three times, but not to the pauper's father. Her last husband died in January 1880. Since the death of her last husband she has resided continuously in the parish of Govan Combination, and the pauper resided with her till he reached the age of puberty on 8th September 1888. She had then a residential settlement in that parish, acquired during viduity. (3) The pauper after arriving at puberty was employed in several situations, and continued to reside with his mother in Govan till he became chargeable, with the exception of five periods which he passed in prison, the longest being six months for theft."

The parties submitted the following question for the opinion of the Court:—"Whether the parochial settlement of the pauper Alexander Sandilands at the date of chargeability was in Ayr, the parish of his birth, or in Govan Combination, the parish in which his mother had a residential settlement at the date of his reaching puberty, and in which he continued to reside down to the date of his chargeability?"

The first party argued—A legitimate child took its own birth settlement upon its father's death—*Craig* v. *Greig and Macdonald*, July 18, 1863, 1 Macph. 1172. In like manner a bastard child tooks its own birth settlement on attaining puberty—*Greig* v. *Ross*, February 10, 1877, 4 R. 465. In the case of a bastard child there was no reason why it should follow its mother's settlement after puberty. It was a *filius nullius*, and in the eye of the law no relationship existed between it and its mother—*Gray* v. *Carphin Coal Company*, July 27, 1891, 18 R. (H. of L.) 63. Prior to puberty no doubt a bastard child followed its mother's settlement, but the reason of that was that the mother and not the child was the pauper.

Argued for the second party—A legitimate pupil child had a derivative settlement in the parish where his father had acquired a residential settlement, and this settlement was not lost when the child attained puberty, but could only be lost by non-residence—*Inspector of Poor of St Cuthberts* v. *Inspector of Poor of Cramond*, November 12, 1873, 1 R. 174; *Hume* v. *Pringle*, December 22, 1849, 12 D. 411; *Allan* v. *Higgins and Others*, December 23, 1864, 3 Macph. 309. In the case of an illegitimate child the same rules applied, only that the parish of the mother was substituted for that of the father—*Heritors and Kirk-Session of Lasswade* v. *Heritors and Kirk-Session of Newlands*, March 6, 1844, 6 D. 956. The mother's settlement was the settlement of the child, because she was liable for its support. That liability continued after puberty. A mother might even in certain cases give a settlement to legitimate children—*Heritors and Kirk-Session of Crieff* v. *Heritors and Kirk-Session of Fowlis*, July 19, 1842, 4 D. 1539; *Gibson* v. *Murray*, June 10, 1854, 16 D. 926, The case of *Gray* v. *Carphin Coal Company* had no application to the poor law. The only case which seemed to support the first party's contention was *Greig* v. *Ross*, but it appeared from the report of that case in the Scottish Law Reporter (14 S.L.R. 346) that the question was whether the bastard child after puberty retained a settlement in the birth parish of its mother's husband, which, being its mother's settlement, had been its settlement during pupillarity. That was not an authority where the question was as to the retention or loss of a derivative residential settlement—*St Cuthbert's* case *supra*.

At advising—

LORD PRESIDENT—When this pauper attained puberty, his mother, with whom he lived, had an industrial settlement in Govan. After the boy attained puberty he and his mother continued to reside in Govan down to the date of his becoming chargeable.

As Alexander Sandilands was an illegitimate child, his mother's settlement was his settlement; and he had that settlement, and was liable to lose it, on the same conditions as if he had been legitimate, and had therefore taken his father's settlement. Now, as already mentioned, the mother's settlement was an industrial settlement, and the conditions under which an industrial settlement is retained or lost are those stated in the 76th section of the Poor Law Act 1845. Those conditions regulate the retention and loss of an industrial settlement as regards the child who derives it, as well as the parent who acquires it.

That this is the law, and that the conditions under which the birth settlement of a parent is lost by a child on its attaining puberty, do not apply to an industrial settlement, is shown by the case of *St Cuthbert's*, 1 R. 174, which in my judgment is decisive of the present question.

I am therefore for finding that the settlement was in Govan.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court found that the pauper's settlement was in Govan.

Counsel for the First Party — Deas. Agents—Gill & Pringle, W.S.

Counsel for the Second Party—George Watt. Agent—John Macmillan, S.S.C.

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*Wednesday, November 7.*

## SECOND DIVISION.

## SCOTT AND OTHERS *v.* CRAIG AND OTHERS.

*Process — Expenses — Aged Witness — Expense of Medical Certificate—Copies of Report of Commission — Objections to Auditor's Report—A.S., 16th February 1841, sec. 17.*

In an action of reduction it was averred that one of the defenders was unable to be present through old age,

and an affidavit was lodged to that effect in terms of the Act of Sederunt of 16th February. She was accordingly examined on commission, and the evidence so taken was used at the trial. The case was decided in favour of the defenders, and the pursuers were found liable to them in the expenses of process as taxed by the Auditor. The pursuers objected to the Auditor's report on the defenders' account that he had improperly allowed (1) the expense of a doctor's attendance on the defender in order that an affidavit of her inability to appear at the trial might be given; and (2) the expense of two copies of the report of the commission containing the evidence of the same defender, whereas the expense of only one copy should have been allowed.

The Court *repelled* the objections.

Counsel for Pursuers—Salvesen. Agent—Andrew Newlands, S.S.C.

Counsel for Defenders—M'Clure. Agent—R. Addison Smith, S.S.C.

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*Wednesday, November 7.*

## SECOND DIVISION.

[Sheriff of Ayr.

## ADAMS *v.* GLASGOW AND SOUTH-WESTERN RAILWAY COMPANY.

*Reparation — Master and Servant — Railway — Dangerous Occupation — Reasonable Precautions for Safety of Railway Servants—Contributory Negligence.*

A surfaceman was engaged in clearing away rubbish from both the lines in a railway station, when he was run over by a shunting engine which was proceeding up the down line. He sued the railway company for damages, on the ground that, looking to the dangerous nature of his employment, they ought to have taken special precautions to warn him of any approaching danger. The evidence showed that the shunting operations were of an ordinary character, and that they were being carried out in the usual way. It was not proved that special precautions were taken by other railway companies in similar circumstances. The Court *assoilzied* the defenders, *holding* (1) that the pursuer had failed to prove fault on the part of the defenders; and (2) that, assuming fault on the part of the defenders to have been proved, the pursuer had by his own negligence materially contributed to the accident by stepping on to the down line without looking to see that it was clear.

Upon 11th July 1893 George Adams, a surfaceman in the employment of the Glasgow & South-Western Railway Company, was ordered by the foreman under whom he worked to clear away rubbish from between both the up and down lines in the railway station at Ayr. While engaged in this work Adams was knocked down by an engine, which was proceeding tender first up the down line.

In November 1893 Adams raised an action of damages in the Sheriff Court at Ayr against the railway company. The action was laid both at common law and under the Employers Liability Act.

The pursuer averred that the accident had been caused by the defective system followed upon the defenders' line, which allowed the engine to proceed along the wrong line; that "it was the duty of the defenders while the pursuer was engaged in his work to have had some person watching the line so as to warn the pursuer of any approaching danger, especially from the wrong direction;" and that it was the duty of the driver in charge of the engine, or the servant under whose orders he was acting, to see that the line was clear, and to whistle or to give intimation of the approach of the engine, but that there had been negligent and culpable failure to take these precautions.

The defenders denied fault, and averred that the accident had been caused by the pursuer violating rule 347 of their rules and regulations, which was in these terms—"When a train is approaching, platelayers and other men at work on the permanent way must not remain on any running lines, nor between them if the spaces are less than 8 feet, but must at once move clear of all lines, unless they can distinctly see that they are in a position of safety and in no danger from another train approaching them unobserved. The men must stop in the position they have taken up till the train has cleared a sufficient distance to enable them to see that no train is approaching on the other lines before they re-cross the rails."

Proof was allowed. The material results of the evidence were as follows:—In accordance with the orders which he had received the pursuer was engaged in clearing away rubbish upon the up line when the 7·20 train from Glasgow came in. He was working alone. The down line was blocked at both ends of the station by signals, and it was the custom of the Glasgow & South-Western Railway and of other railways to allow engines to travel along such blocked lines in either direction as the exigencies of the traffic required. The engine which struck the pursuer went along the line in the same way every morning, after taking in water, as it did on the day of the accident, in order to pick up some carriages upon the up line. Before starting from the water column the engine-driver looked along the down line and saw that it was clear. He then went to the platform side and kept a look-out on that side of the engine. The shunting porter was standing upon the footplate on the other side of the engine, and according to his own state-