belonging to the pursuer which were insured with the defenders.

The defenders pleaded, *inter alia*—"(1) The present action is excluded by the clause of reference in the policy. (2) In any view, the action ought to be sisted pending the decision of the pursuer's claim by arbitration in terms of the policy."

On 23rd June 1891 the Lord Ordinary (STORMONTH DARLING) repelled these two pleas, and the defenders having reclaimed, the First Division adhered on 18th July 1891, and thereafter Friday 13th November was fixed as the diet of proof.

The defenders now presented a petition for leave to appeal to the House of Lords against these interlocutors.

The petitioners argued in support of the application—The clause of reference on which they founded in the pleas which had been repelled was in a form in general use by insurance companies, and it was of the utmost importance that the question raised as to its effect should be finally settled by a judgment of the House of Lords. This was the only question of importance raised in the case, and it was obvious that neither party would have an interest to make a second appeal at a later stage. The present was not a mere question of procedure, as in some cases where leave had been refused—*Scottish Rights-of-Way and Recreation Society* v. *Macpherson*, November 16, 1886, 14 R. 74; *Stewart* v. *Kennedy*, February 26, 1888, 16 R. 521. The proper time therefore for presenting an appeal was the present.

The respondent argued—The question of the construction of the clause of reference could be argued in the House of Lords when the case was concluded. If leave to appeal were granted, it might lead to there being two appeals to the House of Lords, while if leave were refused, the necessity for an appeal might pass away. The proof was fixed for Friday, and had already been prepared for. It might be a convenience to the petitioners to go to the House of Lords now, but it would be a great hardship to the respondent, who had no interest in the question of the construction of the clause of reference except as it affected his case, to expose him to the chance of there being two appeals. There was therefore no reason for departing from the ordinary rule—*Stewart* v. *Kennedy*, February 26, 1888 (opinions of the Lord President and Lord Adam), 16 R. pp. 522-3.

At advising—

LORD PRESIDENT—If we were to have regard solely to the interest of the insurance company, and to its convenience in the conduct of its business, there is probably no doubt that we ought to grant the prayer of this petition, as they would thus be enabled to have a question of great general importance finally settled. But we are bound to keep in view also the interests af the insured, who is quite unconcerned in general questions of law, and wants to get his claim settled as soon as may be. Now, it is to be observed that the petitioners have not evidenced any anxiety to save expense to the opposite party by bringing this application timeously, and before preparations for the proof had to be made. Indeed, this petition is presented to us on the eve of the proof, and does not therefore come before us favourably when our duty is to determine upon a balance of convenience. But further, I think we should be slow to interfere with the progress of the action where we see that one result of the proof now impending may be that the defenders are found liable in so moderate a sum that on reflection they may consider that they have no adequate interest on this occasion to appeal to the House of Lords. I think we shall best exercise our jurisdiction to-day by refusing this petition for leave.

LORD ADAM concurred.

LORD M'LAREN—If leave to appeal had been asked at an earlier stage, I am inclined to think that this would have been a strong case for granting an application of this kind, but the leading consideration must be the progress of the case, and I agree that it would be inexpedient on the eve of the proof to interfere with what till now both parties appear to have considered the proper mode of conducting the case.

LORD KINNEAR—Mr Ure has stated that in certain circumstances his clients might eventually have no interest to appeal this case to the House of Lords. If that is so, it appears to me that the pursuer has a very strong argument for maintaining that he ought to be allowed an opportunity of having the whole case considered before he is compelled to go to the House of Lords. If this question had been raised sooner I agree we should have had a different matter for our consideration, but as the case now stands I think with your Lordships that it would not be expedient to grant the leave craved.

The Court refused the petition.

Counsel for Petitioners—Ure. Agents—T. & R. B. Ranken, W.S.

Counsel for Respondent — Salvesen. Agent—T. M'Naught, S.S.C.

Tuesday, November 10.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

DEN (INSPECTOR OF POOR FOR PARISH OF MELDRUM) *v.* LUMSDEN.

Poor—Aliment—Action of Relief—Form of Decree.

In an action by an inspector of poor against the father of two illegitimate children, the paternity being admitted, the Court granted decree for a sum already expended on the children's maintenance, but *refused* to grant decree for payment of aliment at a spe-

cific rate for each of the children until they should respectively attain the age of fourteen or cease to be a charge on the pursuer.

William Den, Inspector of Poor for the parish of Meldrum and county of Aberdeen, presented a petition in the Sheriff Court at Aberdeen against John Dunlop Lumsden, praying the Court "to ordain the defender to pay to the pursuer the sum of ten shillings sterling weekly in advance, as from the twentieth day of December Eighteen hundred and ninety, until the children, John D. Lumsden and George Addison Lumsden, shall attain the age of fourteen years respectively and be able to maintain themselves, or until the pursuer is relieved of their maintenance, with the legal interest on each weekly sum from the date of its becoming due till payment, and with expenses, and to grant warrant to arrest on the dependence."

The pursuer averred—"(Cond. 2) In the month of August 1887 Ann Burr, whose address is at present unknown, gave birth to a child of the name of John Dunlop Lumsden, at Crooked Lane, Aberdeen. The defender is the father of said child. In the month of June 1889 the said Ann Burr gave birth to another child of the name of George Addison Lumsden, at India Street, Edinburgh. The defender is the father of said child. The defender's averment in answer is denial. Explained that at the date when the proceedings were raised Ann Burr's address was not known to the pursuer. (Cond. 3) The said Ann Burr has deserted the said children, and her address is unknown to the pursuer, and as the parish of settlement of the said Ann Burr is the parish of Meldrum, the said children have become chargeable to said parish. The defender is the father of the said children and is bound to aliment them, but he refuses or delays to do so, and the present proceedings have therefore become necessary. (Cond. 4) The mother of the children having deserted them, and her address being at present unknown to the pursuer, the defender is liable in payment of the whole aliment of the foresaid children, and the sum mentioned in the prayer of the petition is a reasonable aliment to allow them. The address of the said Ann Burr is now known to the pursuer, but she is unable to contribute pecuniary assistance to the aliment of her children, and she declines to maintain them."

The defender on record denied that he was the father of the children.

On 27th March 1891 the Sheriff-Substitute (BROWN) before answer allowed the parties a proof of their averments.

"*Note.*— . . . It was further argued for the defender that a parochial board is not entitled to a continuing decree of any kind, but must be content to sue for sums actually expended. The original conclusions I have no doubt were incompetent, but as amended, with consent of the defender, they are in accordance with those in a case reported by Hume—*Kirk-Session of Wigtown* v. *Dalziel*, 453, and the case of *Anderson* v. *Heritors of Lauder*, 10 D. 960. The pursuer alleges that the mother of the children, who had now been discovered, is unable to contribute her share, but that is a matter of fact, and therefore the proof is made before answer so far as the defender's pleas are not otherwise disposed of."

The defender having appealed, the Sheriff (GUTHRIE SMITH) adhered on 20th May 1891.

On 29th May the defender lodged a minute admitting the paternity of the children, and on 16th June the Sheriff-Substitute, in respect of this minute, decerned against the defender as prayed for.

The defender appealed, and argued—A parochial board was only entitled to recover sums actually expended by them, and was not entitled to decree for a continuing payment such as was asked for here—*Duncan* v. *Forbes*, February 8, 1878, 15 S.L.R. 371; *Gillies* v. *M'Dougall, &c.*, Guthrie's Sheriff Court Cases, 27.

The pursuer argued—It was competent to grant a decree for a continuing payment such as was asked for here—*Anderson* v. *Heritors and Kirk-Session of Lauder*, March 11, 1848, 10 D. 960; *Kirk-Session of Wigtown* v. *Dalziel*, February 6, 1795, Hume's Dec. 453.

The case was continued to give the pursuer an opportunity of amending his record, and he subsequently proposed to amend the prayer of his petition by asking decree in this form:—"To ordain the defender to pay to the pursuer the sum of (first) £1, 5s. 9d., being the amount expended by the pursuer as Inspector of Poor of the parish of Meldrum in alimenting John Dunlop Lumsden and George Addison Lumsden, the children of the defender, from the 20th December 1890 till the date of this action, with interest at the rate of 5 per cent. per annum on the said sum from the date hereof till payment; further, to ordain the defender to pay to the pursuer the sum of (second) five shillings weekly for each of the said John Dunlop Lumsden and George Addison Lumsden until they shall respectively attain the age of fourteen or cease to be a charge on the pursuer as inspector foresaid, the first payment of 5s. for each of the said John Dunlop Lumsden and George Addison Lumsden to be made seven days after the date hereof, with interest on each sum of 5s. from the date when it shall become due till paid, and with expenses."

He also proposed to add averments to the effect that he had already expended the sum of £1, 5s. 9d. on the maintenance of the defender's children, and that "the cost of alimenting and supporting the children is not and cannot be less than 5s. per week for each."

In answer to these amendments the defender admitted that the sum of £1, 5s. 9d. had been expended by the pursuer on the maintenance of the children.

At advising—

LORD PRESIDENT—The case as it now stands is in this position—that the defender has admitted the paternity of the children named in the prayer of the petition, and

has also admitted that expenses to the amount of £1, 5s. 9d. have been incurred by the pursuer in maintaining them.

The case, however, involves another question—a difficulty arising from the position adopted by the pursuer in claiming decree in the form set out in the prayer of the petition, even as amended. I am of opinion that we should not grant a decree for future aliment at a specific rate if the circumstances of the parents continue such as to make it applicable. The prayer of the petition contains elements of a hypothetical nature which, in my view, make it not a proper subject for a decree, and there is no authority for granting a decree in such terms. The duty of a parochial board to give relief arises only as circumstances occur to give rise to it. They have no standing relation to the objects of relief which entitles them to assume that they will have a continuing duty to aliment them, and it will depend, as has been indicated, on the circumstances of the two parents whether they will have a right to claim relief from one or both of them.

I propose therefore that we should confine our decree to the sum of £1, 5s. 9d. already expended, with interest thereon from the date of the action, and that we should refuse the rest of the prayer of the petition.

LORD ADAM—I concur. It appears to me that the pursuer has forgotten the true nature of his claim; that it is a claim for relief against those who are liable for the maintenance of the children. Being an action of relief, it follows that the expenses must have been incurred before the action is brought, and it equally follows that no continuing decree for the amount which may in the future be expended in aliment can be granted. I agree that the only competent conclusion is the first—that is to say, for the expense already incurred.

LORD M'LAREN and LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

"The Lords having heard counsel upon the appeal, record, and whole process, together with the minute of amendment for the pursuer and respondent, and the minute of amendment for the defender and appellant, Sustain the appeal: Allow the amendments in said minutes to be made at the bar, and the same having been done, recal the interlocutor of the Sheriff-Substitute dated 27th March 1891, and the interlocutors subsequent thereto: Find that by minute the appellant has admitted the paternity of the children named on record: Find that it is admitted that at the date of the action the sum of £1, 5s. 9d. had been expended by the pursuer on the aliment of the said children and that the appellant is liable therefor: Decern against him for said sum, with interest thereon at 5 per cent. per annum from date of petition: Find neither party entitled to expenses in Sheriff Court: Find appellant entitled to expenses in this Court," &c.

Counsel for the Pursuer—Comrie Thomson—F. T. Cooper. Agents—Henry & Scott, W.S.

Counsel for the Defender—Salvesen—Gloag. Agents—Ronald & Ritchie, W.S.

Tuesday, November 10.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

TULLY *v.* INGRAM & MACKENZIE AND OTHERS.

Agent and Client—Employment—Privity of Contract—Reparation—Professional Negligence—Donation.

An uncle informed his nephew that he had bought a house which he intended to present to him, and that he proposed to consult a certain law-agent as to the titles. The nephew acquiesced in the uncle's choice of the law-agent, but did not interfere actively in the transaction or employ the law-agent. The transaction was completed without a search for encumbrances being made, and after the death of the law-agent the nephew was evicted from the property by a bondholder.

In an action at the nephew's instance against the representative of the law-agent—*held* that as the pursuer had not employed the law-agent, he had no title to sue.

Question, whether the representative of the deceased law-agent could in any view have been made liable, in respect that on the discovery of the burden neither notice thereof nor any opportunity of clearing it off had been given.

Question, whether a partner who had been assumed by the law-agent after the transaction could be made liable.

William Tully, farmer, Portpatrick, sued Ingram & Mackenzie, solicitors, Stranraer, and James Mackenzie, sole surviving partner of that firm, and Mrs Ingram, widow and executrix of the deceased partner Alexander Ingram, for £150 as damages for loss sustained by him through the alleged professional negligence of the firm in connection with the purchase of house property in Portpatrick.

The pursuer averred that in May 1873 he purchased from James Rodger, Stranraer, certain subjects situated in Portpatrick for £200; that the late Alexander Ingram was instructed by his (the pursuer's) uncle Mr Paterson, acting on behalf of the pursuer, to act as agent for the pursuer, which Ingram did; and that the transaction was concluded in the firm's office on 18th July 1873. Before the transaction was concluded Mackenzie entered into partnership with Ingram; he was thoroughly cognisant of