furth of the subjects conveyed at one of the yearly terms, and a like sum in name of grassum is stipulated to be paid at the expiration of every twenty-fifth year from and after the term of entry, over and above the ground rent for the year, with interest and penalty. (6) Another portion of the said estate of Strathleven consists of the superiority of various feus. In the greater part of the feu-dispositions or contracts the casualties of superiority payable at the entry of heirs and singular successors are taxed at a duplicand of the feu-duty. But in some of the larger and more important feus, granted to linen printers or others, for the purpose of their business, the reddendo clause in the feu-contracts is differently expressed, the lands being holden for the yearly payment of a sum in name of feu-farm duty, and the vassals and their successors paying to the superior and his heirs and successors a sum (either the same, or less than the yearly feu-duty) on the expiry of every twenty-five years from the term of entry, and that in lieu of the casualties, legal or conventional, which might arise, due to the granter and his foresaids as superiors of the subjects. (7) The said Mrs Ewing, in virtue of the liferent conveyance in her favour, has drawn the ground-annuals and feu-duties payable under the contracts of ground-annual and feu-contracts, and she thinks that as liferentrix she is entitled to the sums payable as grassums under the contracts of ground-annual, and to the sums payable every twenty-five years under the feu-contracts. (8) The said Humphrey Ewing Crum Ewing is fiar of the said estate of Strathleven, and vested in the superiority thereof, and disputes the right of Mrs Ewing to such grassums and periodical payments, and maintains that they are payable to him."

The questions of law for the opinion and judgment of the Court are:—

"1. Whether, during the survivance of the liferentrix, the grassums becoming payable under the said contracts of ground-annual belong to her or to the fiar?

"2. Whether, during the survivance of the liferentrix, the sums becoming payable periodically at intervals of twenty-five years under the said feu-contracts belong to her or to the fiar?"

N. C. Campbell and Watson for Mrs Ewing.

Solicitor-General (Clark) and Marshall for Mr Ewing.

The Court held that both the sums payable every twenty-fifth year went to the fiar.

Agents for Mrs Ewing—M'Ewen & Carment, W.S.

Agents for Mr Ewing—Tods, Murray, & Jamieson, W.S.

Wednesday, March 20.

TURNBULL *v.* WALLACE.

Poor Law Act, 8 *and* 9 *Vict. c.* 83, §§ 70, 71, *and* 72—*Settlement.*

A married man who has deserted his wife may acquire a residential settlement in a parish, although his wife is at the time receiving relief from another parish; and the parish in which the husband has acquired a residential settlement is liable to reimburse the parish relieving the wife.

James Wallace, Inspector of Poor of St Nicholas parish, Aberdeen, sued William Turnbull, Inspector of Stewarton, Ayrshire, for certain sums paid to the wife of David Caird. The following interlocutor, pronounced by the Sheriff of Ayrshire (Campbell), recalling the interlocutor of the Sheriff-Substitute, fully brings out the facts of the case:—"Finds that the present action is at the instance of the Inspector of Poor of the parish of St Nicholas or City Parish of Aberdeen, pursuer, against the Inspector of the parish of Stewarton, defender: Finds the summons concludes for payment of £10, 8s. 3d. outlay and expenses incurred by the pursuer in maintaining a pauper named Mary Davidson or Kerr from the 26th of January 1869 to the date of the summons, and for future aliment: Finds the said Mary Davidson or Kerr is the lawful wife of David Kerr, who was born in the pursuer's parish in the year 1810: Finds the said David Kerr, who was married in 1829, deserted his wife at Aberdeen in the year 1855, and has continued his desertion up to the present time: Finds that at the date of his desertion in 1855 the said David Kerr had a residential settlement in the parish of Old Machar, Aberdeen: Finds the said Mary Davidson or Kerr, shortly after her husband's desertion, applied to Old Machar for parochial relief: Finds the said parish of Old Machar granted her temporary relief for a few months prior to 14th January 1856, at which date she ceased to be chargeable, and apparently supported herself for nearly, but not quite, five years: Finds the said Mary Davidson or Kerr again fell into poverty, and became chargeable to the said parish of Old Machar on the 27th of October 1860, and received relief up to the 4th of February 1861, when she removed to the pursuer's parish: Finds that, in consequence of the said David Kerr's continuous absence from Old Machar since 1855, a statutory notice of chargeability was sent by that parish to the pursuer's parish upon the 27th of October 1860, on the ground that the said David Kerr had lost his residential settlement in Old Machar, and that the pursuer's parish was bound, as the admitted birth parish of the said David Kerr, to relieve Old Machar of the pauper's future maintenance: Finds the pursuer, in the belief that he was bound to relieve Old Machar from the date of the statutory notice in October 1860 until the pauper's removal to the pursuer's parish in February 1861, repaid Old Machar its advances during that period, amounting to £1, 8s.: Finds that, from the 4th of February 1861 up to the date of the summons, the said Mary Davidson or Kerr has received relief from the pursuer's parish, and is now in receipt thereof: Finds that the sums concluded for as aforesaid have been disbursed by the pursuer in alimenting the said Mary Davidson or Kerr and in investigating her settlement, and that the pursuer continues to aliment her: Finds that, from the year 1863 to the present time, the said David Kerr has resided in the defender's parish, viz., the parish of Stewarton, and that it is not alleged that he has had recourse to common begging by himself or his family, or that he has ever received or applied for parochial relief: Finds that, on or about the 26th day of January 1869, the pursuer sent a statutory notice of the chargeability of the said Mary Davidson or Kerr to the defender, and intimated his claim of relief in terms of statute: And in these circumstances, finds, in point of law, that the said David Kerr acquired and still possesses a settlement in the defender's parish; that the settlement of the husband is also the settle-

ment of his wife, and that there is nothing in the present case to warrant the conclusion that the said Mary Davidson or Kerr had, during the period for which relief is sought, or has at present, any other legal settlement than that of her husband: Therefore finds the defender liable to relieve the pursuer in terms of the conclusions of the summons, and decerns accordingly: Further, finds the pursuer entitled to expenses," &c.

The Sheriff added this Note—"On the facts above stated the Sheriff is of opinion that the defender's parish is liable in the relief claimed.

"In the case of *Gray* v. *Fowlie*, March 5, 1847, 9 D. 811, it was held by a majority of the whole Court that, although a husband desert his wife and go abroad, she cannot, until the dissolution of the marriage, acquire a settlement in any parish different from that where his settlement was when he left.

"More recently, it was held by a large majority of the whole Court that a married woman cannot have any settlement of her own apart from her husband, or any settlement that is not his settlement—that her fate, in short, is linked to his in so far as the question of settlement is concerned—*M'Crorie* v. *Cowan*, March 7, 1862, 24 D. 723.

"There are certainly no cases on this subject of equal authority with these two. There are none, in short, in which the whole Court has been consulted.

"The Sheriff has therefore no hesitation in accepting the doctrine as there laid down, on the ground that it is authoritative. Besides, he is himself of opinion that it is sound.

"Now in the present case it is quite ascertained that the defender's parish is the settlement of the husband, and has been so since 1869, by virtue of five years' residence therein 'without having recourse to common begging by himself or his family, and without having received or applied for parochial relief.'

"Being an able-bodied man during the whole period of his residence, he had no claim to be relieved of the expense of maintaining his wife and family; and the fact that she claimed and obtained relief from the parish in which she resided, in his absence, and without his consent, cannot have prevented him from acquiring a settlement in Stewarton.

"But the Sheriff-Substitute seems to think that his desertion of his wife during the time he lived in Stewarton, being criminal, gave such an illegal character to his residence there as to prevent him acquiring a settlement for himself and her.

"But his residence there was not in the least illegal. It was his failure to take his wife there with him that was illegal; but that fact could not prevent his acquisition of a settlement by residence, if his residence was such as the statute requires in point of continuity and endurance, and was unattended with begging or receipt of, or application for, relief.

"On what ground should the deserted wife have a different settlement from the ascertained settlement of her husband? If he voluntarily took her home to-morrow, it could not be doubted that his settlement would then be hers. If she went to his house and insisted on living with him, the same result would happen. If they mutually agreed to live separately and in different parishes, still his settlement would undoubtedly be hers. Nay, if she deserted him, it is a settled point that his settlement would continue to be hers. In short, it seems admitted on all hands that if husband and wife should live in separate parishes for any length of time or for any cause, the settlement of the husband would be the settlement of his wife unless the husband was possessed with the evil intention of deserting her. But why should this evil intention in the mind of the husband affect the question? There is nothing in the statute introducing such an element of consideration, and the Sheriff can see no legal principle for holding that such a consideration should have any weight. It would only introduce an element of confusion into poor law administration."

The defender appealed.

Solicitor-General (CLARK) and BURNET for him.

WATSON and KEIR for the respondent.

At advising—

LORD JUSTICE-CLERK — This case, like many others of the same class, has given us a good deal of trouble. The difficulty in such questions is inevitable, because there is no juridical principle which can be applied when, the obligation being imposed by statute, the words of the statute do not provide for the particular case.

The law of parochial relief rests on the proposition that in this country no man shall starve, and every one is entitled to be supported by the parish when all other means fail. On the other hand, no man who can support himself is entitled to receive money from the parochial funds.

The facts of the case are these—A married woman was deserted in 1855 by her husband, who had an industrial settlement in the parish of Old Machar. She received parochial relief from Old Machar. In 1860 she found means to support herself. Thereafter, when she became chargeable, the parish of Old Machar sent her to the parish of St Nicholas, Aberdeen, the birth settlement of her husband, and that parish supported her from 1860 to 1869. In 1868 it came to the knowledge of the parish of St Nicholas that the husband was living in the parish of Stewarton, Ayrshire, and had acquired a residential settlement there. The parish of St Nicholas accordingly sent to the parish of Stewarton a notice that they were supporting the wife, and calling upon them for relief in terms of § 72 of the Poor Law Act. The defence raised two questions—1st, Was the wife a proper subject for parochial relief?; and 2d, Supposing that she was, which parish is liable?

I am of opinion that she was a proper subject for parochial relief. The parish of Old Machar was bound to relieve her, and if she was properly transferred to St Nicholas, that parish was also bound to support her. I do not desire to say anything in regard to the case of a man deserting his wife, and going to a neighbouring parish in order to avoid the expense of supporting her. In such a case I by no means say that the parochial board are bound to admit the wife to relief. But no such case arises here.

The next question is, What parish was bound to furnish the relief? As a general rule, the obligation to support the husband includes the obligation to support the wife. The settlement of the wife follows the settlement of the husband. I do not think any of the cases are opposed to this view. The case of *Palmer*, to which we were referred, was under the Lunacy Act, and the words of that Act were founded on in the judgment. In the other case the husband was a foreigner, with no settlement in this country. The necessity of finding a settlement led to an exception to the general rule.

Holding, then, that the settlement of the husband is in the parish of Stewarton, what is the right of the parish of St Nicholas? If the wife had lived in the same parish as her husband, she would not have been a proper subject of relief. But the Poor Law Act gives no power to remove the pauper to another parish until that parish acknowledge its liability to relieve the pauper. If the parish of St Nicholas had refused to acknowledge their liability, Old Machar had no power to remove the pauper. I think St Nicholas was not bound to go against the husband.

The parish of St Nicholas has given relief in an administrative capacity, and, having given the statutory notice, I think their claim for relief must be sustained.

The other Judges concurred.

Agents for Pursuer—Webster & Will, S.S.C.
Agents for Defender—M'Ewen & Carment, W.S.

HOUSE OF LORDS.

Monday, February 19.

ERSKINE BEVERIDGE & CO. *v.* ROBERT BEVERIDGE.

Partnership—Trustees of deceased Partner—Manager, powers of.

Held that the trustees of a deceased partner, who under the deed of copartnery succeeded to his place in the firm, were not each individually, but only as a body collectively, entitled to the position and rights of a partner as in a question with the surviving partner, and that one of the trustees, who was also manager of the firm, was not entitled to act as an individual partner, but as a manager only, and had, under the circumstances, overstepped his powers of management.

This was an appeal from a decision of the Second Division of the Court of Session. The litigation began with an action of declarator and interdict at the instance of the appellants, the firm of Beveridge & Co., against Robert Beveridge and the trustees of the late Erskine Beveridge. In 1857 the late Erskine Beveridge, and his son James Adamson Beveridge, entered into a co-partnership, which was dissolved in 1860 by mutual consent. In 1862 Mr Erskine Beveridge entered into a partnership for three years with Mr Cance, and in 1864 Mr Robert Beveridge, brother of Mr Erskine Beveridge, was appointed manager of the factory business at a salary of £1200 a-year. At the same time, or soon after, James Adamson Beveridge was again taken into the firm, which still retained the original name of Erskine Beveridge & Co., the agreement being that all contracts, bills, &c., should be entered into and given under the name of the firm. The business was to be more particularly under the charge of Erskine Beveridge during his life, and after his decease under the charge of his brother, the respondent Robert Beveridge, and the firm became bound to grant the necessary procuration and authority to Robert Beveridge which might be required by him in the office of manager for subscribing obligations for the firm. Erskine Beveridge died in 1864, and Robert Beveridge was left one of his trustees. It was alleged that the respondent then assumed to act as a partner instead of a mere manager, and that James Adamson Beveridge, the surviving partner, resisted this. That the respondent assumed to sign the name of the firm in his dealings without his nephew's consent or knowledge. That he also made alterations in the works, and, *inter alia*, ordered forty-four power-looms in place of the hand-looms formerly used, and persisted in purchasing these in spite of his nephew's remonstrances, alleging that this was one of the acts of his ordinary administration as manager. The respondent, also without the consent, and against the wish of the firm, cancelled existing contracts between the firm and many of the clerks and managers of departments, and entered into other arrangements, thereby adding to the liabilities of the firm. He also withdrew a sum of £20,000, being the funds of the firm, from one investment, and invested it elsewhere. The appellant, as representing the firm, now wanted to put a stop to these actings and method of proceeding on the part of the respondent.

The defender and respondent, Robert Beveridge, in answer, set up the defence that under his agreements with the firm he was entitled to superintend and manage the business of the firm, and to exercise all the rights and powers of a partner, and, in particular, was entitled to use and sign the company firm and style to all deeds and documents.

The Lord Ordinary held that James Adamson Beveridge was not entitled to sue in the name of the firm, and dismissed the action. This interlocutor was, however, recalled by the Second Division, and judgment delivered in the following terms:—The Court agreed that the pursuer had no title to sue in the name of the firm, but was entitled to sue as a partner; that the defender had no right to sign the name of the firm, but ought to sign in his own name; that he was not entitled, without James Adamson Beveridge's consent, to sign cheques binding on the company; that he had no right to lend or deposit the funds of the firm without James Adamson Beveridge's consent. They therefore granted decree of declarator and interdict in terms of the conclusions; but they also found that the defender acted within his power as manager in ordering the power-looms, and in fixing the salaries of clerks; and therefore assoilzied Robert from those conclusions of the action.

Both parties now appealed from the parts of the judgment decided against them respectively.

Sir R. PALMER, Q.C., for the appellant James Adamson Beveridge, said that this was an important question as to the proper management of a large and prosperous business, the income of the firm having been upwards of £29,000 a-year; and much of the difficulty arose out of the various deeds and contracts between the parties. The law of Scotland made trustees a *quasi* corporate body; and as the partnership deed provided that after Mr Erskine Beveridge's death his trustees should take his place and represent him in the partnership, this no doubt led to considerable difficulty in ascertaining the mutual rights of the parties. But at all events the main contention of the appellant was that he was admittedly a partner, and that therefore things could not be done by the manager of the firm against his wish and in opposition to his orders. The points on which the Court below decided against the appellant were wrongly decided. The firm being a separate person according to the law of Scotland, and these alleged injuries having occurred to the partnership, there was a