£500 each, or they shall have right to claim the following increased amounts, but that only on the conditions stipulated for in the said holograph settlement of my said wife." He then gave to his daughters Mrs Cameron and Miss Alice Dick liferents of the same sums as those provided for them in Mrs Dick's settlement—namely, £7000 in the former case, and £20,000 in the latter. To the third daughter Mrs Higinbotham he gave a liferent of £3500, whereas in Mrs Dick's settlement she was restricted to an annuity of £50. All these gifts were declared to be subject to the conditions specified in Mrs Dick's settlement to which effect was directed to be given. The result was that the daughters were restricted to a liferent, that the capital sums were given to their children if they had any, and failing children were to fall into residue, which by Mrs Dick's settlement was destined under certain limitations to the only son of the marriage.

Now it is plain that if Mrs Dick's settlement was invalid as an exercise of the power of appointment, the alternative which Mr Dick offered to his daughters was equally so, but it was argued that if they did not accept the alternative they must content themselves with £500 each, because Mr Dick had undoubtedly power to restrict them to that amount.

I think that the best answer to that argument is that Mr Dick's deed of apportionment was not a *bona fide* exercise of the power. I take it that the power was conferred because circumstances might arise which would render it expedient and just that there should not be an equal division of the marriage contract funds among the children, and that some of them should get more and others less. Mr Dick, however, was not actuated by consideration of that kind in appointing £500 to each of his daughters, because it seems to me to be plain that he never intended that his daughters' interest in the marriage contract funds should in fact be restricted to that sum. In particular, it is absurd to suggest that he ever contemplated that the sole provision for his daughter Alice out of parental estates, amounting to nearly £120,000, should be a capital sum of £750, that is, a legacy of £250 under Mr Dick's settlement, and of £500 under his deed of appointment. The appointment of £500 to each of the daughters was therefore merely a threat, a weapon which he used for the purpose of concussing the daughters to agree to a disposition of the marriage contract funds which was contrary to the provisions of the contract, and which he had no power to make. I think that that was an illegitimate use—indeed an abuse—of the power which the Court cannot sanction. Accordingly Mr Dick's deed of apportionment was in my judgment altogether bad and cannot receive effect.

I am therefore of opinion that the first question of law should be answered in the negative, and head (*d*) of the third question in the affirmative. If that be done all the other questions seem to be superseded.

The Court answered the first question of law in the negative, and answered head (*d*) of the third question in the affirmative.

Counsel for the First Parties—Grainger Stewart. Agents—Carmichael & Miller, W.S.

Counsel for the Second Parties—Clyde, K.C. — Graham Stewart, K.C. — Chree. Agents—J. Knox Crawford & Son, S.S.C.

Counsel for the Third Party—Cullen, K.C. —Hon. W. Watson. Agents—J. & A. Peddie & Ivory, W.S.

Counsel for the Fourth Party—Hunter, K.C. — Horne. Agents — Carmichael & Millar, W.S.

Counsel for the Fifth Party — Kippen. Agents—Carmichael & Millar, W.S.

Tuesday, June 18.

SECOND DIVISION.

[Sheriff Court at Airdrie.

RUTHERGLEN PARISH COUNCIL *v.* NEW MONKLAND PARISH COUNCIL.

Poor—Settlement—Pupil whose Widowed Mother had at Death Residential Settlement Different from Father's Takes Settlement of Father.

A legitimate pupil child on the death of his father takes a derivative settlement in the parish in which his father had a settlement at the date of his death; where, however, the mother survives the father and acquires a settlement in a parish other than that of the father's settlement, the pupil, becoming chargeable, is entitled to relief from the parish of his mother's settlement during her life, but on her death the suspended liability of the father's parish revives.

The Parish Council of the Parish of Rutherglen brought the present action against the Parish Council of the Parish of New Monkland in the Sheriff Court of Lanarkshire at Airdrie.

The following statement of the *facts* and *contentions* of parties is taken from the opinion of Lord Ardwall—"In this action the parish of Rutherglen claims relief from the parish of New Monkland for the aliment of a pauper named Samuel Brown, who became chargeable on 30th November 1905, and was relieved by Rutherglen.

"The pauper was born in the parish of New Monkland on the 26th of January 1894; he is therefore still in pupillarity.

"The father of the pauper died on the 18th of June 1899, having at the time of his death a residential settlement in New Monkland. The pauper's father had, however two years before his death, removed to Rutherglen, where he died. After his death the pauper's mother and the pauper resided in family in Rutherglen till the 30th of July 1904, when she died without having re-

married. Neither parent of the said pauper ever applied for or received relief from the parish of Rutherglen.

"The question now is whether, on his mother's death, the pauper's derivative settlement acquired from his mother's residential settlement in the parish of Rutherglen came to an end, and the derivative settlement acquired from his father in New Monkland revived."

On 7th June 1906 the Sheriff-Substitute (GLEGG) pronounced the following interlocutor:—"*Finds in fact* that (1) the pauper was born on 26th January 1894 in the parish of New Monkland, and his father died in 1899, having a residential settlement in that parish; (2) in 1897 the pauper's father removed to the parish of Rutherglen with his wife and family, and after his death there, his widow continued to reside and maintain the pauper in that parish, and at her death there in 1904 she had acquired a residential settlement in that parish; (3) on 3rd November 1905 the pauper, being still in pupillarity, became chargeable to the parish of Rutherglen: *Finds in law* that (1) the derivative settlement which the pauper had from his father in New Monkland was lost by the acquisition of a settlement in the parish of Rutherglen, derived from his mother through her residence there; (2) on his mother's death the derivative settlement in the parish of Rutherglen subsisted, and the derivative settlement in the parish of New Monkland did not revive: Therefore assoilzies the defenders from the conclusions of the action."

Note.—"The question in this case is whether a pupil, whose widowed mother had at the time of her death a residential settlement different from that of her predeceasing husband, takes at her death the settlement of his mother, or the prior settlement of his father. There is no doubt on the authorities that a widow can acquire a settlement which becomes, during her life, the settlement of her pupil children. It is not so clear on the authorities that this settlement attaches to her children at her death, to the exclusion of the father's residential settlement, but I think that this result must be ascribed to them. In *Crieff* v. *Fowlis-Wester*, 4 D. 1538, it was held that a posthumous child took the residential settlement of its mother and not the birth settlement of its father. The opinions of the Judges in that case regard the settlement acquired by the mother after the father's death as of the same order as a settlement acquired by the father. In *Gibson* v. *Murray*, 16 D. 926, the Court preferred the birth settlement of their living mother to the birth settlement of the children. The Lord President said, at p. 929, that children have the benefit of a mother's residential settlement, and the Lord Justice-Clerk, on p. 935, that children take the mother's residential settlement after the father's death, just as they previously took the father's. The expressions used do not suggest that the mother's settlement was to rule only during her life, but apparently treat it as equally permanent with that of the father. In *Grant* v. *Reid*, 22 D. 1110, an inbecile became chargeable after the death of his widowed mother, and it was not disputed that the residential settlement of the mother settled the question of which parish was chargeable, and accordingly, residence being established, that parish was found liable, and not the parish of the pauper's birth nor that of his father's birth. In *Carmichael* v. *Adamson*, 1 Macph. 452, the birth settlement of a deceased widowed mother was preferred to the parish of the pupil's birth. The opinions in this case, however, except that they recognise the existence of a derivative settlement after the mother's death, do not much help the present question, as they proceed on the ground that there was no father's settlement to fall back on. In *M'Lennan* v. *Waite*, 10 Macph. 908, a minor, after the death of her widowed mother, became a pauper, and it was found that being emancipated and past pupillarity, and having lost the derivative settlement she enjoyed through her mother's residential settlement, she was chargeable to the parish of her birth. It was argued that she was chargeable to her father's residential settlement, but that argument was not entertained, and the question was whether she had lost the derivative settlement acquired through her mother. It is clear from the language of the Lord President that if the claim for relief had been made while the pauper was in pupillarity and after her mother's death, that the mother's residential settlement would have been taken. In *Shotts* v. *Bothwell*, 24 R. 169, the pauper's mother, after the death of his father, remarried without having acquired a residential settlement, and the pauper became chargeable after his mother's death. It was held that the new settlement acquired by the mother through her remarriage had no effect on the settlement of the pauper. It was clearly pointed out, however, that the mother took the settlement of the second husband solely for purposes of practical convenience, and that it was entirely different from a settlement acquired by residence. It simply, as regarded the children, temporarily suspended or superseded their own proper settlement, and being in their case merely the derivative of a derivative, was ended at once by the dissolution of the marriage. It is obvious that this decision does not conflict in the least with the present judgment, nor, I think, do the dicta of the Judges do so. Lord Adam, on p. 171, speaks of the settlement of the father remaining that of the children, but he does so, it seems to me, in view of the argument that the mother's remarriage affected this settlement. His Lordship seems to be restating the effect of *Beattie* v. *Mackenna*, 5 R. 737, which decided that a second marriage, though it gave the children a temporary claim on their stepfather's parish, did not finally sever their connection with their own father's settlement. That case decided nothing more, for it appears that the interval between the death of the first husband and the marrying of his successor was too brief to allow of the widow

acquiring a settlement for herself and her children. Indeed, it appears from the opinion of Lord Shand, that if the mother had acquired a residential settlement the claim there made, being that of a pupil after the mother's death, would have lain against the settlement of that parish. For his Lordship says—'If the pauper had acquired her mother's settlement and had lost that settlement,' a certain question would have arisen, and he goes on to say that the fact of a second marriage does not create a settlement for the children. Lord Mure speaks of the father's settlement as pertaining to the children, but he does that because, in the case under decision, there was no settlement acquired by residence of the mother, and the question was between the father's and the stepfather's. To return to the *Shotts* case, it is to be pointed out that Lord Kinnear reaches the liability of the parish of the pauper's birth in a way that implies that a residential settlement on the part of the mother would have prevented that result being arrived at. For, after dealing with two prior contingencies, he dismisses the third, the liability of the stepfather's parish, because, p. 173, '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 we must fall back on the parish of the pauper's own birth.'

"Now, the conclusion I draw from these authorities is that a widow can acquire a residential settlement for herself and her pupil children, which comes in place of that derived from her deceased husband, and consequently that on her death it is the settlement so acquired that rules, and not the settlement of her deceased husband.

"I was referred to an arbitration by the Local Government Board in Graham on Poor Law, p. 36, viz., *Glasgow* v. *Paisley*, 1903, where exactly the contrary view was held, but I must respectively differ from it."

The pursuers reclaimed, and argued—The leading rule was that a pupil child took the settlement of its father, unless there was some special reason making this impossible. Here there was no such reason. It was true that, after the father's death and during the mother's life, if she acquired a new settlement in another parish, the latter parish became chargeable with the maintenance of the pupil child, not upon the ground that the child had a settlement in the parish, but upon the ground that it was a dependant of, part and parcel of, its mother. On the mother's death the liability of the father's parish, which had only temporarily been suspended, revived, there being thus no change of the child's settlement at all. The only case in which a pupil child could acquire a settlement through its mother was where the father had no residential settlement in Scotland.

The defenders argued — Admittedly a widow could acquire a new residential settlement for herself after her husband's death, and admittedly during her lifetime the parish of the settlement thus acquired became liable for her pupil children. The true explanation of this was that the children had acquired the residential settlement of their mother for themselves, and it had never been suggested until now, and there was no authority or indeed reason for the view, that upon her death they should lose that settlement and re-acquire the father's. Reasons of expediency were against it.

The following authorities were cited, the respective contentions of parties as to their bearing being fully set forth in the opinions of their Lordships and the Sheriff-Substitute:—*Adamson* v. *Barbour*, May 30, 1853, 1 Macq. 376; *Crieff* v. *Fowlis-Wester*, July 19, 1842, 4 D. 1538; *Gibson* v. *Murray*, June 10, 1854, 16 D. 926; *Grant* v. *Reid & Miller*, May 25, 1860, 22 D. 1110; *Carmichael* v. *Adamson*, February 28, 1863, 1 Macph. 452; *M'Lennan* v. *Waite*, June 28, 1872, 10 Macph. 908, 9 S.L.R. 566; *Craig* v. *Greig & Macdonald*, July 18, 1863, 1 Macph. 1172; *Beattie* v. *Mackenna & Wallace*, March 8, 1878, 5 R. 737, 15 S.L.R. 427; *Parish Council of Shotts* v. *Parish Councils of Bothwell and Rutherglen*, November 24, 1896, 24 R. 169, 34 S.L.R. 136; *Greig* v. *Adamson & Craig*, March 2, 1865, 3 Macph. 575; *Parish Council of Rutherglen* v. *Parish Council of Glasgow*, May 15, 1902, 4 F. (H.L.) 19, 39 S.L.R. 621; *Heritors and Kirk-Session of Coldinghame* v. *Heritors and Kirk-Session of Dunse*, 1779, M. 10,582; *Inspector of Poor of St Cuthberts* v. *Inspector of Poor of Cramond*, Nov. 12, 1873, 1 R. 174, 11 S.L.R. 64; *Hendry* v. *Mackison & Christie*, January 13, 1880, 7 R. 458, 17 S.L.R. 291; Graham's Poor Law, p. 186.

At advising—

LORD STORMONTH DARLING — This case raises what may fairly be called a new point in the poor law, for it is not decided in terms by any previous judgment.

Samuel Brown, while still a pupil, became chargeable to the parish of Rutherglen as a pauper on 30th November 1905, and he continues to be so chargeable. He was born in the parish of New Monkland on 26th January 1894. His father died on 18th June 1899, having a residential settlement in that parish. Two years before his death the father had removed with his wife and family to the parish of Rutherglen. The mother of the pauper continued to reside there after her husband's death till her own death on 30th or 31st July 1904, when she died without having remarried. At the date of her death she had acquired a residential settlement in the parish of Rutherglen. First the father and then the mother continued to support the boy in family while they lived, for he only became chargeable a few months after his surviving parent's death.

In these circumstances, which are all admitted, a contest has arisen between the parishes, Rutherglen maintaining that the

pauper took at his father's death and retained during pupillarity the residential settlement in New Monkland which he derived from his father, though this may have been temporarily suspended from the time when his mother acquired a residential settlement in Rutherglen down to her own death; and New Monkland on the other hand maintaining that the pauper derived from his mother the residential settlement which she had acquired as a widow in the parish of Rutherglen, and that this settlement subsisted during his pupillarity to the exclusion of the prior settlement derived from his father. There is no doubt on the authorities, as the Sheriff-Substitute observes, that a widow can acquire a settlement by residence which becomes during her life the settlement of her pupil children; but it is not so clear, he adds, that this settlement attaches to her children at her death to the exclusion of the father's settlement, whether by birth or residence. It is on this point that the parties are sharply at issue; they are at one in maintaining that the settlement of a pupil child is always derivative where a derivative settlement can be found. This has been the law of Scotland ever since the reversal by the House of Lords in 1853 of the case of *Barbour* v. *Adamson*, 1 Macq. 376.

The Sheriff-Substitute decided in favour of New Monkland, the council of which parish he assoilzied, and the novelty of the point consists in his finding in law (1) that the derivative settlement which the pauper had from his father in New Monkland was lost by the acquisition of a settlement in the parish of Rutherglen derived from his mother through her residence there, and (2) that on his mother's death the derivative settlement in the parish of Rutherglen subsisted, and the derivative settlement in the parish of New Monkland did not revive. The point is perhaps difficult as well as new, and it has been treated by the Sheriff-Substitute with his usual care and ability. But I have come to hold on a consideration of all the cases that the weight of judicial opinion is in favour of holding that a derivative settlement acquired by a pupil from the mother by virtue of her residence as a widow for the requisite period does not subsist after her death, at all events where there is a settlement derived from the father to fall back upon.

I shall go over the cases cited by the Sheriff-Substitute in their order.

The strongest case in support of his judgment is the case of *Crieff* v. *Fowlis-Wester* (in 1842), 4 D. 1538. That was treated entirely as a question of which of three settlements was to be held liable, the parish of the female pauper's own birth settlement, viz., Little Dunkeld, where she was born in 1804, the parish of her residential settlement if of sufficient duration after she attained puberty, viz., Crieff, and the parish where her mother had acquired a settlement by residence as a widow for eighteen years, viz., *Fowlis-Wester*. These were all the parishes that were parties to the process. The pauper's own residence in Crieff was held of insufficient duration, and the decision was that *Fowlis-Wester* was liable; this undoubtedly implied that a pauper could derive a settlement from a widowed mother after the mother's death. But the case was taken on the footing that the father did not appear to have acquired any settlement by residence, and no claim was made upon the parish of his birth, if indeed it was in Scotland, and was known. It is noticeable that the case arose three years before new conditions had been imposed upon the acquisition of a residential settlement by sec. 76 of the Act of 1845, and eleven years before a father's birth settlement was assimilated to his residential settlement (if he had acquired such) as creating a derivative liability for his pupil children by the case of *Barbour* v. *Adamson* (*supra cit.*) But in any case the *Crieff* case cannot be regarded as deciding anything more than that a derivative settlement through the mother *may* subsist after her own death. In particular, it does not decide that it shall prevail over a father's settlement where that is known.

The case of *Gibson* v. *Murray* in 1854 (16 D. 926), was the case of pupil children whose English father had not acquired any settlement in Scotland, and whose mother was alive, so the question which we have here to deal with did not arise.

The case of *Grant* v. *Reid* in 1860 (22 D. 1110) established that an imbecile, who, as such, was incapable of acquiring a settlement for himself, had acquired a derivative settlement in the parish of his widowed mother, which remained available to him after her death in preference to the birth parish of the pauper himself and also the birth parish of his deceased father. The question was treated as a narrow one, but what was chiefly discussed in the opinions of the Judges was the continuity of the mother's residence in Kilmallie and not the question of the liability of the father's birth parish. The report is unsatisfactory, for the arguments of counsel are not given, and there is no general doctrine in the opinions either of the Lord Ordinary or Lord President Macneill. In these circumstances I cannot hold that the judgment has any bearing on a point which it practically ignores. If it has, I think it is inconsistent with subsequent cases to which I shall presently refer, and, on the same assumption, I must respectfully express my inability to agree with it.

The important Whole Court case of *Carmichael* v. *Adamson* in 1863 (1 Macph. 452) has little bearing on the real question here except that, as the Sheriff-Substitute says, it recognises the existence of a derivative settlement from the mother after the mother's death. But if that general proposition is qualified, as it must be, by the addition that in *Carmichael's* case there was no father's settlement either by birth or residence to fall back upon, it does not go far to support the Sheriff in holding that on the mother's death the settlement derived from the father did *not* revive. The case is chiefly remarkable for a vigorous

dissent by Lord President Inglis, who not only assented to the principle—which has subsequently been adopted by the House of Lords—that a husband's desertion of his wife does not confer upon her the capacity to acquire an industrial settlement for herself, but also insisted that as a general rule pupil children are so identified with their father that they can neither have status, rights, nor liabilities except through him. Lords Neaves and Mackenzie, who were in the majority, while agreeing with their brethren as to the effect of desertion, laid it down with equal clearness (1) that pupil children being legitimate follow the settlement of their father if he has one, and (2) that after the father's death they follow his settlement in the first instance, but that failing the father's settlement the mother, as now the head of the family, may acquire an independent settlement for herself and them.

M'Lennan v. *Waite* (1872), 10 Macph. 908, was a special case, the parties to which were the parish at once of the female pauper's own birth and of her deceased father's residential settlement, and the parish where her mother had lived long enough to acquire a residential settlement. The point of the case was that the pauper was *minor pubes* when she became chargeable, and the decision was that, in accordance with the Whole Court case of *Craig* v. *Greig & M'Donald*, 1 Macph. 1172, the pauper being above the age of puberty and not having acquired any residential settlement in her own right, was chargeable to the parish of her own birth. It was implied in the decision that the pauper had lost the derivative settlement which before emancipation she had acquired through her mother. But I demur to the inference of the Sheriff-Substitute that "if the claim for relief had been made while the pauper was in pupillarity and after the mother's death the mother's residential settlement would have been taken." If this means that the decision would have been laid on different grounds, I agree, because the essential facts would have been different, but if it means that the parish of the mother's residential settlement would have been taken rather than the parish of the father's residential settlement, I do not agree, and I see nothing in the Lord President's very guarded opinion to justify that inference. His Lordship's reference to the pauper's settlement being in her birth parish "in preference to any derivative settlement which she formerly had," is all qualified by the postulate that she had attained the age of puberty.

The other two cases quoted by the Sheriff-Substitute—*Beattie* v. *Mackenna* in 1878 (5 R. 737) and *Shotts* v. *Bothwell* in 1896 (24 R. 169)—are both cases presenting the peculiarity that the mothers of the paupers had married again. In *Beattie's* case the pauper when he became chargeable was still a pupil. In *Shotts* the pauper when he became chargeable had reached puberty. In *Beattie's* case Lord Mure, who delivered the leading judgment, laid down the general rule of law as clear that "pupil children, being legitimate, follow the settlement of their father if he has one in Scotland, whether that settlement be one of residence or of birth, and that they continue in the ordinary case to hold that settlement after the father's death." The decision was that the parish of the father's birth settlement continued to be liable during the pauper's pupillarity notwithstanding the second marriage of the pauper's mother. Lord Shand, in concurring, said that "the previous cases seem to come to this, that when the mother has survived the father the pupil children must *during her lifetime* be charged on her parish, because she is truly the pauper. The pauper still, however, has a settlement derived from his father. Though there may be a temporary suspension of that settlement in following that of the mother if she become a pauper, on the mother's death the child's settlement is that derived from his father." If that is a correct statement of the law it directly contradicts the Sheriff-Substitute's finding to the effect that on the mother's death the derivative settlement in the parish of New Monkland did not revive. For I do not follow the learned Sheriff's criticism on Lord Shand's opinion that "if the mother had acquired a residential settlement the claim there made, being that of a pupil after the mother's death, would have lain against the settlement of that parish." That is plainly inconsistent with Lord Shand's phrase about there being only a "temporary suspension" of the settlement derived from the father—a suspension, that is to say, ending with the mother's life and her position as the temporary "head of the family."

Shotts v. *Bothwell*, besides re-affirming the principle that the parish of settlement of a second husband could not be made liable for the first family, between whom and the second husband there existed no legal relation, had only a bearing on the question here in so far as it contained a re-statement by Lord Adam (who had been Lord Ordinary in *Beattie's* case) of the "temporary suspension" view of the settlement derived from the first husband. The real point of the case was that a child who had ceased to be a pupil could have no right as a rule to any derivative settlement, and must therefore become chargeable to his own birth settlement. I am at a loss to see how that warrants any inference that a residential settlement acquired by a widow for herself and her pupil children comes in place, after her death, of a settlement derived from the children's own father.

I quite agree that in poor-law questions wherever anything has been expressly decided it is more important to preserve uniformity of decision than to insist on strict adherence to principle. But it is not contended that there is any prior decision that precisely rules this case. And I think not only that there are weighty opinions to the effect that in the case of pupils the settlement of their father is the primary ground of liability, just as he himself is primarily liable for their support if he has the means, and that the emergence of any

other ground of liability is limited and temporary; but I think also that principle is all in favour of that conclusion. There is nothing new or startling in the idea of a settlement reviving, for a birth settlement is always capable of being revived on a residential settlement being lost, and the principle which lies at the foundation of a derivative settlement through a parent, viz., the expediency of not separating a mother from her children or the children from each other, does not apply after the mother's death, when she has ceased to be in point of fact the "head of the family." Moreover, it is plain that the capacity of a mother to attract the children's settlement to her own is very different and much slighter than the capacity of a father to do the same, if only in respect of her liability to have her settlement changed by marrying again.

I therefore propose that we should recall the Sheriff-Substitute's interlocutor of 7th June 1906, and, while repeating his findings in fact, find in law that the derivative settlement which the pauper had from his father in New Monkland was not lost at the date of the pauper becoming chargeable, but revived on his mother's death in 1904.

LORD LOW—I concur in the conclusion at which your Lordship has arrived. The judgment proposed appears to me to be rested upon sound principle, and to be entirely consistent with the view of the law which was very clearly stated in *Beattie* v. *Mackenna* (5 R. 737) and *Shotts* v. *Bothwell* (24 R. 169).

The only difficulty which I have felt has been caused by the cases of *Crieff* v. *Fowlis-Wester* (4 D. 1538) and *Grant* v. *Reid* (22 D. 1110).

In the former case it was admitted that the deceased father of the pauper had never acquired a residential settlement, but nothing is said in the report as to whether or not he had a birth settlement in Scotland. I have also looked at the session papers in the case, but they throw no light upon the matter. No proof was led in regard to the father's settlement, and no parish said to be the parish of his birth was a party to the case. I think therefore that it may be assumed that, as stated by Lord Anderson in *Gibson* v. *Murray* (16 D. 926), the father's settlement could not be ascertained. If so, then the judgment in *Crieff* v. *Fowlis-Wester* is no authority in the present case, and is in no respect inconsistent with the views expressed by your Lordship.

In *Grant* v. *Reid* the pauper's father had a birth settlement in Scotland, and the question arose between the parish of that settlement and the parish in which after the father's death the mother had acquired a residential settlement. It was held that the latter parish was liable, and therefore *prima facie* the judgment is directly in favour of the view taken by the learned Sheriff-Substitute. It is plain, however, that the question—and the only question—which was argued and decided was whether the mother had not lost the residential settlement which she had admittedly acquired after her husband's death? Thus the Lord President, in giving the judgment of the Court, said—"It is not disputed that if the widow retained the settlement she had acquired in Kilmallie the liability attaches to that parish."

The judgment therefore proceeded upon a concession, but it is not without significance that the learned counsel who represented the parish of the father's birth made the concession, and that it was referred to by the Lord President in terms which suggest to my mind that in his opinion it was properly made. Of course, if the question whether, assuming that the mother had a residential settlement at his death, the parish of the father's birth was nevertheless liable, had been argued, the result might have been different, but I cannot help thinking that the judgment is an example of a view which is indicated in several of the earlier cases, namely, that a residential, or as it was oftened termed an industrial settlement, having presumably benefitted the parish in which the residence took place, founded a claim against that parish (which could not be urged against a parish of birth) for the support of pupil children of the parent by whose residence the settlement had been acquired. That view, however, has never been given effect to by an actual decision, and I do not think that it has received much countenance in more recent times.

I therefore think that to hold in this case that the pauper took this residential settlement of his father is not on the one hand contrary to any of the decisions, while upon the other hand it is consistent with principle and with the more recent authorities. I therefore concur.

LORD ARDWALL—In this action the parish of Rutherglen claims relief from the parish of New Monkland for the aliment of a pauper named Samuel Brown, who became chargeable on 30th November 1905, and was relieved by Rutherglen.

The pauper was born in the parish of New Monkland on the 26th of January 1894. He is therefore still in pupillarity.

The father of the pauper died on the 18th of June 1899, having at the time of his death a residential settlement in New Monkland. The pauper's father had, however, two years before his death removed to Rutherglen, where he died. After his death the pauper's mother and the pauper resided in family in Rutherglen till the 30th of July 1904, when she died without having remarried. Neither parent of the said pauper ever applied for or received relief from the parish of Rutherglen.

The question now is, whether on his mother's death the pauper's derivative settlement acquired from his mother's residential settlement in the parish of Rutherglen came to an end, and the derivative settlement acquired from his father in New Monkland revived?

The Sheriff-Substitute has held that the pauper's settlement in the parish of Rutherglen subsisted at the time of his mother's

death, and still subsists, and that the pauper's derivative settlement in the parish of New Monkland did not revive. I am of the contrary opinion.

It is well settled that where after the death of a father the mother acquires a new settlement for herself, either by residence or in respect of a second marriage, the pupil children of her first marriage take the derivative settlement of their mother, and are entitled to be supported in the case of becoming paupers by the parish of such settlement so long as the mother is alive.

The general question raised in this case is Whether on the death of a widowed mother after having acquired a residential settlement for herself, and a deceased father having also had at the time of his death a known residential settlement, a pupil child takes the derivative residential settlement of his mother or of his father? I am of opinion that he takes that of his father. The policy of the law is to prevent the dispersion of the family, as was said in the case of *Adamson* v. *Barbour*, 1853, 1 Macq. 376. This has been repeated in many other cases, and it is this policy that is the ground of the rule which is very well established, to the effect that pupil children after the death of their father take a derivative settlement from their mother during her lifetime—see *Gibson* v. *Murray*, 16 D. 926; *Greig* v. *Adamson & Craig*, 3 Macph., 575.

It has been held in two cases, *Beattie* v. *M'Kenna*, 5 R. 737, and *Shotts* v. *Bothwell and Rutherglen*, 24 R. 169, that where a widow having pupil children marries again and thereby acquires the settlement of her second husband, the pupil children are liable to be relieved, should they become chargeable as paupers, by the parish in which their mother has a settlement through her second husband, but on the death of the mother the derivative settlement acquired by the children in the parish of her settlement ceases to subsist, and the children if still pupils take a derivative settlement from their deceased father either in his birth parish or in his parish of settlement. Lord Mure says in *Beattie's* case—"I can see nothing in the circumstances of the present case to take it out of the broad general rule that a legitimate child being a pupil follows the settlement of his father whether the father is dead or is alive." Lord Deas says—"I hold it to be quite fixed that where the mother after the father's death maintains the family, her settlement, of whatever kind or however acquired, is their settlement. She is the pauper." And Lord Shand says that the previous cases seemed to come to this, that when the mother has survived the father the pupil children must during her lifetime be charged on her parish because she is truly the pauper. He goes on to say—"The pupil has still, however, the settlement derived from his father. Though there may be a temporary suspension of his settlement in following that of the mother if she become a pauper, yet on the mother's death the child's settlement is that derived from his father;" and his Lordship then points out that the mother being dead the principle of *Barbour's* case, that there should be no dispersion of the family, is not interfered with.

In my opinion there seems no good reason why the rule thus applied to the case of a mother who has married a second time should not apply to the case of a mother dying leaving pupil children where she has not married a second time. In short, I think that one and the same rule must be applied to the mother's settlement however acquired, that rule being that on her death the suspended derivative settlement of her pupil children in their father's parish revives.

As already pointed out, the reason for pupil children taking so far as parochial relief is concerned the mother's settlement on the death of their father in preference to the father's, is to avoid dispersion of the family, and when that reason ceases by the mother's death there seems no good reason why the parish of the father's settlement should not be that of his children; or, in the words of Lord Mure, why the broad general rule should not apply, that a legitimate child being a pupil follows the settlement of its father whether that father is dead or alive.

But it is said against this view that in the cases of *Crieff* v. *Fowlis Wester*, 4 D. 1538, and *Carmichael* v. *Adamson*, 1 Macph. 452, the derivative settlement acquired through a mother was preferred to the settlement of the father, and the case of *Gibson* v. *Murray*, 16 D. 927, was also cited as supporting this view. Now it appears, as stated by the Lord Ordinary in the case of *Gibson* v. *Murray*, that in the case of *Crieff* v. *Fowlis Wester* the parish of the father's settlement could not be ascertained, and the mother had an industrial settlement acquired by thirteen years' residence. It appears from the report that the father had no residential settlement, and nothing is said about his birth settlement. I think, therefore, that it must be assumed that in the *Crieff* case the father's settlement could not be ascertained. Accordingly that case does not militate against the views expressed in the later decisions above cited.

Taking next the cases of *Carmichael* and *Gibson*, it is perfectly clear that in these cases the father had no settlement in Scotland, and accordingly all that was decided was that in these circumstances the children who were in pupilarity fell to be supported by the mother's parish of settlement, and not by their own birth parishes, as that would have led to the dispersion of the family. These decisions accordingly do not encroach upon the broad general rule above referred to, and which I think must govern the present case.

The law applicable to this case may be shortly summed up as follows—(1) A legitimate pupil child on the death of his father takes a derivative settlement in the parish in which his father had a settlement at the date of his death. (2) But in the case where the mother of the pupil child survives the

father, and acquires a settlement in a parish other than the parish of the father's settlement, the pupil, in the case of his becoming a pauper is entitled to be relieved by the parish of his mother's settlement. The liability of the mother's parish rests on two grounds, (*a*) that it is the policy of the poor law to avoid the dispersion of a family, and (*b*) that in such a case it is the mother who is truly the pauper, the children being viewed as her dependants. (3) In the event, however, of the mother's death after acquiring a settlement in a particular parish, the liability of that parish for the support of her pupil child ceases to exist, and the suspended liability of the deceased father's parish to support the pupil child revives. (4) The said liability of the mother's parish ceases at her death in whatever way her settlement in such parish may have been acquired, whether by industrial residence or re-marriage or otherwise. The reason for such cessation being that the grounds on which the mother's parish is made liable in preference to the father's necessarily cease to exist on the occurrence of her death.

I cannot reconcile the decision in *Grant* v. *Reid*, 22 D. 1110, with the decisions above referred to, and accordingly I must hold that it falls to be disregarded as not being authoritative.

I concur in holding that the interlocutor of the Sheriff-Substitute ought to be recalled and decree pronounced in favour of the pursuers as concluded for, with expenses in both Courts.

The Court pronounced this interlocutor:—

"Sustain the appeal: Recal the said interlocutor appealed against: Find in fact in terms of the findings in fact in the said interlocutor: Find in law that the derivative settlement which the pauper had from his father in New Monkland was not lost at the date of the pauper becoming chargeable, but revived on his mother's death in 1904," &c.

Counsel for Appellants—Orr Deas—D. P. Fleming. Agents—H. B. & F. J. Dewar, W.S.

Counsel for Respondents—Hunter, K.C. —Grainger Stewart. Agent—A. P. Nimmo, W.S.

Saturday, June 22.

SECOND DIVISION.

[Sheriff Court at Glasgow.

O'NEILL *v.* MOTHERWELL.

Master and Servant—Workmen's Compensation Act 1897, (60 *and* 61 *Vict. cap.* 37) *sec.* 2 (1)—*Time for Taking Proceedings—Claim not Made within Six Months—Arbitration Held Incompetent—Indication of Circumstances in which Six Months' Rule would not be Enforced.*

The Workmen's Compensation Act 1897, section 2, (1) enacts:—"Proceedings for the recovery under this Act of compensation for an injury shall not be maintainable . . . unless the claim for compensation with respect to such accident has been made within six months from the occurrence of the accident causing the injury, or, in case of death, within six months from the time of death. . . ."

An injured woman during a period of about six months received from her employer a larger weekly sum than she would have been entitled to under the Workmen's Compensation Act 1907, to which no reference was made by either party. The employer having proposed to reduce the amount of the payments, the woman, more than six months after the accident, and without having made any claim for compensation within that period, brought an arbitration under the Act, contending that she was not barred by her omission to make her claim within the statutory period, because she had been led by her employer to believe that her right to compensation was admitted and that a claim was unnecessary.

Held that there was nothing in the circumstances of the case to entitle the Court to diverge from the strict rule laid down in the Act, but *observed* that a remedy would be found if the case should ever arise of an employer deliberately misleading an injured workman and inducing him to refrain from making a claim within the statutory period.

Sarah Cameron or O'Neill brought an arbitration under the Workmen's Compensation Act 1897 in the Sheriff Court at Glasgow against Andrew Motherwell, in which the Sheriff was asked to ordain Motherwell to pay to O'Neill the sum of nine shillings and eightpence half-penny weekly, beginning the first weekly payment as at 25th April 1904, until the further order of Court.

The Sheriff [FYFE] dismissed the application, and at the request of O'Neill stated a case which contained the following statement of facts—"1. That respondent is a grain merchant, carrying on business in Glasgow.

"2. That his business premises, fronting Surrey Street, Cumberland Street, and Main Street, Glasgow, consist of (*a*) grain mill and other buildings, entering from Surrey Street; and (*b*) office quarters, entering from Cumberland Street.

"3. That these two parts of the premises are not under one roof, but are separate buildings situated at some distance apart.

"4. That an overhead railway runs between these two sections of the premises, but access is possible from the one to the other by means of a pend which enters from Cumberland Street, passes under the office buildings, through an arch beneath the railway, and into a lane upon which the mills portion of the property abuts.

"5. That, as the buildings were constructed, at 11th April 1904, the only access to the office where appellant was employed as an office-cleaner was by a stair leading