provisions do not detract from the plain meaning of the words which are not superfluous but which are intended to regulate the succession. I should, therefore, upon the mere construction of the deed, come to the conclusion which your Lordships have reached, that this testator is settling his own estate, and that he intends to exclude the children to whom he gives provisions from making any other claim on that estate.

Then the question arises whether that is in accordance with previous rules of construction laid down, and I agree that what was said by Lord M'Laren in this Court and by Lord Halsbury and Lord Watson in the House of Lords in *Naismith* v. *Boyes* is directly in point. All these clauses, according to the doctrine so laid down, are intended to enable full effect to be given to the testator's will by putting persons who are to take benefit under it, under a disability of putting forward legal claims which would withdraw some part of the estate from the disposition of the testator's will, and so disturb the distribution that he intended. That doctrine appears to me to be clearly applicable, and to settle the question of construction were it otherwise doubtful. But then the Lord Ordinary has proceeded upon what he considers to be the law established in the case of *Dunbar* v. *Dunbar's Trustees*, and in the argument upon that case our attention was called to what was said by Lord Lindley in particular, which was cited as containing the doctrine said to be established by *Dunbar* v. *Dunbar's Trustees* upon this point. In that case the Court was construing a marriage settlement by which the lady, who was possessed of very considerable means, had settled both the estate which she was actually possessed of at the time, and all estate which she might afterwards acquire, and had protected her settlement in the marriage contract by a clause that it should be in full satisfaction of bairns' part of gear, executry, and everything else which the children could claim or demand by and through the decease of the mother. Lord Lindley said—and the judgment of the House was in accordance with the observation—that these words were wide enough, in his opinion, to exclude the children of the marriage from all claims, foreseen or unforeseen, to any share of their mother's personalty except under the settlement. That is not laid down as a doctrine of law. It is a construction of particular words with reference to their context under a particular settlement, but I have no doubt at all that it is exactly the construction which ought to be put upon the similar words, although they are not identical, in the settlement we are construing. Therefore I should have no difficulty in holding that the words in question were wide enough to cover claims which the testator did not foresee. If by any subsequent legislation a right had been given to children to make a claim upon their father's estate in consequence of their mother's death which did not exist at the time the will was made, it may very well be that that clause would have covered such a claim.

But then the question that we have to determine is not what particular claims would be covered by the general words, but what is the estate which is being protected by the exclusion of claims in general, and upon that question *Dunbar* v. *Dunbar's Trustees* has no application to the present case. In that case, as I have said, the mother was settling her own estate by contract not by will, but the principle is the same; it was her own estate which she was settling, and the purpose of the clause was to prevent her own estate being carried away by any claim advanced by the children except under the settlement of that estate that she was making by contract with her future husband. The general words, therefore, that were used by Lord Lindley may be perfectly apt to define the claims that are excluded, as embracing such as might not be foreseen by the testator, but they have no bearing at all upon the question whether the estate protected from all such claims is the father's estate, or somebody else's. For these reasons, and also for the reasons which your Lordships have given, I am very clearly of opinion that the clause is applicable to the father's estate alone, and does not exclude any claim either upon the mother's, or upon anybody else's succession, which may emerge after the father's death.

LORD PEARSON — I am of the same opinion.

The Court recalled the Lord Ordinary's interlocutor, found and declared that the pursuer was entitled to legitim out of his mother's estate, and decerned.

Counsel for Pursuer (Reclaimer)—Graham Stewart, K.C.—D. Anderson. Agents—W. & J. Cook, W.S.

Counsel for Defenders (Respondents)—Hunter, K.C.—Sandeman. Agents—J. & D. Smith Clark, W.S.

Thursday, November 26.

FIRST DIVISION.

[Sheriff Court at Jedburgh.

PARISH COUNCIL OF CAVERS *v.* PARISH COUNCILS OF SMAILHOLM AND URR.

Poor—Settlement—Computation of Time—"Three Years"—Poor Law (Scotland) Act 1898 (61 *and* 62 *Vict. cap.* 21), *sec.* 1.

The Poor Law (Scotland) Act 1898 enacts, sec. 1, that "no person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall . . . . have resided for three years continuously in such parish. . . ."

The three years must be three years according to the calendar, and there-

fore they do not expire until the same day in the calendar three years afterwards.

On the afternoon of 29th May 1900, P. went to reside in the parish of S., and continuously resided there till the morning of 28th May 1903.

Held that P. had not resided in the parish of S. for three years within the meaning of the Poor Law (Scotland) Act 1898, sec. 1, and consequently had not acquired a settlement there.

Brown v. *Robertson*, 1869, 3 Poor Law Magazine, 173, *disapproved*.

The material portion of the Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), sec. 1, is quoted in the rubric.

The Parish Council of Cavers, in the county of Roxburgh, raised an action in the Sheriff Court at Jedburgh, which, as originally laid, was only against the Parish Council of Smailholm in the same county, for payment of £16, 18s. 10d. advanced by pursuers in maintaining Mrs Robert Patterson, a pauper lunatic, in Melrose Asylum. The action having been appealed to the Court of Session, the Court, on 16th May 1908, allowed the pursuers to call as additional defenders the Parish Council of Urr, in the county of Kirkcudbright.

The facts were as follows—Robert Patterson, a ploughman, whose birth parish was the parish of Urr, went to reside at the farm of Sandyknowe, in the parish of Smailholm, on the afternoon of 29th May 1900, and continuously resided there until the morning of 28th May 1903, when he removed from the said parish. On 21st February 1906 Isabella Brydeson or Patterson, his wife, then residing in the parish of Cavers, was removed to the Melrose Asylum as a pauper lunatic.

On 15th March 1907 the Sheriff-Substitute (BAILLIE) found that on 21st February 1906 Robert Patterson had a residential settlement in the parish of Smailholm, and therefore found that the parish of Smailholm was bound to repay to the parish of Cavers the amount advanced, and granted decree.

The defenders appealed to the Sheriff (CHISHOLM, K.C.), who on June 11, 1907, recalled his Substitute's interlocutor, found in law that Robert Patterson had not acquired a settlement under the Poor Law (Scotland) Act, 1898, in the parish of Smailholm, and assoilzied the said parish.

The pursuers the Parish Council of Cavers appealed.

At the hearing of the appeal it was admitted by the defenders, the Parish Council of Smailholm, and the defenders, the Parish Council of Urr, that one or other of them was liable.

Argued for the defenders and respondents (the Parish Council of Urr)—In computing time under the Poor Law Act the maxim *dies inceptus pro completo habetur* applied, and fractions of days were counted as whole days, *e.g.*, residence from any hour on 29th May 1900 to any hour on 28th May 1903, was sufficient—*Brown* v. *Robertson*, 1869, 3 Poor Law Magazine, 173; *Cochrane* v. *Kyd and Others*, June 16, 1871, 9 Macph. 836, 8 S.L.R. 567; *The Queen* v. *Inhabitants of St Mary, Warwick*, 1853, 1 Ell. and Bl. 816. In *Waddell* v. *M'Phail*, December 2, 1865, 4 Macph. 130, 1 S.L.R. 50, and also in *Emmerson* v. *Oliver*, December 18, 1905, 8 F. 322, 43 S.L.R. 291, which followed thereon, it was sought to drop a whole day out of the twelve months' occupation required as a qualification for the franchise.

Argued for the defenders and respondents (the Parish Council of Smailholm)—A year must be counted "by the return of the day of the next year that bears the same denomination"—*Lady Bangour* v. *Hamilton and Others*, January 26, 1681, M. 248 (year and a day adjudication); Bell's Com. (M'Laren's ed.), vol. i, p. 759; (prescription) *Simpson* v. *Melville*, March 1, 1899, 6 S.L.T. 355; (deathbed) *Mercer* v. *Ogilvy*, March 1, 1796, 3 Pat. App. 434; (limitation of time) *Ashley* v. *Magistrates of Rothesay*, June 20, 1873, 11 Macph. 708, 10 S.L.R. 513. The maxim *dies inceptus*, &c., only applied provided the corresponding day of the next year had been reached. The three years therefore did not expire till 29th May 1903.

At advising—

LORD PRESIDENT—The husband of the pauper, who is an insane pauper, went to a farm called Sandyknowe on May 29, 1900, Sandyknowe being in the parish of Smailholm. He left Sandyknowe on May 28, 1903, and the sole question in the case is whether he resided for three years in the parish of Smailholm. If he did, then he acquired a residential settlement, and the pauper, his wife, is chargeable upon Smailholm. If he did not, then Smailholm is not liable. The question therefore is the calculation of the three years. The learned Sheriffs have come to different results upon this. The learned Sheriff-Substitute held that he had resided for the three years, being chiefly moved by a decision of Lord Fraser when he was a Sheriff in the case of *Brown* v. *Robertson*, reported in the Poor Law Magazine, vol. iii, p. 173. The learned Sheriff came to the other conclusion and held that he had not resided for three years. A good many cases were quoted to us which have been decided upon other branches of the law, such as, for instance, bankruptcy, year and day apprisings, election law, and deathbed. But I have come without really much difficulty to the conclusion that the judgment of the learned Sheriff is right. I think three years must be three years according to the calendar, and accordingly the three years do not expire until the same day in the calendar three years afterwards. In other words, taking the date here, Patterson did not complete his three years until the 29th of May 1903. I think that is a perfectly simple view of the statute, and really I think suits all cases. I do not think, of course, that the Court will ever be concerned with the question of what happens inside a day—that is to say, I do not think that it will go into an inquiry as to the particular hour of the day at which the period commences and at which it ends, and in that sense the maxim

dies inceptus pro completo habetur is applicable. But I think the brocard is pushed far beyond its proper application when it is applied—as it is applied by the judgment in *Brown* v. *Robertson*—both at the beginning and at the end of the period. If that case were right it really would amount to a certainty that there had never elapsed a period which existed for three years *de momento in momentum*. It never could happen at all unless the person really arrived at midnight punctually, or one second after the midnight the day before the first day, and stayed up to midnight on the last day.

Accordingly I am of opinion that your Lordships should refuse the appeal, and adhere to the judgment of the learned Sheriff.

LORD M'LAREN—I am satisfied that the Sheriff has given a sound decision, and has put it on the right ground. The thing to be determined is an interval of time, and when that is expressed in terms of a division of the calendar, the interval is to be reckoned from the day when the interval begins to the corresponding day in the next division of the calendar. Where the interval to be determined is one year from the 29th of May, it will not be completed until the 29th of May in the following year, and similarly for a period of two, three, or any greater number of years.

This is the first and the important rule, and there is a second and subsidiary rule, which is, that when an interval of time is specified in a statute, a day is held to be *punctum temporis*, and it is therefore held to be unnecessary and improper to reckon by hours. I should hesitate to say that this second rule is universally applicable, because in private contracts it may sometimes be inferred from the nature of the contract or its subject-matter that the time is to be reckoned *de momento in momentum*. But we are only concerned with a period prescribed by statute, and in the absence of express provision to the contrary I should hold that it was unnecessary to reckon by hours and minutes. I may here observe that according to the rule which the Sheriff has applied to a period of residence of three years, the actual residence may fall short of three complete years, but never by so much as one whole day.

But if we were to define the period in the way suggested by the Sheriff-Substitute, it would follow that a residence might be begun on the last moment of the 1st of January and ended on the first moment of the 31st of December, and that this would be treated in law as a residence for the period of a year, although in arithmetic it is only 363 days and a fraction.

When the cases are examined in which intervals of time have been defined by the Court, I think it will be found that the same rule or mode of reckoning has been applied in all cases, although different forms of expression may be used to define the rule. Thus, when it is said that the first day of the period is excluded, and the last day is taken subject to the maxim *dies inceptus pro completo habetur*, that is just another way of stating that the interval is to be reckoned from a given day to the corresponding day of the next consecutive period.

In the present case the person whose settlement is in question began his period of residence on the 29th of May, and as he did not remain in the parish until the 29th of May three years later, but left on the 28th, it follows that he did not acquire a residential settlement.

LORD KINNEAR—I also agree with the learned Sheriff.

LORD PEARSON was absent.

The Court pronounced this interlocutor—

"... Find in law that the said Parish Council of Urr is bound to repay the pursuers, the Parish Council of Cavers, the amount advanced for the maintenance of the said Isabella Brydeson or Patterson, with interest, all as concluded for: Therefore decern against the defenders, the Parish Council of Urr, for payment to the pursuers of the sum of £16, 18s. 10d., with interest, all as concluded for: Find the respondents, the Parish Council of Urr, liable to the respondents, the Parish Council of Smailholm, in the expenses of the appeal: And remit," &c.

Counsel for the Parish Council of Cavers (Pursuers and Appellants)—W. Thomson. Agents—Steel & Johnstone, W.S.

Counsel for the Parish Council of Smailholm (Defenders and Respondents)—T. B. Morison, K.C.—Jameson. Agents—P. Morison & Son, S.S.C.

Counsel for the Parish Council of Urr (Defenders and Respondents)—Chree—Macmillan. Agents—Ronald & Ritchie, S.S.C.

Friday, November 27.

SECOND DIVISION.

MACDOUGALL'S FACTOR *v.* ANDERSON AND OTHERS.

Liferent and Fee—Bequest of Free Income—Casualties—Duplications of Feu-Duties and Ground-Annuals—Purchase by Judicial Factor of Feu-Duties and Ground-Annuals having Duplicands.

A testator, whose estate amounted to £20,000, made a bequest of the liferent of the free income of his estate, but made no provision as to the capital, which accordingly fell into intestacy. His estate at the time of his death included superiorities yielding feu-duties which amounted to £64 per annum. Subsequently part of the moveable estate was invested by a judicial factor in further superiorities yielding £117 per annum. Duplications