distribution. The gift was several and not joint, and so there was no room for accretion—*Farquharson* v. *Kelly*, March 20, 1900, 2 F. 863, 37 S.L.R. 574.

At advising—

LORD TRAYNER—The truster by the fifth purpose of his settlement directed his trustees on the death of his widow to realise his estate and divide it among certain persons named, "share and share alike," and the lawful issue of such of the residuary legatees "as may have predeceased leaving lawful issue." By the same purpose of the trust he directed that, should any of the residuary legatees fail to claim their share within twelve months of the succession thereto opening to them, his trustees should pay the unclaimed shares of residue "to and equally among my other residuary legatees and their lawful issue, such issue always taking *per stirpes*." Now, while the direction to pay the residue to the residuary legatees named, "share and share alike," would not in itself have conferred a right on any of them to claim, as by way of accretion, any share of the residue which had lapsed, either by the death of one of the residuary legatees without issue or by his failure to claim the same within the time prescribed by the truster, yet the direction to pay such lapsed shares "to and equally among my other residuary legatees and their lawful issue" appears to me to confer such a right of accretion and to be in effect and substance a survivorship clause. Taking the whole of the fifth purpose together, I read it as directing payment or division of the residue among the legatees named and the survivors of them, or the issue of predeceasing legatees—that is, legatees predeceasing the period of division. If that view of the truster's settlement is taken, then the questions before us are ruled, in my opinion, by the decision in *Bryson's Trustees*, on the authority of which I hold that vesting was postponed until the death of the truster's widow, and that no right was conferred on any of the residuary legatees named until that event happened. But the issue of any predeceasing legatee are, by the express direction of the truster, substituted to the predeceasing parent, and take the share (equally among them) which the parent would have taken had he survived. I am therefore of opinion that the share destined to the truster's nephew Andrew Sword falls to be divided among his surviving children, and the share destined to Andrew, the truster's grandnephew, falls to be divided among the residuary legatees who survived the widow, and the issue *per stirpes* of any residuary legatees who predeceased her.

The LORD JUSTICE-CLERK and LORD YOUNG concurred.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor:—

"The Lords having heard counsel for the parties to the special case, answer the first question of law therein stated in the negative, and the second question of law therein stated in the affirmative; answer the third question of law therein stated by finding that the share destined to Andrew Sword, son of the truster's deceased nephew Thomas Sword, falls to be divided among the residuary legatees who survived the truster's widow and the issue *per stirpes* of any surviving legatees who predeceased her: Find and declare accordingly and decern."

Counsel for the First, Second, and Fourth Parties—Cullen. Agent—Henry Smith, W.S.

Counsel for the Third and Fifth Parties—Orr. Agents—Coutts & Palfrey, S.S.C.

Counsel for the Sixth Party—C. N. Johnston, K.C.—Guy. Agent—W. G. L. Winchester, W.S.

Thursday, July 17.

SECOND DIVISION.

PARISH COUNCIL OF STORNOWAY *v.* PARISH COUNCIL OF EDINBURGH.

Poor—Settlement—Residential Settlement—Continuous Residence for More than Three Years and Less than Five during Period Some Years Prior to Commencement of 1898 *Act—Poor Law (Scotland) Act* 1898 (61 *and* 62 *Vict. c.* 21), *sec.* 1.

A man who was born in the parish of A, resided continuously in the parish of B for three years and two months between March 1888 and May 1891. He thereafter resided in the parish of B from June 1893 to February 1895. He received temporary relief in February 1895 and September 1896, and ultimately became permanently chargeable in 1899. *Held* that his continuous residence in the parish of B for three years and two months between March 1888 and May 1891 was not such residence "before" the commencement of the Poor Law (Scotland) Act 1898 as to give a residential settlement under the provisions of section 1 of that Act, and that the pauper was now chargeable to his birth parish.

Parish Council of Falkirk v. *Parish Councils of Govan and Stirling*, June 12, 1900, 2 F. 998, 37 S.L.R. 759, *distinguished* and *commented on per* the Lord Justice-Clerk.

This was a special case presented for the opinion and judgment of the Court upon the question whether a pauper, John Maclennan, was chargeable to the parish of Stornoway or to the parish of Edinburgh.

The facts in the case were as follows:—John Maclennan was born in the parish of Stornoway in 1853. He resided in the following parishes for the following periods—(*a*) St Cuthbert's from March 1888 to May 1891, a period of three years and two

months; (*b*) Old City Parish of Edinburgh from May 1891 to June 1893, a period of two years and one month; (*c*) St Cuthbert's from June 1893 to February 1895, a period of one year and eight months, and again from 13th April to 15th May 1895; (*d*) New City Parish of Edinburgh from 15th May 1895 to September 1896, and from 23rd October 1896 to March 1897; (*e*) Stornoway from March 1897 to the present time. The said John Maclennan became chargeable as a pauper from 27th February to 13th April 1895, and again from 17th September to 23rd October 1896, and was supported on the first occasion by the parish of St Cuthbert's, and on the second occasion by the New City Parish of Edinburgh. No statutory notice of his having become so chargeable was on either of these occasions sent to the parish of Stornoway. In 1899, while residing in the parish of Stornoway, he once more became chargeable as a pauper, and has remained so ever since. The statutory notice of his chargeability was given by the parish of Stornoway to the New City Parish of Edinburgh on 12th December 1899.

On 14th March 1895 the Secretary for Scotland, under and in virtue of the powers conferred upon him by the Local Government (Scotland) Act 1889, sec. 51, and the Local Government (Scotland) Act 1894, sec. 46, issued an order whereby a portion of the St Cuthbert's and Canongate Combination Parish, including the portion in which Maclennan had resided, was merged in the New City Parish of Edinburgh. This order came into operation on the 15th May 1895. On the 14th May 1895 the Secretary for Scotland, acting under the aforesaid statutes, also issued an order whereby the remaining portion of the said combination was merged in the parish of Leith as at 15th May 1895.

In these circumstances a dispute arose between the Parish Council of the Parish of Stornoway and the Parish Council of the City Parish of Edinburgh as to the settlement of John Maclennan, and the present Special Case was accordingly presented for the opinion and judgment of the Court.

The parties to the special case were—(1) the Parish Council of the Parish of Stornoway, and (2) the Parish Council of the Parish of Edinburgh.

The first parties maintained that the parish of the second parties was the parish of the pauper's settlement, and that he was chargeable to that parish. They contended that section 1 of the Poor Law (Scotland) Act 1898 was retrospective, that the pauper had consequently acquired a residential settlement in the parish of St Cuthbert's by his residence in that parish from March 1888 to May 1891, and that he had not lost that residential settlement since.

The second parties maintained that section 1 of the Poor Law (Scotland) Act 1898 was not retrospective beyond a period of chargeability previous to that Act, that in the case of parishes being amalgamated under the Local Government (Scotland) Act 1889, sec. 51, periods of residence in the former separate parishes were not to be added together so as to constitute a settlement in the united parish, that when Maclennan was last chargeable while resident in the parish of Edinburgh, *i.e.*, between 17th September and 23rd October 1896, his settlement was in Stornoway, and that after his chargeability ceased on that occasion he had not resided long enough in the parish of Edinburgh to acquire a residential settlement there, either under the Poor Law (Scotland) Act 1845 or under the Poor Law (Scotland) Act 1898, and that the parish of Stornoway was now liable for his support.

The question of law stated for the opinion and judgment of the Court was—"Is the pauper chargeable to the parish of Stornoway, or is he chargeable to the parish of Edinburgh?"

The Poor Law (Scotland) Act 1898 by section 1 repeals section 76 of the Poor Law (Scotland) Act 1845, and enacts—"From and after the commencement of this Act [1st October 1898] 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 . . . and without having received or applied for parochial relief; and no person who shall have acquired a settlement by residence in any such parish shall be held to have retained such settlement if during any subsequent period of four years he shall not have resided in such parish continuously for at least one year and a day: 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."

Argued for the first parties—The pauper had acquired a residential settlement in St Cuthbert's parish by his residence therein from March 1888 to May 1891, and he had never lost it. The City Parish of Edinburgh now included the portion of the parish of St Cuthbert's in which the pauper had resided, and his residence therein was equivalent to residence in the City Parish of Edinburgh—*City Parish of Edinburgh Parish Council* v. *Gladsmuir Parish Council*, March 20, 1901, 3 F. 753, 38 S.L.R. 505. The Poor Law (Scotland) Act 1898, section 1, was retrospective, and substituted a three years' residence for one of five years—*Parish Council of Falkirk* v. *Parish Council of Govan and Stirling*, June 12, 1900, 2 F. 998, 37 S.L.R. 759. The fact that he had become chargeable in 1895 and again in 1896, and had got relief on these occasions, did not affect the settlement he had acquired in 1891. The case of *Johnston* v. *Black* relied on by the second parties was not in point, and moreover it had been reconsidered in a subsequent case, viz.—*Inspector of Poor of Inverkip* v. *Inspector of Poor of Greenock*, November 14, 1893, 21 R. 64, 31 S.L.R. 82.

Argued for the second parties—In 1891 the pauper had not a residential settlement in St Cuthbert's. The Poor Law (Scotland) Act of 1845 required five years' residence. In 1895, when he got relief from St Cuthbert's, and in 1896, when he got relief from the New City Parish of Edinburgh, his settlement was in Stornoway, and Stornoway would have been bound to pay had St Cuthbert's and the City Parish of Edinburgh demanded it—*Johnston* v. *Black*, July 13, 1859, 21 D. 1293; *Simpson* v. *Allan*, July 19, 1859, 21 D. 1363. The Poor Law (Scotland) Act of 1898 was not retrospective—*Urquhart* v. *Urquhart*, July 1853, 1 MacQueen 658; *Gardner* v. *Lucas*, March 21, 1878, 5 R. (H.L.) 105, 15 S.L.R. 740.

At advising—

LORD JUSTICE-CLERK—The question in this special case turns upon the construction to be put upon the word "before" in the first clause of the Act of 1898, whether it is to be read as applying under the word "before" to the acquiring of a residential settlement in the three years immediately before the passing of the Act, or whether it must be held to apply to any three years at any time before the Act was passed. In this case the period founded on by the parties of the first part as establishing a residential settlement is between March 1888 and May 1891. Giving the best consideration I can to the argument addressed to us very ably by Mr Ure and Mr Millar, I have been unable to hold it to be a sound construction of the clause that it refers to any period of three years before the passing of the Act however remote, but refers only to the three years which concluded at the passing of the Act. It appears to me that the purpose was not to alter the period for acquiring a settlement so as to operate in cases where there had been three years residence 10, 20, 30, or it might be 40 years ago, but only to provide that where at the passing of the Act a person was found in the position of having three years' residence the Act should apply, and it should not be necessary that two years more should run so as to complete the time required by the Act of 1845. I think that construction is an entirely reasonable construction of the words of the Act, and that any other construction would be unreasonable, and would lead to such anomalous results that it can scarcely be conceived that it could be contemplated when the Act was passed. If there was any case decided in this Court in which the latter reading had been distinctly upheld, I should respectfully express my dissent from it, and if it were in circumstances anything similar to the present, might desire that the case should be considered by a more full Bench before yielding to adopt such a view. I do not think that the case quoted to us calls for such action. In that case the question was not the same as in this case. It related to the relief given to the widow of a man who died before the Act of 1898 came into operation, and who, if he himself had become chargeable before he died, could not have been held to have acquired a settlement by residence, seeing that the law applicable to residence for three years was not then in operation. The question was really one of derivative settlement by the wife, who was found entitled to relief after his death. Here the pauper had been receiving relief long after the lapse of the three years, which are founded on as giving him a settlement in St Cuthbert's, and at the time he did receive that relief it is undoubted that by receiving relief in 1895 any effect of the previous residence towards making a settlement under the law then in force was wiped out. I will content myself with saying, as at present advised, that I would not have concurred in that judgment. In my opinion the first alternative of the question should be answered in the affirmative and the second in the negative.

LORD YOUNG—In this case I think it sufficient to say that I am of opinion that in the circumstances of this case the pauper is chargeable to the Parish of Stornoway.

LORD TRAYNER—It is admitted that the birth settlement of the pauper is in Stornoway, and that that parish is chargeable with his support unless he has acquired a residential settlement in some other parish. It is maintained by the first party that the pauper did acquire a residential settlement in St Cuthbert's (now represented by the parish of Edinburgh) by virtue of a residence there for three years and two months immediately prior to May 1891. This is maintained, not upon the law as it existed in 1891, but as the effect of the law passed in 1898. It is certain, and was not disputed, that if the question of the pauper's chargeability had arisen at any time prior to the commencement of the 1898 Act, chargeability for the pauper would have fallen on the parish of Stornoway. By the Act of 1845 five years' residence was necessary for the acquisition of a settlement, and such residence the pauper in this case never had in any parish. But the Act of 1898 repealed the 76th section of the Act of 1845, and provided that from and after its commencement (1st October 1898) a residential settlement should be acquired by three years' continuous residence "either before or after or partly before and partly after the commencement of this Act." The first party maintains that under this provision, which he says is retrospective, he is entitled to rely on the three years and two months' residence in St Cuthbert's prior to May 1891 as giving the pauper a residential settlement there, because that residence was "before" the commencement of the 1898 Act. I cannot so read the provision of the Act of 1898. That Act is retrospective in a certain sense, because it gives effect to residence not merely after the date of its commencement but also to a residence of three years wholly or partially before that date. But I think the residence before the date of the commencement of the Act to which the provision in question refers is residence immediately before, and not separated therefrom by any interval of time however long, and irrespective of the history of the

pauper during that interval. The repeal of the 76th section of the Act of 1845 did not repeal or affect the rights acquired or the obligations incurred in respect of that section before the repealing Act was passed. Now, the pauper in this case obtained parochial relief in February 1895, the effect of which under the existing law (so far as the acquisition of a residential settlement was concerned) was to wipe out the residence of three years and two months in St Cuthbert's parish as if it had never existed. A residence such as would result in the acquisition of a residential settlement must of necessity have commenced after the rehabilitation of the pauper—that is, after he had ceased to get parochial relief. Was the Act of 1898 intended, or does it, whether intended or not, resuscitate a residence which under the Act of 1845 had clearly been wiped out and extinguished? I cannot think so. I give full effect to the words, and I think the intention of the Act, when I read the three years' residence "before" the Act to mean the three years immediately before, and in so reading the Act all rights and obligations existing in October 1898 are preserved, and the benefit of that Act in no way restricted.

The pauper's settlement on 30th September 1898 was admittedly his birth settlement—that is, in Stornoway. He had then no other. I think the Act of 1898 did not at its commencement confer on him a different settlement, and I would answer the question put to us by finding that the pauper is chargeable to the parish of Stornoway.

LORD MONCREIFF was absent.

The Court pronounced this interlocutor—

"Answer the question of law stated in the special case by finding that the pauper John Maclennan is chargeable to the parish of Stornoway: Find and declare accordingly, and decern."

Counsel for the First Parties—Ure, K.C. —J. H. Millar. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for the Second Parties—Dundas, K.C.—Cooper. Agent—R. Addison Smith, S.S.C.

Friday, March 21.

BILL CHAMBER.

[Lord Pearson, Lord Ordinary on the Bills in Vacation.

AYTOUN'S TRUSTEE, PETITIONER.

Process — Arbitration — Witness — Proof— Warrant to Cite Witness Resident in Scotland to Give Evidence in Arbitration in England — Evidence by Commission Act 1859 (22 *Vict. cap.* 20), *secs.* 1 *and* 5.

The trustee in a Scottish sequestration agreed with the trustee in an English bankruptcy to refer certain questions to arbitration in London, it being agreed, *inter alia*, that the arbiter should have all the powers of a judge of the High Court as to the summoning of witnesses and production of documents. The agreement was approved and endorsed by a minute signed by a judge of the Bankruptcy Division of the High Court of Justice in London. The trustee in the Scottish sequestration presented a petition in the First Division for a warrant under section 1 of the Evidence by Commission Act 1859, to cite a witness resident in Scotland to give evidence in London before the arbiter and to take with him all books and documents relating to the subject matter of the arbitration. The petitioner produced a recommendation of the arbiter, which, proceeding on the narrative that it was stated to him that the witness in question was a necessary witness, and would not attend unless compelled, recommended the Court of Session to issue a warrant to compel the attendance of the witness to give evidence in the arbitration.

Held, by the Lord Ordinary on the Bills in Vacation, that he had no power under section 1 of the Evidence by Commission Act 1859, to grant the prayer of the petition, and petition *refused*.

The Evidence by Commission Act 1859 (22 Vict. cap. 20), enacts as follows:—Sec. 1—"Where, upon an application for this purpose, it is made to appear to any court or judge having authority under this Act that any court or tribunal of competent jurisdiction in Her Majesty's dominions has duly authorised, by commission, order, or other process, the obtaining the testimony in or in relation to any action, suit or proceeding pending in or before such court or tribunal of any witness or witnesses out of the jurisdiction of such court or tribunal and within the jurisdiction of such first-mentioned court, or of the court to which such judge belongs, or of such judge, it shall be lawful for such court or judge to order the examination before the person or persons appointed, and in manner and form directed by such commission, order, or other process as aforesaid, of such witness or witnesses accordingly, and it shall be lawful for the said court or judge by the same order, or for such court or judge, or any other judge having authority under this Act, by any subsequent order to command the attendance of any person to be named in such order for the purpose of being examined, or the production of any writings or other documents to be mentioned in such order, and to give all such directions as to the time, place, and manner of such examination and all other matters connected therewith as may appear reasonable and just; and any such order may be enforced, and any disobedience thereof punished in like manner as in case of an order made by such court or judge in a cause depending in such court or before such judge."

Section 5—. . . "The Court of Session in Scotland . . . shall respectively be courts, and judges having authority under this Act."