

as showing that the father had no title to resist encroachment. But the title in that case was not that of a proprietor in liferent. It was a mere personal right of occupancy, and was rejected on that ground, and not on the general ground that a liferent proprietor has no title to defend the estate against encroachments by the public. And with regard to the cases of prescription where the estate is held in trust, I think that it is only where the trust is for behoof of a particular person that the prescription is interrupted by the minority of the person for whose behoof the trust exists. This was the ground of decision in the case of *Baillie v. Menzies*, 1756, 5 Br. Sup. 847, and I am not aware that it has ever been gone back upon. . . .

[After dealing with the evidence his Lordship concluded]—On the whole, therefore, while I cannot help thinking that the present claim is not so much in vindication of the public right as in pursuance of a private dispute, I am of opinion that the question was fairly before the jury, and that while the evidence would have supported, perhaps more satisfactorily to my mind, a different verdict, there is no sufficient ground for setting aside the verdict as contrary to evidence.

LORD DEAS was absent.

The Court disallowed the bill of exceptions and discharged the rule.

Counsel for Pursuers — Asher — Campbell.
Agent—Alexander Wylie, W.S.

Counsel for Defender — Macdonald, Q.C.—
Mackintosh. Agent—Alexander Morison, S.S.C.

Tuesday, February 22.

SECOND DIVISION.

[Sheriff Court of Dumfries
and Galloway.]

GRAHAM v. M'WILLIAM.

Poor—Circumstances Entitling to Relief in respect
of Lunatic Daughter.

Held that an able-bodied man living with his wife and a lunatic daughter in a house rent free, and earning £27 a-year and 65 stones of meal as wages, was not a proper object of parochial relief in respect of his lunatic daughter.

Poor—Industrial Settlement—Settlement of a
Lunatic living with her Father.

A labourer born in parish of C., three months before acquiring an industrial settlement in parish of H., applied for and received parochial relief from the latter in respect of his lunatic daughter. Observed, that in accordance with *Milne v. Henderson* (7 R. 317), this relief did not interfere with the acquisition of an industrial settlement in H., and that that parish must be liable for any advances made so long as it continued to be the parish of the father's settlement.

This action was raised at the instance of William Graham, Inspector of Poor of the Parish of Hoddam, against Alexander M'William, Inspector of Poor of the Parish of Carlawerock. The sum-

mons concluded for repayment of the sum of £8, 14s. 6d. sterling, as well as for all future advances paid or disbursed by the pursuer for the relief of James Hunter, or Agnes Hunter, his daughter. The following facts were admitted or proved:—James Hunter, who was born in the parish of Carlawerock, at Whitsunday 1874, went to live at Newpark, in the parish of Hoddam, as a shepherd or farm-servant. His family consisted of his wife, aged fifty-nine, and one child Agnes Hunter, twenty four years of age, a helpless lunatic. Besides occupying his house rent free, he was earning £27 per annum and 65 stones of meal. On the 10th of January, and when he was on the eve of acquiring an industrial residential settlement at Hoddam, Mrs Hunter, his wife, applied to the pursuer for relief on account of the daughter Agnes, alleging her helpless state and the inability of the parents to support her. The pursuer accordingly gave the relief craved, sent to the defender the statutory notice that the said Agnes Hunter had become chargeable on the parish of Hoddam, and next day sent an amended statutory notice that the father had become chargeable on the said parish. The defender denied liability, averring that James Hunter was an able-bodied man, and in circumstances which made it incumbent on him to support his imbecile daughter. The father alleged that the pursuer had made the advances prematurely and without proper inquiry into the circumstances of the case, and with a view to prevent the pauper acquiring a residential settlement in Hoddam.

He pleaded—“(1) That neither the said James Hunter nor the said Agnes Hunter being proper objects of parochial relief, the defender is neither liable to relieve the pursuer of advances, which must have been improperly made, nor to maintain the alleged pauper or paupers in time coming, and the defender should be absolved from the whole conclusions of the petition, and expenses found due to him. (2) *Separatim*, Even if the said Agnes Hunter should be found to be a proper object of parochial relief, and the said advances be found to have been properly made, such advances have not pauperised the said James Hunter, nor prevented his acquiring a residential settlement in the parish of Hoddam.”

The Sheriff-Substitute (HOPE), after findings in fact, pronounced this judgment:—“Finds in law—(1) That the said James Hunter not being in circumstances properly to support his lunatic daughter, although he is an able-bodied man, therefore his said daughter is a proper object for parochial relief; (2) That her settlement is that of her father; and (3) That the parish of Carlawerock, as the parish of the pauper's settlement, is bound to repay to the parish of Hoddam all advances made on behalf of said pauper to this date, and to relieve it of all further maintenance or relief: Therefore repels the defences, and decerns.”

The defender appealed, and argued — (1) In point of fact James Hunter was not a proper object of parochial relief; (2) In point of law, on the authority of the case of *Milne*, Hoddam must bear the burden of the relief given.

Authorities—*Wallace v. Turnbull*, March 20, 1872, 10 Macph. 675; *Anderson v. Patterson*, June 12, 1878, 5 R. 904; *Milne v. Henderson and Smith*, Dec. 3, 1879, 7 R. 317.

At advising—

LORD JUSTICE-CLERK—This is a short matter, and I think simple in its result. The father lives with his lunatic daughter and wife, and receives wages to the amount of £27 a-year and an allowance from his master; and further, as has been proved in the case, is capable of supporting himself. At the date of his wife's application for relief he was on the eve of acquiring a residential settlement in the parish of Hoddam, and then for the first time, and under no change of circumstance, the parochial board of Hoddam, at the request of the mother, gave him an allowance of £8 a-year, which brings the father's income to £35 a-year. How far that is a proper allowance is a question which I think the parochial board could best judge, but the peculiarity of this case is that the effect of this payment, if the argument on the general legal question is correct, is to lay the burden of bearing the charge on Carlaverock, the birth settlement of the pauper. Now, I do not think that under the circumstances it was sufficiently proved that the father was a proper object of parochial relief in respect of his imbecile daughter, and it seems to me that the parochial board have not properly applied their minds to the question. I am very far from saying that there could have been any design on the part of Hoddam to increase the burden on Carlaverock, but if we find—what is perfectly consistent with the proof in the case—viz., that it is not sufficiently established that the father was incapable of supporting his lunatic daughter, and that therefore he was not a proper object of relief, the burden will fall on Hoddam, who made the advances under such circumstances. On the second point there is no question. The settlement of the lunatic was beyond doubt in the parish of Hoddam, if the father had acquired a settlement at Hoddam. The case of *Milne v. Henderson* is conclusive on the point. According to the authority of that case, Hoddam is the settlement against which the relief is to be charged, and there is no necessity to go to her former settlement. There were some conflicting decisions on the matter before this case, which was meant to fix once and for all the rule. However, I propose, without going further into this point, to simply find that it has not been properly established that the father here was at the date of the relief a proper object of parochial relief.

LORD YOUNG—I am of the same opinion. James Hunter is certainly not a pauper. He resides industrially now in the parish of Hoddam, and has been industrially resident there as an able-bodied man since Whitsunday 1874. Now, it may certainly be, according to authority, that he is entitled to some assistance in respect of his daughter's sad state, and if he is now or was at any other time since Whitsunday 1879, then Hoddam is the parish to give the assistance. We find that he is not a pauper, and at Whitsunday 1879 he resided at Hoddam industrially for five years, and for two years more; and therefore if he is entitled to assistance, Hoddam is the parish which will be liable. But then a few months before Whitsunday 1879 the parish of Hoddam advanced about £8 a-year, and it is said for them that for this assistance Carlaverock is liable, because five years of industrial residence had not been completed at January 1879, and certainly this might raise some question for the period

elapsing between January and Whitsunday. Surely it is almost foolish to raise a question of this kind. Moreover, I agree with your Lordship in holding that it is not proved that in January 1879 any change had occurred in the father's circumstances. On the contrary, he was better off than before, his wages having been raised, and thus nothing in the evidence to show that he had any claim to this exceptional assistance. It may be that we should not have interfered in any way with the Parochial Board of Hoddam, but when they make advances under such circumstances as have occurred, and then appeal to the parish of Carlaverock, I am not satisfied on the evidence that such an appeal was in the circumstances justified. This, however, is not of paramount importance, because in accordance with the case of *Milne*, whenever assistance is given to a man who is not a pauper in respect of the mental condition of one of his family, the burden of such assistance is to be borne by the parish of settlement at the time, and therefore the defender's counsel in argument conceded that any such exceptional assistance given before a residential settlement had been acquired at Hoddam would have to be borne by Carlaverock, while any given after the five years' residence at Hoddam would, in accordance with the decision of *Milne*, have to be borne by the parish in which the father was so industrially resident.

LORD CRAIGHILL—I concur in your Lordships' conclusions and reasons for such conclusions.

The Court found that the pursuer had failed to prove that, at the time when the advances labelled were made, James Hunter, father of the lunatic, was a proper object of parochial relief, and therefore sustained the appeal and assolizied the defender.

Counsel for Appellant (Defender)—Trayner—J. A. Reid. Agents—Ronald & Ritchie, S.S.C.
Counsel for Respondent (Pursuer)—R. Johnstone—Lang. Agents—Smith & Mason, S.S.C.

Wednesday, February 23.

SECOND DIVISION.

SPECIAL CASE—GILLIES v. GILLIES'
TRUSTEES.

Settlement—Trust—Clause of Forfeiture—Casus improvisus.

By trust-disposition and settlement a trustor directed his trustees to make certain provisions for his widow, and to hold the capital of the residue of his estate for the purpose of dividing it among the issue of his children *per stirpes*, the respective shares to be paid over as the issue of the said children respectively attained the age of twenty-one. He further declared that if any of his children should repudiate the above provisions, the child or children so repudiating, and their issue, should forfeit all interest in the settlement in favour of the child or children and their issue abiding by it. He left a widow, one son (who survived his father a