Tuesday, November 24.

FIRST DIVISION.

[Sheriff of Lanarkshire.

PARISH COUNCIL OF SHOTTS *v.* PARISH COUNCILS OF RUTHERGLEN AND BOTHWELL.

Poor—Settlement—Forisfamiliation—Stepfather's Settlement.

When a widow marries a second husband, the residential settlement which she may derive from him does not affect the settlement of her pauper child by the first marriage, which falls to be determined upon the child attaining minority according to the nature of the father's settlement, although during the years of pupilarity the child's own right of settlement may be temporarily suspended and absorbed in the mother's.

A pauper born in the parish of R. became a minor in 1894, and a proper object of relief in 1895. His father, who had a birth settlement in B., having died in 1888, his mother in the same year married a man who had acquired a residential settlement in S., and continued to reside with her husband in that parish, the pauper living in family with her until her death in 1895.

In a question between the parishes of R., B., and S., *held*, in accordance with the above principle, and following the cases of *Beattie* v. *Mackenna*, March 8, 1878, 5 R. 737, and *Inspector of St Cuthbert's* v. *Inspector of Cramond*, November 12, 1873, 1 R. 174, that R., the parish of the pauper's own birth, was liable for his support.

This was an action raised in the Sheriff Court of Lanarkshire to determine the parish of settlement of Patrick Mallan, a pauper.

The pauper was born in 1880 in the parish of Rutherglen, and became a minor in 1894. His father was born in the parish of Bothwell, and retained his birth settlement until his death in 1888. His mother later in the same year entered into a second marriage with Charles Dobbin, who had a residential settlement in the parish of Shotts. She continued to reside with her husband in that parish until his death in July 1895, the pauper living in family with her. In August 1895 the pauper became a proper object of parochial relief.

The competing parishes were—(1st) The parish of Shotts, pursuers, who pleaded—"(2) The Parish Council of Rutherglen—the pauper being born in that parish—is bound to relieve the pursuers of the foresaid advances and of future relief, in respect of the said Patrick Mallan's birth settlement. (3) In the event of its being shown by the Parish Council of Rutherglen that the pauper's settlement is in the parish of Bothwell, the pursuers are entitled to decree against the parish Council of Bothwell to relieve the pursuers of advances and of future maintenance, in respect the said Patrick Mallan acquired through his father a settlement in that parish." (2nd) The parish of Bothwell, defenders, who pleaded—"(2) In respect of the said Patrick Mallan being above the age of puberty, and being forisfamiliated, and Rutherglen being the parish of his birth, his settlement is in that parish, and the Parish Council of Rutherglen are liable for his support. (3) Alternatively, in respect of the said Patrick Mallan having, while in pupilarity, acquired through his mother a derivative residential settlement in Shotts parish, and not having lost such settlement by absence at the date of chargeability, the said parish of Shotts is liable for his support, and the Parish Council of Bothwell should be assoilzied, with expenses." (3rd) The parish of Rutherglen, defenders, who pleaded—"The defenders, the Parish Council of the parish of Rutherglen, are entitled to absolvitor, with expenses, in respect that—(*a*) The pauper has never been forisfamiliated, and has therefore the parish of Bothwell or Shotts as his settlement; (*b*) *esto*, that he has been forisfamiliated, he took, on the marriage of his mother with Charles Dobbin, the parish of Shotts as his settlement, and as that settlement was a derivative residential settlement, he has not lost it."

On 29th July 1896 the Sheriff-Substitute at Hamilton (DAVIDSON) pronounced an interlocutor in which, after certain findings in fact, he found "that in the circumstances above set forth the said Patrick Mallan has acquired through his mother a residential settlement in the parish of Shotts, and that he is chargeable to that parish: Therefore assoilzies the defenders from the conclusions of the action."

Note.—"I have been unable to distinguish this case from that of *Wallace* v. *Muir* (Poor Law Magazine, 1893, p. 445), where it was decided by the Sheriff of Lanarkshire that a child acquired a derivative settlement during the years of puberty by residence with his mother, and that a settlement so acquired can only be lost by non-residence, like other settlements. The decisions in the Court of Session seem to me to be to some extent conflicting. The case of *St. Cuthbert's* v. *Cramond* (1 R., 174), lays down the principle distinctly, that a settlement acquired through the child's father adheres to the child after his death; but, in *Craig* v. *Greig and Macdonald* (1 Macph. 1172), a majority of a bench of seven judges distinguished between a settlement acquired through a father, and one obtained through a mother. *Wallace* v. *Muir*, however, is of course binding as an authority in this Court; and, as the point at issue seems to have been distinctly raised and decided there, I do not think it is necessary to enter further into the question."

The pursuers appealed to the Court of Session, and argued—The Sheriff-Substitute was wrong. When a pauper pupil attained minority, his settlement was either the residential settlement of his deceased father—*Inspector of St Cuthbert's* v. *Inspector of Cramond*, November 12, 1873, 1 R. 174—or, if the father had had no resi-

dential settlement, his own birth settlement —*Craig* v. *Greig and Macdonald*, July 18, 1863, 1 Macph. 1172. During pupilarity the pauper had a derivative settlement from his father, whether birth or residential— *Beattie* v. *Mackenna*, March 8, 1878, 5 R. 737. It was quite true that if the mother survived the father, and had or acquired an independent settlement of her own, that became the settlement of the children during pupilarity. But if she died during the pupilarity of the children, their derivative settlement from their father revived. The principle in such cases was that the mother was the pauper, and the pupil children, being mere encumbrances on her, were not paupers in their own right. The judgment in *Greig* v. *Adamson and Craig*, March 2, 1865, 3 Macph. 575, went no further, though the rubric was misleading. This was patent from Lord Deas' opinion, p. 579, and had been recognised in *Beattie, ut. sup. per* Lord Mure, p. 740. The authority of *Beattie* had been expressly accepted in *Hendry* v. *Mackison*, January 13, 1880, 7 R. 458, and later in *Campbell* v. *Hislop*, June 5, 1894, 31 S.L.R. 919. The second marriage of the pauper's mother could have no effect on his settlement; the pauper was incapable during pupilarity of acquiring a settlement of his own by residence; and therefore whatever parish might be liable, the parish of Shotts was not.

Argued for the defenders, the Parish Council of Rutherglen—The Sheriff-Substitute was right. The tendency of the decisions was to identify the position of the father and mother in matters of this kind. In the case of *Heritors of Crieff* v. *Heritors of Fowlis Wester*, July 19, 1842, 4 D. 1538, it was decided that a wife might acquire a residential settlement for herself and a posthumous legitimate child. A further step was taken in the case of *Gibson* v. *Murray*, June 10, 1854, 16 D. 926, which settled that a widow's birth settlement was the settlement of her children. *Grant* v. *Reid*, May 25, 1860. 22 D. 1110, decided that a widow might acquire a residential settlement for an imbecile child living in family with her. Then came *Greig, ut sup.*, which decided that a residential settlement derived by the pauper's mother from her second husband had the same effect as one acquired directly by herself. It was implied in the decision in *Greig* that a widow's second marriage might supersede the derivative settlement of the children of her first marriage as well as her own. Assuming that the father and mother were in the same position as regards this matter, the pauper here had acquired a residential settlement in his own right. That result followed necessarily from the decision in *Hume* v. *Pringle*, December 22, 1849, 12 D. 411. The Guardianship of Infants Act, 1886 (49 & 50 Vict. cap. 27), had placed a father and mother on a footing of absolute equality in relation to their children. [Rutherglen admitted that if liability could not be attached to Shotts, it would be liable as the parish of the pauper's birth.]

Argued for the defenders, the Parish Council of Bothwell—Either Shotts or Rutherglen was liable; Bothwell was not.

Lord Adam—[*After stating the facts of the case, his Lordship proceeded*]—In my opinion the parish of the pauper's own birth is responsible. That was not disputed by the parish of Bothwell, but it was disputed by the parish of Rutherglen. On the other hand, between the two parishes of Bothwell and Rutherglen it was not disputed that if Shotts was not liable, then the parish of the pauper's birth was liable.

The first question which naturally and logically occurs is, what was the parish of settlement of this pauper when his father died in 1888? For I think there can be no doubt that the parish of his father's settlement, the pauper being then a pupil, became his settlement. I think further that the authorities show that so long as he continued a pupil that settlement could be lost by no act of his. Therefore, if matters had continued as they were, that would have been the parish of his settlement until he became a minor, and therefore capable of acquiring a new settlement, in which case it is not disputed that the parish of his own birth would have been the parish of his settlement.

It appears, however, that shortly after his father's death his mother married this man Dobbin, who had a residential settlement in Shotts. The question is, whether the fact of the second marriage of his mother made any change in the settlement of the pauper. Now, I think the authorities are against that view. I think the marriage of the pauper's mother effected no change, and did not deprive him of the right which he had in his own person to a settlement in the parish of his father's birth. I concur with the criticism of the case of *Adamson* that all that decision settled was that where a woman married again she lost the settlement of her first husband, and acquired that of her second husband for herself. She was the pauper in that case, not the children, and it was her settlement alone that required to be looked to, for the children were not to be treated as independent paupers.

I think that the principle of *Beattie* settles this case. There, as I understand it, it was decided that, so long as the children are pupils and remain with their mother, the right of settlement which they themselves acquired by the death of their father in the parish of his birth may be temporarily suspended. So long as the mother was alive and the pupil living with her he would have had her settlement, for she would have been the pauper. But she died, the pupil attained minority; he then became capable of acquiring a settlement on his own account, and the result is, that after attaining puberty, as the case of *Cramond* shows, the settlement of his own birth became his settlement.

It was said that there was a specialty in this case, in respect that there was here, not a birth settlement, but a settlement which the widow had acquired by residence, and it was said, on the authority of the *Crieff* case, that that made a difference. I do not think the facts bear that out, for, as far as any settlement of the widow is con-

cerned, as soon as she married she ceased to have an independent settlement, and only had that of her husband, between whom and the pauper there is no legal relation. In the next place, I think it is equally clearly out of the case that the children acquired any settlement in the parish of Shotts, for so long as a child is under fourteen years of age it has no *animus* to change its own residence.

I am therefore of opinion that we should recal the Sheriff-Substitute's interlocutor, and hold the parish of Rutherglen liable.

LORD M'LAREN—I am of the same opinion. It seems to result from the authorities that a pupil child is incapable of acquiring an independent settlement. Now, as connected with the history of this case, we had to consider what was the settlement of the pauper during the period of pupilarity. Now, the law on that subject is that the father—who of course is liable to maintain the child—when he becomes a pauper takes that liability along with him to the parish, and, whether he be alive or dead, the parish of his father's settlement is the parish which is liable to keep the child, and to give it sustenance during the period that the child is incapable of earning a livelihood. This rule, which has been very much discussed, was extended first to the case of a mother who acquires during her widowhood an independent industrial settlement, and because she is responsible for the aliment of her child it was held that she had a claim against the parish of her industrial residence for her child as well as for herself. And then, in the case of *Greig* in 3 Macph., this rule was further extended to the case where the mother's settlement is not acquired by industrial residence, but is acquired through her re-marriage. But those decisions, while settling the question of the liability for the maintenance of a pupil child, throw very little light upon the present question, which relates to the liability for a child who has been for some years forisfamiliated. I think they throw little light on the question, because whenever a child becomes forisfamiliated the question of settlement has to be considered afresh and independently of the liability during the past. Now, I take it that the settlement which the child acquires from the father in consequence of the father's industrial residence will adhere, and failing that, the settlement which the child may acquire from the mother through her industrial residence will adhere to the child until lost in the usual way; and that derived settlement from either parent is the one that constitutes a prior claim on the parish—prior to the latent claim which always exists against the settlement of the child's birth. But it seems to me it would not be a sound extension of the principle of derivative settlements to hold that it should be extended to the case of the settlement of a stepfather, as I think the fallacy of the argument consists in extending a rule that may be convenient and just in the case of pupilarity to a new question that arises upon forisfamiliation. It is impossible to discover any tangible ground for subjecting the parish of the stepfather's industrial residence to liability for the stepchild. He is not bound to maintain the stepchild. He is bound to maintain his wife, and that is a very good reason why she should have a settlement through him. But the stepfather sustaining no legal relation towards his stepchild, and owing him no duty of support or obligation towards him, it would be inconsistent with legal principle to hold that his settlement should take effect upon the stepchild. Now, as this pauper Patrick Mallan had a father who died without having an industrial settlement, and a mother who never acquired an industrial settlement of her own, it follows that the child must fall back upon the parish of his own birth, which is always liable, unless its liability is displaced by some stronger tie or ground of liability. I therefore am of opinion that the parish of Rutherglen, the parish of Patrick's birth, is the one that is responsible for his maintenance.

LORD KINNEAR—I agree. The question is whether this pauper is chargeable on the parish of his own birth, or secondly, upon the parish of his father's birth, or thirdly, upon the parish in which his mother is said to have acquired a derivative settlement by residence after her marriage with a second husband. I take it to be settled that the father's birth settlement transmits to his children only while they are in pupilarity, and therefore the parish of the father's birth seems to me to be relieved upon perfectly clear and well-established principles. I can see no grounds upon which the parish of his stepfather's birth or residence should be made liable. The settlement which the widow acquired by residence after her first husband's death and during her second marriage was not an independent industrial settlement acquired by herself, but through her second husband's settlement, from which I am unable to see that the children of her first marriage could acquire any right. Therefore I agree with your Lordships that we must fall back upon the parish of the pauper's own birth.

The LORD PRESIDENT was absent.

The Court recalled the interlocutor of the Sheriff-Substitute, and found the Parish Council of Rutherglen liable to support the pauper.

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