

to be regarded as of general application, create some difficulty, for the position of William Taylor is in some respects not unlike that of the invalid's father in the case of *Knox v. Hewat*. But there are two points of distinction which I think justify us in dealing with *Knox's* case as exceptional and special. The first is that the support of a permanently invalided daughter of seventeen is a different kind of burden from the support of children under puberty; and the second, which is more vital, is that the father was admittedly unable to work in wet weather through physical disability. In *Taylor's* case there was no physical disablement, although there may have been a disinclination for hard work which had become constitutional. I think it would be dangerous to hold that in determining whether a man is able-bodied within the meaning of the poor law, regard should be had to anything but the physical (in which I include mental) condition of the man himself; and it seems illogical to hold that a person supporting himself by work and paying poor rates, and so not entitled to parochial relief in his own right, must be treated as a pauper because of the extent of his family burdens.

As regards the legal question, I concur with Lord Dundas. The only point in the case which makes it special is that the discovery of the deserting father in an adjoining parish very soon after he had acquired a residential settlement there (which is the change of circumstances relied on) rather suggests a suspicion that no very strict inquiry was made as to his whereabouts till it was likely to prove fruitful. But even so taking it, the change had occurred without the connivance of the relieving parish's inspector and by the act of Taylor himself. This acquisition of a new settlement is a positive fact which is to be distinguished from the mere lapse of the period of time which involves the loss of a residential settlement, and in this case, as in that figured by the Lord President in the *Leith* case, involved a change of chargeability. I am therefore for recalling the judgment appealed from.

LORD JUSTICE-CLERK—I concur. I hold that the true test to be applied to such a case as this is found in the question, Has it been proved that the pauper is not able-bodied? If the evidence led on the part of those who aver that he is not, does not prove as fact that he is not, they cannot obtain a favourable answer to any plea founded on the averment. I think it would be a very dangerous thing to deal with cases where there is a disinclination to work as being cases of inability, except upon very clear grounds in fact. Here I entirely concur with your Lordships that there is not ground for holding that William Taylor was not to be classed among the able-bodied in the sense of the poor law.

Taylor's children obtained relief, they being necessitous, and therefore proper objects of relief in their own right, being deserted by their father. He was then, when

found, dealt with as able-bodied, and therefore capable of acquiring a settlement.

But for *Knox's* case I should have had no difficulty. But as I agree with what your Lordships have said, I do not accept that exceptional case as ruling the present, but concur with your Lordships in holding that this case is distinguishable from *Knox*.

LORD ARDWALL was absent.

The Court pronounced an interlocutor sustaining the appeal, finding in fact in terms of the Sheriff-Substitute's first four findings in fact, and further "(5) that in or about May 1906 the said William Taylor left the pursuers' parish, and was not traced until on or about 9th July 1909, when he was found to be residing in the defenders' parish, where he had acquired a residential settlement; and (6) that on 14th July 1909 the pursuers intimated to the defenders that the said William Taylor had lost his settlement in Old Machar, and called on them for relief from the future maintenance of the said children: Find in law (1) that in December 1905 the said children had a derivative settlement through their father in the pursuers' parish; (2) that as and from 14th July 1909 the pursuers are not liable for the maintenance of the said children; and (3) that it falls to the defenders to take steps to make the said William Taylor support his said children, or otherwise, as they may be advised: Therefore decern against the defenders in terms of the crave of the initial writ."

Counsel for Pursuers and Appellants—Sandeman, K.C.—A. M. Mackay. Agents—Macpherson & Mackay, S.S.C.

Counsel for Defenders and Respondents—Chree—A. R. Brown. Agents—Alex. Morison & Co., W.S.

Thursday, August 17.

BILL CHAMBER.

[Lord Kinnear.

LOGAN, PETITIONER.

Entail—Provisions to Widow and Children—“Free Yearly Value”—*Aberdeen Act 1824* (5 Geo. IV, cap. 87)—*Mansion-House*—*Old Mansion-House within Burgh having Ceased to be Used as such*.

In a petition presented by an heir of entail in possession of an entailed estate, to have the amount of the annuity provisions, granted by his predecessor in favour of wife and daughters, fixed, and to have the latter charged on the entailed lands, held (*per* Lord Kinnear) that in the free yearly value of the estate, which lay entirely within a burgh, there was rightly included the rent of a house which was the old mansion-house of the estate but which had ceased to have that character.

This was a petition presented by Crawford William Logan, heir of entail in possession of the lands of Westmarch, situated in the burgh of Paisley. The object of the petition was to have fixed and restricted the amount of the annuity and provisions granted by his predecessor in possession of the entailed estate in favour of his wife and daughters, in terms of the Aberdeen Act 1824 (5 Geo. IV, cap. 87), secs. 1 and 4, and to obtain authority to charge the entailed lands with the amount of the daughters' provisions.

On 28th April 1911 the Lord Ordinary appointed a curator *ad litem* to the three nearest heirs next in succession to the entailed estate, who were in minority, and further remitted the petition to Mr John Kinmont, S.S.C., to inquire and report.

In his report the reporter drew attention to the fact that the petitioner had produced a statement showing the free rental of the estate for the year ending Whitsunday 1910, in which was included the rent of the mansion-house. The reporter referred to *Leith*, June 10, 1862, 24 D. 1059, but stated that in the present case the house in question, although the old mansion-house of the estate, had no longer the characteristics or amenity of a mansion-house of an entailed estate, and that the petitioner did not object to the rent of the mansion-house being included in the rental of the estate for the purposes of fixing the annuity and provisions, and charging the latter by bond and disposition in security. The curator *ad litem* for the next heirs of entail, however, objected to the inclusion of the mansion-house for these purposes.

The Lord Ordinary on the Bills (LORD KINNEAR) fixed the annuity and provisions at sums calculated on the footing that the rent of the mansion-house fell to be included in the rental of the lands chargeable therewith, and authorised the petitioner to charge the entailed lands (including the mansion-house) by bond and disposition in security for the amount of the daughters' provisions.

Counsel for the Petitioner — Cowan.
Agent—F. J. Martin, W.S.

Saturday, November 4.

FIRST DIVISION.

[Sheriff Court at Leith

HALVORSEN v. SALVESEN AND
OTHERS.

Master and Servant—Workmen's Compensation Act 1906 (6 Edw. VII, c. 53), sec. 1 (1)—Accident Arising "Out of" the Employment—Engineer Returning to Ship.

A ship's engineer who was on shore for a legitimate purpose, in order to get back to his ship, then at anchor about 100 yards off the shore, got into a six-oared lifeboat, 27 feet in length, which he found lying at the jetty, and which in ordinary circumstances would

have been manned by six men, each with an oar. It had in it its rudder but no oars. He attempted to reach the ship by paddling with the rudder, trusting to the wind and tide, which were both in his favour, carrying him towards the ship. He was carried out to sea and was drowned.

Held that the accident did not arise out of and in the course of the deceased's employment.

Jemima Sutherland or Halvorsen, 21 Prince Regent Street, Leith, for herself and as guardian of her pupil son Neil Theodore Halvorsen, claimed compensation under the Workmen's Compensation Act 1906 from J. T. Salvesen and others, shipowners, Leith, in respect of the death of her husband Theodore Halvorsen, employed as an engineer on one of the defenders' vessels.

The Sheriff-Substitute (GUY) having awarded compensation a case for appeal was stated.

The facts were—"On 11th July 1910 the said Theodore Halvorsen was in the employment of the appellants as second engineer on board their steamship 'Ramleh,' which was then at anchor at Leith Harbour, South Georgia, an island situated in the South Atlantic Ocean. The steamship 'Ramleh' is a 'ship,' and the said Theodore Halvorsen was a 'seaman,' within the meaning of the Merchant Shipping Acts 1894 and 1906. The said vessel arrived in said harbour early in May 1910, and shortly thereafter, while the said steamship 'Ramleh' was lying in said harbour, the said Theodore Halvorsen received an injury to his thumb by accident arising out of and in the course of his employment by its being crushed in the machinery of the ship. The injury necessitated the services of a medical man, and the appellants in implement of their duty under section 34 of the Merchant Shipping Act 1906 allowed all the seamen on board their vessels to have the services free when their ships were at Leith Harbour, South Georgia, of a medical man, Dr Cruickshanks, resident on shore there. On the afternoon of the day when the said Theodore Halvorsen met with said accident, he went ashore and was attended to by Dr Cruickshanks, whose services as a medical man were sometimes given on board ship and sometimes given at his house on shore.

"Shortly after the said Theodore Halvorsen's thumb had been attended to by the said Dr Cruickshanks, he was absent from the said harbour on another of the appellants' steamers, engaged in the capacity of chief engineer on an emergency voyage in search of a missing whaler, on which voyage he was absent for about three weeks.

"On his return his thumb was still requiring medical treatment, and on 11th July 1910 he went on shore for the purpose of seeing the doctor in connection therewith and having his thumb dressed. The said Theodore Halvorsen and Robert Hood, the third engineer, had been on shore on 10th July 1910 on their own private business or pleasure, namely, shoot-