during which it has been regarded as a leading authority, I cannot think that we can go against it.

In common with some of your Lordships, I may regret that such was the rule so established, and I may think that the opposite decision would be the better. At anyrate, it is some consolation to know that what we cannot do has been done to some extent by a recent statute (37 and 38 Vict. cap. 37), but that statute does not apply here.

On these grounds I think we are bound to adhere to the Lord Ordinary's interlocutor.

Lord Deas—I have come to the same conclusion as your Lordship, but very unwillingly. As Counsel and Judge, I have considered many cases on this point subsequent to that of *Watson*, but I cannot say that I have ever heard doubts thrown on its authority. I confess that I am very glad to see that a Statute of 1874 (37 and 38 Vict. c. 37), now excludes some of the technical objections which have been found inconvenient in dealing with cases similar to this, but the statute is not applicable here, and I think we can do nothing but adhere.

Lord Mure concurred.

Lord Shand—If the point had been open, I should have been of opinion that the deed here in question was a good exercise of the power of apportionment, because, although no share is specially given to the representatives of the lady's son Alexander Campbell, who predeceased his mother, and in whom a share of the fund no doubt had vested, yet the fund has been divided amongst the whole parties really interested, whether as being themselves directly entitled to a share as objects of the power, or indirectly as representatives of their deceased brother Alexander. The same division could admittedly have been effectually made if a sum, it might be of small amount, had been left as Alexander's share to his representatives, and a corresponding reduction made on the sums given to each of the surviving sons. The pecuniary result would have been precisely the same if Mrs Campbell had allocated £200 as Alexander Campbell's share and fixed the amounts apportioned to each of her two surviving sons at £250 in place of £300 as fixed by the deed, because in that way each son would receive £50 as representing his late brother and £250 in his own right, being £300 in all, and the two daughters would have the same right to residue as the deed now gives them. This being so, I cannot help feeling that the pursuer's objection to the deed is founded more on the form which the deed has taken than the substance of the deed, or any true excess of power on the part of Mrs Campbell, and I think it is satisfactory that the statute of 1874 will obviate all future objections of this kind.

But, with your Lordships and the Lord Ordinary, I am of opinion that the question is concluded by the authority of the case of *Watson* v. *Marjoribanks*. In that case the lady had divided the fund amongst the children surviving her only, and these children were all parties, and were the only parties to the litigation. David Marjoribanks, who was the leading objector to the division, was the executor and beneficiary under the will of Charles his brother, to whom he maintained a special share should have been allocated. The Court held that in order to make an effectual appointment it was necessary to allocate a special share in favour of Charles, so that David, the survivor, should have the benefit of that particular share, and the same principle applied to the share of the other brother Edward, who had died intestate, and who was represented by his brothers and sisters. The argument maintained in support of the deed was the same as that here pleaded by the defenders, and the circumstances were substantially the came as occur in this case. There were no creditors parties to the litigation, and although creditors' interests were mentioned in the argument, it ws nevertheless a acase the same as the present, in respect it was a litigation truly amongst the children and in reference to the division of the fund amongst the children. That case has been regarded as the leading authority in our law from 1837 downwards, and the main—perhaps the only substantial—point on which I have ever understood that the case of *Crawcour* v. *Graham* threw doubt on it had reference to the rights of creditors to come in and claim a share of the fund to be divided, rather than to such a question amongst surviving children as we have here.

Concurring as I do, then, in thinking that this case is ruled by the case of *Watson* v. *Marjoribanks*, I am of opinion that the interlocutor of the Lord Ordinary should be adhered to.

The Court adhered.

Counsel for Pursuers (Respondents)—Dean of Faculty (Fraser)—Rutherfurd. Agents—Gibson Craig, Dalziel, & Brodies, W.S.

Counsel for Defenders (Reclaimers)—Gloag—Kinnear. Agents—Ronald & Ritchie, S.S.C.

Friday, June 21.

FIRST DIVISION.

SPECIAL CASE—GREIG (INSPECTOR OF POOR OF CITY PARISH OF EDINBURGH) *v.* YOUNG (INSPECTOR OF POOR OF PERTH PARISH).

Poor—Relief—Settlement of Illegitimate Pupil Child, Born while Mother in Jail.

An Irishwoman with no settlement in Scotland, when living in the City Parish of Edinburgh was sentenced to nine months' imprisonment, and in Perth General Prison, within Perth Parish, gave birth to a child. When released she returned to Edinburgh, but on her being shortly thereafter sentenced to seven years' penal servitude, her child was left destitute and became chargeable to the City Parish. *Held* (proceeding on the decisions in the cases of *Macrorie* v. *Cowan*, March 7, 1862, 24 D. 723, and *Adamson* v. *Barbour*, 13 D. 1279, 1 Macq. 376) that the parish which afforded relief had no claim of relief against the parish of Perth, in which the child was born.

On 18th May 1870 a female pauper named Eliza-

beth O'Brien or Young became chargeable to the City Parish of Edinburgh, and continued to receive relief from that date. She had been born on 24th December 1868 in the General Prison of Perth, in the parish of Perth, and was the illegitimate child of Bridget O'Brien or Young, a native of Ireland, who had not acquired any settlement in Scotland. In 1857 the mother had been resident in Edinburgh, where she became chargeable as a pauper to the City Parish, and was removed to Ireland. She afterwards returned to Edinburgh, where she was apprehended in 1860 upon a charge of robbery, and was sentenced on 10th November 1860 to five years' penal servitude, which she underwent in the General Prison of Perth. She was liberated on 25th January 1865. At the date of the birth of her child she was again a prisoner in the General Prison of Perth, having been sentenced by the Sheriff of Edinburgh on 29th July 1868 to nine months' imprisonment for theft. When apprehended on that charge she had been living in the City Parish, Edinburgh. She was liberated on 29th April 1869. She was again apprehended on a charge of theft on 2d February 1870, and on 18th May 1870 was sentenced in the High Court of Justiciary at Edinburgh to seven years' penal servitude, and in consequence her child became a proper object of parochial relief, and chargeable to the City Parish there. Statutory notice thereof was duly given to the parish of Perth, and particulars of the advances made down to 25th November 1872 were sent to the inspector of that parish. The total amount advanced by the City Parish for board and clothing of the pauper from 18th May 1870 to 31st October 1876, with interest thereon for three years, was £65, 9s. 3d. The mother was liberated on licence on 12th January 1875. On all the above occasions of liberation she was returned to Edinburgh as the place of commitment by and at the expense of the prison authorities, but where she resided in the intervals of imprisonment is not known.

In these circumstances this Special Case was presented by George Greig, Inspector of Poor of the City Parish of Edinburgh, of the first part, and William Young, Inspector of Poor of the parish of Perth, of the second part, and the question submitted was—"Whether the parish of Perth, as the parish of the pauper's birth, is liable in repayment of the advances made by the City Parish of Edinburgh as the relieving parish?"

It was agreed that if the answer was in the affirmative decree should be given against the party of the second part for £65, 9s. 3d.

Authorities for City Parish of Edinburgh—*Muir* v. *Thomson*, November 7, 1873, 2 Poor Law Mag. 95; *Craig* v. *M'Lennan*, May 14, 1867, 39 Jur. 390; *Gibson* v. *Murray*, June 10, 1854, 16 D. 926.

Authorities for parish of Perth—*Gibson* v. *Murray*, *supra*; *Craig* v. *Greig and Macdonald*, July 18, 1863, 1 Macph. 1172; *Adamson* v. *Barbour*, July 2, 1851, 13 D. 1279, 1 Macq. 376; *Macrorie* v. *Cowan*, March 7, 1862, 24 D. 723; *Suckley* v. *Whitborn*, 2 Bullstrode's Rep. 358; *Essling* v. *Hereford*, 10 Modern Rep. 334; *Hopkins* v. *Ironside*, January 27, 1865, 3 Macph. 424; 1 Glen's Poor Law Statutes, 92.

At advising—

LORD DEAS—This question relates to the right of relief by the City Parish of Edinburgh for aliment afforded to a female pauper child in pupillarity, named Elizabeth O'Brien or Young, and the parish of Perth, against which relief is claimed, is what is said to be the parish of birth of the child. The mother appears to be of very indifferent character, and has been very often under sentence of penal servitude or imprisonment. The child was born in the prison of Perth on the 18th May 1870, and the City Parish of Edinburgh contends that Perth, being the parish of the child's birth, is liable for relief.

Now, it is to be observed that the mother Bridget O'Brien was a single woman, and therefore her child is illegitimate, and being in pupillarity the result seems to be that if the mother has a settlement in any parish that parish must be the parish of settlement of the pupil child. Now, the mother has a parish of settlement. She was born in Ireland, and she has a birth settlement somewhere in that country. In that state of matters it appears to me that the case is ruled by that of *Macrorie* v. *Cowan*.

The circumstances of that case were slightly different, but the material facts are sufficiently like to place this case under the same rule of law. The question in *Macrorie* was as to the aliment afforded to a married woman who became insane and was put in an asylum. The peculiarities which existed in that case do not affect the applicability of the decision to the present. The question decided there was that the husband's settlement was also the wife's, and that she could have no other so long as the marriage subsisted. Here, instead of the indirect question of the husband's settlement, we have the direct question of the mother's, and as she has a birth settlement in Ireland it is quite plain that the case of *Macrorie* applies, and therefore her parish is the settlement of her illegitimate pupil child.

The only perplexity which occurred to me at first arose from the history of the mother as being under penal servitude during the time that relief was being afforded. Since the decision in *Adamson* v. *Barbour* it is settled that if the parent has a settlement that settlement is the settlement of all the children of the parent. Therefore I think that the City Parish of Edinburgh cannot claim relief from the parish where the child was born.

LORD MURE—I concur. This case is ruled by the cases of *Macrorie* and *Adamson*. There is no doubt that the settlement of an illegitimate pupil child follows that of the mother, and if the mother had had a settlement in Scotland there could have been no question in the case, for then that settlement would have been the settlement of the child. But here the mother had no settlement in Scotland, though she must have had one in Ireland where she was born. Now, if the mother had not been under sentence of penal servitude there would have been a plain remedy under the statute, namely, to remove her and child to Ireland, a remedy indeed to which the City Parish of Edinburgh had already resorted to in her case on a previous occasion. The mother, however, preferred being on the parish here in Scotland, and returned. But as the mother was, as a matter of fact, in penal servitude, she and her child could not be removed to Ireland. It is the misfortune of the City Parish that they can-

not take steps to do this, and under the law laid down in the case of *Macrorie* that parish must take the expense of the child's relief until the mother's settlement is found.

LORD SHAND concurred.

LORD PRESIDENT—I concur. The principle of the case of *Macrorie* is clearly applicable here.

The Court therefore found that the parish of Perth was not liable in repayment of the advances made by the City Parish of Edinburgh.

Counsel for Greig (Inspector of Poor of City Parish of Edinburgh)—Dean of Faculty (Fraser)—J. A. Reid. Agent—D. Curror, S.S.C.

Counsel for Young (Inspector of Poor of the Parish of Perth)—Keir. Agents—Tods, Murray, & Jamieson, W.S.

Friday, June 21.

FIRST DIVISION.

[Sheriff of Fife.

DON *v.* THE NORTH BRITISH RAILWAY COMPANY AND OTHERS AND THE NEWPORT RAILWAY COMPANY.

Railway—Interdict — Damages — Railways Clauses Act (8 *and* 9 *Vict. cap.* 33) *sec.* 6—*Lands Clauses Act* (8 *and* 9 *Vict. cap.* 19) *sec.* 17—*Remedy where Lands injuriously Affected by Operations of Railway—Interdict in such a Case.*

Where lands are taken under statutory powers by a railway company, the owner, under the 17th section of the Lands Clauses Act 1845, is entitled to notice from the company, but in a case where the owner is merely able to instruct that his property is injuriously affected by the operations of the company he is not entitled to any notice, nor can he proceed by way of interdict against the company, but his remedy is that of compensation under the 6th section of the Railways Clauses Act 1845.

By Act of Parliament in 1870 (33 and 34 Vict. cap. 153) the Newport Railway Company were empowered to make a line of railway for the purpose of forming a junction with the Tay Bridge Railway. The time for completing this railway was extended by a subsequent Act. The Act of 1870 authorised the construction of the line through a field called the Well Park, then belonging to the Rev. Thomas Just. In November 1871, Mr Just feued a portion of the Well Park to a Mr Don. A feuing plan was at that time exhibited to him, which was referred to in the feu-contract which was entered into between him and Mr Just. On that plan a number of roads were shewn as proposed to be made, and among others a road leading down the centre of said park. On 26th July 1872 the railway company served the usual statutory notice on Mr Just that they were to take possession of that portion of the Well Park over which their railway passed, as shown on the Parliamentary plan. In September 1873, a minute of reference was entered into between Mr Just and the railway company, and under that reference the amount of compensation payable by the railway company was fixed. Mr Don did not begin to build on his feu till 1876 and he thereafter brought this action in the Sheriff Court of Fife against the North British Railway Company and Mr Just's trustees, which was afterwards conjoined with a supplementary action against the Newport Railway Company, who were the parties really interested. In the pursuer's feu-contract the piece of ground feued by Mr Just was disponed to the pursuer, with "free ish and entry thereto by the streets laid down on said plan, but in so far only as the same may be opened and not altered in virtue of the reserved power" therein mentioned. That reserved power was thus expressed—"The said Thomas Just and his foresaids shall have full power and liberty to vary or alter the said plan, streets, or roads delineated thereon, in so far as regards the ground not already feued, in such manner as they shall think fit." The Sheriff was asked to interdict the railway company "from entering upon and building an embankment upon the road or way connecting the turnpike road leading from Newport to Woodhaven with a road known as the Kirk Road, and which road or way is delineated on a feuing plan mentioned in the said condescendence, and leads to, and for part of its extent constitutes the eastern boundary, and forms a portion of the ground or feu belonging to the above-named pursuer, and described in the said condescendence, and from interfering in any manner with the said road or way so as to render the same impassable, or dangerous to passengers or carriages, or so as to prevent the said pursuer, his tenants, or others having their free and unrestricted use of the same; or otherwise, to interdict the defenders from entering upon said road or way and interfering with the same, as aforesaid, aye and until they shall have caused another and sufficient road to be made instead of the said road or way; and to grant interim interdict."

The pursuer maintained that he had by the terms of his feu a right of access which would be interrupted by the execution of the works of the railway company, and pleaded, *inter alia*, accordingly:—"(1) The pursuer having the said right of access by the said road or way to the said lot or piece of ground, is entitled to maintain the same. (2) The said right of access having been interfered with or threatened to be interfered with as aforesaid, the pursuer is entitled to interdict as craved."

The defenders pleaded, *inter alia*—"(3) The defenders being in the course of executing their line of railway and work in terms of their statutory powers, and having acquired the lands in question, as condescended on, and before any streets or roads through the same were opened up or existed, and being besides ready and willing to meet all competent and legal claims or damages or otherwise at the instance of the pursuer, the interim interdict will fall to be recalled, and the petition dismissed with expenses."

A proof was led before the Sheriff-Substitute (BELL), from which it appeared that no road was as yet formed through the Well Park, and the Sheriff (CRICHTON) on appeal adhered, though on a different ground. The latter added this note to his interlocutor:—

"*Note* . . . . The pursuer contended that under his feu-contract and relative plan he had acquired right to the proposed road shown on the said plan, as running down the