that when the sealed-up packet, which afterwards was found to contain the writing in question, was delivered by Miss Russell to Mr Henderson, she informed him "that it contained her will, and was not to be opened till after her death." The delivery, accompanied by this declaration, is far stronger evidence that the writing was a completed writing, and that it was intended to be her last will, than would have been the placing of it in the strong box in which all papers considered of value were kept for security. The delivery of a will, indeed, does not affect it irrevocably, but it unmistakeably shows that, when delivered, it was considered to be a completed and, unless recalled or altered, an effectual settlement of her affairs. In the second place, the letter and the signature on the envelope referred to, which were attached to and delivered with the packet, are reasonable and sufficient tokens of authentication. The signature on the envelope supplied the want of a signature to the holograph letter which was enclosed, and this letter again, taken, as it must be, as an appendage to the will, is truly authentication under the hand of the testatrix.

For these reasons, I am of opinion that the first of the questions submitted to the Court must be answered in the affirmative. The second question must, I think, be answered in the negative. The bequest of the £100 there referred to was in effect an appropriation by the testatrix herself of so much of the £2000 over the capital of which she had only the power of disposal in favour of one or more of the descendants of her father. The beneficiaries of this bequest were not of this class, and were it to be held that the leaving of this £100 to Miss Russell's executor was a valid exercise of the faculty, the whole £2000 might, had the testatrix thought fit, have been also effectually bequeathed, which, in the circumstances, would be an inadmissible conclusion, as there would be a plain violation of the condition upon which the faculty alleged here to have been exercised was conferred.

LORD RUTHERFURD CLARK concurred.

LORD YOUNG—I also agree. I think the law is accurately stated by Lord Stair in the passage which Lord Craighill has referred to. "Holograph writs subscribed are unquestionably the strongest probation by writ, and least imitable. But if they be not subscribed, they are understood to be incomplete acts, from which the party hath resiled." I think the word "understood" is as accurate a word as could have been used by Lord Stair to express his meaning, which is not that there is any rule *positivi juris* requiring subscription as essential, but merely that it is a reasonable conclusion, and one on which a Court would determine, that if the writ be not subscribed, it is incomplete, and was not intended by the writer to be complete. That this was Lord Stair's opinion is plain—from what follows:—"Yet, if they be written in count-books or upon authentic writs, they are probative, and resiling is not presumed." It is therefore a question of circumstances. The strongest case is where in some separate writing the testator has declared that any writing of a testamentary character, though not subscribed, should have effect—that is to say, should not be "understood" to be incomplete. In short, it removes the ground on which the understanding rests; it makes it no longer reasonable to understand that the writing is incomplete. Now, I think that that is plainly the case here; for we must take the facts as they are agreed on by the parties; and the fact is not in controversy that this testamentary instrument was delivered by the testatrix to her executor in a sealed-up packet, "bearing on the outside her own signature, and the words 'James Henderson' in her writing. Outside the packet, and attached to it by a piece of string, was an envelope addressed thus, 'To James Henderson from Margaret Russell,' all in her handwriting. When delivering the packet she informed Mr Henderson that it contained her will, and was not to be opened till after her death." With reference to these concluding words, we must take it as a fact that she delivered the packet, stating that it contained her will, and that it was not to be opened till after her death. I think that removes all ground for the understanding which in general is referred to by Lord Stair. I therefore agree that we answer the first question in the affirmative, and the second in the negative, and the third requires no answer.

The LORD JUSTICE-CLERK was absent.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties on the Special Case, are of opinion and find, that the first question therein put falls to be answered in the affirmative, and that the second falls to be answered in the negative; find that it is unnecessary to answer the third question, and decern," &c.

Counsel for the First and Third Parties—Maconochie. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Second, Fourth, and Fifth Parties—Graham Murray. Agents—Macandrew, Wright, Ellis, & Blyth, W.S.

Tuesday, December 11.

SECOND DIVISION.

[Sheriff of Aberdeenshire and Kincardine.

MILNE (INSPECTOR OF POOR OF THE PARISH OF MONTROSE) *v.* ROSS (INSPECTOR OF POOR OF THE PARISH OF LAURENCE-KIRK).

Poor—Relief—Settlement—Liability for Relief granted to Able-Bodied Man in respect of Minor Child Permanently Disabled by Natural Infirmity.

An able-bodied man received from the parish of M, in which he had then no settlement, his settlement being in that of L, relief for his son aged about seventeen years, who from infancy was partially paralysed and epileptic and weak-minded, so as to be disabled from gaining his own livelihood, and who lived in family with him. While relief was being thus given the father lost his

settlement in L, and acquired a fresh one by residence in the parish of M. M subsequently sued L for relief of the sums expended and to be expended on the son's behalf. *Held* (following *Milne* v. *Henderson and Smith*, Dec. 3, 1874, 7 R. 317) that the son being incapable by reason of his natural infirmity from acquiring a settlement of his own, and being unforisfamiliated, took that of his father, which had ceased to be in the parish of L, and therefore that that parish was not liable for the relief given subsequent to such loss of settlement.

Frederick Alexander, labourer, had five children, of whom the eldest, James, born in the parish of St Cyrus in 1861, was from the age of one or two years paralysed on the right side, suffered from epileptic fits, and was rather weak-minded. For nine years prior to Martinmas 1874 Frederick Alexander lived in Laurencekirk. At that date Frederick Alexander removed with his wife and children, including James, to Montrose, and resided there continuously till the date of this action (January 1882). In July 1878, Frederick Alexander being then an able-bodied man, his wife applied in Montrose for relief on behalf of James, which was granted at the rate of 3s. a week, James remaining an inmate of his father's house. The name of James was entered on the roll of poor for Montrose. This relief continued to be given until 8th December 1881, when James was removed from his father's house and lodged in the Sunnyside Lunatic Asylum at Montrose as a pauper lunatic, where he was up to the date of this action, at the expense of Montrose.

This action was raised in the Sheriff Court of Kincardineshire by Alexander Milne, inspector of poor of the parish of Montrose, against George Ross, inspector of poor of the parish of Laurencekirk, for the sum paid in relief of James Alexander, being the above-mentioned 3s. a week from July 1878 to December 1881, and all subsequent sums thereafter expended or to be expended on James Alexander by Montrose while he should require parochial aid and have his settlement in Laurencekirk. The pursuer averred that James Alexander had become in July 1878, when he granted relief, chargeable in his own right, he being paralytic and subject to epilepsy, and, though sixteen and a half when relieved, suffering under severe and permanent disease, which prevented his doing anything to earn his own living.

The defender did not admit the pursuer's averments as to the condition of James Alexander, except his removal to an asylum. He averred that prior to his removal to an asylum he was not forisfamiliated. He also averred that he was able to do light work.

The Sheriff-Substitute (Dove Wilson) pronounced an interlocutor allowing the pursuer "a proof of his averments, in so far as relevant to support the claim for repayment of the relief which was afforded prior to Martinmas 1878, and to the defender a conjunct probation;" *quoad ultra* he assoilzied the defender.

"*Note.*—This case seems to me to be ruled by that of *Milne* v. *Henderson and Smith*, December 3, 1879, 7 R. 317.

"When Frederick Alexander left Laurencekirk at Martinmas 1874 his son James resided in family with him, and was about thirteen years of age. James, therefore, at that time had no settlement of his own, but took a derivative one through his father, who had then acquired a residential settlement in Laurencekirk. The only claim which relief afforded to James could raise up against Laurencekirk would expire as soon as his father lost his residential settlement there, which would be at Martinmas 1878, unless prior to that the father had become a proper object of parochial relief. It is settled, however, by the case to which I have referred, that the relief given to the son James, however properly given, could not make the father a pauper, and therefore did not interrupt the father's loss of settlement in Laurencekirk by non-residence. For these reasons it seems to me to be clear that at Martinmas 1878 any claim against Laurencekirk expired.

"This disposes of the main question in the case, as it decides that wherever James Alexander's settlement may now be it is not in Laurencekirk, and accordingly that that parish is not liable for his maintenance in the asylum to which it has unfortunately become necessary to admit him. Laurencekirk being thus right in my opinion on the main question involved, I have found it entitled to the expenses hitherto incurred. As the defender does not on record admit that the aliment supplied to James between July and Martinmas 1878 was rightly given, there will have to be a proof upon that point, and upon its result will depend the liability for any further expenses which may be incurred."

The pursuer appealed to the Sheriff (Guthrie Smith), who recalled the Sheriff-Substitute's interlocutor, and allowed the pursuer a proof of his averments, and to the defender a conjunct probation, and remitted to the Sheriff-Substitute, who thereafter, in respect that he had already given his opinion on the law applicable to the case, made avizandum with the proof to the Sheriff. It appeared from the evidence of his parents and of medical men that though James Alexander could run messages and do occasional odd jobs he was mentally and physically incapacitated from learning a trade or gaining a continuous livelihood. He was to a great extent paralysed on his right side, and subject to epilepsy. His memory was weak, and he was subject at times to great excitement, but he was not continuously insane.

The Sheriff pronounced this interlocutor:—"Finds it proved that on the 18th July 1878 the pauper James Alexander, being paralytic, subject to epileptic fits, and suffering from mental and physical weakness, which ultimately rendered his removal to an asylum necessary, became chargeable to the Parochial Board of Montrose; that he was then living with his parents, was nearly seventeen years of age, and had never been forisfamiliate; that as a destitute person in his own right, he was entered in the roll of poor, and that at the date of chargeability his settlement was in the parish of Laurencekirk: Finds in law that this [Laurencekirk] is his settlement as long as the pauperism continues: Therefore repels the defences, decerns in terms of the conclusions of the summons, &c.

"*Note.*—On the 18th July 1878 the Parochial Board of Montrose advanced to James Alexander the sum of 3s. a week. He was a boy about seventeen years of age, and resided with his

parents. He was paralytic, subject to epileptic fits, and had ultimately to be sent to an asylum. No medical certificate was obtained, but the inspector says he lived in the same street, and was well acquainted with the circumstances of the family, and the helpless condition of the pauper, who has since been unable to do anything for his own support. Of course, his father, being an able-bodied man, had no right to relief. But when any of the family suffers from mental weakness a different rule applies. The party then becomes a destitute person in his own right within the meaning of the statute. If he requires to be removed to an asylum, the expense is necessarily beyond a working-man's means, and the poor law undertakes to provide for him. The lunatic ceases to be a member of the household, and the burden devolves on the parish which was his settlement at the date of admission; but as regards the rest of the family, their settlement is unaffected by the lunatic being on the pauper roll. Their settlement may change, but he continues chargeable to the parish to which he belonged when admitted.

"Although there is an express provision to this effect in lunacy statutes, it is not unimportant to observe that the principles of the poor law lead to the same conclusion. In relieving destitution we have to deal, in the ordinary case, with families rather than individuals. We cannot separate father, mother, and children, and so long as the family bond is unbroken, relief is given to the head for himself and all dependent upon him. The father's settlement is that of the family, and hence the doctrine of derivative settlement, with its many ingenious refinements, which have caused such needless confusion, and are, indeed, the reproach of the poor law. So, also, if the father is able-bodied, and is not entitled to relief, the younger members of the family are no better. But when, through the visitation of Providence, any of them becomes insane, his case must be dealt with separately. The law requires that he shall be secluded from society, or at least specially cared for, and there is no reason, but the contrary, why his necessities should involve the whole family in one common destitution. The lunatic becomes a pauper in his own right, just as if he had been forisfamiliated, and his settlement is not affected by the subsequent movements of the family.

"If, therefore, in July 1878, when the present claim was intimated, James Alexander had been sent to an asylum, the burden would certainly have fallen on Laurencekirk, for beyond doubt that was then his settlement. The family had lived there for five years. They had removed to Montrose, and the settlement in Laurencekirk was running off, but their absence was insufficient to effect this result until November 1878.

"In point of fact, however, the patient was not sent to an asylum for some time after. The inspector did not consider it necessary to separate him from his mother, but entered him on the roll as the recipient of 3s. a-week. There are many occasions on which this is not only a humane course, but a wise and proper one in the interests of the ratepayers. Is it to be said that when a person's mental and physical condition amounts to permanent disability for the business of life, and the family are too poor properly to supply his wants, an inspector is in no case entitled to interfere until the patient is a confirmed lunatic? This is practically what the defender's arguments come to. If such a principle were admitted in the administration of the poor law it would be extremely pernicious. The village fool would be left destitute and uncared for—a reproach to humanity. The Poor Law Act has committed a large discretion to the inspector, and the relieving committee with whom he acts, and, on the whole, that discretion has been well exercised—with a due regard to the dictates of common kindness and Christian feeling as well as the interests of the ratepayers. A court of law cannot review their decision, because no one can have the same knowledge of the facts as persons resident on the spot. It can only inquire whether their decision was legal on the face of it, and rested on grounds fairly sufficient; and that, I take it, is the only practical question which in this case has to be determined.

"It may not be very easy to indicate the considerations which should influence an inspector in deciding the question whether a lad living in family with his parents is a destitute person in his own right by reason of physical or mental infirmity, but generally they are of the same class as the considerations which require to be kept in view in fixing the amount of the relief. These have been repeatedly explained by the Lunacy Board. They are—(1) the ability of the guardian, and the legal or moral obligation he is under to help in his support; (2) the ability of the patient himself to contribute; (3) the need for special diet or nursing; (4) how far does the presence of the lunatic interfere with the bread-winning power of the family; (5) the irksomeness of the duties which proper attention to him involves; and (6) the cost of living in the neighbourhood—(See Report of the Commissioners in Lunacy for 1883, page 38).

"It appears that there are six children younger than James in this family, the youngest being now only some months old. James has never been able to do anything for his own support. The father makes 17s. a-week; but in the autumn of 1878, when relief was given, he says he did not make on an average above 6s. a-week. When the mother leaves James alone, she gets a neighbour to attend to him, as he cannot be trusted alone on account of his liability to fits. The medical evidence is to the effect that while the state of his mind would not *per se* prevent him from earning a living, he suffers from partial paralysis, is regularly subject to epileptic convulsions, has never been able to work, and is not likely to be so. In fact, he is so weak in body and mind as to require to be cared for by others, and considering his father's circumstances at the time the application was made for relief, I am not prepared to say that relief was improperly given.

"Very frequently it is not for the advantage of a patient to send him at once to an asylum. It saves a good deal of money to keep him with his friends, for while the cost of a pauper lunatic in an asylum ranges from 13 pence to 20 pence a day, in a private dwelling it may not exceed 5½d., and many forms of mental disease may be as well treated at home as in a public establishment for the insane. In refraining, therefore, from at once sending the pauper in this case to an asylum, the pursuer was simply following the instructions of the Lunacy Board. The Commissioners say in

their last report—'It is always desirable, when practicable, to place a patient with capable guardians, who either from the tie of relationship or otherwise have an affectionate interest in his welfare, and we are disposed to encourage the recognition of such ties when consistent with the interest of the patient' (Report, p. 38). If a small sum will enable a patient to live with his relatives, it is infinitely better for all concerned that the claim should be recognised by admitting him to the pauper roll, rather than that he should be wholly thrown on the parish with the certain result of his being at once removed to an asylum.

"If, then, the relief given was neither in amount nor in form in excess of the power belonging to the Parochial Board, to whom was it administered? It was paid, no doubt, to the boy's mother, but it was given to be spent on the lunatic, and not on the other members of the family. It was, in fact, relief given to the boy himself, whose name accordingly was entered on the roll of the poor.

"The chargeability then begun has since continued. By his own personal pauperism he ceased to be a member of the father's family, and his settlement could not possibly be affected by their movements. This doctrine of shifting settlements is one for which the statute will be appealed to in vain. The case referred to by the Sheriff-Substitute, if I understand it properly, was of a different nature from the present. As was said in one of the earlier cases, I cannot understand how a man, entered on the roll of paupers as one of the permanent poor, can go to bed with one settlement and rise with a different one in the morning."

The defender appealed to the Court of Session, and argued—James Alexander was not a pauper while his father's settlement in Laurencekirk continued, and the relief given to the father, an able-bodied man, in Montrose in July 1878 in respect of a weak child did not pauperise him or prevent him changing his settlement at Martinmas thereafter along with that of his unforisfamiliated child. James Alexander was therefore no pauper, nor was he forisfamiliated till he was admitted to a lunatic asylum in December, at which time his father's settlement was in Montrose. The lunacy law which pauperised him was not invoked till that time—Lunacy Act, sec. 75. The relief given prior to that was given in charity by an act of discretion, and not in the exercise of the poor law—*Milne* v. *Henderson and Smith*, *supra cit.*; *Graham* v. *M'William*, February 22, 1881, *ante*, vol. xviii. p. 322. It was impossible to find any legal ground on which relief so given could rest. The case of *Kirkwood* v. *Knox*, June 3, 1868, 40 J. 503, was the only case which pointed in that direction, and there the father was not, as here, able-bodied. The number of children in the family was of no significance.

Additional authorities for defender—*Palmer* v. *Russell*, December 1, 1871, 10 Macph. 185; *Petrie* v. *Meek*, March 4, 1859, 21 D. 614; *Hay* v. *Paterson*, January 29, 1857, 19 D. 332; Guthrie Smith's Poor Law, 195.

The pursuer replied—The question was not whether he had acted rightly or wrongly in giving relief in July 1878. James Alexander was then a proper object of relief, and if so, there must be a pauper, and that was either the father or the son. On either supposition Laurencekirk was liable, for the settlement of both was then there. The relief either pauperised the father or forisfamiliated and pauperised the son in his own right. The circumstances of this case were distinguishable from those of *Milne*, for there the child was a lunatic from birth, while here he was only a person suffering from a disease which merely impaired his power of gaining a living, and from which he might recover. Further, the case of *Milne* was inconsistent with *Beattie* v. *Adamson*, November 23, 1865, 5 Macph. 47, and *Hay* v. *Paterson* (*supra*).

At advising—

Lord Craighill—James Alexander, to whom or on whose account parochial relief has been afforded by the parish of Montrose, is the son of Frederick Alexander, who prior to 1874 had acquired by residence a settlement in the parish of Laurencekirk. In November of that year he removed with his family to Montrose, where they have since resided. On 15th July 1878 application was made to the inspector of poor of Montrose on behalf of the said James, who was then sixteen years of age, for parochial relief. Interim relief was granted at once by the inspector, and on 18th July the applicant was entered on the roll as one of the ordinary poor. Thenceforward relief has been supplied, and for the money thus disbursed the action brought before us by appeal was raised by the inspector of Montrose against the inspector of Laurencekirk on the assumptions (1) that James Alexander had been properly relieved, and (2) that Laurencekirk was, in July 1878, and has since continued, the parish of his settlement. The Sheriff, after proof had been led, pronounced the interlocutor of 29th August 1883, which has been submitted to the review of this Court.

The ground of his judgment consists of several findings, the fundamental one being that James Alexander was a destitute person in his own right. Whether the Sheriff in coming to this conclusion proceeded on the view that James Alexander was a lunatic is not by any means clear upon the terms of the interlocutor, but when these are regarded in the light thrown upon this question by the note, in which the grounds of judgment are more fully explained, the fair inference seems to be that the Sheriff dealt with the case as one in which the person relieved was a lunatic. Thus he says—"But when, through the visitation of Providence, any of them becomes insane, his case must be dealt with separately. The law requires that he shall be secluded from society, or at least specially cared for, and there is no reason, but the contrary, why his necessities should involve the whole family in one common destitution. The lunatic becomes a pauper in his own right just as if he had been forisfamiliated, and his settlement is not affected by the subsequent movements of the family." This is the view of the law on which he proceeded, but it is no warrant for the conclusion that though Frederick Alexander, the father, lost his settlement in Laurencekirk, his unforisfamiliated son, by reason of the relief furnished on his account, continued to be settled in that parish. This is shown by a recent decision of this Division of the Court which has been overlooked by the Sheriff. The present case, taking James Alexander to be lunatic

when his name was placed on the roll of poor, is identical in all material particulars with the case of *Milne* v. *Henderson and Smith*, December 3, 1879, 7 R. 317, where it was held (1) that as the person relieved was a lunatic, and was incapable of acquiring a settlement, he followed the settlement of his father; (2) that the father was not made a pauper by the relief given on account of his son; and (3) that the lunatic's settlement was the settlement of his father. The inquiry therefore would be, Assuming James Alexander to be lunatic, what was his father's settlement? for the parish of his settlement would be that by which the lunatic behoved to be supported, and as to this there is no controversy. The father lost his settlement in Laurencekirk in November 1878. From that time consequently that parish was free of liability, and therefore ought, so far as future support was concerned, to have been assoilzied from the claim sued for on behalf of the parish of Montrose.

But the fact is, that James Alexander, on whose account relief was afforded, was not lunatic in 1878, though, as the Sheriff finds, he was "paralytic, subject to epileptic fits, and suffering from mental and physical weakness." This in the end was admitted by the counsel for Montrose in their argument upon the appeal, and consequently the liability or non-liability of Laurencekirk must now be determined upon this view of James Alexander's condition. Had he been forisfamiliated the inquiry would have been what was his parish of settlement; but he was unforisfamiliated, and the consequence is, in the words employed by Lord Neaves in the opinion he delivered in *Fraser* v. *Robertson* (June 5, 1867, 5 Macph. 819), that he was still a member of the father's family, so that his person is sunk in the father as regards residence. The same thing, indeed, is stated by the Sheriff in the passage of his note where he says—"We cannot separate father, mother, and children, and so long as the family bond is unbroken, relief is given to the head for himself and all dependent upon him. The father's settlement is that of the family, and hence the doctrine of derivative settlement, with its many ingenious refinements, which have caused such needless confusion, and are indeed the reproach of the poor law. So, also, if the father is able-bodied, and is not entitled to relief, the younger members of the family are no better." Thus the individuality of children unforisfamiliated is merged in the father, from which it follows—(1) That the settlement of Frederick Alexander, the father, was the settlement of James Alexander, his son; (2) that the latter could not claim parochial relief in his own right; and (3) that however great might be the burden which by reason of the son's bodily infirmity was cast upon his father, the latter, while able-bodied, could not come upon the parish. Such results, in some views, may be matters for regret, but as the law is they must be recognised. And it may be doubtful whether a change in the law producing different results would, on the whole, be a change for the better either for individuals or for the community. Much may be said on both sides of this question. What we are concerned with, however, is the application of the law as it is, and that appears to me to be easy on the present occasion.

In the first place, as the settlement of the father was the settlement of James, the son, nothing which was advanced on account of James after November 1878 could be chargeable against Laurencekirk, because the father through absence lost his settlement in that parish; and in the second place, as James, the son, was not entitled to relief in his own right, and as his father also, by reason of his being able-bodied, was precluded from obtaining relief for himself or for any member of his family, however feeble or diseased that member might be, the money paid by Montrose on account of James, between July and November of 1878, was not an obligatory but only a gratuitous aid, and consequently is not recoverable from Laurencekirk, though Laurencekirk was then the settlement of the family. For these reasons I think that the present appeal ought to be sustained, the interlocutor appealed against recalled, and the defender assoilzied.

Lord Rutherfurd Clark—I agree with Lord Craighill.

Lord Young—I also agree with Lord Craighill. My opinion proceeds entirely on the case of *Milne* v. *Henderson and Smith*, which I agree with the Sheriff-Substitute in thinking rules the present one. In fact, it was admitted by the respondent that it did so unless a distinction could—as it is the opinion of the Sheriff-Substitute that there cannot—be taken between it and the present case, and the only distinction that could be drawn was in fact that the son for whom the relief was granted was not a lunatic, but only a helpless paralytic and subject to epileptic fits. I think that concession was unavoidable. But it was maintained that James Alexander was not lunatic at the time he first received relief, but only paralytic and that that makes a difference. I am of opinion that it makes none. He was in that condition from infancy, and never ceased to be a member of his father's family till he became a permanent inmate of the poorhouse by removal to the lunatic asylum, and whether this were necessary because paralysis or epilepsy afflicted him, or lunacy, seems to me an immaterial accident. I therefore agree that the result of this case is the same as that of *Milne*. There is thus no occasion for us to consider about the few shillings of aliment expended between July and Martinmas. To consider that question would require us to determine what otherwise would require no decision, namely, whether under the poor law relief was demandable by the father in respect of this paralytic child.

The Lord Justice-Clerk was absent.

The Court pronounced this interlocutor:—

"The Lords . . . Find that Frederick Alexander, who has all along been an able-bodied man, left the parish of Laurencekirk at Martinmas 1874, and has not since resided there: Find that his son James Alexander, by reason of natural infirmity, is not, and has never been, capable of maintaining himself, and that he never has been forisfamiliated: Find in law that James Alexander has no settlement other than that of his father, and that the settlement his father had acquired in Laurencekirk lapsed at

Martinmas 1878 by non-residence: Therefore sustain the appeal; recal the interlocutor of the Sheriff-Substitute of March 27, 1882; the interlocutor of the Sheriff of August 20, 1883; assoilzie the defender from the conclusions of the action."

Counsel for Pursuer (Respondent)—Sol.-Gen. Asher, Q.C.—J. Burnet. Agents—W. & J. Burness, W.S.

Counsel for Defender (Appellant)—J. P. B. Robertson—Pearson. Agents—Pearson, Robertson, & Finlay, W.S.

Tuesday, December 11.

SECOND DIVISION.

[Lord Adam, Ordinary.

BEATTIE AND MUIR *v.* BROWN.

Poor—Settlement—Deserted Wife—Effect of Admission by Parish — Poor Law Amendment (Scotland) Act 1845 (8 *and* 9 *Vict. c.* 83), *secs.* 70, 71, 76, 78, 79 *and* 80.

Held that in a question of liability between parishes an admission of liability made by A to B, after full inquiry, does not bar A's claim for relief as against C on subsequently ascertaining that the true liability was in that parish.

A wife deserted by her husband acquired a residential settlement in a parish in which she supported herself for a time by her own industry. She thereafter became chargeable in another parish, and while she was receiving relief her husband came and stayed with her for two months unknown to the parochial authorities, and without contributing to her support. In an action by the relieving parish against that in which she had acquired a settlement, for reimbursement of the sums expended on her, the latter parish maintained, *inter alia*, that the desertion was interrupted by the return of the husband. *Held* that in the circumstances the desertion remained uninterrupted.

This was an action at the instance of the Inspectors of Poor of the Barony Parish, Glasgow, and of the parish of Kirkcaldy, against the Inspector of Poor of the parish of the Dundee Combination, for declarator that a pauper named Margaret Rowan or Lawson, wife of Peter Lawson, had at the date when she became chargeable a residential settlement in Dundee, and for payment of the sum of £152, 11s. 7d., being the alleged amount of alimentary advances made to her between March 1874 and May 1882. The action was raised in May 1882.

It was admitted that the pauper was first relieved by Barony in 1873, and that notice was sent to Kirkcaldy, as the parish of settlement of her husband, he having been born there and acquired no other, and to Dundee on the ground that the pauper had a residential settlement there as hereinafter explained; that Kirkcaldy ultimately (in 1874) admitted, and Dundee refused to admit, liability; also that on 11th September 1878 Kirkcaldy gave notice to Dundee, and Dundee again refused to admit liability.

The pursuers averred that the pauper was a deserted wife, her husband, whose birth settlement was in Kirkcaldy, and whose residence at the time of the action was unknown, having deserted her in 1861 in Glasgow; that from 1863 to 1872 she had supported herself by keeping a shop in Dundee, and acquired a settlement there; that in 1872 she had gone to Glasgow, where she became chargeable in 1873, and had ever since continued to be a proper object of relief; that she became insane in 1873, soon after becoming chargeable, and was placed in an asylum; that in 1874 Kirkcaldy, under misapprehension as to her true settlement, admitted liability, and had supported her ever since, either in an asylum or with friends, or after she recovered her reason, which she did in 1881, as a recipient of out-door relief; and that the notice by Kirkcaldy to Dundee in 1878 was given after ascertaining the true settlement.

The defender did not admit that any residential settlement had been acquired in Dundee. He denied that Kirkcaldy's admission was made under any misapprehension or error, and averred that it was made after full inquiry and consideration of a full statement of particulars sent by Barony, a copy of which, stating, *inter alia*, that the pauper had lived eight years and six months in Dundee, was referred to and founded on.

He pleaded—"(3) In respect of the admission of liability made by the parish of Kirkcaldy to the Barony Parish on 12th February 1874, the pursuers are not entitled to decree of declarator and payment as craved. (4) In the circumstances the pursuers are barred by *mora* from insisting in the present claim. (5) The pauper in question not having acquired any settlement in the parish of Dundee, the defender is not liable for the sums sued for. (6) In any event, the parish of Dundee is not liable except to the extent of disbursements or advances made from the date of the statutory notice of 11th September 1878, and for one year prior thereto, in terms of section 78 of the Lunacy Act 1857."

The Lord Ordinary (Adam) on 16th December 1882 assoilzied the defender.

"*Opinion.*—In the month of May 1873 the pauper Margaret Brown or Lawson became a proper object of parochial relief, and received, as such, relief from the Barony Parish of Glasgow.

"She became insane in November 1873, and continued in that state till May 1881, when she was struck off the lunacy roll as recovered, but she is still in receipt of parochial relief.

"The Barony Parish was not the parish of the pauper's settlement, and accordingly on the 27th May 1873 that parish sent statutory notice that the pauper had become chargeable to the parish of Kirkcaldy as the parish of birth of the pauper's husband.

"It has been ascertained apparently that the pauper had been deserted by her husband in the year 1861; that she had lived and supported herself in the parish of Dundee from Martinmas 1863 till Whitsunday 1872, when she went to Glasgow. The Barony Parish accordingly, of the same date, gave notice of the pauper having become chargeable to the parish of Dundee on the ground that she had acquired a settlement by residence in that parish.

"The result of the matter was that Dundee re-