mitted, cannot be the ground of an action in England — *Mostyn* v. *Fabrigas*, 1 Smith's Leading Cases, p. 658. The learned commentator states his view, deduced from the authorities reviewed, that to sustain an action the pursuer must shew that he has a right of action both according to the law of the country in which the act was done, and the law of England where the remedy is asked; and Addison (on Torts, p. 30) expresses a similar opinion. The judgment of the Court of Queen's Bench in the case of *Phillips* v. *Eyre* (4 E.R., Q.B., p. 1), is substantially to the same effect, and the judgment of the learned judges, delivered by Chief-Justice Cockburn, and particularly that part of it on p. 239 of the report, expresses the views which in my opinion govern the present case. In the following passage (p. 240) it is true the case of *Scott* and *Seymour* is referred to as presenting a question which may possibly be regarded as still open; but the whole reasoning on which the judgment rests, as well as the authority of Justice Story, are against the opinion which Justice Wightman expressed in that case, and support the view which I have adopted in the decision of this case."

The pursuer having lodged a reclaiming note against this interlocutor, the defenders compromised the case by a payment of £700.

Counsel for Pursuer—Rhind. Agents—Morison & Keith, S.S.C.

Counsel for Defenders—R. Johnstone—Mackintosh. Agents—Hope, Mann, & Kirk, W.S.

Friday, February 9.

FIRST DIVISION.

[Sheriff of Perthshire.

GOW *v.* YOUNG.

Poor—Poor Law Act 1845, *sec.* 70 —*Admission of Liability.*

Held (in conformity with the decision by the Second Division in the case of *Beattie* v. *Arbuckle*, Jan. 15, 1875, 2 Rettie 330) that a parish which has admitted liability for the support of a pauper, and has acted on that admission, is not entitled to withdraw it on the ground that it was made in error.

William Young, inspector of poor of the parish of Perth, wrote upon 24th November 1865 to Alexander Gow, inspector of poor of the parish of Caputh, stating that Agnes Henderson or Cameron, residing at Guard Vennel, Perth, had become chargeable to Perth parish, "which claims relief from your parish as the parish of settlement." In a subsequent letter, dated 28th November 1866, the grounds of the claim were furnished by Perth to Caputh. It was further stated —"Her husband, Alexander Cameron, a wright, was born in Dunkeld, in your parish, deserted her 28 years ago, and has not since been heard of. His father, John Cameron, was a wright in Dunkeld, and well known, but long since dead. James Cameron, a wright there, I suppose, is a brother, and I refer you to him, as I believe he is able to give you the particulars. His workshop is near the police-station. I claim upon you in respect of husband's birth. Your admission and instruction will oblige." On 5th December some further particulars were furnished by Perth to Caputh, and on 20th December 1866 the inspector of Caputh wrote to the inspector of Perth stating the result of his inquiries, and admitting that if the information he had received was correct his parish was liable, but that he would write again should he find anything to the contrary. The claim was afterwards brought before the half-yearly meeting of the Parochial Board of Caputh, held on 8th April 1867, when the meeting instructed the inspector to admit liability. The inspector of Caputh accordingly admitted liability, and repaid the pursuer, the inspector of Perth, his advances up to 11th April 1868. He then came to think that he had made a mistake in giving the admission, and he withdrew or endeavoured to withdraw it, and repudiated further liability. He did so on the ground that the pauper had been deserted by her husband in 1838, since which time nothing had been heard of him, and the pauper had supported herself in Perth, thereby acquiring an industrial settlement there. The withdrawal was not accepted by the inspector of Perth, and eventually this action was raised in the Sheriff Court of Perthshire on 6th October 1875 against Caputh for repayment of advances made, and for relief in the future.

The defender, *inter alia*, pleaded—"(3) The original admission of liability having been made in excusable error as regards the law applicable to the circumstances (then undecided), defender was justified in subsequently withdrawing the admission and repudiating liability. (4) Defender having repudiated liability in April 1868, the claim of pursuer for aliment prior to the raising of the present action is extinguished by *mora*."

The Sheriff-Substitute (BARCLAY), after a proof as to the pauper being a proper object of relief, pronounced an interlocutor containing certain findings of fact, and, applying the law to the facts as thus found, finds—"*Firstly*, That the pursuer, notwithstanding the admission of liability by Caputh in 1866, having homologated the repudiation of liability in 1868 by the defender, and of the great *mora* following thereon, cannot recover for the advances since made to the pauper prior to the date of the action: *Secondly and Separately*, With regard to the conclusion for relief of future aliment, the pauper having resided in the parish of Perth since the desertion of her husband for a period much longer than necessary for acquiring a residential settlement therein, has acquired such, and cannot, in the want of proof of her husband being alive during that period, be sent to the parish of her husband's birth: Therefore assoilzies the defender from the conclusions of the action, finds him entitled to costs, remits the account when lodged to the Auditor to tax, and decerns." In the note it was stated—"Caputh does not sue for repetition of advances made whilst liability was admitted, but Perth sues for past and future aliment as if there had been no repudiation. The pursuer homologated the recal, and for six years made no formal claim of relief. In this way the ratepayers, who were bound to supply the fund every year, are relieved from their proper burden, which is thrown upon their successors. This renders the plea of *mora* much more formidable

than when it arises between private parties—See *Hay* v. *Jack*, February 15, 1853, 25 Jurist 234; and *Eastwood and Paisley* v. *Lismore and Appin*, January 22, 1864, 36 Jurist 233; see also *Barony* v. *Dailly* (second branch), February 9, 1866, 38 Jurist 198; *Beattie* v. *Greig*, July 9, 1875, Session Cases 923. The *mora* in some of these cases was much shorter than in the present case, and there too, as in this case, liability was first admitted and subsequently repudiated."

The pursuer appealed to the Sheriff (Adam), who pronounced the following interlocutor:—

"*Edinburgh, 19th June* 1876.—The Sheriff having heard parties' procurators on the pursuer's appeal, and considered the same and whole process—Sustains the appeal, and recals the interlocutor appealed from: Finds it proved that on the 20th December 1866 the inspector of the parish of Caputh admitted liability for the support of the pauper by his letter of that date: Finds that no facts or circumstances have been proved which are relevant to relieve the defender from the effect of that admission: Therefore finds that the parish of Caputh was effectually bound by the said admission, and that the same is still effectual: Therefore decerns against the defender in terms of the conclusions of the summons; finds the pursuer entitled to expenses; allows an account thereof to be lodged; and remits the same to the Auditor to tax and report, and decerns.

"*Note.*— . . . The Sheriff is of opinion that in this case a deliberate admission of liability was after investigation made by Caputh, which was afterwards duly acted on. He thinks therefore that the case falls within the principle settled in *Beattie* v. *Arbuckle*, January 15th, 1875, 2 Rettie 330, and that this admission of liability cannot be retracted by Caputh on the ground averred.

"The Sheriff thinks that this is conclusive of the case against Caputh. It does not appear to him that there is any evidence in process that Perth ever acquiesced in the withdrawal by Caputh of its admission of liability, and abandoned its claim against that parish. On the contrary, Perth from the first refused to accept of such withdrawal, and the evidence in process shows that although Perth took no active steps to enforce its claims of relief, apparently in the hope that Caputh would pay without the necessity of litigation, it made repeated demands for payment. Caputh was perfectly well aware that Perth had not abandoned its claims, but was insisting on them, and in these circumstances it appears to the Sheriff that there is no room either for the plea of *mora* or prescription.

"The Sheriff thinks that this is a hard case for Caputh, as he has no doubt that but for the admission made in 1866 Caputh would not have been liable—*Greig* v. *Simson*, May 16, 1876."

The defender appealed, and argued—It was not a restitution of money already paid that he asked. He desired to be relieved from future obligations. A discharge granted under an error in law was not good. *A fortiori*, an admission entailing future obligations was not binding. Considerations of policy were against the view that an admission once given was to be held as binding, and against the decision of the Second Division in *Beattie* v. *Arbuckle*, January 15, 1875, 2 R. 330. Such a decision would tend to prevent admissions being given. There had been delay in bringing this action sufficient to justify its being excluded on the ground of *mora*.

Authorities—*Dickson* v. *Halbert*, February 17, 1854, 16 D. 586; *Purdon* v. *Rowat's Trustees*, December 19, 1856, 19 D. 206; *Wilson* v. *M'Lelland*, December 7, 1830, 4 W. and S. 398; *Beattie* v. *Arbuckle*, January 15, 1875, 2 R. 330; *Crawford* v. *Beattie*, May 12, 1860, 22 D. 1064; *Cooper* v. *Phibbs*, May 9, 1867, 2 L.R., Eng. Apps. 149 (Lord Westbury's opinion, p. 170); *Macdonald* v. *Taylor and Craig*, November 26, 1863, 9 Poor Law Mag. 348; *Parish of Rathven* v. *Parish of Elgin*, June 24, 1875, 2 L.R., Scotch Apps. 538; *Hay* v. *Jack*, February 15, 1853, 15 D. 388.

At advising—

Lord President—In this case the pauper became chargeable to the parish of Perth in November 1866, and the inspector of poor of that parish gave the statutory notice to the inspector of Caputh on the 24th of that month that this person had become chargeable to that parish, and intimated at the same time that the grounds of the claim would be furnished later. Accordingly, four days later, a letter was sent to the inspector of Caputh with the particulars of the case, and a claim upon Caputh "in respect of husband's birth." Other letters passed between the parties, until upon 8th April 1867 the matter was brought under the notice of the Parochial Board of Caputh. They instructed their inspector to admit the claim, and they did so in a letter which is not preserved, but which was no doubt sent by them. From that date the pauper was maintained by Perth at the expense of Caputh until the following year, when the Caputh Board having got new light upon the case and upon the law applicable to it, wished to withdraw their admission of liability and to throw the burden of the pauper's support upon Perth, where she appears to have acquired an industrial settlement. That attempt to withdraw was met by a letter dated 7th April 1868, in which the inspector of Perth declined to accept the withdrawal. The correspondence afterwards continues between the two inspectors, Perth maintaining their right to stand upon the admission received, and Caputh that they were not bound thereby.

In these circumstances, the question is whether Caputh is bound for the future maintenance of the pauper in consequence of the admission made in April 1867? It appears to me that the case of *Beattie* v. *Arbuckle*, January 15, 1875, 2 Rettie 330, is a direct authority in point. In that case the Barony Parish was the relieving parish, but it was also the parish that would have been liable upon the facts, as afterwards averred by the opposing parish, viz., Cambuslang, had it not been been for the admission of liability by the latter. The Judges of the Second Division, before whom the case was heard, unanimously held that an admission made under the 70th section of the Poor Law Act could not be withdrawn, but that the parish giving it was permanently liable. It would require very strong reasons to induce us to go back upon that decision, and we could not do so without consultation with the Judges of the other Division, who so decided that case. But I see no reason to doubt the soundness of their decision. Further, it introduces a most

excellent and salutary rule for the government of such cases. By means of it litigation will be avoided; and I cannot upon that matter agree with the suggestion ingenuously made by Mr Mackay, that its effect will be to foster litigation, for the reason that no parish will readily give an admission. I do not think that is a good argument, or that the result he fears will follow. I do not think it is desirable that a party in the position of the pursuer should make an admission rashly or blindly, but when made, I do not think he can be permitted to withdraw it on the ground that he was in error.

The only variation between the case to which I have referred and the present, to which Mr Mackay was able to point, was merely one of form. In it the admission was acted upon for a longer time. The period was seven years there, and here it is only one. But to make a distinction upon any such ground would be to discard the fixed rule and to make it arbitrary, which would at once deprive it of its utility.

This action is further said to be barred by *mora*. That is a plea the applicability of which I confess I do not see. It was in April 1868 that the inspector of Caputh wrote endeavouring to withdraw the admission he had made. But there was nothing like acquiescence amounting to withdrawal on the part of the inspector of Perth. He was firm from the first, and said that he meant to make Caputh hold to its admission. To say that there was *mora* in the sense of abandonment, while the parties are engaged in a controversial correspondence, appears to me to be out of the question.

It seems to me therefore that there is no reason for distinguishing this case from that of *Beattie* v. *Arbuckle*, and I am quite prepared and very willing to follow its authority.

Lord Deas—I am of opinion that the case of *Beattie* v. *Arbuckle* is clearly applicable to the present case. There an admission of liability was acted upon for some years; here only for one. But that circumstance makes no difference, and an admission is quite satisfactory whether it has been acted upon for a year or more. There was great deliberation before it was made here, and the Parochial Board sanctioned it. I do not say that an admission rashly made by an inspector, and not sanctioned by the Parochial Board, is to be always binding upon a parish. We shall deal with that question when it arises.

There is more to be said in favour of the judgment it is proposed to pronounce than against it in a question of the administration of the Poor Law, even if the Court were not always disinclined to disturb what has once been decided upon reasonable grounds. I think the Sheriff came to a right conclusion.

Lord Mure concurred.

Lord Shand—I agree with your Lordships. When such an admission has been given, as was the case here, the inspector receiving it is fairly entitled to assume that he need take no further trouble in regard to the pauper. Thus in many cases evidence formerly available to him may be lost, and it is not to be forgotten that the evidence is generally to be obtained amongst a changing population; so that, unless an admission is binding, the parish relieved might be seriously prejudiced. And, even if the admission has been given in error, the case is one on which the other party has acted, and where he would suffer if it were not held binding. It is therefore better to have a general rule. I think the decision is a sound one, even if the question were now raised for the first time.

The Court adhered.

Counsel for Pursuer (Respondent)—Balfour—Keir. Agents—Dundas & Wilson, C.S.

Counsel for Defender (Appellant)—Asher—Mackay. Agents—Lindsay, Howe, Tytler, & Co., W.S.

HOUSE OF LORDS.

Friday, March 9.

LOGAN (SPROAT'S FACTOR) *v.* M'LELLAN.

(*Ante*, vol. xii., p. 225.)

Trustee—Liability of Trustee—Negligence.

Circumstances in which *held* that the claim of a creditor against a trust-estate on which he had formerly been a trustee could not be defeated by allegations of negligence and default on his part when acting as trustee in compelling payment from others, alleged to be debtors to the estate.

Sale—Loan.

Circumstances of a transaction *held* to constitute a sale, not a loan.

This was an appeal for C. B. Logan, W.S., judicial factor on the trust-estate of the deceased Thomas Sproat. The circumstances of this case will be found (*ante*, vol. xii., p. 225) in the report of the decision of the Second Division of the Court of Session.

At advising—

Lord Chancellor—My Lords, the circumstances of this case are somewhat peculiar, and considerably involved; but when your Lordships look at them, divested, as they must be, of a great deal of irrelevant matter which has been thrown around them in the condescendence and the other papers in the case, I think your Lordships will have no difficulty in arriving at a just conclusion as to what your decision ought to be.

My Lords, I will remind you that the pursuer in this case, who is the appellant here, is a judicial factor, appointed in the year 1873, over the trust-estate of one Thomas Sproat, a man who died so long ago as January 1859, seventeen years since. The respondent, on the other hand, is the executrix of a person named William Hannay M'Lellan, who was one of three trustees of the testamentary disposition of this Thomas Sproat, and he continued one of those three trustees for a period of about three years from 1859, the time of the death of the truster, up to 1862, when he resigned the trust. This Thomas Sproat had in his lifetime become the acceptor of a bill of exchange, which was dated the 19th April 1858. It was a bill at twelve months for £1582, 12s. 8d. It