munity, "so oft as the communion shall happen to be celebrated thereanent, in all time coming, to furnish the elements to the celebration of the communion at the said kirk;" and accordingly a decree of modification of stipend pronounced in that year contains the following finding:—"And sic like the said commissioners, in respect of the consent of the said Mr John Aitchison, Provost of Dunbar, above written, finds and declares that the Provost, Bailies, Council, and community of the town of Dunbar above mentioned are and shall be obliged, so oft as the communion shall happen to be celebrate thereanent, in all time coming, to furnish the elements to the celebration of the communion at the said kirk." In subsequent decrees of modification of stipend pronounced in 1767 and 1833, the obligation of the burgh to furnish the communion elements, according to use and wont, was recognised. A dispute has arisen betwixt the minister and the magistrates as to the quantity of wine which the latter are bound to furnish, the minister contending that he is entitled to six dozen annually, while the magistrates say they are only bound to furnish as much as is actually necessary. The minister accordingly presented a petition to the Court, on the footing that the conclusion of the summons of 1860 were not exhausted, no decree having been pronounced for communion elements, in which he prayed the Court to "award and decern, to and in favour of the petitioner and his successors in office, serving the cure at the Kirk of Dunbar, in name of communion elements, by decree against the Magistrates and Town Council of Dunbar, as representing the said burgh and community thereof, either the annual allowance of twenty-two loaves of bread and six dozen of wine, as hereinbefore set forth, or else a money payment of £15 a year in lieu and place thereof; and to remit to the Lord Ordinary, before whom the locality of the stipend of the said parish is now depending, to give effect to said decerniture in framing and adjusting the locality of the stipend.

It was stated in the petition that "for upwards of sixty years the burgh of Dunbar had been in use to give the minister of the parish annually, in satisfaction of his claim against them for communion elements, twenty-two loaves of bread and six dozen of wine; but in the month of November 1865 it was officially intimated to the petitioner by the Town-Clerk that the Magistrates and Town Council hold that this allowance is too large, and that they intend in time coming to approximate the supply of bread and wine to the quantity which may be actually consumed in church at the celebration of the communion." It was also stated that "by this procedure on the part of the burgh of Dunbar the interest of the benefice will be injuriously affected, and it has in consequence become the duty of the petitioner, on behalf of himself and his successors in office, to take steps for having the allowance for communion elements put on a satisfactory and permanent footing, according to use and wont, or otherwise according to law."

The Magistrates stated in their answers that they were willing to implement the obligation upon them, but that in consequence of there being now a Chapel of Ease in the parish, and of the number of communicants in the Parish Church being thereby, as well as by the progress of dissent, considerably reduced, it was not now necessary that so much wine should be furnished as formerly.

GORDON, for the petitioner, argued—This is a petition in the augmentation process, the conclusions of which are not exhausted. It was omitted, when the augmentation was granted, to ask a decree against the Magistrates, in terms of the finding in the decree of 1618, and the use and wont which has followed thereon.

(Lord CURRIEHILL—Has this Court any jurisdiction to pronounce a decree for any sum of money not payable out of teinds?)

We have a finding or declarator in 1618 that the elements shall be furnished by the Magistrates in all time coming, and the Court has surely power to give effect to its own finding.

GIFFORD and D. B. HOPE, for the Magistrates, answered—This is not a demand made against the heritors. It is made against the Magistrates, but not *qua* heritors. The conclusion of the summons of augmentation was for a decree against the heritors, as intromitters with the teinds, for sums payable out of them. There is no conclusion against the Magistrates for communion elements.

The LORD JUSTICE-CLERK—I do not entertain any doubt in regard to this matter. It has been admitted that the demand is entirely unprecedented. It is admitted that this Court has never awarded a sum for communion elements, except in terms of a summons of augmentation, modification, and locality, and never except out of teinds. That itself goes a long way to show the incompetency of this Court to award what is asked out of the common good of the burgh. But further, the summons under which an augmentation was obtained in 1861 was framed in the usual way, and contained a conclusion for payment of the communion elements by the heritors who usually pay for them. The judgment granting the augmentation assigned as a reason for making no award for communion elements the fact that they were otherwise provided for. The conclusions, therefore, seem to me to be exhausted. We cannot pronounce the decree asked, partly because the conclusions are exhausted, and partly because what is asked is not within the conclusions; for what we are asked to do is to pronounce a decree, not against the heritors, but against the Magistrates of the burgh. Then, when we look to what was done in 1618, it seems to me to constitute an ordinary civil obligation founded on contract, and to be interpreted by use and wont. It was not a decree by the Court of Teinds, but a finding by a particular Commission of Parliament created for a temporary purpose, which lasted only one year, and which cannot be in any way regarded as the predecessor of this Court. I am therefore of opinion that this is an incompetent application.

The other Judges concurred, and the petition was accordingly refused as incompetent.

Agents for Petitioner — Mackenzie, Innes, & Logan, W.S.

Agents for Respondents — J. & J. Milligan, S.S.C.

COURT OF SESSION.

FIRST DIVISION.

CASSELS *v.* KEITH.

Poor—Adequacy of Relief—Boad of Supervision—Sheriff—Jurisdiction. Held that a party receiving temporary relief, and who was entered in the casual and not the permanent roll of paupers in a parish, was a pauper in the sense of the Poor Law Amendment Act, and that being in actual receipt of relief, the Sheriff

had no jurisdiction to entertain any question as to its adequacy, the only competent remedy being an appeal to the Board of Supervision.

An application for parochial relief who had been for three months receiving continually increasing allowances, but who was not on the permanent roll, applied to the Inspector of the Poor of Lanark on the 22d of May for further relief. She then received a shilling, and was told not to come back till the 8th of June, when her case would be considered by the board. On the 31st of May she presented a petition to the Sheriff, setting forth these circumstances, and praying that the inspector should be ordained to award her relief. The Sheriff-Substitute (Dyce) held the question to be one as to adequacy of relief, not of refusal, and therefore that his jurisdiction was excluded, the petitioner's remedy being a complaint to the Board of Supervision under section 74 of the Poor Law Amendment Act. On appeal, the Sheriff (Alison) altered, holding that the allowance of such a small sum for such a long period amounted substantially to a refusal of relief. The inspector advocated.

A debate took place before the Lord Ordinary on the question of law disposed of by the Sheriffs, but his Lordship was of opinion that it was necessary that there should be a proof of the averments of parties. A proof was accordingly taken. After a second debate, the Lord Ordinary returned, on the same grounds, to the interlocutor of the Sheriff-Substitute. His Lordship further held that the petitioner's case was excluded by the judgment of the Court in the case of Johnstone *v.* Black, July 13, 1859, 21 D. 1293.

The petitioner (respondent) reclaimed.

W. A. BROWN for her argued—There are two facts in the case beyond dispute (1) that for a period of three weeks the petitioner was left to depend for her maintenance on a sum of one shilling; and (2) that she never was at any time entered in the permanent, but was throughout placed on the casual roll of paupers. It is not disputed that a pauper, refused relief, has a right of action before the Sheriff, and the Sheriff-Depute was right in holding that the allowance of so small a sum for such a long period is virtually a refusal of relief. The circumstances of the case, therefore, would have given the petitioner the remedy of appeal to the Sheriff even if she had been placed on the permanent roll of paupers. But being only on the casual roll, she is not a poor person having legal rights in the sense of the 33d section of the Poor Law Amendment Act, and therefore the remedy of appeal to the Board of Supervision was not competent to her, because that is only given to those who are on the permanent roll, and thereby have legal rights as paupers. The case quoted by the Lord Ordinary has no application whatever to the circumstances of this action. That was a case where the Court held that the administration of temporary relief did not operate to the effect of destroying a settlement on the ground that the relieving parish did no more than discharge the obligation which was incumbent on the parish where the pauper had a settlement. That case went no length at all to decide that a person receiving temporary relief was entitled to avail himself of the privileges accorded to paupers by the Poor Law Act, who are on the permanent roll.

JOHN MARSHALL, for the respondent, was not called upon.

The LORD PRESIDENT said the case would be continued till the Court had an opportunity of inquiring into the practice of the Board of Supervision.

At advising—

The LORD PRESIDENT—This is an advocation from the Sheriff Court of Lanarkshire. The Lord Ordinary has advocated the cause, and altered the interlocutor of the Sheriff. We have a reclaiming-note before us against that interlocutor. The case arose on an application to the Sheriff by a pauper, or a person in need of relief, on the footing that relief had been refused by the inspector. The application was made under the 73d section of the Poor Law Amendment Act. The question then came to be whether this person was in the predicament of one who had been refused relief, or in the predicament of one whose relief was inadequate. It was contended, on behalf of the petitioner, that she was not in the position of one who had the remedy competent under the 74th section of the Act. It appears that she obtained relief from the inspector for three months, getting monthly allowances during that period. But it is said she was not entered on the regular roll of paupers, and it is contended that not being so, she was not entitled to appeal to the Board of Supervision. It appears that the allowance given to her was not large, and that it was given to her monthly, but it was given to her in advance, and she was told, on the 22d of May, that she should get no more until another meeting of the board. I think it is quite clear that relief which is merely exhausted cannot be called a refusal of relief. I had very little doubt, on a reading of the statute, that this party was not in the predicament of being refused relief under the 73d section. But then it was contended that she could not obtain redress under the 74th section of the Act, because, not being on the permanent roll of paupers, she had not legal rights provided for by the Act. I don't think the fact of being on the roll is the test of having right to this redress, and any omission on the part of the inspector will not debar a party from the remedy competent under the 74th section. I accordingly thought it proper to inquire in regard to the practice, and I have inquired, and I find that a party who has at any time received parochial relief is recognised as a pauper entitled to complain to the Board of Supervision. I think that this practice is in accordance with the principle of the statute, and with reason. I think, therefore, that the Lord Ordinary and the Sheriff-Substitute are right, and that the Sheriff is wrong.

The other Judges concurred.

The judgment of the Lord Ordinary was accordingly adhered to, with additional expenses.

Agents for Advocator—Bell & Maclean, W.S.

Agents for Respondent—Macnaughton & Finlay, W.S.

SECOND DIVISION.

GREEN *v.* SHEPHERD.

Reparation—Infringement of Trade Marks—Interdict. A party brought an action of damages for infringement of trade marks, the summons in which contained a conclusion for interdict. Under this conclusion he asked for *interim* interdict after issues were adjusted. Held that the protection of interdict could not be granted until the pursuer had established his right by action.

In an action at the instance of the pursuer, a chemist in England, and his mandatory in Scotland, against the defender, a washing-powder and table-salt manufacturer in Aberdeen, for infringe-