produced which was satisfactory to the trustee he would not have rejected the claim. There is another anomalous result. Where the statute allows the creditor fifteen days to appeal against the trustee's deliverance, it would be hard to say when, under such a judgment as this, they would begin to run. That very ambiguity shows the judgment to be bad. I am of opinion that the deliverance is not within the statute, and if so, a suspension is a competent remedy. I think the whole matter has arisen from the trustee not having quite an accurate view of what it was he had to do. He seems to have thought that he must reject these documents of debt as being between a father and son, whereas all he had to do was to ask for evidence if he thought them at all suspicious. The true ground of our judgment is that the deliverance was not authorised by the statute.

LORD ARDMILLAN—I am not quite satisfied with the way the complainer has dealt with this deliverance. I think he has played fast and loose with the two interpretations of it, but the first question is whether the deliverance is competent. I think not; a combination of two of the statutory alternatives is ridiculous. If he had received further evidence he could not have recalled his own deliverance rejecting the claim, and so the allowance of eight days was useless. The proper deliverance was to allow enquiry and hold the claim over for admission or rejection. The near relationship of the parties may perhaps give some ground for suspicion, but not necessarily so. If this deliverance is incompetent it cannot be beyond the reach of remedy, and the remedy proposed is a good one.

LORD MURE concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the reclaiming note for Malcolm Ritchie against Lord Young's interlocutor of 13th November 1874, Recall the said interlocutor; sustain the reasons of suspension; interdict, prohibit, and discharge the respondent from proceeding to divide the sequestrated estate, or any portion thereof, among the creditors of the bankrupt, until he shall have disposed of the complainer's claim by a deliverance in terms of the statute, rejecting or admitting the same, and until the said deliverance has become final, and decern: Find the complainer entitled to expenses, and remit to the Auditor to tax the amount of the said expenses, and to report."

Counsel for Complainer — Solicitor-General (Watson) and Burnet. Agent—Neil M. Campbell, S.S.C.

Counsel for Respondent — Dean of Faculty (Clark), Q.C., and Strachan. Agent—T. F. Weir, S.S.C.

Friday, January 15.

SECOND DIVISION.

[Sheriff of Lanark.

BEATTIE *v.* ARBUCKLE.

Poor Law Amendment Act, sec. 70—*Admission of Liability.*

Where an inspector of poor admitted liability after correspondence with the inspector of another parish and personal inquiries.—*Held* that a statement that the admission was made in error was not sufficient to relieve the inspector from the effects of the admission.

The summons in this suit, at the instance of the Inspector of Poor of the Barony parish, Glasgow, on behalf of the Parochial Board of that parish, against the Inspector of Poor of the parish of Cambuslang, concluded for payment of—"(*First*), the sum of £118, 5s. 2d. sterling, being the amount of an account for parochial relief supplied and incurred by the Parochial Board of the parish of Barony to and on account of Mary Slater or Moyes, widow of David Moyes, printer, who was born in the parish of Cambuslang in or about the year 1834, and who died in or about the month of July 1862, having at the time of his death a parochial settlement in the said parish of Cambuslang by reason of his birth therein, commencing said account on the 13th day of March 1869, and ending the 18th day of January 1873, annexed hereto; and (*Second*), the sum of £11, 19s. sterling, being interest on said amount of advances during the currency thereof to the 27th day of March 1873, at 2½ per centum per annum, amounting together said two sums to the amount of £130, 4s. 2d. sterling, and also to take charge of the said Mary Slater or Moyes, and so free and relieve the pursuer and the Parochial Board of the parish of Barony of her support in all times hereafter, and for all which the defender is liable, in respect that the said Mary Slater or Moyes was at the date of her chargeability, and during the whole period of her receiving parochial relief from the parish of Barony, a proper object of such relief by reason of her insanity, and her parochial settlement was in the parish of Cambuslang by reason of her deceased husband's birth therein as aforesaid, and that statutory notice of her chargeability was duly given to the defender on or about the 17th day of March 1869, with interest on the said sum of £130, 4s. 2d. sterling from the date of this action till payment, and with expenses."

The pursuer averred that Mary Slater, the pauper (who is aged about 38 years), was the widow of David Moyes, a printer, who was born in the parish of Cambuslang in or about the year 1833. She and Moyes were regularly married in Bridgeton about the year 1856. The parochial settlement of the said David Moyes at the date of his marriage to Mary Slater was in the parish of Cambuslang by reason of his birth therein. After his marriage to the pauper he did not acquire a residential settlement in Scotland. David Moyes died in Bridgeton, Glasgow, in or about the month of July 1862, and at that date his parochial settlement was in the parish of Cambuslang by reason of his birth therein. The said David Moyes had, on or about 16th June 1862, applied for and received parochial relief from the Barony parish of

Glasgow. His widow, Mary Slater, the pauper, upon his death continued to receive relief for herself and young children from the Barony parish until they were relieved by the parish of Cambuslang. On or about 6th March 1863 the parish of Cambuslang admitted liability for the pauper, and reimbursed the pursuer his advances to her and her children, and continued to afford them parochial relief down to the month of April 1868. The pauper again became chargeable to the parish of Barony on or about 13th March 1869, and being in an unsound state of mind was removed to Gartnavel Asylum, where she remained up till 24th October 1872, when she was removed to the Argyle District Asylum at Lochgilphead, where she is at present, at the expense of the Barony parish. Statutory notice of her having become chargeable to the Barony parish was sent to the defender upon 17th March 1869. Notwithstanding thereof, and that particulars of the claim were duly furnished to the defender, he refused to admit further liability for the pauper.

The defender admitted the admission of liability in 1863, but explained that it was done under a mistake. The defender stated that David Moyes, the husband of the pauper, was born in the parish of Cambuslang on 13th March 1833. . Three months after his birth his father went to reside in the parish of Rutherglen, where he has ever since remained. The said David Moyes left his father's house about the year 1846 or 1847 and went to work and reside in Bridgeton, in the Barony parish of Glasgow, and he continued to work and reside in the said parish till the date of his death in 1862, except such time as he was serving in the Lanarkshire Militia, when, though he personally was absent on public service for short periods, he retained his domicile in the parish. At the date of his marriage (in or about November 1856), or at all events long before he first became an object of parochial relief, which was shortly before his death in 1862, he had acquired a settlement by residence in the Barony parish, which he never lost. The parochial settlement of the pauper Mary Slater or Moyes is in the parish of Barony, in respect of her husband's settlement in that parish.

The letter admitting liability on the part of Cambaslang parish was as follows:—"Dear Sir—I duly received yours of the 25th ult. in reply to my letter of the 16th July last; and from the facts therein contained, in connection with personal inquiries, I am now satisfied that said David Moyes had no residence settlement at the time of his death, and therefore admit liability.

"Please let me know what weekly allowance you have been giving her, and refer her to me for future aliment, directing her to call any day (off a Saturday) either between the hours of 8 and 9 in the morning, or between 3 and 5 P.M.—I remain, yours truly, John Hall, *Inspr.*"

The pleas in law for the pursuer were—"(1) Having been on said March 1869, when she became chargeable to the said parish of Barony, and continued to be so since, in an unsound mind and destitute, Mary Slater was a proper object of such relief. (2) The parochial settlement of the said Mary Slater is in the parish of Cambuslang, in respect her deceased husband's settlement was in that parish by reason of his birth therein. (3) In respect thereof the pursuer is entitled to decree in terms of the conclusions of the summons, with expenses.

The defender's plea in law was—"The parochial settlement of the pauper being in the parish of Barony, in respect that her deceased husband's settlement was in that parish by reason of his residence therein, the parish of Barony is bound to relieve the pauper, and the defender should be assoilzied with expenses."

After a proof the Sheriff-Substitute pronounced the following interlocutor:—

"*Glasgow, 16th March* 1874.—Having heard parties' procurators, and made avizandum, for the reasons detailed at length in the subjoined Note, finds that the pauper has been all along chargeable to the parish of Barony of Glasgow (of which the pursuer is inspector), in virtue of the residential settlement of her late husband acquired there prior to 8th August 1855: Therefore assoilzies the defender, inspector of the parish of Cambuslang, from the conclusions of the action: But, in the circumstances of the case, finds no expenses due by or to either party, and decerns.

"*Note.*—The present is an action for recovery of monies paid for maintenance of a pauper, and for relief from such maintenance for the future. It is brought by Beattie, the inspector of the parish of Barony of Glasgow, against Arbuckle, the inspector of the parish of Cambuslang.

"The pauper, now insane, is the widow of one David Moyes, and admittedly takes the settlement of her late husband, wherever that may be proved to have been. The said David Moyes was admittedly born in the parish of Cambuslang in 1833, and it is not disputed that unless it can be shown that he afterwards acquired a residential settlement in the parish of Barony, his birth-settlement, viz., that of Cambuslang, would still be liable for the maintenance of his widow, the pauper. The *onus probandi*, therefore, lies upon the parish of Cambuslang, and this has been frankly admitted throughout.

"Evidence, parole and documentary, has been adduced on both sides at considerable length. At first sight it appears very conflicting and almost impossible to reconcile with itself. Yet on careful examination the Sheriff-Substitute has come to be of opinion that the defender is plainly right as to the fact of settlement, though there are circumstances which ought in equity to preclude his claiming expenses. At the outset it is desirable to state such matters of fact as are either admitted on record or are plainly established on the evidence.

"The pauper's husband was born in the parish of Cambuslang in the year 1833, and continued to reside there with his father until he was fifteen or sixteen years of age. He afterwards came to reside in the Barony parish of Glasgow, though the period of his so doing is matter of dispute. On 8th August 1855 he joined the militia, and remained in the regiment till 1860. In November 1856 he married the pauper. He was not in Glasgow from 8th August 1855 till 30th June 1856, but in Lanark and Airdrie. Subsequent to his marriage, and until he left the militia, he appears to have resided with his wife and family in Glasgow when not on duty with his regiment, but does not appear to have had any continuous residence in the Barony parish until 1860, for his wife and family are found with him when on duty at Lanark, and subsequently at the Curragh in Ireland. On 16th June 1862 he applied for and obtained relief from the Barony parish. He died in July 1862. On his death the pauper, as his

widow, continued to receive relief for herself and children from the Barony, until 6th March 1863. At that period a somewhat important event took place. The inspector of the parish of Cambuslang professed himself satisfied, on full investigation, that the pauper was really chargeable to his parish (the defender's), and accordingly admitted liability for the pauper, and reimbursed the pursuer's parish for the advances already made to her and her children. (See letter 7/1 of process). After this the defender's parish continued to afford the pauper and her children parochial relief till April 1868. At that time the pauper ceased to be an object of parochial relief till 13th March 1869, when, having become insane, she again became an object of relief, and being found in that state in the pursuer's parish, had to be in the first instance provided for at their expense, and was accordingly removed by pursuer's parish, first to Gartnavel Asylum, and afterwards to the asylum at Lochgilphead, where she at present remains, at the expense of the pursuer's parish.

"On 17th March 1869 the statutory notice of the pauper having become chargeable was duly sent by the Barony parish to the defender, but he declined to admit liability, and after considerable correspondence and some proposals to refer the matter to arbitration, the present action was ultimately brought. Before the period of this second chargeability the inspector Hall, who acted for the defender's parish when its chargeability was admitted as above stated, had died, and the present refusal by the said parish to abide by the admission of the former inspector was caused by discoveries alleged to have been made by the defender, their present inspector, after his accession to office.

"In this state of matters it was strongly contended by the pursuer's parish that the letter of admission, No. 7/1 of process, amounted to a *quasi* contract, and formed a sort of binding obligation by which the defender's parish was barred in all time coming from re-opening the question. This was denied on the part of the defender's parish, and it was argued that the letter, 7/1, was not binding because it had proceeded upon an error in fact, and that the matter in question, being one affecting the interests of the ratepayers, could not be settled against them by the mere acts or admissions of an inspector. It appears to the Sheriff-Substitute that it would be *ultra vires* of an inspector, or even perhaps of the Parochial Board itself, to enter into a contract as to the support of a pauper which should have the effect of saddling the ratepayers in all time coming with the maintainence of the pauper, in the face of clear evidence afterwards emerging of non-liability. He cannot therefore sustain the pursuer's plea to the effect of creating *estoppel*. But, on the other hand, he is of opinion that it is a matter to be kept clearly in view in dealing with the evidence, more especially if it appears that, in consequence of the admission of chargeability, important evidence has been lost, which if now available would have seriously affected the issue.

"Rejecting, therefore, the plea of *mora* and acquiescence as a bar to prosecuting the inquiry, the important question presents itself, At what period, if any, did the pauper's husband acquire a settlement by residence in the pursuer's parish?

"As regards this, it is important to notice that on 8th August 1855 the pauper's husband joined the militia, and that he continued to be borne on the strength of the regiment down till 1860; that for nearly a year after his enlistment he was not in Glasgow at all (See Adjutant's deposition, defender's proof, p. 19,) and that after his marriage, in November 1855, he sometimes resided with his wife and family in Lanark, and once at the Curragh of Kildare in Ireland, for considerable periods. (See defender's proof, pp. 6, 8, 10, 11, 12.) Now, upon this state of matters, the Sheriff-Substitute would observe, that while it may be that absence on military service may be so construed as not to deprive a man of his residential settlement already acquired, there seems no authority for maintaining that a new settlement can be acquired during a period of five years broken in this manner. If this view be correct, the period of five years necessary to acquire a residential settlement must be taken to be some period anterior to 8th August 1855. Now, on turning to the pursuer's proof, we find that M'Kellar, the brother-in-law of the pauper's husband, came to reside in Bridgeton in 1849, and there found him residing in Mrs Frame's house there (defender's proof p. 3); that, according to William Moyes, his brother, he left his father's house when he was 15 or 16 years of age, and came to Bridgeton, first to Mrs Thomson's, and afterwards to Mrs Frame's (defender's proof, p. 8); and in this he is corroborated by his wife, Mrs Moyes, (p. 7.) John Frame, son of Mrs Frame, who is dead twenty-one years ago, says much the same thing (p. 13), and so also does Mrs Nelson (p. 15, 16). All these witnesses distinctly depone that from the time the pauper came to Bridgeton (parish of Barony) till he joined the militia, he constantly resided there. See their evidence *passim*, and also that of Mrs M'Kellar, the pauper's sister (defender's proof, p. 7). But the most important witness upon this point is the deceased's father, still alive. He is a man of 75 years of age, and his memory, no doubt, as he admits, is not what it once was. But it is hardly possible to suppose that he could be in error as to the facts to which he depones, as they are of a kind likely to rivet themselves in the memory of most men, and occurred at a time when impressions are strongly retained. He says—'When David (the deceased) left my house he was about 15 years of age, twenty-five years since. He and his mother had quarelled about mending his jacket. His brother William and sister Margaret, now Mrs M'Kellar, had left our house before. David went to reside with one Mrs Frame at Bridgeton, Glasgow, with whom his brother and sister resided. He never, to my knowledge, lived in Rutherglen after that. He often came to see me—chiefly on Sundays. He came from Bridgeton. He continued to visit me till his death. He never left residing in Bridgeton except while in the militia. If he had gone to reside elsewhere he would have told me' (defender's proof, p. 1). It may be noticed that during this time the deceased was working at Barrowfield and Springfield Works, and supporting himself thereby.

"Now, it would seem that, if these witnesses are to be believed, it is impossible to resist the conclusion that for five years at least prior to 8th August 1855 the deceased was residing within the Barony parish, and had consequently acquired a settlement there. It may be said that these witnesses are for the most part relatives of the deceased, and this is no doubt true; but this very circumstance, so far from diminishing their credibility, greatly

adds to it. It is impossible to fancy that they could have any interest one way or the other in the issue, for the contention is between two parishes. But of all persons they were the most likely to know the facts. That slight discrepancies may be detected between their depositions is true, but this also seems to tell in favour of their credibility, as it excludes the presumption of collusion.

"This evidence is still further confirmed by Mrs Nelson's statement, to the effect that the deceased had told her that he lived in Bridgeton for seven years before his marriage, which took place in 1856 (defender's proof, p. 16). It is also supported by the statements of the pauper herself, made before her insanity, and deponed to by Mrs Nelson (defender's proof, p 21) and Arbuckle (p. 22).

"Against this evidence the pursuer has adduced several witnesses, whose evidence certainly goes to show that in their opinion the deceased continued to live with his father in Rutherglen long after 1849. No doubt can be cast on their thorough honesty. But on examination it will be seen that their statements are not direct, but inferential, and the facts to which they do speak seem to be fairly reconcileable with the evidence given by the defender's witnesses. They say that the deceased was often seen going and returning from Rutherglen for some time after he worked at Barrowfield, and from this they seem to infer that he then stayed with his father. Now, it will be observed that his father distinctly says that his son used regularly to visit him after leaving his house, and it is most probable that these were the occasions in which he was seen on the road. Besides, even if it were to be taken as proved that he did live for some time in Rutherglen after getting employment in the Barrowfield Works, this could hardly be extended beyond six months, or a year at the utmost, and that would not be inconsistent with the defender's contention that he resided in Bridgeton for five years anterior to 1855. In short, it seems to the Sheriff-Substitute to be impossible by such evidence as that of the pursuer's witnesses to get over the clear evidence of the father and near relatives of the deceased, confirmed as it is by many auxiliary circumstances.

"It was strongly urged, indeed, that by the conduct of the defender's parish much evidence had been lost, both of a parole and documentary kind, which, if still available, might have materially affected the case; and it is no doubt true that much evidence has been lost by lapse of time, or some other cause—still it is impossible to presume that such evidence, if still extant, would be unfavourable to the defender, unless it could be shown that he had of set purpose destroyed it. Of this there is no evidence. Upon the whole, the Sheriff-Substitute is of opinion that it would have required the very strongest evidence to get over the very clear depositions of the defender's witnesses, and that what evidence is lost would, if still extant, have been capable of the same construction as he has applied to that which has been adduced for the pursuer.

"But while the Sheriff-Substitute has thus arrived at the conclusion that the defender has made out his contention, he is equally impressed with the conviction that the defender is not entitled to costs. It is impossible to read the letter No. 7/1 and the relative correspondence, without being satisfied that the pursuer was induced to relax all inquiry as to the actual state of the facts, and to assume that matters had been finally arranged. That being so, he was bound, in the interest of the ratepayers of the Barony parish, to litigate the case; nor could he, until the whole evidence had been led, have known how the circumstances actually stood. Expenses have accordingly been refused."

The pursuer appealed, and the Sheriff pronounced the following judgment:—

"*Glasgow, 5th August* 1874.—Having heard parties' procurators on the cross appeals, and considered the process—for the reasons stated by the Sheriff-Substitute, adheres to the interlocutor appealed against; dismisses the appeal, and decerns.

"*Note.*—Both parties are agreed that the question as to the settlement of the pauper through her late husband depends on whether the latter lived in Barony parish for five years preceding 8th August 1855. The exhaustive analysis of the evidence in the note to the Sheriff-Substitute's interlocutor shows clearly, and the pursuer's procurator did not dispute, that the balance of evidence on this matter is in the defender's favour.

"It is quite unnecessary in these circumstances to go over the evidence again; the Sheriff will content himself with the observation that the risk of error in dates of the witnesses on whom the defender relies is reduced to a minimum from their referring to such facts as the Queen's visit to Glasgow (proof, page) and the marriage of the deceased pauper's brother (proof for defender, page 9), the birth of the witness' child (proof for defender, page 20).

"The argument of the pursuer's procurator was directed to the consequences of the long delay which has occurred since the question of the pauper's chargeability first arose, and to the fact of the arrangement which was then made by the defender's predecessor with the pursuer.

"The delay, it was said, had caused great loss of evidence which might have been in the pursuer's favour. This, however, is an assumption for which there is no foundation in fact. Besides, the pursuer is responsible for a great part of the delay; as the present action was not raised till 31st March 1873—four years after the commencement of the payments of which the pursuer seeks relief. At least one witness (see evidence of Moyes, proof, page) who might have given important evidence, has died within that time.

"It must also be observed that the Barony parish has itself to blame that liability was recognised by Cambuslang in 1863; for that was done in a great measure in consequence of erroneous information from the Barony inspector. which (unintentionally no doubt) misled the Cambuslang officers and Board (see per Lord Justice-Clerk Inglis in *Innes* v. *Ironside*, 1868, I Poor Law Mag. (n.s.) 538).

"It was contended for the pursuer that the arrangement in 1863 formed a complete bar against the defender disputing liability now, and that the defender is not entitled to challenge that arrangement on the ground merely of erroneous judgment on matter of law.

"To this it must be answered that the defender is not claiming repayment of the sums expended under a former arrangement, but is resisting a demand as to relief which commenced after that arrangement had terminated by the pauper having returned to the general population. In such a case the parish against which relief is claimed is feer to deal with the matter as a new one, without

being encumbered by the old and erroneous agreement.

"This seems to follow from the decision in *Beattie* v. *Wood*, 1866, 4 Macph. 427.

"Besides, even if the pursuer's argument were right in principle, it is wrong in fact, for the former arrangement was made in essential error on matters of fact as to the date when the pauper's husband first came to Barrowfield.

"Accordingly, without indicating any opinion on the question whether Cambuslang has a good claim by way of *condictio indebiti* against Barony for the payments made under the arrangement referred to, the Sheriff cannot hold that arrangement to be a bar to the present defence."

The pursuer appealed to the Court of Session.

At advising—

Lord Justice-Clerk—The questions raised in this case are of importance, and are not without difficulty. The facts are as follows:—In the year 1862 the wife of a man named Moyes became a pauper and chargeable on the Barony Parish of Glasgow. The inspector of the Barony Parish wrote to the Parish of Cambuslang, stating that the woman, or her husband, had been born at Cambuslang, and after some correspondence, on the 6th March 1863 the inspector of Cambuslang parish wrote admitting liability. Apparently the woman received relief from Cambuslang until April 1868, then ceased to receive relief, became insane, and was removed to an asylum. It turns out that the real state of facts is, that the pauper received relief from Cambuslang till September 1868. In April 1868 she became insane, but her name was not removed from the books of Cambuslang, and relief was continued to her until September, perhaps from both parishes. For three months and a half after September 1868 the pauper seems to have been self-supporting. In March 1869 she became again insane, and the only period during which she was self-supporting was from September 1868 until January 1869. The Barony parish now bring this action, based on the admission of Cambuslang, for the amount of an account incurred by them in the relief of the pauper from March 1869 until January 1873. The defence is twofold, 1st, That Cambuslang is not bound by the admission, the fact being that in 1863 the settlement of the pauper was in the Parish of Barony, and that the admission was induced by erroneous information furnished by the inspector of Barony parish; 2d, that even if the admission is binding, it is contended that as the pauper became self-supporting afterwards a new chargeability must be held to have arisen. The first defence is a mere allegation that the inspector of the Cambuslang parish made an error in his admission, and I think is not a relevant ground for opening up the matter. We had an argument as to the effect of essential error in voiding a contract, but that is not raised here, where the question is not whether error in a point of fact will vitiate a contract, but whether it is relevant to allege an error in the admission in order to set it aside. But it is said the error was induced by the inspector of Barony. I think the letter of the inspector of Barony does not bear the construction contended for. It put the inspector of Cambuslang on his enquiry, and, in addition, the admission did not proceed on that letter alone, but there were personal enquiries by the inspector of Cambuslang, so that I am of opinion the inspector of Cambuslang has precluded himself from raising the question, and it would neutralise the beneficial effect of such admission if such an error were to vitiate them. I think, on the first point, that Cambuslang is bound by the admission in 1863.

On the second point, whether the effect of the interval between September and January, during which the pauper is said to have been self-supporting, is to make such a break as to raise the question of chargeability of new, I think, that although the pauper may not have received relief during that period, yet that in the circumstances her chargeability substantially remained unaffected.

Lord Neaves—I concur. The admission here was made to save the expense of a litigation. It was not taken on the warranty of the inspector of the Barony parish, but it was backed up by independent enquiry. This is not a case of essential error, and I think that to allow the admission to be opened up on account of an error such as is alleged here is out of the question, and would go far to destroy the beneficial effect of such admissions. It was the result of joint enquiry and of a desire to save expense, and an arrangement so made is not to be disturbed on the ground of mere error on either side. Something of the nature of *mala fides* must be alleged, and it would require very peculiar circumstances indeed to relieve an inspector from the effect of such an admission. On the second point, I think there was no convalescence of the pauper. I give no opinion on the effect of a lapse of years. It does not follow from my view of this case that the former settlement is to be an infallible basis for all time coming; but here I agree with your Lordship there is no ground for re-opening the question.

Lord Ormidale—I think this is an important question in the administration of the Poor Law, especially as bearing upon the 70th section of the Poor Law Amendment Act. Under that Act the parish in which a pauper becomes chargeable is bound to maintain him until the proper parish of settlement is either admitted or judicially ascertained. In this case, in 1863 the Barony parish, of it had got no admission from Cambuslang, would have sued that parish, and if it had done so, and it had been determined that Cambuslang was liable, it would have been very difficult to have opened up the question. But the statute says that where an admission is given the parish getting such an admission of liability is not entitled to go on with an action, and if such an action had been raised after an admission it would have been dismissed. I do not say that in all circumstances an admission of liability is to be for ever conclusive. There may be exceptional circumstances entitling a parish to be free from such an admission. It is said here, in the first place, that there was misrepresentation on the part of the Barony parish; and secondly, that the admission can only extend to the time when the pauper was not self-supporting. On the first allegation I think the statement made by the parish of Cambuslang is conclusive. In answer to condescendence 5 they explain that the admission was made under a mistake. It is not said the mistake was induced by any misrepresentation; it arose from non-vigilance, and cannot entitle them to get quit of the admission.

On the second point, the circumstances connected with the case on this point are not clearly ascertained. It is tacitly admitted that the pauper may have been drawing an allowance from both parishes. The only conclusion I can come to is, that the pauper for a few months may have neglected to draw her allowance from Cambuslang, but there was nothing to show she was self-supporting.

On the whole case, I think it lies with the parish of Cambuslang to show that the admission made by them is no longer binding, and that it has failed to show any exceptional circumstances sufficient to entitle them to get rid of it.

LORD GIFFORD—I agree with your Lordships that the admission is binding, and that no cause has been shown why effect should be refused to it. I feel the importance of giving effect to such admission, as, though not *res judicata*, it prevents a *res judicata*, and in one point of view is better than a *res judicata*. I think our decision goes this length, that such an admission will not be displaced except the party seeking to displace it shows clear ground for so doing. I mean an admission got and obtained in *bona fide*. Even a decree got in bad faith may be opened up. The statute says the liability of a parish may be determined by an admission such as we have here.

The second question, the effect of rehabilitation, I think it is unnecessary to determine. This is not a case of real rehabilitation—the mere circumstance of a pauper, owing to insanity or confusion, not drawing an allowance for some time, will not constitute rehabilitation. On the whole case, I think the admission made in 1863 must be given effect to as no exceptional circumstances sufficient to invalidate it have been shown, and that the liability of the parish of Cambuslang has never been interrupted by rehabilitation of the pauper.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the appeal:—Find it proved that on the 6th of March 1863 the inspector of the parish of Cambuslang admitted liability for the support of the pauper by his letter of that date: Find that no facts or circumstances have been proved which are relevant to relieve the respondent from the effect of that admission: Find it admitted from the bar that the parish of Cambuslang continued to support the pauper down to the month of September 1868: Find that from that date until the month of March 1869 the pauper received no relief either from Cambuslang or Barony, and that in that month she became insane, and was sent to Gartnavel Asylum, where she has been ever since, the insanity being certified by the medical officer to have, in March 1869, subsisted for six weeks previously; therefore, Find that the parish of Cambuslang was effectually bound by the said admission, and that the same is still effectual; sustain the appeal, recal the judgment complained of, and decern against the respondent (defender) in terms of the conclusions of the summons: Find the pursuer entitled to expenses in both Courts; modify the expenses of the proof to one half the taxed amount thereof, and remit to the auditor to tax the expenses and to report."

Counsel for Appellant—Fraser and R. V. Campbell. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Respondents—Asher and M'Kechnie. Agent—T. Carmichael, S.S.C.

Friday, January 15.

SECOND DIVISION.

[Lord Gifford, Ordinary.

THE LORD ADVOCATE *v.* THE EARL OF GLASGOW.

Entail—Succession Duty—Statute 16 *and* 17 *Vict. c.* 51, §§ 4, 8.

An heir of entail whose consent was given to the creation of encumbrances on the entailed estate on his succession to the estate, *held* not to be the creator of the encumbrances in the sense of the 34th section of the Succession Duty Act, and in calculating the amount of the succession duty allowance must be made in respect of such encumbrances.

Annuity.

No allowance is to be made under section 38 of the Succession Duty Act in respect of an annuity granted by the heir in possession in favour of the successor, and terminable on the death of the first deceaser.

This action was raised to determine what allowance ought to be made by the Crown to the defender, the Earl of Glasgow, on settling with him for the duties to which he became liable in respect of his succession to the late Earl.

The facts were as follows:—By agreements in 1855 and 1866 between the late Earl of Glasgow, as heir of entail in possession of the estate of Hawkhead and others, and his brother the present Earl, as the heir of entail next in the order of succession, along with the two heirs of entail following in the order of succession, the necessary steps were to be taken to enable the late Earl to charge the entailed estates with the sums of £20,000 and £9440, to be borrowed by him on the security of the entailed estates in virtue of the statutes referred to in the record. By the agreements it was provided that, while the late Earl was to retain as his own funds and property £19,000 of the £20,000 and £6940 of the £9440 so to be borrowed, he was to pay over to the present Earl the remaining £1000 of the former sum and £2500 of the latter, besides £1425 to one and £300 to the other of the consenting heirs, and was also to execute and deliver to the present Earl personal bonds of annuity for £1250 and £500, to be paid during their joint lives, and to terminate at the death of the first deceaser, of them. The sums of £20,000 and £9440 were accordingly borrowed by the late Earl, and charged by him as encumbrances on the entailed estates. He alone executed the bonds and disposition in security which were granted to the lenders of the money, the present Earl not being a party to them at all. And the transaction was completed by the late Earl delivering to the present Earl bonds of annuity, and paying to him and the other consenting heirs the sums stipulated for in the agreements as the price or consideration in respect of which their consents were given.