for an indefinite time, was, of all courses, the worst that could have been followed. He says the premises in which the goods were "were 86 feet long and 30 feet broad. They had just been vacated by James Laing & Company, coachbuilders, and the rent they had paid was £4 per month. The premises are built of stone and slated, and are thoroughly water-tight, and all the ironmongery and other perishable goods were stored in them. When the goods were being removed it was found that the said space was not sufficient. There was a large quantity of flooring, and the respondent was obliged to lease from Messrs Garvie a covered shed in the same place, but entering from Rose Street, at a rent of £3 per month. Both places were required." For those premises he thus undertook to pay £7 a month for an indefinite period—that is to say, until the issue of a litigation which it was evident would be protracted and expensive. I cannot see any justification for the course he adopted. It was evidently the worst course. Whoever was eventually to be found entitled to these goods, plainly the worst course was to heap up expense upon them. I do not think the person entitled to these goods should be required to admit this deduction.

LORDS MURE, SHAND, and ADAM concurred.

The Court granted warrant to Barr to uplift the sum in dispute.

Counsel for Barr — Gloag — Shaw. Agent —Andrew Newlands, S.S.C.

Counsel for Stronach — Comrie Thomson — Kennedy. Agents — Macpherson & Mackay, W.S.

Friday, March 4.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

M'CAIG (INSPECTOR OF POOR OF KILMORE AND KILBRIDE) *v.* SINCLAIR (INSPECTOR OF POOR OF ARDCHATTAN AND MUCKAIRN).

Poor—Relief—Dismissal from Poorhouse—Poor Law Act 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 70.

A pauper having no settlement in Scotland was, at the expense of the parish in which he was found destitute, relieved by being admitted into a combination poorhouse to which the parish was a contributor. After being there two months he demanded his own clothes, insisted on leaving the poorhouse for a temporary purpose, received them and left, but returned the same day. He was refused admittance without a fresh order, but the following day, having obtained such from another parish which contributed to the poorhouse, he was again received into it. He subsequently became insane and was sent to an asylum. In a question between the parishes as to the expense of his removal to the asylum and subsequent maintenance, *held* (*rev.* judgment of Lord M'Laren) that the circumstance of his temporary absence did not interrupt his chargeability to the first parish, and therefore that it remained liable for that expense.

On 25th November 1884 Mark Power, a vagrant Irishman having no settlement in Scotland, was found in the parish of Ardchattan in a state of destitution, and was, upon his application, admitted to the Lorne Combination Poorhouse in Oban, to which Ardchattan was a contributor. There he remained, at the expense of Ardchattan, until the 19th January 1885. On the 19th of January he applied to the governor for leave of absence for a night, but was told this was impossible, though he might receive leave of absence for a reasonable period during the day. He then stated that he wished to leave the poorhouse, as he was desirous of attending a wedding, and he at the same time asked for his clothes. The governor then gave him his clothes, and he left the poorhouse that day. Being desirous of being re-admitted, he came back to the poorhouse along with a priest who took an interest in him, but was refused readmittance unless he had an order. On the 20th application was made to the inspector of Ardchattan for an order by the priest who was taking an interest in Power. And on the 21st a reply was sent that it was for the parish in which Power was to deal with the case—Power's only claim on Ardchattan having been that he was found destitute in it. Coincidently with this application, however, Power went on the 20th to the office in Oban of the inspector of Kilmore, which was also a parish which contributed to the Lorne Combination Poorhouse, and applied for admission there. The assistant inspector of poor sent him to be examined by a medical-officer, and having got the medical-officer's report that he was not in good health or able to work, he did not return to the assistant inspector, but went direct to the Combination Poorhouse and was admitted. His name remained on the books of the poorhouse as an Ardchattan pauper, no fresh entry being made. The governor did not make such, because he considered him still chargeable to Ardchattan. On 12th February 1885 he was certified to be insane, and was on the 13th sent to the County Lunatic Asylum at Lochgilphead.

On said 12th February Kilmore and Kilbride intimated to Ardchattan that Power had been removed to the asylum, and that Kilmore and Kilbride claimed from Ardchattan repayment of the expense of his removal to and maintenance in the asylum.

The Inspector of Poor for Kilmore and Kilbride raised this action against the Inspector of Poor for Ardchattan for declarator that the defender was liable to pay to the pursuer the sum advanced for Power, a pauper entitled to relief from the defender, since 12th February 1885, and to be advanced, and for decree for the sum already spent on him, deducting the Parliamentary grant to be received, conform to account beginning at 12th February 1885.

The defender in answer stated—"In allowing the pauper to leave the poorhouse as aforesaid the governor was acting within his powers. By the 40th section of the rules and regulations for the management of poorhouses, prepared and sanctioned by the Board of Supervision, it is provided—'Twenty-four hours after having intimated to the house-governor a desire to be dismissed from the poorhouse, or sooner, if the house-

governor shall think fit, any adult inmate, not a dependent of any inmate, may quit the poorhouse; but no inmate shall carry away any clothes or other article belonging to the poorhouse without the express permission of the house-governor or matron; and no poor person dismissed from the poorhouse, or so quitting it, shall again be received therein except in the mode prescribed in article 21 for the admission of poor persons.' It was not necessary for the governor to obtain the sanction of the defender, nor to communicate with him, before allowing the pauper to leave the poorhouse. . . . The chargeability of the defender's parish for the said pauper ceased when he left the poorhouse at Oban on the 19th January 1885."

The pursuer pleaded—"(1) The pursuer is entitled to decree as concluded for in respect that the said pauper became chargeable in the defender's parish, and has since continued a proper object of relief. (2) The said pauper having been found destitute in the defender's parish, and having been continuously chargeable since November 1885, the defender is liable for his maintenance."

The defender pleaded—"(1) In the circumstances stated the pauper ceased to be chargeable to the defender's parish when he left the poorhouse at Oban on 19th January 1885. (2) The pauper having been properly and regularly discharged from the poorhouse at Oban on the 19th January 1885, the defender's parish then ceased to be chargeable for his maintenance."

Section 70 of the Poor Law Act 1845 provides "that in every case in which a poor person in any parish or combination shall apply for parochial relief the inspector of poor . . . shall be bound to make inquiry forthwith into the circumstances of the applicant, and shall, notwithstanding such poor person may not have a settlement in the parish or combination, if he be in other respects legally entitled to parochial relief, be bound to furnish him with sufficient means of subsistence until the next meeting of the parochial board, and such board shall continue to afford to such poor person such interim maintenance as may be adjudged necessary 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." . . .

The Lord Ordinary (M'Laren) pronounced this interlocutor:—"Finds (1) that the pauper Mark Power was on 19th January 1885 discharged from the Combination Poorhouse, into which he had been received on the order of the inspector of the parish of Ardchattan; (2) that he was so discharged on his own application, and in conformity with the rules made by the Board of Supervision in the exercise of their statutory powers; (3) that the pauper was re-admitted to the said Combination Poorhouse on the order of the parish of Kilmore, represented in this action by the pursuer; (4) that the pauper had no settlement in either of these parishes; (5) that in these circumstances the parish of Kilmore has no claim of relief against the parish of Ardchattan: Therefore assoilzies the defender from the conclusions of the summons, &c.

"*Opinion.*—This is an interesting case upon the construction of one of the clauses of the Poor-Law Amendment Act, and as it involves the liability of one or other of the parishes which are parties to the action to maintain an insane pauper for the rest of his life, it is a question of such importance as would in my opinion fully justify an action in the Supreme Courts. It raises a question under the 70th section of the Poor Law Amendment Act as to the extent and limits of the obligation which the Act imposes in the first instance upon the inspector or other relieving officer of the parish, and next upon the parochial board of the parish, to afford relief to destitute persons who may apply for relief within the parish, and who are proper objects of parochial relief although not having a settlement within the parish. I have also in connection with the statute to take into consideration the terms of two orders of the Board of Supervision, made under their statutory powers, for the government and discipline of the poorhouses—one of these being the order quoted in the second statement of facts, which entitles a poor person to be discharged from the poorhouse within twenty-four hours after having given notice of his intention to leave, or within such less time as the governor may think proper. The other is a supplementary order of the Board of Supervision applicable to leave of absence, and the effect of it is, that while no inmate shall be entitled as of right to leave of absence, the governor may grant leave of absence for so many hours during the day as he may think fit, but with this qualification, that no inmate shall be allowed to be absent during the night except for reasons of urgency—[*His Lordship here stated the facts of the pauper's admission to and his departure from the poorhouse*]. I hold it proved that the pauper was discharged from the poorhouse *animo et facto* by the governor, and that he could not be received into the poorhouse again except by a new application under the 70th section of the statute—[*His Lordship here stated the circumstances of the pauper's re-admission into the poorhouse*].

"There might in other circumstances be a question whether, in respect that the pauper did not return, and that the inspector had not the opportunity of conferring with a member of the board, this was an admission that would be binding upon the parish, but it is quite clear that the fact that Power had been admitted was brought to the knowledge of the inspector, and in the circumstances I cannot in the least doubt that he was admitted under an order issued by the assistant inspector, who is a person falling within the description of the 'other officer of the parish' in the 70th section; that he was rightly admitted under his order; and that under the statute the parish would be bound, if it is a case within the statute, to continue the administration of relief so long as the pauper continued to be an object of parochial relief.

"Then the man became insane in the month of March, and was—no matter upon whose application—sent to the County Lunatic Asylum. The question is, which parish is bound to maintain him? Now, without reading the words of statute, I may remark that the points with reference to this question are, the condition attached to the right of the pauper to parochial relief from the parish where he may be found, and the provision as to when the obligation to give relief shall come to an end. The condition is, that

notwithstanding such poor person may not have a settlement in the parish or combination, if he be in other respects legally entitled to parochial relief, the parish will be bound to furnish him with it. Then the provision as to the termination of the obligation is in these words—'Until the parish or combination to whom such poor person belongs be ascertained, and his claim upon such parish or combination admitted, or otherwise determined, or until he shall be removed.' Now, with reference to the terms quoted, it is clear that this man Power never could have been discharged in virtue of the first of these alternatives, because he was an Irishman, and he had no settlement in any parish in Scotland. The obligation, however, might come to an end if he was removed, and with reference to that word 'removed' I find that in the 59th section it is used with regard to the removal of lunatic paupers to asylums; in the 72d section it is used with reference to the removal of a person from the parish which affords him temporary relief to the poorhouse of the parish of settlement; and in the 77th section it is used with reference to the removal of persons born in England, Ireland, or Isle of Man, and not having acquired a settlement in any parish or combination in Scotland, and who under that section are liable to be removed upon the order of a Sheriff or Justices. These, so far as I can find, are the meanings in which the word 'removed' is used in this statute, and I do not find that a case has occurred here satisfying the condition of the 70th section that the pauper shall be removed, but it is obvious that underlying the whole of the 70th section there is an implied condition that the man continues to be a proper object of parochial relief. That is the condition upon which he is to be admitted, and it is implied that he is only to remain chargeable to the parish giving the order so long as he shall continue to be a proper object of parochial relief. If I were to interpret the statute without reference to decisions, I should say that a person once admitted to the poorhouse under the 70th section must continue to be chargeable so long as he shall remain in that state of bodily or mental infirmity which renders him a proper object of parochial relief. I should also hold that as soon as the pauper becomes able-bodied, and being in possession of intelligence to be at large, demands his discharge, he must be discharged, and whether he demands it or not, he must be discharged, because it is no longer a proper application of the parochial rates to maintain him in idleness in the poorhouse. This, although not expressed in the statute, is to be read into it as an obvious and necessary qualification of its terms. But that again is not a case which occurs here, because I am quite satisfied that during the interval of twenty-four hours which elapsed between the discharge of Power on the 19th of January and his re-admission on the 20th the man continued to be in the same state of infirmity which entitled him to be admitted, and that he never recovered, but, on the contrary, became more and more infirm until his mind became affected, and he had to be removed to the lunatic asylum.

"I must, however, consider how this statute has been interpreted, and I think that the case of *Taylor* v. *Strachan* [*cited infra*] which has been referred to is a direct decision upon this point, because in that case also a pauper had obtained relief under the authority of the 70th section of the Act from the parish of Urquhart, was maintained for a few days—it does not matter in this question whether it is days or weeks or months—and was discharged upon his own application. There was a question whether he had not been sent out by the inspector for the purpose of transferring him to another parish, but the Judges unanimously negatived the suggestion to that effect, and held that he was discharged on his own application, just as Power was discharged in this case. He then came to the parish of Huntly, just as this man came to Kilmore, and applied for an order of admission to the poorhouse in that parish. It was held that Urquhart was not bound to relieve Huntly. Now, the view upon which the Court proceeded there was that the 70th section of the statute must be taken to contain the implied condition that the liability was only to continue so long as the pauper desired to remain in the poorhouse; that if he left of his own accord, just as in the case where he becomes able-bodied, it would not be the duty of the parish to support him; being discharged on his own application and as of right, the obligation in that case equally comes to an end. There is no duty on the part of the parish to maintain a pauper unless he desires to obtain parochial relief. It is not an unconditional duty, but only a duty which subsists so long as the pauper desires it. That qualification of the statute, I think, was admitted in the case of *Taylor* v. *Strachan* very clearly; and accordingly the only question was whether the pauper had not been sent on to another parish for the purpose of evading liability. If that had been held proved, the parish of Urquhart would not have been allowed to escape liability, because under the authority of the previous case of *Brown* v. *Gemmell*, May 29, 1851, 13 D. 1009, it was held that such a proceeding would have been an evasion of the statutory obligation of maintenance.

"Therefore, having regard to the case of *Taylor* v. *Strachan*, I come to the conclusion that when the pauper in this case was discharged on his own application, and as I expressly find, not with any view on the part of the governor of relieving the parish of Ardchattan, then the obligation under the 70th section came to an end; and that the parish which thereafter admitted him to receipt of parochial relief admitted him under the obligation of section 70, and is therefore liable to maintain him so long as he remains a proper object of parochial relief. It is not disputed that from the time of this man's admission on the 20th of January 1885 he has been a proper object of parochial relief; and I hold that he must continue to be maintained by the parish of Kilmore. I therefore assoilzie the defenders, with expenses."

Kelmore reclaimed, and argued—The Lord Ordinary had decided this case by the light of *Taylor* v. *Strachan and Brown*, November 8, 1864, 3 Macph. 34, and if the facts here were as they existed in that case his judgment could not be impugned. But the Lord Ordinary had taken an erroneous view of the facts proved. The pauper, Power, never voluntarily asked for his discharge as he had a right to do under sec. 70 of the Poor Law Act, and he never received it. It was quite unreasonable to argue that final discharge was operated and continuity of settle-

ment interrupted by the pauper's having asked for his own clothes for one night to enable him to attend a wedding. In *Taylor* v. *Strachan* the Court held that the circumstances amounted to discharge, and it was on that view of the evidence that the decision was given.

Ardchattan replied—To adopt a rule different from that followed by the Lord Ordinary here would open a door to endless confusion and litigation. The sound rule to follow was—in whatsoever parish the pauper was found destitute that parish must maintain him. Otherwise in such a case as this, where the pauper was a vagrant Irishman, there would be endless tracings and inquiries as to where he was first found in a state of destitution, entitling him to relief under the 70th section of the Poor Law Act. The import of the proof was as stated by the Lord Ordinary. The pauper had voluntarily insisted on his discharge, and had got it. There was no case attempted to be made, as in *Taylor*, of collusion on the part of the first relieving parish to get freedom from the burden of supporting him. Ardchattan then had discharged him, and the burden of relief now lay on Kilmore, where he was found subsequently in a state of destitution.

At advising—

Lord Justice-Clerk—My impression is that this case is a great deal too narrow to come within the case cited in support of the interlocutor, and I cannot help thinking that a less costly and cumbrous means might be discovered than an appeal to this Court for settling such questions as is the one before us now. I entirely accept the view in *Taylor* v. *Strachan*, in which it was decided that the parish which has ultimately relieved a pauper is not entitled to have recourse on parishes which formerly gave him relief if he has *bona fide* and voluntarily left them. This, however, is not a case of the kind. The pauper was found in Ardchattan in a destitute condition. He was an Irishman and had no settlement in the parish. The parish of Ardchattan, however, had compassion on him and gave him relief, and sent him to the Combination Poorhouse at Oban, Ardchattan being liable for his support while there. He remained there, but for the absence here in question, till 13th February, when, having become insane, he was confined in a lunatic asylum. The question arises, who is responsible for his support? It is argued that as here the pauper had no settlement whatever, Ardchattan must be responsible. I do not say what the case might have been had the circumstances of his leaving the poorhouse at Oban been different or of a more important nature. My opinion is based on this, that the pauper never in any real sense left the poorhouse in which he was being maintained by Ardchattan, and his residence there was never in point of fact interrupted. Sinclair, the governor, himself says so—"Though he brought an order from a different parish I considered him chargeable to the same parish as before. I noticed that the particulars were not entered at the foot of No. 27 [the certificate by the medical officer of Kilmore of 20th January 1885 mentioned above]. This was necessary to complete it, but I had these particulars in the order from Ardchattan. (Q) You thought the two together enabled you to let him in?—(A) Yes. If he had been two nights absent from the house I would have made a fresh entry in my book. The parish would have benefited a day by his being two nights absent. (Q) If there had been one clear day of twenty-four hours during which he was not in the house it would have been necessary to make a fresh entry?—(A) Yes; that was my reason for doing what I did." It is clear therefore that the governor did not consider the rules of the poorhouse as infringed, or that the pauper had so clearly taken up such a position as to render his going out with his own clothes from 11 o'clock till his return a complete dismissal of himself from the poorhouse. I think the governor was right, and that this formed no breach of the continuity of his residence.

I think then we must alter the Lord Ordinary's interlocutor.

Lord Young—I am of the same opinion, and I think that the Lord Ordinary would have entertained and acted upon your Lordship's view but for his view as regards the applicability of the case of *Taylor* v. *Strachan*. In his note he says that a person once admitted into the poorhouse under the 70th section of the Poor-Law Amendment Act must continue to be chargeable so long as he remain in a condition to be chargeable, but as soon as he becomes able-bodied and demands his discharge he must get it. He does not think that that happened here, for in his view the man continued infirm between his discharge and re-admission next day. Then he goes on to consider the case of *Taylor* v. *Strachan* as interpreting the statute, holding that it was there decided that if the pauper leaves of his own accord, then all liability to support him ceases. Here he holds that the pauper applied and got his discharge, and therefore that Ardchattan's liability was put an end to. Now, that opinion upon the statute and the case of *Taylor* is exactly what your Lordship has expressed. But I agree that we cannot assent to the view that the pauper was ever discharged from the poorhouse, or from being a pauper chargeable to Ardchattan, where he was at the 19th of January. I in fact do not take the Lord Ordinary's view of the evidence, viz., that the facts require the application of clause 40 [above quoted] of the rules sanctioned by the Board of Supervision. I think in point of fact that the pauper neither applied nor received his discharge. I think there was no application by the pauper to be dismissed from the poorhouse. His application was for leave of absence to attend a wedding, and he accompanied his request with a further one for permission to wear his own clothes, and I cannot interpret this application for leave of absence into one for complete discharge from the poorhouse. I therefore regard the case as one where the pauper continued to be chargeable as a pauper on account of destitution. He desires leave of absence for a few hours, which he gets, and then comes back and asks to be re-admitted. Difficulties are thrown in the way of this, as he is told the original order on which he was received is exhausted, and he is refused re-admission. On coming back with an order he was admitted, and the governor allowed his name to remain entered on the books as a pauper chargeable to Ardchattan, being of opinion, and rightly, that his absence made no interruption of his charge-

ability. I think that *Taylor* v. *Strachan* was rightly decided, but that it is not in point, and I think the Lord Ordinary has taken an erroneous view as to its import in pronouncing the same decision here on a different state of facts.

LORD CRAIGHILL and LORD RUTHERFURD CLARK concurred.

The Court recalled the Lord Ordinary's interlocutor and decerned in terms of the conclusions of the summons.

Counsel for Pursuer—J. A. Reid—G. W. Burnet. Agents—Murray, Beith, & Murray, W.S.

Counsel for Defender—Comrie Thomson—Low. Agents—Davidson & Syme, W.S.

Friday, March 4.

FIRST DIVISION.

[Lord Trayner, Ordinary.

HUNTER AND OTHERS (OWNERS OF "AFTON") *v.* THE NORTHERN MARINE INSURANCE COMPANY (LIMITED) AND OTHERS.

Shipping Law—Insurance—Marine Insurance—Ship Insured "in Port" for Certain Time "After Arrival."

A policy of insurance insured a vessel from Java to any port or ports of call or discharge in the United Kingdom, . . . "and while in port during thirty days after arrival." She arrived at Greenock, was docked and discharged, and put for repairs into a repairing-yard situated between two of the Greenock docks. Repairs being completed, she on a day within thirty days of arrival went out of that dock to proceed to Glasgow in ballast to fulfil a charter, and was capsized by a gale at a place in the fairway of the Clyde opposite to the West Harbour of Greenock. *Held* (*diss.* Lord Shand) that she was not at the time of the accident in the port of Greenock as the meaning of that expression was understood among business men, but had left the port of Greenock in the prosecution of a new voyage, and therefore that she was not at the time covered by the policy, and the underwriters were not liable on it.

Opinion (*per* Lord Trayner) that when she left the dock to be put into the repairing-yard, she left the port in the sense of the policy, and ceased to be covered thereby.

Tests for determining the meaning of the word "port" considered.

This was an action by David Hunter of Ayr, shipowner, and others, registered owners of the ship "Afton" of Ayr, against The Northern Marine Insurance Company (Limited) and others, underwriters, who had undertaken policies on the vessel and her furniture, &c., in which the pursuers sought to recover the amount of damage sustained owing to an accident which befell the vessel on 12th February 1885, as stated below. The question in dispute was whether the vessel was covered by these policies at the time when the damage occurred. The policies of insurance (which were three in number) were, so far as the question in this action was concerned, to the same effect. That executed at Dundee on 20th September 1884 may be taken as a specimen. It insured the "Afton," "at and from port or ports and/or place or places, in any order, in Java to any port or ports of call and/or discharge in the United Kingdom or France or United States, and *while in port during thirty days after arrival*" (including all risk of docking while in dock, and undocking and shifting docks as might be required at any time during the currency of the policy). These perils were insured against, viz., "seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever; barratry of the master and mariners, and of all other perils, losses, and misfortunes."

The "Afton" sailed on the voyages covered by the policies, and arrived at Greenock on 22d January 1885, when she was berthed in the Victoria Harbour and discharged her cargo. She completed her discharge on 4th February. She was then under charter to proceed to Glasgow to take a cargo from there to Brisbane, but some repairs being necessary before proceeding on her new voyage, she was on 6th February taken into Caird's Dock (a private graving dock, not the property of the Harbour Trustees, but situated between the two Greenock docks) at Greenock for repairs. Upon 12th February, the repairs being completed, she left Caird's Dock in tow of a steamer, to be taken to Glasgow to fulfil her charter, and on the same day, while in tow, she capsized and sustained the damage sued for. The *locus* of the accident was a place in the fairway of the river Clyde opposite to and within a short distance of Greenock Harbour.

The question whether the "Afton" was or was not covered by the policies at the date of the damage depended upon whether or not she was within the "port of Greenock" when the accident occurred. The pursuers averred that the "port of Greenock," "in the ordinary commercial sense of the term, and as known in mercantile and maritime custom and usage, embraces that part of the river Clyde, or estuary thereof, which lies between White Farland Point on the west and Garvel Point on the east, and from the shore or south bank of the Clyde on the south to and including the said sandbank on the north, and in any event it embraces and includes the place where the "Afton" capsized."

The defenders denied that at the time of the accident the "Afton" was in the port of Greenock. They averred that she was then in the navigable channel of the Clyde; that she had left the port of Greenock, and was on a voyage from Greenock to Glasgow, and was not covered by the policies founded on.

The defenders pleaded, *inter alia*—"(3) The vessel not having been covered by the policies founded on when the loss occurred, in respect (1st) she was not then in the port of Greenock, *et separatim* (2d), whether in the port of Greenock or not, she had entered on a new voyage from Greenock to Glasgow, the defenders should be assoilzied."