nothing to do with the destination which is to take effect should Robert Charles Cordiner survive the testator.

I accordingly think that it must be held that the codicil of 9th October 1890, having been executed for a specific and declared purpose unconnected with the general destination of the residue set forth in the deed, it cannot safely be appealed to as interpreting or modifying the construction of the clause in the trust-settlement disposing of the fee of the residue of the testator's estate in the event of the survivance and not the predecease of Robert Charles Cordiner.

I accordingly arrive at the opinion that the view of the Lord Ordinary, to the effect that there was no vesting of the fee of William Fraser Cordiner's estate in the Reverend Robert Charles Cordiner, is correct.

It was very properly pointed out to the Court by Mr Dykes, counsel for the *tutor ad litem* to Robert Charles Cordiner's pupil children, that it was sufficient for the decision of the present action to sustain his second plea-in-law without going into any question at present as to the date to which vesting is postponed.

I accordingly would propose that the Lord Ordinary's interlocutor should be recalled, in so far as it sustains the first plea-in-law for John W. More, and that in place thereof we should sustain the second plea-in-law for that claimant, and *quoad ultra* adhere to the Lord Ordinary's interlocutor.

LORD DUNDAS—I am of the same opinion. It seems clear enough that, reading the tenth purpose of the testator's settlement by itself, Robert Cordiner took no right of fee *a morte testatoris*. But the effect of the codicil dated 9th October 1890 must of course be considered. It was pressed upon us by the pursuer's council that the settlement and the codicil must be read together. I agree with this contention, in so far as it means that the Court must always consider all the subsisting testamentary writings of a testator, and endeavour upon such consideration to arrive at his matured intention. But in this endeavour the Court must, I apprehend, have regard to the sequence, the dates, and the purposes of the various instruments by which the testator has expressed his testamentary intentions. So viewing the matter, and agreeing, as I do, with the construction put upon the codicil by my brother Lord Ardwall, I think we must hold that the Lord Ordinary was right in deciding that Robert Cordiner had not at his death any vested right of fee in the residue of the truster's estate. I further agree in thinking that we ought to sustain the second plea-in-law for the tutor *ad litem* rather than his first plea, which was sustained by the Lord Ordinary, because it is enough for us simply to negative the conclusions of the summons without in any way prejudicing any other questions which may possibly arise in the future.

The LORD JUSTICE-CLERK concurred.

LORD LOW was absent.

The Court recalled the Lord Ordinary's interlocutor in so far as it sustained the first plea-in-law for J. W. More, tutor *ad litem* to Robert Grote Cordiner and Hugo Grote Cordiner, and in lieu thereof sustained his second plea-in-law, and *quoad ultra* affirmed the said interlocutor.

Counsel for Pursuer—Graham Stewart, K.C.—A. R. Brown. Agents—Alexander Morison & Company, W.S.

Counsel for Defender Alexander Duffus (William Fraser Cordiner's Judicial Factor)—Lord Kinross. Agents—Ross & M'Callum, S.S.C.

Counsel for Defender John W. More (Tutor *ad litem* to Robert and Hugo Cordiner)—Chisholm, K.C.—Dykes. Agents—Ross & M'Callum, S.S.C.

Counsel for Robert Gray (Mrs W. F. Cordiner's *curator bonis*)—Lippe. Agent—James Gibson, S.S.C.

Thursday, January 20.

FIRST DIVISION.

LEITH PARISH COUNCIL *v.* ABERDEEN CITY PARISH COUNCIL.

Poor—Settlement—Derivative Settlement—Deserted Children—Father Sent to Penal Servitude—Loss of Settlement by Father.

M.'s pupil children became destitute, receiving relief in the parish of L. through M., their father, being sentenced to penal servitude. At the time of their desertion the children had a settlement in the parish of A. derived from M. The parish of A. admitted liability till the expiry of three years from the date of M.'s having left that parish, when it repudiated liability on the ground that M. had lost his settlement there, and that the settlement of the children, which was derived from him, had lapsed also.

Held that the children were paupers in their own right; that their settlement could not change during chargeability; and that the parish of A. therefore remained liable for their support.

Beattie v. *Adamson*, November 23, 1866, 5 Macph. 47, 3 S.L.R. 44, *applied.*

Milne v. *Henderson and Smith*, December 3, 1879, 7 R. 317, 17 S.L.R. 197, *disapproved.*

On 15th July 1909 the Parish Council of the Parish of Leith (*first parties*) and the Parish Council of the City Parish of Aberdeen (*second parties*) brought a Special Case for the determination of questions regarding the liability to maintain the pupil children of William Mitchell, then a prisoner in the prison at Peterhead.

The *facts* as stated by the Lord President in his opinion (*infra*) were as follows:—"William Mitchell, who was not by birth

a Scotsman, came to Scotland and acquired a settlement by residence in the parish of Aberdeen, which admittedly he held on 6th December 1903. On that date he went to Leith in search of employment, leaving his wife and family in Aberdeen. On 6th February 1904 he took a house in Leith, to which he brought his wife and family, and there is no doubt that after 6th February 1904 he was in the course of losing his Aberdeen settlement. But on 10th November 1906—that is to say, before the expiry of the three years, even if you count the three years as running from 6th December 1903 and not from the 6th February 1904—he was taken out of his house by being arrested and put in jail, and the eventuality of it was that he never came out of jail again, because he was sentenced to penal servitude for ten years—a sentence which he is still undergoing. His wife was dead by that time, but he left his children entirely unprovided for. On 11th November 1906 these children were taken to the poorhouse, and with the exception of one who has been adopted by some friends in Peterhead, they are all in Leith poorhouse now. The question raised by this case is whether Leith, which has got the children in its poorhouse, is bound to bear the brunt of it, or whether Leith has recourse against Aberdeen."

It was admitted by the parties (1) that at the date when they were taken into Leith Poorhouse in November 1906 all the children in question had a settlement in the parish of Aberdeen derived from their father; (2) that since that date they had all been continuously in receipt of relief from the first parties with the exception of George Mitchell, on whose account no advances had been made since January 1907; and (3) that so long as the settlement of said children was in the parish of Aberdeen the second parties were liable to repay to the first parties all advances properly made on their behalf.

The first parties *maintained* that when Mitchell's children were admitted to the poorhouse in November 1906 they became and fell to be regarded as paupers in their own right; that their settlement at that date having admittedly been in the parish of Aberdeen, and they having since been continuously in receipt of relief, said children had never lost their settlement in the parish of Aberdeen. Alternatively the first parties maintained that Mitchell did not cease to reside in Aberdeen in the sense of the statute until 6th February 1904, the date at which he removed his wife and family from Aberdeen and took up house at Leith; that at the date when he was arrested, on 10th November 1906, and at the date when he was sentenced to a term of penal servitude on 22nd January 1907, his settlement was in the parish of Aberdeen; and that subsequent to said 10th November 1906, or at all events subsequent to said 22nd January 1907, and until he was liberated from prison, his settlement could not change. Alternatively, and in the event of its being held that William Mitchell ceased to reside in Aberdeen on 6th December 1903, the first parties maintained that at the date when he was arrested, on 10th November 1906, his settlement was in the parish of Aberdeen, and that subsequent to said date, and until he was liberated from prison his settlement could not change. In the event of its being held that the settlement of the children changed with that of their father, and that Mitchell had lost his settlement in Aberdeen by absence for the statutory period, the first parties maintained that he did not cease to reside in Aberdeen until 6th February 1904, the date at which he took up house with his family in Leith, and that accordingly he did not lose his settlement in Aberdeen till 7th February 1907, until which date the second parties were liable for the support of the children.

The second parties maintained that on 6th December 1906 the said William Mitchell's settlement in the City Parish of Aberdeen was lost on account of his absence from that parish for three years, that thereupon the settlement which the said children had derived from their parent also came to an end, and accordingly that the claim made by the first parties as the relieving parish for repayment of the sums disbursed by them on account of the said children was good against the second parties only in respect of the period from 10th November 1906 to the said 6th day of December 1906, but not for any further period. Alternatively they maintained that the settlement of the said William Mitchell in the City Parish was lost on 6th February 1907, and that the claim of the first parties for reimbursement was good against the second parties only in respect of the period from 10th November 1906 to the said 6th day of February 1907.

The *questions of law* included the following—"Do the said Alfred, Emily, Mary and James Mitchell, children of the said William Mitchell, still possess a settlement in the City Parish of Aberdeen."

Argued for first parties—The children were paupers in their own right, and during chargeability their settlement (which admittedly was in Aberdeen) could not change—*Beattie* v. *Adamson*, November 23, 1866, 5 Macph. 47, 3 S.L.R. 44; *Parish Council of Paisley* v. *Parish Councils of Row and Glasgow*, 1908 S.C. 731, 45 S.L.R. 556.

Argued for second parties—The true debtor in the obligation to aliment these pupil children was their father. He had not become destitute; he was an able bodied man. No doubt a restraint had been put upon his liberty, making it impossible for him to earn his livelihood, but he was not himself a pauper; he was not himself in receipt of parochial relief. His children were properly relieved by the first parties because they were found destitute within the parish, but the receipt of parochial relief by them did not pauperise him. The fact that a man's wife or children had received parochial relief did not prevent him from acquiring a settlement by residence elsewhere, or *a fortiori* from losing it—*Wallace* v. *Turnbull*, March 20,

1872, 10 Macph. 675, 9 S.L.R. 417; *Anderson* v. *Paterson*, June 12, 1878, 5 R. 904, 15 S.L.R. 620; *Milne* v. *Henderson and Smith*, December 3, 1879, 7 R. 317, 17 S.L.R. 197; *Milne* v. *Ross*, December 11, 1883, 11 R. 273, 21 S.L.R. 207; *Hunter* v. *Henderson*, December 22, 1894, 22 R. 331, 32 S.L.R. 169; *Brechin Parish Council* v. *Montrose Parish Council*, December 6, 1904, 7 F. 207, 42 S.L.R. 150. That being so, Mitchell had lost his settlement in Aberdeen on 6th December 1906, or in any event on 6th February 1907, with the result that his children had lost their settlement there. *Esto* that if the children were the paupers their settlement could not change during chargeability—*Beattie* v. *Adamson* (*cit. supra*)—they were not the paupers. They could not be so, for their father was alive, he had not deserted them, and his whereabouts were known.

At advising—

LORD PRESIDENT— . . . [*After narrative, ut supra*] . . . I cannot say that I find the case of any difficulty, because I think it is clearly settled by one at least of the few absolutely settled things we have in the poor law. On that 11th November, when these children were taken to the poorhouse, they were in the position of deserted children. Their father was not a pauper, but he was not there. He had been removed to prison. There was nobody to take care of them, and they were entirely destitute. I cannot have any doubt, therefore, that they were — to use a phrase which has often been used — paupers in their own right—that is to say, that they were proper objects of parochial relief. Well, then, what was their settlement? It is quite clear what it was. They were all pupil children, and, accordingly, their settlement was the settlement of their father, and the settlement of their father at that time was—it is equally clear—in Aberdeen. Accordingly these children became chargeable as paupers in their own right with a settlement which was their settlement. No doubt they derived that settlement from their father, but none the less the settlement was their own, and it was in Aberdeen. They have been paupers ever since, and if, as I say, there is one guiding principle among the rather tortuous ways of the poor law it is surely this, that during pauperism no change can take place. That was laid down in *Beattie* v. *Adamson*, and to the best of my belief it has never been departed from since. I think it is clear that these children are still paupers with a settlement in Aberdeen, and accordingly I think that Aberdeen must bear the charge.

Certain cases were quoted—I do not propose to go through them—which were supposed to be against this view, but I do not think any of them were, because I think it will be found that if the facts are narrowly looked into they do not controvert the doctrine I have stated. Some confusion has, I think, occasionally arisen with regard to this subject by not carefully attending to whether, in the case of people who may have a derivative settlement, there has not been, if I may so phrase it, a period of emancipation from pauperism. It is of course quite well settled that the fact of children being paupers does not necessarily pauperise the father. So, too, a father may be receiving relief in such a way as to show that he is the pauper, and that his children, who along with him are receiving relief, are not really paupers at all, but that he is the pauper who receives relief for the whole of his family. But if the father is able-bodied and elsewhere, the fact of the children getting relief does not make the father a pauper. When you have a person who in certain circumstances must have a derivative settlement, namely, a child or a wife, that settlement may be in one sense of the word ambulatory. That is to say, of course, the principal person from whom the settlement is derived may be in the course of changing, and may eventually change, the settlement. But then, in order to have that given effect to, there must always be at least some emergent period from pauperism in the case of a person relieved, and I think it is not attending to that that has caused the confusion. But, as I say, I think that when these cases are looked into closely enough it will be found that in all cases where a different body has been called on after a period of years to relieve a child or wife from the body that has relieved them before, on account of a change of settlement, it will be found that this change of settlement has been effected by the fact of there being a period, however short, of their emergence from pauperism. In other words, to apply that to this case, when this man's sentence of penal servitude is over and he emerges from prison, well then, if his children were to go to him for a single day and then next day have to go back to the poorhouse again the change would have operated. By the time the man has emerged from prison the settlement in Aberdeen will have been lost, and then the children, if they be still in pupilarity and have not been forisfamiliated, will follow his fortunes, and any settlement which they may take will be the settlement they get from their parent.

I am bound to say also that one case which was quoted to us—the case of *Milne* v. *Henderson and Smith*, 7 R. 317—is, I think with great respect, a case of no authority. It seems to me that Lord Gifford, although professing to agree with the judgment, in his opinion really disagreed with it, and Lord Ormidale I do not think sees the point of difficulty at all, and the Lord Justice-Clerk lays down a proposition which cannot be supported, which is that a lunatic cannot be a pauper. The result is that I think that case may be, for all practical purposes, wiped from the books.

LORD KINNEAR—I agree. It is common ground that the children in question became proper objects of parochial relief on the 10th November 1906. Now, as has been explained by Lord President M'Neill and also by Lord President Inglis, "settle-

ment" is a technical term which means simply the right to demand relief from a particular parish, and it is common ground that the children in question had such a right. But if there were any dispute about it, I think it is perfectly clear that that was their position, because they were destitute children, too young to support themselves, and therefore they necessarily fell upon the parish. That means that they had right to relief from some particular parish, and it is admitted in the case by both parties that that parish was the parish of Aberdeen. It is admitted that on the day when they were taken into Leith poorhouse in November 1906, all the children had a settlement in the parish of Aberdeen derived from their father. If that be so, then I take it to be settled law, settled by decisions going further back than *Beattie* v. *Adamson* and frequently followed, that the settlement of the pauper at the date when he becomes chargeable cannot be altered during chargeability. The principal point which we have to consider here, viz., whether a child's settlement can be altered during the period of its chargeability by a change in the father's settlement, arose for decision and was decided in *Beattie* v. *Adamson*, and the ground of judgment in that case appears to be directly applicable to the present. When a child—I cannot say I am quoting the exact words of Lord Justice-Clerk Inglis, because I have not the book before me, but I am quoting the sense,—when a child has acquired a settlement through its father, that becomes the child's own settlement to all intents and purposes. If that be so, no loss of settlement by the father who continues to be able-bodied can in any way affect the settlement of the child who has become a proper object of parochial relief. The decision appears to me to be directly in point. I think it is of no consequence whether the father loses his settlement in Aberdeen by voluntary change or by compulsory change, or whether he loses it at all. The question is not the father's settlement but the right of relief in the children against one parish or against the other, and on the ground established, as I think, in *Beattie* v. *Adamson*, I am for answering the first question of law put to us in the affirmative.

LORD JOHNSTON—I agree in the conclusion at which your Lordships have arrived.

LORD M'LAREN was absent.

The Court answered the first question of law in the case in the affirmative.

Counsel for First Parties—Craigie, K.C. —J. Hossell Henderson. Agents—Snody & Asher, S.S.C.

Counsel for Second Parties—Sandeman, K.C.—A. Brown. Agent—Alex Morison & Company, W.S.

Friday, January 21.

SECOND DIVISION.

MACFARLANE AND OTHERS (MACFARLANE'S TRUSTEES) *v.* MACFARLANE AND OTHERS.

Succession — Legacy — Ademption — Specific Legacy of Shares — Shares Divided by Company into Ones of Lower Denomination—Sale by Curator Bonis.

A by his trust-disposition and settlement, dated 11th February 1902, bequeathed to his mother, and to three sisters "100 £5 shares of the Empire Guarantee and Insurance Corporation Limited." By resolution of the company each of the £5 shares was in 1907 divided into five £1 shares. A's holding, which was at that time 500 £5 shares, became 2500 £1 shares, for which he received a new certificate. On 18th August 1908 B was appointed *curator bonis* to A, who at that date possessed 1750 £1 shares. On 19th November 1908 B sold the said shares, not because the money was required for the payment of A's debts nor for his maintenance, but because he considered it imprudent to hold them.

Held that the legacies were not adeemed either (1) by the sale of the shares by the *curator bonis*, or (2) by the alteration in the form thereof.

Mitchell's Trustees v. *Fergus*, July 3, 1889, 16 R. 902, 26 S.L.R. 615, *doubted.*

Duncan Macfarlane, engineer, Glasgow, and others, the trustees acting under the trust-disposition and settlement, dated 11th February 1902, of the late Alexander Thomson Macfarlane, *first parties;* Miss Marie Douglas Macfarlane, Mrs Isabella Macfarlane or M'Kellar, and Mrs Jessie Reed Macfarlane or M'Kellar, sisters of the testator, *second parties;* and the said Duncan Macfarlane as an individual and others, being the whole legatees under the trust-disposition other than the second parties, *third parties*, presented a Special Case to have decided whether a bequest in the said trust-disposition in favour of the second parties had been adeemed.

By his trust-disposition the testator, *inter alia*, directed his trustees to pay the following legacies—"To each of my mother and my three sisters, at present unmarried, 100 £5 shares of the Empire Guarantee and Insurance Corporation, Limited—my remaining shares in that corporation to be sold, and, after payment of any debts which I may owe, the proceeds to fall into residue."

The testator died on 20th November 1908, predeceased by his mother, but survived by his three sisters, who were unmarried at the date of the settlement.

The Case stated, *inter alia*—"At the date when the deceased's will was signed he held 1000 shares of £5 each fully paid of the Empire Guarantee and Insurance Corporation, Limited. From time to time his hold-