

industrial residence of M'Gerry was for eight years in Dailly. The first point which arises for consideration is, What was the effect of marriage on the wife as regards her settlement?

On this point I remain of the opinion which I have expressed in former cases, that a woman does not acquire for herself a settlement by her marriage, nor does she *stante matrimonio* acquire for herself personally a settlement by living in family with her husband while he is acquiring a residential settlement. Of her husband's settlement she gets the benefit. That benefit is hers, not in consequence of her acquiring for herself a settlement under the Poor Law Act, but in consequence of her personal status and rights being merged in that of her husband. She personally formed no relation with the parish; but to her husband she has become *eadem persona*, therefore she enjoys the benefit of his settlement.

It is important to bear in mind the distinction between a birth settlement, on the one hand, which is personal and abiding, following the person *sicut umbra sequitur*, and reviving or returning into view and effect as soon as other interposed settlements are lost; and, on the other hand, the benefit of a conjugal relation to a man who acquired a settlement—a benefit which is not personal from settlement, but derivative from marriage, and is not abiding, but available only while the woman is wife or widow of the man who has the settlement.

During the husband's life the wife has the benefit of his settlement in virtue of the social relation by which they are united. Misfortune may fall on her and her family, and evil days may come. The marriage relation, with its attendant claims on the parish, is to her, in the event of poverty, a protection. It is to her as the shadow of a great domestic rock beneath which, while marriage lasts, she dwells shielded against the evil day. Even on the death of her husband, she is during her widowhood viewed in law as retaining her right to relief in respect of the marriage relation. The law humanely continues or stretches out the protection over her and her children, so that in the benevolent construction of law she is held as continuing in her widowhood to dwell beneath the extended shadow of her husband's right.

But when her widowhood ceases, the protection of her marriage relation ceases also. She could not retain the benefit of that relation or that protection after she became the wife of another man. It does not, in my opinion, make any material difference that M'Geachy, the second husband, had no Scotch settlement. He was born in Ireland, and liable to be removed there.

If I am right in my view of the law applicable to this case, the liability of the parish of Dailly ceased, not because of the acquisition of another settlement, but because of her marriage to another man. That second marriage completely broke the tie between her and M'Gerry. But she herself had no settlement in Dailly, and no claim on Dailly except in respect of her marriage with M'Gerry; therefore, when the wife's tie and the widow's tie were both broken, the liability of Dailly was necessarily terminated.

We have nothing to do at present with any question in regard to removal to Ireland. The law has provided for it, and there is a discretion vested in the Parochial Board and the Board of Supervision to ensure the judicious and humane enforcement of the law.

Nor have we anything to do at present with the claims of the children. They are all pupils, and are not themselves in their own right the objects of parochial relief. They were, while their mother was a widow, burdens on her industry or her other means of subsistence. When she married a second time she passed with her children as burdens into the new marriage relation. Till the children emerge from pupilarity, and become,—as I hope they may not become,—paupers in their own right, there can be no separate case in regard to them for our consideration.

LORD KINLOCH concurred with the LORD PRESIDENT and LORD ARDMILLAN.

The Court accordingly answered the question in the negative.

Agents for the Parish of Govan—D. Crawford & J. Y. Guthrie, S.S.C.

Agents for the Parish of Dailly—M'Ewen & Carment, W.S.

Tuesday, March 14.

MACKINTOSH v. MOIR.

(Vide ante, p. 382.)

*Process—Jury Trial—Fixing Place of Trial—Circuit Court—1 Will. IV, c. 69, § 11.* This case being an action of declarator of a right of way at Dunoon, in the county of Argyll and within the limits of the Inverary Circuit,—notice of trial was given by the pursuers for the next Circuit Court of Justiciary at Glasgow, in terms of 1 Will. IV, c. 69 § 11, but the Court discharged the notice as incompetent, Dunoon not being within the district appropriated to the Glasgow Circuit.

Thursday, March 16.

CRAIG v. JEX BLAKE.

*Process—Jury Trial—Fixing date of Trial—Variation of Issues—Notice of motion—Competency—13 and 14 Vict., c. 36, sec. 40—31 and 32 Vict., c. 100, sec. 28.* The Lord Ordinary having pronounced an interlocutor approving of an issue to try the cause, the defender, on the following day, moved him, in terms of 13 and 14 Vict., c. 36, sec. 40, to fix the date of the trial, which was done by the Inner House upon the Lord Ordinary reporting the case to them. Thereafter the defender lodged a reclaiming note against the interlocutor approving the issue, and also moved the Court to vary it in terms of 31 and 32 Vict., c. 100, sec. 28.

*Held, 1,* That the motion was not incompetent, because the notice of it had not been in the hands of the Clerk of Court until counsel came up to move it.

*2,* That it was not incompetent because made upon the 7th day after the date of the Lord Ordinary's interlocutor, the 5th and 6th not being sederunt days.

*3,* That both the motion and the reclaiming note were incompetent, because the defender was barred from objecting to the interlocutor after having adopted it, and made its finality the basis of her motion to fix the day of trial—