

count of the pauper. A settlement may be acquired derivatively by adding the residence of the pauper claiming the settlement to that of the person, father or husband, from whom it is alleged to be derived. To this effect see *Allan v. Higgins*, 23d December 1864, referred to by the Sheriff-substitute. And on that authority it may, in like manner, be retained should five years elapse without one year's residence of either within the parish.

Whether it would be so in such a case as that stated by me in *Beattie v. Adamson*, 23d November 1866, does not seem to have been decided, and it is not necessary to decide it in this case.

The specialities in the facts are conclusive against the plea, supposing it otherwise well founded; for relief was here given to Cruikshank while in the parish of Tullynessle, and afterwards when resident at Premnay, although Fyvie through misconception repaid those advances to Premnay. See *Johnston v. Black*, 13th July 1859, &c.

The other judges concurred.

Agents for Advocate—Renton & Gray, S.S.C.

Agent for Respondent—John Auld, W.S.

Saturday, June 6.

FIRST DIVISION.

MACOME v. DICKSON.

Landlord and Tenant—Furnished House—Taxes.

In the letting of a furnished house, the taxes in respect of tenancy or occupancy are, by the custom of the country, paid by the landlord, unless otherwise stipulated.

Dickson took a three-years' lease of a furnished house from Macome, no special stipulation being made as to the payment of taxes on the house. A question arose as to the tenant's liability for payment of these taxes. The Sheriff-substitute (STEELE) found the tenant liable for the taxes under deduction of the landlord's proportion. The Sheriff (HUNTER) reversed, and found that, "according to the usage of the district, all such taxes are either paid by the landlord or deduction of the amount allowed by him to the tenant: Finds in law, that the usage is to be held to constitute, *ipso jure*, an integral part of the contract; and, *second*, that the defender is therefore entitled to have deduction from the rent of the amount of taxes payable by the tenant."

The landlord appealed.

J. M'LAREN for appellant.

WATSON, for respondent, was not called on.

LORD PRESIDENT—Apart from the seven-pence of income-tax, I have no doubt as to the rest of the case, and I am not disposed very much to refine in such a question, or to affect to decide it on any clear principle beyond this, that there is no doubt of the understanding, not confined to the west country, but very general, that in the letting of a furnished house the tenant pays no taxes. On that simple ground, I think the Sheriff is right.

LORD CURRIEHILL and LORD DEAS concurred.

LORD ARDMILLAN—I am of the same opinion. No exception to the general practice has been established, and it cannot be presumed that a man who takes a furnished house takes it on a different understanding from what is usual. Besides, we have the evidence of the house-agent, who let the house, and who understood that the taxes were, as usual, to be paid by the landlord.

Agents for Appellant—Millar, Allardice, & Robson, W.S.

Agents for Respondent—Tawae & Bonar, W.S.

Saturday, June 6.

SECOND DIVISION.

BONAR v. ANSTRUTHER.

Bond of Provision and Annuity—5 Geo. IV., c. 87 (Aberdeen Act) 3d Section—Reddendo and Tenendas Clauses—Increasing Annuity.

An heir of entail in possession executed a bond of provision and annuity in favour of his widow, but providing that in no case was she to receive more than one-third of the free yearly rent of the estate. It was further provided by the bond that, when certain preferable burdens should expire, the annuity, if reduced by the previous clause, should be again increased. Held (1) that the omission in the bond of annuity of the reddendo and tenendas clauses did not invalidate the deed, there being a valid obligation constituted by it upon the grantor and the succeeding heirs of entail to infest the widow in the annuity; (2) that the 3d section of the Aberdeen Act conferred a power to grant an annuity to expand on the ceasing of any former liferent.

In this action the pursuer, Mrs Louisa Bonar, seeks to enforce a bond of provision and annuity, dated 5th August 1834, granted in her favour by her late husband, Colonel Robert Anstruther of Thirdpart. By this bond he, as heir of entail infest in the lands, and in virtue of the powers conferred upon heirs of entail by 5 George IV. cap. 87, section 1, bound and obliged himself and the succeeding heirs of entail to infest the pursuer in a free yearly annuity of £700 per annum out of the said lands of Thirdpart and others; provided, however, that in no case was she to receive more than one-third of the free yearly rent of the estates, after the deduction of all preferable burdens. The deed further provided that whenever these preferable burdens should expire, and, in particular, an annuity of £1000 a-year granted to Lady Anstruther, Colonel Anstruther's mother, that then the annuity to the pursuer should be increased to the full amount of £700, or to a sum amounting to one-third of the yearly rent of the estate.

Colonel Anstruther died in 1856, and upon his death it was discovered that one-third of the free annual rent of the estate, after deduction of preferable burdens, amounted to £425, and this sum has been annually paid to Mrs Anstruther, the pursuer. Lady Anstruther died in 1865, whereupon the pursuer claimed the increased annuity under the bond; and her claim being refused, she brought the present action against the heir of entail in possession of the estate.

The defences were, that the bond of annuity was invalid, in respect of the omission of two essential clauses—viz., the reddendo and tenendas—and that the annuity had not been constituted a burden on the entailed estate in the manner prescribed by the Statute; and that, even if the bond was valid, the Act contained no provision by which the annuity could be increased upon the expiration of another annuity.

The Lord Ordinary (ORMIDALE) repelled both these pleas.