make them liable to the jurisdiction of the Sheriff—*St Patrick Insurance Company* v. *Brebner*, November 14, 1829, 8 S. 51; *Bishop, &c.*, v. *Mersey and Clyde Navigation Steam Company*, February 19, 1830, 8 S. 558. The qualifications in Palfrey's position, as they appeared after a proof, could not have been known to the public, who looked upon him as a manager, and the defenders were barred by personal exception from now saying that Palfrey was only an agent and not a manager—Bell's Prins. 27A; *Young* v. *Livingstone*, March 13, 1860, 22 D. 983.

Counsel for the respondent was not called upon.

At advising—

LORD JUSTICE-CLERK—We have heard the whole case clearly stated by Mr Mackintosh, but I can see no grounds on which we should interfere with the Lord Ordinary's judgment.

This Mr Palfrey is just in the same position as many agents for insurance companies in this country who carry on their own business as solicitors and act as agents for insurance companies also. They receive proposals from persons desiring to insure, and transmit the proposals to the head office, and if the directors see fit to entertain them, then a policy is issued from the head office.

This company which is said to be carrying on business in Edinburgh has no place in which to carry on the business. All the business that was done was done by Palfrey as agent for the company.

LORD RUTHERFURD CLARK—I agree. I think this man Palfrey was merely a stalking-horse to obtain premiums.

LORD TRAYNER—I also agree. I think there is no evidence in this case that the defenders had any place of business in Scotland.

It was suggested by the counsel for the pursuer, that the defenders by issuing the handbill referred to bearing that "branch offices and agencies" had been opened at various places including Edinburgh, had done something that amounted to prorogation of jurisdiction. I do not think so; the terms of the handbill do not establish that the defenders had, or ever represented that they had, a place of business of their own, at any of the addresses mentioned, but merely indicated where people might apply if they wanted to do business or be put in communication with the defenders' company.

The Court in their judgment repeated the findings in the Sheriff-Substitute's interlocutor of 13th July 1889, and adhered to the interlocutor reclaimed against.

Counsel for the Appellant—J. Mackintosh. Agents—Douglas & Miller, S.S.C.

Counsel for the Respondent—Wm. C. Smith — Crole. Agents — Edward Nish, Solicitor.

Thursday, February 27.

FIRST DIVISION.

[Sheriff of Aberdeen, Kincardine, and Banff.

PITHIE (INSPECTOR OF TULLYNESSLE AND FORBES PARISHES) *v.* PRIMROSE (INSPECTOR OF ROTHIEMAY PARISH) AND MILNE (INSPECTOR OF NEWHILLS PARISH).

Poor — Settlement — Pupil Illegitimate Pauper.

The mother of a pupil illegitimate daughter married, and shortly thereafter died, leaving her child chargeable on the rates.

Held that the pauper was chargeable to the parish of her mother's settlement, which was that of her husband.

The Rev. James M. Pithie, Inspector of Poor of the united parishes of Tullynessle and Forbes, brought an action in the Sheriff Court of Banff against James Primrose, Inspector of Poor of the parish of Rothiemay, and John Milne, Inspector of Poor of the parish of Newhills, for payment of sums advanced and for relief of future advances for the maintenance of Mary Ann Middleton Taylor, a pupil illegitimate pauper.

The pursuer averred that Barbara Taylor, the mother of the pauper, was born at Coldhome in the parish of Rothiemay on 14th May 1861, that her illegitimate child was born in August 1881, that sometime thereafter Barbara Taylor was married to Alexander Mackie, farm-servant, but that she died soon after the marriage survived by her husband. He further averred that in December 1887 application was made to him for parochial relief on behalf of the said Mary Ann Middleton Taylor, who was then residing in his parish with a sister of her mother, that the pauper was a proper subject of parochial relief, the residence of her reputed father being unknown, and that the pursuer had advanced the sum of £5, 7s. 6d. for her relief. Alexander Mackie had a birth settlement in the parish of Newhills.

The Inspector of Poor of the parish of Newhills admitted the pursuer's averments, but refused to admit liability, on the ground that the derivative settlement which the deceased's mother had through her husband in the parish of Newhills while she was alive did not inure to her child after her death, and that her death had the effect of relieving the husband and the parish of the husband's settlement.

The Inspector of Poor of Rothiemay admitted pursuer's averments, but averred that the parish of Alexander Mackie's birth settlement was liable for relief.

The pursuer pleaded, *inter alia*—"(1) In respect that the mother of this pupil illegitimate pauper had a settlement by birth in the parish of Rothiemay, the pursuer is

entitled to decree as craved against the said James Primrose. (2) Or otherwise, in respect the pauper has a settlement in the parish of Newhills, derived from the husband of her deceased mother, the pursuer is entitled to decree as craved against the said James Milne."

The defender Primrose pleaded, *inter alia*—"(1) The pauper being a pupil child, can have no settlement in Rothiemay in respect of her own birth. (2) The pauper being an illegitimate pupil child, her settlement is derived from her mother. (3) The pauper's mother having acquired a settlement in the parish of Newhills, in consequence of her marriage with Alexander Mackie, the pauper derived from her a settlement in the same parish, and could not lose it."

The defender Milne pleaded—"Where an illegitimate pupil child becomes chargeable as a pauper upon the death of its mother, who at the time of her death was married to a man not its father, the parish liable is not the husband's parish, but the parish of the mother's settlement at the time of her marriage, and therefore this defender, Milne, is entitled to absolvitor with expenses."

A joint-minute was lodged by the parties admitting that the pursuer was entitled to his advances, and that the only question which fell to be determined was the liability of the defenders *inter se*.

On 14th January 1889 the Sheriff-Substitute (GRIERSON), after finding the facts above set forth, found in law, "under reference to the subjoined note, that the pauper has a settlement in the parish of Newhills: Therefore sustains the second plea-in-law for the pursuer; decerns against the defender John Milne, inspector of poor of the parish of Newhills, in terms of the conclusions of the summons; assoilzies the defender James Primrose, inspector of poor of the parish of Rothiemay, from the said conclusion.

"*Note.*—Alexander Mackie, who has a birth settlement in the parish of Newhills, married Barbara Taylor. Before her marriage Taylor had an illegitimate daughter. The child was born in August 1881, in the parish of Rothiemay. The mother died, and in December 1887 application was made on behoof of the child for parochial relief, and the question arose whether the liability rested with the parish of Rothiemay, where she was born, or with the parish of Newhills, in which her mother's husband had a birth settlement.

"In the case of *Hay* v. *Thomson*, February 6th, 1856, 18 D. 510, Lord Colonsay says —'The sound principle is that in law an illegitimate child is part and parcel of the mother, just as a legitimate child is part and parcel of the father. The sole question to be determined then is, what was the mother's settlement.' 'For the settlement acquired by her is acquired to the exclusion of all others,' and what is her settlement is her illegitimate child's settlement. Now her settlement is that which she derived from her husband. But it was argued that the fact of her death made a difference; but it has been held in a question between legitimate children and their father that his desertion does not free the parish in which he has a settlement from liability to relieve them.

"The same principle has been applied where the father was transported, and in *Barbour* v. *Adamson*, July 2, 1851, 13 D. 1279, May 30, 1853, 1 Macq. 376, the Judges in the Court of Session, and the Lord Chancellor in the House of Lords, treated his death as an analogous case.

"It is true that these principles were applied in the case of the father of legitimate children, but in the case of *Caldwell* v. *Dempster*, July 20, 1883, 10 R. 1262, it was laid down that they were equally applicable in the case of the mothers of illegitimate children."

The Inspector of Poor of Newhills appealed to the Sheriff (GUTHRIE SMITH), who on 10th April recalled the Sheriff-Substitute's interlocutor, and found that Rothiemay was the parish liable.

"*Note.*—In this case the Sheriff-Substitute has held that the pauper is chargeable not to the parish in which she was born, or the parish in which her mother was born, but the parish in which her stepfather was born. If the stepfather had died and the mother had survived, I could understand it, for then the mother would have been the pauper, and she would have taken the husband's settlement at the date of his death for herself and all claiming through her. But when it is the mother that is first taken away, it is the child herself who becomes the pauper, and were she a legitimate child she would be chargeable to the parish in which her father, or failing the father, her mother, had a settlement at the date of the second marriage. The cases admittedly are very difficult to reconcile, but this is the result I think, to which they lead. In particular *St Cuthbert's* v. *Cramond*, 1 R. 174, *Beattie* v. *M'Kenna*, 5 R. 737, and *Simpson* v. *Miles*, 10 R. 928, prove that the mother's second marriage does not affect the settlement of the pupil in the case of a legitimate child, and I see no reason for applying a different principle when the child is illegitimate."

The Inspector of Poor of Rothiemay appealed to the Court of Session, and argued—It being settled by the case of *Hay* v. *Thomson*, February 6, 1856, 18 D. 510, that an illegitimate child takes its mother's settlement, however that may have been acquired, the only question in the present case was whether the death of the mother made any difference, on which see *Beattie* v. *M'Kenna*, March 8, 1878, 5 R. 737; *Hendry* v. *Mackison and Christie*, January 13, 1880, 7 R. 458. A pupil child could neither acquire nor lose a settlement, and so in the present case the settlement of the pauper being that of its mother, and she taking the settlement of her husband, the pauper child did not by its mother's death lose its derivative settlement, which was the settlement of its mother's husband, the parish of Newhills—*Caldwell* v. *Dempster*, July 20, 1883, 10 R. 1263.

Argued for the respondent, the Inspector

of Poor of the parish of Newhills—There was no tie between the pauper and the husband of her mother, so as to make the parish of her settlement liable in relief. Any liability arising from the pauper's mother having through her marriage a settlement in Newhills terminated at her death, and the parish liable in relief was the parish where the mother had a settlement at the date of her second marriage—*Greig* v. *Adamson*, March 2, 1865, 3 Macph. 375; *St Cuthbert's* v. *Cranond*, November 12, 1873, 1 R. 174.

At advising—

LORD PRESIDENT—The Sheriff has observed at the conclusion of the note to his interlocutor that the various cases upon the point which we have to deal with are very difficult to reconcile with one another. It appears to me, on the other hand, that the decisions in these various cases all point in one direction, and conclusive of the present question. It is to be observed that the child in the present case is the pauper, and accordingly we are not embarrassed by a consideration of those cases where the father or the mother has through misfortune become chargeable on the rates, and has obtained relief for themselves as well as for their children.

The mother of this child is dead, and the father, so far as the present question is concerned, may be taken to be in the same position. Now, in the case of an illegitimate child the mother stands in the place of the father of a legitimate child, and so during pupillarity its settlement is that of its mother.

As therefore in the case of a legitimate child the pupil takes the settlement of his father after his death, so in the case of an illegitimate child it takes the settlement of its mother, and never can have any other settlement until it is forisfamiliate.

The question in the present case accordingly is narrowed to this, what was the settlement of the pauper's mother? And to that there can only be one answer. She married after the pauper's birth, and though she died shortly after her marriage her husband still survives. Her settlement as a married woman was of course that of her husband, which accordingly must also be the settlement of her illegitimate child, seeing it is the only one which she could leave to it.

The result of our decision is that we shall recal the interlocutor of the Sheriff and revert to that of the Sheriff-Substitute.

LORD ADAM—In the case of legitimate children the settlement is that of the father, and this is not altered by his entering into a second marriage.

In the case of illegitimate children the case is quite different. If the mother marries, that will entirely alter the circumstances, for the children will take the settlement of their mother while she takes that of her husband.

In the present case the pauper's settlement is that of its mother's husband, and I accordingly think that the interlocutor of the Sheriff-Substitute should be given effect to and that of the Sheriff recalled.

LORD M'LAREN—The cases upon this branch of the Poor Law have decided that a pupil child can have no settlement but what it derives from its parent. This was conclusively settled by the case of *Greig* (3 Macph. 575), where it was held that the child, though born in Scotland, had no settlement in this country during its pupillarity, because the mother had never acquired a settlement in Scotland during her lifetime. As was observed, a pupil child can neither acquire nor lose a settlement during pupillarity, and the settlement which he derives from his parent he retains during his pupillarity.

This must be taken to be fixed by the decisions which have been cited. If this be so, then the child here could have no settlement but for its mother, and that is not lost by the death of the mother.

The only question that remains, then, is, what was the settlement of the mother? and that is admitted to be Newhills, as fixed by the Sheriff-Substitute, whose decision in the matter I think is right.

LORD SHAND was absent.

The Court recalled the interlocutor of the Sheriff, and found in terms of the Sheriff-Substitute's interlocutor.

Counsel for the Appellant—Asher, Q.C.—Salvesen. Agent—Alex. Morison, S.S.C.

Counsel for the Respondent—J. C. Thomson—J. A. Reid. Agents—Auld & Macdonald, W.S.

Thursday, February 27.

SECOND DIVISION.

[Sheriff of Lanarkshire.

M'GUIRE *v.* CAIRNS & COMPANY.

Reparation — Personal Injury — Dangerous Operation—Workman Injured by Splinter of Broken Metal—Insufficient Precautions for Safety of Workmen—Damages.

A workman in an iron foundry was breaking up old iron by dropping upon it a heavy metal ball which was raised into the air by a steam crane. In such an operation splinters of broken metal may fly to a considerable distance. It was not his duty to see that the yard was clear, but following the usual practice the workman shouted a warning, and after a short interval, to allow such of the workmen who heard him to escape to places of safety, he let the ball drop. A splinter of iron flew through the open door of a shed adjoining the yard, and severely injured a workman who had not heard the warning. This door was of considerable width, and there were no instructions given to the workmen regarding it when old iron was being broken in the yard.