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

At advising—

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

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

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

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

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

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

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

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

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

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

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

LORD SHAND was absent.

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

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

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

Thursday, February 27.

SECOND DIVISION.

[Sheriff of Lanarkshire.

M'GUIRE *v.* CAIRNS & COMPANY.

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

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

In an action at the instance of the injured man against the owners of the foundry—*held* that this operation called for special instructions from the employers or their manager, and the safety of the workmen should not have been left to arrangements made by the men themselves, and that the pursuer was entitled to damages, as his injury was caused by the failure of the defenders to make proper arrangements for the safety of their workmen while the operation of breaking up old iron was being carried on.

This was an action at common law and under the Employers Liability Act by Andrew M'Guire, labourer, Glasgow, against Cairns & Company, ironfounders, Hayfield Foundry, Glasgow, for damages on account of an accident sustained by him in their service.

The pursuer was ordered by his foreman George Thomson to help in filling sand into one of the moulding pits on the defenders' premises. These pits were situated in a shed which adjoined an open yard, and there was a door about 30 feet wide in the wall of the shed. The door was divided into two parts, one part being opened on hinges, and the other being opened by means of pulleys. On this occasion the part moved by pulleys was left partially open. While the pursuer was working in this shed the general manager of the works, Andrew Cairns, had ordered some other workmen to break up an iron cylinder in the yard, about 30 yards from where the pursuer was employed; and the method followed was of this nature—a ball of iron, weighing 23 or 25 cwt., was raised into the air by a steam-crane, and allowed to drop upon the cylinder. A splinter flew from the cylinder through the door of the moulding shed and struck the pursuer, inflicting severe injuries upon him.

The pursuer averred—"Said accident was caused through the fault, recklessness, and carelessness of the defenders, or their said manager or foreman, for both of whom defenders are responsible. . . . The method of, as well as the place for breaking" (the iron), "and particularly when workmen like pursuer were engaged at other work in said moulding shed, as aforesaid, was highly dangerous. . . . It was defenders' duty, . . . before proceeding to break said cylinder, to have the said yard so fenced and protected as to prevent injury to their workmen, including the pursuer, while breaking the cylinder in question. On the occasion of said accident the said process of breaking up was carried on under the personal superintendence and control of defenders' said manager, and it was particularly the duty of the said manager, before ordering or allowing said process to be begun, to see that the said door, which runs on pulleys as aforesaid, was entirely shut and said passage closed, or that other sufficient precautions were taken to prevent pieces or splinters of said cylinder to enter said moulding shed, and so prevent accident in carrying out said process of breaking up said cylinder, but the defenders and their said manager failed to discharge said duty, or take any precautions for the safety of pursuer, with the result that pursuer was injured as aforesaid. Further, the defenders' said manager, before proceeding to break said cylinder, should have seen that workmen, including pursuer, who were working as aforesaid in said shed in obedience to orders of defenders' said foreman, were duly warned that said process of breaking up was to be carried on, but no warning was given, and the pursuer was not aware that said process was being attempted until he was struck as aforesaid." . . .

The defenders explained that "the operation of breaking up iron was being performed on the occasion in question in the same place and in the same manner as it has been in use to be performed in defenders' works since they were started about twenty-four years ago, and there is no other place within the works in which it could be performed. Explained also that exactly the same method is used in all similar works in the neighbourhood. Explained further, that before the ball was dropped a warning was given, and that it was the duty of pursuer or his fellow-workmen working with him, when this warning was given, to close the door, so as to prevent splinters of iron coming in."

The Sheriff-Substitute (GUTHRIE) allowed a proof. It appeared that the method of breaking up old iron by means of ball and derrick was the usual method practised in the defenders' yard and in other iron-foundries; that splinters of metal often flew from the iron on the stroke of the ball; that it was not the craneman's duty to see that the way was clear, nor was anyone detailed for this duty. There were no instructions by the employers to secure safety for the workmen. It was the practice of the craneman to give warning about a minute before the ball fell by a shout, so as to allow anyone who heard him to escape to a place of safety. Upon this occasion the craneman proceeded as usual, and did not see that the space was clear. The pursuer was engrossed in his task, which was critical, and called for his whole attention, and he did not hear the shout of the craneman. Besides, the warning could not easily be heard within the moulding shed on account of the noise therein. There were no instructions given to the men to close both halves of the door of the shed while iron was being broken in the yard. The half of the door had been accidentally left partially open by workmen passing to and from the moulding shed.

Upon 13th February 1889 the Sheriff-Substitute found that "it was not proved that the defenders were in fault in respect of any failure of the man at the crane to give warning, or by reason of the door having been left accidentally open," and assoilzied the defenders.

Upon 23rd November 1889 the Sheriff (BERRY) adhered.

The pursuer appealed to the Court of Session, and argued—This operation was dangerous. The only warning given was

by a shout from the man at the crane, but no precautions were taken to ensure that the shout was heard by all the men in the yard who were liable to be injured. It was therefore an insufficient system. If the ordinary precautions to ensure safety were not sufficient, special precautions ought to be used—*Cairns* v. *Caledonian Railway Company*, March 19, 1889, 16 R. 618. The defenders had failed to take reasonable and proper precautions—*Murdoch* v. *Mackinnon*, March 7, 1885, 12 R. 811; *M'Inally* v. *King's Trustees*, October 27, 1886, 14 R. 8. There could be no plea of contributory negligence, because the danger was not sufficiently visible to the pursuer to excite his apprehensions, as he was right to suppose that all precautions would be taken to avoid injury to the workmen—*Grant* v. *Drysdale*, July 12, 1883, 10 R. 1159.

The defenders argued—This was purely a case of accident. The system which was followed in this case was the ordinary and usual one, which had been in use in this foundry for many years, and in all the other foundries in the district. The pursuer was quite well aware of it; if he had desired to make the matter more secure he could have had the door shut. No other system had been suggested, or indeed was possible. The shout which the man gave before he dropped the weight was ample warning, and the pursuer should have heard it.

At advising—

LORD JUSTICE-CLERK—This is a somewhat peculiar case. The operation the carrying-out of which caused the accident for which damages are now sued for was the breaking-up of an iron cylinder by means of a derrick to which was attached a heavy iron ball. This weight was allowed to fall from the height of the derrick and broke up the cylinder. Now, the facts show that in performing such an operation as this it is not unlikely that masses of metal may fly to a considerable distance, because in this instance a considerable piece of metal was projected with momentum sufficient to break the bones of this unfortunate man thirty yards away from where the operation was taking place.

The facts of the case are that the pursuer was working in the moulding shed which is in the defenders' yard. There was a door in the shed, and this door was open at the time the operation of breaking up the cylinder was being carried on in the yard; therefore when the ball fell upon the cylinder, it broke off a piece of metal which flew through the open door and injured the pursuer. It seems to me that this was an operation which called for special instructions on the part of those to whom the works belonged, by themselves or their manager. I do not think that this was an operation in regard to which the safety of the men employed in the yard could be left to the chance arrangements made by the men themselves. The practice in this yard on occasions like the present was this—When the man in charge of the derrick was ready to let the weight fall, he gave a shout, and the other workmen understood that each must look out for himself and get out of the way. That might have been an efficient way of carrying on this operation if it had been the fact that the man who had to give the warning shout, and whose duty it should have been under this system to see that the space over which the metal might fly was clear, was able to see, and had a duty under the system to see, that the surrounding ground was quite clear. But that was not what was done. The man just gave a shout, waited a little, and then let the weight fall without observing if anyone was in the way. Now, the pursuer says that at this time he did not notice that the man in charge of the derrick had given a warning shout, and that is quite easily understood because it is a matter of common observation that if anyone is deeply engaged in some work of his own, he does not always notice sounds which occur outside the range of his immediate occupation. I think that in this particular occupation it would have been all right if the shout which was uttered by the man at the derrick had been heard as widely as it was the intention of the shouter it should be heard, but I do not think that a system can be said to be a sufficiently safe one in which the man who has charge of the weight merely gives a shout and then lets the weight fall without taking any precautions to see that the way is clear. It seems to me that if it was the practice in these works to leave the door of the moulding shed open while operations of this kind were going on in the yard, then it was the manifest duty of the defenders to give such instructions to their workmen as would prevent the persons in the shed being knocked down by a mass of metal as this unfortunate man was.

I am of opinion, therefore, there was fault on the part of the defenders, inasmuch as this breaking-up of the cylinder being a dangerous operation, they did not give sufficient instructions to protect their workmen in carrying it out.

As regards the question of damages, this man has suffered very severe injuries, the results of which affect him yet. The doctors say that his arm which was paralysed is improving, but that he will probably never be able to work as well as before. I would therefore suggest that we should name a sum of £100 as damages.

LORD RUTHERFURD CLARK—I take the same view. The ground upon which I put my judgment is a simple one, but to my mind quite satisfactory. I think that a dangerous operation was being carried on in this yard from time to time, and that it was the duty of the defenders to make arrangements for carrying out this operation with safety to his workmen.

LORD KINNEAR concurred.

The Court pronounced this interlocutor:—

"Find that the injuries sustained by the pursuer on the occasion libelled was caused by failure of the defenders to make proper arrangements for the

safety of the workmen in their works at times when metal was being broken up by ball and derrick: Therefore sustain the appeal: Recal the interlocutor of the Sheriff and Sheriff-Substitute appealed against: Find the defenders liable to the pursuer in damages, assess the same at £100 sterling," &c.

Counsel for the Appellant—M'Lennan. Agent—L. M'Intosh, S.S.C.

Counsel for the Respondent—C. S. Dickson — Younger. Agents — Drummond & Reid, W.S.

Monday, November 25, 1889.

FIRST DIVISION.

(With Three Consulted Judges.)

[Sheriff of Chancery.

HARE AND ANOTHER, PETITIONERS.

Heritable Security — Heritable or Moveable—Service of Heirs—Titles to Land Consolidation (Scotland) Act 1868 (31 *and* 32 *Vict. cap.* 101), *sec.* 117.

This section enacts—"From and after the commencement of this Act no heritable security granted or obtained either before or after that date shall, in whatever terms the same may be conceived, except in the cases hereinafter provided, be heritable as regards the succession of the creditor in such security, and the same, except as hereinafter provided, shall be moveable as regards the succession of such creditor, and shall belong after the death of such creditor to his executors or representatives *in mobilibus* in the same manner and to the same extent and effect as such security would, under the law and practice now in force, have belonged to the heirs of such creditor; provided always that where any heritable security is or shall be conceived expressly in favour of such creditor and his heirs or assignees or successors, excluding executors, the same shall be heritable as regards the succession of such creditor," &c.

Held that an heir of provision under a destination in a heritable bond may complete his title by service—*diss.* Lord Shand, who held that service was incompetent, in respect that by sec. 117 of the Titles to Land Consolidation Act 1868 the creditor's right was moveable *quoad* succession.

Opinions (*per* Lord President, Lord Justice-Clerk, Lords Young, Adam, Lee, and M'Laren) that the 117th section of the Titles to Land Consolidation (Scotland) Act 1868 makes heritable securities moveable only in cases of intestate succession.

Lord Alfred Henry Paget died on 24th August 1888. He was domiciled furth of Scotland. At the date of his death he was sole surviving and acting trustee under an indenture or marriage settlement in the English form, dated 20th August 1845, between the late Lord Macdonald and Lady Macdonald, who still survived. By indenture dated 4th December 1873 certain new trustees had been assumed under the marriage settlement, and by a second indenture dated 17th October 1888 the Hon. Hugh Henry Hare and Mr George Thomas Cavendish Paget were assumed under the powers contained in the settlement, and were thereafter the sole trustees.

At the date of Lord Alfred Paget's death he was infeft, as trustee, in certain heritable securities in virtue (1) of a bond of corroboration and disposition in security dated 11th and 17th July 1883, the debtor in the bond being taken bound "to make payment to the said Lord Alfred Henry Paget, as trustee foresaid, and his successors in office, or his or their assignees whomsoever," and (2) of assignations to eighteen different heritable securities in favour of "Lord Alfred Henry Paget, as trustee foresaid, and his sucessors in office and assignees whomsoever."

Messrs Hare and Paget accordingly presented this petition to the Sheriff of Chancery asking to be served "nearest and lawful heirs of provision in general to the said Lord Alfred Henry Paget, as trustee foresaid," under the bond of corroboration and disposition in security and eighteen several assignations, "but in trust always" for the purposes of the marriage settlement.

The Sheriff of Chancery (BLAIR) on 12th August 1889 pronounced this interlocutor:—"... Finds that the petitioners are not nearest and lawful heirs of provision in general of the late Lord Alfred Henry Paget under and in virtue of the bond of corroboration and disposition in security and assignation set forth in the petition: Therefore refuses the prayer of the petition, and decerns.

"*Note.*— ... The petitioners ask for service as heirs of provision in general to Lord Alfred H. Paget, as trustee under the destination in the bond of corroboration and assignations before mentioned, but in trust for the purposes of the indenture of 20th August 1845. The Sheriff is humbly of opinion that the securities vested in Lord A. H. Paget were moveable as regards succession, and that the procedure to make up a title by service is incompetent. The assignations granted by the prior holders of the securities are in favour 'of the said Honourable Alfred Henry Paget, commonly called Lord Alfred Henry Paget, as trustee foresaid, and his successors in office and assignees whomsoever,' and the bond of corroboration by Lord Macdonald is in favour 'of the said Lord Alfred Henry Paget, as trustee foresaid, and his successors in office, or his and their assignees whomsoever." The 117th section of the Titles to Land Consolidation (Scotland) Act 1868 provides that no heritable security, 'in whatever terms the same may be conceived,' shall be heritable as regards the succession of the creditor unless it has been taken 'expressly' excluding executors, or a minute has been executed by the creditor in the form of the schedule referred to in the section, and re-