigned the whole fund, and he has paid away considerable sums under orders of Court. Is he to account of new in this action of reduction,—is he to bring a second process of multiplepoinding, or how is he to act? As there is no suspension, he may be ordered to-morrow to pay the whole fund to the preferred claimants, and against this he would have no defence, notwithstanding the present direct petitory action against him. All these considerations point to the radical incompetency of the present process. The Lord Ordinary gives no opinion as to whether any, and what other, remedies are open to the pursuers, if they have really suffered wrong."

The pursuers reclaimed to the First Division of the Court.

At advising, the Court adhered to the interlocutor of the Lord Ordinary.

Counsel for Pursuers—Campbell Smith, and Reid. Agent—A. Clark, S.S.C.

Counsel for Defenders—Rhind, W. A. Brown, R. V. Campbell, and Asher. Agents—A. Kelly Morison, S.S.C., A. Morrison, S.S.C., D. Cook, S.S.C., Millar, Allardice & Robson, W.S., Leburn Henderson & Wilson, S.S.C.

Wednesday, January 7.

FIRST DIVISION.

[Sheriff of Fifeshire.

JACKSON (INSPECTOR OF POOR, PARISH OF ABBOTSHALL) *v.* ROBERTSON (INSPECTOR OF POOR, PARISH OF LESLIE).

Poor—Chargeability—Residential settlement.

A sailor had a birth settlement in one parish: having taken his wife to a neighbouring parish, the following day he went to sea, and subsequently, during a period of more than five years, visited her three times in all, remaining twice for a few days, and once, when in bad health, for a whole year. *Held* that these visits were not sufficient to found a residential settlement by the husband.

Observed (*p.* Court) that cases of *Greig* and *Moncrieff* did not apply in the present circumstances.

In this case the parties agreed upon the following statement of facts:—Jane Young or Stewart, the pauper lunatic whose settlement is in dispute, is forty years of age, and was born in the parish of Leslie. She is the wife of Andrew Stewart, seaman, aged thirty-seven years, who was also born in Leslie. Andrew Stewart is the son of the late Robert Stewart, flax-dresser, who resided for many years in Leslie. At Martinmas 1851 the said Robert Stewart removed to Kirkcaldy, and subsequently, in May 1859, to Abbotshall. He emigrated to America in October 1865, and died there about two years after, leaving his wife and family in Abbotshall, where they still reside. Andrew Stewart removed with his father to Kirkcaldy in 1851, and for some time worked as an apprentice blacksmith; but in consequence of the dulness of trade at the time, he failed to complete his apprenticeship, and went away to sea. Since that time he has followed the occupation of a seaman, for the most part sailing on board American vessels, and generally returning at the end of his voyages, which usually extended from one and a-half to two years, to his father's house in Kirkcaldy, and after-

wards in Abbotshall, but seldom staying more than a few days at a time on these occasions. In February 1864 he married the aforesaid Jane Young, and they took up house in Leslie, where they continued to reside until February 1866. At that time the said Jane Young or Stewart, becoming incapable from supervening insanity to manage her household affairs, was removed from her house in Leslie, and boarded with Mrs Stewart (residing in the parish of Abbotshall), her sister and husband's stepmother. She refused to remove with her husband, and two of her sisters had to go to Leslie to remove her. Her husband stayed with her one night after her removal to Abbotshall, having to leave the following day to join his ship at Leith. The said Andrew Stewart gave no particular instructions as to the disposal of his furniture, which was removed from his house in Leslie, under the directions of his wife's sisters, before the term of Whitsunday 1866, and placed in the house of a friend of theirs at Morningside, in the parish of Kinghorn, where it still remains. He never rented a house or room in the parish of Abbotshall, and did not pay in any way for accommodation for himself when absent from the parish. He paid 4s. per week for his wife's bed and board, and he paid additional for his own bed and board when he stayed with his wife in the house of the foresaid Mrs Stewart in Abbotshall. Since February 1866, when he removed his wife to Abbotshall, Andrew Stewart did not land with his ship at any port in Scotland except once at Troon, in December 1870. But during the interval from 1866 to 1870 he visited his wife twice. On the first occasion he stayed only a few days, his duty as mate preventing him from being long absent while his ship was lying in port. On the second occasion he remained at home for twelve months, being at the time in bad health. On leaving, which he did in May 1869, he went to Glasgow, and stayed for a few weeks there with a cousin, attempting to procure an engagement on board another vessel. His last visit occurred in December 1870, on the occasion before referred to, when his vessel touched at Troon; but this visit extended only to a few days. Subsequent to this he did not land in Scotland nor return home. From the date of his wife's removal to Abbotshall to that of his last visit (February 1866 to December 1870) is two months short of five years. The said Jane Young or Stewart was removed to the Fife and Kinross District Lunatic Asylum, at the charge of the parish of Abbotshall, on 11th August 1871. Her husband was then lying with his ship at Rotterdam, and there were no funds available to meet the expense of her removal to the asylum. Since that time, however, he has twice made remittances for behoof of his wife. First, he sent £10 to his stepmother, and afterwards he remitted £14 to the inspector of Abbotshall parish, through his cousin in Glasgow. Of this sum of £24 upwards of £23 was received by the Parochial Board of Abbotshall. At the time of the removal of the aforesaid Jane Young to the asylum, statutory notice of chargeability was sent to Leslie, and a claim was made on that parish as her husband's birthplace; but this claim is refused, on the ground that her husband began to acquire a settlement in Abbotshall in February 1866, and that that parish continued to be his home until the time of his wife's removal to the asylum in August 1871, a period of upwards of five years; that he has still no other recognised place of residence, and that he continued to pay for his wife's maintenance during the whole period of her residence in that parish. The question for the Sheriff to decide is, whether, in these circumstances, a residential settlement has been acquired in Abbotshall?

On 24th May 1873, the Sheriff-Substitute (BEATSON BELL) pronounced an interlocutor finding in point of law that the husband of the lunatic had acquired a residential settlement in Abbotshall at the date when his wife became chargeable as a pauper on that parish. The Sheriff-Substitute considered this case to be ruled by the cases of *Greig* v. *Miller*, 5 Macph. 1132, and *Moncrieff* v. *Ross*, 7 Macph. 331.

The pursuer appealed, and on 10th July 1873 the Sheriff-Depute (CRICHTON), reversing the judgment of the Sheriff-Substitute, pronounced the following interlocutor: — "The Sheriff having heard parties' procurators on the appeal for the pursuer, and considered the record and joint statement of facts for the parties, recals the interlocutor of the Sheriff-Substitute of 24th May 1873; finds that Andrew Stewart, the husband of Jane Young or Stewart, has not acquired a settlement in the parish of Abbotshall by residence therein in terms of the statute: therefore decerns against the defender in terms of the conclusions of the libel; and finds the pursuer entitled to expenses, of which allows an account to be lodged, and remits the same when lodged to the Auditor of Court to tax and report.

"*Note.*—The present action is brought to recover the amount of advances made by the pursuer, as inspector of the parish of Abbotshall, to Jane Young or Stewart, a lunatic at present detained in the Kinross District Asylum, the wife of Andrew Stewart, a sailor, whose present residence, if he has any, is not stated. It is admitted by the parties that Andrew Stewart's birth settlement is in the parish of Leslie, and that must be taken to be his present settlement, if he has not acquired another by residence. The settlement of Andrew Stewart, wherever that may be, and however acquired, is the settlement of his wife. She can have no other settlement than his *stante matrimonio;* for the peculiarity which has given rise to a different view in some cases, namely, the desertion of the husband, does not arise here. The question, therefore, for decision is, whether Andrew Stewart's settlement is his birth-settlement in Leslie, or a residential settlement acquired by him in Abbotshall?

"It appears to the Sheriff that a defence to the present claim might have been founded upon the fact that Andrew Stewart, the husband, is the proper debtor in the advances which have been made on behalf of his wife, and which are now sued for; *Cochrane* v. *Kyd*, 16th June 1871, 9 Macph. 836. It is not alleged that he is a pauper, or that he is either unable or unwilling to pay for his wife's support. It may be difficult to recover from him, seeing that he is constantly moving about from port to port, but that difficulty does not shift the burden from him to another. The Sheriff, however, considers himself precluded from giving effect to this ground of defence—(1) because it was not pleaded by the defender, and (2) because in the joint minute, No. 5 of process, the parties agree in stating that 'the question for the Sheriff to decide is, whether in these circumstances a residential settlement has been acquired?'

"Upon this question the Sheriff has come to be

of opinion that no residential settlement was acquired by Andrew Stewart in the parish of Abbotshall.

"It appears from the joint statement of the parties that when Stewart left his house in Leslie in February 1866 he did not take any house as a residence for himself in the parish of Abbotshall. His furniture was not removed to that parish, but was taken to the parish of Kinghorn, where it still remains. His wife went to Abbotshall to board with a relative, and Stewart remained with her one night, leaving next day to join his ship at Leith. From that time until his wife's removal to the Asylum in August 1871, he only visited her thrice. On the first occasion he remained a few days; on the second he remained in bad health for twelve months prior to May 1869; and on the last occasion, in December 1870, he remained again for a few days. The Sheriff cannot regard these visits as 'residence,' in the sense of the statute; and in no sense can they be said to be residence in the parish of Abbotshall for five years continuously, which is the statutory requirement towards acquiring a settlement by residence.

"The Sheriff-Substitute remarks upon the phraseology of the joint-minute, which sets forth that Andrew Stewart remained 'at home' for the twelve months he was in bad health. The Sheriff thinks that nothing can be founded upon that. The words used merely import that Stewart remained on shore, or that he was not at sea during the period mentioned following his ordinary avocation. The Sheriff does not think that the cases referred to by the Sheriff-Substitute necessarily decide the present question. It is noticeable, that in these cases the sailor, while absent at sea, had a house of his own in which his wife constantly resided during his absence, and to which at the end of his voyages he regularly returned. This fact, which influenced the Court very much in arriving at the ultimate decision pronounced in these cases, is wanting in the present case. The absence in the present case of Stewart is much greater than the absence of the sailors in the cases referred to; and while the extent of absence is not of itself conclusive of the question, whether a settlement has been acquired by residence or not, it has always been considered of material importance in arriving at a decision of that question. But the most important distinction between those cases and the present is this, that in each of these cases the residence of the sailor himself was clearly fixed as having commenced at a certain date and ended at a certain date, the period between which dates being at least five years. In the present case this element is entirely wanting. It can scarcely be said that the one night which Stewart spent with his wife, in February 1866, was the commencement of a five years' residence. But even if this should be held, it is quite certain that he was not resident with his wife, nor in the parish of Abbotshall, when the five years terminated in February 1871. In the view of the Sheriff, the only residence of Stewart in the parish of Abbotshall was for the year ending May 1869. This of itself could not give him a residential settlement there, and as it is not averred that he had acquired a residential settlement in any other parish, the burden of the present claim must fall on the parish of Leslie, in which Stewart had his birth settlement."

The defender appealed to the First Division of the Court of Session.

At advising—

LORD DEAS—I have not altered the opinion I formed in *Greig*, but it has very little application to this case. Here the husband and wife resided in Leslie, but that parish, which is the parish of the birth of the husband, tries to say that he began to acquire a residential settlement in the parish of Abbotshall in February 1866. In the case of *Greig*, at the commencement of residence the husband had a house in the parish in which a settlement was held to have been acquired, and he never ceased to have a house there all along. And his absence from the parish was always in the exercise of his calling. The first question here is, did this man, in February 1866, make provision for his residence in the parish of Abbotshall? It is unfortunate that some of the substantial facts of the case require an able argument to show what we are to assume to be the fact. However, it seems to be a fact that Stewart was tenant of a house in Leslie till Whitsunday 1866. Then, when he did go to Abbotshall, he did not go for residence; he went to accompany his wife in the stage of lunacy in which she then was, he himself to go next day, as it would appear, to sea. If he returned before Whitsunday 1866, he would have been entitled to go to Leslie, and would not have been entitled to go to Abbotshall as his home. How then could his house be there? And that state of matters continues during the whole five years. When he visits his wife there he pays separate board for himself. As to the occasion on which he stayed twelve months, it is not stated on what footing he was, but it is quite plain that it was on the same footing as at the commencement. So also as to his visit of five months' duration. Nobody says in the case of *Greig* that a sailor, because his "home is on the deep," must be held to reside at the place he most frequents when on land. Then the periods of residence in this case are very different as to duration from those in *Greig*. I am of opinion that Stewart never had a residence in Abbotshall.

LORD ARDMILLAN—I continue to be of the same opinion as I expressed in *Greig*, but I would consider it very unfortunate if the decision in that case were to be extended to a state of circumstances to which it is not applicable. The facts and circumstances here do not approach those in *Greig*. The commencement of the five years' residence is not fixed at Abbotshall. I have no doubt that Leslie remained, for several months after he left, the home of the husband, and when he left he took his wife from his own house and placed her in that of a friend.

LORD JERVISWOODE concurred.

LORD PRESIDENT—I concur. I only wish to express my satisfaction that your Lordships are not prepared to extend *Greig* and *Moncrieff* to circumstances such as the present.

The Court accordingly affirmed the judgment of the Sheriff, and dismissed the appeal.

Counsel for Pursuer—Solicitor-General (Clark) and Burnet. Agents—Webster & Will, S.S.C.

Counsel for Defender—Watson and Mackintosh. Agents—Tods, Murray & Jamieson, W.S.

LAW AGENTS ACT.

(36 AND 37 VICT. C. 63.)

On 6th November 1873 an Act of Sederunt was passed in pursuance of section 8 of the Act 36 and 37 Vict. c. 63, nominating and appointing certain persons therein named to be examiners for the purposes of the Act (the Chairman being JAMES STUART TYTLER, W.S., Professor of Conveyancing in the University of Edinburgh), and ordaining "the stated meetings of the said examiners for the examination of persons applying for admission as Law Agents to be held in Edinburgh four times in the year."

On 20th December 1873 another Act of Sederunt was passed as follows:—

THE Lords of Council and Session, considering that by section 8th of the Act of the 36th and 37th year of Her Majesty Queen Victoria, chapter 63, entituled "An Act to amend the Law relating to Law Agents practising in Scotland,' it is provided that it shall be lawful for the Judges of the Court of Session, or any seven or more of them, of whom the Lord President and the Lord Justice-Clerk shall be two, "From time to time to prescribe the subjects of Examination in Law and in General Knowledge, and to make Rules for conducting such Examinations, and also for Entrance Examinations of Apprentices, and Intermediate Examinations," do hereby Enact and Provide as follows:—

I. That when the Judge, to whom a Petition for admission of a Law Agent has been presented under the 7th section of the Act, shall require the Applicant to be examined under the provisions of the 8th section, he shall remit the Applicant to the Examiners appointed by the Court.

II. The Examination of the Applicant under such remit shall be held in Edinburgh, and shall embrace the following subjects:—(1) *General Knowledge*:—History of England and Scotland; Geography; Arithmetic; Bookkeeping; Latin—The First and Second Books of the Æneid; Logic (Jevon's Elementary Lessons); Or, in place thereof, in the option of the applicant, Mathematics—First three Books of Euclid. (2) *Law*:—The Law of Scotland, Civil and Criminal; Erskine's Institute, Bell's Principles, Hume's Commentaries; Conveyancing; Forms of Process, Civil and Criminal.

III. The Examination in General Knowledge above prescribed may take place, in the option of any intending applicant, as an Entrance Examination before entering into Indenture of Apprenticeship, or at any time before the Applicant's Petition to the Court for admission as a Law Agent, and in either of these cases it may be held either in Edinburgh, Glasgow, Aberdeen or Dundee, and those Applicants who have passed such Examination shall not be required, on applying for admission as Law Agents, to pass any further Examination in General Knowledge.

IV. Every applicant for admission as a Law Agent must have attended, and taken part in the Examinations of the Classes of Scots Law and Conveyancing in a Scottish University, and these classes must have been attended in two separate Winter Sessions.

V. For the future no person shall be admitted as Apprentice under Indenture to a Law Agent until he shall have passed an Entrance Examination by the Examiners appointed by the Court, which may take place in Edinburgh, Glasgow, Aberdeen, or Dundee, and shall embrace the following subjects:—English Composition and Writing to Dictation; Arithmetic, Simple and Compound, and Vulgar and Decimal Fractions; Elements of Latin.

VI. It shall not be necessary for any Apprentice or Applicant for admission as a Law Agent, to undergo any Entrance Examination or Examination in General Knowledge, where such Examinations are dispensed with by the said Act, and also in the following cases viz:—(1) If any Apprentice or Applicant hold a Degree of any University in Great Britain or Ireland granted after Examination. (2) If he have attended in three separate Sections, three separate Classes of Arts, in any Scottish University (one of said Classes being Humanity), and has taken part in the Examinations in such Classes. (3) If he be a Member of the Faculty of Advocates. (4) If he have been called to the Degree of Utter Barrister in England. (5) If he have been admitted and enrolled as an Attorney or Solicitor in England.

VII. All the Examinations shall be conducted partly orally and partly by writing.

VIII. Any three of the Examiners appointed by the Court shall be a quorum at any Examination, and the Statutory Fee to the Examiners shall be paid by the Applicant previous to each of the said Examinations.

And the Lords APPOINT this said Act to be entered in the Books of Sederunt, and to be published in common form.

(Signed) JOHN INGLIS, *I.P.D.*

Tuesday, November 4.

Lord Shand, Ordinary.

KELMAN, PETITIONER.

Act 36 and 37 Vict. c. 63, § 24—Petition by Notary-Public.

A notary-public had been in actual practice as such for six years and ten months prior to 5th August 1873, but had taken out seven annual certificates, and had practised as a conveyancer for seven complete years.—*Held* that he was entitled to be admitted a law agent under § 24 of the Act, and prayer of the petition granted.

This was a petition presented by James Anderson Kelman to be admitted as a law agent, under § 24 of the Act, which provides—"that any person, being a notary-public, who has during the period of seven years immediately preceding the passing of this Act regularly taken out a stamped certificate as required by law, and who has during the same period been engaged in actual practice as a law