Friday, November 19.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

MAIN *v.* CLARK'S TRUSTEES.

Succession — Trust — Legitim — Equitable Compensation—Bequest to Daughter in Liferent and Grandchildren in Fee with Liferent Delayed till Death of Annuitant —Advances under Trusts Acts for Maintenance of Grandchildren—Incidence of Advances—Trusts (Scotland) Act 1867 (30 *and* 31 *Vict. cap.* 97), *sec.* 7.

A testator, who died in 1882, left the residue of his estate to be liferented after the death of his widow, to whom he bequeathed an annuity, by his five daughters in equal shares, and to go in fee to their children. A daughter claimed and received legitim, reserving in the discharge her rights under the trust-disposition after compensation. The income of the trust left a large surplus after meeting the annuity to the widow. In 1895, at the instigation of the daughter, the trustees under the Trusts (Scotland) Act 1867, sec. 7, on the narrative of this surplus income "for the disposal of which in the events which have occurred the said trust-disposition makes no provision, and which will fall to be accumulated for the benefit of the truster's grandchildren," applied to the Court for power to make advances "out of the aforesaid surplus income undisposed of" for the maintenance, education, and upbringing of her children, and received power to make certain advances "out of the funds of the said trust estate undisposed of." In 1898 the widow died, and in 1906 the daughter claimed the liferent of a share of the residue on the ground that compensation for the withdrawal of her legitim had been fully made. She maintained that the whole amount of her children's said advances should be debited against their interest in the capital of the trust funds. The trustees maintained that these should be charged against the annual income which would have fallen to the daughter had she not elected to take her legitim.

Held—*altering* judgment of Lord Ordinary (Mackenzie)—that in estimating to what extent compensation to the estate had been made, the advances for the maintenance of the grandchildren, both up to the widow's death and thereafter, fell to be charged against the capital falling to the grandchildren; but the daughter was not entitled to be credited with anything as interest on those advances, the trust having *de facto* received no interest.

[*Vide Clark's Trustees*, June 19, 1895, 22 R. 706, 32 S.L.R. 511.]

On 16th June 1908 Mrs Katherine Margaret Clark or Main, wife of Robert Baillie Main, gas engineer in Glasgow, brought an action against William Clark and others, trustees of her father the late Peter Clark, wine and spirit merchant, Glasgow, and also against the beneficiaries under the trust. In it she sought declarator (1) that the pursuer by taking legitim from her father's estate did not surrender the benefits of the provisions in her favour contained in his trust-disposition beyond the amount necessary to make compensation out of the said provisions to the beneficiaries under the residuary destination for any loss occasioned to them through the withdrawal of legitim; (2) that by the application of the benefits of the pursuer's provisions in the hands of her father's trustees towards the purpose of compensation, full compensation had already been made; (3) that in respect of such compensation having been made she was entitled to receive the benefit of the provision in her favour of the liferent of one fifth of the residue. Conclusions for an accounting followed.

The trustees defended the action. The question between the parties was how certain advances made under the authority of the Court—*Clark's Trustees* (*cit. sup.*)—to the pursuer for the maintenance of her children, fiars of the residue, was to be charged, *i.e.*, whether against the compensating fund, the pursuer's liferent, or the grandchildren's fee, capital. It had already been decided—*Clark* v. *Clark's Trustees*, 14th December 1906, 13 S.L.T. 694, *per* Lord Ordinary (Salvesen)—that the doctrine of equitable compensation was applicable.

The *facts* are given by the Lord Ordinary (MACKENZIE), who on 6th March 1909 pronounced the following interlocutor:—"Finds and declares in terms of the first conclusion of the summons: Further finds that in making compensation the provisions for which the pursuer is entitled to credit are (1) one-fifth of £100 a-year from 14th September 1882 to 30th September 1885, with interest thereon at the average rate earned by the trust estate from the respective dates when payments should have been made; (2) £500 with interest at said rate from 30th September 1885; (3) the annual sums to which the pursuer is entitled under the liferent right conferred on her by the last purpose of the trust-disposition and settlement, under deduction of (*a*) the amount falling to her under head (2), and (*b*) the annual sums paid subsequent to 26th March 1898 under orders of the Court for the maintenance, education, and upbringing of her children: *Quoad ultra* continues the cause, reserving question of expenses: Grants leave to reclaim."

Note.—[*After stating the first conclusion of the summons*]—"There is no dispute that the pursuer is entitled to decree in terms of this conclusion, the point having already been decided in *Clark* v. *Clark's Trustees*, 1906, 13 S.L.T. 694. She will therefore have right to receive her share of the income originally destined to her as soon as the trust has been fully compensated. [*His Lordship then narrated the second conclusion of the summons.*] The cir-

cumstances of the trust are as follows —The late Peter Clark died in 1882. By the settlement the provisions in favour of the widow and children were declared to be in full of their legal rights. The testator's widow accepted the testamentary provisions in her favour, but his five daughters claimed and were paid their legitim. In the discharge they granted their rights were reserved under the trust-disposition and settlement after compensation had been made.

"By the fifth purpose of the settlement the testator directed his trustees to set aside and invest out of the residue of his estate a sum sufficient to secure an annuity of £600 to his widow so long as she remained unmarried, restrictable in the event of her second marriage to £100.

"By the sixth purpose he declared that so long as his wife should remain unmarried it was his desire that his children should remain in family with her so long as they remained unmarried, and he directed his trustees to pay to his wife an allowance of £100 a-year for each of his daughters so long as they should continue to reside with her, for their maintenance, clothing, and education.

"By the seventh purpose he directed his trustees, upon the occasion of any of his daughters marrying with their consent and approval, to pay to her the sum of £500 as a marriage outfit, said sum to be 'deducted from the share of residue of such daughters falling to them as after provided, when the final division of my means and estate takes place.'

"By the eighth purpose the testator left an annuity of £60 a-year to his sister Mrs Bryce.

"By the last purpose of the settlement the truster gave directions regarding his estate in the event of his wife marrying again (which event did not occur), and went on to provide as follows:—'And upon the death of the survivor of my said wife and my sister, the said Mrs Flora Clark or Bryce, I direct my said trustees to hold and retain the whole residue and remainder of my means and estate for behoof of my whole surviving children, viz., Jane Clark, Jessie Flora Clark, Catherine Margaret Clark, Henrietta Alexandrina Clark, and Elizabeth Clark, equally among them, share and share alike, and the survivors and survivor of them in liferent, for their liferent alimentary use of the free annual proceeds thereof only, and their respective lawful issue in fee, equally among them *per stirpes*, declaring that in case any of my said children shall decease leaving lawful issue, such issue shall succeed always in room of their respective parents, which shares shall not be payable to the beneficiaries entitled to the same until they respectively attain the age of twenty-one years complete in case of males, or in the case of females until they attain that age or are married, whichever of these events shall first happen: And I declare that the whole of the foregoing provisions shall vest in the beneficiaries under these presents at and upon the arrival of the respective periods of payment thereof.'

"The amount of legitim paid to the pursuer was £5341, 10s., or including interest to date of payment, £5572, 8s. 9d. Certain advances have been made under the authority of the Court for the maintenance, education, and upbringing of the children of the pursuer. The question whether full compensation has now been made to the trust estate depends upon how these advances are to be dealt with. The pursuer maintains that the whole amount, £6062, 17s. 9d., should be debited against her children's interest in the trust funds. The trustees maintain that they should all be charged against the income now falling to the pursuer.

The proceedings in the petition under which these advances were authorised are reported under the name of *Clark's Trustees*, 22 R. 706. From the report it appears that the income of the trust investments for the year then current exceeded £3400, and that, after deducting the widow's annuity and other expenses, there was a surplus income of at least £2700 a-year, 'for the disposal of which,' as the petitioners averred, 'in the events which have occurred, the said trust-disposition and settlement makes no provision, and which will fall to be accumulated for the benefit of the truster's grandchildren.'

"The petition contained these further statements—'The petitioners have been applied to by Mr Clark's two married daughters, on behalf of their respective families, who will ultimately become entitled to shares of the fee of the estate, for a payment to each of them out of the aforesaid surplus income undisposed of by the testator to assist them in maintaining and educating their children in a more liberal way than their present means enable them to do, and in a manner more suitable to the fortune which the children will inherit. . . . In these circumstances the petitioners are satisfied of the propriety of making the payments now asked out of the undisposed-of income of the estate.' The application was made to the Inner House in virtue of its *nobile officium* and of its powers under section 7 of the Trusts Act of 1867.

"The interlocutor pronounced was in terms of the prayer of the petition, and was as follows:—'Authorise and empower the petitioners, as trustees of the deceased Peter Clark, merchant, Glasgow, to pay and apply out of the funds of the said trust estate undisposed of by the said deceased, for the maintenance and education and upbringing of the children born or to be born of Mrs Jessie Flora Clark or Main and Mrs Catherine Margaret Clark or Main, to the extent of the sum of not more than £500 per annum to each family, and that for the period of two years from the 15th day of May 1895, and decern *ad interim*.'

"The truster's widow did not die until 26th March 1898, and it was not until then that the pursuer's liferent right under the last purpose of the trust-disposition and

settlement commenced to run. Until it commenced the surplus income would under the residue clause go to increase the capital destined ultimately to the truster's grandchildren. The effect of the order of the Court was to diminish the fund which would go to augment the capital destined to the grandchildren under the residue clause. The payments for the benefit of the children were continued and increased under subsequent notes presented to the Court, the interlocutors in which were dated 6th March 1897 and 14th July 1900, and are set out in the note dated March 11th, 1905, a print of which has been produced in the present proceedings. In each of the interlocutors the funds out of which payments were directed to be made are described as funds undisposed of by the truster. Although this might be a correct description of the position of the surplus income prior to the death of the pursuer's mother on 26th March 1898, inasmuch as there was no express provision dealing with surplus income which therefore fell within the scope of the residue clause, no part of the income could, strictly speaking, be said to be undisposed of after 1898. The income as well as the fee of what was destined to the pursuer and her family were expressly dealt with by the residue clause, the mother took the liferent and her children the fee. The trustees have debited the whole amount of the advances to the children against the income of the pursuer's share and maintain that they were right in doing so. The pursuer says that the whole should be debited against the share of capital falling to her children.

"I am unable to agree with either of the views submitted. I think regard must be had to what it is that the Court has done. The pursuer, though not directly a party to the petition, took the initiative by asking the trustees to present the petition on the footing above set forth. The payments for the benefit of the children commenced under the interlocutor of June 19th, 1895, as from the 15th of May 1895. It is directed by that interlocutor that these payments are to be taken out of the funds undisposed of by the truster. This can only mean that the payment was to be out of income. In no sense could it ever have been said that the capital originally destined to the children was undisposed of. No doubt if the payments had not been taken out of the income the amount to be added to the capital would have been so much larger, but the fact remains that the payments were made from income and nothing else. During the period from 15th May 1805 to 26th March 1898 the pursuer was not entitled to draw anything from the trust estate. I am therefore unable to see how her provisions can be debited with any portion of the advances prior to 26th March 1898.

"After that date it appears to me the position of matters is changed. The pursuer was then entitled, according to the terms of the trust-disposition and settlement, to draw the liferent of the capital destined to her children. The sums falling to her under this liferent would then have become available to recoup the trust estate for the amount of legitim she had taken. The pursuer, however, cannot in the circumstances of the present case say that the whole of this income was available to make equitable compensation. She was a party to asking the Court, through the trustees, to authorise payment out of this income of sums for the benefit of her children. This the Court sanctioned. The Court was never asked to sanction any advances out of the capital destined to the children, and never did. The payments were authorised to be made out of what was income and not capital. The trustees have not got in their hands the sums which would have fallen to the pursuer, and therefore cannot apply them in recouping the estate for the legitim she has taken. In my opinion, the estate must be taken as it stands in point of fact. The result of this opinion is that the only funds the pursuer is entitled to maintain are available to make compensation are the sums which would have fallen to her under her liferent, under deduction of the sums annually paid for the benefit of her children subsequently to 26th March 1898.

"Two other matters remain—first, in regard to the allowance of £100 a-year dealt with in the sixth purpose of the settlement. I understood the pursuer's counsel to admit that as this allowance is not charged specifically against the pursuer's share, but falls to be paid out of the general estate, she was only entitled to credit for one-fifth of the amount.

"The next question relates to the sum of £500 provided as a marriage outfit under the seventh purpose of the trust settlement. The provision is that this sum was to be paid in the event of any of the truster's daughters marrying with the consent and approval of the trustees. It is said this consent and approval was never applied for or given. On the other hand, there is no suggestion that the trustees would have withheld their consent and approval had they been asked. Three of the five acting trustees in 1885 are now dead. It appears to me that the point is not material, in consequence of the declaration that this sum of £500 is to be deducted from the share of residue falling to the pursuer. It is true that there is no sum of capital falling to her under the residue clause, but I think it quite legitimate to take the view that the truster did not intend the £500 to be over and above what his daughter might take under the residue clause. Of course, if she did not survive her mother she would not be entitled to anything from which the £500 could be deducted. If, however, as is the case here, she did, then I think the £500 should be deducted from the liferent. I think the pursuer is entitled to the £500, but that in stating the account the amount which is credited to her under this head must be debited against her liferent.

"An argument was submitted that the pursuer was entitled in computing the amount of her liferent to credit for the

amount of the interest on advances made to the children. In the view I take this would only apply to interest on the advances between 15th May 1895 and 26th March 1898. I think the estate must be taken as it stands; *de facto* this interest is not in the hands of the trustees to recoup the estate for the legitim taken. I do not think the pursuer is entitled to credit for it."

The pursuer reclaimed, and argued—The only part of the interlocutor which was challenged was the finding which dealt with the advances paid under orders of Court subsequent to the widow's death. Those advances also should be debited against the capital falling to the children. The petition had been under sec. 7 of the Trusts Act 1867—*see Clark's Trustees*, June 19, 1895, 22 R. 706, 32 S.L.R. 511. Under that statute the Court had no power to do anything other than make an allowance out of capital. Unappropriated income was capital—*Ross's Trustees*, July 14, 1894, 21 R. 995, 31 S.L.R. 812. The income which would have fallen to the pursuer should be accumulated in the hands of the trustees. If those advances to the amount of £6000 had not been made, that sum bearing interest would have gone to meet the pursuer's equitable compensation. Furthermore, the advances made subsequent to the widow's death in 1898 ought to be held to apply to income accumulated before that date. What the Court dealt with throughout was the income undisposed of by the settlement—that was the surplus income up to 1898. The pursuer was entitled in computing the amount of her liferent to credit for the amount of the interest on the advances made to the children.

Argued for the defenders (respondents)—There was a manifest distinction between what happened prior to 1898 and thereafter. As the advances to the children subsequent to 1898 were rendered necessary because the pursuer elected to take legitim, she was personally barred from insisting that they should be paid out of capital. Had she accepted the provisions of her father's will she would have had ample funds after her mother's death to maintain and educate her children. It was the duty of a parent to maintain his or her children. The principle was that a parent's funds are liable *primo loco* for their education and maintenance—Ersk. Inst., i, 6, 56, note *e*. The advances should therefore be paid out of income. It was only the balance of accumulated income that remained after charges of every kind had been met that became capital. In *Clark's Trustees* (*sup. cit.*) it was stated that what was asked was a payment out of "income undisposed of." The undisposed income was what the Court was dealing with. It was undisposed of *qua* income. There was no income to which the children were entitled; there was capital to which they would be entitled when equitable compensation had been fully made. If the pursuer were successful, her action in taking legitim would be to the prejudice of the fiars. That was not the law—*Dixons* v. *Fisher*, July 1, 1833, 6 W. & S. 431. The case of *Muir's Trustees* v. *Muir*, December 22, 1899, 37 S.L.R. 257, was referred to. The Lord Ordinary was right as regards the question of interest on the advances.

LORD ARDWALL.—I think that two corrections require to be made on the interlocutor of the Lord Ordinary. The first is under head (1), where it seems a slip has occurred. Both parties are agreed that the three words "one-fifth of" should be deleted, and that the following words should stand under heading 1, "£100 a-year from 14th September 1882 to 30th September 1885." The other correction which I would propose that we should make is this—that we should not do as the Lord Ordinary has done, and make a deduction of the annual sums mentioned under letter (*b*) at the close of the interlocutor, viz., "The annual sums paid subsequent to 26th March 1898, under orders of the Court, for the maintenance, education, and upbringing of her children." The question which has been argued to us is whether these sums are to be taken out of the capital of the estate, the fee of which ultimately falls to the children, or whether they are to be taken out of the annual income which but for her claiming legitim would have fallen to Mrs Main after the death of her mother. Now I am of opinion that they ought to be taken out of the capital which ultimately falls to the children. In the first place, all the applications which were made to the Court for these advances were made under section 7 of the Trusts Act 1867, and that section authorises advances to children to be made out of capital, and although it was said in the course of these applications and in the course of the argument that the capital there was spoken of as largely composed of accumulated income, yet that was merely for the purpose of showing the Court that the estate had been increasing in amount, and therefore that it might very properly form a fund out of which such allowances to the children might be paid. The fact remains that it was out of capital that these advances were to be paid. It is now proposed that instead of being paid out of capital the advances since 1898 should be paid out of the income which would have fallen to be paid to Mrs Main had she not elected to take her legitim, but which since she chose her legitim now comes (under the rule of equitable compensation) to be paid to the trustees. Now that being so, I think that if the payments to children are deducted from that annual income, they are really being deducted from Mrs Main's share of the income of the estate and nothing else; for the result would be, if the Lord Ordinary's interlocutor were to stand, that it would be longer until the amount which she withdrew from her father's estate in name of legitim is fully compensated, and consequently longer until she begins to get the share of income provided to her under her father's settlement. In this way these advances would really come out

of the income which falls to her, and not out of the capital of the estate of which the children are ultimate fiars. Accordingly, I propose that we should disallow the deduction which the Lord Ordinary has made, and hold that Mrs Main is entitled to credit for the full amount of her share of income, under deduction of the amount falling under head (2), but not under deduction of the annual sums paid to or for her children subsequent to 26th March 1898. There is only one other matter of which I require to take any notice, and that is with reference to the sums of interest mentioned in the last paragraph but one of the Lord Ordinary's note. Upon that matter I agree with the view that the Lord Ordinary has taken. No interest is *de facto* in the hands of the trustees, and I think it would be out of the question to deal with a fictitious sum as forming in any way a sum for which Mrs Main is entitled to credit.

LORD LOW—I have come to the same conclusion as that arrived at by Lord Ardwall.

In the petition which was presented to the Court in 1895, what was asked by the trustees, and what was granted, was authority to pay and apply yearly for behoof of the pursuer's children, £500 out of the surplus income of the trust estate which remained after paying the widow's annuity of £600, and as to the disposal of which, so long as the widow survived, the truster had given no directions. In granting authority to the trustees to make the payments, the Court proceeded upon the 7th section of the Trusts Act 1867, which empowers the Court to authorise advances to minor descendants of a truster out of the capital of a fund destined to them. Now the fee of one-fifth of the residue of the trust estate was destined to the pursuer's children, and the surplus income, not being otherwise disposed of by the testator, fell into residue, and became part of the capital of the trust estate. Accordingly the Court felt justified in authorising the trustees to pay, for behoof of the pursuer's children, a yearly sum of £500 out of the surplus income, as being truly part of the capital destined to them.

The payment was only authorised for a short period of years, and when that period expired the application was renewed and authority was again given for a further period of years. It was, I think, during the currency of the second period that the truster's widow died in 1898. Now, if the pursuer had not claimed legitim that event would necessarily have put an end to any further payments to her children out of income, or at all events out of income accruing after that date, because under the settlement the pursuer was entitled to the liferent of the share of the residue destined to her children in fee. As, however, she had claimed legitim she was not entitled to enjoy the liferent until by accumulation of the income which would otherwise have been payable to her, the amount withdrawn from the estate as legitim had been restored. In these circumstances the trustees, notwithstanding the death of the widow, continued payment of the £500 a-year under the authority already obtained and not only so, but in 1902, when the period for which payment had last been authorised expired, they again applied to the Court for authority to continue the payment for another period, and that authority was granted. In the note which was then presented to the Court the fact that the widow was dead was not disclosed. It is idle to speculate upon what the Court would have done had that fact been disclosed, because the authority craved was granted and the payments have been made. I take it that the view upon which the trustees acted must have been that there was still income undisposed of by the truster which was truly part of the capital destined to the pursuer's children. And that was indeed the case, because the pursuer having rejected her conventional provisions and taken legitim could not claim her liferent under the settlement, and accordingly there was no direction of the testator which regulated the disposal of the income which would otherwise have fallen to her. On the other hand the law, in accordance with the principle of equitable compensation, required the trustees to accumulate that income for the purpose of restoring to capital the amount which had been withdrawn as legitim. Therefore, although it arose in somewhat different circumstances, the situation was practically the same after the widow's death as before that event. In both cases there was income of the trust funds which was not subject to any disposition which the truster had made, and in both cases that income was truly capital destined to the pursuer's children.

Now it is to be remembered that the payments were authorised by the Court under the Trusts Act 1867, and that that Act only empowers the Court to authorise payments out of capital, and therefore the payments before the widow's death out of surplus income, and after her death out of income which would have fallen to the pursuer had she not claimed legitim, could only have been made upon the footing that they were capital. It seems to me that the position of matters would have been exactly the same if after the widow's death the whole income of the share of the residue destined to the pursuer's children had first been added to the capital and then a sum of £500 a-year had been paid to them out of the capital. If, however, that had been the method adopted there could have been no question that the whole of the income to which the pursuer would have been entitled if she had not claimed legitim had been applied for the purpose of restoring to the trust estate the amount withdrawn as legitim. But that is in effect what has been done, the only difference being that the unnecessary procedure of first carrying the £500 to capital, and then paying that amount out of capital, has not been gone through. I am therefore of opinion that the Lord Ordinary was wrong

in holding that the various sums of £500 paid to the pursuer's children since the widow's death do not fall to be credited to the pursuer in estimating to what extent she has made compensation. As regards the question of interest, I agree with Lord Ardwall that the Lord Ordinary was right.

The LORD JUSTICE-CLERK concurred.

The Court pronounced this interlocutor—

"Vary the said interlocutor by deleting therefrom the words 'one fifth of' occurring before '£100,' and also the words, "and (*b*) the annual sums paid subsequent to 26th March 1898 under orders of the Court for the maintenance, education, and unbringing of her children": *Quoad ultra* adhere to the said interlocutor reclaimed against, and decerns: Remit the cause to the said Lord Ordinary to proceed," &c.

Counsel for Pursuer (Reclaimer) — Maclennan, K.C.—Macdiarmid. Agents—Skene, Edwards, & Garson, W.S.

Counsel for Defenders (Respondents) — Hunter, K.C. — Malcolm. Agents — Carmichael & Miller, W.S.

Saturday, November 20.

SECOND DIVISION.

(Before Seven Judges.)

[Sheriff Court at Banff.

ABERDEEN PARISH COUNCIL *v.* BANFF PARISH COUNCIL.

Poor — Statute — Settlement — Derivative Residential Settlement—Poor Law (Scotland) Act 1898 (61 *and* 62 *Vict. cap.* 21), *sec.* 1—*Chargeability of Husband before Commencement of Act—Industrial Residence for Three Years Prior to Chargeability—Chargeability of Widow after Commencement of Act.*

The Poor Law (Scotland) Act 1898, which under section 10 came into force on 1st October 1908, by sec. 1, repeals section 76 of the Poor Law (Scotland) Act 1845, which provides that no person shall be held to have acquired a settlement in a parish unless he has resided continuously for five years therein, and in lieu thereof enacts that "from and after the commencement of this Act no person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall, either before or after, or partly before and partly after, the commencement of this Act, have resided for three years continuously in such parish, 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. . . . Provided always that nothing herein contained shall, until the expiration of four years from the commencement of this Act, be held to affect any persons who at the commencement of this Act are chargeable to any parish in Scotland."

S, an Irishman by birth, resided in the City Parish of Aberdeen from 9th November 1893 to 16th September 1897, and maintained himself without having recourse to common begging, and without having received or applied for parochial relief, but from the latter date till his death on 27th February 1905 he was almost continuously in receipt of relief from that parish. On various dates in 1905, 1906, and 1907 S's widow, who was born in the parish of Banff and was married to S on 9th November 1893, applied for and received parochial relief from the City Parish Council of Aberdeen. That Parish Council raised an action against the Parish Council of Banff concluding for repayment of the sums expended in the relief of Mrs S.

Held by a majority of Seven Judges—*diss.* the Lord Justice-Clerk, Lord Ardwall, and Lord Johnston—that in respect of S's three years' residence in Aberdeen prior to 16th September 1897, Mrs S had acquired as at the effective date of her chargeability a derivative residential settlement in Aberdeen, and that the City Parish Council of Aberdeen had therefore no claim of relief against the Parish Council of Banff.

Parish Council of Falkirk v. *Parish Councils of Govan and Stirling*, June 12, 1900, 2 F. 998, 37 S.L.R. 759; and *Parish Council of Stornoway* v. *Parish Council of Edinburgh*, July 17, 1902, 4 F. 998, 39 S.L.R. 848, *considered;* and *Parish Council of Falkirk* v. *Parish Councils of Govan and Stirling, approved.*

Opinion (*per* Lord President) that since the decision of the House of Lords in *Parish Council of Rutherglen* v. *Parish Council of Glasgow*, May 15, 1902, 4 F. (H.L.) 19, 39 S.L.R. 621, no reliance could be placed on *Hay* v. *Skene*, June 13, 1850, 12 D. 1019, and that *Greig* v. *Simpson and Craig*, May 16, 1876, 3 R. 642, 13 S.L.R. 423, *had been overruled.*

Observations (*per* Lord Kinnear) on the dicta of Lord President M'Neill in *Robertson* v. *Stewart*, December 12, 1854, 17 D. 169, and of Lord Justice-Clerk Inglis in *Hay* v. *Carse*, February 24, 1860, 22 D. 872, as to the meaning of the term "settlement."

The Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), sec. 1, is quoted *supra in rubric.*

The Parish Council of the City Parish of Aberdeen raised an action in the Sheriff Court at Banff against the Parish Council of Banff concluding for various sums expended by the pursuers in the maintenance of a pauper, Mrs Isabella Pirie or Smith. The question at issue was whether the pauper had a derivative residential settlement in the pursuers' parish or not.