that his claim would have been successful, because the money having been left to the Presbytery of Glasgow they were directed by the testator to add the interest to the stipend of the minister of St David's parish, Glasgow. The testator did not in express words say to whom the stipend was to be paid, and accordingly one must resort to implication, but the necessary implication is that the interest of the bequest, having been added to the stipend, should be paid to the person for the time being legally entitled to receive the stipend. Accordingly if, as all the parties agree, the stipend proper during a vacancy would have fallen prior to 1814 to the patron for general pious purposes, then a corresponding proportion of the interest of the bequest would have gone to the same destination.

Different considerations apply to the Robb Bequest, because there the testator, having bequeathed the capital to the Kirk-Session of the Ramshorn Church, Glasgow, directed that the free annual revenue should be paid by the Kirk-Session to the minister of the church for the time being. That is a perfectly unambiguous direction, and it leaves no room for anyone except the minister to make a claim against the Kirk-Session for any portion of the revenue. In the event of there being two ministers entitled—as would happen in the event of the translation or death of a minister—then the natural division between the two beneficiaries would be in proportion to the period during which the stipend had accrued. But if there was a period of vacancy the language of the will is wide enough to give to a minister on his appointment a right not merely to the interest which would accrue after his appointment, but also to any income which had accrued prior to his appointment and which did not belong to his predecessor in office.

Accordingly treating this question as I do as a pure question of construction, I am of opinion that in the case of the Paton Bequest the third question of law ought to be answered in the affirmative, and that in the case of the Robb Bequest the third question of law ought to be answered in the negative. In each of these special cases the parties have put two preliminary questions, but I should say that these two questions do not require to be answered in either case.

The LORD PRESIDENT was absent.

The Court answered the third question of law in the Paton Bequest case in the affirmative, and the third question of law in the Robb Bequest case in the negative.

Counsel for the First Parties—Chree, K.C. —Hamilton. Agent—F. P. Milligan, W.S.

Counsel for the Second Parties—Anderson, K.C.—Leadbetter. Agents—Macpherson & Mackay, W.S.

Tuesday, July 17.

FIRST DIVISION.

[Lord Cullen, Ordinary.

GLASGOW PARISH COUNCIL *v.* OLD KILPATRICK PARISH COUNCIL.

Poor—Settlement—Derivative Settlement—Forisfamiliation—Blind Girl Placed in Asylum by Parents Reaching Puberty.

Poor—Settlement—Derivative Settlement—Father of Unforisfamiliated Child Losing Residential Settlement while Child was Chargeable.

On application to the school board by the father, an able-bodied man who was at that time leading a low life, a blind female child born February 19, 1896, was placed in a blind asylum on December 30, 1904. The expense of her maintenance was defrayed by the school board up to February 19, 1912, but thereafter by the parish so far as in excess of the allowance granted by the institution for her work. Her parents continued to visit her, corresponded with her, and had her to spend holidays with them, but they left the question of having her removed to the town where they had gone to live to be decided by the matron and the girl herself. In 1905 the father went to another parish, where he acquired a residential settlement, but this he lost on February 23, 1914, through non-residence, having gone to live in Ireland. On chargeability beginning, intimation had been sent to the parish of the father's residential settlement, but it had repudiated liability. In an action against it to recover the advances, *held* (1) (*sus.* Lord Cullen) that the child was not forisfamiliated prior to 19th February 1912, when chargeability began, and (2) (*rev.* Lord Cullen) that the parish of the father's residential settlement when chargeability began continued to be liable after that date notwithstanding the father's loss of that settlement.

Leith Parish Council v. *Aberdeen Parish Council*, 1910 S.C. 404, 47 S.L.R. 263, *followed.*

The Parish Council of Glasgow, *pursuers*, brought an action against the Parish Council of Old Kilpatrick, *defenders*, concluding for decree of declarator that a child, Euphemia M'Dermid, was, on or about 22nd February 1912, when she became chargeable as a pauper to the pursuers, destitute and a proper object of parochial relief and had ever since continued to be so, and that she had when chargeability began and still had her settlement in the parish of the defenders, and for payment to the pursuers of £58, 17s. 1d., being the amount of advances made for the maintenance of the child from 22nd February 1912 to 21st January 1915.

The pursuers *pleaded*—"1. The pauper's settlement at the time when she became chargeable having been and still being in the parish of Old Kilpatrick, the pursuers are entitled to decree of declarator as con-

cluded for. 2. The pauper's settlement at the time when she became chargeable having been and still being in the parish of Old Kilpatrick, the pursuers are entitled to decree against the defenders for the sums, and for relief, as concluded for, with expenses."

The defenders pleaded, *inter alia*—"2. The said Euphemia M'Dermid having been forisfamiliated on attaining puberty, and having thereafter resided for more than three years continuously in the parish of Glasgow, without having recourse to common begging, and without having received or applied for parochial relief, and having thus acquired a settlement by residence in said parish, the defenders are entitled to absolvitor. 3. The settlement of the said Euphemia M'Dermid when she became chargeable not being in the parish of Old Kilpatrick, the defenders should be assoilzied."

On 23rd November 1916 the Lord Ordinary (CULLEN) found that "the defenders are bound to repay to the pursuers the amount of the expenditure claimed by them in respect of the support of Euphemia M'Dermid, applicable to the period prior to 23rd February 1914, but that the defenders [are] not bound to repay to the pursuers the amount of the expenditure claimed by them in so far as applicable to the period after 23rd February 1914," and continued the cause and granted leave to reclaim.

The *facts* are given in the opinion appended to his interlocutor.

Opinion.—"In this action Glasgow Parish Council claims from Old Kilpatrick Parish Council expenditure incurred by them from and after 22nd February 1912 for the aliment and support in the Royal Glasgow Blind Asylum of a blind girl named Euphemia M'Dermid, the ratio of the claim being that the girl had a derivative residential settlement in Old Kilpatrick.

"Euphemia M'Dermid was born on 19th February 1896 at Duntocher in Old Kilpatrick parish, being the daughter of Alexander M'Dermid, a painter's labourer. She was totally blind, or practically so, from birth. Her parents were of a low class as regards the life they led. Her father had fallen into drinking habits and did no steady work, and for a number of years he and his wife led a roving existence of a very low kind, accompanied by their said daughter and another child, a boy. His wife was also given to drink. There are in evidence a variety of convictions obtained against one or other of them for breach of peace, assault, &c.

"In 1903, when the M'Dermids had drifted to Perth, Euphemia was lodged in Dundee Blind Asylum on the initiative of Perth School Board, and she remained there until about June of that year, when she came back to her parents on holiday. She was not allowed to return, as the M'Dermids moved on and took her with them.

"In the end of December 1904 the M'Dermids reached Glasgow in a condition of destitution, and they applied for relief, which the parents received at Barnhill, while the children were sent to Stobhill. After four days M'Dermid and his wife left Barnhill Poorhouse, taking the girl with them. The boy was left at Stobhill for a time, being unwell. M'Dermid's object in so leaving was, he says, to look for work. Being destitute he landed in a night asylum in Glasgow with his wife and daughter. While he was there the superintendent of the night asylum, noticing the girl's blindness, recommended him to take steps to have her placed in a blind asylum. Such an institution was obviously the only kind of place where she could obtain an education. M'Dermid acted on this recommendation. He went to the School Board Offices and signed an application for admission of his daughter to the Royal Glasgow Blind Asylum. Following thereon Euphemia M'Dermid was admitted to the asylum on 30th December 1904. She has been there ever since. As her father although able-bodied was unable *de facto* to contribute to her support there the School Board defrayed it until 19th February 1912, when she reached the age of sixteen and her educational period was regarded as terminated. Thereafter she was put to work in the asylum. Apart from such meagre allowance as was made to her according to the rules of the institution in respect of work done by her, her support after 22nd February 1912 was provided by the pursuers.

"In the early part of 1905 Alexander M'Dermid went to live in the parish of Old Kilpatrick, and he thereafter acquired a residential settlement in that parish. On 23rd February 1914 he lost said settlement through non-residence. He left Scotland and went to Belfast, where he now resides and obtains apparently good and steady employment, earning at the present time £2 per week or thereby.

"After Euphemia M'Dermid was placed in the Royal Glasgow Blind Asylum on her father's application, as already mentioned, she was not left derelict there by her parents, in the sense that they visited her there with fair regularity, and that on the other hand she came home to spend holidays with them. After her parents went to Belfast there was frequent correspondence, small gifts of money to the girl from her parents, and visits of some duration by the girl to them.

"There was during this period a proposal by her father that she might leave Glasgow and be transferred to a blind asylum in Belfast. She remained, however, in Glasgow, and I gather from the evidence that this was in accordance with her own preference. She had apparently been well attended to and kindly treated in the Glasgow Asylum.

"Having stated the facts of the case so far as they seem to me to be material, the first question which I have to decide is whether Euphemia M'Dermid was at puberty forisfamiliated in consequence of having been on 30th December 1904 placed in the Royal Glasgow Blind Asylum and having remained there. The defenders maintain that she was, and the pursuers maintain the contrary. If she was then forisfamiliated, it is common ground that by residence in Glasgow Parish thereafter for three years she acquired a residential

settlement in that parish and never has lost it, with the result that the pursuers have no recourse against Old Kilpatrick for the expenditure made by them.

"I had an exhaustive citation from counsel of authorities bearing on forisfamiliation. The case most nearly resembling the present one is, I think, that of *Parish Council of Brechin* v. *Parish Council of Barony Parish of Glasgow and Parish Council of Perth*, 1897, 24 R. 587, 34 S.L.R. 443. There a father, who was a hawker leading a nomadic life in lodging-houses, had a daughter of sixteen who although not insane was mentally and physically weak. He made an agreement with the keeper of a lodging-house on the footing that his daughter should take care of children and assist in housework, receiving therefor her food and clothing, and that she should return to him whenever she or the lodging-house keeper desired. It was held that she had not thereby become forisfamiliated. It is to be noticed on the facts stated (1) that the girl ceased to live with her father, (2) that he ceased to pay for her support, and (3) that she earned or was intended to earn her own support. The ratio of the decision was that the arrangement for placing the girl with the lodging-house keeper arose by compulsion of circumstances in the shape of the unsuitability of the father's roving life to his daughter's mental and physical condition; that it did not represent the starting of an independent career in life for her outwith her father's control, but was of the nature of a voluntary and terminable arrangement made by him and subject to his control by way of doing the best he could for her, looking to her defects, which made it unsuitable for her to share his mode of life.

"Now in the present case it is clear that Euphemia M'Dermid being totally blind could only be educated in a special institution for the blind such as the Royal Glasgow Blind Asylum. Thus the placing her in such an institution at the age of nine years or thereby was a necessary step if she was to be educated at all. Once she was placed in the asylum there was no occasion for any special display of control by her father over her. It was in every way suitable that she should be allowed to remain undisturbed where she was, and he allowed her to remain. Had he chosen to remove her at puberty to another similar asylum, or unwisely to insist on her returning to live with him, I am unable from the facts which I have stated to infer that she would have been held to have passed beyond his control and to have emerged into independent conditions of life. And as bearing on this topic it may be kept in view that, as I have said, M'Dermid and his wife did not act towards their daughter as a child whom they had abandoned. They visited her in the asylum with fair regularity, and they had her sent to them to spend holidays with them, &c.

"The defenders' counsel, by way of making good their contention that M'Dermid lost control of his daughter in consequence of placing her in the blind asylum, sought to maintain that if he had tried to recover her custody he would have failed, as the authorities under the Children's Acts would, presumably, have stepped in to prevent him, in view of the low conditions under which he lived according to the evidence. I am not called on to try this hypothetical issue whatever the effect might be. The point, moreover, is not raised on record.

"On the facts which I stated relative to the placing of Euphemia M'Dermid in the blind asylum by her father on 30th December 1904 and her continued residence there up to 19th February 1912, when she attained the age of sixteen, and when, her education as a blind child being regarded as completed, the School Board ceased to pay for her support there, I am of opinion that the facts do not warrant the inference that she was forisfamiliated before 19th February 1912. On this footing the defenders' counsel explicitly conceded that the defenders were liable for the part of the pursuers' account applicable to the period prior to 23rd February 1914.

"As regards the pursuers' account for the period subsequent to 23rd February 1914 a different question is raised. On that date Alexander M'Dermid lost through absence his residential settlement in Old Kilpatrick by virtue of which the pursuers seek reimbursement of their expenditure from the defenders. Up to that date, if Euphemia M'Dermid was not forisfamiliated prior to 19th February 1912 by her residence in the Blind Asylum, she had not acquired for herself a residential settlement in Glasgow, and was admittedly chargeable through her father's subsisting residential settlement in Old Kilpatrick to that parish. From and after 23rd February 1914, however, the defenders maintain that her chargeability to Old Kilpatrick ceased in respect that her father then lost his residential settlement in that parish and was an able-bodied man.

"On this branch of the case the pursuers founded on the cases of *Beattie*, 1866, 5 Macph. 47, 3 S.L.R. 44; *Paisley*, 1908 S.C. 731, 45 S.L.R. 556; and *Leith*, 1910 S.C. 404, 47 S.L.R. 263, as showing that no change in chargeability takes place while pauperism continues. On the other hand, the defenders appealed to the more recent case of *Old Machar* v. *Aberdeen*, 1912 S.C. 26, 49 S.L.R. 20. In that case certain pupil children became in 1905 chargeable, in respect of their father's failure to support them, to Old Machar, where their father had a residential settlement. In 1906 the father left Old Machar and was not traced until 1909, when he was found in Aberdeen where he had acquired a settlement. He was an able-bodied man. On discovering the father in Aberdeen, Old Machar gave notice to that parish of a claim of relief for the future. It was held that Old Machar ceased to be liable from the date of giving the notice. The ratio, as I read the case, was that the father being an able-bodied man was bound to support his children. And it was said that if he failed to discharge this obligation it was the duty of Aberdeen, where he had become settled, and not of Old Machar, to

enforce it. In the present case there is this difference, that after Alexander M'Dermid lost his residential settlement in Old Kilpatrick he did not acquire a new residential settlement in another parish in Scotland as did the father in the *Old Machar* case. He went to Ireland and is still there. His birth settlement, however, appears to have been in Glasgow. It seems to me therefore that the decision in the *Old Machar* case applies, and that the defenders are not liable for the portion of the pursuers' claim which is for expenditure made by them applicable to the period after 23rd February 1914.

"I desire to add that no argument was offered by the defenders regarding any effect which the fact of the father here having been all along an able-bodied man might possibly have had on the earlier portion of the pursuers' claim."

The pursuers reclaimed.

The parties averred, *inter alia*—"(Cond. 2) On or about 22nd February 1912 Euphemia M'Dermid, who at that date was an inmate of the Royal Glasgow Asylum for the Blind in the parish of Glasgow, became chargeable as a pauper to the said parish of Glasgow, and has since been maintained in said asylum at the expense of the said parish of Glasgow. At the time when the said pauper became chargeable as aforesaid she was blind and was destitute, and a proper object of and entitled to parochial relief, and she has since continued to be so. (Ans. 2) Admitted."

In the Inner House the defenders amended answer 2 by adding the following words:—"Subject to the qualification that Euphemia M'Dermid became chargeable as a proper object of and entitled to parochial relief on or about 22nd February 1912, and continued to be so only if she had been forisfamiliated as stated" [*i.e.*, on attaining puberty at 19th February 1908].

Argued for the pursuers (reclaimers)—The Lord Ordinary was right in holding that Euphemia M'Dermid was not forisfamiliated at puberty. By placing her in the Blind Asylum her father was not throwing the burden of her maintenance upon the public but was availing himself of the statutory facilities provided to enable a parent to fulfil the obligation to educate in circumstances in which that obligation was rendered specially onerous owing to the special nature of the education required. The object of the Blind and Deaf Mute Children (Scotland) Act 1890 (53 and 54 Vict. cap. 43) was to provide facilities when the obligation to educate could not be fulfilled in the usual way—section 3. The father did not thereby lose control of his child; had he continued to reside in Glasgow the child could have attended the asylum as a day scholar and lived with its parents. The father retained control of the child's religious education—section 6—and he could have removed the child at any time. The mere attainment of puberty did not result in forisfamiliation—*Fraser* v. *Robertson*, 1867, 5 Macph. 819, 4 S.L.R. 74; *Mackay* v. *Munro*, 1892, 19 R. 396, 29 S.L.R. 332. Forisfamiliation was a matter of mixed fact and law, and the tests of it as laid down in the cases, viz., *Parochial Board of Elgin* v. *Parochial Board of Kinloss*, 1893, 20 R. 763, *per* Lord Trayner at p. 764, 30 S.L.R. 684; *Parish Council of Glasgow* v. *Parish Council of Kilmalcolm*, 1904, 6 F. 457, *per* Lord Moncreiff at p. 465, 41 S.L.R. 347; 1906, 8 F. (H.L.) 12, 43 S.L.R. 639; *Greenock Parish Council* v. *Kilmarnock and Stirling Parish Councils*, 1911 S.C. 570, *per* Lord President Dunedin at p. 574, 48 S.L.R. 444; and *Parish Council of Kirkintilloch* v. *Parish Council of Eastwood*, 1902, 5 F. 274, *per* Lord Young at p. 280, 40 S.L.R. 179, had not been satisfied. If the child was not forisfamiliated, she took her father's settlement when chargeability began, and that was in the parish of the defenders. The defenders' denial of liability was immaterial, for that was a mere denial of their legal obligation. *Parish Council of Brechin* v. *Parish Council of the Barony Parish of Glasgow*, 1897, 24 R. 587, 34 S.L.R. 443, was most nearly in point and should be followed. If the child was forisfamiliated she could not acquire a residential settlement in Glasgow. That involved the acquisition of a new settlement and for that freedom of choice was necessary; here there was no freedom of choice. *Roger* v. *Maconochie*, 1854, 16 D. 1005, was referred to. There was no case precisely in point; the *Parish Council of Kirkintilloch* v. *Parish Council of Eastwood* (*cit.*) and the *Parish Council of Glasgow* v. *Parish Council of Kilmalcolm* (*cit.*) were not authorities, for they merely decided that a sane child might by residence in a charitable institution acquire a residential settlement. Further, chargeability began on 22nd February 1912; the child was then a proper object of poor relief in her own right. The fact that she had an able-bodied father in existence was immaterial, for he was not available for her support. The mere fact that a person in receipt of relief had means of support did not cause the relief given to be improperly given. The principle of the poor law was that relief should be given at once by the parish in which a person was found destitute, while that parish had a right to reimbursement from the parish of settlement or from those who were bound to support the pauper—Poor Law (Scotland) Amendment Act 1845 (8 and 9 Vict. cap. 83), sections 70 and 71. But the relieving parish did not cease to give relief properly merely because it did not proceed against those liable to support the pauper. It might not recover its full disbursements from those bound to support the pauper—*Austin* v. *Shennan*, 1874, 2 R. 68, 12 S.L.R. 27. Neither was it bound to discuss those who were bound to support the pauper, and the parish of settlement had no title to object if the relieving parish proceeded first against it and not against those who were bound to support the pauper—*Hay* v. *Adams*, 1851, 3 P.L.M. 173; *M'William* v. *M'Bride*, 1865, 9 P.L.M. 133; *Forfar Parish Council* v. *Davidson*, 1898, 1 F. 238, 36 S.L.R. 165; *Wallace* v. *Turnbull*, 1872, 10 Macph. 675, 9 S.L.R. 417. In all those cases the pauper had some source from which support might have been given when poor relief was given, and the relief was held to

have been properly given and to be recoverable. In the present case at the date of chargeability there was destitution of the child in Scotland, absence of the father, and no proof that the relieving parish knew that the father was able-bodied when relief was given: consequently the child was a proper object of poor relief. If so, there was no subsequent emergence from pauperism, and during chargeability the changes on the father's settlement were immaterial —*Beattie* v. *Adamson*, 1866, 5 Macph. 47, 3 S.L.R. 44; *Inspector of Poor of St Cuthbert's* v. *Inspector of Poor of Cramond*, 1873, 1 R. 174, 11 S.L.R. 64; *Beattie* v. *Mackenna*, 1878, 5 R. 737, 15 S.L.R. 427; *Parish Council of Paisley* v. *Parish Council of Row*, 1908 S.C. 731, 45 S.L.R. 556; *Leith Parish Council* v. *Aberdeen Parish Council*, 1910 S.C. 404, 47 S.L.R. 263. Consequently the loss of the father's residential settlement in Scotland having occurred during chargeability did not let in his birth settlement in Glasgow. *Old Machar Parish Council* v. *Aberdeen Parish Council*, 1912 S.C. 26, 49 S.L.R. 20; *Milne* v. *Henderson & Smith*, 1878, 7 R. 317, 17 S.L.R. 197; and *Brechin Parish Council* v. *Montrose Parish Council*, 1904, 7 F. 207, 42 S.L.R. 150, were distinguished. In any view therefore the defenders were liable.

Argued for the defenders (respondents)—The child was forisfamiliated at puberty. The fact that her father was without a fixed residence and destitute when he placed her in the Blind Asylum, and that thereafter he did not maintain her or exercise control over her, necessarily led to the inference of forisfamiliation —*Parochial Board of Elgin* v. *Parochial Board of Kinloss* (*cit.*), *Parish Council of Glasgow* v. *Parish Council of Kilmalcolm* (*cit.*), *Greenock Parish Council* v. *Kilmarnock and Stirling Parish Councils* (*cit.*), *Parish Council of Kirkintilloch* v. *Parish Council of Eastwood* (*cit.*). The father could not be said to be using the School Board under the Blind and Deaf Mute Children Act 1890 to act for him, and the receipt of benefits under the Education Acts had no bearing on pauperism—*Govan Parish Council* v. *Glassary Parish Council*, 1908 S.C. 64, 45 S.L.R. 55. The father had in effect deserted his child. At puberty the child could choose its own residence—*Harvey* v. *Harvey*, 1860, 22 D. 1198; *Fisher* v. *Edgar*, 1894, 21 R. 1076, 31 S.L.R. 862. She continued to reside in the asylum as a matter of her own choice and she thereby acquired a residential settlement in Glasgow—*Parish Council of Kirkintilloch* v. *Parish Council of Eastwood* (*cit.*), *Parish Council of Glasgow* v. *Parish Council of Kilmalcolm* (*cit.*). *Parish Council of Brechin* v. *Parish Council of the Barony Parish of Glasgow* (*cit.*), was distinguished for there the father retained control. If there was no forisfamiliation the child at the date of chargeability was not a proper object of poor relief, for her father was able-bodied and had not deserted or in effect deserted her—*Milne* v. *Henderson & Smith* (*cit.*), followed in *Milne* v. *Ross*, 1883, 11 R. 273, 21 S.L.R. 207; *Graham* v. *M'William*, 1881, 18 S.L.R. 322; *Hunter* v. *Henderson*, 1895, 22 R. 331, 32 S.L.R. 169; and *Brechin Parish Council* v. *Montrose Parish Council* (*cit.*). The present case was ruled by the *Old Machar* case (*cit.*). *Beattie* v. *Adamson* (*cit.*), turned upon specialties and should not be applied generally; further, it had been criticised in *Inspector of Poor of Inverkip* v. *Inspector of Poor of Greenock*, 1893, 21 R. 64, 31 S.L.R. 82. In the *Leith* case (*cit.*) it had not been observed that *Milne* v. *Henderson & Smith* had been repeatedly followed. The defenders were not liable, for if the child was forisfamiliated she had at the date of chargeability acquired a residential settlement in Glasgow, and if she was not forisfamiliated, as she never had become a proper object of poor relief in her own right, and the pursuers could not recover the relief given.

At advising—

LORD PRESIDENT—In this case we had the advantage of an able and exhaustive argument on both sides of the bar fortified by a copious citation of authority. But when the undisputed facts of the case are clearly apprehended the law applicable is by no means doubtful.

The pauper, a blind girl sixteen years of age, was found destitute and a proper object of parochial relief on 22nd February 1912, when notice of chargeability was given by the relieving parish (Glasgow) to the parish of Old Kilpatrick in which the pauper's father had at that date acquired a residential settlement. The notice of chargeability was accepted and Old Kilpatrick then became, so to speak, seised with the case.

The sole question now at issue is whether or not, at the date when the notice of chargeability was given, the blind girl was forisfamiliated—had ceased to be a member of the father's family, and accordingly had acquired a residential settlement in her own right in the parish of Glasgow, where she had resided from 19th February 1908, the date when she attained puberty, down to the date when notice of chargeability was given. On this mixed question of fact and law my verdict coincides with that returned by the Lord Ordinary. The survey made by his Lordship of the evidence seems to me to be full and accurate and his conclusion correct.

Acting on excellent advice, the parents of this girl made arrangements in 1904 with the School Board of Glasgow for her board and maintenance in the Glasgow Blind Asylum. On the 30th December 1904 the father himself took the girl there, and there she has continued to reside from that date onwards, her board and maintenance being provided in the first instance by the School Board of Glasgow, and subsequently by the School Board of Old Kilpatrick. But during that period her parents never abandoned or deserted their child or surrendered parental control. On the contrary, they continued to visit her from time to time; she visited them when they had a house to which she could go; they sent her little presents; they corresponded with her; and when the question of her

removal in 1911 was mooted, they, acting with great judiciousness, left that question to be determined by the matron of the Blind Asylum and the girl herself. Accordingly, down to the date when the notice of chargeability was given, these parents behaved towards their daughter exactly as parents would have behaved who had sent their daughter to be educated at an educational establishment; and, apart from their irregular and roving life of great poverty, no doubt due to misconduct, which prevented them from supporting the girl as they otherwise might have done, their conduct was exemplary. But the girl was not emancipated at the time when the notice of chargeability was given, and Old Kilpatrick therefore was liable.

Old Kilpatrick, confessedly, continued to be liable so long as chargeability continued, for it is not disputed that, when the girl ceased to be a proper object of parochial relief, the parish of Old Kilpatrick, being the father's settlement, and therefore the girl's settlement in her own right, continued to be liable. No doubt when a change of circumstances took place liability might cease. But the only circumstance which could liberate the parish of Old Kilpatrick was the cessation of chargeability, and it is common ground here—it is indeed admitted—that the girl never ceased to be chargeable, and therefore she continued a proper object of parochial relief down to the time when the account sued for closes. If there is one rule in the poor law which is better fixed than another it is the rule that the settlement of the pauper at the date of chargeability cannot be altered so long as chargeability continues. That is a rule to which, so far as I know, there are no exceptions. As Lord Kinnear observed in the case of *Leith Parish Council* v. *Aberdeen Parish Council*, 1910 S.C. 404, 47 S.L.R. 263—"I take it to be settled law, settled by decisions going further back than *Beattie* v. *Adamson*, 1866, 5 Macph. 47, 3 S.L.R. 44, and frequently followed, that the settlement of the pauper when he becomes chargeable cannot be altered during chargeability."

That this blind girl, then, was not emancipated appears to me to be perfectly plain. It is conceded that she never ceased to be properly chargeable. She continued to be a proper object of relief. Old Kilpatrick therefore must pay the bill. The one circumstance which it was alleged effected a change of liability was that on 23rd February 1914 the father lost his residential settlement in the parish of Old Kilpatrick. That fact is wholly irrelevant; it has no relation whatever to the question of Old Kilpatrick's liability. The one fact which would have been relevant is the cessation of the chargeability of the pauper, and that is the one fact which has never occurred.

Inasmuch, then, as this girl was not emancipated when the notice of chargeability was given, and she continued to be a proper object of parochial relief, I am of opinion that the parish of Glasgow is entitled to decree substantially in terms of the conclusions of the summons. Accordingly I propose that we should recal the interlocutor of the Lord Ordinary and that the pursuers should have decree.

LORD SKERRINGTON—I agree with your Lordship.

LORD MACKENZIE—I agree with the Lord Ordinary on the question of forisfamiliation.

As regards the other point disposed of by the Lord Ordinary in his opinion I take a different view, and regard the case as one in which the child was properly in receipt of relief, with a derivative settlement in Old Kilpatrick which had become her own. The chargeability of the child in her own right commenced on 19th February 1912, when the School Board ceased to pay for her. At that date her derivative settlement was in Old Kilpatrick, and it was for Old Kilpatrick to take any necessary steps. Written notice of the pauper having become chargeable was given by the Parish Council of Glasgow to the Parish Council of Old Kilpatrick on 22nd February 1912. The minute of admissions bears—"When she attained the age of sixteen her father was then in Ireland, and was not asked at that time to make any provision for her maintenance; and being destitute she became chargeable as a pauper to Glasgow Parish Council and is still chargeable to them."

The case is one which in my opinion falls under the general principle which is thus stated by the Lord Justice-Clerk (Inglis) in *Beattie* v. *Adamson*, 1866, 5 Macph. 47, at p. 53—"There can be no doubt of the general principle that the settlement of the pauper when relief is first given remains the settlement so long as the pauperism continues." The dictum so expressed is quoted with approval in *Campbell* v. *Deas*, 1893, 21 R. 64, 31 S.L.R. 82, by Lord Adam, and the rule is expressed in similar language in the *Leith* case by the Lord President (Dunedin), 1910 S.C. 404, at p. 407, 47 S.L.R. 263—"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." The language used by Lord Dunedin in the *Row* case, 1908 S.C. 731, 45 S.L.R. 556, is not the same, but I take it the proposition in law is identical.

Now in the present case the pauperism continued, and in this respect the case differs from that of *Old Machar*, 1912 S.C. 26, 49 S.L.R. 20, on which the judgment of the Lord Ordinary proceeds. It therefore appears to me that Old Kilpatrick is responsible, and that the pursuers are entitled to decree.

LORD JOHNSTON was absent.

The Court recalled the interlocutor of the Lord Ordinary and decerned against the defenders for the sum sued for.

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