the bed of the river, within the high-water mark, ought to be regulated not by the direction of the conterminous fence between proprietors, but by the extent of their respective fronts adjoining to the high-water mark, and so that each shall carry out his enclosures in a direction equally corresponding to the course of the shore." The Court, in working out this principle, appointed a line to be drawn representing the *medium filum* of the river Clyde, and a perpendicular to be dropped on that line from the point indicating the land boundary between the properties where it touched high-water mark. In this way effect was given to the land frontage of the respective properties at high-water mark; and the shore was divided by a line falling perpendicularly from the point terminating the land boundary on the assumed average line of the bed of the river. The rule was of course equally applicable to all the properties lying on the river in that locality; and the shore fell to be parcelled out by a series of perpendiculars drawn each from the point of meeting of the conterminous properties at high-water mark. It perhaps cannot be said that the rule is one absolutely and inflexibly to be applied in all circumstances whatsoever. But, in the actual circumstances, I think the rule was fitly and judiciously assumed. So far as I can read the after unreported proceedings in *Campbell* v. *Brown*, I conceive the Court to have been in error in to any extent departing from this principle. It has been, to say the least, through accidental wisdom that the proceedings have not been reported ; and I do not doubt that the reported rule has practically settled many a controversy.

But, further, it appears to me that the rule received express confirmation in the case of *Mactaggart* v. *Macdowall*. In that case the conterminous properties were not on the side of a river or firth, but on the Bay of Luce, which was simply the open sea. There was in that case, therefore, no room for taking the *medium filium*, as in the case of a river. It appeared to me, as Lord Ordinary in the case, that the sound method of applying the analogy of the reported case of *Campbell* v. *Brown* was to assume a line representing the average line of the shore, and to let fall on this line the perpendicular dropped from the end of the land boundary. The Court approved of this rule, and appointed it to be carried into effect. In so doing, I think they just adopted the principle of the reported case of *Campbell* v. *Brown*, with the difference created by the circumstance that they were not now dealing with the bed of a river, but with the shore of the open sea.

I am of opinion that the rule laid down in the reported case of *Campbell* v. *Brown*, and thus sanctioned in the after case of *Mactaggart* v. *Macdowall*, should be made the rule of division in the present case. The case is so far different from the former cases that, in the present case there may be said to be involved nothing but shore grounds, without any adjacent land above high water-mark. But, practically, this creates no difference, for the point of separation of the properties at high water-mark is not subject of dispute, so far as it is matter of fact; and it was only as fixing this point that the ascertainment of the land boundaries was of importance in the former cases. The locality now in question is the identical locality which the Court dealt with in the case of *Campbell* v. *Brown ;* and the reported rule of that case ought, I think, to be applied.

The only difficulty which I have had has arisen from the circumstance that Mr Reid only acquired the property now in question in 1853, by which time Messrs Laird had, by possession, defined the line of boundary down as far as the north-west end of their sea-wall; and the line so defined was, in the disposition by Mr Laird to Mr Reid, assumed to be, so far as it went, " the eastern boundary of the ground hereby disponed." The doubt which hence arose was, whether, in the present division, the perpendicular which is to mark off the shore should not be dropped from the north-west corner of the sea-wall, on the footing that at the time of this purchase the sea-wall marked off the frontage along high water-mark belonging to Messrs Laird? I would have thought this necessarily to follow, were there no peculiarity in the terms of the disposition; but the one property had been disponed merely as contiguous to the other. But, by the terms of the disposition, Mr Reid acquires " all and whole the just and equal westward half " of the shore-ground as originally disponed by Lord Belhaven in 1811. In the present process, which is substantially a process of division of this shore ground, hitherto undivided, I have come, on full consideration, to be of opinion that the perpendicular which forms the line of boundary must be dropped from the point on the public road which indicates the point of separation between the properties, as constituted into separate properties in that same year 1811, between Laird and Macfarlane, Lord Belhaven's disponees. The line of boundary indicated by that perpendicular will be the line of march between the properties, subject only to this qualification, admitted by Mr Reid, that down to the sea-wall the line defined by the possession of Messrs Laird will be to that extent the march. The line of boundary which I thus think ought to divide the disputed shore ground will, as I understand, according to the evidence before us, tally with the line A C, alternatively concluded for in Mr Reid's summons of declarator. But this may, if necessary, be made the subject of further consideration.

Agent for Pursuer—William Mason, S.S.C.
Agents for Defenders—Adam & Sang, S.S.C.

Tuesday, March 14.

SPECIAL CASE FOR

J. D. KIRKWOOD (INSPECTOR OF POOR OF PARISH OF GOVAN)

AND

HUGH MANSON (INSPECTOR OF POOR OF PARISH OF DAILLY).

Poor—Settlement—Husband and Wife—Second Marriage. Held (*diss.* Lord Deas), That a derivative settlement acquired by marriage belongs to a woman only while she retains the status of wife or widow of the man from whom it is derived, and is destroyed, not suspended, by a second marriage ; and that on the dissolution of that second marriage, though her maiden settlement may revive, that derived from her first husband does not.

Question, Whether a residential settlement belonging to a woman in her own right, and not derivatively, is extinguished or only suspended by marriage?

The following Special Case was presented to the First Division of the Court of Session by the

Inspectors of the Poor of the Parishes of Govan and Dailly, in the question between the said parishes as to the parochial settlement of Catharine Straiton or M'Gerry or M'Geachy, a pauper presently chargeable to the parish of Govan, and of her family.

The facts were stated as follows:—"In the beginning of May 1865, Dennis Gerry or M'Gerry died in the Glasgow Royal Infirmary. He was a native of County Down, Ireland, but, at the date of his death, had an existing settlement in the parish of Dailly, by a residence in that parish for eight years, ending at Martinmas 1862. At the date of his death Gerry's residence was in the parish of Govan. He left in that parish a widow, Catherine Straiton or Gerry, aged thirty-three years, a native of said County Down, to whom he had been married in 1851 or 1853, and who had all along resided with him. She had no settlement in Scotland other than that acquired by her husband in Dailly. He also left six lawful children; two born in the parish of Dailly, one in the parish of Girvan, and two in that of Govan. On 26th May 1865, three weeks after Gerry's death, his widow applied to the Parochial Board of Govan for relief for herself and children, which was at once afforded. Govan claimed repayment of said advances and relief from Dailly, as the parish of settlement. The Parochial Board of Dailly admitted liability, and afforded relief to the said Catherine Straiton or Gerry for herself and children, at varying rates of aliment as circumstances required, from said 26th May 1865 down to January 1868. On 8th January 1868 the said Catherine Straiton or Gerry contracted a second marriage with James M'Geachy, a native of County Donegal, Ireland, who had only been a short time resident in Scotland, and had not acquired any settlement in Scotland; and on 10th January 1868 she was, in respect of this marriage, struck off Dailly poors-roll. Dailly parish gave no relief to her or her children after December 1867. M'Geachy took up his abode in the house formerly occupied by his wife in the parish of Govan, and they continued to reside there, supported by their own industry, till 19th November 1868, when M'Geachy, being unable to work from dropsy, applied to the parish of Govan for relief, for behoof of himself and his wife and family, which was accorded him, and continued down to his death on 29th May 1869. During all his chargeability, M'Geachy was, from the state of his health, unfit for removal to Ireland. On 1st June 1869 the said Catherine Straiton or Gerry or M'Geachy applied to the Parochial Board of Govan for relief for herself and children. She then had surviving five children by her first husband, and one by her second; the latter, however, died before the presenting of this Special Case. On this application of 1st June 1869 relief was afforded her, and she still continues chargeable. Intimation of this chargeability was sent to the Inspector of Poor of the parish of Dailly on 1st June 1869, and a demand made that the parish of Govan should be relieved of said chargeability by the parish of Dailly.

"The latter denied liability."

The question of law laid before their Lordships was—"Whether the parish of Dailly is bound to relieve the parish of Govan of the burden of maintaining the said Catherine Straiton or Gerry or M'Geachy and her said children, or any and which of them?"

WATSON, with him TRAYNER, for the parish of Govan, argued—That in May 1865 the pauper had a residential settlement in the parish of Dailly through her first husband Dennis M'Gerry. Unless she retains that she has no settlement at all in Scotland, for though in 1868 she was married a second time to a James M'Geachy, he was an Irishman, having no settlement in Scotland, and could therefore convey to her no Scotch settlement. There was no question raised as to whether the pauper had lost by non-residence her settlement in Govan (see *Johnston* v. *Black*, July 13, 1859, 21 D. 1293), and they submitted that Govan must be held liable on the proposition that a second marriage to a man who had no settlement in Scotland merely suspended the former one acquired under the first marriage, and that this latter revived on the death of the second husband. They referred to the case of *Greig* v. *Adamson*, March 2, 1865, 3 Macph. 575, but argued that the principle there laid down did not apply in the present case, as the circumstance that the second husband had no settlement in Scotland placed this in quite a different category. On the other hand, the cases of marriage with a foreigner are more nearly in point, as for instance those of *Hay* v. *Skene*, 13th June 1850, 12 D. 1019; and *Thomson* v. *Knox*, 28th June 1850, 12 D. 1112. Reference was also made to the cases of *M'Crorie* v. *Cowan*, March 7, 1862, 24 D. 723; and *Carmichael* v. *Adamson*, February 28, 1862, 1 Macph. 452.

SOLICITOR-GENERAL (A. R. CLARK), with him LANCASTER, for the parish of Dailly, replied—That the mother alone must be looked upon as the pauper, and the true question therefore was whether she had a settlement in the parish of Dailly. Now, she never had in Scotland any settlement except that derived from her first husband. This, it is argued, subsists notwithstanding her second marriage, in such a way as to revive upon the death of the second husband. That is to say, during the second marriage there is absolute suspension, but upon the dissolution of that second marriage, the second husband having no settlement in Scotland, and the widow herself having no birth settlement in Scotland, the settlement acquired from the first marriage revives. Now, without in any way admitting that a residential settlement, at any rate one so acquired, can be suspended merely, it is clear that during the life of M'Geachy, the second husband, the pauper had a claim against his parish of settlement, and that only. That was in Ireland, and Govan had a right to remove M'Geachy and his wife and family to Ireland. They could not do this in consequence of the state of his health, and so had to support them till his death. On that occurring, the pauper claims relief in her own right, and she must do so against the parish of settlement which M'Geachy left her. That is against some parish in Ireland. She is M'Geachy's widow, and not M'Gerry's, and all that Govan can do if it wants to obtain relief, is to remove her and her family to Ireland. As the substantive foundation of their case, they submitted that a residential settlement accruing to a woman by marriage is not suspended merely, but destroyed, by a second or subsequent marriage.

At advising—

LORD PRESIDENT—The pauper, who is a native of Ireland, was twice married in Scotland—first to Dennis Gerry, who died in 1865; and second to James M'Geachy, who died in 1869. Both her

husbands were native Irishmen. By Denis Gerry she has four children surviving; by James M'Geachy none. Of course the pauper and her two husbands had none of them birth settlements in Scotland. But Gerry, at his death in 1865, had a settlement by industrial residence in Dailly, and of that settlement the pauper and her children, as his widow and children, got the benefit by receipt of parochial relief from the date of Gerry's death till her marriage with M'Geachy in January 1868. In November 1868, M'Geachy being then resident in Govan, and without any settlement in Scotland, fell ill, and became chargeable on that parish, which continued to give him parochial relief for himself, his wife (the present pauper), and her children by her first husband, and one child then alive by her second husband, till the death of M'Geachy in May 1869.

Since that date, Govan has continued to support the pauper and her children, but claims to be relieved by Dailly on the ground that the residential settlement which the pauper derived from her first husband as his widow was only suspended, but not extinguished, by her second marriage, and has revived by the death of her second husband.

This is a question of general application, and depending on clear principle.

I am of opinion that a derivative settlement acquired by marriage belongs to the woman only while she retains the status of wife or widow of the man from whom the settlement is derived. By her second marriage her status is entirely altered; she is a wife and not a widow, and has no settlement except such as her second husband possesses, and if he has no settlement she can have none. When the second husband dies her status is that of the widow of the second husband; and though her maiden settlement, if she has one, will revive, that which she once had derivatively and temporarily from her first husband was, in my opinion, finally lost by her second marriage, and the only settlement which she can have derivatively after her second marriage, whether as wife or widow, must be the settlement of her second husband.

Another and a very different question was glanced at in the course of the arguments of counsel, whether a residential settlement belonging to a woman in her own right, and not derivatively, is extinguished by her marriage, or is suspended only and will revive on the death of her husband? The answer to this last question depends on principles and considerations which have no application to the question stated in this case. I therefore refrain from giving any opinion on this last-mentioned question. But the question stated in the case I answer in the negative.

Lord Deas (after adverting to the facts as already narrated)—The question, then, is whether the settlement which the pauper had as the wife of Dennis M'Gerry, her first husband, was merely suspended by her second marriage, or whether it was totally destroyed. I am of opinion that it was merely suspended, and not destroyed. That a settlement may be suspended is undoubted. The most familar instance we have is that of the suspension of the original or birth settlement—it may be suspended, but can never be destroyed. Your Lordship intimates that there may be a difference between a settlement acquired by a woman for herself by industrial residence, and one acquired by her through her husband—that the former may possibly be suspended, and the other not. I confess I am unable to see the distinction. I can see no difference in principle between the one and the other, for it seems to me that if the residential settlement is lost in either case it is so because the former status of the wife is sunk in marriage, and the husband's settlement swallows up all residential settlement which the wife previously may have had. I do not see why it should swallow up a derivative residential settlement any more than a properly acquired one. The two must go together. Now, the settlement said to be lost was not one as a wife, but as a widow, for the pauper had it after her husband's death, and it appears to me that it would be carrying too far the abstract principles of the sinking of a wife's rights by marriage to hold that a second marriage destroyed the settlement which this woman derived from her first husband, and what is more, exercised or enjoyed after his death. If the child of the second marriage had survived, there would have been children of both marriages. I agree with your Lordship that the widow is the pauper, and that her settlement is the children's. We are indeed always against the separation of the family, and we are equally against the sending of families out of the country wherever a reasonably constituted settlement can be found within it. If your Lordship is right, the rational course is to send this woman and her children at once to Ireland. But I cannot assent to this. I am of opinion that the woman had a settlement in this country upon the dissolution of her first marriage, and retained it during the period of her first widowhood, and that not having acquired any other by or during her second marriage, she is now, upon its dissolution, just in the same position as at her first husband's death.

Lord Ardmillan—The first husband of this pauper was Dennis Gerry or M'Gerry. He was born in Ireland. He lived, his wife living with him, in the parish of Dailly for eight years; and he acquired a residential or industrial settlement there. He left Dailly in the end of 1862, and he died in 1865, then residing, but not having a settlement, in the parish of Govan. His widow and children lived for some time in Govan, but aliment was supplied by Dailly till January 1868, when the widow married James M'Geachy, an Irishman, having no settlement in Scotland. After this marriage, M'Geachy and his wife continued to reside in Govan. He fell into bad health: he received relief from Govan; and he died in May 1869, having no Scottish settlement.

The widow, in June 1869, applied to Govan for aid, and received it. The question before us relates to the liability of Dailly to relieve Govan of the burden of supporting this pauper, now the widow of James M'Geachy, and her pupil children by her first marriage with Dennis M'Gerry.

The whole facts are well stated in the Special Case.

I am of opinion that we should answer the question in the negative. There is no separate question at present in regard to the pupil children. For the support of their mother, the widow of M'Geachy, I think that the parish of Dailly is not liable.

This woman, a native of Ireland, had no settlement in Scotland when she became the wife of M'Gerry; nor had M'Gerry any settlement in Scotland at that time. After this marriage, the

industrial residence of M'Gerry was for eight years in Dailly. The first point which arises for consideration is, What was the effect of marriage on the wife as regards her settlement?

On this point I remain of the opinion which I have expressed in former cases, that a woman does not acquire for herself a settlement by her marriage, nor does she *stante matrimonio* acquire for herself personally a settlement by living in family with her husband while he is acquiring a residential settlement. Of her husband's settlement she gets the benefit. That benefit is hers, not in consequence of her acquiring for herself a settlement under the Poor Law Act, but in consequence of her personal status and rights being merged in that of her husband. She personally formed no relation with the parish; but to her husband she has become *eadem persona*, therefore she enjoys the benefit of his settlement.

It is important to bear in mind the distinction between a birth settlement, on the one hand, which is personal and abiding, following the person *sicut umbra sequitur*, and reviving or returning into view and effect as soon as other interposed settlements are lost; and, on the other hand, the benefit of a conjugal relation to a man who acquired a settlement—a benefit which is not personal from settlement, but derivative from marriage, and is not abiding, but available only while the woman is wife or widow of the man who has the settlement.

During the husband's life the wife has the benefit of his settlement in virtue of the social relation by which they are united. Misfortune may fall on her and her family, and evil days may come. The marriage relation, with its attendant claims on the parish, is to her, in the event of poverty, a protection. It is to her as the shadow of a great domestic rock beneath which, while marriage lasts, she dwells shielded against the evil day. Even on the death of her husband, she is during her widowhood viewed in law as retaining her right to relief in respect of the marriage relation. The law humanely continues or stretches out the protection over her and her children, so that in the benevolent construction of law she is held as continuing in her widowhood to dwell beneath the extended shadow of her husband's right.

But when her widowhood ceases, the protection of her marriage relation ceases also. She could not retain the benefit of that relation or that protection after she became the wife of another man. It does not, in my opinion, make any material difference that M'Geachy, the second husband, had no Scotch settlement. He was born in Ireland, and liable to be removed there.

If I am right in my view of the law applicable to this case, the liability of the parish of Dailly ceased, not because of the acquisition of another settlement, but because of her marriage to another man. That second marriage completely broke the tie between her and M'Gerry. But she herself had no settlement in Dailly, and no claim on Dailly except in respect of her marriage with M'Gerry; therefore, when the wife's tie and the widow's tie were both broken, the liability of Dailly was necessarily terminated.

We have nothing to do at present with any question in regard to removal to Ireland. The law has provided for it, and there is a discretion vested in the Parochial Board and the Board of Supervision to ensure the judicious and humane enforcement of the law.

Nor have we anything to do at present with the claims of the children. They are all pupils, and are not themselves in their own right the objects of parochial relief. They were, while their mother was a widow, burdens on her industry or her other means of subsistence. When she married a second time she passed with her children as burdens into the new marriage relation. Till the children emerge from pupilarity, and become,—as I hope they may not become,—paupers in their own right, there can be no separate case in regard to them for our consideration.

LORD KINLOCH concurred with the LORD PRESIDENT and LORD ARDMILLAN.

The Court accordingly answered the question in the negative.

Agents for the Parish of Govan—D. Crawford & J. Y. Guthrie, S.S.C.

Agents for the Parish of Dailly—M'Ewen & Carment, W.S.

Tuesday, March 14.

MACKINTOSH *v.* MOIR.

(Vide *ante*, p. 382.)

Process—Jury Trial—Fixing Place of Trial—Circuit Court—1 *Will. IV, c.* 69, § 11. This case being an action of declarator of a right of way at Dunoon, in the county of Argyll and within the limits of the Inverary Circuit,—notice of trial was given by the pursuers for the next Circuit Court of Justiciary at Glasgow, in terms of 1 Will. IV, c. 69 § 11, but the Court discharged the notice as incompetent, Dunoon not being within the district appropriated to the Glasgow Circuit.

Thursday, March 16.

CRAIG *v.* JEX BLAKE.

Process—Jury Trial—Fixing date of Trial—Variation of Issues—Notice of motion—Competency—13 *and* 14 *Vict., c.* 36, *sec.* 40—31 *and* 32 *Vict., c.* 100, *sec.* 28. The Lord Ordinary having pronounced an interlocutor approving of an issue to try the cause, the defender, on the following day, moved him, in terms of 13 and 14 Vict., c. 36, sec. 40, to fix the date of the trial, which was done by the Inner House upon the Lord Ordinary reporting the case to them. Thereafter the defender lodged a reclaiming note against the interlocutor approving the issue, and also moved the Court to vary it in terms of 31 and 32 Vict., c. 100, sec. 28.

Held, 1, That the motion was not incompetent, because the notice of it had not been in the hands of the Clerk of Court until counsel came up to move it.

2, That it was not incompetent because made upon the 7th day after the date of the Lord Ordinary's interlocutor, the 5th and 6th not being sederunt days.

3, That both the motion and the reclaiming note were incompetent, because the defender was barred from objecting to the interlocutor after having adopted it, and made its finality the basis of her motion to fix the day of trial—