LINDSAY, . . . APPELLANT.

M'TEAR, . . . RESPONDENT.

Scotch Poor-Law No. 2.
Claim "on behalf of Children" (*a*).

1851.
1st, 11th, 13th, 15th, 21st July.
1852.
26th March.

Under the Poor-Law of Scotland, a father—himself requiring no relief—is not entitled to claim relief on behalf of his children.

The Poor-Law does not recognise children as distinct from their parents while they are all living in family together.

If relief were granted to a father simply "on behalf of his children," they would still remain under the parental power, which would exclude the control of the parish officer.

It is one of the tests of title to relief under the Poor-Law, that those on whose behalf it interferes shall be entirely subject to its disposal.

IN the year 1848, the Appellant, a cotton-spinner, preferred his petition to the Sheriff-Substitute of Glasgow, stating that he was in extreme poverty, and out of all employment; that he had made every endeavour to obtain work, but without success; that he was not permitted to beg; that his wife was confined in an infirmary; that he had four helpless children of tender years; that he could not support them; that they could not support themselves; that they were in danger of starving; and that he had on their behalf applied for relief from the parish authorities, but that relief was refused. The petition, therefore, prayed an order, requiring the Inspector of the Poor of the Parish of Gorbals to "afford relief to the petitioner for his said children, and to continue such relief until they should be otherwise provided for."

The inspector, by his answer, stated that the petitioner, being an able-bodied person, was not entitled to relief for his children, but was himself bound to maintain them.

The Sheriff-Substitute repelled the defence of the inspector; and to this judgment the Sheriff-Principal, upon appeal, adhered.

The inspector, thereupon, carried the case, by advocation, to the Court of Session, where the *Lord Ordinary* (Lord *Robertson*) held that the Sheriff's decision was correct; but the inspector reclaimed; and the

(*a*) As regards the claim of the "able-bodied," see the preceding case, p. 120, *suprà*.

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case coming before the First Division, their Lordships appointed it for argument before all the Judges of the Court of Session (*a*).

After the hearing, the First Division requested their Lordships of the Second Division, and the permanent Lords Ordinary, to give their opinions on the case in writing.

Of these consulted Judges, one—and one only—(Lord *Robertson*) held the claim to be well-founded; while the other eight (the *Lord Justice-Clerk* (Lord *Hope*), Lord *Medwyn*, Lord *Moncreiff*, Lord *Cockburn*, Lord *Cuninghame*, Lord *Murray*, Lord *Ivory*, and Lord *Wood*) considered it unsustainable.

In conformity with the opinions of the majority, the First Division (though themselves equally divided, the *Lord President* and Lord *Mackenzie* being against the claim, and Lord *Fullerton* and Lord *Jeffrey* in favour of it) pronounced judgment (*b*), altering the Sheriff's interlocutor, "and dismissing the original application for relief." Hence the present appeal.

The *Recorder* (the Hon. *J. S. Wortley*), Mr. *Roundell Palmer*, and Mr. *Gregg*, for the Appellant: Whatever difference of opinion may exist as to the policy of permitting able-bodied persons out of employment to seek relief under the Poor-Law (*c*), there ought to be no hesitation with respect to the claim of helpless and destitute children of tender years. Their right, founded in nature and humanity, was first

(*a*) *M'William* v. *Adams* (*suprà*, p. 120), and *Lindsay* v. *M'Tear*, were heard and disposed of together in the Court below. But it tends to clearness to report them here separately.

(*b*) By the Judicature Act, 6 Geo. IV. c. 120, s. 23, the judgment in such cases is to be according to the opinion of the majority of *all* the Judges, "in order to preserve uniformity of decision and to settle doubtful questions" more authoritatively.

(*c*) See the last case, *suprà*, p. 120.

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restricted by the statute 1425, c. 25, which prohibits begging by any person "betwixt fourteen and three-score-ten years," except such "as cannot win their living otherwise;" to whom licenses of mendicancy were to be given. Persons, therefore, under fourteen, or above seventy, might beg without license. The Appellant's children are under fourteen, and consequently would have been entitled to practise mendicancy, had not the Act 1579, c. 74, established a new principle, to the end that those who formerly subsisted by alms might thenceforth be supported by compulsory assessment. They are, then, not only entitled to relief under that statute, as lawful beggars, but also as coming within the description of *impotent* persons,—a description peculiarly applicable to those on whose behalf this claim is preferred.

In *Wilson* v. *Cockpen* (*a*), the Court of Session found children entitled to parochial relief, in respect that their paternal grandfather was unable to support them. In the more recent case of *Duncan* v. *Ceres* (*b*), the same Court made a similar order in favour of children living with their mother, an able-bodied woman; and in the still later case of *Willock* v. *Rice* (*c*), an inspector, who had refused a mother's application on behalf of her children, was condemned in costs.

That this was always the law of Scotland, appears from Lord Bankton's treatise, published in the last century. That eminent institutional writer (who in his time was one of the Judges of the Court of Session) states (*d*) that "Infants, whom their parents, through poverty, cannot maintain, are to be supported by the public." The late Act (*e*), too, favours the claim. It is preferred

(*a*) 18th Feb. 1825, 3 Shaw & D. 378.
(*b*) 14th Feb. 1843, 5 Second Series, 552.
(*c*) 9th June, 1848, 10 Second Series, 1259.
(*d*) Vol. i. p. 157. (*e*) 8 & 9 Vict. c. 83, ss. 68, 80.

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by the father, from necessity, as administrator for his children. If there be any technical objection to the form of application, it ought not to be allowed to prejudice the right. A *Tutor ad litem* may still be appointed (*a*).

Mr. *Rolt* and Mr. *George Ross*, for the Respondent: The Appellant, being an able-bodied person, is not entitled to ask public assistance for the support of his children; and *their* claim to relief is dependent upon, and inseparable from *his*. The Act 1424, c. 25, did indeed permit children to beg. But they must have been the children of paupers, who themselves had a similar privilege. The word *impotent*, used in the Act 1579, c. 74, has reference to persons disabled by nature, disease, or old age, and cannot properly be applied to children who, though of tender years, may have robust constitutions. The Appellant does not ask relief on his own account. It must therefore be inferred that he does not require it. If this claim were sustained, many similar applications would be advanced; and the consequences would be serious. The demand is wholly unprecedented (*b*).

Mr. *Palmer*, in reply.

1852. 26*th March.* *Lord Brougham's opinion.*

Lord BROUGHAM:

My Lords, I consider this appeal as in effect disposed of by the affirmance of the judgment in the preceding case (*c*).

The ground of the application by a confessedly able-bodied person who does not pretend that he is unable to support himself, but who merely applies for relief to himself in respect of his having children unprovided for,

(*a*) The opinions of Lords Fullerton and Jeffrey, in favour of the Appellant, are set out in the appendix to Appellant's Case. Lord Robertson's, to the same effect, Respondent's Case, p. 12.

(*b*) The opinions of the Judges in favour of the Respondent are set out in the appendix to his case.

c (*Suprà*, p. 120.)

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is in effect disposed of by the judgment which the House has just pronounced in the last case. It is enough to say, that the statute of 1661, c. 38, to which I have already referred in the course of the argument upon the general question, appoints the justices to make trial and examine of poor, aged, sick, lame, and impotent, and such as are not able to maintain themselves, nor are able to work for their living; and also (another head of inquiry) of all orphans or other poor children who are left destitute of help. That is the legislative enactment as to poor children. It cannot approach to correctness of expression to say that the children of an able-bodied person, who does not contend that he is himself unable in one way or another to support himself, come within the description of children "left destitute of all help."

I entirely agree with the learned argument of the Court below, that it is impossible to separate the case of the father from that of the children, and that if any provision is to be made in such cases, it must be made by new Acts of the Legislature.

My Lords, I shall therefore move your Lordships that the judgment of the Court below in this case be affirmed.

Lord TRURO:

Lord Truro's opinion.

My Lords, in this case, as in the last, very important principles are involved; but I think the decision is attended with no great difficulty.

This is an appeal by a father on behalf of his children; and it states in substance, that, although he can support himself, he cannot support *them;* and it is insisted, that, irrespective of any question of right on his own part, the children, at least, are poor impotent persons, and as such are entitled to be relieved out of the poor-rate.

It must be observed, that this is not the case of

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deserted children. The father and the children continue to form one family—the father at the head, in his parental character. I conceive that, while this is the case, the law will not distinguish between them; and that the children can only claim through their parent, who represents them; and so much does a father represent the family, that the relief to the father is always regularly measured with reference to the state of the family, and no distinct relief is administered to the wife or the children. I do not mean that the children's claim under the present appeal is at all affected by the circumstance that the father, instead of some other person, prosecutes the appeal on their behalf; or that the children would improve their claim by that being done which has been suggested at the bar, viz., to allow the appeal to stand over, that some person other than the father might prosecute the suit on their behalf. On the contrary, the substance of the answer to the children's claim would equally apply by whomsoever the appeal on behalf of the children should be prosecuted; that answer being, that, in point of fact, the children are under his protection, and form part of the parent's family, and that they cannot prosecute a claim distinct from him. The law does not notice them as distinct from the father. I take that principle to be broad and universal.

Wherever the law gives parish relief, it gives also certain authorities and rights; and it is one test by which to ascertain the title to relief, whether the parties claiming it are in a condition to be amenable to that authority and to those rights, which are enacted as the guards and protection of the parish at whose expense the relief is to be provided.

The parish officers have the right to appoint the place for the destination of those to whom they are bound to administer relief. But while the children are circum-

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stanced as the Appellant's are, there is no power by which to take them out of the custody of their father, or to exercise any control over the father in regard to them, or in any way to interfere with his parental rights and authorities. If the father were entitled to and received relief, the children would of course be benefited by such relief, and the relief granted to the father would confer a power of dealing with the whole family. But there is no provision in the Act at all adapted to the case of children receiving relief while living under the roof of their father, and subject to his control,—the father himself neither receiving nor being entitled to relief.

The general principle seems to be so clear, and the attempt now making so entirely new, that I must desire a distinct authority to warrant a decision in favour of this appeal.

I find no authority in principle, or in any part of the Act of Parliament, for such a separation of the children, in point of right, from their father, as that, while the father can support himself, he may cast his children upon the parish.

The decision of the father's case, I think, governs the present. That same view of the public interest, which induced the exclusion of an able-bodied father from being entitled to parish relief, seems to me to extend to his family. Some inconveniences may no doubt result from that policy, but it has been deemed to be the least evil of the two; and it is justly remarked in the pleadings that individuals, who have practised industry, frugality, and self-denial, with the view of meeting the hour of calamity themselves, might, if this appeal were successful, have their means withdrawn from them, in order to support others, who, by habits of idleness, extravagance, and profligacy, had brought themselves to want.

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This question cannot properly be decided upon grounds of humanity. But the House is bound to declare, whether the overseers are authorised by law to apply the rate in question to the relief of these individuals,—and I think that by law they are not so authorised, and that the children's rights and claims are dependent upon those of the parent. And, therefore, I quite agree with my noble and learned friend that this appeal should also be dismissed, and the decision of the Court below affirmed.

Interlocutor affirmed.

CONNELL & HOPE.—LAW, HOLMES, ANTON, & TURNBULL.