a river, where there can't be possession by net and coble, a right may be reared up by other means. But where a proprietor has a title to salmon fishings, it is not required that he should use net and coble to the same extent as in rearing up a title of "fishings" only. But the defender has used net and coble for two years. There has been rod fishing for a long time, and the fishings have been let by advertisement from the Torridon proprietors. Then, 4th, Can the pursuer challenge the defender with two centuries of possession upon ground competent to the Crown that he has not connected his title with the Crown? There are elements in the titles produced which give indications to connect the title by the subject superior with a right from the Crown. But I think it is not competent to the pursuer to insist in this ground of challenge.

Judgment accordingly, and adhere in interdict case.

The SOLICITOR-GENERAL, for defender, asked expenses. In the interdict he had been successful. In the declarator he had never disputed the pursuer's right to one-half of the fishings. The whole question had been as to his right to fish from the defender's side as well as his own, and he had failed to establish such right. The defender's objection to the pursuer's title was as to his title to interfere with the defender's fishings.

The DEAN of FACULTY, for the pursuer, said the interdict sought had been only granted in part. In the declarator, the defender had all along disputed the pursuer's right to the fishings, and put him to proof of the possession he had had to explain his title. He had established his right.

The Court thought the defender entitled to expenses in the interdict as having been substantially successful in the case. In the declarator the defender had contended to the last that the pursuer had not established any right to salmon fishings in the river. No expenses would be awarded in that action.

Counsel for Sir John Stuart — The Dean of Faculty, Mr Young, and Mr Adam. Agent—James Steuart, W.S.

Counsel for Colonel M'Barnet—The Solicitor-General, Mr Gifford, and Mr Balfour. Agents—W. H. & W. J. Sands, W.S.

SECOND DIVISION.

BEATTIE *v.* ADAMSON.

Poor — Settlement — Residence — Retention — Pupil Child — Desertion by Father — Statutory Notice — Parochial Relief. A female child, aged 11, and in a weak state of health, was deserted in 1856 by her father, who had then a residential settlement in the parish of C., and she was relieved by the parish of B. Statutory notice was not given to C. until 1860. Held (*alt.* Sheriffs of Lanarkshire and Lord Barcaple, *diss.* Lord Cowan) (1) that the time for ascertaining the settlement was the date of first obtaining relief, and not the date of the statutory notice; (2) that the settlement which the child had in 1856 was one acquired by her in her own right, and was not lost by reason of her father's absence from the parish of C.; (3) that her own absence for four years did not cause the loss of her settlement, as she was in receipt of parochial relief; (4) that the parish of C. could not plead that the relief given was not parochial relief, because it had admitted that it was. *Opinion* (per L. J. Clerk) that there may be something exceptional in the state of a pupil child's mental or bodily health to make it, although not deserted, a proper object of parochial relief.

This was an advocation from the Sheriff Court of Lanarkshire. The advocator, who is Inspector of the Barony Parish of Glasgow, sued the respondent, who is Inspector of the City Parish of Glasgow, for repayment of certain advances amounting to £64, 2s. 4d., made by him for behoof of a pauper, Elizabeth Clark, betwixt 20th August 1857, and 9th October 1863, with interest thereon, and also for relief of her maintenance and support in time coming. He averred that the City Parish was the parish of her settlement.

Elizabeth Clark was born in the parish of St Cuthbert's in the year 1845. She was taken into the poorhouse of the Barony Parish in September 1856, her father having then deserted her and three other children. The father was then in possession of an acquired residential settlement in the City Parish, but he has not resided in that parish since 1854. On 20th August 1857, the father returned to the Barony Parish and repaid to the pursuer the advances which had been made on behalf of the three other children, but refused, as was alleged, to pay the advances made on behalf of Elizabeth, or to remove her from the poorhouse. This refusal was denied by the City Parish and there was no proof led in regard to it; but as matter of fact she remained in the poorhouse, and is there still. A statutory notice was sent to the City Parish on 20th August 1857, but it was contended that this notice did not apply to Elizabeth, but only to the other children. A good statutory notice was, however, admitted to have been given on 12th June 1860. The pursuer made the following averment on record in regard to the condition of the pauper's health:—

"The said Elizabeth Clark was, during the period embraced in said account, in delicate health, having scrofulous swellings, and being subject to falling sickness and other disease, rendering her unable to earn her own livelihood, and she was then, and still continues to be, a proper object of parochial relief;" and the answer to this averment was—"Admitted that Elizabeth Clark was, during the period mentioned, in delicate health, but denied that she was and is a proper object of parochial relief."

The defender stated the following pleas in law:—

"1. Alexander Clark having ceased to reside within the City Parish of Glasgow, in or about the month of May 1854, and not having resided thereafter within said parish for one year during the period of five years subsequent to said date, he lost the settlement he had acquired within said parish for himself and children. 2. The said Alexander Clark being an able-bodied man, neither he nor his children were proper objects of parochial relief, and any relief given by Barony to the children was therefore illegal, and can have no effect as against the defender in the present question. 3. Assuming that the defender is legally liable in relief to the pursuer for advances on account of the foresaid Elizabeth Clark, such liability would only arise for advances made subsequent to the foresaid 12th day of June 1860, in respect that no statutory notice was given to the defender of her having become chargeable prior to said date. 4. When the said Alexander Clark returned to Glasgow, as before mentioned, and repaid Barony a sum on account of their advances to his children, and relieved them of the chargeability of three of them, Barony was bound to have handed over the care and custody

of the foresaid Elizabeth Clark to her father, and, if need be, to take the necessary steps to compel him, as an able-bodied man, to support his said daughter—and not having done so, the pursuer is not now entitled to relief against the defender. 5. There being no grounds, either in fact or in law, for the present claim, this action should be dismissed, with expenses."

The Sheriff-Substitute, on 23d Feb. 1864, allowed both parties a proof, but, after some proof had been led by the pursuer, the defender put in a minute of admissions containing, *inter alia*, the following admission:—"That Elizabeth Clark was, at the date of the action, and during the whole period embraced in the account sued for, and still is, in respect of the state of her health, a proper object of parochial relief." The Sheriff-Substitute held that the notice of 1857 was not a good notice in regard to Elizabeth Clark, and that, as in 1860, when notice was first given, she had lost her settlement in the City Parish, the pursuer was not entitled to recover. He therefore assoilzied the City Parish with expenses. In his note he observed:—"It is admitted by the defender that at the time the pauper Elizabeth Clark was admitted into the Barony Poor-house she was a proper object of parochial relief, on account of her delicate health, and being deserted by her father; it is also admitted that at that time her settlement was in the City of Glasgow Parish, but her settlement was solely a derivative one; being unemancipated, her settlement was that of her father, who had then acquired a residential settlement in that parish. But a party who has acquired a residential settlement may lose it, and does lose it, if during any subsequent period of five years he has not resided in the parish continuously for at least one year. Alexander Clark, Elizabeth Clark's father, ceased to reside in the City of Glasgow Parish in May 1854, and he never returned to that parish, so that he lost his settlement there in May 1858. As to the pauper Elizabeth Clark, she never could have acquired for herself a settlement in any parish, and her only claim to be held as having a settlement in the City Parish is that that parish was the parish of her father's settlement. The Sheriff-Substitute cannot see that the fact that she was in receipt of parochial relief from the Barony Parish stopped the operation of the law in depriving her father of his settlement in the City Parish by continuous non-residence for five years, especially as the City Parish had no statutory notice of her being in receipt of relief till 1860, long after her father had lost his settlement in the City Parish."

The Sheriff (Alison), on appeal, adhered.

The pursuer then advocated, and stated the following additional plea:—"The pauper, Elizabeth Clark, having been admittedly a proper object of parochial relief on 20th August 1857, and during the whole period of the account sued for, and her parochial settlement having been, at the time of her becoming an object of parochial relief, and being still, in the City Parish of Glasgow, that parish is liable in the expense of supporting her."

The Lord Ordinary (Barcaple) pronounced the following interlocutor:—

"*Edinburgh, 9th February* 1866.—The Lord Ordinary having heard counsel for the parties, and considered the closed record, productions, and whole process, advocates the cause; as matter of fact, finds that the pauper Elizabeth Clark was, at the date of the action, and during the whole period embraced in the account sued for, and still is, in respect of the state of her health, a proper object of parochial relief: Finds that the Parochial Board of the Parish of Barony supplied to her the board, aliment, and relief specified in said account, and still continue to supply her with parochial relief: Finds that the said Elizabeth Clark is the lawful daughter of Alexander Clark, sometime strapper in Glasgow, and was born in the parish of Saint Cuthberts, Edinburgh, in September 1845: Finds, that in the year 1845, the said Alexander Clark came to the City Parish of Glasgow, and resided in said parish continuously, along with his family, including his daughter Elizabeth, till the month of May 1854: Finds, that in the said month of May 1854, the said Alexander Clark removed from the City Parish of Glasgow, and went with his family to reside in the Parish of Barony, where he resided till about 26th October 1856: Finds, that since the said Alexander Clark removed from the City Parish of Glasgow in May 1854, he has never resided in that parish continuously for a year; Finds, that on or about 26th October 1856, the said Alexander Clark deserted his family, which then consisted of four children, Elizabeth, Alexander, Jean, and John, in the Parish of Barony; finds that while said four children were so deserted in Parish of Barony, application for relief on their behalf was made to the Parochial Board of that parish, and that said Board took Elizabeth Clark into their poor-house, and afforded out-door relief to the other three children: Finds, that on 20th August 1857, the Inspector of the Poor of the Barony Parish sent to the Inspector of Poor of the City of Glasgow Parish a notice in the following terms:—'Case of Alexander Clark's three children, residing at 36 Clyde Street, A.—Chambers of Parochial Board, Barony Parish, Glasgow, 20th August 1857.—Sir,—I hereby give you notice, in terms of the Statute 8 and 9 Vict., cap. 83, sec. 71, that the above-named poor person has become chargeable as a pauper to the Parish of Barony, and that the Parish of Glasgow, where the settlement appears to be, is held liable for all advances, charges, and expenses, which shall be expended to or incurred in respect of said poor person. A statement of the particulars of the case may be sent soon.' Finds, that at the date of sending and receiving said notice, Alexander Clark was an able-bodied man, and had never applied for relief: Finds, that at or immediately after the date of said notice, Alexander Clark took charge of his three chlldren, Alexander, Jean, and John, and paid to the Parochial Board of Barony Parish £2 on account of advances to his children, but did not then or since take charge of the said Elizabeth Clark: Finds, that on 12th June 1860, the Inspector of Barony Parish sent to the Inspector of the City Parish of Glasgow a notice in the following terms:—'Chambers of Parochial Board, Barony Parish, Glasgow, 12th June 1860.—Case of Elizabeth Clark, residing at Margaret Stewart's, Auchintrue, Arran.—Sir, I hereby give you notice, in terms of the statute 8 and 9 Vict., cap. 83, sect. 71, that the above-named poor person has become chargeable as a pauper to the Parish of Barony, and that the Parish of Glasgow, where the settlement appears to be, is held liable for all advances, charges, and expenses which shall be expended to or incurred in respect of said poor person.' As matter of law, Finds that notice that the said Elizabeth Clark had become chargeable was not given, in terms of the 71st section of the Poor-Law Amendment Act, to the Inspector of the City Parish of Glasgow, until 12th June 1860: Finds that when Alexander Clark deserted his children in October 1856, he had a settlement in

the City Parish of Glasgow; but that on 12th June 1860, and for some time previous to that date, he had lost his settlement in that parish: Finds that at the date of said statutory notice, the said Elizabeth Clark, had not, either in her own right or in right of her father, a legal settlement in the City Parish of Glasgow: Finds that in these circumstances the Parish of Barony is not entitled to be repaid by the City Parish of Glasgow for any part of the relief afforded to Elizabeth Clark, or to be relieved by said parish of her future support: Therefore of new sustains the defences, and assoilzies the Inspector of Poor for the City Parish of Glasgow, respondent and defender, from the conclusions of the action, and decerns: Finds the advocator and pursuer liable in expenses, both in the inferior Court and in this Court; allows accounts thereof to be given in, and when lodged, remits the same to the Auditor to tax and report.

"E. F. MAITLAND.

"*Note.*—If the earlier notice of 20th August 1857 could be held to be a sufficient statutory notice with reference to Elizabeth Clark, that would relieve the case of all difficulty as to the question of settlement; for unquestionably, at that date, her father, and she through him, had still their settlement in the City Parish, which they left only in May 1854. But the Lord Ordinary does not think that the notice can be held to apply to Elizabeth Clark. It is headed—'Alexander Clark's three children, residing at 36 Clyde Street.' Elizabeth was then in the Barony Poorhouse, and Alexander Clark's other three children were living in Clyde Street, where he deserted them, and found them when he came back, and they had been receiving parochial relief there. In these circumstances, it does not seem possible to hold that the notice applied to Elizabeth, whose case was being treated separately, and does not appear to have been adverted to in giving the notice.

"Taking 12th June 1860 as the date of notice in regard to Elizabeth, the question of settlement is new, and not free from difficulty. There can be no doubt that by that time Alexander Clark, the father, had ceased by absence to have his settlement in the City Parish. If he had then returned to the Barony Parish, and become an object of parochial relief by disability, there could have been no claim upon the City Parish. It seems to be equally clear that there would have been no such claim if his daughter Elizabeth had then become chargeable, for the first time, in the Barony Parish.

"The argument in support of the claim against the City Parish is founded upon the admitted existence of chargeability, and the receipt of parochial relief from 1856, when Clark first deserted his family, he having then his settlement in the City Parish. It is maintained, in the first place, that if it had been the father himself who then became chargeable and obtained relief, he could not have lost his settlement in the City Parish while receiving relief in Barony, notwithstanding that notice had not been given to the former parish. If notice had been given to the City Parish while the pauper had not been upwards of four years absent, it would have constituted him a pauper of that parish, to which, in the contemplation of the statute, he ought to have been removed; and in that state of things, it is clear that he could not lose his settlement. The Lord Ordinary does not think, however, that it necessarily follows that the settlement cannot be lost when the party becomes chargeable and receives relief, but no notice is given to the parish of settlement, or that the analogy of the provisions in regard to acquiring a settlement can be held to be conclusive. There are several qualifications required for the residence by which a settlement is to be acquired, while there are no similar qualifications of the non-residence by which it is lost. The Lord Ordinary expresses no opinion upon this question, which does not necessarily arise in the present case. The opinions of the Judges of the Second Division in the case of Turnbull *v.* Kemp, 20 D. 703, appear to be not unfavourable to the view that mere pauperism in another parish, though without statutory notice, would interrupt the loss of settlement. But the case did not admit of a decision on the point.

"In the present case, the pauperism relied upon as preventing the loss of the settlement is not that of the head of the family, but of his unemancipated child. At the debate the argument was pressed so far as to maintain that the relief obtained by Elizabeth Clark, while deserted by her father, prevented his continuous absence from the City Parish depriving him of his own settlement there. The Lord Ordinary has no hesitation in rejecting that view. A more plausible ground for holding the settlement to be retained seemed to be that Elizabeth Clark having, by the desertion of her father, become entitled to parochial relief in 1856, which she has continued to receive ever since, she then became a pauper of the City Parish, though the claim of Barony as the disbursing parish was barred by want of notice; and that the City Parish cannot get quit of her so long as she continues a pauper. But the Lord Ordinary feels obliged to reject this view also. It appears to him that the question of settlement must be taken to arise as at the date of the notice, which is the date of the legal claim, the question being, what is the settlement as at that date? The City Parish was not then the parish of settlement of Alexander Clark, an able-bodied man, who had resided elsewhere since 1854. He was bound to receive and support his daughter wherever he might be; and if he ceased to be able-bodied, the parish of his settlement was liable to relieve him and any of his family who might be entitled to parochial relief. The Lord Ordinary does not think that, while the father was thus in a position both to lose and to acquire a settlement, anything had occurred to cause the settlement of his daughter to be separated from his. Such a separation would, he thinks, be without any sufficient legal ground, as well as contrary to the policy of the law. If, by sufficient notice given in 1857, the City Parish had been made liable to relieve the Barony, it must no doubt have continued to be so to the present time. But it would have had a claim of relief against the father, if he could be found, or, as the Lord Ordinary thinks, against any other parish which could be shown to be the parish of his settlement after he ceased to retain a settlement in the City Parish.

"E. F. M."

The advocator reclaimed.

FRASER and BURNET, for him, argued—The Lord Ordinary is wrong in assuming that the settlement is to be ascertained as at the date of notice being given. The period when that is to be ascertained is the date at which the pauper became chargeable. At that time—viz., 1856, Elizabeth Clark had a residential settlement in the City Parish which she had then acquired in her own right (Hume, 22 Dec. 1849, 12 D. 414—Lord Wood's interlocutor—and Allan *v.* Higgins and Others, 23 Dec. 1864, 3 Macp. 311—per Lord Jus-

tice-Clerk). The pauper was in 1856, and has been all along, admittedly a proper object of parochial relief. She was deserted by her father, and the state of her health was such as to make her a proper object (Hay *v.* Paterson, 29 Jan. 1857, 19 D. 332). The notice of 1857 is not maintained to be a good notice; but the pursuer is entitled to recover advances since 12th June 1860.

W. M. THOMSON (LORD ADVOCATE with him), for the respondent, replied—The relief given after 1857, when the father's desertion ceased, was not parochial relief. Elizabeth Clark was not then a proper object. The admission founded on by the pursuer was not intended to admit this. Petrie *v.* Meek, 21 D. 614; Jack *v.* Isdale (H.L.), 1 Law Rep. (App.) p. 1; and Lemon *v.* Cameron, 2 Macp. 454, were cited.

At advising,

The LORD JUSTICE-CLERK—The facts of this case, as they are to be gathered from the proof and admissions, are few and not complicated, but it is very necessary to specify what they are. Alexander Clark, the father of this pauper, seems to have been for a very considerable time resident in the City Parish of Glasgow, and to have acquired a residential settlement in that parish. Elizabeth, his daughter, was born in 1845, so that when she first received parochial relief she was just eleven years of age, and therefore in pupillarity. At that time, in 1856, there can be no doubt that Alexander Clark had a residential settlement in the City Parish. It is said that at that time he deserted his wife and children and went to England, and I take it as matter of fact that he did so, although, perhaps, it might have been open to question, as he may have gone to get work, but I assume that he deserted them as both parties have so taken it. It is equally clear, however, that he came back in August 1857, and when he came back he found his children receiving parochial relief from the Barony Parish. He repaid the advances which had been made on account of all his children except Elizabeth, but he refused to repay the advances to her, or to remove her from the poorhouse. It is admitted that Barony did not compel him to remove his child. At the same time, there cannot be the slightest doubt that in August 1857 Alexander Clark was an able-bodied man. It follows from that, as decided in Thomson and MacTear, that his children were not proper objects of parochial relief. After 1857, the fair result, I think, is that Clark never again deserted his family. He was obviously going from place to place, following his business as a strapper. The City Parish in these circumstances maintained this important plea:—'The said Alexander Clark being an able-bodied man, neither he nor his children were proper objects of parochial relief, and any relief given by Barony to the children was therefore illegal, and can have no effect as against the defender in the present question.' That plea proceeds on the assumption that the City Parish is the parish of settlement. Whether that be so is another question, but that is the assumption. If he was an able-bodied man, and if there was nothing extraordinary or anomalous in the condition of his children, that is clearly a well-founded plea, for the decisions in Petrie *v.* Meek and Isdale *v.* Jack have settled that the right to give and the right to receive relief are co-relative, and therefore that what a person is not entitled to receive a parish has no right to give. But while that plea seems well founded, there is a fact imported by way of admission into the case which may be called a fact of inference. The admission is in these terms—'The defender admits that Elizabeth Clark was at the date of the action and during the whole period embraced in the account sued for and still is in respect of the state of her health a proper object of parochial relief.' Your Lordships will observe that this admission is made by the party who put upon record the plea which I have read. The party who made the admission knew the words he was dealing with, and must have been well aware both of the facts of the case and the law applicable to these facts; and the admission is that this child was from 1856 downwards a proper object of parochial relief. Now, she could not be a proper object of parochial relief, being a pupil and her father being an able-bodied man, unless there was something exceptional in her case. There must have been something of that kind, and I have no doubt that if this admission had not been made we would have had evidence that there was something in the condition of this child in reference to her bodily or mental health which would have made her a proper object of parochial relief. We must take it that there may be such a condition. It is quite well known in law, and we have an example of it in the case of Hay *v.* Paterson. Here I must take it for granted that the child was in a condition somewhat analogous to the child in that case, and entitled on its own account to receive parochial relief. That being so, a good deal of difficulty is cleared away. The question then comes to be, When did Elizabeth Clark first become chargeable? It was in 1856, and that chargeability has continued ever since. That being so, the next question is, What was her settlement when she became chargeable? There can be no question that the child being a pupil, her father's settlement, which was a residential settlement, was hers, and his settlement was at that time admittedly in the City Parish. But then it is said that the father lost his settlement there in 1858, by five years having elapsed without his having resided one year in the parish, and that seems to be the fact. But then, what is the effect of that upon the settlement of the child, who has become and was all along and still continues to be a proper object of parochial relief? I am unable to see that it can have any. If the father himself had become chargeable in 1856, there can be no doubt that subsequent absence from the parish would not have altered his settlement until he was rehabilitated. Is it otherwise with the child? To be sure if the child's settlement is in no sense its own, but follows necessarily the fortunes of the father—if that be the meaning of a derivative residential settlement—the case might be different. But then, what are your Lordships to say to the cases of Hume *v.* Pringle and Allan *v.* Higgins, where it was laid down distinctly that a child acquiring such a settlement acquires it in its own right? If that was the condition of this child in 1856, it appears to me quite impossible to hold that any loss by the father of his settlement can in the slightest degree affect the settlement which the child had acquired. It therefore appears to me that the City Parish must continue to acknowledge the settlement so long as she continues to be a pauper. The Lord Ordinary seems to think that this liability must depend, not on the time when chargeability commenced, but the time when notice was given. I confess I am quite at a loss to perceive the meaning of this view; for what is the use of a statutory notice? Simply to comply with a proviso in the Poor-Law Act that until a relieving parish gives notice it cannot recover; but that proviso has nothing to do with the principles of

the law of settlement. And there can be no doubt of this general rule that the settlement of a pauper when he becomes chargeable must remain the settlement so long as he continues to receive parochial relief. I am therefore of opinion that the Barony Parish is entitled to recover the advances made since 1860, and to be relieved of the maintenance of the pauper in future. It is not maintained that the previous notice of 1857 is a good notice.

Lord COWAN—I am of opinion that the interlocutor of the Lord Ordinary, in so far as it assoilzies the City Parish of Glasgow from the claim made in this action by the Barony Parish, is unobjectionable. The legal principles applicable to the case, having regard to the facts established by the proof or admitted on record, appear to me to lead to that result. The pauper, Elizabeth Clark, in respect of whom the claim of relief is made, is daughter of Alexander Clark, an able-bodied man. She was born in St Cuthbert's Parish in September 1845. Her father with his family (including his daughter Elizabeth) came to the City Parish of Glasgow in that year, and continued to reside in that parish until May 1854. At that date Clark removed to the Barony Parish, where he resided, earning wages at the rate of 14s. per week, till October 1856, when he temporarily deserted his family, and his daughter Elizabeth was in consequence taken into the Barony Poorhouse, where she continued to be at the date of this action, although her father returned to his family in August 1857, and except for a short period was constantly at work earning the above wages till sometime after October 1860. During the whole period from 1854 till 1860 neither he nor his daughter Elizabeth resided for any continuous period in the City Parish of Glasgow. And the first notice given to the inspector of the City Parish of the pauper having become chargeable in the Barony Parish was dated in June 1860.

In this state of the facts it is not doubtful—(1) That in May 1854 Clark had acquired for himself and for the members of his family a residential settlement in the City Parish; and (2) that such residential settlement in 1860 had not been retained by continuous residence during the five years which succeeded 1854, for one year within the City Parish, as required by the statute for the retention of a settlement acquired by residence. The question is, whether there are any specialties in the case to obviate the conclusion adverse to the claim of the Barony Parish to which these premises seem necessarily to lead.

The claim is not for relief of advances made to Alexander Clark himself, and could not be, for he was able-bodied and has been in full employment, but for sums paid on account of his daughter Elizabeth, an unemancipated child, alleged to have become destitute in 1856, within the parish of Barony, in consequence of the father's desertion of his family. At that time three of Clark's children received out-door relief from the Barony and the pauper was taken into the poorhouse. On the father's return in 1857 he repaid these advances made on account of his other children to the extent of 40s., but his daughter Elizabeth was and has since been allowed to remain in the hospital. The claim now made is for the expenses thence incurred in her board and otherwise.

As an unemancipated child of Alexander Clark, I do not see how advances made to her as a pauper in her own right can be made the subject of a legal claim. She was still a member of her father's family, and after his return to the Barony in 1857, where his other children lived in family with him, Elizabeth might have done so for any thing that appears from the proof. The Barony might have had a legal claim against the father for money expended on her account, as it had, and seems to have, succeeded in making effectual against him for relief furnished to his other children. But I cannot think that such temporary relief, whether to her or to the other children, can be founded on to the effect of obviating the loss of the residential settlement in the City Parish through the non-residence of Clark in that parish for the whole period between 1854 and 1860; *vide* Turnbull *v.* Kemp, 20 D. 703.

An attempt was made at the debate to show that the proof established such a state of health both of body and mind in the case of this unemancipated child as to admit of the application of the principle recognised in the case of Hay *v.* Paterson, 29th January 1857, where a pupil child, subject to fits of epilepsy from its infancy, and ultimately confined as a lunatic, was held to take the birth settlement of its father, and that the burden of supporting such lunatic pauper lay with the father's parish although the father was alive. After full consideration of the proof, I do not think this view can be maintained. But at any rate the question is still left unsolved with regard to the parish liable. For if Alexander Clark has, through non-residence, lost the residential settlement he had in the City Parish, the funds of that parish cannot be subjected for advances made to his unemancipated child, even although she were viewed as a lunatic pauper, and as such, a burden on her father's parish settlement. The burden, in that case, must be on the parish of his birth.

Taking the view of the facts of the case to which I have generally alluded, I am prepared to affirm the interlocutor of the Lord Ordinary. But it is urged that an admission has been made upon record to the effect that Elizabeth Clark has been, during the whole period embraced in the account, that is, from 1857, and still is "in respect of the state of her health, a proper object of parochial relief;" and it is thence inferred that, as a pauper in her own right, having in 1857 had a residential settlement derived from her father in the City Parish, liability for her maintenance has been fixed on the City Parish; and that the non-residence in the City Parish cannot infer her loss of settlement—the admitted fact of her being an object of parochial relief from 1857 excluding the application of the statutory provision.

While I cannot but consider the terms of the admission extremely incautious, and that they admit of being construed in the manner contended for by the Barony, I cannot bring myself to the conclusion that the defender thereby intended to do more than to say that, so far as the health of the child was concerned, she was, as matter of fact, a fit object to be relieved as a pauper. I cannot hold that it could have been intended to admit, or that it has been admitted as a legal inference, that she was an object of parochial relief in her own right, although an unemancipated member of her father's family, especially having regard to the pleas on record, founded on the fact of the father being an able-bodied man exclusive of all liability. I am unable to dispose of this case on that ground, and therefore I do not require to consider whether the fact of relief having been furnished by another parish during the four years and a day—admitting it to have been to a person so destitute as to require relief from the parish where she for the time resided—could have the

effect of obviating the statutory provision that "no person who shall have acquired a settlement by residence in any parish or combination shall be held to have retained such settlement if, during any subsequent period of five years, he shall not have resided in such parish or combination continuously for at least one year."

Were it necessary to decide this question, I would feel it to be attended with very great difficulty. The words of the statutory provision are not qualified by any condition whatever. The first branch of the section having reference to the acquisition of a settlement through five years' residence, expressly provides that the person shall have resided for the five years continuously, without having recourse to common begging by himself or his family, and without having received or applied for parochial relief. And in the proviso saving the rights of paupers, who prior to the passing of the Act had resided for *three* years in a parish, it is added, "and have not become proper objects of parochial relief." The part of the statutory provision with which we have to do contains no similar condition. It provides, in absolute terms, for the release of the parish from liability, if during any subsequent period of five years the person shall not have resided in the parish continuously for at least one year. Absence from the parish for five years without such residence is enough to put an end to the residential settlement. It appears to me that this provision cannot be got over by an offer to prove that the pauper had, in another parish at a greater or less distance, been maintaining himself by begging, or by having received or applied to some other parish for parochial relief. I cannot import those conditions which are in the first branch of the statute nor the words which occur in the proviso, into the second branch of the enactment, in itself subject to but one condition. And I hesitate to think that although the pauper may have been recognised in another parish as an object of parochial relief, and have got such relief without intimation to and without the knowledge of the parish, this of itself is sufficient to keep up the residential settlement, although during the whole period of five years the pauper has never been within the parish, and no chargeability in respect of him or her has been attempted to be fixed upon its funds.

There can be no question that the statutory notice is required for the primary purpose of fixing from its date the right to be relieved of advances made to paupers whose settlement is in a different parish from the relieving one. The question of settlement being acquired or not retained depends upon considerations apart from the giving or withholding of notice. But in such a question as we have to deal with in this case, where relief has been given during the currency of four years and a day, while the residential settlement was yet entire, the giving of notice during that period might have important effects in fixing chargeability on the parish of the pauper so relieved. For, having got the notice of chargeability, the parochial inspector was bound either to have got the pauper removed to his own parish, or at least to have provided for his maintenance in the parish of his residence. The pauper must thus have become permanently chargeable during the subsistence of his residential settlement, and after that the settlement could not be lost by non-residence, the pauper being supported all the while by the funds of his proper parish, though not resident in it. It is quite a different case when nothing has been heard of the pauper during the whole five years of his absence. The statutory exemption of liability may be well pleaded in such a case, even although some other parish, without fixing the chargeability of the pauper upon the residential settlement, may have come under advances for his support. The parish of the birth must then be resorted to for relief; and should it happen that the pauper has no parish of birth in Scotland, then the relieving parish, as in other cases of the like kind, must bear the burden.

While, however, these considerations seem to me of the greatest weight, I do not think it necessary to place the opinion I have formed in this case upon these grounds, there being enough, as I think, in the case otherwise to support the interlocutor of the Lord Ordinary, who has affirmed the views of the Sheriff-Substitute and Sheriff in the Court below.

Lord BENHOLME—In this case I should have been happy to have contented myself with simply concurring with your Lordship, but Lord Cowan has made observations on two very delicate points, and perhaps I may be pardoned for shortly adverting to them. The first point of delicacy is the effect of the admission on record, that this poor girl was from the beginning and all along a proper object of parochial relief. My Lord, there was a proof which was shortened by reason of this and other admissions, and I can take no other view of this very ample admission than that, though a pupil and not emancipated, yet she was a proper object of relief, and that the Barony Parochial Board was well entitled to grant her relief, which was to be recovered from the parish of her settlement. How could she on any other footing be called a proper object of parochial relief? When you say that a child unemancipated is a proper object of parochial relief in opposition to one who is not, I understand that in the one case there is no claim against the father, while in the other there is. We have here an admission that the girl was a proper object in her own person all the time. If this is so, I cannot see how the absence of the father can affect her claim. If the father had himself become a pauper, his absence thereafter could never have the effect of altering his settlement. When a man receives relief, that clause as to retention of settlement flies off altogether. I cannot understand how a man falling into poverty and receiving parochial relief can lose his residential settlement so long as that state of matters continues. The effect of a notice, I apprehend, is merely to give a claim to recover as from its date. It has nothing to do with the constitution or loss of a settlement. The Lord Ordinary has gone mainly on that consideration. The important circumstance pointed out by him is that the date of the notice is 1860, and that that is the date of importance in fixing the settlement. I think that view is not sound. The notice merely limits the effect of the settlement, which is constituted altogether irrespective of it.

Lord NEAVES—I concur with the majority. In regard to the admission, I think it was intended to end the strife on the question involved in it. In his condescendence the pursuer gave particular details in regard to the state of the pauper's health. The statement was denied by the City Parish. What did the parties mean by that statement and its denial, if not to raise the issue whether the girl was a proper object of parochial relief? Then a proof was led; and Lord Cowan says he does not find anything in the proof to support the pursuer's statement. No wonder, because the proof was

stifled in the bud by an explicit admission of the pursuer's statement which had previously been denied. If the admission meant that she would have been a proper object of parochial relief if placed in certain circumstances, then it was trifling with the Court to make it. Such an admission might have been made in regard to any child, even a child of the richest man in the country. I think, therefore, it must have been meant to apply to the particular circumstances of this case. Accordingly the Lord Ordinary finds "that the pauper Elizabeth Clark was at the date of the action and during the whole period embraced in the account sued for and still is, in respect of the state of her health, a proper object of parochial relief." That being the case, the question is what was her parish of settlement in 1856, when she began to be a proper object of relief. That, I think, can't admit of any doubt. She had then a settlement in the City Parish—derived no doubt through the residence of her father—but as complete a personal settlement as if she had been an adult. I have no doubt of that, for it has been held both here and in the House of Lords that a child acquires such a settlement for itself and in its own right. That liability of the City Parish has never ceased, unless, indeed, we take the peculiar view urged upon us which seems to assume two shapes. First, it is said that this being a derivative settlement, and the girl being a pauper, she may have had a good settlement when the pauperism began, but as her father continued to go about without becoming a pauper, and lost his settlement, the daughter has also lost hers. This is a very strange view—that because the settlement is derivative, it must fluctuate with the father's movements. I think that is absurd. But that is not the view of the Lord Ordinary. He says—"It appears to him that the question of settlement must be taken to arise as at the date of the notice." That is his view. Is it the statutory rule? I can find nothing in the statute to that effect. When a person becomes a pauper, his settlement *then* must fix the liability. All that the statute says is, that notice must be given before you can recover. The want of notice does not alter the settlement; when a person becomes a pauper the liability is fixed, although it is only from the date of notice that disbursements can be recovered.

The Court pronounced the following interlocutor:—

"*Edinburgh, 23d November* 1866.—The Lords, having heard counsel on the reclaiming note for the Inspector of Barony Parish against Lord Barcaple's interlocutor of 9th February 1866, recal the said interlocutor; of new advocate the cause; recal the interlocutors of the Sheriff and Sheriff-Substitute complained of: Find that the pauper, Elizabeth Clark, being then eleven years of age, became, in respect of the state of her health, a proper object of parochial relief in her own right in November 1856, and has continued to be so ever since: Find that, at the time when the pauper became a proper object of parochial relief, as aforesaid, her settlement was in the City Parish of Glasgow, by reason of her father then having an industrial settlement in the said parish: Find that since the pauper became a proper object of parochial relief she has been maintained at the expense of the Barony Parish: Find that the said parish gave notice to the City Parish on 12th June 1860 that the pauper had become chargeable in terms of the 71st section of the statute 8 and 9 Victoria, cap. 83: Find that the pursuer is entitled to recover from the defender the expense of maintaining the pauper from and after the date of the said notice: Decern against the defender for payment of £28, 2s. 4d. with interest on said sum as libelled: Further, decern and ordain the defender to take charge of the said pauper, and to free and relieve the pursuer of the burden of maintaining her in all time coming: *Quoad ultra* sustain the defences; assoilzie the defender and decern: Find the pursuer entitled to expenses subject to modification, and remit to the auditor to tax the expenses and to report, and modify the expenses to two-thirds of the taxed amount thereof.

"JOHN INGLIS, I.P.D."

Agent for Barony Parish—John Thomson, S.S.C.
Agent for City Parish—William Burness, S.S.C.

BUCHANAN'S TRUSTEES *v.* M'NAUGHTON.

Trust — Vesting— Construction—Liferent — Fee—Heirs and Assignees. A trust-deed directed that the trustees were to hold the estate for behoof of three daughters for their liferent use allenarly, and after them for their heirs and assignees. One daughter having died, *held* under the deed that one-half of her share became fee in the person of a surviving sister, which she was entitled to transmit to her husband; but that the husband had no right to the third share liferented by his wife, the fee of which passed to the last surviving sister.

The question in this case arose on a multiplepoinding brought for the distribution of the estate of the late Mr Buchanan of Auldbar, who died in 1832, possessed of considerable property. The trust-deed which he left was framed by himself, and as he appears not to have been a professional person, his use of technical terms without knowing what they meant made the writing one of the most perplexing documents with which the Court has for a long time had to deal. There were three daughters—Mrs Kirk, Mrs Gibson, and Mrs M'Naughton. The trustees were directed to hold the estate for behoof of his said daughters in liferent, for their liferent use allenarly, and after their decease for behoof of their heirs or assignees in fee. There was no clause of survivorship, but the deed proceeded—"hereby declaring notwithstanding, that my said daughters shall have it in their power to destine and dispone of to the extent of one-half of the fee of such property as they may respectively succeed to." The truster went on to say that the liferents were not to be assignable unless *mortis causa*, and that none of the sisters should have the power of disponing of their shares to the prejudice of surviving sisters, nor the heirs of the bodies of sisters, but such of them as were married might leave their husbands an annuity of one-half of their share. Mrs Gibson died first, without issue; then Mrs M'Naughton, and her surviving husband, the Rev. John M'Naughton, of Belfast, claimed the whole of his wife's one-third as assignee of his wife; and also one-half of Mrs Gibson's share, which vested in his wife by survivance. Mrs Kirk opposed the claim, on the ground that as she was the survivor of the three sisters, she and her family took the whole, Mr M'Naughton being only entitled to an annuity of one-half of his wife's share.

The Lord Ordinary (Ormidale) pronounced the following interlocutor:—

"*Edinburgh, 31st January* 1866.—The Lord Ordinary, having heard counsel for the parties, and considered the argument and proceedings, Finds that the fund *in medio* consists of the residue of