

The other Judges concurred.

The following interlocutor was pronounced:—

“Decern against the pursuer and respondent for payment to the reclamer of aliment at the rate of 28s. a-week since 15th August last, to continue till final judgment in the cause; further, decern against the respondent for payment to the reclamer of the sum of £30 further to account of her expenses to the close of the proof in the Outer House.”

Counsel for Pursuer (Respondent)—Young.  
Agent—A. Morison, S.S.O.

Counsel for Defender (Reclamer) — Ure.  
Agent—T. Carmichael, S.S.O.

Friday, October 22.

FIRST DIVISION.

[Sheriff of Renfrew and Bute.

WALLACE v. DEAS AND DEMPSTER.

*Poor—Poor Law Act 1845 (8 and 9 Vict. c. 83), secs. 69 and 76—Residential Settlement—Interruption of Residence by Parochial Relief.*

M. having resided about four years and eleven months in a parish, and having fallen ill, was visited by the parish doctor, and received a small amount of medicine. Held that this was “parochial relief” in the sense of the Act, and was sufficient to break the acquisition of a residential settlement.

Andrew Wallace, Inspector of Poor for the Parish of Govan Combination, Glasgow, brought an action in the Sheriff Court of Renfrew and Bute, against John Strachan Deas, Inspector of Poor for the Parish of Greenock, and Archibald Dempster, Inspector of Poor for the City Parish of Glasgow, jointly and severally, or severally and according to their respective liabilities, for payment of certain sums expended by him during the years 1878 and 1879 for relief of Peter M'Neil, labourer, Glasgow, and his family.

M'Neil's parish of birth was the City Parish of Glasgow, and a question had arisen whether or not he had since acquired a residential settlement in Greenock. At the proof before the Sheriff-Substitute a minute was put in for the two defenders admitting that the pursuer was entitled to decree against one or other of them, and relieving him from appearing further in the case, and in the subsequent appeals to the Sheriff and to the Court of Session no appearance was made for the pursuer.

At the proof before the Sheriff-Substitute Peter M'Neil, the pauper, deponed—“I once lived at No. 32 South Coburg Street, Glasgow. While a tenant there I left my wife and family and went to Greenock to work, and after working for not more than three weeks I removed my wife and family to Greenock. I got work in Caird & Co.'s foundry in Arthur Street, Greenock. I went first to lodge with Mrs Buntine in the Stanners, and was there for between four and six months, and then removed to a house opposite, where I remained for three or four months. I do not recollect who let me that house. Then we went to

lodge with a Mrs Ferguson in Dalrymple Street for about two months, when she left the house, and we remained as the tenants for about a year. After that we lived with a Mr Cunningham at No. 5 Crawford Street for about thirteen months, and then went to a Mr Gardiner in the same street for about six months. We next went to a Mr Kean in Charles Street, and stayed there for a year and a-half or two years. Then we took a house in Harvie Lane, and stayed there for a year at least. We next went to a Mrs M'Farlane in a street off Ardgowan Street, and stayed there for six or seven months. Then we stayed for three or four days with a Mr Broadley in Charles Street, after which we went to Ireland to see my wife's relations. We stayed there for three or four weeks, and on our return went back to Broadley's, and stayed for about six months. After leaving him we went back to Cunningham's, in Crawford Street, and stayed there for about a year, and then went to Main Street, Carlsdyke, and stayed for nearly a year. I was working, off and on, during the whole of these periods spoken to, with the exception of a few weeks . . . My memory is not distinct as to dates. I took badly in the spring after my return from Ireland, and applied to the Parochial Board in Greenock for medicine and medical attendance. I was visited by Dr M'Culloch. That illness lasted for about a fortnight. So far as I recollect, he did not advise me to go to the poorhouse or the hospital. I was also visited by a clerk from the parochial board office, but he did not offer me the poorhouse at that time. He did so afterwards, when I was in the Main Street house. A minister named Kerr applied to the board for me at that time. He said that he would go and state my case to Mr Deas, and I said nothing against it. I got medicine that time too from Dr M'Culloch.” His wife corroborated him as to the sequence of their various abodes. From the books of the house-factor it was proved that M'Neil left the Coburg Street house in May 1871, the tenant after him having got possession of the room on 10th May 1871. No other witnesses were called for the City Parish of Glasgow.

For the parish of Greenock it was proved that M'Neil's name appeared in Messrs Caird's books from September 1864 to March 1866, from October 1866 to April 1867, and from 16th October 1872 till 9th October 1875, but did not occur in the interval. In Messrs Scott & Co.'s books his name appeared from 1st July to 1st September 1866, from 24th April to 18th May 1867, and from 26th June 1871 till 18th May 1872. It was also proved that on 23d May 1876 M'Neil applied to the parochial inspector of Greenock for relief; that on inquiry he was found to be suffering from pleurisy, and in such sickness and poverty as to render him a proper subject for such relief; that he was offered admission to the poorhouse, but declined it; and that he received medical relief for about three weeks, and medicines, the cost of the latter being about 2s. 2d. There was also evidence to show that the pauper had been absent in Dumbarton for three or four weeks in 1875, and in Ireland in the same year for several weeks.

The Poor Law Act 1845 (8 and 9 Vict. c. 83) provides, section 69—“That in every parish or combination it shall and may be lawful for the parochial board, and they are hereby required,

out of the funds raised for the relief of the poor, to provide for medicines, medical attendance, nutritious diet, cordials, and clothing for such poor, in such manner and to such extent as may seem equitable and expedient." . . . Section 76 provides that "No person shall be held to have acquired a settlement in any parish or combination by residence therein unless such person shall have resided for five years continuously in such parish or combination, and shall have maintained himself without having recourse to common begging, either by himself or his family, and without having received or applied for parochial relief."

The Sheriff-Substitute (H. SMITH), after findings in fact, found "in law, that there being no sufficient evidence that the pauper resided for five years continuously in Greenock without having received or applied for parochial relief, the parish of the pauper's birth is the parish liable to the pursuer," and decreed accordingly against the City Parish of Glasgow.

The Sheriff (FRASER) on appeal adhered, and added this note:—

"Note.— . . . . . But there is still another ground of judgment which would bar the defence set up by Dempster, viz., the obtaining by the pauper parochial relief during the five years. He applied for parochial relief; he was visited by the assistant inspector of the poor several times; he was reported as a fit object for parochial relief, and he was so; he was offered the poorhouse and the parochial infirmary, both of which he declined, preferring rather to be treated in his own miserable room. He was there visited by the parochial surgeon and administered to as a pauper, and drugs to the extent of 2s. 6d. were given to him by the parochial board, and paid for by them. This was the kind of parochial relief he needed, and the asking and obtaining of that parochial relief during the five years has as effectually barred the acquisition of a settlement as if he had been maintained for a whole year by the parochial board of Greenock. The Sheriff has not thought it necessary to set forth this ground of judgment in the shape of findings, as he concurs in the ground of the judgment stated by the Sheriff-Substitute, and it is sufficient for the case."

The City Parish of Glasgow appealed to the Court of Session, and argued—The pauper had acquired a residential settlement in Greenock.

(1) On the evidence, his residence there had begun not later than 10th May 1871, in which case the five years had run before 23d May 1876, when the alleged parochial relief was given; but (2), in any view, that gift was not sufficient in law to break the period of residence. The man in applying for the trifling gift was not a pauper *quoad ultra*, and the argument might be pushed to cases of voluntary gift, or of attendance at a common dispensary.

The respondent was not called upon.

At advising—

LORD PRESIDENT—I do not see any reasonable doubt that the judgments of the Sheriffs are well founded. The appellants are the parish of birth, and seek to establish as against the parish of Greenock that the pauper acquired a settlement by industrial residence in Greenock for a period of five years. There are two tracts of time which he endeavours to set up as this period

of five years. The first begins on 10th May 1871; the other on 25th June 1871. The residence undoubtedly continued for a period of more than five years from either date, but the period from 10th May 1871 to 10th May 1876, which is sufficient for the acquisition of a settlement, would be unbroken by an alleged receipt of parochial relief by the pauper; whereas the period from 26th March 1871 to 26th June 1876 is broken by an alleged receipt of parochial relief on 23d May 1876.

There are thus two questions before us. The first is, whether the parish of birth has established a residence in Greenock, beginning on 10th May 1871? Now, I think the true view is that the parish of birth has failed to establish that proposition. The burden of proof was undoubtedly with them, and I never saw a feebler attempt to fix the continuance of a five years' residence. If it really began on or before 10th May 1871, that was surely a fact susceptible of proof; but we have no satisfactory proof of it. I am therefore for refusing that ground of appeal, and I think no more need be said about it.

The other question is of a different kind, and turns upon this, whether what occurred on 23d May 1876 was, in the meaning of the Poor's Act, a receipt of parochial relief. The relief was medical treatment and medicine. The pauper was visited by the parish doctor, a salaried officer of the parochial board, and received medicine at the expense of the parochial board. Now, that relief was given under the authority of the statute (sec. 69), and was relief which the parochial board is not entitled to give to anyone but a pauper. Section 69 provides "that in every parish or combination it shall and may be lawful for the parochial board, and they are hereby required, out of the funds raised for the relief of the poor, to provide for medicines, medical attendance, nutritious diet, cordials, and clothing for such poor, in such manner and to such extent as may seem equitable and expedient." Now, the power which is here given to the parochial board, and the obligation which is imposed upon them, is to provide out of the proper poor's funds medical assistance and medicine for "such poor," and they can go no further. If this man was not in the position of a pauper, he was not entitled to receive medicine or medical advice at the expense of the parochial board. But it was hardly suggested that he was not in that position. No doubt he did not require to be fed or clothed, but these are not indispensable conditions of pauperism. If he was off work and in want, the parochial board was entitled to assist him in whatever way he required, whether with food, clothing, or medicine, and though here the relief was confined to medicine, it was no less relief given, and quite properly given, under the statute. If it had been thrust upon him when he did not require it, that would have been another affair; and cases have been decided in which it was held that a residential settlement was not interrupted by relief so given, because it was improperly given. But that was not the case here; on the contrary, the relief was given quite properly, and consequently, under section 76 of the statute there has not been a period of five years during which the person acquiring the settlement has not been in receipt of parochial relief.

I am therefore for adhering to the interlocutor appealed against.

LORDS DEAS and MURE concurred.

LORD SHAND—I am of the same opinion. The first point is a question of fact, on which both the Sheriff and Sheriff-Substitute are against the appellant, and it would require a very strong case indeed to satisfy me that we ought to interfere with their decision. Indeed, if that were the only point in the case we could scarcely have entertained it.

But the second and more important point raises a question of law. Is professional medical advice and medicine parochial relief in the sense of the statute? I think there is no difference between their position and that of food or clothing. If it had been a case of voluntary giving of medicine, or if the man had gone to a dispensary, there might have been a different question; but here we have a formal application followed by relief, and though the amount is small the principle seems to be none the less clear; and I therefore agree with your Lordships on this point, which I think is the only question of any consequence in the case.

The Court refused the appeal, with expenses.

Counsel for Appellant (City Parish of Glasgow)—Trayner—Pearson. Agents—W. & J. Burness, W.S.

Counsel for Respondent (Parish of Greenock)—J. G. Smith—Jamieson. Agents—Duncan & Black, W.S.

Friday, October 22.

FIRST DIVISION.

[Sheriff of Lanarkshire.

SELKIRK (SERVICE'S TRUSTEE) v. SERVICE.

Process—Exhibition and Transumpt—Bankrupt—Trustee—Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79), secs. 90, 91, 93—Competency.

A trustee in bankruptcy brought an action against the bankrupt's father, as sole trustee under his own marriage-contract, for exhibition and transumpt of all writs affecting certain properties dealt with under the contract, with the view of ascertaining the bankrupt's interest therein. Held that his proper remedy was under the above sections of the Bankruptcy Act, and action dismissed as unnecessary.

Observations per Lord President on the proper office of an action of transumpt.

T. L. Selkirk, accountant in Glasgow, trustee on the sequestrated estate of James Service junior, raised an action in the Sheriff Court of Lanarkshire against James Service senior, as sole trustee under the antenuptial contract of marriage between him and the now deceased Sarah Causer or Service, and also as an individual, for a warrant against the defender ordaining him to exhibit and produce in the hands of the Clerk of Court

the whole writs, vouchers, and evidents of certain properties dealt with under the said marriage-contract, that they might be judicially transumed and authentic transumpt delivered to the pursuer.

By the said antenuptial contract James Service senior assigned and disposed to himself and the other trustees therein mentioned All and Whole certain heritable subjects, the said trustees to hold the same for the liferent use allenary of the said Sarah Causer or Service, exclusive of her husband's *jus mariti* and right of administration, whom failing for the liferent use allenary of the said James Service senior, and for behoof of the children or child to be procreated of the said intended marriage equally in fee, with power to the said trustees to sell the subjects publicly or privately, and to invest the price in the purchase of other heritages or in good heritable securities. There were two children of the marriage, James Service junior and Mrs Sarah Service or Blues. The mother Mrs Service having died, the defender and the other then acting trustees in 1873 disposed the said subjects to the trustees under the Glasgow Improvement Act, receiving therefor a price of £1050, which fell to be re-invested in terms of the said marriage-contract.

By the said antenuptial contract the said Sarah Causer or Service disposed to the defender, in the event of his surviving her, in liferent for his liferent use allenary, or to the child or children of the said intended marriage in fee, All and Whole certain heritable subjects in Glasgow.

The pursuer raised this action to obtain exhibition and transumpt of the writs and evidents as to the re-investment or deposit in bank of the said sum of £1050, and for exhibition of the titles of the said heritable subjects in Glasgow, to enable him to realise the bankrupt's interest therein.

The defender pleaded, *inter alia*—(1) The action is incompetent. (3) The pursuer's averments are not relevant or sufficient to support the prayer of the petition.

By the Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. c. 79) it is enacted, section 90—“The Sheriff may at any time, on the application of the trustee, order an examination of the bankrupt's wife and family, clerks, servants, factors, law-agents, and others, who can give information relative to his estate, on oath, and issue his warrant requiring such persons to appear; and if they refuse or neglect to appear when duly summoned, the Sheriff may issue another warrant to apprehend the person so failing to appear.” . . .

Section 91 enacts—“The bankrupt and such other persons shall answer all lawful questions relating to the affairs of the bankrupt; and the Sheriff may order such persons to produce for inspection any books of account, papers, deeds, writings, or other documents in their custody relative to the bankrupt's affairs, and cause the same, or copies thereof, to be delivered to the trustee.”

Section 93 enacts—“If the bankrupt or any of such other persons shall refuse to be sworn, or to answer to the satisfaction of the Sheriff any lawful question put to him by the Sheriff or trustee, or by any creditor with the sanction of the Sheriff, or without lawful cause shall refuse to sign his examination, or to produce books, deeds, or other