by the respondent, and decern: Find the appellants entitled to expenses in both Courts, and remit to the Auditor to tax the same and to report.

Counsel for Pursuer (Respondent)—Asher—Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defenders (Appellants)—Balfour—Mackintosh. Agents—H. & A. Inglis, W.S.

Wednesday, June 12.

FIRST DIVISION.

[Sheriff of Ayrshire.

ANDERSON (INSPECTOR OF MAYBOLE PARISH) *v.* PATERSON (INSPECTOR OF IRVINE PARISH).

Poor—Relief—Act 8 and 9 Vict. c. 83 (Poor-Law Act), sec. 71—Where a Pauper Child Obtained Relief from one Parish, its Father being able-bodied and having a Residential Settlement in another.

A pauper child received parochial relief from the parish in which she was living at the time. Her father was an able-bodied man in another parish, but at the time when relief was first given he had no settlement in Scotland. After the father had acquired a residential settlement in that other parish, the inspector of poor in the parish which was affording relief gave the usual statutory notice of chargeability and a claim of relief to the inspector of poor in the parish of the father's settlement, and intimated that the father, who still continued able-bodied, refused to maintain the child. In these circumstances the Court *held* that the parish where the father had a settlement, being the parish of settlement of the pauper at the date of the statutory notice, was liable to relieve the parish which had afforded relief of advances made after the date of the statutory notice.

This was an action brought by John Anderson, inspector of poor in Maybole parish, against Andrew Paterson, inspector of poor in Irvine parish, for repayment of certain sums of money applied as parochial relief to the maintenance of Helen Higgins between 3d August 1874 and 23d July 1877. Helen Higgins was on 24th December 1873 (when parochial relief was first given to her) about 10 years of age, in a destitute condition, and suffering from an ulcer in one of her legs. She was then residing in Maybole parish, where she was born. Her father, William Higgins, was born in Ireland, and had in December 1873 no settlement in Scotland, but was living in the parish of Irvine, and on learning that fact the pursuer on 3d August 1874 gave to the defender the usual statutory notice that Helen Higgins had become chargeable, and claimed relief from Irvine as the parish of settlement. Shortly before that date William Higgins had, by five years' continuous residence in Irvine, acquired an industrial settlement in Irvine parish. During that time he had received no parochial relief, and would not have been entitled to any relief on his daughter's account. On 26th August 1874 the pursuer intimated to the defender that William Higgins refused to take his daughter or to maintain her, and it was admitted that the defender took no steps to remove the child from Maybole or to provide for her maintenance.

The defender pleaded, *inter alia*—"(5) The said Helen Higgins not having acquired a settlement, either derivatively or otherwise, in the parish of Irvine at 24th December 1873, the defender is not bound to repay any advances made or to be made, for her support by the pursuer, as concluded for. (6) *Et separatim*—the said William Higgins being at 24th December 1873 an able-bodied man, and not having then deserted the said Helen Higgins, she was not a proper object of parochial relief at said date."

The facts as stated above were admitted in a minute lodged in process.

The Sheriff-Substitute (ORR PATERSON) found the defender liable to relieve the pursuer's parish of the advances made, and which might thereafter be made, to Helen Higgins, so long as she remained a proper object of relief and continued in Irvine parish. He added this note—

"*Note*—Parties having renounced probation, and asked that the case should be disposed of on the admissions in process, the Sheriff-Substitute has pronounced judgment on the materials furnished by these admissions.

"The admission that Helen Higgins was a proper object of parochial relief being made under the qualification that had she been living in family with her father he would not have been entitled to parochial relief on her account, amounts to this, that there was nothing exceptional in respect of the state either of her body or mind which entitled her to relief notwithstanding of her father being able-bodied, and that it was only in respect of her becoming destitute in the pursuer's parish, when living there apart from her father, that relief was rightly furnished to her.

"The case of *Wallace*, 20th March 1872 (10 Macph. 675), seems to decide that relief so furnished to a wife or pupil child does not prevent the acquisition of a residential settlement by the husband or father; and that the settlement so acquired by the husband or father while the wife or child is receiving relief from and residing in another parish, inures to the wife or child (see also *Palmer*, 10 Macp. 185). If that be so, William Higgins, the father, had at the date of the statutory notice in August 1874 acquired a residential settlement in the parish of Irvine, and his settlement was the settlement of his pupil child.

"The statutory notice was therefore properly given to the parish of Irvine, which at the date of notice was the parish of the child's settlement.

"Under the 70th section of the Poor Law Act the relieving parish is bound to afford interim payment maintenance 'until the parish or combination to which such poor person belongs be ascertained, and his claim upon such parish or combination admitted or otherwise determined, or until he shall be removed.'

"Here the defender's parish on receiving the notice refused to admit liability or to remove the pauper; and under the Poor Law Act the relieving parish had no power to remove the

child to her parish of settlement until liability was acknowledged or otherwise determined.

"The pursuer's parish was therefore bound to continue to furnish relief to the child until the parish of settlement was determined, and is entitled to repetition thereof from the date of notice from the parish of settlement when determined.

"The Sheriff-Substitute has felt some difficulty in determining whether the relieving parish was not bound to go directly against the father, who was an able-bodied man and liable for his child's support.

"Beyond the fact that the relieving parish must have known before giving the statutory notice that the father of the pupil was residing in Irvine, there is nothing to show when the relieving parish came to knowledge of where the father was, and no admission is made on the point.

"In that state of the admissions, the Sheriff-Substitute cannot hold that the relieving parish was in knowledge of the residence of the father for a time prior to the notice being given beyond what was necessary to allow of notice being given, or that the giving of notice was purposely delayed to allow of a residential settlement being acquired by the father before notice.

"The question therefore resolves into this, is the parish relieving a pupil child bound to go against the able-bodied father; or is it entitled to go against the parish of the father's settlement?

"The 71st section of the Poor Law Act provides, 'That where in any case relief shall be afforded to a poor person found destitute in a parish or combination, it shall be lawful for the parochial board of such parish or combination to recover the monies expended on behalf of such poor person from any parish or combination within Scotland to which he may ultimately be found to belong, or from his parents, or other persons who may be legally bound to maintain him.'

"This seems to give the relieving parish the option of suing the parish of settlement in the first place; and the judgment in the case of *Wallace* supports the view that this is a competent course.

"Although the above interlocutor embodies what the Sheriff-Substitute regards as the result of the application of the principles laid down in the recent authorities to the facts of the present case, it is not without difficulty that he has arrived at a judgment which puts the burden of the support of the child on the defender's parish only in respect of what has occurred since the date at which the child became chargeable."

The defender appealed to the Sheriff (Campbell), who adhered. He declined to allow the defender additional proof.

The defender appealed to the Court of Session, and argued—The date of chargeability, and not the date of notice of chargeability was the *terminus a quo* at which the liability in respect of a pauper's settlement must be determined. The pauper's father not having acquired a settlement in Scotland at the time of her chargeability, but she having a legal settlement by birth in Maybole, that parish was liable for her relief. Further, the father being an able-bodied man at the time when relief was begun to be given, and not having then deserted his child, she was not at that time a fit subject for parochial relief.

Authorities—*Petrie* v. *Meek*, March 4, 1859, 21 D. 614; *Jack* v. *Isdale*, February 12, 1866, 4 Macph. (H.L.) 1; *Murray* v. *Hutchison*, March 20, 1867, Poor Law Mag. vol. ix., 1st ser.; *Johnson* v. *Wallace*, June 13, 1873, 11 Macph. 699; *Beattie* v. *Adamson*, November 23, 1866, 5 Macph. 53.

Argued for the respondent—As the father of the pauper had acquired and still held a residential settlement in the parish of Irvine, that settlement formed the settlement of his child; and as the pauper was during the time that parochial relief was afforded a proper subject for relief, the parish which afforded it was entitled to relief from the parish of her father's settlement.

Authorities— *Wallace* v. *Turnbull*, March 20, 1872, 10 Macph. 675; *Palmer* v. *Russell*, December 1, 1871, 10 Macph. 185; *Adamson* v. *Barbour*, May 30, 1853, 1 Macq. 376; *Hay* v. *Paterson*, January 29, 1857, 19 D. 332.

At advising—

Lord President—This is an action raised by the Inspector of Poor in the parish of Maybole to recover from the parish of Irvine a sum of money paid for the maintenance of a child who when the first advances were made was ten years of age. The claim begins on the 3d August 1874, on which day the statutory notice was sent by the pursuer to the defender that the child had become chargeable. I do not think that there is any reason to doubt that Irvine is responsible for relief to the child if that relief was properly given, and if the child was a proper object for relief. But there are peculiar circumstances here in this respect. The father was an able-bodied man, and was in Irvine, where his industrial settlement was. Therefore the duty of maintaining the child properly fell on the father, and not on the parish, and in ordinary cases I should not be inclined to encourage a parish which was bound to relieve a child in not sending the child to its parent.

If the father had been living at Maybole, no doubt the proper duty of the inspector there would have been to insist on his taking the child. If the father too were an object for parish relief, that would be a different matter, but he was able-bodied and bound to maintain the child. Again, if the father's residence was in another third parish, neither the parish of relief nor that of recourse, a delicate question would have arisen as to how far the parish affording relief would be entitled to go against the parish of settlement instead of against the father. On that point I give no opinion.

But the peculiarity here is that this able-bodied man was residing in Irvine, the parish in which the defender was inspector, and was accessible to him, and when notice was given to him a duty was imposed on him which is practically admitted in the answers made by the defender, and it therefore appears to me that the inspector of Maybole discharged himself of his duty in insisting that the father should take the child. I think that the responsibility of getting the child taken into the residence of the father was shifted from Maybole to Irvine, and the defender failed in his duty when he did not go to Higgins and insist upon his taking the child.

But I wish to guard myself from appearing to

sanction the general rule that where a pauper is found destitute and relief is afforded, that the parish so affording relief will have a good claim of relief from the parish of settlement if there is an able-bodied father of the pauper accessible and able to maintain the pauper himself.

Lord Deas concurred.

Lord Mure—I concur, but with difficulty, as the sixth plea-in-law for the defender, to the effect that on 24th December 1873 Higgins was an able-bodied man and his daughter was therefore at that date not a proper object of relief, seems to me sound. But on the ground of the specialties in the case mentioned by the Lord President I do not differ. And further, on the authorities I find that the Court is acting in accordance with the rule followed in the case of *Dinwoodie* v. *Graham*, January 27, 1870, 8 Macph. 436.

Lord Shand—I concur. On 7th August 1874, when the parish of Maybole gave notice to the parish of Irvine, the pauper was a proper object for parish relief. For although the father was an able-bodied man, he was at a distance, and he had left the child destitute, and with no means of subsistence. It was then the duty of Maybole to relieve the child till some other provision was made. This being the case, the statute says that where any relief is given the parish which gives it shall recover from any parish to which the pauper belongs, or from the parents of the pauper. The statute gives the relieving parish an alternative, and here the parish of Maybole gets the benefit of the first alternative, which is all that is asked.

The Court adhered.

Counsel for Pursuer (Respondent)—Dean of Faculty (Fraser)—Moncreiff. Agent—J. Carment, S.S.C.

Counsel for Defender (Appellant)—Guthrie Smith. Agents—Morton, Neilson, & Smart, W.S.

Wednesday, June 12.

SECOND DIVISION.

[Lord Adam, Ordinary.

SIVRIGHT *v.* STRAITON ESTATE COMPANY (LIMITED).

Superior and Vassal—Casualty—Personal Title—Conveyancing Act 1874 (37 *and* 38 *Vict. cap.* 94), *sec.* 4, *sub-sec.* 4.

Held (*aff.* Lord Adam, Ordinary) that under the 4th sub-section of the 4th clause of the Conveyancing Act 1874 a singular successor in whose favour in November 1876 a disposition was executed and recorded was liable to the superior in payment of a casualty of a year's rent, although the superior had in 1873 granted a precept of *clare constat* in favour of the heir of the last-entered vassal (who was still in life), but which was not recorded till after the institution of the action.

Opinions (*per curiam*) that this case was ruled by the cases of *Ferrier's Trs.* v. *Bayley*, May 26, 1877, 4 R. 738, and *Rossmore's Trs.* v. *Brownlie and Others*, Nov. 23, 1877, 15 Scot. Law Rep. 129, and that the unrecorded precept of *clare constat* was merely a personal title which in virtue of the Conveyancing Act 1774 was swept away by the subsequently recorded disposition.

Counsel for Pursuer (Respondent)—Balfour—Pearson. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defenders (Reclaimers) — Lord Advocate (Watson)—M'Laren. Agents—Welsh & Forbes, S.S.C.

Wednesday, June 12.

FIRST DIVISION

[Sheriff of Dumfries and Galloway.

BARCLAY *v.* NEILSON.

Lease—Farm Buildings—Obligation on Landlord to put Buildings in Tenantable Order.

A lease for nineteen years contained a declaration that the additions to the farm buildings and repairs thereon should be executed in a manner to be approved of by the landlord. There was no obligation on either landlord or tenant to execute them, and no specification of what they were to be. *Held* (1) that in the absence of any special stipulation to the contrary, the liability for repairs must fall on thel andlord, and, on the principle *noscitur a sociis*, that the liability for additions must also fall on him ; and (2) that the measure of his liability was what was required for the cultivation of the farm in terms of his lease, and should be ascertained by a remit to a man of skill.

This was an action raised in the Sheriff Court at Kirkcudbright by John Barclay, tenant of the farm of Barstobrick, against his landlord, and concluded for decree that the defender should be ordained to implement the lease of the farm granted by him to the pursuer of date February 1869, "by making and completing the repairs and alterations on the houses and buildings on said lands and others thereby let, referred to in said lease, and agreed to between the parties," &c. The particular repairs and alterations asked were specified in the summons, and the Court were alternatively asked to have these ascertained. There was a further alternative conclusion for damages.

The clauses in question of the lease provided—"And with respect to the houses and buildings upon the said lands and others hereby let, it is declared that the additions to and repairs thereon shall be made and completed in a manner to be approved by the said Walter Montgomerie Neilson or his foresaids; and on the same being completed they shall be upheld and maintained in good tenantable condition during the lease, and left in like condition at the expiry thereof by the said John Barclay and his foresaids, and the proprietor shall have full power and liberty to have the said houses and buildings annually inspected by a competent person or persons appointed by him, and in case and so often as repairs are necessary,