own right during the subsistence of the marriage as she is to have a separate domicile from her husband, or to enjoy any other personal status or franchise in her own right." Consistently with this general principle thus authoritatively stated it is difficult to understand how the pauper here could emerge from the married state, on the death of her Irish husband, with a settlement which was not and never had been her husband's, and was not even her own ante-matrimonial settlement, but one acquired by residence *stante matrimonio*. I say "by residence," but I am unable to say by whose. It cannot be by the residence of a husband who was acquiring thereby a settlement for himself. For that was not the case. It cannot be by the residence of the wife, for *stante matrimonio* she cannot acquire a settlement for herself, even when deserted (*Gray* v. *Fowlie*, 9 D. 811). It must be then through some mysterious process of reasoning by the residence of the wife through the husband, attributing to her his residence, and attributing to his residence, so attributed to her, an effect which it did not have in relation to himself. But if by her husband's residence the pauper acquired a settlement by virtue of the Act of 1898, she did not do so at her death merely, but at the date of the Act, and constructively at the earlier date of September 1897, and continued to have that settlement till her husband's death. That is to say, for eight years husband and wife had different settlements, a thing wholly opposed to principle authoritatively recognised and already referred to.

The case of *Falkirk* (2 F. 998) differs materially from the present. The three years' residence of the husband had been completed before his death, his death occurred before the date of the Act, his wife's chargeability commenced after his death and after the date of the Act. But the husband never himself applied for or received relief. The *Falkirk* case thus admits of being distinguished at two essential points from the present. But I recognise that the grounds of judgment cannot be reconciled with the opinion I hold on the present case. It would not be appropriate that I should canvass the grounds of judgment stated by the learned Judges who decided it. I content myself with saying that I respectfully endorse the views stated by Lord M'Laren, who dissented.

I therefore think that the parish of Aberdeen, as the relieving parish, is ultimately entitled to be reimbursed by the deceased husband's parish of settlement, which was the wife's if and when that is ascertained, and that it is only on a necessary extension of the rule of *Hay* v. *Skene*, which I must recognise, and not on principle, that the parish of the wife's birth may be resorted to *primo loco*, and until it discharges the *onus* of establishing the husband's actual settlement as at his death.

The Court pronounced this interlocutor—

"Find in fact in terms of the seven findings in fact in the interlocutor of the Sheriff-Substitute of Banff dated 23rd January 1909: Recal the findings in law in the said interlocutor, and in lieu thereof find in law (1) that in respect of the three years' residence of her husband in Aberdeen prior to 16th September 1897 the pauper Mrs Smith had acquired, as at the effective date of her chargeability, a derivative residential settlement in Aberdeen, and (2) that this being so, the Parish Council of the City Parish of Aberdeen has no claim of relief against the Parish Council of the parish of Banff: *Quoad ultra* affirm the said interlocutor appealed against," &c.

Counsel for Pursuers (Appellants)—Constable, K.C.—A. R. Brown. Agents—Macpherson & Mackay, S.S.C.

Counsel for Defenders (Respondents)—M'Lennan, K.C.—A. M. Mackay. Agents—Alex. Morison & Company, W.S.

Friday, December 3.

SECOND DIVISION.

[Lord Guthrie, Ordinary.

CUTHILL *v.* INVERKEILOR PARISH COUNCIL.

Poor—Process—Local Government Board—Complaint—Court of Session Action for Adequate Relief—Competency—Relief—"Inadequate"—Offer of Poorhouse—Poor Law (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 83), *secs.* 74 *and* 75.

The relief offered to a pauper by a parish council may be "inadequate" within the meaning of sections 74 and 75 of the Poor Law (Scotland) Act 1845, as well from its form as from its amount. An offer of admission to the poorhouse is therefore open to complaint to the Local Government Board for Scotland on the ground of being "inadequate" and to review by a court of law as provided for in these sections.

Poor—Relief of Pauper—"Inadequate"—Offer of Poorhouse — Unsuitability to Circumstances—Poor Law (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 83), *sec.* 74.

Circumstances in which *held* that an offer of admission to the poorhouse made by a parish council to a pauper was "inadequate" as being unsuitable to the then position of the pauper.

The Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83) enacts—Section 74—"In every case in which any poor person shall consider the relief granted to him to be inadequate, such poor person shall lodge or cause to be lodged a complaint with the Board of Supervision, which Board shall and is hereby required, without delay, to investigate the nature and grounds of the complaint; and if upon inquiry it shall appear that the grounds of such complaint are well

founded, and if the same shall not be removed, then the said Board shall by a minute declare that, in the opinion of the Board, such poor person has a just cause of action against the parish or combination from which he claims relief, and a copy of such minute certified and signified by the secretary, shall, if required, be delivered to such poor person, and upon the production or exhibition of such minute or certified copy thereof such poor person shall forthwith and without any further proceedings be entitled to the benefit of the poor's roll in the Court of Session. . . ."

Section 75—"Provided always that it shall not be competent for any court of law to entertain or decide any action relative to the amount of relief granted by parochial boards unless the Board of Supervision shall previously have declared that there is a just cause of action as hereinbefore provided."

The Local Government (Scotland) Act 1894 (57 and 58 Vict. cap. 58), sec. 3, abolishes the Board of Supervision and transfers its powers and duties to the Local Government Board for Scotland thereby established. By section 21 it is enacted that after 15th May 1895 every reference in any Act of Parliament to a Parochial Board shall be read and construed as referring to a Parish Council.

On 22nd October 1908 Mrs Christina Jaap or Cuthill raised an action against the Parish Council of Inverkeilor, concluding for (1) declarator "that the decision of the Local Government Board for Scotland, contained in a minute of the said Board, of date 10th March 1908, is final and conclusive to establish that the defenders, as the Parish Council of the parish of settlement of the pursuer, are bound to afford her adequate parochial relief, and that their offer to receive and maintain her in their poorhouse at Arbroath is not an offer of adequate parochial relief: And whether it be so declared or not . . . that the defenders are bound to afford the pursuer adequate parochial relief, and that otherwise than by receiving and maintaining her in their said poorhouse"; and (2) decree against the defenders "to provide outdoor relief for the pursuer, and to proceed instantly to determine the amount of such outdoor relief, and to pay the same weekly to the pursuer so long as she shall remain chargeable to the defenders' said parish of Inverkeilor."

The pursuer, who had for some years prior to 30th October 1907 been in receipt of outdoor relief from the defenders, had about that date received intimation that they had decided not to grant further outdoor relief to her, but offered to receive and maintain her in the poorhouse. She had declined this offer as inadequate, and had thereafter complained to the Local Government Board for Scotland, who after inquiry had declared by minute, dated 10th March 1908, that the pursuer's grounds of complaint were well founded, and that she had a just cause of action.

This action was accordingly raised, and the pursuer's circumstances as established in proof before answer were thus summarised by the Lord Ordinary (GUTHRIE)—"The pursuer has always maintained a respectable character. Although not in robust health and sixty-five years of age, she does not require medical attendance or nursing, and she is able to cook the food and look after her son's house, and thereby to make it possible for him, strong neither mentally nor physically, to maintain himself without assistance from the parish. Her other children give such help as is necessary to keep the mother and son's establishment going, in addition to the 12s. to 14s. a-week he earns on the roads, but they are unable to maintain their mother. If the pursuer receives outdoor relief the joint establishment will be kept up as at present. If this relief is refused, the result will be to force, not only the pursuer, but very soon her son also, into the poorhouse. I think Mr Macdonald, the Carmyllie inspector of poor, puts the case accurately when he says 'the effect of sending her' (the pursuer) 'there' (to the poorhouse), 'would be to break up a home for two respectable people.'"

The pursuer pleaded, *inter alia*—"(1) In virtue of her rights under the Poor Law (Scotland) Act 1845, and in respect of the minute of the Local Government Board for Scotland condescended on, the pursuer is entitled to decree in terms of the conclusions of the summons. (2) The pursuer being a proper object of parochial relief, and having her settlement in the defenders' parish, is entitled to adequate relief from the defenders, and decree should accordingly be pronounced in terms of the alternative conclusion for declarator. (3) The defenders' offer to receive and maintain the pursuer in their poorhouse not being, in the circumstances, adequate relief, the pursuer is entitled to decree as concluded for."

The defenders pleaded, *inter alia*—"(1) The action is irrelevant. (2) The defenders having, without prejudice to their plea of non-liability, offered to receive and maintain the pursuer in their poorhouse, which is full and adequate relief, the pursuer is barred from insisting in the conclusions of the present action, and the defenders ought to be assoilzied from the conclusions of the present action."

On 2nd February 1909 the Lord Ordinary, after a proof, before answer, pronounced the following interlocutor—"Finds with respect to the first alternative of the first declaratory conclusion of the summons that no finality attaches to the decision of the Local Government Board; therefore dismisses said first alternative conclusion: Finds and decerns in terms of the second alternative of said first declaratory conclusion, and decerns and ordains in terms of the remaining and operative conclusion following thereon; reserving the rights of the defenders in the event of any material change in the circumstances of the pursuer."

Opinion.—"I cannot affirm the first declaratory conclusion of the summons. The decision of the Local Government Board

in the pursuer's favour was necessary under section 75 of the Poor Law Act of 1845 to entitle her to raise the present action, but no finality is attached to such decisions.

"The question in the case is raised by the second declaratory and the operative conclusion. . . .

"An argument was maintained, on the terms of sections 73 and 75 of the Act of 1845, to the effect that in a question of outdoor or indoor relief no action is competent either in the Court of Session or in the Sheriff Court. The defenders have no special plea raising this question, but they argued it under their plea of relevancy. They say that while on a question of total refusal of relief there is an appeal under section 73 of the statute to the Sheriff, and on a question of the amount of outdoor relief there is a right, under sections 74 and 75 of the statute, to appeal to the Local Government Board, and if the Board's certificate be got, to bring an action in the Court of Session, parish councils are final judges as between outdoor and indoor relief. It has been decided in *Watson* v. *Webster*, 15 D. 448 (1853), and in *Forsyth* v. *Nicol*, 5 Macph. 293 (1867), that an offer of the poorhouse is not a refusal of relief in the sense of section 73 of the statute, and that such an offer, coupled, of course, with a refusal of outdoor relief, cannot be the subject of an application to the Sheriff under section 73. The question remains, whether such a refusal of outdoor relief, coupled with an offer of the poorhouse, cannot be brought before the Local Government Board and be the subject of a Court of Session action. The Local Government officials prove that ever since the Act of 1845 it has been the unquestioned practice to take such appeals. Last year, for instance, there were eighty-nine appeals taken and entertained against the offer of the poorhouse. Such practice is sanctioned by the opinion of Lord Cowan in the case of *Forsyth* v. *Nicol*.

"The defenders' construction of the Act is not a probable one. If local feelings may so influence the question of amount of outdoor relief as to render it necessary to provide for an appeal to an outside authority on that subject, much more may general local considerations unduly prejudice individual claims in a question of applying the poorhouse test, and refusing outdoor relief whatever the effect of the test might be. It may be that the words of the Act refer primarily to the question of the amount of outdoor relief, but I do not think they are necessarily so limited. I think it may fairly be said that, in a case suitable for outdoor relief, and for which insistence on entry into the poorhouse would involve unnecessary hardship, the offer of the poorhouse is not an adequate one, although I admit that a difficulty, not, I think, an insuperable one, is raised by the expression 'the amount of relief' in section 75. I read 'amount of relief' as equivalent to 'relief.'

"If this, clearly the most probable, be a reasonably possible reading of sections 74 and 75, I agree with the Local Government Board in thinking that this is a clear and indeed typical case for outdoor relief, in accordance with the theory of the Poor Law Acts and the practice of the central poor law authority for more than fifty years. . . . [*His Lordship narrated pursuer's circumstances and position*] . . . .

"The decree can only regulate the pursuer's rights in her present circumstances. These may change at any time so as to make the pursuer's demand unreasonable, and to entitle the defenders to insist, if she asks relief from them, that she shall enter the poorhouse."

The defenders reclaimed, and argued—The parish council were final on the question whether indoor or outdoor relief was the appropriate method in a case, and it was incompetent either to complain to the Local Government Board or to bring an action in the Court of Session with regard to such a question. The Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83), sec. 73, made an application to the Sheriff competent where relief was refused, and by section 74 an action in the Court of Session was competent, with the sanction of the Board, where the relief was "inadequate." In no other case could the matter of relief be considered by a court of law—section 75. There was no refusal of relief here, and there was no question of inadequacy. "Inadequate" simply meant insufficient, and action was competent accordingly only on the question of sufficiency or adequacy of any sum awarded by the parish council by way of outdoor relief. That was the natural meaning of the word, and that view was supported by the fact that in section 75 the word "amount" was used. An offer of admission to the poorhouse was undoubtedly a legal tender of relief—*Watson* v. *Welsh*, February 26, 1853, 15 D. 448; *Mackay* v. *Baillie*, July 20, 1853, 15 D. 971; *Forsyth* v. *Nicol*, January 19, 1867, 5 Macph. 293, 3 S.L.R. 169. If the tender was a legal one it was also an adequate one—*per* Lord Robertson in *Mackay* v. *Baillie*, *cit.* In any event the offer of the poorhouse, involving as it did board and lodging, clothing, and medical attendance, could not be described as "inadequate,"

Argued for the pursuer (respondent)—The complaint to the Local Government Board and the action following on their minute were within section 74 of the Poor Law (Scotland) Act 1845. "Inadequate" undoubtedly involved something more than mere deficiency in amount. It implied unsuitability to the circumstances of the case. The questions whether the offer of the poorhouse was a legal tender of relief, and whether it was an offer of adequate relief, were two totally different questions—*per* Lord Cowan in *Forsyth* v. *Nicol*, *cit.* The cases cited by the defenders merely decided that an offer of the poorhouse was a legal tender of relief, and therefore excluded an application to the Sheriff under section 73 of the Act, and did not raise the question whether the offer was an adequate one in the sense of section 74. The view con-

tended for by the defender involved the somewhat surprising result that the Parish Council were final on the question whether indoor or outdoor relief was appropriate to any particular case, though their decision as to the amount of the outdoor relief to be given to a pauper could be reviewed by the Court of Session. Further, the practice since the passing of the Act in 1845 was entirely in the pursuer's favour, and that practice could certainly be appealed to—*Magistrates of Dunbar* v. *Duchess of Roxburgh*, 1835, 3 Cl. and Fin. 335; *Queen* v. *Commissioners of Inland Revenue*, [1891] 1 Q.B. 485.

At advising—

LORD LOW—The main question in this case is whether if a parish council offers to take a pauper, who is admittedly entitled to relief, into the poorhouse, that offer is final and not subject to review either by the Local Government Board or by a court of law?

It is admitted that the decision of a parish council in regard to the relief to be allowed to a pauper may, under the provisions of the 74th section of the Poor Law Act 1845, be reviewed upon a complaint made by the pauper that the relief is "inadequate." But it was argued that (unless in an exceptional case, such as the physical condition of the pauper rendering his removal to the poorhouse impossible) an offer of the poorhouse could not be described as "inadequate" relief, it being an offer of total relief, inasmuch as in the poorhouse the pauper is lodged, clothed, and fed, and receives medical attendance. If that view be sound, the result would be that a pauper to whom the poorhouse was offered could not, unless in an exceptional case such as I have figured, take advantage of the provisions of sec. 74 of the Act, and if he could not do so the Act does not provide any method whereby he could have the decision of the parish council reconsidered or reviewed. If that were the case I think that it would be a serious defect in the Act, because although it has always been recognised that there are classes of cases, the proper way of dealing with which is to offer the poorhouse, there are other classes in which the offer of the poorhouse would amount to harsh administration of the poor law, and be contrary to the public interest. Further, the policy of the Act was to give the Board of Supervision (now the Local Government Board) an effective control over the parish authority, and it would be anomalous if such control was excluded whenever the parish authority chose to offer the poorhouse. If therefore the expressions "adequate relief" and "inadequate relief" can fairly be read as including the case where admission to the poorhouse is the relief offered to the pauper, I have no doubt that so to read them would be in accordance with the intention of the statute, and I think that the expressions may fairly so be read. I take it that the word "adequate" as ordinarily used means very much the same thing as "sufficient"—that is "adequate" which is fully sufficient for its purpose. In regard to the relief of the poor, no doubt the question of "adequacy" and "inadequacy" most commonly and obviously arises when the amount of the relief is objected to. If the amount is too small the relief is plainly "inadequate." But it seems to me that relief may be "inadequate" by reason of the form in which it is offered as well as by reason of its amount. If therefore the poorhouse is offered to a pauper whose circumstances, according to the rules which have been consistently recognised in the administration of the poor law, render that an unsuitable form of relief for him or her, I think that the relief may very well be described as "inadequate," because it does not sufficiently meet the requirements of this case. It is also important to observe that that is the view which has been taken in the actual administration of the poor law ever since the Act was passed. Ever since that date complaints against the offer of the poorhouse have been made to and entertained by the Board of Supervision and the Local Government Board without, so far as appears, any objection being taken to the competency of such a course until the present case. I have therefore no hesitation in holding that it was competent for the pursuers to complain to the Local Government Board under the 74th section of the statute, and that the Board having found that the grounds of the complaint were well founded, it was competent for the pursuer to bring the present action.

Upon the merits of the case I agree with the Lord Ordinary. The Local Government Board had the case investigated by a very experienced official, and upon the facts ascertained by him I think that the Board were amply justified in coming to the conclusion that an offer of admission to the poorhouse was not a proper form of giving relief to the pursuer.

I am therefore of opinion that the interlocutor of the Lord Ordinary should be affirmed.

LORD ARDWALL—In this action brought by (poor) Mrs Christina Jaap or Cuthill against the Parish Council of Inverkeilor, the first conclusion of the summons is not now insisted in, but the second is for the purpose of having it declared that the defenders are bound to afford the pursuer adequate parochial relief, and that otherwise than by receiving and maintaining her in their poorhouse, and that they should be decerned to provide outdoor relief to the pursuer, and to proceed to determine the amount of such outdoor relief, and to pay the same weekly to the pursuer.

It is admitted that the pursuer is a proper object of relief, and the defenders have offered to relieve her by receiving and maintaining her in their poorhouse at Arbroath. The pursuer being dissatisfied with this offer, and being desirous for many reasons of receiving outdoor relief, presented an application complaining that the relief offered to her is inadequate, and claiming 2s. 6d. per week of outdoor

relief, to the Local Government Board in the form prescribed by that Board. The Local Government Board made a careful investigation into the matter by one of their experienced officials — Mr George A. Mackay — and having heard all that was to be said on the other side on behalf of the defenders, they on 10th March 1908 passed a minute in the following terms—"The Board again considered the case of Christina Jaap or Cuthill, a pauper of Inverkeilor, residing in Carmyllie, complaining of inadequate relief. The Board having found upon inquiry that the grounds of complaint are well founded, declare that in their opinion the applicant has a just cause of action against the parish of Inverkeilor, and to direct the Secretary to deliver to the applicant a copy of this minute certified and signed by him." In pursuance of the finding in that minute the present action was raised.

It was maintained for the defenders that in a case such as the present the Parish Council are the sole judges as to whether outdoor or indoor relief should be granted in any particular case, and that there is not provided by statute or otherwise any appeal from their decision on that matter. In support of this, and on the construction of the sections 73, 74, and 75 of the Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83), they maintained that there are only two appeals competent to courts of law from the decision of the parish council. In the first place under section 73 there is an appeal to the Sheriff in any case where the parochial board—now the parish council—have refused relief to a poor person; and, in the second place, under sections 74 and 75 they maintain that the only question upon which an appeal can be taken to a court of law is as to the amount of relief granted by the parochial board, and they found upon the terms of section 75 in support of that contention.

I am of opinion that this argument is not well founded—that sections 74 and 75 must be read together and as virtually one section, and so reading them I am of opinion that the leading provision in section 74 that in every case in which any poor person shall consider the relief granted to him to be inadequate, such poor person shall lodge or cause to be lodged a complaint with the Board of Supervision, covers cases not only of outdoor relief where the amount may be inadequate, but also cases where the relief in the poorhouse or elsewhere offered or given is not adequate or suitable to the particular case. I cannot read the word "inadequate" as merely meaning "inadequate in amount," and I think that so to read it would limit the natural and ordinary meaning of that word to an extent quite inadmissible.

It is not unimportant to observe that the Board of Supervision, shortly after the passing of the Poor Law Act of 1845, issued rules to regulate the form and manner in which poor persons seeking redress for inadequate relief were to transmit their complaint to the Board, and on 27th December 1895 the Local Government Board issued a form of application for paupers complaining to the Board of inadequate relief, showing the various particulars of his case which the pauper has to insert in his application. These forms plainly show that the complaints of "inadequate relief" are not necessarily confined to complaints of mere inadequacy of "amount" of relief, but may be made regarding inadequacy of the kind of relief offered, whether outdoor or indoor or otherwise.

I am therefore of opinion that the pursuer's application was properly made to the Local Government Board under said sections 74 and 75, and that they having declared that the present pursuer has a just cause of action against the defenders, this action has been competently brought in pursuance of their minute.

I may add that I think that it would have been strange had there not been a provision in the Poor Law Act for an appeal to a court of law in any case except, first, where relief was altogether refused, and second, where the outdoor relief was inadequate in amount, and I think that the Board of Supervision, and afterwards the Local Government Board, have all along properly interpreted the scope of the appeal provided against the decisions of parochial boards and parish councils under sections 74 and 75.

The defenders, however, referred in support of their contention to the decisions and dicta in the cases of *Watson* v. *Webster*, 15 D. 448; *Mackay* v. *Baillie*, 15 D. 971; and *Forsyth* v. *Nicholl*, 5 Macph. 293. Now it falls to be observed that all these cases were cases of application to the Sheriff under section 73, and the opinions of the Judges must be read in view of that fact. It is quite true that it is the right of a parochial board to offer indoor relief as an answer to a claim for relief, and that such offer is a sufficient legal tender in an application complaining that relief had been refused to a poor person by such board, and this was what was decided in all these cases. But in none of them was the question raised whether on account of the circumstances of the pauper or otherwise indoor relief was an inadequate form of relief.

In *Watson* v. *Webster* the question which was really at issue was whether the offer of maintenance in a combination poorhouse some 25 miles away from the pauper's parish was a sufficient tender of relief, and it was held that it was just as good an offer as if the poorhouse had been in the pauper's own parish.

In the case of *Mackay*, again, the point raised was whether when a pauper illegitimate child of eight years of age, with the concurrence of his mother, petitioned the Sheriff for an order of relief, it was a sufficient answer on the part of the parochial board to offer to receive the child and the mother into the workhouse. Several questions of interest and difficulty were raised in that case, but it did not decide the point now at issue.

In the case of *Forsyth* there is a strong general dictum by Lord Justice-Clerk Inglis

to the effect that in all cases it is a legal tender of relief to offer admission to the poorhouse, but this was said in a case the proceedings in which commenced in an application to the Sheriff under the 73rd section of the Act, and that it did not raise the present question I think appears very clearly from the opinion of Lord Cowan, who concurred with the Lord Justice-Clerk, and who says this in the opening sentences of his opinion—"Whether the offer to receive the applicant into the poorhouse is a legal tender of relief is one question, and whether the relief offered is adequate and suitable is another and different question. The first is for this Court to decide, but as regards the second the remedy is an application to the Board of Supervision."

I am accordingly of opinion that the decision and dicta in *Forsyth's* case do not affect the present case, in which the pauper has taken the course pointed out by Lord Cowan and made application to the Local Government Board, who now take the place of the Board of Supervision, under sections 74 and 75.

The only remaining question is on the merits of the case, and as to these I have no hesitation in affirming the judgment of the Lord Ordinary, and that upon the grounds clearly and succinctly stated by his Lordship in his opinion. This I may say is my own opinion of the evidence, but it is satisfactory to find that it is also the opinion of the Local Government Board and their officials, whose views on such a question as an administrative body are entitled to some weight.

I accordingly think that the Lord Ordinary's interlocutor ought to be adhered to.

LORD JUSTICE-CLERK—I have had great difficulty in this case. It has not been easy for me to hold that an offer to take a pauper into the poorhouse is not an offer of adequate relief. I have found it difficult to see that relief in the house which is generally adequate in the case of an individual pauper is not an adequate offer in every case. But after consultation with your Lordships I have found reason to modify my view, and to hold that the question of "adequate relief" by offer of the poorhouse may be a question of special circumstances, and that it is not a sufficient answer to an appeal against the adequacy of relief to maintain that an offer of the House must be held to exclude such appeal.

I agree in what your Lordships have said, and I also agree in the views expressed upon the merits of the case.

I should only like to say with regard to the case of *Forsyth* v. *Nicholl*, 1867, 5 Macph. 293, which gave me considerable difficulty, that in that case the Lord Justice-Clerk was dealing with an application to the Sheriff under the 73rd section of the Act after the offer of the workhouse had been made to and refused by the pauper. The offer there was clearly made to secure the pauper against starvation, and in such a case the offer of the workhouse may be an adequate ground for not interfering. On the whole matter I agree with your Lordships that the judgment of the Lord Ordinary should be affirmed.

LORD DUNDAS was sitting in the First Division.

The Court adhered.

Counsel for Pursuer (Respondent)—Johnston, K.C.—Wark. Agent—Peter Weir, S.S.C.

Counsel for Defenders (Reclaimers)—Cooper, K.C.—Macphail. Agents—Lindsay, Howe, & Company, W.S.

Friday, December 3.

SECOND DIVISION.

[Sheriff Court at Glasgow.

INTERNATIONAL BANKING CORPORATION AND OTHERS *v.* FERGUSON, SHAW, & SONS.

Property — Sale of Moveables — Right in Security — Restitution — Reparation — Accession—Specificatio—Bona fide Purchase of Goods Belonging to Third Party, and Conversion thereof into a New Product.

Foreign oil merchants sold to A, subject to his meeting certain bills to be drawn upon him, a quantity of oil, and sold the bills, with the bills of lading attached, to B. The oil was deposited in store by the shipowners. A accepted but failed to meet the bills. He, however, though without the title and not the owner, sold and issued delivery orders for the oil to C, who, in good faith, purchased the oil, obtained possession of it, and used it by working it up into lard compound, which he sold and delivered to his customers.

In an action for restitution of the oil, or, alternatively, for payment of its value when it was obtained from the store, at the instance of B against C, *held* that the defender having converted the oil into a new species, was liable to the pursuer for its value.

The International Banking Corporation of New York, Threadneedle House, London, with certain consents, brought an action in the Sheriff Court at Glasgow against Ferguson, Shaw, & Sons, oil merchants, Glasgow, in which they sought to have the defenders ordained to deliver to them 53 barrels of refined cotton-seed oil belonging to them, and failing delivery, and alternatively, to pay to them the sum, as restricted, of £156, 13s. 2d., the value to the pursuers and in the market of these barrels of oil at the date on which the defenders received delivery thereof.

The pursuers pleaded, *inter alia*—"(2) The pursuers being the owners of the oil for delivery of which they claim decree, and being also the holders for value of the bills of lading for said oil, they are entitled