law this was a mere sham change, and not sufficient to make a change of possession. None of the rights and none of the liabilities were changed, and it was in fact not a transfer of property at all. I am driven to the conclusion that if it was imagined that such a ceremony changed possession it was a mistake. Had the bankrupt paid the rent regularly and had the defenders accepted the liabilities of the property there might have been a question whether, as they had really got possession of the heritable property, they had not also got hold of the moveables also. But that is not raised.

The only other question is, Whether by recording these deeds in the Register of Sasines, which was quite inappropriate in the case of deeds dealing with moveables, anything was done equivalent to a change of possession? I think no one can really maintain that, and it is impossible to hold that such was the effect.

I am of opinion that the interlocutor should be adhered to.

The LORD PRESIDENT, LORD MURE, and LORD SHAND concurred.

The Court adhered.

Counsel for Pursuer (Respondent)—Kinnear—J. P. B. Robertson. Agents—Maclachlan & Rodger, W.S.

Counsel for Defenders (Reclaimers)—Campbell Smith—Readman. Agents—Boyd, Macdonald, & Company, S.S.C.

Friday, March 8.

FIRST DIVISION

[Lord Adam, Ordinary.

BEATTIE (INSPECTOR OF BARONY PARISH) *v.* MACKENNA (INSPECTOR OF GIRVAN PARISH) AND WALLACE (INSPECTOR OF GOVAN COMBINATION).

Poor—Settlement of Pauper Child where Father dead and Mother contracts Second Marriage.

A pupil pauper, born in 1866, became chargeable in 1875. Her father had died in 1866, his birth parish being at that time his parish of settlement. Thereafter the mother married a second time, but died in 1872.—*Held* that on her father's death the pupil acquired a settlement in the parish of his birth, which was not affected by the mother's second marriage, and that there was nothing in the facts of the case to take it out of the ordinary rule of law that a legitimate child follows the settlement of its father whether dead or alive.

Observations on the case of *Greig* v. *Adamson*, March 2, 1865, 3 Macph. 575.

This action was raised by the Inspector of the Barony parish of Glasgow against the Inspectors of the parishes of Girvan and of the Govan Combination regarding the settlement of Mary Ann Little, a pupil pauper child.

The following statement of the facts of the case is taken from the note to the interlocutor of the Lord Ordinary (ADAM):—"The pauper Mary Ann Little was born on 13th January 1866 in the Barony parish. She is therefore still a pupil. Her father John Little died in 1866. He was born in the parish of Govan, which was his parish of settlement at the time of his death. He was survived by his wife Abigail Sergeant or Little, and by his daughter the pauper. His wife was born in the parish of Girvan. His widow married in 1870 Richard Maise, who had then a residential settlement in the parish of Old Monkland. She died in 1872. Maise at this time still retained his residential settlement in Old Monkland. On 1st June 1875 the pauper became chargeable on the Barony parish. At this time Maise had lost his residential settlement in Old Monkland, and being an Irishman by birth, had no other settlement in Scotland. These seem to be the material facts in the case."

The Lord Ordinary found that the pauper had a subsisting parochial settlement in Govan parish in respect of the birth of her father in that parish. He added this note to his interlocutor:—

"*Note.*—[*After the statement of facts quoted above*]—The Lord Ordinary is of opinion that the pauper on her father's death in 1866 acquired in her own right a settlement in the parish of his birth—which was the parish of Govan. The Lord Ordinary further thinks that the marriage of the pauper's mother to Richard Maise in 1870 did not affect this settlement. In the case of *St Cuthbert's* v. *Cramond*, November 12, 1873, 1 Rettie 174, it was held that a residential settlement which a pauper, who was a pupil, had derived from his father was not lost by the second marriage of his mother. It appears to the Lord Ordinary that the same principle applies to a birth settlement.

"The pauper being a pupil is incapable of acquiring a new settlement in her own right, and the parish of Govan will therefore continue to be the parish of her settlement so long as she continues to be a pupil—*Craig* v. *Greig*, July 18, 1863, 1 Macph. 1172; *M'Lennan* v. *Waite*, June 28, 1872, 10 Macph. 908."

Govan parish reclaimed, resting their case chiefly on the cases of *Kirkwood* v. *Manson* and *Greig* v. *Adamson*.

Authorities—*Kirkwood* v. *Manson*, March 14, 1871, 9 Macph. 693; *Greig* v. *Adamson*, March 2, 1865, 3 Macph. 575; *Barbour* v. *Adamson*, May 30, 1853, 1 Macq. 376; *Carmichael* v. *Adamson*, February 28, 1863, 1 Macph. 452; *Crieff* v. *Fowlis Wester*, July 19, 1842, 4 D. 1538; *Allan* v. *Higgins*, December 23, 1864, 3 Macph. 309; *Crawfurd* v. *Beattie*, January 25, 1862, 24 D. 357; *Gibson* v. *Murray*, June 10, 1854, 16 D. 926; *Grant* v. *Reid*, May 25, 1860, 22 D. 1110; *Greig* v. *Hay and M'Lean*, May 18, 1858, 1 Poor Law Mag. 36; *Ferrier* v. *Kennedy*, February 8, 1873, 11 Macph. 402.

At advising—

LORD MURE—The question here raised for decision is, Whether the obligation to support a pauper who is a pupil, and whose father and mother are dead, attaches to the father's settlement, which was in the parish of his birth, or to the parish of the mother's birth settlement, or to that of the pauper's own birth.

The circumstances in which the question is

raised are distinctly stated in the note to the Lord Ordinary's interlocutor, and are as follows:—The pauper was born in the Barony parish in January 1866, and was a pupil at the date of the present action. Her father John Little was born in the parish of Govan, and died in 1866, when his settlement was still in that parish. He was survived by his wife, who was born in the parish of Girvan, and by his only child, the pauper. His widow in 1870 married Richard Maise, an Irishman by birth, who had then a residential settlement in the parish of Old Monkland, and she died in 1872. It is said that at this date Maise still retained his residential settlement in Old Monkland; and although this has been made matter of admission between the parties, it may, I think, be doubted, having regard to the facts set out and admitted in the record, whether Maise can be said to have retained that settlement in 1872. But, be that as it may, there can be no doubt that at the time the pauper first became chargeable—viz., at the 1st of June 1875—Maise had lost that settlement, and being an Irishman it is admitted that he had no other settlement in Scotland.

In this state of the admitted facts, it was not contended that any claim could be made against Old Monkland parish to support the pauper. That parish has accordingly not been made a party to the action, and but for the slight complication which has been introduced into the case in consequence of the second marriage of the pauper's mother, it appears to me to be one the solution of which is not attended with any great difficulty as between the parishes who are now directly interested.

The general rule of law is clear, that pupil children, being legitimate, follow the settlement of their father if he has one in Scotland, and that whether that settlement be one of residence or by birth, and that they continue in the ordinary case to hold that settlement after the father's death. On this point the opinion of the Lord President (Lord Colonsay) in the case of *Gibson* v. *Murray* is very distinct, where his Lordship said—"It is beyond question that in the case of legitimate children their settlement is derived primarily from that of their father, and that if on his death they become chargeable, the burden rests on the parish in which he had his settlement rather than on the parish in which they were born. Nor is it of any consequence whether the father's settlement was acquired by residence or belonged to him by birth. In either case the children have the benefit of his settlement. The judgment of the House of Lords in the case of *Barbour*, 30th May 1853, 1 Macq. 376, appears to be conclusive on this point." Applying this rule to the circumstances of the present case, the parish of Govan, being that of the deceased father's settlement by birth, would appear to be liable to support his child.

But it is maintained on the part of the parish of Govan that there are specialties in this case, arising out of the second marriage of the pauper's mother, which take it out of the operation of the general rule, and that the parish which, in the circumstances that here occur, is liable to support the pauper is either that of its own or of its mother's birth. The ground upon which this is maintained is, that the mother by her second marriage lost the settlement of her first husband, and acquired not only for herself but for her pupil child the residential settlement of her second husband in this parish of Old Monkland, and that the latter settlement having since been lost by non-residence, the pauper's settlement at the date of chargeability in 1875 was either in the Barony parish, that of the pauper's own birth, or in the parish of Girvan, *i.e.*, the parish of her mother's birth. This is distinctly stated and pleaded in the record in answer to the 4th article of the condescendence, and in the 5th plea-in-law for the defenders the parish of Govan.

As regards the parish of the pauper's own birth, I do not think that there is room for any serious question. For the course of the decisions ever since that of *Barbour* v. *Adamson* has been uniform, to the effect that when such a question is raised as between the birth settlement of a pupil child and the birth settlement of its parent, the settlement of the parent is held to regulate liability. In the case of *Barbour* v. *Adamson* it was the birth settlement of the father; and in the cases of *Gibson* v. *Murray*, 10th June 1854, and of *Carmichael* v. *Adamson*, 28th February 1863, it was the birth settlements of the mothers which were respectively held liable to support the children in a question with the parishes of the children's own births. There is no ground therefore, in my opinion, upon which the Barony parish can be held liable at present to support the paupers.

The other question, viz., Whether the liability to support the pauper attaches to the parish of Govan or to that of Girvan? is not so clear. On that question the Lord Ordinary has held that this case is ruled by the decision in that of *St Cuthbert's* v. *Cramond*, 12th November 1873, referred to in his note; and although the question was there raised with regard to the residential and not the birth settlement of the father, I am of opinion that the Lord Ordinary is right in holding that the same principle applies in the circumstances of the present case.

It was strongly contended on the part of the defender the inspector of Govan that in deciding that case of *St Cuthbert's* the judgment of the whole Court in the case of *Greig* v. *Adamson*, 2d March 1863, 3 Macph. p. 575, was disregarded, and that the rules there laid down, as well as in the earlier cases of *Gibson* v. *Murray*, 16 D. 926, and of *Carmichael* v. *Adamson*, 1 Macph. 452, supported the views maintained by the defender. But in this I think that the defender is under a misapprehension. In the cases of *Carmichael* and of *Gibson* the point raised in the present case did not and could not occur, because in those cases the father of the pupils had no settlement in Scotland. In these circumstances the Court, though not without difficulty, followed the rule of *Barbour* v. *Adamson*, holding that, as the mother was substantially the pauper and the head of the family, the parish which was bound to relieve her was also liable to support her pupil children.

The circumstances of *Greig* v. *Adamson* were different. There the first husband was dead. The second husband was alive, and had a settlement in Scotland, which was, of course, that of his wife, whom he had deserted, leaving the children of both marriages in family with her at the time she applied for relief. The somewhat

absolute and unqualified terms in which the decision of *Greig* v. *Adamson* is stated in the rubric may have led the parties here to think that that case had been disregarded in deciding the case of *St Cuthbert's* v. *Cramond*. For it is there stated, not merely that the widow by her second marriage had lost the settlement of her first husband, but that she "had acquired that of her second husband not only for herself, but also for the pupil children of her previous marriage." Now, I do not think that any such broad rule relative to the children was laid down in *Greig* v. *Adamson*. And I am unable to find in the opinions of the majority of the Judges in that case any such rule as is here contended for—namely, that immediately on the second marriage of a woman the pupil children of her first marriage, who had acquired their father's settlement, are transferred in a body to the settlement of the second husband, and lose the settlement they had acquired through their own father. If the opinions are carefully examined—particularly that of Lord Deas, which was concurred in by the majority of the Court—it will be seen that the judgment is put distinctly on this, that the mother was pauperised by having to support the children of both marriages, and as she was truly the pauper, and was obliged to go against the parish of her second husband, the children in family with her should in the meantime be relieved by that parish also, thus applying the principle of *Barbour* and *Adamson* that families should not be separated where it can possibly be avoided. But it leaves the question open what the rule is to be where the mother is dead before relief is required for the children. In such a case I see nothing in the opinions in *Greig* v. *Adamson* to indicate that the parish of the mother or of the stepfather's settlement would be liable for their support instead of the parish of their own father's settlement. And I can see nothing in the circumstances of the present case to take it out of the broad general rule that a legitimate child, being a pupil, follows the settlement of its father whether the father is dead or is alive.

Lord Deas concurred, and said — The question here relates to the settlement of a pupil whose father is dead, and whose mother married again, and what is to be settled is, How far the settlement of the child which it acquired by the death of its father is altered by the subsequent marriage of the mother? I hold that it is settled that where the mother after the husband's death maintains her family, she being a pauper, the settlement of the pupil children must follow hers. This was particularly laid down in *Greig* v. *Adamson*, and in that case there was an opinion expressed as to the present question—namely, How far the pupil's settlement would be affected by the subsequent marriage of the mother? and I find that there I said that the settlement of the pupil child can be no ways altered by the subsequent marriage of its mother.

Lord Shand—The claim of Govan, as the parish of the pupil's father's birth, to be relieved of the maintenance of the pupil, is rested on the ground that the pupil after her father's death acquired a new settlement by the subsequent marriage of her mother, who acquired her second husband's settlement. If the pupil had acquired her mother's settlement, and lost that by non-residence, the question would arise whether the pupil child fell back on her father's birth settlement in Govan or her own birth settlement in the Barony parish? That question, in my opinion, does not arise, for I think the case of Govan fails, because on the authorities I do not think the pupil did acquire a new settlement by the second marriage of her mother. The dicta seem to come to this, that the mother having survived the father, and being the keeper of the children, they must during her lifetime be charged on her parish. But the pupil still has a settlement in the place of the settlement of its father, and though there may be a temporary suspension of that settlement in following that of the mother if she is a pauper, that suspension is merely temporary so long as the child is in pupilarity—it never really loses its hold on the father's settlement. But on the mother's death the child's hold on the mother's parish is at an end, and she takes her father's settlement. The result is that we carry out the principle laid down in the leading case of *Barbour*.

Lord President concurred.

The Court adhered.

Counsel for Inspector of Govan Combination (Reclaimer)—Guthrie Smith—Alison. Agent—John Gill, S.S.C.

Counsel for Inspector of Barony—Burnet—Low. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for Inspector of Girvan — Asher — Moncreiff. Agent—John Carment, S.S.C.

Friday, March 8.

FIRST DIVISION.

[Lord Rutherfurd Clark, Ordinary.

DUNCAN *v.* THE DUNDEE, PERTH, AND LONDON SHIPPING COMPANY.

Shipping Law Salvage—Owners of Ship salved found Liable for Salvage both on the Ship and on the Cargo.

Where a ship employed in the coasting trade in Great Britain was placed in great danger through the fault of the owners' servants, and was salved by another vessel—*held* (1) that the owners could be proceeded against in an action directed against them personally for salvage of ship and cargo; (2) that they were liable for salvage both on the ship and on the cargo, though they were not owners of the cargo, for, being common carriers, they were responsible for the safe delivery of the latter, and therefore the aid given by the other ship was really rendered to them in respect of it as well as of the ship.

Remarked that a Court of Appeal is very unwilling to disturb the finding of an Inferior Court as to the amount of salvage to be paid, as that question is very much one of discretion.

This action was raised in the Court of Session by Peter Miln Duncan, merchant and shipowner