on principles peculiar to the laws of England or Scotland. The construction of an arbitration clause is a matter to be determined by the phraseology of the clause and by the rules of grammar and logic, and is not a question of the municipal law of England or of any other country. It is otherwise of course when the question is whether the agreement to refer to arbiters to be chosen is effective.

The Court pronounced this interlocutor:—

"Recal the said interlocutor: Find that the arbitration clause falls to be construed by the law of England, and before further answer sist procedure *hoc statu* in order that the parties may carry through arbitration proceedings in England if on a true construction of said clause it is valid and covers the dispute in question: Find the reclaimer liable in expenses since the date of the interlocutor reclaimed against, and remit," &c.

Counsel for Pursuer and Reclaimer—Younger, K.C.—T. B. Morison. Agents—J. & J. Galletly, S.S.C.

Counsel for Defenders and Respondents—Hunter, K.C. — Boyd. Agents — Boyd, Jameson, & Young, W.S.

HOUSE OF LORDS.

Tuesday, May 29.

(Before the Lord Chancellor (Loreburn), and Lords Macnaghten, Davey, James of Hereford, Robertson, and Atkinson.)

PARISH COUNCIL OF GLASGOW *v.* PARISH COUNCIL OF KILMALCOLM.

(In the Court of Session, March 1, 1904, reported 41 S.L.R. 347, and 6 F. 457.)

Poor — Settlement — Capacity to Acquire Residential Settlement — Bodily and Mental Weakness Rendering Self-Maintenance Impossible — Maintenance in a Charitable Institution.

A person whom "mental weakness and chronic physical disease" renders incapable of maintaining himself, may, by the necessary residence for the requisite period in a charitable institution, without begging or applying for parochial relief, acquire a residential settlement in the parish where the institution is situated.

Question whether an insane person could so acquire a residential settlement.

The case is reported *ante ut supra.*

The Parish Council of Kilmalcolm (defenders and reclaimers) appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—I am of opinion that the order appealed from is right and that this appeal should be dismissed. I do not propose to enter upon any discussion of the law involved in this case, because, having had the advantage of considering the opinion which has been prepared by my noble and learned friend Lord Robertson, I find myself in complete agreement with it and have nothing to add to what he says.

LORD MACNAGHTEN—I agree.

LORD DAVEY—The learned counsel for the appellants have failed to convince me that the judgments delivered by the learned Judges of the Second Division are wrong, and I have nothing to add. All the facts and the law also seem to be dealt with by those Judges in a manner which appears to me to render it unnecessary to add anything. Therefore I concur.

LORD JAMES OF HEREFORD—This case appears to me to be governed by authority which cannot now be disputed.

The pauper Mary Gillespie, an illegitimate child, was born in the parish of Houston on 18th February 1881. She was admitted to a charitable institution called Quarrier's Homes, situated in the parish of Kilmalcolm, in October 1887, and remained there until March 1901, when on account of disobedience she was removed to the City of Glasgow Poor-house and has remained there ever since. It will be seen that the pauper attained puberty in February 1893. It is sought to render the parish of Kilmalcolm liable by virtue of the residence of the pauper at Quarrier's Homes within that parish.

The mental condition of the pauper is thus described—it is said that during the whole period of her residence in Kilmalcolm "she suffered from mental weakness and chronic physical disease which made her incapable of maintaining herself." Now, upon those facts it must be taken that the pauper did not in one sense maintain herself—that is, she did not earn any money, and had, of course, no private means of her own. She also, from mental deficiency, was incapable of earning her living. But now the authorities apparently clearly decide that the non-earning of the means of support, even when coupled with incapacity through mental weakness short of lunacy or idiotcy, does not prevent the acquiring of a residential settlement so long as the pauper does not resort to common begging and does not apply for parochial relief.

It is sufficient if the pauper is maintained by someone. So long as there is no disqualification through begging or application for parochial relief it is immaterial from whom the means of maintenance are derived.

A series of decisions, the principal of which is the *Kirkintilloch* case, have so determined, and this view of the law has been acted on for many years. It seems too late to attempt to alter rules so well established.

Doubtless this view may, as mentioned by Lord Moncreiff, cast a heavy burden upon a parish in which a charitable institution is situated, but the parish may

derive benefit from the existence of the institution within its boundaries; but even if this be not so, this argument of hardship cannot alter the law.

I therefore concur in the judgments of the Lord Ordinary and of the Judges of the Second Division of the Court of Session, both upon the main point and on the special averments mentioned in those judgments.

LORD ROBERTSON—The clear argument presented by the learned counsel brought the question before us to a very narrow point. This woman resided three years continuously in the appellants' parish, and during that period had not recourse to common begging and did not receive or apply for parochial relief. Her subsistence was derived from the funds of the charitable institution in whose home she resided; but it was not argued that this circumstance of itself excluded the application of the disputed section. The question proposed by the appellants was the much narrower one, whether the fact (for this is to be assumed) that the woman suffered from "mental weakness and chronic physical disease which made her incapable of maintaining herself" takes her out of the enactment. The words in the section relied on by the appellants are "shall have maintained himself"; but the (disappointingly) limited contention is that while a person may be within the section who *de facto* does not (*e.g.*, through laziness) maintain himself while able to do so, another person whose failure to maintain himself is due to mental and bodily weakness is outside the provision.

Now, if the words in question had to be construed for the first time, there is, to say the least, much plausibility in the broader view that to come within the enactment at all a person must during the three years have derived his maintenance from his own property or labour. This view goes of course a great deal further than the appellants do now, and would render the fact of maintenance not being found by the person himself but by others the crucial fact, while the cause of that fact, *e.g.*, bodily or mental unfitness for self-maintenance, would be irrelevant to the question.

The construction of the statute, however, which as matter of history was put on this section by the very able Judges who developed the law on this subject from 1845 to 1898, was entirely different. They held that from the point of view of the poor law all persons fell into two categories, according as they did or did not live off or try to live off the public by rates or begging; and that if people did not live off or try to live off the public in those ways it was immaterial whether they lived on their own resources or on the resources of their friends, or people who acted as their friends. Accordingly if a man did not ask parochial relief or beg, it was of no consequence whether he lived on his own means or wages or on other people's; and equally little did it matter whether the charity on which he subsisted was administered to him by individuals or by organisations. Obviously this is an entirely tenable theory, although it is open to the objection that it reduces the emphatic and energetic words "support himself" to a synonym of "live," and finds the effective enactment in the qualification introduced by the word "without." But it seems to me unnecessary to be anxious over the intrinsic merits of this construction, because the Legislature adopted it in 1898. By that time repeated judicial decisions in Scotland had completely established this construction; and in that year Parliament, while (for a different purpose) repealing the section containing the words "maintain himself," re-enacted those words as part of the new formula of residential settlement. In my opinion it must be held that in so doing the Legislature deliberately and of choice re-enacted them in the sense which they had been authoritatively held to possess, and that they must therefore be read in that sense.

This being so, there is nothing in the present case except the comparatively easy question whether the result is affected by the fact that the pauper was disabled from maintaining herself by bodily and mental weakness not involving insanity. For the reason given by the Lord Ordinary I think the averment insufficient and irrelevant. Whether the authorised construction of the words "maintain himself" will stand the strain of a condition of insanity is a question which has not arisen and does not arise to-day. It is a question generically different from that before the House.

LORD ATKINSON—I have had the advantage of reading the judgment which has just been delivered by my noble and learned friend and I entirely concur.

Their Lordships dismissed the appeal with expenses.

Counsel for the Appellants—Clyde, K.C. —Macmillan. Agents—Lade & Hood, Solicitors, Port-Glasgow—Morton, Smart, Macdonald, & Prosser, W.S., Edinburgh—Bramall & White, London.

Counsel for the Pursuers and Respondents—The Solicitor-General for Scotland (Ure, K.C.)—W. Thomson. Agents—Mackenzie, Innes, & Logan, W.S., Edinburgh—Grahames, Currey, & Spens, Westminster.

Counsel for the Parish Council of Houston, Defenders and Respondents—Scott-Dickson, K.C. — MacRobert. Agents — Holmes, Mactavish, & Company, Johnstone—Constable & Sym, W.S., Edinburgh —John Kennedy, W.S., Westminster.