

LORD ADAM was absent at the hearing.

The Court adhered.

Counsel for Pursuer and Respondent—
Dickson—Fleming. Agents—Dundas &
Wilson, C.S.

Counsel for Defender and Appellant—
Ure—Crabb Watt. Agents—Dove &
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Tuesday, November 14.

FIRST DIVISION.

[Lord Wellwood, Ordinary.]

CAMPBELL v. DEAS.

Poor—Settlement—Rehabilitation—Loss of Residential Settlement—Poor Law Act 1845 (8 and 9 Vict. c. 83), sec. 76.

A woman who had acquired a residential settlement in Greenock left that parish in 1881 and did not afterwards return to it. She received relief in another parish from April 1884 to August 1886. The relieving parish claimed against Inverkip, the parish of the pauper's birth, and also against Greenock. The former admitted liability and reimbursed the relieving parish. Greenock denied liability. From August 1886 to February 1887 the pauper was self-supporting, but at the latter date she again became chargeable, and the relieving parish recovered from Inverkip. In an action by Inverkip against Greenock for payment of the expense of the pauper's maintenance during this second period of chargeability—*held* that the pauper had been rehabilitated before the second period of chargeability began, and that having been absent from Greenock for more than four years and a day before its commencement, she had lost her residential settlement, and that this result was not affected by the fact that she had received relief in another parish during part of the four years.

Beattie v. Adamson, November 23, 1866, 5 Macph. 47, distinguished.

Opinion by Lord Adam approving the decision in that case.

This was an action at the instance of John Campbell, inspector of poor of the Inverkip district of the parish of Inverkip, against John Strachan Deas, inspector of poor of the parish of Greenock, for payment of £208, being the amount of advances made by the pursuer for behoof of a pauper Mary Ann Hill from April 1887 to October 1891.

The facts of the case as admitted by the parties were these—Mary Ann Hill was born in Inverkip parish in 1856. From 1863 to 1881 she resided with her father in Greenock. In 1881 her father died, at which date his parish of settlement was Greenock by reason of his continuous residence there. At her father's death Mary

Ann Hill had through him a derivative residential settlement in Greenock.

In October 1881 Mary Ann Hill left Greenock, and she did not subsequently return to it.

In April 1884 Mary Ann Hill applied to the inspector of Cardross for relief, and being a proper object of relief she was on 19th May received into Dumbarton poorhouse. Statutory notices and formal claims of relief were duly made by the inspectors of Cardross and Dumbarton against Inverkip, and Inverkip admitted liability. Statutory notices were also sent by Dumbarton and Cardross to Greenock, and in October 1884 a claim was made against Greenock by Dumbarton but Greenock denied liability and the claim was withdrawn. After her admission the pauper remained an inmate of Dumbarton Poorhouse until 19th August 1886, when she left in search of work. The expense of her maintenance during this period was paid by Inverkip to the parishes of Cardross and Dumbarton.

On 14th February 1887 Mary Ann Hill again became chargeable to the parish of Cardross, and was received into Dumbarton Poorhouse. A statutory notice was sent to Inverkip. Inverkip admitted liability on 12th March 1887, and on the same day Inverkip for the first time gave statutory notice of chargeability to Greenock. Greenock did not admit liability.

On 14th June 1887 the pauper left the poorhouse, and from this date onwards she continued to be a proper object of parochial relief. She wandered from parish to parish, always applying for and receiving relief, and on the relieving parishes claiming against the parish of Inverkip, as the parish of birth, their claims were admitted, and the sums expended on her maintenance were repaid.

The defender pleaded, *inter alia*—“(3) Any residential settlement, if ever possessed by the pauper in the parish of Greenock, having been lost by her absence therefrom for four years, the defender is entitled to absolvitor.”

The 76th section of the Poor Law Act 1845 provides—“And be it enacted, that from and after the passing of this Act no person shall be held to have acquired a settlement in any parish or combination by residence therein, unless such person shall have resided for five years continuously in such parish or combination, and shall have maintained himself without having recourse to common begging, either by himself or his family, and without having received or applied for parochial relief; and no person who shall have acquired a settlement by residence in any parish or combination shall be held to have retained such settlement if during any subsequent period of five years he shall not have resided in such parish or combination continuously for at least one year.”

On 16th November 1892 the Lord Ordinary (WELLWOOD) pronounced this interlocutor:—“Finds in respect of the decision of the Court in the case of *Beattie v. Adamson*, 5 Macph. 47, that the pauper Mary Ann Hill's residential settlement in the parish

of Greenock, which was acquired by continuous residence of the pauper's father prior to his death on 17th June 1881, has not been lost by non-residence, and still subsists: Finds that it is admitted that when the advances sued for were made, the said Mary Ann Hill was a proper object of parochial relief, and the said advances were properly made on her behalf: Therefore decerns and ordains the defender, as inspector of poor of the parish of Greenock, to make payment to the pursuer, as inspector of poor of the parish of Inverkip, of the sum of £200, 15s., the restricted sum now claimed by the pursuer, with interest as concluded for: Finds and declares that the defender, as inspector foresaid, is bound to free and relieve the pursuer, as inspector foresaid, in all time coming, or at least so long as the parochial settlement of the said Mary Ann Hill subsists in the said parish of Greenock, of all alimentary and other advances which the pursuer may hereafter be called upon to make for behoof or on account of the said Mary Ann Hill, and decerns: Finds the pursuer entitled to expenses, &c.

"*Opinion.*—In this case the Inspector of Poor of the parish of Inverkip seeks to recover from the Inspector of Greenock repayment of £208, 11s. 11d., being the amount of advances for parochial relief which the parish of Inverkip had made from time to time between 29th April 1887 and 31st October 1891 on behalf of a pauper called Mary Ann Hill.

"The defender's third plea-in-law is as follows:—'Any residential settlement, if ever possessed by the pauper in the parish of Greenock, having been lost by her absence therefrom for four years, the defender is entitled to absolvitor.'

"The material facts of the case are as follows:—The pauper was born in the parish of Inverkip in 1856. Between the years 1863 and 1881 she lived with her father William Hill in the parish of Greenock; and at his death on 17th June 1881 she had through him a derivative residential settlement in the parish of Greenock.

"In October 1881 she left the parish of Greenock, and has never resided in it since.

"On 11th April 1884, when she was residing at Cardross, she applied for parochial relief, and on 19th May 1884 she was received into Dumbarton poorhouse. It may here be said, once for all, that from that time forward she never ceased to be an object of parochial relief, and never was rehabilitated so as to be no longer entitled to ask for and receive relief. She wandered from parish to parish, always applying for and receiving relief; and on the relieving parishes claiming against the parish of Inverkip as the parish of birth their claims were admitted.

"It is admitted that the first statutory notice given by the parish of Inverkip to the parish of Greenock was on 12th March 1887, more than five years after the pauper ceased to reside in Greenock. The question is, whether the pauper is to be held to have lost her residential settlement

in Greenock by having failed during the period of five years subsequent to October 1881 to reside continuously for one year in that parish; or whether the fact that within the four years immediately after October 1881 she applied for and obtained parochial relief prevented the loss of her residential settlement in Greenock although no statutory notice was given by Inverkip to Greenock, and no admission of liability was made by the latter parish

"During the first discussion in the Procedure Roll I referred the parties to the case of *Beattie v. Adamson*, 23rd November 1866, 5 Macph. 47, which seemed to me to be directly in point. Repeated examination of that case has satisfied me that the same point was there expressly decided adversely to the argument of the present defender; and sitting alone I feel bound to follow that decision, although but for it I should have been disposed to come to a different conclusion.

"The material facts in *Beattie v. Adamson* were these:—A girl Elizabeth Clark, born in 1845, resided with her father, an able-bodied man, in the City Parish of Glasgow, where he acquired a settlement by residence. In May 1854 he removed with his family to Barony Parish. In September 1856 he deserted them in Barony Parish and went to England.

"In November 1856 Elizabeth was admitted to the Barony poorhouse where she remained. On 12th June 1860 Barony Parish sent a statutory notice to the City Parish. The latter denied liability, on the ground that Alexander Clark, the father, having lost his settlement in 1859, the settlement was lost both for himself and for his children. They also pleaded that as Clark was an able-bodied man, neither he nor his children were proper objects of parochial relief.

"It is not necessary to follow the case through all its stages. The Sheriff-Substitute and the Sheriff both assolizied the City Parish. The cause having been advocated to the Court of Session, the Lord Ordinary, Lord Barcaple, also assolizied the City Parish, holding that by 12th June 1860, when the first statutory notice was given to the City Parish, Alexander Clark had lost his settlement in that parish, 'and that at the date of the said statutory notice the said Elizabeth Clark had not either in her own right or in right of her father a legal settlement in the City Parish of Glasgow.' This judgment was recalled by the Second Division of the Court, Lord Cowan dissenting.

"It will be seen from the opinions of the judges that two questions had to be considered. The first was whether Elizabeth Clark was to be regarded as being a proper object of parochial relief in her own right. The majority of the Court, on the strength of a minute of admissions which had been lodged by the defender, held that she was a proper object of parochial relief in her own right, to the effect of making her settlement independent of the retention or loss of her father's settlement. With that question we have nothing to do here.

"But holding that she was a proper object of parochial relief in her own right, the majority of the Court further held, that although she had not resided in the City Parish for upwards of five years, her settlement in that parish had not been lost, because in November 1856, when the settlement in the City Parish still subsisted, she became a proper object of parochial relief in Barony Parish.

"I do not find in the report in Macpherson any record of an argument having been addressed to the Court upon the distinction between the two portions of the 76th section of the Act 8 and 9 Vict. cap. 83, and perhaps this may account for the Lord Justice-Clerk (Inglis) treating that question so briefly. He says (page 52):—'If her father had received parochial relief in another parish, a failure to reside would not have altered his settlement. Is it otherwise in regard to the child?' And again:—'One view of the Lord Ordinary deserves attention at all events from its novelty. He seems to think that the liability of the City Parish must depend not on the question, When did the child become chargeable? but, When was the statutory notice given to the City Parish? I am quite unable to see any grounds for that opinion. The object of a statutory notice is not to create a settlement, it is merely a compliance with a provision of the Poor Law Act, that until a relieving parish gives notice, it shall have no right to recover from the parish of settlement the sums advanced. The giving or withholding notice has no effect on the law of settlement. There can be no doubt of the general principle, that the settlement of the pauper when relief is first given remains the settlement so long as the pauperism continues.'

"Lord Cowan, however, who dissented, went very fully into the question. He did not attach the same meaning to the admission in the defender's minute, and therefore was for holding that the father's settlement having been lost by non-residence, Elizabeth Clark had no residential settlement in the City Parish when the statutory notice was given.

"Although, such being his view, he did not find it necessary to express a positive opinion upon the other question, he thus states his views upon it:—'I am unable,' he says, pp. 54-55, 'to dispose of this case on that ground; and therefore I do not require to consider whether the fact of relief having been furnished by another parish during the four years and a day—admitting it to have been to a person so destitute as to require relief from the parish where she for the time resided—could have the effect of obviating the statutory provision that "no person who shall have acquired a settlement by residence in any parish or combination shall be held to have retained such settlement if during any subsequent period of five years he shall not have resided in such parish or combination continuously for at least one year."

"Were it necessary to decide this ques-

tion I would feel it to be attended with very great difficulty. The words of the statutory provision are not qualified by any condition whatever. The first branch of the section having reference to the acquisition of a settlement through five years' residence, expressly provides that the person shall have resided for the five years continuously, without having recourse to common begging by himself or his family, and without having received or applied for parochial relief. And in the proviso saving the rights of paupers, who prior to the passing of the Act had resided for three years in a parish, it is added, "and have not become proper objects of parochial relief." The part of the statutory provision with which we have to do contains no similar condition. It provides, in absolute terms, for the release of the parish from liability if during any subsequent period of five years the person shall not have resided in the parish continuously for at least one year.

"Absence from the parish for five years without such residence is enough to put an end to the residential settlement. It appears to me that this provision cannot be got over by an offer to prove that the pauper had, in another parish at a greater or less distance, been maintaining himself by begging or by having received or applied to some other parish for parochial relief. I cannot import those conditions which are in the first branch of the statute, nor the words which occur in the proviso, into the second branch of the enactment, in itself subject to but one condition. And I hesitate to think, that although the pauper may have been recognised in another parish as an object of parochial relief, and have got such relief without intimation to and without the knowledge of the parish, this of itself is sufficient to keep up the residential settlement, although during the whole period of five years the pauper has never been within the parish, and no chargeability in respect of him or her has been attempted to be fixed upon its funds.

"There can be no question that the statutory notice is required for the primary purpose of fixing from its date the right to be relieved of advances made to paupers whose settlement is in a different parish from the relieving one. The question of settlement being acquired or not retained depends upon considerations apart from the giving or withholding of notice. But in such a question as we have to deal with in this case, where relief has been given during the currency of four years and a day, while the residential settlement was yet entire, the giving of notice during that period might have important effects in fixing chargeability on the parish of the pauper so relieved. For having got the notice of chargeability, the parochial inspector was bound either to have got the pauper removed to his own parish, or at least to have provided for his maintenance in the parish of his residence. The pauper must thus have become permanently chargeable during the subsistence of his residential settlement, and after that the

settlement could not be lost by non-residence, the pauper being supported all the while by the funds of his proper parish though not resident in it. It is quite a different case when nothing has been heard of the pauper during the whole five years of his absence. The statutory exemption of liability may be well pleaded in such a case, even although some other parish, without fixing the chargeability of the pauper upon the residential settlement, may have come under advances for his support. The parish of the birth must then be resorted to for relief; and should it happen that the pauper has no parish of birth in Scotland, then the relieving parish, as in other cases of the like kind, must bear the burden.'

'Lord Benholme and Lord Neaves concurred in the Lord Justice-Clerk's opinion that the mere fact of a person becoming a proper object of parochial relief in another parish was sufficient without notice to prevent the loss of a residential settlement. For instance, Lord Benholme says (p. 55)—'It is only when a man is not receiving relief—when he remains able-bodied—that his absence for more than one year out of every five causes the loss of his previously acquired industrial settlement. But if a man falls into poverty and gets relief, I do not see that his subsequent non-residence can affect his settlement . . . (p. 56). The date of the notice is not the proper date. The important date is the time when the pauper became chargeable, not when chargeability was announced to the parish of settlement.'

'Such being the grounds of decision, I cannot but hold the case to be directly in point, and as it has never been expressly overruled, I feel bound to follow it.

'As I have already indicated, I should, in the absence of that decision, have been prepared to decide in favour of the defender. Lord Cowan's views as to the meaning and effect of the 76th section of the Poor Law Act, which I have intentionally quoted at length, so fully express the interpretation which I am disposed to put upon it, that I do not think it necessary to state my own views at any length. I think there is a marked and intentional difference between the two parts of the 76th section of the Poor Law Act. The part of the clause which deals with the acquisition of a settlement is fenced with certain conditions which are inserted to prevent the acquisition of a residential settlement by persons who beg or require and apply for parochial relief. Now the things which are declared to disqualify and prevent the acquisition of a settlement, viz., begging or receiving or applying for parochial relief on the part of such persons, are matters which are necessarily within the knowledge and under the notice of the parochial authority of the parish of residence.

'Again, as regards the loss of a residential settlement, the one thing to be looked to is continued absence. The parish of residence has nothing to do with, and knows nothing of, the way in which the person who has left it is living and main-

taining himself or is being maintained. Accordingly, all that the statute required to be proved in order to infer loss of settlement is absence for the requisite length of time.

'That seems to be a reasonable construction of the clause; and it must be remembered that the latter provision as to loss of settlement was enacted in order to amend the rule of the older Poor Law, that a residential settlement could not be lost until a new one was acquired. The operation of the amending clause would be limited indeed if loss of a settlement were held to be prevented or arrested whenever the person in question was proved to have begged or asked for relief in another parish during the first four years of absence.

'In the case of *Johnston v. Black*, 13th July 1859, 21 D. 1293, the Court by their decision countenanced a qualified construction or limitation of the second half of the 76th section. The judgment proceeded on the footing that if before a residential settlement has been lost by non-residence for four years and a day, the person in right of it becomes a proper object of parochial relief, and is relieved by another parish; and if the parish of residence receives statutory notice of such chargeability, and admits liability, the residential settlement will not be lost, although the pauper continues to reside outwith the parish of residence. The ground of judgment apparently was that the parish of residence (Ayton) having admitted liability, it became its duty to remove the pauper, and if it chose to allow the pauper to remain in the relieving parish and pay for him there, the pauper must be held to have been constructively on the roll in the parish of residence from the date of the notice, or at least from the date of admission of liability. Lord Colonsay says (p. 1296)—'It is contended that all that the statute requires in order to destroy a settlement is absence for five years, or, as it has been construed, absence for any time more than four years. I think it would be very difficult to maintain that proposition abstractly to its greatest extent. If a party has removed from a parish—from Ayton to the parish of Coldingham—becomes a pauper at the end of a year or two years, is put upon the roll in Coldingham, relief afforded him, and liability admitted by Ayton, I hold him to be in the same position as if he was on their roll.' The judgment, it will be seen, proceeded expressly on the ground that Ayton, the parish of residence, admitted liability within the four years.

'The case of *Johnston v. Black* has had a curious record. It does not seem to have been quoted or referred to in *Beattie v. Adamson*; while in the later case of *Cochrane v. Kyd*, 16th June 1871, 9 Macph. 836, it was viewed with considerable doubt, although it was not nearly so strong a decision as that in the case of *Beattie v. Adamson*, which in its turn was apparently not alluded to in *Cochrane v. Kyd*.

'I observe that Mr Guthrie Smith in his work on Poor Law, pp. 355 to 357, regards the decision in *Johnston v. Black*

as allowing the greatest qualification of the 76th section permissible; while he simply notes the facts of the case of *Beattie v. Adamson* and the decision of the Court without comment.

"I have not been given, and I have not found, any further light on that decision (*Beattie v. Adamson*), and I can only say that in my opinion it requires reconsideration.

"I understand that the pursuer is content, if successful, to restrict his claim to £200, 15s."

The defender reclaimed, and the case was twice heard in the Inner House. At the first hearing the defender admitted that the case of *Beattie v. Adamson*, November 23, 1866, 5 Macph. 47, upon which the Lord Ordinary's decision was founded, was an authority against him, but argued that that decision was unsound and should be reconsidered. At the second hearing the question argued was whether *Beattie v. Adamson* could be distinguished from the present case.

Argued for the defender—Assuming *Beattie v. Adamson* to be an authority against the defender, it was at variance with the provisions of the Poor Law Act. The question whether or not a pauper had lost a residential settlement depended solely upon whether or not he had been absent from the parish of residential settlement for more than four years. If he had, his residential settlement was lost—Poor Law Act 1845, sec. 76. The mere fact that a pauper received relief in one parish could not be held to be constructive residence in another. *Beattie v. Adamson* was therefore wrongly decided—*Cochrane v. Kyd*, June 16, 1871, 9 Macph. 836; 43 Scot. Jur. 457; *Crawford v. Petrie & Beattie*, January 25, 1862, 24 D. 357; 34 Scot. Jur. 180. At all events, the parish of residential settlement was not liable unless it had received the statutory notice within four years and a day from the time the pauper left it—*Beattie v. Adamson*, 5 Macph. per Lord Barcaple, p. 50, and per Lord Cowan, p. 55. Here Inverkip gave no notice to Greenock until March 1887. But the case of *Beattie v. Adamson* was not an authority against the defender. It decided no more than that the settlement fixed at the date when a pauper first became chargeable remained his settlement so long as chargeability continued. It did not settle that the period of four years' absence, by which a residential settlement might be lost, ran from the expiry of the first period of chargeability. The mere fact that a pauper was in receipt of relief did not prevent the four years' running in favour of the parish of residential settlement. When a pauper became chargeable the question what parish was liable for his maintenance during the period of chargeability fell to be decided with reference to the date at which that particular period of chargeability had begun, and not with reference to any previous period of chargeability—*Crawford v. Petrie & Beattie*, supra. In *Innes v. Ironside* there was only one period of chargeability, and there was

also a practical admission of liability by the parish of residential settlement. In *Johnston v. Black* there was a break in the chargeability, but the decision proceeded on the fact that the parish of residential settlement had admitted liability. Here there was no admission of liability by Greenock, and the pursuer had made no claim upon that parish until more than five years' after the pauper had left it. The soundness of the decision in *Johnston v. Black* had also been doubted, and it was worthy of reconsideration—*Cochrane v. Kyd*, supra. The case of *Beattie v. Brown* was not against the defender, because it dealt only with the first period of the pauper's chargeability, and that period began before the pauper had lost his residential settlement by absence for four years and a day. In the present case, when the second period of chargeability began, the question to be considered was whether at that date the pauper had been absent for more than four years from Greenock. On the facts that question fell to be answered in the affirmative, and the result was that the defender must be assoilzied.

Argued for the pursuer—On the assumption that *Beattie v. Adamson* was an authority against the defender, the authority of that case should not be disturbed. It had formed the rule of practice for many years. The decision was supported by other cases, and was sound—*Johnston v. Black*, July 13, 1859, 21 D. 1293, 31 Scot. Jur. 675; *Cochrane v. Kyd*, supra; *Innes v. Ironside*, June 5, 1868, 5 S.L.R. 582; *Turnbull v. Russell*, February 27, 1858, 20 D. 703, 30 Scot. Jur. 370. The pauper had a residential settlement in Greenock in 1881. It could only be lost by absence from Greenock for four years and a day before she became a pauper, as till then it was not impossible for her to live a year in Greenock before the expiry of five years from the date at which she first left it. When she became a pauper in 1884, Greenock was therefore the parish of her settlement, and it continued to be the parish of her settlement so long as her pauperism continued. She had never been rehabilitated, and it was therefore her settlement still. *Crawford v. Beattie* was not adverse, for there the pauper had been absent from the parish of residential settlement for more than four years before he became a pauper. A pauper could neither gain nor lose a settlement. Section 76 of the Poor Law Act contemplated the same kind of residence in respect of retaining as in respect of gaining a settlement—*Beattie v. Stark*, May 23, 1879, 6 R. 956, and opinions per Lord Justice-Clerk and Lords Deas and Ivory in *Crawford v. Beattie*, supra. A pauper could not retain a settlement by living on charity for twelve months in the parish of settlement. Notice of liability to the parish of settlement had to do only with the amount of the liability; the question was, when did pauperism commence. Neither had admission or denial of liability any effect in enabling a parish to escape liability. The maxim *quod fieri debet in-*

fectum valet applied. Otherwise a parish would be tempted to deny liability until four years and a day had run. But in *Innes v. Ironside* it was decided that if a parish ought to have admitted liability it was the same thing as if it had actually admitted it. When the pauper's chargeability ceased in August 1886 Greenock continued to be her residential settlement for four years and a day. It was settled law that such new period began to run only on chargeability ceasing—*Johnston v. Black, supra*. This was the basis of the judgment in *Cochrane v. Kyd*. A settlement could neither be lost nor gained by piecing together detached periods of industrial residence. If, therefore, the pauper was rehabilitated during the six months following August 1886, Greenock was still the parish of her residential settlement in February 1887, when she was permanently pauperised. But intervals of a few weeks or months did not amount to rehabilitation—*Beattie v. Wood*, February 9, 1866, 4 Macph. 427; *Beattie v. Greig*, July 9, 1875, 2 R. 923; *Beattie v. Brown*, December 11, 1883, 11 R. 250; *Beattie v. Arbuckle*, January 15, 1875, 2 R. 330. The admission of liability by Inverkip could not benefit Greenock—*Beattie v. Brown, supra*. Inverkip was the parish of birth and had no ground to resist liability in a question with any parish except Greenock.

At advising—

LORD ADAM—This is an action brought by the parish of Inverkip against the parish of Greenock to recover the amount of certain advances, made in respect of a pauper of the name of Mary Ann Hill from 29th April 1887 to 31st October 1891.

The parish of Inverkip is the parish of birth of the pauper. It is not disputed that the pauper had at one time a residential settlement in the parish of Greenock, and the question is whether or not the pauper had retained or lost that settlement when the advances in question were made to her.

The material facts are not in dispute, and will be found in the joint-minute of admissions by the parties.

It appears that the pauper was born in the parish of Inverkip in 1856, that she resided with her father in the parish of Greenock from 1863 to 1881, where he had acquired a residential settlement; and that on his death in June 1881 she then acquired a derivative residential settlement in that parish.

It further appears that she left Greenock in September or October 1881, and that she has never since resided in that parish.

It further appears that in April 1884 the pauper became a proper object of parochial relief when residing in the parish of Cardross, and that on 29th October 1884 statutory notice and a formal claim for relief were sent by that parish both to Inverkip and Greenock; that Inverkip admitted liability, that Greenock denied liability; and that the claim against Greenock by Cardross was formally withdrawn on 17th November 1885.

It further appears that the pauper con-

tinued to be a proper object of parochial relief until 19th August 1886, when she left Dumbarton Poorhouse in search of work.

Presumably she had found work and became self-supporting, because we hear no more of her until the 14th February 1887, when she again became chargeable to the parish of Cardross. On 12th March 1887 Cardross gave notice to Inverkip and Greenock. Inverkip admitted liability, Greenock did not.

I do not think it necessary to trace the history of this woman further, as from this time onwards she appears to have continued to be a proper object of parochial relief.

From the facts as I have stated them, it would appear that there is no evidence that the pauper received relief, or was a proper object of parochial relief, during upwards of five months from August 1886 till February 1887. I think that the presumption is that she was during these months self-supporting, and that the effect of that was to rehabilitate her from her previous state of pauperism. I think, accordingly, that the question which we have to decide in this case is, what was the parish of settlement of the pauper on the 14th February 1887 when she for the second time became chargeable to the parish of Cardross, and whether she had at that date lost or still retained her residential settlement in the parish of Greenock.

That depends on the construction of the 76th section of the Poor Law Act of 1845. The first part of that section provides for the acquisition of a settlement by residence, and the second for the retention of a settlement so acquired, and enacts "that no person who shall have acquired a settlement by residence in any parish or combination shall be held to have retained such settlement if during any subsequent period of five years he shall not have resided in such parish or combination continuously for at least one year."

In this case the pauper left Greenock in October or September 1881, upwards of five years before February 1887, the date when she became chargeable as a pauper, and never afterwards resided there. It appears to me, therefore, that she has not fulfilled the condition on which alone she was entitled to retain her settlement in that parish, viz., residence for one year out of the five years occurring subsequent to her leaving it.

But it is said by the pursuer that she was in receipt of parochial relief during a part of these five years, and that if the time during which she so received relief be deducted from the statutory five years, it will be found that the pauper had not lost her residential settlement by reason of non-residence, and he claims to have this deduction of time made on the ground, in law, that a person while a proper object of parochial relief can neither acquire or lose a settlement. The facts are as stated by the pursuer, but I do not think that his proposition in law is well founded.

He maintains, however, that it was so decided in the case of *Beattie v. Adamson*, and the Lord Ordinary is of opinion that

that case is directly in point and has decided the case adversely to the defender on its authority, at the same time expressing a strong opinion that but for that case he would have arrived at a different result.

But his Lordship's opinion as to the authority of *Beattie v. Adamson* is founded on a view of the facts in this case which I do not think is correct, and which I think cannot be sustained. "On 11th April," he says "when she—that is, the pauper Hill—was residing at Cardross, she applied for parochial relief, and on 19th May 1884 she was received into Dumbarton Poorhouse. It may be here said once for all that from that time forward she never ceased to be an object of parochial relief, and never was rehabilitated so as to be no longer entitled to ask for and receive relief." If that was the true state of the facts, they would have been similar to those in *Beattie v. Adamson*, and I should have come to the same conclusion as his Lordship, because I think that what that case decided was, in the words of the Lord President, "that the settlement of the pauper when relief is first given, remains the settlement so long as the pauperism continues," and this he says is a general principle of which there can be no doubt. I think that *Beattie v. Adamson* did no more than apply that rule to the facts of that case, and I think it is a sound rule and should not be disturbed. But as I have pointed out, the pauper in this case ceased subsequent to 1884 to be a subject of parochial relief and had been rehabilitated.

We are dealing with the settlement of a pauper in a new pauperism commencing in 1887, and the question is as to the effect to be given to a previously existing state of pauperism in determining that settlement. We are not dealing with facts emerging during an existing pauperism as in *Beattie v. Adamson*. No doubt in that case there are observations by the Judges which touched the question, particularly by Lord Benholme, to the effect that it is only when a man is not receiving relief that his absence for more than four years out of five causes the loss of his previously acquired industrial settlement—and by Lord Cowan to an opposite effect—but I do not think that the question was either raised or decided in that case, and that it is not an authority ruling the present case. That being so, I am of opinion, for the reasons fully and clearly stated by Lord Cowan and by the Lord Ordinary, and which need not be repeated, that the pauper having been absent from the parish of Greenock continuously for upwards of five years, has lost her residential settlement in that parish.

With reference to the case of *Johnston v. Black*, the ground of judgment is I think correctly stated by the Lord Ordinary, viz., that it proceeded on the fact that the parish of Ayton had admitted liability within the four years, and that the Court held that the pauper was in the same position as if he had been on their roll and resident in the parish. It would appear that some doubt has been thrown on the authority of that decision, but however that may be, it is an essentially different

case from this in which liability was repudiated and that repudiation acquiesced in.

The only other case to which I would refer is that of *Crawford v. Beattie* in 24 D. 357.

In that case the pauper had a residential settlement in the Barony Parish of Glasgow. In 1851 he left that parish. In 1854 he became a lunatic and was supported in an asylum by his friends for one year and ten months, when he became a pauper. The Court held that he had lost his residential settlement in the Barony Parish. In giving judgment the Lord President said—"The full period of time prescribed by the statute having elapsed betwixt the date of Biggar's (the pauper) migration and the date of his becoming chargeable, the only question in which the Barony Parish can, under the 76th section of the statute, have an interest, is whether during that interval he did or did not reside in the Barony Parish continuously for at least one year."

So I think here that the only question in which the parish of Greenock has an interest is whether the pauper resided continuously in that parish for one year after she left, and that, as that question cannot be answered in the affirmative, she cannot be held to have retained her settlement, and that consequently the interlocutor should be recalled and the defender assoi- zied.

LORD M'LAREN concurred.

LORD KINNEAR—I concur with Lord Adam. I do not think that the question is precluded by the decision in the case of *Beattie v. Adamson*. There certainly are observations to be found in the opinions of the Judges in that case, and particularly in the opinions of Lord Cowan and Lord Benholme, which may seem to support the interpretation of the decision which the Lord Ordinary has arrived at. But then Lord Cowan dissented from the judgment, and considered that it necessarily involved the proposition which the majority of the Court rejected. Lord Benholme's observations must be read with reference to the special facts of the case, and to the previous opinion which had been delivered by the Lord Justice-Clerk, the late Lord President. It appears to me that the true grounds of judgment must be sought in the opinion of the Lord Justice-Clerk and the interlocutor of Court; and, going to these sources, I agree with Lord Adam that the decision is not unjust to the doctrine which the judgment proposed to lay down, that when a pauper having a residential settlement obtains relief during a period of non-residence, the period of chargeability must be deducted in computing the period by non-residence during which he is said to have lost his residential settlement.

Now, the points which were raised for decision in the case of *Beattie v. Adamson* are very clearly brought out in the Lord Justice-Clerk's opinion. In the first place, the Court held that a pauper, who was in that case the child of an able-bodied

person, had in respect of her own state of health a claim of relief in her own right. The child being a proper object of relief in its own right, the question came to be whether its settlement was in one parish or in another. Now, apart from that specialty, with which we have no concern here, the case appears to me to have decided three things. In the *first* place, that when a child has acquired a derivative settlement from its father, that becomes its own settlement to all intents and purposes—that proposition, which had been established by previous decisions, is the first step in the argument of the Lord Justice-Clerk towards the conclusion at which he ultimately arrived. *Second*, that no loss of settlement by an able-bodied father can in any way affect the settlement acquired in its own right by his child; and *third*, that the settlement of a pauper being a proper object of relief, remains his settlement so long as the pauperism is continuous. I do not think that it is possible to find in the opinion of the Lord Justice-Clerk any other legal propositions than these. He begins by considering the special question which I have adverted to—whether the child was a proper object of relief in its own right or not—and then having answered that question in the affirmative, he goes on to ask what was the child's settlement when she first obtained relief? As to that there was no question. Then he says—"But then it is said that further in 1858 and 1859 her father lost that settlement by allowing five years to pass by without residing twelve months in the City Parish." And his answer to the argument founded upon that proposition is, that if the child had followed the father's settlement there might have been a question. Then he says—"No loss of settlement by the father who continues able-bodied can in any way affect the settlement of the child who has become a proper object of relief. Therefore it appears to me that the City Parish was the settlement of the child when she became chargeable, and will remain so as long as she continues chargeable." Then his Lordship goes on in the last sentence of his opinion to lay down the general proposition that the settlement of the pauper when relief is first given remains the settlement so long as the pauperism continues. The interlocutor contains a series of findings to the same effect, and it is quite impossible to extract from any of them any support whatever for the conclusion which the Lord Ordinary rightly enough rejects, that the mere fact of a person recovering parochial relief in one parish is sufficient to prevent the loss of a residential settlement in another.

Now, that decision being out of the way here, I am of opinion with Lord Adam that there can be no question at all as to the proper application of the statute to the circumstances of the present case.

The LORD PRESIDENT concurred.

The Court recalled the Lord Ordinary's interlocutor and assolized the defender.

Counsel for the Pursuer—J. A. Reid—Lees. Agents—J. & J. H. Balfour, W.S.

Counsel for the Defender—Guthrie—Graham Stewart. Agents—R. R. Simpson & Lawson, W.S.

Tuesday, November 14.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.

SADLER AND OTHERS v. THE INCORPORATION OF TAILORS OF AYR; AND WEBSTER AND OTHERS v. THE INCORPORATION OF TAILORS OF AYR.

Incorporation—Trust—Illegal Administration—Attempt to Exclude New Members—Reduction of Minutes.

Members of an incorporation benevolent scheme fund are trustees for themselves and for future members, and are not entitled to administer the scheme in such a way as to secure to themselves the benefits of the trust to the exclusion of others of the class for whose benefit the scheme was instituted.

Rules for regulating a benevolent Scheme Fund in connection with the Incorporation of Tailors of Ayr were framed in 1805. By these the age for admission was fixed at 40, and it was enacted that "should it be necessary for the advancement of the fund to alter any of the articles," such alteration should be under discussion for three months. After 1846, as a consequence of the passing of the Act which took away the exclusive right of trading from corporations in burghs, applications for admission almost ceased. In 1860 the members, being then only five, in furtherance of a scheme for securing to themselves the whole benefit of the scheme, and for excluding new members, by minute, duly confirmed after three months, reduced the age limit to 30. No new members were admitted between 1855 and 1891, when S., M., and L., all under 30, were admitted after litigation. While their right to admission was under dispute, the only remaining members, two in number, at a meeting in June 1891, suspended the standing orders of 1805, forthwith fixed the age limit once more at 40, and thereafter admitted W., F., and C. as members although all over 30 years of age.

An action was brought by S., M., and L. to have the minutes extending the age and admitting W., F., and C. reduced, and these three persons declared not to be members; while W., F., and C. brought an action to have themselves declared duly admitted, and if necessary to have the minutes of 1860 reduced.