and of course the price had not been paid, nor had a conveyance of the subjects been executed. Accordingly the subject of the bequest formed part of the testator's estate at the time of his death, and was carried by his settlement directly to the party of the third part, subject to her obligation to carry out the contract of sale and her right to receive the stipulated price in return for a conveyance of the property.

LORD GUTHRIE—I concur in the opinion of your Lordship in the chair.

The Court answered the question of law in the case in the negative.

Counsel for the First, Second, and Fourth Parties—The Solicitor-General (Ure, K.C.) —Wilton. Agents—Mackay & Hay, W.S.

Counsel for the Third Party—Scott Dickson, K.C.—Chree. Agent—W. J. Lewis, S.S.C.

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*Wednesday, March* 11.

## FIRST DIVISION.

(Before Seven Judges.)

[Sheriff of Lanarkshire.

## PAISLEY PARISH COUNCIL *v.* ROW AND GLASGOW PARISH COUNCILS.

*Poor—Settlement—Deserted Wife—Derivative Residential Settlement — Husband Unheard of since Date of Desertion—Loss by Husband of Residential Settlement through Absence.*

A wife having been deserted by her husband became and remained chargeable. The parish of the husband's residential settlement admitted liability, but when three years had elapsed from the time of his leaving that parish, during which he had admittedly not been back in the parish, it repudiated further liability, on the ground that the husband had now lost his residential settlement there, and that *prima facie* the parish of his birth was now liable. Nothing was known of the husband subsequent to his desertion. *Held* that the parish of the husband's residential settlement at the date of the wife's becoming chargeable remained liable.

*Rutherglen Parish Council* v. *Glasgow Parish Council*, May 15, 1902, 4 F. (H.L.) 19, 39 S.L.R. 521, *commented on.*

On 28th October 1905 Paisley Parish Council raised an action against (1) Glasgow Parish Council and (2) Row Parish Council, to recover the sum of £11, 2s. expended by the pursuers on account of Mrs Elizabeth Logan or Wright, a pauper residing at 7 Park Avenue, Paisley. (The pursuers also craved decree for any future disbursements they might make, but afterwards restricted the summons to the amount stated above.)

The *facts* are given in the *note* of the Sheriff-Substitute (FYFE), who on 18th December 1905 dismissed the action *quoad* the first defenders, and gave decree against the second defenders Row Parish Council.

*Note.*—"There is no occasion in this process to incur the expense of a proof, for the facts are not really in dispute, and the question at issue is a legal one. Daniel Wright was born in Glasgow in 1859, but he resided at Shandon for thirteen years prior to October 1901, thereby acquiring a residential settlement in Row parish. In October 1901 he disappeared and has not since been heard of. He left his wife and family at Shandon. The deserted wife and three dependent children went to Paisley, where they seem to have struggled along without parish aid till April 1902. The wife then applied to Paisley parish, and being a proper subject for relief, Paisley on 22nd April 1902 granted her relief. Paisley parish gave statutory relief notice to Row parish on 14th May 1902, and Row recognised liability. Row reimbursed Paisley down to January 1905. Row then declined to pay, upon the ground that the settlement of the wife in Row was only a derivative settlement following that of her husband, and that the husband's settlement in Row (which was only a residential settlement) had lapsed in October 1904—that is, when he had ceased to reside in the parish for three years, the wife's settlement lapsing with it.

"Paisley then, in January 1905, gave statutory notice of chargeability to Glasgow, the parish of the husband's birth.

"It is clear that Paisley must be relieved, and the question is whether liability rests with Row or Glasgow.

"Row has been bearing the burden all along, for Paisley was only paying on behalf of Row. It is a circumstance of importance that the chargeability has been continuous since relief was first given in April 1902. Accordingly Glasgow pleads the recognised principle that settlement cannot change during the currency of chargeability, and so that this action, so far as laid against Glasgow, is irrelevant, or at least premature. In other words, Glasgow pleads that Row cannot escape liability unless Row can either locate the deserting husband or prove that he is dead.

"The question in effect comes to be this, Which parish has the *onus* of proof as regards the whereabouts of the husband?

"It is important to note that the wife never was a pauper in her own right. Row relieved her only because at the time she became chargeable the husband (not yet being absent three years) still had a residential settlement in Row, and it is urged for Row that the principle of no change of liability during continuity of relief applies only where a pauper has a claim of relief in her own right, and does not therefore apply to the present case at all.

"There is no definite authority upon the point raised, but I think the principle is the same upon whatever ground the relieving parish originally became liable. The parish which is saddled with the liability must go on bearing it until that parish can

shift it, that is, in the present case Row must go on paying till Row can do one of three things—(1) Discover the husband in an able-bodied condition to support his wife; or ( ) prove that, if he is alive and not able-bodied, the husband had subsequent to October 1901 acquired a residential settlement in some other parish; or (3) prove that the husband is dead.

"Row's plea that Glasgow is liable is founded only upon the non-residence of the husband in Row Parish for three years. But that negative fact is not in my opinion sufficient to interrupt the continuity of relief. Row must be able to plead something positive before Row can drop the burden on to another parish."

Row appealed to the Sheriff (GUTHRIE), who on 14th March 1906 adhered to his Substitute's interlocutor, subject to a variation as to the date from which interest on the sum decerned for should run.

*Note.*—"The learned Sheriff-Substitute has I think taken a sound view of the law, and it is unnecessary to add to what he has said. The wife is a proper object of parochial relief, her settlement at the date of chargeability was that of her husband in Row, and it could not be changed as long as the chargeability continued. These points are all decided in *Beattie* v. *Adamson*, 5 Macph. 47, and accepted in *Inverkip* v. *Greenock*, 21 R. 64. See also *Rutherglen* v. *Glasgow*, 1902, A.C. 360. The position is illustrated in an interesting way with regard to the points suggested at the debate by *Wallace* v. *Turnbull*, 10 Macph. 675, where the deserted husband having during the wife's chargeability acquired a residential settlement elsewhere, the parish of his new settlement was sued only for relief of outlays made *after* acquisition of that settlement."

Row appealed.

On 22nd November 1907 the Court appointed the case to be heard before Seven Judges.

Argued for appellants (Row) In 1902, when the pauper became chargeable, she had through her husband a derivative settlement in Row. In 1905 the husband had by non-residence for three years lost his settlement in that parish—Poor Law (Scotland) Act 1898 (61 and 62 Vict. c. 21), sec. 1—and the pauper being one of his family lost her derivative settlement also. Prior to the *Rutherglen* case (*Rutherglen Parish Council* v. *Glasgow Parish Council*, May 15, 1902, 4 F. (H.L.) 19, 39 S.L.R. 621) Row would have remained liable, for a deserted wife was prior to that decision in the same position as if her husband had died at the date of desertion, and the pauper's husband having at that date a settlement in Row the deserted wife would have retained it. That rule, however, was now altered. The settlement of a deserted wife now depended on that of her husband. It was therefore not irrelevant (as the respondents contended) to inquire whether the husband's settlement in Row had or had not changed. A derivative settlement changed during chargeability according as the principal settlement changed—*Wallace* v. *Turnbull*, March 20, 1872, 10 Macph. 675, 9 S.L.R. 417; *Palmer* v. *Russell*, December 1, 1871, 10 Macph. 185, *per* Lord President Inglis at p. 189, 9 S.L.R. 134; *Anderson* v. *Paterson*, June 12, 1878, 5 R. 904, 15 S.L.R. 620; *Hunter* v. *Henderson*, December 22, 1894, 22 R. 331, 32 S.L.R. 169. The case of *Beattie* v. *Adamson*, November 23, 1866, 5 Macph. 47, 3 S.L.R. 44, relied on by the respondents, was distinguishable, for that was the case of a child who through ill-health was an object of relief in her own right. The husband's residential settlement, therefore, having been lost and his birth settlement, *i.e.*, in the Parish of Glasgow, having revived, that parish *prima facie* became liable for the pauper. The appellants were not bound to prove that the husband was still alive, for as to that the ordinary rule as to the presumption of life applied—Dickson on Evidence, i, sec. 116. To escape liability the respondents must prove either that he had acquired a new settlement or had died within three years after leaving Row. They could not do so.

Argued for respondents (Glasgow)—The pauper's settlement in Row, though derivative, was her own just as much as a birth settlement or an industrial settlement, if acquired by her there, would have been her own. The question was, Had she lost it and got a new one? She was the pauper. It was not enough to say that her husband had lost his settlement in Row. The pauper had not lost hers, and it remained till it had been shown that she had acquired another—*Beattie* v. *Adamson*, *cit. sup.* This had not been shown. The later cases cited by the appellants, *e.g.*, *Hunter*, were quite consistent with the case of *Beattie* v. *Adamson*. In *Hunter's* case it was proved that the deserting father had acquired a new settlement in the parish of O., which consequently thereafter became liable to support his deserted children. No new settlement had been shown to have been acquired by the husband here. Reference was also made to *Gray* v. *Fowlie*, March 5, 1847, 9 D. 811. The rule as to presumption of life did not apply to cases of parochial relief—*Greig* v. *Simpson & Craig*, May 16, 1876, 3 R. 642, *per* Lord Deas at 644, 13 S.L.R. 423. The burden rested where it fell, and it was for the appellants to show that the pauper's settlement had shifted—Graham on Poor Law, p. 98; *Greig* v. *M'Leod*, March 7, 1860, P.L.M. 593. The appellants had failed to discharge that *onus*, and therefore remained liable.

At advising—

LORD PRESIDENT—In April 1902 Daniel Wright, who was by trade a gardener, and was living in Paisley with his wife and three dependent children, deserted his family, who thereafter became chargeable to the parish. His birth parish was Glasgow, where he was born on 11th July 1859. He had, however, acquired a settlement by residence in the parish of Row when he left it in October 1901 to take up house in Paisley. In these circumstances Paisley sent notice to Row claiming relief from that parish in respect of the settlement by

residence. Row admitted liability, and continued to maintain the widow and children down to January 1905. At that date Row notified Paisley that the deserting husband had lost his settlement in Row by non-residence, repudiated liability for further advances, and called upon Paisley to claim against Glasgow, the husband's birth parish. Paisley notified Glasgow accordingly, but was by them referred back to Row as the parish still liable. It is matter of admission that liability is upon one or other of the defenders. It is further admitted (1) that there has been no break in the chargeability of the wife since relief was first given by Paisley in 1902; and (2) that from the date of his leaving Row in October 1901 the husband has not been back in that parish. It is not admitted that no settlement has meantime been acquired by him in any other parish; and the case must be decided on the footing that he has simply not been heard of since he deserted his family in 1902.

Had this case come up for decision before the case of *Rutherglen* (4 F. (H.L.) 19) was decided in the House of Lords the solution would have been easy. The deserted wife had no husband, for desertion was equivalent to death. Being therefore the pauper there could obviously be no change in her settlement during the continuance of chargeability. But the *Rutherglen* case destroyed the doctrine of desertion being equivalent to death, and the real question argued in this case is whether the House of Lords' judgment carries as a corollary the deciding of this case in favour of Row. Technically speaking, the House of Lords decided no more than this, that a deserted wife whose husband was still known to be alive could not acquire an industrial settlement for herself, and that consequently on her relapse into pauperism her settlement was, as it has always been, *i.e.*, her husband's settlement. But I need scarcely say that if I thought the opinions of the noble and learned Lords, or the logical deduction to be drawn from these opinions, lead to a certain conclusion, I should hold myself bound to follow them. I am, however, of opinion that the House of Lords' judgment in the *Rutherglen* case does not really touch the considerations on which this case must be decided. The whole difficulty, I think, arises from not distinguishing between derivative pauperism (if I may coin an expression to make my meaning clear) which is one thing, and derivative settlement which is another. It is necessary for me to press this point because the learned Sheriff-Substitute whose judgment, affirmed by the Sheriff, is under appeal, and whose conclusions I agree with, begins his opinion with a proposition which, if true, would, I think, entirely vitiate the conclusions which follow. He says—"It is important to observe that the wife never was a pauper in her own right." If she was not, then the husband was the pauper at the moment she became chargeable. And just as by working elsewhere he can acquire a new residential settlement although his wife is getting relief—*Wallace* v. *Turnbull*, 10 Macph. 675—so also by his absence merely he can (the doctrine of desertion as equivalent to death being exploded) lose the residential settlement he acquired and revert to his birth settlement. Indeed, it would come to this, that unless you could presume him dead (for which upon the dates there is certainly no ground) he might have a settlement in any parish in Scotland except only Row, where alone it is positively known he has not been for the last three years. This argument, upon the assumption made, seems to me irresistible. But I think the assumption is clearly wrong. When a wife is found deserted and unable to support herself it is she who is a proper object of parochial relief, and it is she who is the pauper. If this were not so, then *Wallace* v. *Turnbull* would be bad law, because a man cannot be a pauper and at the same time acquire a residential settlement. Then comes the question—What is her settlement? Being a wife her settlement is necessarily derivative from her husband—it is a mere accident whether at the moment when the wife's settlement has to be sought for the husband's settlement is his birth settlement or a residential settlement. In either case it fixes the settlement of the pauper the deserted wife. Nothing after that can, I think, happen until there is a change of circumstances. Putting out of view the possibility of some extraneous aid being given to the wife, which, of course, would put an end *de facto* to her chargeability, the only change of circumstances must consist in the discovery of the husband alive, for if he is dead it is clear that the settlement of the widow, as she now is, continues what it has been all through the period of chargeability. If the husband is discovered alive, then, if he is able bodied, it is he who is bound to support his wife, and if he is not, then he becomes the pauper and the wife a dependant on him, her relief being his relief, and the parish ultimately liable being the parish of the settlement of the pauper the husband, as that settlement is then discovered to be. All this seems to me really decided in terms by the case of *Beattie* v. *Adamson* (5 Macph. 47). There a pupil child subject to fits was held in fact to be a proper object of relief in its own right. Its settlement was necessarily the settlement of its father, which happened at the time of the inception of relief to be a residential settlement. The father subsequently lost that residential settlement. The child received continuous relief. It was held that the parish of the residential settlement was still liable notwithstanding that the father, from whom the settlement was originally derived, had admittedly lost his own settlement therein, and had either acquired a new residential settlement or reverted to his birth settlement. I can see no difference in principle between that case and this. The effect of the discovery of the father alive is different, because, although able-bodied he was poor, and was not liable to support a child in the state of

health that this one was. Whereas in this case the husband, if able-bodied, however poor, is liable to support the wife. But in that case if the father had been in affluent circumstances the child would have ceased to be in a position *de jure* to receive relief, the chargeability would have ended, and the settlement of the child would then have followed the settlement of the father, just as here the settlement of the wife would follow that of the husband if discovered.

The fallacy of the opposite argument may, I think, be tested in another way. It is said that the husband has certainly lost his settlement in Row. Now that is necessarily based on the assumption that he lived for three years after he disappeared, for if he died within the three years then his settlement in Row remains a historic fact unaltered, and the case comes to be the ordinary one of a widow who at the moment of pauperism still retains the derivative residential settlement of her husband, and it is well settled that so long as she remains a pauper no change takes place. Now while I agree that there is no presumption that the disappeared man is dead, yet, if Erskine's view be the true one (see Inst. iv. 2, 36), the presumption of life would not be available where the person pleading it did not do so in defence but needed it *positivé* whereon to found his plea. In one of the cases Lord Deas, although he does not express it in the same words, seems to have held the same opinion, because he said he did not think the presumption of life was applicable to poor law cases—*Greig* v. *Simpson & Craig*, May 16, 1876, 3 R. 642, at p. 644.

For these reasons I am of opinion, though on grounds differently expressed, that the decision of the Sheriffs is right and should be affirmed.

LORD JUSTICE-CLERK—From the first my opinion was in accordance with the view which your Lordship has expressed, and I entirely concur.

LORD M'LAREN—I concur in your Lordship's opinion. I will only add that the first principle to be applied to cases of this kind is that every pauper who has a claim for relief must continue to be supported by the parish of settlement until that parish can establish a claim against some other parish. If the husband of this woman could be traced it would either be found that he had acquired a settlement in some other parish or that he had not. If he had another settlement, then, of course, the woman would be entitled to relief from that quarter, and the new settlement would be liable on exactly the same ground as Row is at present liable, viz., the ground of derivative settlement. But the case is that nothing whatever is known about the deserting husband, and it cannot be assumed that he has acquired a new settlement, or that he has reverted to his birth settlement, or that he has any settlement in this world at all. He may be dead for anything we know to the contrary.

While I agree with your Lordship that this is a case of a pauper receiving relief in her own right, because her husband is not a pauper—has never applied for relief—that does not seem to me really to be decisive of the question, which I think depends upon the principle that Row must continue to be liable until it is able to show that there is another parish against whom a preferable claim can be made.

LORD KINNEAR—I agree with the Lord President.

LORD STORMONTH DARLING—I am of the same opinion.

LORD ARDWALL—I concur.

LORD GUTHRIE—I also concur.

The Court dismissed the appeal, affirmed the interlocutor of the Sheriff-Substitute dated 18th December 1905, as varied by the interlocutor of the Sheriff dated 14th March 1906, affirmed the last-mentioned interlocutor, and of new decerned as craved, subject to the restriction mentioned, against the defenders the Parish Council of the Parish of Row.

Counsel for Pursuers (Paisley Parish Council)—MacRobert. Agent—A. C. D. Vert, S.S.C.

Counsel for Defenders (Appellants) (Row Parish Council)—Dean of Faculty (Campbell, K.C.)—Orr Deas—Carmont. Agents—Reid & Crow, Solicitors.

Counsel for Defenders (Respondents) (Glasgow Parish Council)—Clyde, K.C.—Hunter, K.C.—W. Thomson. Agents—Mackenzie, Innes, & Logan, W.S.

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*Friday, March* 13.

## SECOND DIVISION.

[Sheriff Court at Edinburgh.

## LINDSAY *v.* M'GLASHEN & SON, LIMITED.

*Master and Servant — Workmen's Compensation Act* 1897 (60 *and* 61 *Vict. cap.* 37), *sec.* 7 (2)—*Dependants—Wholly or in Part Dependent—Wife and Pupil Child Living Apart from and not Supported by Husband.*

In an arbitration under the Workmen's Compensation Act 1897 in which the widow of a workman claimed compensation for herself and as tutor of her pupil child, in respect of the death of her husband while in the course of his employment, it was proved that the workman was killed in June 1907; the spouses were married in August 1895; the wife left her husband in December 1895; the child of the marriage was born in January 1896; during the separation the wife supported herself, the child of the marriage, and an illegitimate child born to her in January