At advising—

Lord President—The interlocutor of the Lord Ordinary is not challenged except in so far as by it his Lordship has allowed the summons to be amended by introducing the words "or severally" after the words "jointly and severally" or "conjunctly and severally," in each of the four conclusions of the summons (including the conclusion for expenses), which are directed both against The Barnton Hotel Company, Limited, and the three individual defenders. The amendment allowed by the Lord Ordinary appears to me to satisfy the requirements of section 29 of the Court of Session Act 1868, inasmuch as (1) it is necessary for the purpose of determining in the present action the real question in controversy between the parties, and (2) it does not subject to the adjudication of the Court any larger sum, or any other fund or property than that which is specified in the summons. It was, however, maintained by the defenders that in a case of proper conjunct and several liability each of the parties has a right of rateable relief against the others, and that this right of relief would or might be prejudiced by the amendment, which (they say) would warrant a several decree being pronounced against any of them without relief. It appears to me, however, that the present case is not one in which any such right of relief would be prejudiced or affected by the amendment, and if the Lord Ordinary considers that decree should be pronounced against the defenders, or any of them, he will doubtless express his interlocutor so as to reserve any right of relief, if such right is found to exist. I therefore think that this contention of the defenders does not afford any reason for declining to allow the amendment.

Lord Adam, Lord M'Laren, and Lord Kinnear concurred.

The Court adhered.

Counsel for the Pursuer and Respondent — Kennedy — M'Lennan. Agent — John Baird, Solicitor.

Counsel for the Defenders and Reclaimers — W. Campbell, Q.C. — T. B. Morison. Agents—Ritchie Rodger & Wallace S.S.C.

Tuesday, June 12.

FIRST DIVISION.

[Sheriff Court of Stirling.

PARISH COUNCIL OF FALKIRK *v.* PARISH COUNCILS OF STIRLING AND GOVAN.

Poor—Settlement—Derivative Settlement—Residential Settlement — Acquisition — Poor Law Amendment (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 83), *sec.* 76—*Poor Law (Scotland) Act* 1898 (61 *and* 62 *Vict. cap.* 26), *sec.* 1—"*Chargeable to Parish.*"

The 76th section of the Poor Law Act of 1845 provided that "no person shall be held to have acquired a settlement in any parish by residence therein unless such person shall have resided for five years continuously in such parish."

Section 1 of the Poor Law Act of 1898 repeals the above section "and in lieu thereof" enacts that "from and after the commencement of this Act no person shall be held to have acquired a settlement in any parish . . . unless such person shall either before or after, or partly before and partly after, the commencement of this Act have resided for three years continuously in such parish." The section contains a proviso to the effect that nothing in the Act shall—until the expiration of four years from its commencement—affect any persons who at the commencement of the Act "are chargeable to any parish in Scotland."

Section 10 of the Act of 1898 provides that the Act is to come into operation on October 1st 1898.

P., who was born in the parish of Stirling, resided from Whitsunday 1895 to September 23rd 1898 in the parish of Govan, and died on the last-named date. His wife resided with him during this period. After the death of her husband, Mrs P. on 27th September 1898 applied to the inspector of the parish of Govan for relief. On 5th October 1898 she was certified by the parochial doctor to be a proper object of parochial relief, and on the same day relief was granted to her, and notice was given to the parish of Stirling that she had "as a pauper become chargeable on the parish." The pauper thereafter applied for and was granted relief in the parish of Falkirk. In an action at the instance of Falkirk parish against the parishes of Stirling and Govan, *held* (1) (*diss.* Lord M'Laren) that the effect of section 1 of the Act of 1898 was to substitute three years for five as the period requisite for the acquisition of a residential settlement, and that consequently as the husband had resided in Govan for more than three years before his death, the derivative settlement of his wife was in the parish of Govan; and (2) that Mrs P. was not "chargeable" to any parish

at the commencement of the Act in the sense of the proviso in section 1 of the Poor Law Act of 1898, the test of chargeability being actual admission to the poor's roll, and that accordingly the case did not fall within the proviso.

Observations (*per* Lord Kinnear) on the meaning of "derivative settlement."

By section 76 of the Poor Law Act of 1845 (8 and 9 Vict. cap. 83) it was enacted that "no person shall be held to have acquired a settlement in any parish or combination by residence therein unless such person shall have resided for five years continuously in such parish or combination, and shall have maintained himself without having recourse to common begging either by himself or his family, and without having received or applied for parochial relief."

Section 1 of the Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 26) enacts as follows:—"Section seventy-six of the principal Act is hereby repealed, and in lieu thereof it is enacted as follows—From and after the commencement of this Act no person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall either before or after, or partly before and partly after, the commencement of this Act have resided for three years continuously in such parish, and shall have maintained himself without having recourse to common begging either by himself or his family, and without having received or applied for parochial relief . . . Provided always that nothing herein contained shall, until the expiration of four years from the commencement of this Act, be held to affect any persons who at the commencement of this Act are chargeable to any parish in Scotland."

By section 10 it is enacted that the Act is to come into operation on the first day of October 1898.

An action was raised in the Sheriff Court of Stirling by the Parish Council of Falkirk against the Parish Councils of Stirling and of Govan craving decree for payment to the pursuer by one or other of the defenders of the sum of £6, 4s., being the amount expended by them in alimenting Mrs Paterson, a pauper, and for relief against future alimentary advances made by the pursuers on her behalf.

The following statement of the material facts in the case is taken from the opinion of the Lord President:—"Mrs Paterson, who was born in the parish of Falkirk, was married to the now deceased James Paterson, who was born in the parish of Stirling, and she resided with him from Whitsunday 1895 in the parish of Govan, where he died on 23rd September 1898. Mrs Paterson had three children by him, who were alive and in pupilarity at the date of his death, and she was then pregnant of another child by him, which was born in Falkirk on 4th January 1899. On 27th September 1898 Mrs Paterson applied to the Inspector of Poor of Govan for relief, and he gave her a line to the parochial doctor Dr Clark, who on 5th October 1898 certified in effect that she was a proper object of parochial relief, and relief was accordingly granted to her by Govan on 5th October, and continued till 8th November 1898, when she went to Falkirk. Although Dr Clark's certificate was not granted until 5th October 1898, the facts stated in it which made Mrs Paterson a proper object of parochial relief, viz., her pregnancy and her being burdened with three young children, existed at and from the date of her husband's death, and in particular on 27th September 1898, when she made her application. On 5th October 1898 the Inspector of Govan gave notice to Stirling that Mrs Paterson had "as a pauper become chargeable to this parish,' and claimed relief from Stirling as the parish in which her husband was born. On 15th November 1898 Mrs Paterson applied to the Inspector of Falkirk for relief, which was granted, and on or about the same day he intimated to Stirling and Govan that she had become chargeable, and claimed to be relieved by one or other of these parishes."

The pursuers maintained that in consequence of her marriage to James Paterson, Mrs Paterson acquired and still retained a settlement in either the parish of Stirling or the parish of Govan, and that they were entitled to decree against one or other of these parishes.

It was admitted by the defenders that the pursuers were entitled to relief, and that decree should be pronounced against one or other of them.

The defenders the Parish Council of Stirling pleaded—"The settlement of the said Mrs Susan Rankine or Paterson being in the parish of Govan, the defenders the Parish Council of the Parish of Stirling should be assoilzied with expenses."

The defenders the Parish Council of Govan pleaded—"(2) The deceased James Paterson not having acquired a residential settlement in Govan parish, his wife could derive no settlement there, and the defenders the Govan Parish Council should be assoilzied with expenses. (3) The said James Paterson having been born in the parish of Stirling, and having no residential settlement at his death, that parish is the settlement of and liable for the maintenance of his pauper widow and pupil children, and the defenders the Govan Parish Council should be assoilzied with expenses."

The Sheriff-Substitute (M'Nair) on 5th June 1899 pronounced an interlocutor, whereby he found that the said James Paterson had not at the date of his death acquired a residential settlement in the parish of Govan; and therefore assoilzied the defenders the Parish Council of the Parish of Govan from the conclusions of the action; and found the pursuers the Parish Council of the Parish of Falkirk entitled to decree as craved against the defenders the Parish Council of the Parish of Stirling, and decerned against the said defenders in terms of the prayer of the petition.

The Parish Council of Stirling appealed to the Sheriff (Lees), who on 25th July

1899 pronounced the following interlocutor:—"The Sheriff having considered the cause, Sustains the appeal: Recals the judgment of the Sheriff-Substitute of 5th June 1899 complained of: Finds in fact (1) that on 15th November 1898 the pauper Mrs Susan Rankin or Paterson applied for and received parochial relief for herself and her pupil children from the pursuers the Parish Council of the Parish of Falkirk; (2) that the said pauper was a proper object of parochial relief; (3) that the said pauper is the widow of the deceased James Paterson, who was born in the parish of Stirling, and who died in the parish of Govan on 23rd September 1898; (4) that the said James Paterson had resided for three years continuously prior to 23rd September 1898 in the said parish of Govan, and had maintained himself during said period without having had recourse to common begging either by himself or his family, and without having received or applied for parochial relief; (5) that the pursuers on 15th November 1898 gave notice of the claim made on them by the said pauper to both defenders, but that the latter declined to admit liability or to relieve the pursuers of the said claim; and (6) that the pursuers have had to expend between 15th November 1898 and 28th March 1899 the sum of £6, 4s. in relief to the said pauper, and to continue to relieve her thereafter: Finds in the above circumstances, as matter of law, (1) that by his residence aforesaid in the parish of Govan the said James Paterson must be held to have acquired a residential settlement therein; (2) that the said settlement enures to his widow; (3) that the parish of Govan is liable to relieve the pursuers of the advances made and to be made by them on behalf of his widow, the said pauper; and (4) that in respect of the existence of this derivative residential settlement of the pauper in the parish of Govan, the pursuers neither have nor can have any claim for relief against the parish of Stirling arising through the birth of the pauper's husband therein: Therefore assoilzies the defenders the Parish Council of the Parish of Stirling from the conclusions of the action: Decerns against the other defenders the Parish Council of the Parish of Govan for payment and relief as prayed for: Finds the pursuers liable to the first-named defenders in expenses: Finds the second-named defenders liable to the pursuers in expenses," &c.

The Parish Council of Govan appealed to the First Division, and argued—(1) Unless there was an express declaration to the contrary in the repealing statute, liability would be governed by the Act in force at the time of the death of Paterson, which required five years' residence to acquire a settlement—Interpretation Act 1889 (52 and 53 Vict. c. 63), sec. 38 (2). It was quite in accordance with the policy of the Poor Laws to interfere as little as possible with vested interests. Accordingly, when Paterson died his settlement was not in Govan but in the parish of his birth, viz., Stirling, and the right acquired by the wife through her husband in respect of his settlement could not change after his death. There could be no settlement partly derivative and partly original—*Kirkwood* v. *Wylie*, Jan. 19, 1865, 3 Macph. 398; *M'Rorie* v. *Cowan*, March 7, 1862, 24 D. 723; *Hay* v. *Carse*, Feb. 24, 1860, 22 D. 872. The case of *Robertson* v. *Stewart*, Dec. 12, 1854, 17 D. 169, on which the judgment of the Sheriff was based, rested on erroneous reasoning, which was negatived by the majority of the Court in *Hay* v. *Carse*, a case which was not before the Sheriff. (2) Even if the appellants were wrong on the first point, the case fell within the exception contained in the proviso to section 1. As soon as the woman became a proper object of parochial relief, and applied for relief, then she was chargeable in the sense of the proviso. Application was the moment of time when chargeability arose, and in questions of residential settlement that was the important time—*Parish Council of Govan* v. *Parish Council of Linlithgow*, Feb. 5, 1897, 7 P.L.M. 199; *Queen* v. *Inhabitants of St Clements Dane*, 1862, 32 L.J. (Mag. Cas.) 25. If the point of time when relief was actually given was the time at which a person became chargeable, the matter would be left entirely in the discretion of those administering the poor law, which was clearly not intended by the statute.

Argued for Parish Council of Stirling—(1) The Act of 1898 was clearly intended to be retrospective, and was thus distinguished from ordinary statutes not affecting vested interests. Undoubtedly the appellants would have had no case if Paterson had survived the date of the Act coming into force, for the effect of the negative words of section 76 was to substitute three for five years as the period for the acquisition of a settlement. But the fact that he did not do so did not prevent the application of the Act now. The Court could not look at the Act of 1845 as an existing statute, since it had been expressly repealed. The case of *Robertson* v. *Stewart*, *supra*, decided the point expressly. Mrs Paterson's settlement could not be ascertained apart from that of her husband, since she had not since his death acquired a residential settlement in her own right. Accordingly, the Court must hold in effect that Paterson had acquired a settlement in Govan at the time of his death, and that Mrs Paterson held that settlement derivatively from him. (2) The proviso in section 1 of the Act of 1898 did not apply to this case. "Chargeable" was to be construed as meaning "on the roll of a parish." The test of "chargeability" was admission to the roll. That was clearly laid down in the case of *Turnbull* v. *Kemp*, February 26, 1868, 20 D. 703. The Court would not look at allegations that a pauper ought to have been admitted to the roll as a proper object of parochial relief at an earlier period. See also *Skene* v. *Beaton*, February 16, 1849, 11 D. 660; *Thomson* v. *Knox*, June 28, 1850, 12 D. 1112; *Robertson* v. *Stewart*, *supra*.

At advising—

LORD PRESIDENT—This is an action for relief of advances made by the parish of Falkirk to Mrs Paterson, a pauper, and it is admitted that Falkirk is entitled to relief either from Stirling, the parish of birth of her deceased husband James Paterson, or from Govan, in which he was resident at the date of his death. The sole question, therefore is whether Stirling or Govan is liable in the relief claimed?

[*After stating the facts of the case as quoted above, his Lordship proceeded as follows:*]—Under these circumstances it appears to me to be clear that but for section 1 of the Poor Law (Scotland) Act 1898 the parish of Stirling, as the parish of the birth of James Paterson, would have been liable to maintain his widow and children, seeing that he had at the date of his death only resided in Govan for three years and four months, and consequently had not acquired a settlement there—residence for five years having been required by section 76 of the Poor Law (Scotland) Act of 1845 for the acquisition of a residential settlement. But section 76 of the Act of 1845 was repealed by section 1 of the Act of 1898, and the important question is, what is the effect of that section as applied to the circumstances of the present case.

Two points arise—(1) What would have been the effect of the section apart from the proviso at the end of it, and (2) what is the effect of the proviso?

Upon the first of these questions I think that the effect of the leading enactment of the section is to substitute three years for five years as the period of residence which is requisite and sufficient for the acquisition of a residential settlement in a parish in Scotland, and that the rule thus laid down must apply to the present case unless its application is excluded by the proviso. It is clear that James Paterson had not at the date of his death on 23rd September acquired a residential settlement in Govan, as he had not then resided for five years in that parish, and it seems at first sight a somewhat startling, if not paradoxical, result that he should for the purposes of the present question be held to have had a settlement there which he never had in fact during his life. It appears to me, however, that the language of section 1 of the Act of 1898 brings about this result. By repealing section 76 of the Act of 1845 it in effect obliterates the five years' residential settlement from the law of Scotland, and gives a direction that three years "shall be held" to be the period for the acquisition of a settlement instead of five years. It is true that this is not done in affirmative words, but the negative words used in the section seem to me to be equivalent to an affirmative declaration to this effect. The negative words have, no doubt, been used because similar words occur in section 76 of the Act of 1845, which substituted five years for three years as the period of residence required for the acquisition of a residential settlement, and there have been many decisions interpreting the language of that section which it would have been inconvenient to disturb. But the effect of section 1 of the Act of 1898 is, in my judgment, to give a direction to the Court before which any question of settlement shall arise to hold that three years (instead of five years) is the period requisite and sufficient for the acquisition of a settlement, and this direction is not limited to cases in which the death of the person whose settlement is in question, or upon whose settlement the derivative settlement of another person—*e.g.*, a wife—depends, occurs after the Act (of 1898) came into operation.

I am therefore of opinion that, unless the proviso applies, we must, for the purposes of the present question, hold (contrary to the fact) that James Paterson had acquired a residential settlement in Govan at the time of his death, and that his wife continued, when she became chargeable, to possess that settlement derivatively from him, with the result that Govan is bound to relieve Falkirk of the advances to which the action relates. I do not think that the settlement of Mrs Paterson can be ascertained apart from that of her husband, seeing that she has not since his death acquired a residential settlement in her own right. The decision in *Robertson* v. *Stewart* (17 D. 169), although not in all respects a direct authority, attributed a similar effect to sec. 76 of the Act of 1845.

The next question is, whether the proviso at the end of sec. 1 of the Act of 1898 prevents the case from falling under the three years' rule introduced by the section. The proviso bears that "nothing herein contained shall, until the expiration of four years from the commencement of this Act, be held to affect any persons who at the commencement of this Act are chargeable to any parish in Scotland." The question therefore is, whether Mrs Paterson was at the commencement of the Act (1st October 1898) "chargeable to any parish in Scotland," in the sense of the proviso, and it appears to me that she was not. It is true that when she applied for relief on 27th September 1898, she was, as is proved by the subsequent medical certificate, dated 5th October (after the commencement of the Act of 1898), a proper object of parochial relief, and it might fairly be maintained that this rendered her then, in a reasonable sense, "chargeable" to whatever parish in Scotland might be found to be the parish of her husband's settlement. It might be forcibly argued that any delay, whether necessary or avoidable in ascertaining her settlement, could not prevent the fact of her being a proper object of parochial relief on and after 27th September from bringing her case within the proviso at the end of sec. 1. If there had been time between 27th September and 1st October 1898 to have had it ascertained by admission, or determined by decision of a Court, that James Paterson had not acquired a residential settlement in Govan (five years being then necessary for this), and that his birth settlement was in Stirling, Mrs Paterson's chargeability to Stirling would have been ascertained prior to the commencement of the Act of 1898, and there would have been fair grounds for contend-

ing that her case fell within the proviso. But it was decided in the case of *Turnbull* v. *Kemp, &c.* (27th February 1858, 20 D. 703) that admission to the roll is the test of pauperism in a question relative to retention of a residential settlement, and that the Court will not go into allegations by the parish of birth that the pauper ought to have been admitted to the roll as a proper object of parochial relief at an earlier date, and before a residential settlement had been lost by absence, and it was also held that the receipt of a few shillings of temporary aid did not prevent the loss of a residential settlement by absence. The Lord Justice-Clerk said—"I take the broad and clear ground that the woman was not upon the roll as a pauper until February 1851. I cannot take anything as proof of pauperism except actual admission to the roll." It is of great importance that there should be a clear and distinct rule in regard to such a matter of practical administration, and I understand that the rule laid down in this case has been followed ever since. This being so, I think we must hold that Mrs Paterson was not "chargeable" in the legal sense on 1st October 1898, the commencement of the Act of 1898, and consequently that her case does not fall within the proviso at the end of section 1.

For these reasons I am of opinion that the judgment of the Sheriff should be affirmed.

LORD ADAM—The first question in this case is, whether the pauper Mrs Paterson was, at the date of the commencement of the Poor Law (Scotland) Act 1898, on 1st October 1898 chargeable as a pauper to any parish in Scotland. The facts which raise the question are that she applied for relief to the parish of Govan on 27th September 1898, but was not admitted to the poor's roll and did not receive relief until the 5th October thereafter. The question is whether the date of the application for relief or the date of admission to the poor's roll is to be taken as the date at which the pauper became chargeable in the sense of the Act.

In the case of *Turnbull* v. *Kemp*, in 20 D. 703, it was decided that admission to the poor's roll was the test of pauperism in the question of the retention of a residential settlement, and that the Court would not go into allegations by the parish of birth that the pauper ought to have been admitted to the roll at an earlier period. That case seems directly in point, and the rule having been thus authoritatively established, and no doubt acted on since, I see no reason for deviating from it in this case. I think therefore that the pauper did not become chargeable to the parish of Govan till the 5th of October, and therefore was not chargeable at the commencement of the Act.

That being so, the next question is, whether the pauper has acquired, through her late husband, a residential settlement in the parish of Govan. Section 1 of the Act of 1898 enacts that "section 76 of the principal Act" (that is, the Poor Law Act of 1845) "is hereby repealed, and in lieu thereof it is enacted as follows"—then follow the conditions under which, from and after the commencement of the Act, a person shall be held to have acquired a settlement by residence. These are not stated affirmatively, but by necessary implication are capable of being so stated, and the condition which more particularly bears on the present question may be so stated thus—A person shall be held to have acquired a settlement in any parish in Scotland by residence therein, if such person shall, either before or after, or partly before and partly after, the commencement of the Act have resided for three years continuously in such parish—then follow other conditions necessary to the acquisition of a residential settlement, but which need not be stated here.

The effect of this legislation appears to me to be to substitute section 1 of the Act of 1898 for section 76 of the principal Act, to the same effect, as regards all future questions of settlement, as if section 1 had all along formed part of the principal Act.

When, accordingly, a person becomes chargeable as being a proper object of parochial relief, and the question arises as to which of two or more parishes is liable for his maintenance, an inquiry into his past history becomes necessary, and if in the course of that inquiry the fact is ascertained that the pauper has resided for three years continuously in a particular parish, without begging and so on, the Act of 1898, which in my view is the only law in force on the subject, enacts that such person shall be held to have acquired a settlement by residence in that parish, and I do not see how the Court can come to any other conclusion. If, accordingly, the pauper's husband had been alive, and the question had been as to liability for his maintenance, it appears to me that as soon as it was ascertained that he had resided for three years continuously in the parish of Govan, and had otherwise complied with the statute, he must have been held to have acquired a settlement by residence therein.

But it is only for the purpose of ascertaining what is to be held to be the pauper's parish of settlement that it is necessary to inquire as to her deceased husband's parish of settlement, because whatever that may be held to be will be hers also. It is here that the difficulty of the case arises, because, as the pauper's husband died before the Act of 1898 came into operation, and he had not then acquired a residential settlement in the parish of Govan, if an inquiry had then been necessary, and had taken place, as to what was his parish of settlement, it would undoubtedly have been held to be the parish of Stirling—the parish of his birth. It is said that a person's parish of settlement cannot alter after his death, and therefore that Stirling must now be held to be his widow's parish of settlement. I do not think, however, that when it is said that Stirling was his parish of settlement at the time of his death, anything more is implied than that if the question of his chargeability had been raised during his life it would have been so held.

It appears to me therefore that the question is, whether when a question of chargeability arises after the commencement of the Act of 1898, and the facts of the case have been ascertained, we are to read these facts in the light of the law as thereby altered, or of the law as it was before. If, for example, it had appeared in this case that the deceased husband had resided for upwards of five years in the parish of Govan, the result would have been that the pauper would have been held to have acquired a derivative residential settlement in that parish. Are we now to substitute the period of three years for the period of five years, and to hold that, he having resided for a period of three years in the parish, the pauper thereby acquired a derivative residential settlement there? The Act provides that a person who has resided for three years in a parish shall be held to have acquired a residential settlement there, and I do not see how we can refuse to give effect to that provision. I do not think that it is a sufficient reason for not doing so that if the question of chargeability had arisen prior to the commencement of the Act the result would have been different.

On the whole matter I am of opinion that the interlocutor of the Sheriff is right, and that the appeal should be dismissed.

LORD M'LAREN—I regret that I am unable to concur in the proposed judgment to the effect that the parish of Govan is liable to maintain the pauper Mrs Paterson.

James Paterson, her husband, died on 23rd September 1898. At the time of his death he had resided for more than three years in the parish of Govan, and if the Act 61 and 62 Vict. cap. 21, had then been in operation he would have had an industrial settlement in Govan. In other words, Govan in the case supposed would have been the parish which was liable to maintain Paterson if he had been an object of parochial relief. But the Act of Parliament did not come into operation until 1st October 1898, and I think the operation of the Act is exactly the same as if it had received the Royal assent of that date. As James Paterson died before the Act of 1898 came into operation, and therefore before the repeal of the 76th section came into operation, he had neither a five years' residential settlement nor a three years' residential settlement. He had, of course, a birth settlement, which was in the parish of Stirling, and if he had been an object of parochial relief Stirling indisputably is the parish which was liable to maintain him.

Now the Act of 1898 does not profess to make any change in the law of birth settlement or in the law of derivative settlement. It follows that if Mrs Paterson at any time between 23rd September and 1st October 1898 had applied for and received parochial relief from Govan, that parish would have had a claim to be idemnified by Stirling, the parish of her husband's birth settlement. And although, in fact, Mrs Paterson was not admitted to the poor roll until after 1st October, that circumstance does not in my opinion make any difference in her claim, because her claim must be upon her husband's last settlement, and I find no warrant in the Act of Parliament for attributing to a deceased husband or father a settlement which he did not in fact possess in his lifetime. In order that Mrs Paterson should have a claim upon Govan it would be necessary, in my opinion, that she should begin and complete an industrial residence for the term of three years during her viduity.

I am not prepared to assent to the proposition that the negative declaration of the recent statute has the same meaning as if it had been expressed affirmatively that every person who had resided or should reside continuously and maintain himself in a parish for three years should thereby acquire a settlement. I think the true meaning of the enactment is that residence for three years (in place of five) is a condition of the right to relief. But there are other conditions, *e.g.*, that the person so residing is an independent person, not a wife or a child, and that he shall have come under the operation of the statute. Mrs Paterson is unable to found on her own residence in Govan for the prescribed period of three years, because she was a dependent during the whole or nearly the whole period of residence; and again, I think that she is not in a position to found upon her husband's residence in Govan, because her husband never came under the operation of the Statute of 1898. During the whole period of his residence in Govan the 76th section of the Poor Law Amendment Act was in operation, and admittedly Paterson did not acquire a residential settlement under that Act.

In a certain sense, no doubt, the recent statute is retrospective. A residence for the prescribed period might be begun before the Act came into operation and be completed after the Act came into operation. In such a case a residential settlement would be acquired on the completion of the period of three years. But I am unable to admit that a residence of three years, begun and completed and interrupted by death during the operation of the Poor Law Amendment Act 1845, can give a right under the Act of 1898. And again, as Mrs Paterson's right is a derivative right, I think it took effect at her husband's death against the parish of his proper settlement, and could only be displaced by the acquisition of a residential settlement in her own right.

Although the point does not arise in my view of the case, I may say that I agree that the present question is not affected by the proviso as to persons who were chargeable at the commencement of the Act. Mrs Paterson did not become chargeable within the meaning of the statute until she was admitted to the roll of the poor, and I do not think that her claim against Stirling depends on the effect of this proviso.

LORD KINNEAR—I agree with your Lordship in the chair and with Lord Adam that the Sheriff has come to a right conclusion.

I cannot say that the question seems to

me to be free from difficulty, since there is a difference of opinion on the Bench. But I venture to think that the difficulty will be diminished if we abstain from arguing upon legal conceptions which are inapposite, and confine ourselves to the simpler task of construing the words of the Act of Parliament.

It is necessary in doing so to bear in mind Lord Colonsay's admonition not to allow ourselves to be embarrassed by the word "settlement," but to remember that that means merely the right of a particular person to be relieved by a particular parish when the necessity for relief arises. But when that is understood, it seems to me clear enough that the first section of the Act of 1898 confers upon every person entitled to parochial relief a right to obtain such relief from any parish in which he shall either before or after, or partly before and partly after, the commencement of the Act have resided continuously for three years, subject to certain other conditions which do not enter the present discussion. The enactment, like the previous enactment of 1845 which it repeals, and in place of which it comes, is negative in form, providing that "no person shall be held to have acquired a settlement in any parish"—which means, shall have a right to be relieved by any parish—unless he shall have satisfied the conditions I have mentioned.

But I agree with the majority of your Lordships that this negative form makes no difference, and that the meaning and effect of the statute are precisely the same as if it had provided in affirmative language that persons shall have a right to relief from parishes in Scotland if they have satisfied the prescribed conditions.

This is the construction which the corresponding words of the Act of 1845 had received for more than fifty years before the new Act was passed; and we must assume that the Legislature would not have repeated a form of words of which the meaning had been fixed by judicial decision and by a persistent practice unless they had intended it to be understood in the sense so ascertained.

The question then is, why the pauper whose settlement is in dispute should be excluded from the benefit of this general enactment.

It is said, in the first place, that the enactment is qualified by a provision which is applicable to the present case, that "nothing herein contained shall, until the expiry of four years from the commencement of this Act, be held to affect any persons who at the commencement of this Act are chargeable to any parish in Scotland." But I agree that the case of *Turnbull* v. *Kemp* is decisive upon that point, and that on the authority of that decision, which is binding upon this Court, we must hold that the pauper was not chargeable at the commencement of the Act but became chargeable thereafter.

But if the case does not fall within the proviso, the exception brings out all the more clearly the comprehensiveness of the general rule, because if the statute enacts that all persons shall acquire a settlement on certain conditions excepting such persons as have been chargeable before the commencement of the Act, it is evident that every case which does not fall within the exception must necessarily be covered by the general rule. But then it is said that the death of the husband on the 23rd of September, before the Act came into operation, has precisely the same effect in fixing the wife's settlement unalterably as at that date as if both spouses had then become chargeable. I find no authority for this in the Act of Parliament. But the argument is that a married woman is incapable during the subsistence of the marriage of having any settlement in her own right or independently of her husband. If her husband has a settlement, that also is her settlement. But she never can have a settlement except that which she derives from him, and therefore her derivative right can never be different from that which was vested in him from whom she derives it; and then it is said to follow, as I understand the argument, that since the husband died before the Act came into operation his settlement cannot be changed after his death, and therefore his widow's cannot be changed either, because the Act cannot affect the settlement of a married woman except through the settlement of her husband from whom hers is derived.

I venture to think that all this argument rests upon a mere verbal puzzle, which arises from the unperceived ambiguity of the term "derivative settlement."

The argument assumes that in this matter the relation between husband and wife is like that between cedent and assignee, so that the right in the wife as transferee cannot vary in any respect from that which was vested in her husband, the transferor. I think this is a misconception, and that the wife's right to relief is not derived from the husband as its source, although her settlement depends upon her husband, because she cannot have a residence independently of him. But her right does not flow from him. It depends upon the Act of Parliament. Of course I agree that the wife takes her husband's settlement, and that she cannot have an independent settlement of her own while the marriage subsists, and again that the husband cannot acquire a new settlement after his death. It follows that neither the husband nor the wife had a settlement in Govan at the husband's death on the 23rd September, because he had resided in that parish for three years and four months only, and the law then in force required a residence of five years for the acquisition of a residential settlement. But it does not follow that by virtue of the new Act which came into force on the 1st of October, the widow, who became chargeable on the 5th of October, may not count the three years of her husband's residence in Govan before his death, just as she might have counted a five years' residence if she had become chargeable under the Act of 1845 and if he had lived so long in the parish.

It is obvious that the new Act cannot affect the right of the husband, because he is dead, but it seems to me to be false reasoning to say that therefore the enactment that makes three years' residence sufficient instead of five cannot benefit his widow, who is still alive and in need of relief. This is said to be the necessary consequence of the derivative character of her settlement. But that is not a statutory phrase. It has been adopted for convenience to describe statutory rights. But if it imports any qualification of those rights that are not expressed in the statutes themselves, all than can be said is that to that extent it is inappropriate. This becomes evident when we consider what the law of derivative settlement really is. It is expounded very clearly and with great authority by Lord Chancellor Cranworth in *Barbour* v. *Adamson*. His Lordship observes that neither in England nor Scotland does the statute law make any provisions as to derivative settlements:—"No statute has ever said that the child shall derive a settlement from its father, or a wife from her husband. But yet early in the administration of poor law it was held that this was necessary to be understood; it was assumed that the wife must be with her husband, and that children must remain with their father." Lord Cranworth proceeds to consider a doctrine which had prevailed with some of the judges of the Court, and rejects it as unsound. It had been laid down that a child in a state of nonage has no right to relief. The father, it was said, is bound to maintain it, and if from age or infirmity he is unable to do so, still no right of relief accrues to the child, but the father has a right to relief, the extent of which is to be measured by the wants of the child as well as his own, or rather by his own wants, treating the necessities of the child as a part of those wants. This Lord Cranworth rejects; and he explains a much simpler view of the matter as the more correct:—"Considering the peculiar nature and object of the poor laws to afford relief to those unable to maintain themselves, it is absolutely necessary that we should construe the provisions of the Legislature so as to meet the ordinary social wants of those for whose benefit they were made." It is on this principle that the doctrine of derivative settlement is permitted at all, and his Lordship, going on to consider more particularly the case of derivative settlement by residence, says that if a father has gained such a settlement it will enure for the benefit of his children as well as of himself. His residence is for the purpose of settlement their residence, and when the children having become poor and destitute are obliged to seek parochial relief, their claim will be upon the parish where they have thus acquired a settlement by means of his residence. The law is stated in the same way by the late Lord President, then Lord Justice-Clerk, in *Allan* v. *Higgins*, where, speaking of the settlement of a child, he says the daughter had a residential settlement in New Monkland acquired by residence of the father:—"It is the residence of the father that makes the settlement of the child." The view taken in both cases seems to me to be that wives or widows and children have under the statute a right to parochial relief, but that in applying the statutory condition of residence to their cases it must be kept in view that wives are supposed to live with their husbands and children with their father. It seems to follow that the material point to be proved by an applicant for parochial relief claiming on a derivative settlement is simply the residence of the husband or father from whom it is derived, and if that satisfies the requirements of the law in force at the time, it is irrelevant to inquire whether it would have been enough to create a settlement under some former law if the claim had been made at an earlier date.

The Court has construed the Act of 1845 on the understanding that the term "settlement" is wide enough to include what is called a derivative settlement, and that the condition as to residence covers the residence appropriate to that kind of settlement, and this construction is warranted, not by reference to any academical doctrines of law, but by a simple regard to the ordinary facts of life and to the social habits of those for whose benefit the law of settlement was introduced.

The Act of 1898, of course, must be construed in exactly the same way. If it were written out at length in so many words, it would run, No person shall be held to have acquired a settlement in his own right, or a derivative settlement in any parish in Scotland, unless he shall have resided, or in the case of married women and of children not forisfamiliated, unless the husband or father, as the case may be, shall have resided in such parish for the prescribed period. I think that is the true meaning of the enactment, and so thinking I do not think it necessary to hold—and I am indeed unable to hold—that this pauper's deceased husband had a settlement in Govan at the date of his death. As matter of historical fact he had no right to relief from that parish if he had become destitute. His right to relief, and his wife's also, were governed at that time by the Act of 1845, and the conditions of that Act were not satisfied by his residence in Govan. But it is a totally different question whether his widow has not a right under the Act of 1898, although he did not live till the passing of the Act, and therefore could take no benefit from it either for himself or her. For the reasons already given I think the widow's right is governed by that statute, and that it is of no consequence that if the husband had applied for relief during his lifetime his right must at that time have been governed by the repealed Act of 1845.

The Court pronounced this interlocutor—

"Refuse the appeal: Find in terms of the findings in fact and in law in the interlocutor of the Sheriff dated 25th July 1899: Affirm the said interlocutor, and decern, &c.: Find the defenders the Parish Council of the Parish of Govan

liable to the defenders the Parish Council of the Parish of Stirling in the expenses of the appeal," &c.

Council for the Parish Council of Govan —C. K. Mackenzie—Cook. Agents—Gill & Pringle, S.S.C.

Council for the Parish Council of Stirling — W. Campbell, Q.C. — Deas. Agents — Fraser, Stoddart, & Ballingall, W.S.

Tuesday, June 12.

SECOND DIVISION.

[Lord Low, Ordinary.

CRAWFORD *v.* ADAMS.

CRAWFORD *v.* DUNLOP.

Reparation — Slander — Architect said to have Condemned Work on Building to Gratify Personal Spite—Innuendo.

Reparation — Slander — Letter Written by Law-Agent on Client's Instructions — Adoption by Agent of Client's Statements —Personal Liability of Agent—Privilege —Issue—Malice in Issue.

A raised two actions, each concluding for £500 damages, the one against B and the other against C, B's law-agent.

In the action against B, A averred that he was employed by D as his architect in the erection of a factory, that he was called on to report on the work of B, who was doing the joiner-work in connection with the factory, that he wrote asking B to remove some of the joisting with which he was not satisfied and replace it with sound joisting, that thereafter he received the following letter from C—" B has called with reference to your note of yesterday. I have asked him to get an independent tradesman to see the joists you object to, and if any are not right they will be removed. I understand that you are attempting to annoy B for some old grudge you have against him. That he is not prepared to accept at your hands. He will complete the contract in terms thereof, and if you attempt to put any person on the job they will be interdicted. I am sending a copy of this note to D" ; that on the same date C wrote to D a letter stating—" My client B has called upon me about A's spleen towards him. I have instructed a complete examination of the joists objected to. Any complaint that can be reasonably made will be removed. He shall complete the work according to contract. This is not the first time I have met with your architect's imperious conduct";—that these letters were written on B's instructions, that the statements in them were false and slanderous, that they were made recklessly, maliciously, and without probable cause by the defender, and represented that A had condemned B's work, not because he conscientiously believed it to be disconform to contract, but because of personal spite he entertained towards B. B admitted that the statements in these letters were made upon his instructions.

Similar averments were made in the action against C, with the additional averment that C knew the statements in the letters to be false, and had made them with the deliberate intention of injuring A in his profession.

The Lord Ordinary (Low) having in both actions approved of issues based upon the letters as innuendoed malice being inserted in the issue allowed in the action against C, the defenders reclaimed.

The Court (*diss.* Lord Young) *adhered* upon the ground (1) that the statements complained of were *prima facie* defamatory as innuendoed, and (2) that the pursuer was entitled to the issues allowed both against B and C, B having admittedly instructed the statements to be made, and C having personally adopted them, and being alleged to have made them knowing them to be false and with the intention of injuring the pursuer in his profession.

Question (*per* Lord Trayner and Lord Moncreiff) whether C was privileged in making the statements in question.

Opinion (*per* the Lord Justice-Clerk) that he was.

Andrew Rennie Crawford, architect, Glasgow, raised two actions, each concluding for £500 damages, one against John K. Adams, joiner, and the other against R. Murray Dunlop, writer, Glasgow. Both summonses were signeted on 10th October 1899.

In the action against Adams the pursuer averred—"(Cond. 2) In the summer of 1899 the pursuer was employed by Messrs A. G. Barr & Company, aerated water manufacturers, Parkhead, Glasgow, as their architect in the erection of a new factory at Parkhead. The defender was employed to do the joiner and wright work, said work to be executed in the manner and conditions specified in the contract. Under the contract the pursuer was appointed sole arbiter to settle disputes. (Cond. 3) In the course of the work being carried out a dispute arose between Messrs Barr and defender over the latter's workmanship, in regard to which the pursuer was called in as architect and arbiter to examine and report. In the pursuer's opinion the defender's work did not comply with the conditions of the contract. Thereafter the pursuer put on an inspector named Hogg, who reported that the joists were not in conformity with the specification. The pursuer, as architect and arbiter under the contract, then reported that he was not satisfied with the joists, and instructed certain joisting, which he marked with a 'B,' to be removed and replaced by sound joisting. The pursuer wrote defender drawing his attention to his report, and requested him to proceed in terms of it. The defender failed to do so, and on 17th August pursuer wrote defender intimating that unless the joists which had been condemned were removed