being able to do anything for herself; the obvious thing to do she did not try, viz., to apply for a further grant from the compensation fund. It is not necessary for the relieving officer to wait till the very last shilling has been spent—*Cathcart* v. *Glasgow*, 1907, P.L.M. 153—but if he gave relief to a person possessed of substantial property the only claim that can arise is for repayment of money paid in error. Such a claim can only be made by the relieving parish against the 'pauper,' the parish of settlement being an entire stranger to the transaction. I think it significant that section 71 of the Poor Law (Scotland) Act 1845 while providing for the recovery of relief from the parish of settlement and from parents, &c., makes no provisions for its recovery from the pauper himself, not contemplating in my view that a person with estate could be relieved."

The pursuers appealed to the Sheriff (A. O. M. MACKENZIE), who on 6th August 1915 adhered to the Sheriff-Substitute's interlocutor and concurred in his note.

The pursuers appealed to the Court of Session, and argued—Mrs Anderson never acquired a settlement in the pursuers' parish by residence, for she had not resided there continuously for three years without having received or applied for poor relief—Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), sec. 1. On 12th January 1914 she did apply for and did receive poor relief, and at that date she was a proper object of poor relief and legally entitled to it. All destitute persons with the exception of able-bodied persons were legally entitled to poor relief, and Mrs Anderson was then destitute and was ailing. On her application for poor relief the inspector of poor was bound to relieve her, and if he did not do so his refusal to do so was improper—Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83), sec. 70—and consequently the pursuers had a right of relief against the defenders—Poor Law (Scotland) Act 1845, sec. 71. The fact that compensation for behoof of herself and her child had at that date been paid into the sheriff court at Stirling was irrelevant, for the application of that fund was in the discretion of the Court, which might have refused to make any payment—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Schedule I, sec. 5—and in any event she was not bound to live on credit or starve until it was decided whether a payment should be made to her or not. *Dinwoodie* v. *Graham*, 1870, 8 Macph. 436, *per* Lord President Inglis at p. 437 and Lord Deas *ibid.* 7 S.L.R. 258; *Forfar Parish Council* v. *Davidson*, 1898, 1 F. 238, *per* Lord Trayner at p. 243, 36 S.L.R. 165; *Harper* v. *Inspector of Rutherglen*, 1903, 6 F. 23, 41 S.L.R. 16, were all authorities for the proposition that where a person was actually destitute and there was no fund immediately available for his support he was a proper object of poor relief, and if he applied for or received it the process of acquisition of a residential settlement was interrupted. If relief was applied for by one not properly entitled thereto, *e.g.*, by an able-bodied person, and was granted to him, that had no effect on the acquisition of a residential settlement, but if a proper application for poor relief was improperly refused the settlement would be effected—*Jack* v. *Thom*, 1860, 23 D. 173, *per* Lord Justice-Clerk Inglis at p. 180. The Sheriffs were wrong and should be reversed.

The defenders were not called upon.

LORD PRESIDENT—My view of this case can be most aptly and most succinctly expressed by adopting, as I now do, the words of the learned Sheriff in confirming his Substitute's interlocutor, where he says—"The Sheriff-Substitute, in my opinion, has decided this case rightly, and I do not think that I can usefully add anything to the clear statement of the grounds of his decision which the note appended to his interlocutor contains."

LORD JOHNSTON—I think that this case presents a difficult question, looking not only to its own nature, but particularly to the nature of the fund, the rights in the fund, and the limitations upon rights of parties interested in the fund, which does not belong to the widow as an individual, but was intended to be made available for the maintenance and benefit of this family generally. I acquiesce in the judgment which your Lordship proposes only on the ground of the very exceptional circumstances, and not in the application of any general rule or principle of the poor law.

LORD MACKENZIE—I agree with the Sheriff and the Sheriff-Substitute.

LORD SKERRINGTON—I agree with your Lordship. It is purely a question of circumstances whether this woman fell within the statutory description of being a poor person. I do not think that she did.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Macmillan, K.C.—Maconochie. Agents—Traquair, Dickson, & MacLaren, W.S.

Counsel for the Defenders and Respondents—Solicitor-General (Morison, K.C.)—Paton. Agents—Bruce & Stoddart, S.S.C.

Saturday, July 1.

FIRST DIVISION.

STEEDMAN'S TRUSTEES *v.* STEEDMAN AND OTHERS.

Succession—Will—Construction—Object of the Gift—"Next-of-Kin."

A testator left a trust-disposition and settlement whereby he directed his trustees to "pay and convey" the residue and remainder of his estate and effects to his "nearest heirs and next-of-kin whomsoever in accordance with law." He left heritable and moveable property. His heirs *in mobilibus* claimed a share in the residue along with his next-of-

kin. *Held* that the next-of-kin were entitled to the residue to the exclusion of the heirs *in mobilibus.*

Thomas Baird Maxwell and others, the testamentary trustees of the late Laurence Steedman, *the testator*, acting under a trust-disposition and settlement and codicils, *first parties;* Thomas Steedman, as an individual, and as executor-dative of his sister Elizabeth Steedman, who had survived the testator but had since died, and Helen Elspit Steedman, being the testator's surviving brother and sister, *second parties;* William Steedman and others, being with one exception all the surviving children of a brother and of a sister of the testator who predeceased him, *third parties;* Mary Steedman Aytoun Young and others, the children of Mrs Isabella Hislop or Young, a niece of the testator, who predeceased him, *fourth parties;* and James Steedman Hislop, being the surviving nephew of the testator not included in the parties of the third part owing to his being affected by a codicil, *fifth party,* brought a Special Case for the determination of their rights under the testamentary writings of the testator.

The *trust-disposition and settlement* dated 7th March 1904 conveyed the whole estate and effects to the first parties as trustees, and after providing for payment of debts and of certain legacies, *inter alia,* a legacy to the fifth party, and annuities, and giving sundry directions, made the following provision:—"*In the eighth place,* In regard to the residue and remainder of my estate and effects, my trustees shall hold, pay, and convey the same to such person or persons, or towards such objects and purposes, as I may by any codicil hereto or separate writing under my hand direct, and failing any such directions then my trustees shall pay and convey the said residue and remainder of my estate and effects to my nearest heirs and next-of-kin whomsoever in accordance with law."

By holograph *codicil* dated 1st July the testator provided:—

"*First July, Nineteen hundred and twelve.*

"I, Laurence Christie Steedman, residing at South Broomage Avenue, Larbert, do hereby cancel and annul the legacy and provision of One thousand pounds made in my will or disposition and settlement before written in favour of James Hislop Steedman, and declare that he shall have no interest in my estate whatever at my death. In witness thereof this codicil written by my own hand is subscribed by me at South Broomage Avenue, Larbert, on the '1st day of July' ['First day of July'] Nineteen hundred and twelve. LAURENCE C. STEEDMAN.

"W. P. Pryde, *witness,* Bank Clerk, Larbert.

"J. M. Pryde, *witness,* Student, residing at Clydesdale Bank, Larbert."

The Case stated—"1. Laurence Steedman otherwise Laurence Christie Steedman) died on 17th February 1913. He was unmarried. He was survived by his brother Thomas Steedman and his sisters Elizabeth Steedman and Helen Elspit Steedman. The said Elizabeth Steedman has since died, but her interest is represented by the said Thomas Steedman as her executor-dative. These parties form the parties of the second part in the present case. The testator the said Laurence Steedman was predeceased by his brother William R Steedman, whose only child William Steedman is one of the parties of the third part. The testator was also predeceased by his sister Mary Ann Steedman or Hislop, all of whose surviving children, with the exception of James Steedman Hislop, are, along with the said William Steedman, the parties of the third part. The parties of the fourth part are the children of Isabella Hislop or Young, the only one of the children of the said Mary Ann Steedman or Hislop who predeceased the testator. The said James Steedman Hislop is the party of the fifth part. All the said parties are of full age excepting the said Alexander Aytoun Young, the youngest child of the said Isabella Hislop or Young, who is a minor, and his father the said Reverend Alexander Aytoun Young concurs in this case as his curator and administrator-in-law.

"2.. . . The estate under the charge of the said trustees consists of moveables of the value of about £7000 and of certain heritage."

"5. . . . The first parties are only concerned to have the judgment of the Court as to who is entitled to receive the funds in their hands. There are funds in the hands of the first parties now available for distribution. . . ."

The second parties *contended* "that the said destination to the testator's nearest heirs and next-of-kin whomsoever in accordance with law carries the said residue to them as being or representing brothers and sisters of the testator alive at the time of his death, and excludes the issue of predeceasing brothers and sisters of the testator from any share in the said residue." The third parties "that on a sound construction of the trust-disposition and settlement and codicils they are entitled to the residue. . . . alternatively, that they are entitled to share in the distribution of the said residue in the same manner and to the same extent as they would have been entitled to share if the testator had died intestate." The fourth parties "that they are entitled to share in the said distribution to the effect of taking equally among them the share which would have fallen by the law of intestate succession to their mother if she had survived the testator."

The fifth party—"That the said codicil is not effectual to revoke, and has not revoked, the legacy in his favour contained in the seventh purpose of the said trust-disposition and settlement, and on the second question that the said destination carries a share of the residue to him as one of the testator's nearest heirs and next-of-kin: . . . alternatively that he is entitled to share in the distribution of the residue in the same manner and to the same extent as he would have been entitled to share if the testator had died intestate." [The fifth party intimated at the hearing that he was unable to argue in support of his contention.]

The *questions of law* were, *inter alia*—"(2) On a sound construction of the said trust-disposition and settlement are the second parties entitled to share in the residue of the moveable estate? (3) If the second question is answered in the affirmative—(*a*) does the expression 'my nearest heirs and next-of-kin whomsoever in accordance with law' include only the second parties, or (*b*) does the expression include also (i) the third and fifth parties, or (ii) the third, fourth, and fifth parties? (4) If the second question is answered in the negative—(*a*) are the third and fifth parties alone entitled to share in the moveable residue, or (*b*) do the fourth parties take their mother's share by representation?"

Argued for the second parties—The testator used the words "next-of-kin" in the technical sense. The term was opposed to heirs *in mobilibus* who were called to succeed as intestate heirs to moveable estate by the Intestate Moveable Succession (Scotland) Act 1855 (18 and 19 Vict. cap. 23), section 1, which introduced representation into the law of moveable succession. The expression next-of-kin must be so interpreted in a will—M'Laren's Wills and Succession, vol. ii, p. 775; *Young's Trustees* v. *Janes*, 1880, 8 R. 242, 18 S.L.R. 135; *Murray's Factor* v. *Melrose*, 1910, S.C. 924, 47 S.L.R. 778 *cf.*; *Nimmo* v. *Murray's Trustees*, 1864, 2 Macph. 1144. Further, it was the intention of the testator that the words "heirs" and "next-of-kin" should be read distributively; "heirs" to indicate the successors to his heritage, and "next-of-kin" the successors to his moveables. Further, it was necessary to exclude the fifth party from the succession by the codicil of 1st July 1912, for though he was amongst the heirs *in mobilibus* at the date of the will he might have been one of the next-of-kin at the testator's death.

Argued for the third parties—There was no decision upon words identical with those in the present case, so that it was open to the Court to construe the words "next-of-kin" according to the intention of the testator as manifested in his testamentary writings. His intention was that his estate should go to his heirs in intestacy as fixed by law unless he directed otherwise; he was a rustic and it was highly improbable that he used "next-of-kin" in its strictly legal sense. "Heirs" and "next-of-kin" were used collectively to designate a class. Even where terms with a technical legal meaning were used, the plain intention of the testator would prevail if it indicated that the testator did not use the words in their technical sense—*Rutherford's Trustees* v. *Dickie's Trustees*, 1907 S.C. 1280, 44 S.L.R. 960; *Gregory's Trustees* v. *Alison*, 1889, 16 R. (H.L) 10, 26 S.L.R. 787; *Trousons* v. *Trousons*, 1884, 12 R. 155, 22 S.L.R. 125.

Argued for the fourth parties—It was unnecessary to exclude the fifth party from the succession if as the second parties contended "next-of-kin" was used in the technical sense, for the fifth party was not amongst the next-of-kin in that sense but amongst the heirs *in mobilibus*. *Quoad ultra* those parties adopted the argument of the third parties.

Lord President—I think Mr Macmillan was well founded when he said that never before had this precise group of expressions come before this Court for interpretation, although the interpretation of groups very nearly approaching the group to be found in this residue clause has been subject-matter of judicial decision, and has I think decided the question which we have to consider.

If the testator had used the expression "next-of-kin" alone, then the case is covered completely by the authority of *Young's Trustees*, 1880, 8 R. 242, 18 S.L.R. 135. If he had used the expression "next-of-kin in accordance with law," once more the case is completely covered by the decision in *Murray's Factor*, 1910 S.C. 924, 47 S.L.R. 778. And I cannot see that the addition of the word "whomsoever" can alter the interpretation that was put upon the phrase in the latter case. Nor do I think that to prefix the words "nearest heirs" alters the construction. I think Mr Chree has shown us how it can be satisfactorily explained without in any degree prejudicing the claim which his clients advance.

I propose to your Lordships that we should answer the first question in the affirmative, the second in the affirmative, the first branch of the third question in the affirmative, the second and third branches of that question in the negative. The fourth and fifth questions are superseded.

Lord Mackenzie—I think we are bound to construe the expression "nearest heirs and next-of-kin" distributively, and I can find no warrant in the destination, taken as a whole, for extending the meaning of "next-of-kin" beyond those who answer that description at common law.

Lord Skerrington—I regret the decision which we are about to pronounce. But the question is one which is settled by the authorities cited to us.

Lord Johnston, who had not heard the case, delivered no opinion.

The Court answered the second question and branch (*a*) of the third question in the affirmative and branch (*b*) of the third question in the negative, and found the fourth question was superseded.

Counsel for the First and Second Parties—Chree, K.C.—C. H. Brown. Agent—Henry Smith, W.S.

Counsel for the Third Parties—Macmillan, K.C.—Wilson. Agents—Wilson & Matthew, S.S.C.

Counsel for the Fourth Parties—D. Anderson, K.C.—Dykes. Agents—Hagart & Burn Murdoch, W.S.

Counsel for the Fifth Party—Blackburn, K.C.—W. T. Watson. Agents—Wallace & Begg, W.S.