the stipulated quality, though not manufactured at the works of the pursuers.

The decision in the *West Stockton* case (July 3, 1880, 7 R. 1055) appears to me to be an authority on the present occasion. The circumstances are all but identical; and I adopt the grounds of judgment presented in the opinions of the Lord Justice-Clerk and Lord Gifford.

There is left for consideration only the amount of damage, and as to this I think that cause has not been shown why the sum awarded by the Lord Ordinary should be reduced. The principle on which he assessed the damage has not been objected to by the defenders. Their case upon this point, as presented at the discussion upon the reclaiming-note, is, that even assuming that they were bound to accept iron manufactured elsewhere than at the pursuers' works, they ought to have been allowed from June 1879, when the final demand for specifications was made, the three or four months provided by the contracts for specification and delivery. But this contention is excluded by their previous delay, and besides is inconsistent with their pleading upon the record. In their third plea-in-law they set forth that in June 1879, the date taken by the Lord Ordinary to be the date of the breach, they were ready to take delivery of the whole iron under the said two contracts, and in so saying they cut away the ground on which the argument for reduction of damage has been maintained.

Entertaining those views, my opinion is that the interlocutor of the Lord Ordinary ought to be affirmed, and judgment accordingly be pronounced.

LORD YOUNG— . . . With respect to the contracts of June and July the Lord Ordinary refers to the *West Stockton* case, decided in July last on the general question raised, in which I expressed an opinion differing from that of your Lordship in the chair and that of Lord Gifford. I do not enter on that question now, but content myself with saying that I agree with the Lord Ordinary that this case is ruled by the decision then pronounced. I therefore agree with the Lord Ordinary on the grounds which he has shortly stated in his note.

LORD JUSTICE-CLERK—I have nothing to add to the very full opinion of Lord Gifford in the case of *Stockton*, and to what I said in that case. I concur in the opinion of Lord Craighill that there is nothing to distinguish this case from that. I therefore think we should adhere to the interlocutor of the Lord Ordinary.

The Court adhered.

Counsel for Pursuers—Macdonald, Q.C.—J. A. Reid. Agents—Finlay & Wilson, S.S.C.

Counsel for Defenders—Dean of Faculty (Fraser, Q.C.)—Asher—W. C. Smith. Agent—J. Smith Clark, S.S.C.

Wednesday, January 26.

SECOND DIVISION.

[Lord Rutherfurd Clark, Ordinary.

RUSSELL (INSPECTOR OF POOR OF COLINTON PARISH) *v.* GREIG (INSPECTOR OF CITY PARISH OF EDINBURGH) AND CRAIG (INSPECTOR OF ST CUTHBERT'S PARISH).

Poor—Settlement of Birth—Liability of Parish of Birth of Pauper Born in a Poorhouse situated there, but belonging to another Parish.

The parish of E. had no poorhouse within its own bounds, but had erected and maintained a poorhouse exclusively belonging to it in the adjoining parish of C. *Held* that the birth settlement of a pauper born in this poorhouse was in the parish of C., and not in the parish of E., to which the poorhouse belonged.

This was an action by the inspector of poor of the parish of Colinton for declarator that John Cunningham, a pauper in the St Cuthbert's Combination Poorhouse, did not possess a settlement of birth in the parish of Colinton, and that his settlement was in the City parish of Edinburgh, and for relief from the City parish of claims made or to be made in Colinton for the pauper, on the ground that he was born in Colinton. The defenders called were the inspector of the City parish of Edinburgh and the inspector of St Cuthbert's. The circumstances in which the action was brought were as follows:—In 1870 the City parish sold the old poorhouse of that parish and built a new poorhouse at Craiglockhart, in the adjoining parish of Colinton. The new poorhouse paid rates in the parish of Colinton. It contained a lying-in ward, and it was the practice of the City parish to send out to that ward paupers about to be confined. The mother of the pauper, who was born on 16th March 1872, was one of the persons so sent out to Craiglockhart by the City parish. He became chargeable to St Cuthbert's in March 1878, and the inspector of that parish raised an action in the Small-Debt Court for repayment of sums expended on his relief against Colinton as the parish of his birth. The inspector of Colinton then raised this declarator to try the question of the liability of that parish to support paupers born in the poorhouse belonging to the City parish though situated in the parish of Colinton.

He pleaded—"(1) The pauper having no settlement by birth or otherwise in the parish of Colinton, the pursuer is entitled to decree in terms of the first declaratory conclusion of the summons. (2) The birth settlement of the pauper being in the City parish of Edinburgh, the pursuer should have decree of declarator to that effect."

The City parish pleaded—"(2) The said pauper having his birth settlement in the parish of Colinton, this defender is entitled to absolvitor, with expenses. (3) The said pauper having no settlement in the City parish of Edinburgh by birth or otherwise, that parish is not liable in repayment of the advances made by the pursuer."

The Lord Ordinary found that the settlement of the pauper was in Colinton, and assoilzied the defenders—adding this note:—

"*Note.*— . . . . (2) The pauper was born in the poorhouse belonging to the City parish of Edinburgh, which is situated in the parish of Colinton. The question is, whether he was born in the parish of Colinton or in the parish of Edinburgh? The pursuer says that in regard to questions of settlement the poorhouse must be held to be situated in the parish to which it belongs.

"The Lord Ordinary cannot adopt that view. It seems to him that the birth settlement of the pauper must be in the parish in which he was actually born. The theory of the pursuer, that the poorhouse is constructively in the parish of Edinburgh, is not supported by any authority. If it were to be entertained at all, it would seem to follow that it should hold good for all parochial purposes; but the parish of Colinton does not extend it to the levying of poor-rates."

The pursuer reclaimed, and argued that the poorhouse of the City of Edinburgh must, though geographically in Colinton, be held on questions of settlement to be in the parish to which it belonged.

Authorities — *Dalmellington* v. *Ruthwell and Troqueer*, Jan. 22, 1822, 1 Shaw (n.e.) 244; *Craig* v. *Ross*, 39 Jur. 390; *Macdonald* v. *Taylor and Craig*, 1866, 9 Poor Law Mag. 348.

At advising—

Lord Justice-Clerk—If the *criteria* of liability introduced by the Poor Law Acts were founded on logical principle there might be something to say for this action, but they are purely arbitrary, and any rule that could be followed in such a matter must often produce bad results. The simplest and most reasonable adjustment of the question is that the child was born in Colinton, and that not being doubtful it is impossible for us to find that by construction it must be held to have been born in the City parish. The Act says that the parish of birth shall be liable—the child was born in Colinton. The building was no doubt erected in Colinton for the benefit of Edinburgh, but that will not enable us to make an exception.

Lord Young—I am of the same opinion, and I must say without any feeling that the case of Colinton is a case of hardship. This poorhouse probably pays more rates to Colinton than any other property in the parish, and there must be comparatively few births in it—not nearly so many as in a village containing the same number of persons.

But apart from that I agree with your Lordship that we must apply the law as it exists, and that is, that the birth settlement of a child shall be the parish where it is born. It is a mere question of fact. The geographical limits of parishes are fixed, and this child was born in Colinton. Applying that law, I hold that a child born in that parish has its birth settlement there. If there is ground for making an exceptional law here, it is a matter for the Legislature and not for the Court.

Lord Craighill—I concur. The only rule on which we can go is to consider the parish in which the child is born. This child was born in Colinton. A more anomalous and a harder result for Colinton would have been if the mother had died at the time of the child's birth, and the child had from its birth been a pauper on the parish of Colinton. We cannot avoid hardships in such matters. All we can do is to administer the Act of Parliament, and there is no escape from the conclusion that Colinton must relieve the City parish.

The Court adhered.

Counsel for Colinton—Wallace. Agent—A. Morison, S.S.C.

Counsel for City Parish—J. A. Reid. Agents—Curror & Cowper, S.S.C.

Counsel for St Cuthbert's Parish—Kinnear—M'Kechnie. Agent—Jas. M'Caul, S.S.C.

Thursday, January 27.

SECOND DIVISION.

[Lord Curriehill, Ordinary.

DRUMMOND *v.* CARSE AND ANOTHER.

Judicial Factor, Liability of—Process—Expenses—Right of Judicial Factor to Pay Expenses of Litigation in which he has been Found Liable out of the Estate under his Charge.

D., a judicial factor who had in *bona fide*, and so far as appeared in the due discharge of his duty, entered into a litigation in which he had been partly unsuccessful, was decerned to pay "as judicial factor" a certain sum. The decree went on to "find the said D. liable in expenses." He paid the expenses thus decerned for out of the trust-estate, which was thereby diminished, so as not to suffice for payment of the principal sum found due. *Held*, in a suspension by D. of a charge to pay the principal, that the decree did not import personal liability to pay the expenses, and that therefore D was not bound to make up out of his own funds the deficiency in the estate caused by the payment of the expenses.

Question—Whether, a judicial factor being an officer of Court, and responsible to the Court in the factory process, such diligence against his person or property was competent?

This was a suspension at the instance of James Drummond, C.A., Edinburgh, judicial factor on the estate of the late Stewart Carse, painter, Musselburgh, of a charge to make payment as judicial factor of a sum of £220, 19s. 0½d. to the respondents Richard Carse and another. The prayer of the note was to suspend the said charge and whole grounds and warrants thereof, at least in so far as the said charge threatens or may form a step in the process of doing personal diligence against the complainer or diligence against his personal property. The circumstances in which the charge was given appear from the following passage from the note of the Lord Ordinary (Curriehill):—"The complainer unsuccessfully opposed an action at the instance of the respondents, in which he was, by interlocutor of the Second Division dated 29th January 1880, decerned and ordained, as judicial factor on the estate of the late Stewart Carse, to