successful claimants, after the lapse of one calendar month from the date hereof, the articles *in medio* still undelivered; and on his doing so, exoner and discharge him from all claims thereon; and decern," &c.

Counsel for Barclay and Others (Appellants)—Kinnear — Mackintosh. Agents — Ronald & Ritchie, S.S.C.

Counsel for the Drummonds and Others (Respondents)—Asher—Jameson. Agents—Dove & Lockhart, S.S.C.

Counsel for Scouler and Jamieson (Respondents)—Trayner—Pearson. Agents—Douglas & Ker, Solicitors.

Tuesday, January 13.

SECOND DIVISION.

[Sheriff of Perthshire.

HENDRY (INSPECTOR OF TILLICOULTRY) *v.* MACKISON (INSPECTOR OF KILMADOCK) AND CHRISTIE (INSPECTOR OF DUNBLANE).

Poor—Settlement of a Pupil Child where the Mother had Married a Second Time.

The father of a female pupil child had at the time of his death in 1872 a residential settlement in K. Immediately after the father's death the pupil's mother left the parish of K. and married a second time. The mother died in 1878, and the pupil's stepfather having refused to support her, she became chargeable as a pauper. *Held* that the parish of the father's settlement at the time of his death was liable for her relief.

Observed that a pupil child cannot lose by non-residence the settlement which it derives from its parent.

The pursuer in this case, the inspector of poor of the parish of Tillicoultry, sued the inspector of the parish of Kilmadock, and alternatively of Dunblane, for repayment of certain sums paid by him as alimentary advances on behalf of Elizabeth Scobie, a pupil pauper who had been born at Deanston on 29th March 1867. Her father John Scobie had been born in the parish of Dunblane, but for a number of years (upwards of five) prior to his death, which took place in May 1872, he had resided at Deanston, in the parish of Kilmadock, and had at the time of his death a residential settlement in that parish. He had married in December 1865 the pauper's mother Elizabeth Richardson. Immediately after her husband's death the latter had removed with the pauper to Tillicoultry, and about two years thereafter had married, about April 1874, Robert Mackay, who resided in Tillicoultry. The pauper had continued to reside with her mother until the marriage, and thereafter resided along with her stepfather and her mother in Tillicoultry until her mother's death in August 1878. After her mother's death her stepfather refused to support her, and she being unable to aliment herself became chargeable as a pauper, and claimed and received parochial relief from the parish of Tillicoultry. Statutory notices were sent by the pursuer to each of the defenders on 26th September 1878.

In this state of the facts a question arose as to whether the pupil Elizabeth Scobie by the removal of herself and her mother from the residential settlement which her father held at his death had lost her settlement there. If she had not, Kilmadock was liable. If she had lost it, decree was asked against Dunblane, which was the parish of her father's birth settlement. Kilmadock and Dunblane both pleaded that Tillicoultry was the parish of the pauper's settlement, and therefore liable.

The Sheriff-Substitute (GRAHAME) on 14th August 1879 pronounced an interlocutor in which he found in point of law "that at the date of the said John Scobie's death his widow and pupil child had derived through him a residential settlement in Kilmadock parish; that the said child could not, up to the date when she became chargeable as a pauper, as being then in nonage, acquire for herself any new settlement; that the settlement in Tillicoultry which her mother acquired on her second marriage was acquired for herself alone, and did not enure to her child, but that the child continued to follow the settlement of her father in Kilmadock, and that when at her mother's death she became chargeable as a pauper, that parish, as having been the parish of her father's residential settlement when he died, was the parish of her settlement, and as such liable for her maintenance." And the Sheriff therefore decerned against Kilmadock.

He added the following note:—

"*Note.*—In this case questions are raised as to the liability of three separate parishes for the maintenance of Elizabeth Scobie, a pupil pauper—the questions being, Whether the parish of Tillicoultry, where the pauper became chargeable, and where her mother had, after the death of the pupil's father, acquired through a second marriage her second husband's residential settlement, was liable? or secondly, Whether the parish of Kilmadock, as having been the parish of the residential settlement of the pauper's father at the time of his death, or otherwise, as being the parish of the pauper's birth settlement, was liable? or thirdly, Whether in the event of the father's residential settlement at Kilmadock being held to have been lost to his child through non-residence under the 76th section of the Poor-Law Act, his birth settlement at Dunblane did not come into effect, and render that parish liable for the pauper's maintenance? The Sheriff-Substitute thinks that the father's residential settlement at Kilmadock determines the liability of that parish. The view taken by the Sheriff-Substitute is that the residential settlement in Kilmadock of the pupil's father on his death passed to his pupil child; that she as a pupil could not lose it for herself, and that no new settlement having been acquired on her behalf through her mother's second marriage, her father's settlement must be held to be still in force. It is an established principle that no settlement can be lost without the acquisition of a new one, and it is a further principle of the poor-law that no pupil child can acquire a settlement for itself. The head of the family of which it is a member is the pupil's responsible representative in all questions of parochial liability for maintenance; and until the child is forisfamiliated, the settlement of parentage, whether of birth

or residence, as the case may be, alone is recognised as that of the pupil child, and cannot be lost by non-residence on its part. On the father, and on his death on the mother, of a pupil child the law enforces the obligation of its maintenance; and on the parents' failure to discharge this obligation, their respective parishes of settlement, whether of birth or residence, have to take up the burden. Thus the father as head of the family is primarily liable for the maintenance of his pupil children, and on his death the parish of his settlement has to discharge this obligation; and until a new settlement has been acquired and new family roof-trees planted, either by the surviving mother as now the head of the family, and therefore capable of acquiring a residential settlement for herself and her children, or by the children themselves becoming forisfamiliated and independent of their parents, the father's parish of settlement is alone liable. No doubt when the father dies leaving a widow, she becomes the head of the family, and during the pupillarity of the children of the marriage, may, should she become a pauper, claim relief on their account as well as her own from any parish in which she has through a second marriage acquired for herself the settlement of her second husband. Pupil children while living in family with their mother are held so far to follow her fortunes, and from the parish of her settlement, acquired in the manner above referred to, she is entitled to obtain relief not only on her own account but on theirs. In all this, however, there does not appear to be any good ground afforded for holding that there has been any destruction of the pupil children's rights originally derived from their father's settlement; and in the event of the mother dying while the children are still in pupillarity, their father's parish of settlement will, in preference to that of their stepfather, be liable for their support. Some of the earlier decisions may seem at first sight to point to the possibility of a surviving mother acquiring either by residence or through her second marriage a new settlement not only for herself but for her pupil children on their own account; but the opinion of the judges, as delivered in the late case of *Beattie* v. *M'Kenna and Wallace*, March 8, 1878, 5 R. 737, clearly show that these earlier cases are not to be taken as deciding that the settlement of a pupil child can in any question with the parish of its father's settlement be in any way affected by the newly acquired settlement of its mother through her second marriage. Lord Shand in giving his opinion in *Beattie's* case said—'The previous cases seem to come to this, that when the mother has survived the father the pupil children must during her lifetime be charged on her parish, because she is truly the pauper. The pupil still, however, has a settlement derived from his father. Though there may be a temporary suspension of that settlement in following that of the mother if she become a pauper, on the mother's death the child's settlement is that derived from its father. The result is that the principle laid down in the leading case of *Barbour* (1 Macq. 376) is carried out, and there is no separation of the family.' It is to be kept in view that, in the present question as to the liability of Tillicoultry parish for the maintenance of the pupil child, it is the relation of the child to its father, and not that of the wife to the husband, that is the regulating principle. The wife always follows the settlement of her husband, but the child that of its father; and it is this last relationship which constitutes the family tie by which, according to the principle and intention of our poor-law, the members of the family are kept united. The children which a widow brings to the home of her second husband are not in the proper sense members of his family; and it is contrary to the principle of the poor-law to hold that the acquired relation of a stepfather to pupil children destroys their inheritance in their own father's parish of settlement and makes them members of a stranger's family.

"The Sheriff-Substitute has only to add, that if the view now taken as to the obligation falling on Kilmadock in respect of the residential settlement of the pauper's father having been at his death in that parish is correct, it follows that the questions which have been raised as to the liability both of Dunblane parish as the parish of birth settlement of the pauper's father, and of Kilmadock as the parish of the birth settlement of the pauper herself, must be decided in the negative. The conclusion of the whole question is that the residential settlement of the pauper's father passed to her at her father's death, that she acquired no new settlement through her mother's second marriage, and that the original settlement never having been lost, the liability of the parish of Kilmadock for the maintenance of the pauper, as set forth under the present petition, is determined."

The inspector of Kilmadock appealed to the Court of Session, and argued—While admitting that the only difference between the point in dispute and that decided in the case of *Beattie* v. *Wallace* (March 8, 1878, 5 R. 737) was that in the present case the settlement of the father was by residence, and in *Beattie's* case it was by birth, that distinction took it out of the category of *Beattie* v. *Wallace*.

Authorities—*Hay* v. *Carse*, Feb. 24, 1860, 22 D. 872; *Allan* v. *Burton and Higgins*, Feb. 8, 1868, 6 Macph. 358; *Crawford and Petrie* v. *Beattie*, Jan. 25, 1862, 24 D. 357; *Kirkwood* v. *Manson*, March 14, 1871, 9 Macph. 693; *Greig* v. *Adamson*, March 2, 1863, 3 Macph. 575; *St Cuthbert's* v. *Cramond*, Nov. 12, 1873, 1 R. 174.

At advising—

Lord Justice-Clerk — The proposition here maintained for Kilmadock is that a pupil child can lose its father's residential settlement by absence. The proposition is certainly a novel one, and without authority I should not be inclined to accept it. The question has already arisen in the case of *Beattie* v. *Wallace* (*supra*), but with this difference only, that there the settlement of the father was a birth one. No doubt it was in a somewhat different shape, for there could be no question regarding the loss of a birth settlement, as it enures always; but what was decided in *Beattie* v. *Wallace* was whether the obligation to support a pauper who is a pupil child, and whose father and mother are dead, attached to the father's settlement, which was the parish of his birth, or to the parish of the mother's birth settlement, or to that of the pauper's own birth, and it was decided that the pupil took the settlement of the father's birth. There is no doubt that Mr Smith was entitled to

raise the question whether a residential settlement was to be considered as coming under the same category as a birth settlement, though I am bound to say that I cannot see any distinction between them as regards this matter, and the opinion of Lord Mure in the case just quoted, where Lord Colonsay's opinion in the case of *Gibson* v. *Murray*, 16 D. 926, is cited with approval, seems to me an authority to the effect that there is no distinction between them. The opinions of the other Judges in that case are to the same effect, that the father's settlement, whether birth or residential, is liable.

I cannot see the difference to be drawn between a pupil's capacity for losing and for acquiring a settlement. It seems to me contrary to common sense that a pupil while unable to acquire a settlement should lose it by non-residence, and in the absence of authority to the contrary I hold that a pupil has capacity for neither the one nor the other. I am of opinion, therefore, that the Sheriff was right in this case in holding that a pupil child cannot by its own absence lose the settlement of its father.

Lord Ormidale concurred.

Lord Gifford—I am of the same opinion. *Beattie* v. *Wallace* is really conclusive. I cannot take the distinction relied on by Mr Smith—that in the former case it was a birth settlement and here a residential. It seems to me that it makes no difference—the pupil falls back on the father's settlement, and whether that settlement be one of birth or residence it does not matter. It is also clear, I think, that a pupil, as it cannot acquire a settlement, cannot lose one. A pupil cannot do anything, and in the eye of the law, therefore, it cannot be voluntarily absent from any parish. It is the same as a lunatic in this respect, and the cases of lunatics in which a different result was reached are all explainable on the ground that the absence began before the lunacy.

Interlocutor of Sheriff affirmed, with additional expenses to both parishes.

Counsel for Pursuer (Respondent)—Balfour—Macfarlane. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Counsel for Defender Mackison (Appellant)—Lord Advocate (Watson)—Guthrie Smith. Agents—Dundas & Wilson, C.S.

Counsel for Defender Christie (Respondent)—Kinnear—Rutherfurd. Agents—Frasers, Stodart, & Mackenzie, W.S.

Friday, January 16.

FIRST DIVISION.

[Sheriff of Lanarkshire.

MP.—HAMILTON AND STEWART *v.* WRIGHT AND SHARP.

Husband and Wife—Nullity of Marriage—Rights of Innocent Husband over Property of Guilty Wife where Marriage Null owing to Prior Marriage.

S. was married to M. in 1838, who in 1841 deserted her. In 1854 S. went through a ceremony of marriage with W. without taking any sufficient means to ascertain whether M. was still alive. In 1875 W. discovered for the first time that there had been a prior marriage with M., and on inquiry found without any difficulty that he was still living. Prior to this, by arrangement between W. and S., the sum of £65 had been deposited with two persons as trustees for behoof of S. in liferent and her two children by W. in fee. In a competition between S. and W. as to this money, *held* (1) that in point of fact the money was part of the proceeds of S.'s own industry; and (2) that in the peculiar circumstances of the case she was entitled to have it paid to her.

Question—Whether where a marriage was a nullity from bigamy, the guilty wife forfeits all her rights in favour of the innocent husband, and whether the *jus mariti* operates as in the case of a lawful husband?

Sheriff—Jurisdiction—Action between Husband and Wife.

Where a party had married a second time while her first husband was still alive, by arrangement between the parties, a sum was conveyed to trustees for behoof of the wife and the children by that marriage. Upon its subsequently being ascertained by the second husband that his marriage was null, a dispute arose as to the right to the sum in question. *Held* that as judging from the pleadings it was possible that in the result it might be held that the fund in question belonged to the wife irrespective of whether there was a marriage or not, the action was not incompetently brought in the Sheriff Court.

Agnes Burnside Sharp was married to James Miller in 1838. He left her in 1841, having enlisted in the East India Company's service. She thereafter, on the 8th December 1854, went through a ceremony of marriage with Henry Wright, and they lived together as man and wife until 12th February 1875, when she left his house, as she averred, on account of his cruelty. Shortly after this took place Wright discovered that at the time he went through the marriage ceremony with Agnes Sharp her first husband (Miller) was alive, and that he was still alive.

On 25th February 1874, before Wright suspected the existence of the prior marriage, and following upon the difference which led to a separation, a sum of £62 was put in bank in the names of Claud Hamilton and John Stewart as trustees for behoof of Agnes Sharp in liferent and her two children by Wright in fee. That sum formed the fund *in medio* in this multiplepoinding, which was brought by the trustees in question as nominal raisers, the real raiser being Wright, and Sharp being the only other claimant. Neither the children nor the first husband were called or appeared. Wright claimed that the whole fund *in medio* should be made over to him; Sharp that it should continue to be held by the nominal raisers in trust, or alternatively that it should be paid to her. She averred that in point of fact the money was hers, being the product of a drapery business which she carried on before and after her marriage with Wright. He denied this, and averred that the money was his own.