applied for his maintenance, the defenders were not liable for his support. With regard to the cases cited by the pursuer, in all of them the father was alive, and could be sued for any moneys expended on his children.

At advising—

LORD JUSTICE-CLERK—The question in this case is, whether under the provisions of this mutual trust-disposition and settlement the trustees under Mrs Westwood's trust-disposition, who hold the only funds out of which the obligation can be made effectual, are bound to pay back to William Stratton Westwood's *curator bonis* a sum equivalent to three years' aliment, which had been paid out of the capital of the ward's own estate. Mrs Westwood was no doubt liable to pay the cost of maintaining the ward in an asylum if he could not maintain himself, but she has left the whole estate to trustees for behoof of her own son, and the trustees are now paying the extra amount over the interest on the ward's own capital necessary for his maintenance, so that the present question only relates to a period of three years during which that amount was not paid.

The case is of no importance unless the ward should recover, but I think that, as he is possessed of certain estate which can be used for his maintenance, it cannot be said that he is unable to maintain himself so long as that exists. I think the judgment of the Sheriff is right.

LORD YOUNG—I do not think that the matter is doubtful upon the construction of the clause in this mutual trust-disposition and settlement, which provides that the survivor of the spouses should have the duty of maintaining this ward in an asylum or elsewhere "so long as he shall be unable to maintain himself." When this provision first came into operation he had an estate of some £300, so that he was able to maintain himself for a period of six years at the rate of £50 a-year, and the case would have been just the same if he had been able to maintain himself for one year or for twenty years, although the income of his capital might not have been sufficient to maintain him.

I think that the construction the curator seeks to put upon this clause, that the trustees are bound to pay over yearly a sum which along with the ward's income, will be sufficient for his support, is not maintainable, and that so long as the ward is able to maintain himself this clause does not come into operation. I therefore agree with the Sheriff's judgment.

LORD RUTHERFURD CLARK—I am of the same opinion.

LORD TRAYNER—I agree, but I wish to say that I give my opinion entirely upon the case raised upon record, and decided by the Sheriff upon the words of the clause in the mutual trust-disposition and settlement. It is not necessary to deal with the larger question that has been argued, but I do not wish by my silence to be held as agreeing with the views that have been expressed on the part of the curator.

The Court dismissed the appeal.

Counsel for the Pursuer — W. Campbell—Constable. Agent—J. S. Sturrock, W.S.

Counsel for the Defenders—Salvesen. Agent—J. Smith Clark, S.S.C.

Saturday, December 22.

SECOND DIVISION.

[Lord Kyllachy, Ordinary.

INGLIS *v.* GILLANDERS.

Succession—Trust-Disposition and Settlement—Entail—Direction to Entail Lands on Heirs of Another Entailed Estate—Disentail.

In his trust-settlement a testator directed his trustees to execute a deed of entail of his estate of Newmore to and in favour of a series of heirs therein specified, "whom failing to my nephew, J. F. G., Esquire of Highfield, and failing the whole persons above specified, then from respect to my deceased grandfather, G. G., Esquire of Highfield, to the heir in possession of the estate of Highfield under the entail thereof for the time, and to the other heirs-substitute in said entail in the order set down in said entail successively, declaring that my object and intention is that, failing the above series of heirs named by me, then the said lands and estate hereby conveyed are to be held by the heir of entail of the estate of Highfield along with the said estate of Highfield." In a codicil the truster desired it to be understood that the destination to J. F. G., as well as the subsequent destination to the heir in possession of the estate of Highfield, was made by him out of respect to the memory of his late grandfather, G. G. of Highfield.

The trustees executed a deed of entail, in which they disponed the lands of Newmore to the series of heirs other than the heirs of entail of Highfield in the very words of the destination contained in the trust-deed, "whom failing to J. F. G., Esquire of Highfield, who is the heir now in possession of the estate of Highfield, under the entail thereof executed by G. G., Esquire of Highfield . . . and failing the said J. F. G., then to the other heirs-substitute in said entail of Highfield in the order set down in said entail respectively, viz."—The heirs-substitute as they stood at the time were then enumerated in their order.

Held (*rev.* judgment of Lord Kyllachy) that the trustees had not acted *ultra vires* in making the destination of the estate of Newmore to the

heirs of entail of Highfield in the terms above specified, and that that destination did not become inoperative when the estate of Highfield was disentailed.

By his trust-disposition and settlement, dated 5th August 1858, Francis Mackenzie Gillanders of Newmore in the county of Ross, on the narrative that it was his desire and intention that his lands should be settled upon the series of heirs therein specified, directed and appointed his trustees to execute a disposition and deed of entail of the lands and estate of Newmore, and of any other lands of which he might die possessed, to and in favour of his niece, Mrs Katherine Falconer Gillanders or Inglis, whom failing to her eldest son George and the heirs-male of his body, whom failing to her second son, John Gillanders and the heirs-male of his body, whom failing to her third son, William, and the heirs-male of his body, whom failing to the heirs-male of the body of the said Katherine Gillanders, "whom failing to my nephew James Falconer Gillanders, Esquire of Highfield; and failing the whole persons above specified, then, from respect to my deceased grandfather, George Gillanders, Esquire of Highfield, to the heir in possession of the estate of Highfield under the entail thereof for the time, and to the other heirs-substitute in said entail in the order set down in the said entail successively; declaring that my object and intention is that, failing the above series of heirs named by me, then the said lands and estate hereby conveyed are to be held by the heir of entail of the estate of Highfield along with the said estate of Highfield under the burdens, conditions, provisions, and others contained in the disposition and deed of entail to be executed by my trustees as after mentioned." The testator further directed that the "said disposition and deed of entail to be executed by my said trustees shall also contain all other conditions, limitations, and clauses which my trustees shall consider proper and requisite for fully effectuating my design to preserve and secure the succession of the said lands to the series of heirs before specified in so far as now competent by law."

On 9th July 1860 Mr Gillanders made a codicil to his trust-deed, wherein he says—"I desire it to be understood that the destination, in the series of heirs of entail set forth in the foregoing settlement, to James Falconer Gillanders, my nephew, who is now in possession of the estate of Highfield under the entail thereof, has been made by me out of respect to the memory of my late grandfather, George Gillanders of Highfield, the entailer of the said estate, as well as the subsequent destination to the heir of entail in possession of the said estate of Highfield under the entail thereof for the time, and to the other heirs-substitute in the said entail in the order set down in the said entail successively, my object and intention being the same as expressed in the foregoing trust-disposition and settlement."

Acting under the said trust-disposition and settlement the trustees in October 1869 executed a disposition and deed of entail, whereby they disponed the lands and estate of Newmore "to the said Mrs Katherine Falconer Gillanders or Inglis; whom failing, to her eldest son, George Inglis, and the heirs-male of his body; whom failing, to her second son, John Gillanders Inglis, and the heirs-male of his body; whom failing, to her third son, William Hugh Inglis, and the heirs-male of his body; whom failing, to the heirs-male of the body of the said Katherine Falconer Gillanders or Inglis; whom failing, to James Falconer Gillanders, Esquire of Highfield, who is the heir now in possession of the estate of Highfield under the entail thereof executed by George Gillanders, Esquire of Highfield, dated the 7th day of February 1798, being the entail referred to in the said trust-disposition and settlement; and, failing the said James Falconer Gillanders, then to the heirs-substitute in said entail of Highfield in the order set down in said entail successively, *videlicet*, to John Gillanders, eldest son of the deceased Alexander Gillanders, factor of Stornoway, who was eldest son of George Gillanders, Esquire of Highfield, and the heirs-male of the body of the said John Gillanders; whom failing," &c. (the other heirs under the Highfield estate, as they stood at the time, being enumerated in their order).

The institute under the deed of entail, Mrs Katherine Falconer Gillanders or Inglis, died in the year 1872 leaving three sons—George, John, and William. She was succeeded by her eldest son, George Inglis, as heir of entail. Her second son, George Gillanders Inglis, died on 10th August 1873, leaving no male issue, and her third son, William Hugh Inglis, died on 9th May 1877 leaving no issue. George Inglis had no heirs-male of his body, and was thus the sole existing heir of entail, unless the estate was to descend to the heirs designated by the entail of Highfield.

James Falconer Gillanders died in February 1881. On his death he was succeeded in the estate of Highfield by his son, George, who disentailed the estate of Highfield, and conveyed it to trustees for behoof of a series of heirs different from those called to the succession by the original entail. George Gillanders was therefore no longer the heir in possession of Highfield under the entail referred to in the trust-disposition of Francis Mackenzie Gillanders, and no one could thereafter be in possession of the estate as heir under that entail.

In these circumstances George Inglis raised an action against Miss Frances Geraldine Gillanders of Highfield and others, the persons who would have been entitled to succeed to the estate of Highfield if the entail of that estate had not been broken. The pursuer sought declarator (1) that the pursuer was fee-simple proprietor of the estate of Newmore; and (2) that the deed of entail executed by the trustees was disconform to the directions of the truster, and was *ultra vires* of the trustees, in so far as it imported a destination to the defenders, or any of them, of the estate of Newmore as substitute-heirs independently of their having, and even in

the event of their not having, when such succession opened to them respectively, the character of heir of entail in possession of the estate of Highfield. There was also a third conclusion for reduction of the deed of entail, in so far as it imported a destination of the said lands of Newmore to the effect mentioned.

One of the defenders, Charles A. Gillanders, lodged defences, and pleaded, *inter alia*—"(3) The entail of Newmore being valid and operative and within the powers of the entailing trustees, the pursuer is not entitled to decree under any of the conclusions of the summons. (4) The possession of Highfield under the entail thereof of 1798 not having been made a condition of the succession to Newmore, this defender, as heir-male of the body of James Falconer Gillanders and of John Gillanders has a subsisting right of succession under the Newmore entail which the pursuer is not entitled to defeat."

On 7th July 1894 the Lord Ordinary (KYLLACHY) pronounced the following interlocutor—"Finds (1) that upon the just construction of the trust-disposition and settlement of the late Francis Mackenzie Gillanders, the destination of the estate of Newmore thereby directed (on the failure of previous heirs) 'to the heir in possession of the estate of Highfield under the entail thereof for the time, and to the other heirs-substitute in the said entail in the order set down in the said entail successively,' was not a destination to the persons who, at the date of the truster's death, or at the date of the making of the entail which he directed, possessed the character of heir in possession or heir-substitute under the existing entail of the estate of Highfield, but was a destination (*a*) to the heir who should be in possession of the estate of Highfield, when the succession to Newmore opened to the heirs of Highfield; and (*b*) to the heirs thereafter succeeding to the estate of Highfield under the said entail thereof in their order: Finds (2) that the estate of Highfield has now been disentailed, and is held as a fee-simple estate by the trustees under the trust-disposition and settlement of the late George Gillanders of Highfield: Finds (3) that, in these circumstances, the said destination directed by the said Francis Mackenzie Gillanders in favour of the heirs of entail of Highfield is no longer operative, and that, in so far as the existing entail of Newmore expresses or implies the contrary, it is disconform to the directions under which it was granted: Therefore declares and decerns in terms of the second declaratory conclusion of the summons, and also in terms of the conclusion of reduction: *Quoad ultra* dismisses the action: Finds no expenses due to or by either party, and decerns.

"*Opinion.*—In this case the substantial question is whether the pursuer, Mr Inglis of Newmore, is entitled, under the provisions of the Rutherfurd Act and the Entail Act of 1875, to bring the entail of Newmore to an end, in respect that he is now the last heir in existence under the tailzied destination. The ground on which he maintains that proposition is, that a certain branch of the destination—that part of it, namely, which carries the estate to the heirs in possession of the estate of Highfield, under the entail of that estate for the time—is no longer operative, the estate of Highfield having been some time ago disentailed and conveyed to trustees for certain trust purposes, and amongst others to give effect to a destination admittedly quite different from that expressed in the old entail. That is in substance the ground of the pursuer's action.

"The only peculiarity in the case is this, that the entail was executed in virtue of a direction in the trust-disposition and settlement left by the late Francis Mackenzie Gillanders of Newmore, by which he directed his trustees to make an entail containing the destination to which I have referred. These trustees did not, it appears, repeat the language of the trust-settlement, but, on the contrary, with respect to that branch of the destination which dealt with the heirs of entail of Highfield, they substituted, for the general description contained in the trust-deed, an enumeration of the then existing heirs of entail, as they stood at that time, under the Highfield entail. The pursuer has therefore a conclusion to the effect that it was *ultra vires* of the trustees to substitute this enumeration for the general description contained in the trust-deed, and he asks to have the deed of entail reduced in so far as it is thus disconform to the trust-deed.

"I cannot say that I have much doubt upon the main question involved. I think upon the construction of the trust-settlement of the late Mr Gillanders, that it is sufficiently plain that he intended the part of the destination to which I have referred to be a destination in favour of the persons who should possess, when that part of the destination opened, the character of heirs of entail of the estate of Highfield, under the Highfield entail; and that being so, I think it follows that that part of the destination is no longer operative, because the Highfield entail is no longer in existence, and accordingly I think the pursuer is entitled to a finding to that effect, and is also entitled to have declarator, in terms of the second conclusion of his summons. I think he is also entitled to have decree of reduction of the deed of entail, 'in so far as the destination contained in the said disposition and deed of entail imports, or may be held to import, a destination of the said lands and estate of Newmore to the defenders,' &c.

"I shall therefore make a finding to the effect I have mentioned, and pronounce decree in terms of the second and third conclusions of the summons, *quoad ultra* dismissing the action. In the circumstances, and having in view that a decision of the question raised was necessary in order properly to clear the pursuer's title, I make no finding as to expenses."

The defender reclaimed, and argued—

Neither in the trust-deed or the deed of entail was there any irritancy declared on the succession opening to the heirs of entail of Highfield if the estate of Highfield had been disentailed. At the date the deed of entail was executed there existed a person who was "for the time" the heir in possession of the estate of Highfield under the entail thereof, viz., James Falconer Gillanders. The intention of the testator must be looked at, and the trustees were entitled to make a valid and effectual deed for the purpose of carrying out that intention—*Graham* v. *Lord Lynedoch's Trustees*, March 15, 1853, 15 D. 558, June 14, 1855, 2 Macq. 295; *Gordon* v. *Gordon's Trustees*, June 11, 1886, 13 R. 934. It was plain from the codicil that the testator intended, out of respect for his grandfather, that his estate of Newmore should descend to the heirs of entail of the estate of Highfield in the order set down in that entail, and that he had no intention of making it a necessary condition to any of these heirs succeeding to Newmore that the estate of Highfield should not be disentailed.

Argued for the pursuer—The defender had now no connection with or interest in the estate of Highfield. The testator had no intention of benefiting the heirs of entail of the estate of Highfield individually. His wish was that the two estates of Newmore and Highfield should be held by the same person. "The heir of entail in possession of the estate of Highfield under the entail thereof" was one of the substitutes of entail. No such person now existed or could ever exist. The destination therefore fell. In so far as the destination in the deed of entail differed from that in the trust-deed it was unauthorised and *ultra vires* of the trustees, and should be reduced.

At advising—

LORD RUTHERFURD CLARK — By his trust-disposition and settlement, dated 5th August 1858, Francis Mackenzie Gillanders, on the narrative that it was his desire and intention that his lands should be settled upon and descend to the series of heirs therein specified, directed his trustees to execute a disposition and deed of entail of the lands of Newmore to and in favour of his niece, Mrs Inglis; whom failing to her eldest son, George, and the heirs-male of his body; whom failing to her second son, John, and the heirs-male of his body; whom failing to her third son William, and the heirs-male of his body; whom failing to the heirs-male of the body of Mrs Inglis, "whom failing to my nephew James Falconer Gillanders, Esquire of Highfield; and failing the whole persons above specified, then, from respect to my deceased grandfather George Gillanders, Esquire of Highfield, to the heir in possession of the estate of Highfield under the entail thereof for the time, and to the other substitutes in said entail in the order set down in the said entail."

On 9th July 1860 Mr Gillanders made a codicil to his trust-deed, wherein he says—"I desire it to be understood that the destination, in the series of heirs of entail set forth in the foregoing settlement, to James Falconer Gillanders, my nephew, who is now in possession of Highfield under the entail thereof, has been made by me out of respect to the memory of my late grand father George Gillanders of Highfield, the entailer." It appears therefore that Mr J. F. Gillanders was not made a substitute heir from any personal predilection of the truster, but that he was brought into the destination as one of the heirs of entail of Highfield, and in no other character.

The trustees executed a disposition and deed of entail in October 1869. They disponed the lands to the series of heirs other than the heirs of entail of Highfield in the very words of the destination contained in the trust-deed. The entail then proceeds thus—"Whom failing to James Falconer Gillanders, Esquire of Highfield, who is the heir now in possession of the estate of Highfield under the entail thereof executed by George Gillanders, . . . and failing the said James Falconer Gillanders, then to the other heirs-substitute in said entail of Highfield."

The pursuer is heir of entail in possession of the lands of Newmore. He succeeded his mother, the institute, in 1872. His only brothers are dead without issue, and he has no heir-male of his body. He is therefore the sole existing heir unless the estate is to descend to the heirs designated by the entail of Highfield.

James Falconer Gillanders died in 1881. He was succeeded in the estate of Highfield by his son, George, who, after disentailing, conveyed it to trustees for a series of heirs different from those called to the succession by the original entail. George is therefore no longer the heir in possession of Highfield under the entail referred to in the trust-disposition of Francis Mackenzie Gillanders, and no one can be in possession of the estate as an heir under that entail.

In these circumstances the pursuer claims to be the only heir of entail in existence under the entail which Francis Mackenzie Gillanders directed to be made, and he seeks to set aside the entail which was made by the trustees, as being contrary to the directions of the truster. He maintains that the trustees were bound to express the destination in the very words of the trust-deed, and that they exceeded their powers in simply calling the other heirs of Highfield as substitutes to James Falconer Gillanders. His contention is that, failing the previous heirs including James Falconer Gillanders, the destination should have been "to the heir in possession of the estate of Highfield under the entail thereof for the time, and to the other substitutes under that entail."

The case of the pursuer is, that if the entail had been executed in these terms there could not be, after the failure of the heirs of the body of Mrs Inglis, and after the death of James Falconer Gillanders, any "heir in possession of the estate of Highfield under the entail thereof for the time," and that by consequence the substi-

tution "of the other heirs-substitute in said entail" would be of no avail, because no such substitute could succeed unless the heir in possession had previously taken. No such case is possible on the entail as actually executed. The question therefore is whether the entail is framed in accordance with the directions of the truster or contrary to them.

In construing the direction to entail we are not construing an entail, but a trust-deed. In the one case we would be bound to take the entail as it is, and to determine what it has done, for it is the sole measure of the rights which are created by it. In the other case we are not confined by any such rigid rule. We may construe the trust-deed so as to give effect to the intention of the truster. Of course we cannot proceed on conjecture, and the language of the trust-deed must be the only exponent of his purpose.

The fact that the truster directed an entail according to a destination which he set out at length gives support to the argument that he authorised no other destination, and that the trustees had no power to make any alteration on its terms. If this be the sound construction of the trust-deed, I should be obliged to hold that the trustees have exceeded their powers.

But we have not to construe the trust-deed alone. We are bound to take the codicil along with it, and, although the codicil does not in express terms make any alteration on the destination, it assigns a different place to Mr Gillanders of Highfield. He is named in the destination; but, inasmuch as we know from the codicil that he was called only as an heir under the entail of Highfield, we must, in my opinion, hold that he is named only because he was heir in possession of that estate at the date of the trust-deed, and therefore the first of the class called on the failure of the heirs-male of the body of Mrs Inglis. There cannot, I think, be any doubt that that class included the whole heirs of Highfield, and that they would have succeeded in their order if Highfield had not been disentailed. The question arises from the manner of describing the heir who is appointed to succeed after Mr Gillanders. It is said that his possession of Highfield is a condition of his right to succeed to Newmore. That might be true of him. It cannot be true of any other heir, and when the whole heirs are called without distinction, it is difficult to hold that the truster intended that there should be any difference in the conditions on which they might severally succeed.

In the destination, as it is given in the trust-deed, Mr Gillanders is among the heirs selected by the truster. As he was called by name only, it was necessary to point out the person to whom the succession was to open on his failure. For that purpose the truster used the expression to "the heir in possession of Highfield." There was no such necessity when Mr Gillanders was only to take a place among these heirs. In that case the proper form of the destination was that which was adopted by the trustees, viz., to call Mr Gillanders and the substitute-heirs of Highfield after the failure of the prior heirs. The change made on the words used by the entailer was in my opinion not only justifiable, it was required in order to give to the codicil its due effect.

I should reach the same result apart from the codicil, because it is certain that the truster called all the heirs of Highfield in their order. The destination as it is set out in the trust-deed includes all. The trustees have done nothing more than the truster authorised. They have inserted the destination which he prescribed, though they have expressed it in a more perfect manner. I cannot hold that they acted beyond their powers in adopting a form which was better calculated to secure the purpose of the truster than that which he had used himself. There had been no change in the destination. There has only been a change in the expression of it.

There might be force in the argument of the pursuer, if it could be shown that the truster meant that his estate should not descend to the heirs in the Highfield entail if that estate were disentailed. I can see nothing to show that he had any such intention. The expression in the destination "to the heir in possession of Highfield" does not suggest it. It might create a difficulty, if under a destination so conceived the succession should open to the heir who is thus described after Highfield had been disentailed. But if that heir had taken up the succession before the disentail of Highfield, it is plain that the disentail of that estate after his succession could not bring the entail of Newmore to an end. The estate would, according to the very words of the destination, descend "to the other heirs-substitute" in the entail of Highfield, whether they were in possession of Highfield or not. The expression to which I have referred cannot therefore show that the truster meant that the entail of Newmore should depend on the existence of the entail of Highfield. I read it as showing that he assumed that the latter entail would continue to exist, and that he acted on that assumption when he described the heir who was to succeed on the failure of Mr J. F. Gillanders.

Accordingly, I am by no means clear that the pursuer would be successful even if the entail had contained a destination in the very words of the trust-deed. We might very well construe the part of it to which I am referring as meaning "the heir who is under the entail of Highfield entitled to succeed" after Mr Gillanders. The expressions "the heir in possession under an entail," and the heir "entitled to succeed under an entail" are necessarily equivalent if the entail continues to exist, and they were equivalent in the mind of the truster, for he did not contemplate or provide for the disentail of Highfield. The reference to possession may therefore be regarded as the means which the truster used to designate the heir, and not as denoting a quality which was necessary to his succession.

I do not, however, proceed on this view. I prefer to put my judgment on the ground that in making the entail the trustees did not exceed their powers.

The LORD JUSTICE-CLERK—That is the opinion of the Court.

The Court recalled the interlocutor reclaimed against and assoilzied the defenders.

Counsel for the Pursuer — Dundas — Salvesen. Agents—Dundas & Wilson, C.S.

Counsel for the Defender—Lorimer—C. S. Dickson. Agents—Hamilton, Kinnear, & Beatson, W.S.

Saturday, December 22.

SECOND DIVISION.

HUNTER v. HENDERSON.

Poor—Desertion—Pupil Children Deserted by Father—Settlement.

An able-bodied man deserted his pupil children in 1890, and they became chargeable to and were maintained by the parish of P., in which the father had a residential settlement at the date of the desertion. In September 1892 the father, who had by this time lost his settlement in the parish of P. by non-residence, was discovered in another parish, where he had applied for and obtained relief. He continued in receipt of parochial relief until his death, which occurred in the following year. Liability for the cost of his maintenance was admitted by O., the parish of his birth. In October 1892 the parish of P. gave notice to the parish of O. claiming to be relieved of the burden of maintaining the pauper's pupil children. O. denied liability.

Held that the settlement of the children followed the settlement of the father, and that consequently the parish of O. was liable for their maintenance from the date of the statutory notice sent by the parish of P.

Upon 23rd August 1890 George Bathgate, mason, deserted his wife and children. His children, the eldest of whom was six years of age, became chargeable to the parish in which they were then residing. Liability for their maintenance was, however, admitted by the parish of Prestonpans, in which Bathgate had a residential settlement at the date of the desertion, and the children were removed to and subsequently maintained by that parish.

The parish of Prestonpans did everything in their power to discover the whereabouts of Bathgate, but until he applied for relief to the parish of Falkirk, as after mentioned, no trace of him could be discovered.

At the date of the desertion George Bathgate's wife was in a lunatic asylum. She was discharged cured on 28th February 1891, and afterwards supported herself.

Upon 18th September 1892 Bathgate applied for and obtained relief from the parish of Falkirk. Three weeks later he left Falkirk, and on 20th October he applied for and obtained relief from the parish of Tranent. He was removed to the poorhouse of that parish, where he remained until his death in March 1893. Prior to 18th September 1892 he had lost his settlement in the parish of Prestonpans by non-residence. Up to that time he had never personally obtained relief. Liability for his maintenance from 18th September 1892 until his death was admitted by Ormiston, the parish of his birth.

Upon 27th October 1892 the parish of Prestonpans sent a notice to the parish of Ormiston claiming relief and repayment of the advances made or incurred by the said parish on behalf of Bathgate's pupil children. Ormiston denied liability.

A special case was accordingly presented by (1) Robert Hunter, Inspector of Poor of Prestonpans, and (2) Robert Henderson, Inspector of Poor of Ormiston, in order to obtain the opinion of the Court upon the following question:—"Whether the parish bound to support the said three pupil children of the said George Bathgate, as from and after 18th September 1892, is the parish of Prestonpans or the parish of Ormiston?"

The first party argued — The aliment given to these pupil children after 18th September 1892 was recoverable from the second party, because at the date when the father applied for relief, and his whereabouts became known to Prestonpans parish, he had lost his residential settlement, and was therefore chargeable to his birth settlement. The pupil children took their father's settlement. It was settled that, if a husband deserted his wife, and acquired a residential settlement in another parish, that parish was liable for the support of the wife—*Wallace* v. *Turnbull*, March 20, 1870, 10 Macph. 675. Pupil children were in the same position as a wife —*Milne* v. *Henderson and Smith*, December 3, 1879, 7 R. 317; *Milne* v. *Ross*, December 11, 1883, 11 R. 273. It was true that desertion by a father or husband if he was able-bodied was equivalent to death, but that assumption came to an end when the father or husband was discovered, and it was only aliment from the date of the father's discovery that was sought. Here the father was discovered after his desertion as a pauper; he had lost his residential settlement in Prestonpans, he therefore became chargeable to his birth settlement, and as his pupil children followed their father's settlement, they also were chargeable to their father's birth settlement—*Anderson* v. *Wilson*, June 12, 1878, 5 R. 904; *Greig* v. *Simpson and Craig*, May 16, 1876, 3 R. 642; *Adamson* v. *Barbour*, May 30, 1853, 1 Macq. 376; *Parish of Dumfries* v. *Parish of Tinivald*, January 21, 1893, 3 Poor Law Mag. (N.S.) 196.

The second party argued — When the pauper deserted his wife and children on August 23rd 1890, Prestonpans admitted its liability to support the chil-