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.

The *facts* are given *infra* in the findings of the Sheriff-Substitute (LAING).

On 23rd January 1909 the Sheriff-Substitute, after a proof, pronounced the following interlocutor—"*Finds in fact* (1) that on 23rd March and 15th July 1905, 27th April, 26th May, and 15th June 1906, and 1st November 1907, the pauper Mrs Isabella Pirie or Smith applied for and received parochial relief from the pursuers the Parish Council of the City Parish of Aberdeen to the amount of . . . the sum sued for in this action; (2) that the said pauper was a proper subject of parochial relief; (3) that the said pauper was born at Banff on 17th March 1853, and was the lawful daughter of William Pirie, tailor, Banff . . .; (4) that the said pauper was on 9th November 1893 married to Joseph Sinclair Smith, an Irishman by birth, who at the date of said marriage was residing within the said City Parish of Aberdeen . . .; (5) that the said Joseph Sinclair Smith died in the said City Parish of Aberdeen on 27th February 1905; (6) that between 9th November 1893 and 16th September 1897, a period of more than three years the said Joseph Sinclair Smith resided continuously in the said City Parish of Aberdeen, and maintained himself during said period without having had recourse to common begging either by himself or his wife, and without having received or applied for parochial relief, but that from 16th September 1897 down to the date of his death on 27th February 1905 he was almost continuously in receipt of parochial relief from the pursuers . . .; (7) that the pursuers on 23rd March 1905, 27th April 1906, and 1st November 1907, gave notice to the defenders that the said pauper Mrs Isabella Pirie or Smith had become chargeable to the said City Parish of Aberdeen, but that the defenders declined to admit liability or to repay to the pursuers the sum . . . expended by way of relief on the said pauper: *Finds in law* (1) that the said Joseph Smith, by his three years' residence aforesaid in the City Parish of Aberdeen prior to 16th September 1897, acquired a residential settlement therein, (2) that the effect of the receipt by him of parochial relief from the pursuers on and after 16th September 1897 was to prevent the loss of the said residential settlement; (3) that on his death on 27th February 1905 the said settlement inured to his widow, the said pauper Mrs Isabella Pirie or Smith; and (4) that in respect of the existence of the derivative residential settlement of the said pauper Mrs Isabella Pirie or Smith in the City Parish of Aberdeen, the pursuers neither have nor can have any claim for relief against the parish of Banff arising through the birth of the said pauper therein: Therefore assoilzies the defenders from the conclusions of the action."

Note.—"In 1893 Joseph Smith, who was by birth an Irishman, came to reside in the City Parish of Aberdeen. Little is known of his movements prior to his marriage with the woman Isabella Pirie on 9th November 1893, for whose aliment the pursuers now sue, but it is not disputed that from that date until 27th February 1905, the date of his death, he, with the exception of some months in the end of 1895 and beginning of 1896, to which I subsequently refer, resided continuously in the City Parish of Aberdeen. After his death, his widow, on the dates specified in finding in fact (1) became chargeable to the pursuers and was afforded relief by them to the amount sued for in this action. The ground upon which the pursuers claim repayment of the relief so given from the defenders is that Joseph Smith was by birth an Irishman, that at the date of his death he had no residential settlement in this country, and that after his decease his widow's settlement became that of her own birth parish, which was the defenders' parish of Banff. It is clear in law, indeed it was not disputed by the defenders, that if Joseph Smith had not at the date of his death a residential settlement in Scotland, the liability for the relief given to his widow or, if necessary, for her permanent aliment, would fall upon her own birth settlement. It is equally clear, as was conceded by the defenders, that any residential settlement acquired by Smith in the City Parish of Aberdeen, whether based on five or three years' residence, would require to have been completed prior to 16th September 1897, as on that date he obtained parochial relief which was thereafter practically continuous down to the date of his death in February 1905. The first question therefore is, did Joseph Smith prior to 16th September 1897 acquire a residential settlement in the City Parish of Aberdeen? The answer to this question depends upon whether Smith required to reside for five years in the City Parish, in accordance with the provisions of the 76th section of the Poor Law (Scotland) Act 1845, which was in force on 16th September 1897, or whether three years' residence sufficed in respect that at the date when his widow applied for relief the law in force was that enacted by the 1st section of the Poor Law (Scotland) Act 1898, which repealed the said 76th section. In the present case the question is of importance, as if five years' residence was necessary it is clear that Smith did not acquire a residential settlement in the City Parish of Aberdeen prior to 16th September 1897, as the first authentic information dates his living there for a period shortly before his marriage in November 1893. If on the other hand a period of three years be held to be sufficient, then Smith did acquire a residential settlement in the City Parish, as he resided there from November 1893 to 16th September 1897, unless it be that he broke the continuity of the period by absence during the latter part of 1895 and beginning of 1896.

"On the question of the construction of section 1 of the Poor Law (Scotland) Act 1898 there are two conflicting decisions, viz., *Parish Council of Falkirk* v. *The Parish Council of Stirling*, 1900, 2 F. 998, decided by the First Division of the Court of Session, and *Parish Council of Stornoway* v. *Parish Council of Edinburgh*, 1902, 4 F. 998, decided by the Second Division.

As illustrating the conflicting views on the retrospective construction of that section, I refer to the opinions of Lord Adam and Lord Kinnear in the *Falkirk* case on the one hand, and to the opinion of Lord Trayner in the *Stornoway* case on the other. 'The effect of this legislation,' said Lord Adam, 'appears to me to be to substitute section 1 of the Act of 1898 for section 76 of the principal Act to the same effect as regards all future questions of settlement as if section 1 had all along formed part of the principal Act.' On the other hand Lord Trayner said—'The repeal of the 76th section of the Act of 1845 did not repeal or affect the rights acquired or the obligations incurred in respect of that section before the repealing Act was passed. . . .' 'Was the Act of 1898 intended, or does it, whether intended or not, resuscitate a residence which under the Act of 1845 had clearly been wiped out and extinguished? I cannot think so.' The present case resembles that of *Falkirk* in respect that in both the question is one of derivative settlement. On the other hand, this case bears this similarity to that of *Stornoway*, viz., that in both the five years' residence necessary under the Act of 1845 was interrupted by the granting of relief after a period of three years had expired. If, however, the views expressed by Lord Adam are sound, then the receipt of relief by Smith in September 1897 after he had completed three years' residence was immaterial, as the only effect of his accepting relief was to prevent the loss of the settlement which he had acquired. It is perhaps unnecessary to examine these cases further. To all the objections urged in the case of *Stornoway* to the application of the 1898 Act, which might with equal force be urged here, the answer is I think, as stated by Lord Kinnear, this—'That the material point to be proved by an applicant for parochial relief claiming on a derivative settlement is simply the residence of the husband or father from whom it is derived, and if that satisfied the requirements of the law in force at the time it is irrelevant to inquire whether it would have been enough to create a settlement under some former law if the claim had been made at an earlier date.' Applying that principle to the present case, it appears to me that in 1905, when Mrs Isabella Smith claimed in respect of the settlement derived through her husband's residence, that residence satisfied the requirements of the Act of 1898, which was the only law in force at the time, and on this ground I propose to follow the case of Falkirk. . . ." [*The Sheriff-Substitute dealt with the evidence as to Smith's continuous residence in Aberdeen between 9th November* 1893 *and* 16*th September* 1897.]

The pursuers appealed.

On 17th July 1909 the Court appointed the case to be heard before Seven Judges.

Argued for the pursuers (appellants)—The Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), sec. 1, had no application to residence in a parish prior to 1st October 1898, the date when the Act came into force, for a period of less than five years interrupted by chargeability. The only effect of the section was to alter the period of residence required for the acquisition of a settlement from five to three years. It was not intended to alter a rule of law which obtained prior to the passing of the Act, and which still obtained, viz., that if the residence of any person in a parish were interrupted by chargeability before the completion of the period required by the law in force at the time for the acquisition of a settlement, the effect of chargeability was to wipe out the previous residence altogether. The settlement could never change during chargeability, and on its cessation, residence for the purpose of acquiring a settlement had to be commenced of new. In the present case Smith became chargeable on 16th September 1897. According to the law in force at that date his previous residence in Aberdeen was not sufficient to confer on him a settlement in that parish, and accordingly such residence was quite unavailing in any question of settlement. His settlement became fixed as at the date of chargeability, and so long as he remained chargeable it never could be changed. (2) Alternatively, section 1 of the Act of 1898 applied merely to continuous residence immediately prior to the date of the passing of the Act. Both these alternative views had been stated by Lord Trayner in *Parish Council of Stornoway* v. *Parish Council of Edinburgh*, July 17, 1902, 4 F. 998, 39 S.L.R. 848, which was on all fours with the present case. These views were, it was submitted, preferable to the view taken by Lord Adam in *Parish Council of Falkirk* v. *Parish Councils of Govan and Stirling*, June 12, 1900, 2 F. 998, 37 S.L.R. 759, and followed by the Sheriff-Substitute, viz., that the effect of the Act of 1898 was to substitute section 1 of that Act for section 76 of the Poor Law Act 1845 (8 and 9 Vict. cap. 83), "to the same effect as regards all future questions of settlement as if section 1 had all along formed part of the principal Act." The result of the latter view would be to disturb rights acquired and obligations incurred prior to the passing of the Act. Such a result was not to be presumed, and was negatived by the Interpretation Act 1889 (52 and 53 Vict. cap. 63), sec. 38 (2) (*c*). According to that view, if a pauper born in the parish of A, and resident in the parish of B from 1845 to 1848, had then become chargeable and had been maintained by A as the parish of birth settlement up to the date of the Act of 1898, then on 1st October 1902, four years after the commencement of the Act as provided for in the proviso of the section, the parish of A would be able to reclaim from the parish of B repayment of the sums expended in the pauper's maintenance for a period of fifty-four years. That could never have been contemplated by the Legislature. The view contended for by the appellants did not render meaningless the proviso at the end of section 1 of the Act of 1898. That proviso was intended to apply to the

case of a person who was chargeable on 1st October 1898, who was subsequently rehabilitated, and who again became a pauper within four years from the passing of the Act. Further, the rule established by the *Parish Council of Stornoway* v. *Parish Council of Edinburgh* (*cit.*) had been established and followed for some years, and it was more important that the law in this region should be certain than that it should be based on the best possible reasons. [Counsel also argued that it was not established by the evidence that Smith had resided continuously in Aberdeen for three years, and cited *Milne* v. *Ramsay*, May 23, 1872, 10 Macph. 731, 9 S.L.R. 465; *Allan* v. *Shaw and King*, February 24, 1875, 2 R. 463, 12 S.L.R. 336; *Beattie* v. *Smith and Paterson*, October 25, 1876, 4 R. 19, 14 S.L.R. 22; *Greig* v. *Simpson*, October 25, 1888, 16 R. 18, 26 S.L.R. 19.]

Argued for the defenders (respondents)—The decision in the *Parish Council of Falkirk* v. *Parish Councils of Govan and Stirling* (*cit.*) was right. The words of section 1 of the Act of 1898 "either before or after, or partly before and partly after," were clearly intended to cover every possible case. There was no doubt that "after" meant any time after, and there was no justification for giving a narrower interpretation to "before." The interpretation the respondents contended for was the plain meaning of the words, and received support from the proviso in section 1. The proviso stated an exception to the rule laid down, and where one exception, and one only, was stated, others would not be presumed. Moreover, if "before" were construed as equivalent to "immediately before," as suggested in *Parish Council of Stornoway* v. *Parish Council of Edinburgh* (*cit.*), then the proviso in the section would be rendered useless, inasmuch as it would then merely append a limitation of time to a case which by the words of the section would be absolutely excluded from the operation of the Act. The fact that Smith got temporary relief after the expiry of his three years' residence in Aberdeen did not affect the question, and could not do so unless the claim had been made on the parish alleged to be liable for his maintenance. The view of the Act for which the respondents contended was supported by the reasoning in *Robertson* v. *Stewart*, December 12, 1854, 17 D. 169. Counsel also refered to *Parish Council of Paisley* v. *Parish Councils of Row and Glasgow*, 1908 S.C. 731, 45 S.L.R. 556. [Counsel also argued that Smith's uninterrupted residence in Aberdeen for three years prior to 16th September 1897 was clearly established by the evidence, and cited *Beattie* v. *Smith and Paterson* (*cit.*).]

At advising—

LORD PRESIDENT—The facts of this case are contained in the findings of the learned Sheriff-Substitute. The pauper Mrs Smith applied for and obtained relief from the pursuers the Parish Council of the City Parish of Aberdeen on four occasions, the first of them being on 23rd March 1905 and the last on 1st November 1907. The sum sued for in this action represents the amount thus expended on her by the pursuers, and it is not disputed that she was a proper object of parochial relief. The pauper was born in 1853 in Banff. She was married in 1893 to Smith, an Irishman whose settlement at that time is unknown, but which at anyrate was not in Scotland. Smith died on 27th February 1905, that is to say, about a month before the first relief in question. Between 9th November 1893 and 16th September 1897, a period of more than three years, Smith resided continuously in the City Parish of Aberdeen without having recourse to begging and without having received parochial relief. After that he was almost continuously in receipt of parochial relief down to the time of his death in February 1905.

These being the facts of the case, the question to be determined is whether the Parish Council of the City Parish of Aberdeen, which has relieved the pauper, is or is not entitled to be reimbursed by the Parish Council of the Parish of Banff, that parish being the parish of the pauper's birth.

The learned Sheriff-Substitute decided the question in the negative, holding that the settlement of the pauper was in Aberdeen in respect of the three years' residence of her husband in Aberdeen.

I confess that, although I am bound to look upon my opinion with some diffidence because of the considerable divergence of opinion upon the Bench, I have not been able to see that this is a difficult case if only one adheres closely to the words of the Act and does not exhaust oneself in needless speculation. The whole system of the poor law—I mean the rules as to settlement and relief—is absolutely artificial. It is impossible to get a logical system and a system that will always appeal to general notions of equity and propriety out of it. Nor is it difficult to understand why that should be so when one considers the equitable considerations which underly it—the chief one I suppose being that it is the duty of the community as a whole to maintain the poor; and all these rules and regulations are merely the way of apportioning that duty among the various areas, these areas themselves being for that matter delimited by quite fortuitous boundaries. The whole of the difficulty then arises from the artificial rules which have to be made for the purpose of determining how the liability shall fall upon a particular district and upon the individuals who contribute in that district. Having made that general observation, the way in which I approach the case is this—Supposing we had never heard of the Act of 1898, and supposing that section 76 of the Act of 1845 had been phrased exactly as section 1 of the Act of 1898 is, could anybody possibly have had any difficulty in this case? I imagine not. And if that is so, to my mind that ends the question, because section 1 of the Act of 1898 repeals section 76 of the 1845 Act and in lieu thereof enacts as follows:—". . . [*His Lordship read*

the section.] . . ." That is to say, that you are to read the Act of 1845 as if section 76 had never existed and as if the words I have just read had been there instead.

Now I think that my brethren who differ from me in this case would not dissent from the proposition that if the Act of 1845 had always been in the terms of the Act of 1898, there would be no difficulty in deciding this question. But in view of the fact that there are two Acts differing in their terms, various objections are urged against my view, the most sweeping being the statement of one of my learned brethren who follows me that my reading amounts to a *reductio ad absurdum*. In the first place, I may remark that no result is too absurd so far as the poor law is concerned, and therefore I do not think the phrase applies; but I will show what my learned brother means by a *reductio ad absurdum*, and indicate my reasons for thinking that no such *reductio ad absurdum* as he figures is involved. He takes the case of a man who has been a pauper for thirty years and who has received relief from the parish of his birth settlement during that period, yet who prior to the thirty years had resided three, but not five, years in another parish, and then suggests that at the end of the thirty years the whole of the pecuniary relations between the parties would be disturbed on my reading of the Act. I cannot see that my reading of the Act leads to any such conclusion. There are two reasons which I think entirely displaces such a result. The first depends upon the general proposition that you cannot have any change of settlement while pauperism and chargeability are going on. My learned brother who puts this illustration does not absolutely state whether the man is to be a pauper during the whole of the thirty years or whether there are certain intervals in which he was not a pauper; but if he is to be a pauper during the whole thirty years, obviously the question cannot arise. But although there is no change, what is dreaded seems to be an extraordinary accounting at the end of a long period under which everything is to be disturbed. I ask myself, How can that ever be effected although I read the Act as I do? As in a question with the pauper, the parish which is bound to relieve him is the parish where he is found destitute, and what we sometimes call the right of relief between parishes (it is a pity the Act uses one word in two different senses) is not of course the right of relief in the same sense as relief is given to the poor, but is a right to obtain reimbursement. Now let us consider how and under what circumstances this right could arise. If a man who was *de facto* relieved had resided, under the old law, five years in the parish which gave him relief, obviously no question of reimbursement from another parish could arise afterwards. In that case the relieving parish could have no claim for reimbursement. Therefore the case that must be figured with regard to the relieving parish is that while it did not claim reimbursement from another parish because the pauper had never resided five years in that other parish, it might have done so if it had known that three years was enough to give a settlement. Well, my answer to that is that the right to reimbursement depends on the law existing at the time at which the claim for reimbursement emerges, and that time is the moment at which the pauper is relieved, and therefore I cannot see that the retrospective effect of this Act can have any application to a case of this sort; and if you turn the matter the other way, it comes exactly the same. If the actual relieving parish in the past made good a claim to reimbursement against another parish, it was because the man had lived five years in that other parish; and if the real answer was that if the law had been then as it now is there would have been an absence which would have destroyed the settlement in that other parish, how are you to get repetition of money paid and received which at the time was made on a demand which was good in law? Therefore the so-called retrospective effect does not seem to me to affect this question. The truth is (I do not wish to quarrel with the use of the word), I do not think, if you press it, the Act truly has in the true sense a retrospective action at all. All I think that it does is to say that in the future when the question comes up for consideration the period of three and not of five years is to be taken.

The other so-called difficulty, or *reductio ad absurdum*, is that apparently it is thought by some that my view of the Act might land us in this impossibility, that we might be holding that a person has two different settlements at the same time. That, of course, I quite agree is a legal impossibility. But that is not the result of my view of this Act. If this question had arisen at any time during the lifetime of the husband, of course you would then have had to search for what was at the moment the settlement of the husband, and from his settlement to have deduced the settlement of the wife; but that does not seem to be antagonistic to the proposition that when the husband is no longer there, and you have to search for the settlement of the wife, you may have to come to a result different from the result which you would have reached during the lifetime of the husband—and that simply because the law has been altered. I have said so much about the *reductio ad absurdum* because, of course, it would have been an uncomfortable result had my reading of the Act given a loophole for the idea that a person could have two different settlements.

So far as the transfer of liabilities is concerned that does not shock me, for what greater transfer of liabilities could there be than the transfer directly effected by the Act of 1898? The morning after that Act was passed a large number of persons —potential paupers, as we all are—awoke, who, if they became actual paupers the next day would be thrown upon one parish or another in respect of a three years' settlement, whereas the day before they

would not have been thrown on any parish unless they had been settled in it for five years. Obviously there must have been many in the kingdom in that position, but the Legislature was not affected by that consideration, but said—"We have had a five years' limit; well now, we will have a three years'; there may be hardship in one case; that is compensated by hardship in another."

Those are my views on the case, but I should like to say further that I have not said more because I entirely adopt what Lord Kinnear said in his opinion in the *Parish Council of Falkirk* v. *Parish Councils of Govan and Stirling*, 1900, 2 F. 998. I have read that opinion very carefully, and I entirely concur with what his Lordship there says.

There is just one other matter I must mention, and that is, that I think that after the decision of the House of Lords in the case of *Parish Council of Rutherglen* v. *Parish Council of Glasgow*, 4 F. (H.L.) 19, no reliance can any longer be put upon *Hay* v. *Skene*, 12 D. 1019, and that it is quite evident that some of the cases quoted by Lord Johnston in his opinion in this case—I mean such cases as *Greig* v. *Simpson*, 3 R. 642—are absolutely overruled.

Accordingly, I have come to the conclusion that the judgment of the Sheriff-Substitute is right.

I ought to have mentioned that it was argued to us that the three years' residence in Aberdeen was not continuous, but none of your Lordships have any doubt as to that.

LORD JUSTICE-CLERK—Having formerly considered this question in the *Stornoway* case in the Second Division, I came to a very definite opinion which is expressed in the report. I have found myself unable to accept the grounds on which it is argued that the decision given in that case was erroneous. I fear that the only point in which I concur with your Lordship in the chair is when it was said in the opinion delivered that the case was not one which was difficult. But I have never been able to understand how the clause of the statute could have been framed as it is if it was intended by the enactment to express what I understand it is the view of the majority of your Lordships that it does express. Nothing could be more cumbrous to express the idea that the running of a certain number of years at *any* time was to have a particular effect, than the words which are used. I cannot construe the words in the statute, as your Lordship proposes to construe them, in accordance with the decision on the same question in the First Division of the Court. I adhere to the views I formerly expressed, and the views of Lord Trayner in which I concurred at the time.

Your Lordship has said that if the original Act of 1845 had contained a clause expressed as the clause of the later Act is expressed, no difficulty could have stood in the way of interpreting it as your Lordships propose to do as regards the later Act. If I could conceive that the original Act could by possibility have been expressed in terms exactly the same (except as regards the length of periods) as the later Act, I still feel that I should not be able to hold that that was decisive of this case. For the original Act was to establish a system, the later one was to alter a system. The considerations applicable to an original Act, bringing an organisation into existence for the first time, may not apply to a new Act, altering an existing system, though the words may be the same in a particular clause. I cannot therefore look at the matter in the same light as if the construction must be the same in the two cases because of similarity of wording.

It is always unfortunate that there should be a difference of opinion on the Bench, particularly in poor law cases, which too often lead to so much and so expensive litigation, but in this particular case it is of trifling consequence, as the cases to which the decision can possibly apply must be a very rapidly diminishing quantity, and the decision is not likely to cause embarrassment as regards any other statutory enactments, as it would be difficult to imagine how a case could arise where any clause at all similar to this one could be found to require construction, I have therefore the less regret in being a dissentient from the judgment which will fall to be pronounced.

LORD KINNEAR—I agree with your Lordship in the chair. I should be content to express my agreement, and to say that I adhere to the opinion I expressed in the case of *Falkirk* (1900, 2 F. 998), although I cannot hold any opinion which I may have expressed with confidence when I know that it is dissented from by the Lord Justice-Clerk and the Judges who agree with him. But the grounds of dissent are exactly the same considerations which were before the Court when the decision in the *Falkirk* case was pronounced, and which, after due consideration, were then thought invalid. I must therefore, with all respect, maintain my old opinion, which is in accordance with that of the First Division, and I should have been content to say no more were it not that the facts in this case present a somewhat different question of fact from that which arose in the case of *Falkirk*, and it may be that they bring out perhaps more prominently what is said to be the anomalous result of the decision of the Court in that case. The doctrine, as I understand it, of the decision in the case of *Falkirk* is this, that when a widow becoming chargeable for the first time applies for relief as a pauper in her own right, her settlement must be determined in accordance with the provisions of the law in force at the time when she makes her application for relief (that in the case of *Falkirk* was the law established by the Act of 1898), and this notwithstanding that if the settlement of her deceased husband had ever been in question his right of relief must have been determined according to the previous law of 1845. It

is said that that produces the very anomalous result that a widow who has had no time or opportunity of gaining a new residential settlement for herself, but must found upon the settlement which she had during her married life—and that must be the settlement of her husband—should nevertheless be held to have a new settlement when in her viduity, differing from that which she would have had during her husband's lifetime. I cannot say that it seems to me very surprising that an Act of Parliament which is intended to alter the law should alter the legal rights and liabilities of the persons to whom it applies, and there seems to me nothing anomalous in saying that if this pauper's right of relief had arisen before the passing of the Act of 1898, and therefore under the Act of 1845, it would have been different from that which it is under the new Act. I assent to all that your Lordship has said upon the construction of the Act of 1898, and I cannot say that I have the same difficulty that the Lord Justice-Clerk seems to have felt in conceiving that the Act of 1845 might have been expressed exactly as the Act of 1898 is expressed, because section 1 of the Act of 1898 is identical in its terms with section 76 of the Act of 1845, with this difference only, that in the first place it substitutes three years for five years, and, in the next place, after referring to an existing law of settlement introduced by the former Act, it says that the residence which it requires may be "either before or after, or partly before and partly after, the commencement of this Act." It makes one change in the general law, and one only. It substitutes three years for five years, and then for the proper working of that change it says the three years shall be considered as sufficient where the residence has taken place before or after the passing of the Act, or partly before and partly after the passing of the Act. I think it is an Act which governs rights arising after it was passed, but then in the regulation of these rights it provides in perfectly distinct terms for what is to be in future the period of residence from which a residential settlement arises. I must say I think, as indeed I said in the case of *Falkirk*, that a good deal of confusion has been introduced by the use of the term "settlement," as if that expressed some abstract legal principle from which rights were to be logically deduced so as to result in a complete and harmonious system of administration of the poor law. I think it necessary to remember what Lord President M'Neill laid down in *Robertson* v. *Stewart*, 1854, 17 D. 169, that settlement means nothing but a right to be relieved by a particular parish when the necessity for relief arises. Therefore the only proper question of settlement that can be raised at all is whether, when a pauper claims relief or when a parish which has relieved him claims to be reimbursed by another parish, he has or has not acquired a right of relief from the one or the other. It arises only when there is a necessity for relief. I am aware that our attention was called in the course of the discussion to a statement of the law by Lord Justice-Clerk Inglis which was supposed to conflict with this, but it appears to me to be entirely in accordance with the law as stated by Lord President M'Neill. He says in *Hay* v. *Carse*, 1860, 22 D. 872, at p. 879—"It has been said, and said truly, that a settlement means merely a right of relief from a parish when necessity for relief arises." He goes on to say—"Every native of Scotland has a settlement in some parish or other, during his whole life, even while he is perfectly able to maintain himself"; and then his Lordship goes on to explain what he means, and he says—"That is to say, there is at every moment a parish in Scotland which, in the event of his becoming a pauper, would be liable to maintain him." That is exactly the same proposition in other words, and it still refers the pauper's right of relief to the period when it is created by his necessity to claim against the parish, and what particular parish is the parish liable to relieve him must therefore be determined only when the question arises. Now I think the application of that rule to the question in the *Falkirk* case was plain enough, because the only difficulty there was that although it was clear that the widow who claimed relief for the first time as a pauper in her own right was within the terms of the first section of the Act of 1898, her claim having arisen after that Act was passed, and the period of residence required of her being therefore three years, yet her husband having died before the Act was passed, would, if his settlement had come in question, have had to prove a residence of five years. The only question was whether the Act was to be applied in the case of the widow notwithstanding that it could not have been applied, because it was not yet passed, if the question had been raised by the husband during his lifetime. Then the question here comes to be whether it makes any difference that the husband was in a position to claim relief during his lifetime, and that if the question of his settlement had then been raised, it must have been decided according to the Act of 1845. I cannot think it makes any difference, because the statute provides that a person claiming after it is passed would be required to establish three years' residence only, whereas a person claiming relief before it was passed would require to establish a residence of five years. The question does not appear to me to be based upon whether you can say in any accurate sense of the word that the husband had a settlement during his life by reason of three years' residence, because the alteration of the law by the substitution of three for five years is by the proviso to section 1 made subject to this condition, "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." If the husband was chargeable to any parish in Scotland, the alteration of the law does not alter his position. The question is whether that

makes any difference to his widow after his death. But the only test of pauperism is the entry of the pauper's name upon the roll—*Turnbull* v. *Kemp*, 20 D. 703. It is not suggested that this woman was ever on the roll or was ever chargeable to any parish until in her viduity she made a claim in her own right; therefore it appears to me that her claim must be determined according to the law in force at that time. It is said to involve a paradoxical result, but I do not agree that there is anything paradoxical in that statement if it is properly considered, because the law of derivative settlement as explained in *Adamson* v. *Barbour*, 1853, 1 Macq. 376, in the House of Lords, is that the husband's residence is attributed to the wife, because she cannot have any separate industrial residence of her own; she is entitled therefore to plead the industrial residence of her husband when the necessity for relief arises, and that is the same in effect whether the husband could have pleaded the same right, as she now maintains, or whether he could not. The difference arises simply from the passing of a new Act which alters the law, and you cannot alter the law without altering the legal relations of persons who lived at one time under the old law and are now living under the new.

I therefore come to the same conclusion as the Court did in the *Falkirk* case; and I only say, that although I agree with the conclusion at which the Sheriff-Substitute has arrived, I am not to be held as concurring in everything he has said in his interlocutor or note.

LORD LOW—I concur with the opinion of the Lord President.

LORD ARDWALL—I have found this a very difficult question, but on the best consideration I have been able to give to it I concur with the opinion of the Lord Justice-Clerk, and with the views expressed by Lord Trayner in the case of the *Parish Council of Stornoway* v. *Parish Council of Edinburgh*, 4 F. 998. I think that to interpret the Act as was done in that case avoids certain anomalies, which are, I think, inseparable from the interpretation put upon it in the *Falkirk* case. I have also had the benefit of perusing the opinion of Lord Johnston about to be read, and which goes so thoroughly into all the points raised that it is unnecessary for me to add anything.

LORD DUNDAS—I concur with the Lord President.

LORD JOHNSTON — I understand that this question has been sent to a Court of Seven Judges by reason of the apparent conflict of decision between the cases of *Falkirk*, 2 F. 998, and *Stornoway*, 4 F. 998, and that the subject which gave rise to these cases is for reconsideration. That subject is the meaning and effect of the Poor Law (Scotland) Act 1898, sec. 1, which substitutes a period of three years for the period of five required by the Poor Law (Scotland) Act 1845 for the acquisition of a residential settlement.

The gist of that section is to provide that from and after 1st October 1898 "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 after," 1st October 1898 have resided for three years continuously in such parish and shall have maintained himself industrially in the statutory sense. Section 76 of the Act of 1845 is repealed, and this new section is enacted in lieu of it, and is to be read and construed along with the Act of 1845, except in so far as expressly provided.

Residential settlement was not the creation of the Act of 1845. Whether it has an earlier origin I am not aware; but if not, it was created by two Acts of Charles II, 1663, cap. 52, and 1672, cap. 42, and the period for acquisition was three years. I presume that these very general statutory enactments were the subject of judicial interpretation and application, if not extension, as those of the Act of 1845 have been, for I find that Lord President Colonsay in *Robertson's* case, 17 D. at p. 175, says—"By the old law prior to 1845 a party having acquired a settlement by residence, retained that settlement until he had acquired another." It is thus explained why the Act of 1845 and the amending Act of 1898 both define the residential settlements of the future in merely negative terms. They do not create a residential settlement. They find it in existence, but they impose new conditions upon the acquisition, and I may add retention, though with the provisions which affect retention we are not here concerned.

The first question to consider is what the Act of 1898 means by "either before or after, or partly before and partly after," 1st October 1898. I am convinced that what the Legislature meant to effect was (1) that any person who was in the course of acquiring a five years' residential settlement at 1st October 1898, and had either (*a*) completed three years' residence in a parish at or prior to 1st October, or (*b*) completed the three years after 1st October, and (2) that any person who commenced and completed three years' residence after 1st October 1898, should be held to have by such three years' residence acquired a residential settlement at the completion of his three years' residence, instead of having to reside for the longer period of five years required by the Act of 1845. The words "unless such person shall . . . before . . . the commencement of this Act have resided for three years . . ." are, if taken literally, susceptible of a wider construction—so wide as to result in a *reductio ad absurdum* of the enactment. So the Sheriff-Substitute in the present case has read them. He says that the pauper's husband acquired a residential settlement by force of the substitution in the Act of 1845 of the provisions of the Act of 1898, at or prior to the date of his chargeability, viz., 16th September 1897, and that the receipt of parochial relief on and after 16th September 1897 prevented the loss of the

settlement so acquired though the Act of 1898 did not come into operation till a year afterwards—on 1st October 1898. If this view be sound, the logical consequence is that any pauper who (it may be thirty years before) became chargeable to his birth settlement, and has been receiving relief ever since, if he had resided industrially for more than three years and less than five in another parish prior to his thirty years' chargeability, would find himself at 1st October 1898 with a residential settlement, the parish of which was then and there called on to relieve his birth parish for the future, if not even to reimburse it for the past. I cannot believe that the words of the section under consideration were intended to be stretched to any such extent, or even in any less extent, beyond the plain intent of the statute. And here I think the fact that neither the statute of 1845 nor that of 1898 created residential settlement is of importance. They merely enacted certain conditions on the acquisition of a residential settlement, and they enacted them in such terms as not to exclude all other considerations derivable from a general view of the poor law and from principles of the common law acting on its administration. Above all things they do not exclude consideration of the lapse of time which has separated the prior period of three years' residence from 1st October 1898, and still less "the history of the pauper during that interval," to use the words of Lord Trayner in the *Stornoway* case (4 F. at p. 1004). But the view of the Sheriff-Substitute, and the consequent *reductio ad absurdum* of the Act, is, I think, excluded by the proviso at the end of the section under consideration, to which I shall have afterwards to advert.

I therefore respectfully concur in the views of their Lordships of the Second Division in the *Stornoway* case, though I think I should give to the word "before" a more definite meaning, as above explained, than merely immediately before. But this question is of little practical importance, as the cases involving it which will arise in the future can in the nature of things be but few.

But there was another ground of judgment stated by their Lordships, which, whatever is thought of the question to which I have already adverted, is conclusive; and though it has no bearing on the *Falkirk* case, it has a most material bearing on the present, just at the point where the latter case comes to be of some general importance. In the *Stornoway* case the pauper had a birth settlement in Stornoway. He resided for more than three years industrially in St Cuthbert's (now the City Parish of Edinburgh) from March 1888 to May 1891. From May 1891 until March 1897 he was never absent from Edinburgh for such period as would have lost a three years' residential settlement if he had had one as at May 1891. In March 1897 he returned to Stornoway, and in 1899 became chargeable there. But between May 1891 and 1st October 1898, when the Act of 1898 came into force, he had twice received parochial relief in Edinburgh, viz., in 1895 and in 1896. This fact of the pauper's chargeability between the expiry of the three year's residence founded on and the coming into operation of the Act of 1898, had, as I have said, no place in the *Falkirk* case, but it has a prominent place in the present. In the *Stornoway* case their Lordships of the Second Division held, and I respectfully think correctly, that by the reception by the pauper in 1895 and 1896 of relief, any effect of the previous residence towards creating a residential settlement under the law in force prior to 1898 was wiped out, and that the Act of 1898 was not intended to, and did not, resuscitate, as qualifying for a residential settlement, a residence which under the Act of 1845 for any purpose of acquisition of settlement had been extinguished. To hold otherwise would lead to a result impossible to attribute to the intention of the Legislature, viz., that the Act of 1898 should effect the sudden change on 1st October of that year of liabilities already attaching. For if chargeability at any time between the expiry of the three years' residence and 1st October 1898 is not to prevent the fixing of liability by the statutory evolution of a new settlement, then I can see no reason why the fact of chargeability at the date of the Act coming into force, viz., 1st October 1898, should do so either. This ground of judgment in the *Stornoway* case appears to me to be quite unassailable, whatever be thought on the more general question. But I would at this stage draw attention to the proviso at the end of section 1 of the Act of 1898. It is this—"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 the Act are chargeable to any parish in Scotland." It is at least clear that the Legislature had in contemplation that the too literal application of the amending enactment of the section might affect the position of paupers actually chargeable at the date of the Act. It was therefore provided that before such paupers could get the benefit of the shortened period of residence requisite for acquisition of a settlement, four years at least from the commencement of the Act must elapse. It is a necessary implication that such paupers must be first resuscitated before they can get the benefit of the amending enactment, for it is assumed that they must recommence the acquisition of a settlement, and the Legislature thought fit to provide that even if rehabilitated the day after the Act came into force, their acquisition of a new residential settlement should be somewhat postponed as compared with other persons; and before their three years' residence can avail them to change either their former residential settlement or to supersede their birth settlement, at least four years from the passing of the Act must elapse. This does not expressly cover the case of a pauper whose chargeability

has occurred after the completion of a three years' residence prior to the passing of the Act, but has not actually continued down to the date of the Act, and therefore does not expressly cover the *Stornoway* case. But it does so by necessary implication, and imports that not merely the literal terms of the conditions on acquisition of a residential settlement imposed by the statute, but other principles of the poor law, are to be considered. It does, however, as will be seen, expressly cover the present case.

Its circumstances are these—An Irishman whose settlement in Ireland is unknown, and who had not acquired a settlement in Scotland, married in 1893 a woman with a birth settlement in Banff. The couple resided in Aberdeen from October 1893 to September 1897, and the husband during that time had complied so far with the statutory provisions anent acquisition of residential settlements in that he had resided in Aberdeen *ex hypothesi* continuously (the subordinate question of fact I do not think it necessary to deal with) for more than three years, also in that he had maintained himself without having recourse to common begging either by himself or his wife—they had no family—and without having received or applied for parochial relief. But from September 1897 to the passing of the Act of 1898, and from that date till his death in 1905, he was, as the Sheriff-Substitute says, almost continuously in receipt of parochial relief from Aberdeen, not because he had acquired a residential settlement there but because he had no settlement in Scotland, and must otherwise have been removed to Ireland, if indeed such removal is ever now resorted to, under the Poor Law Act 1845, sec. 70 *et seq.* He was thus in the sense of the Act 1898 chargeable to Aberdeen as the relieving parish at the passing of the Act of 1898, and continued chargeable to Aberdeen until his death seven years later.

The present question has arisen, not regarding his settlement but regarding that of his widow, though his settlement is necessarily involved. He died on 27th February 1905. She became chargeable, immediately after his death, and was relieved from 23rd March to 13th July 1905. She has since been more than once in the Aberdeen poorhouse, and, I understand, is regarded as permanently chargeable—whether to her own birth parish in respect that her husband had no settlement in Scotland, or to Aberdeen by reason of a residential settlement acquired under the amending Act of 1898, is the question.

I think that as regards the pauper's husband this case is *a fortiori* of the *Stornoway* case. I cannot see how it can possibly be held that he who had been for thirteen months actually in receipt of relief when the Act passed should suddenly find himself by force of the Act of 1898 in possession of a residential settlement in the very parish which had been giving him relief under the Act of 1845, sec. 70, by reason only that he had no settlement in Scotland. I do not think that there is need of the proviso to the first section of the 1898 Act to support the negative of such a contention. But if anyone thinks that there is, the proviso directly covers the case.

If, then, the husband had, at the passing of the Act, and, from his continuing chargeable, consequently at his death, no settlement in Scotland, and was receiving relief just because he had no settlement in Scotland, how is it maintained that on his death his wife should find herself in possession of a residential settlement by force of the Act of 1898? It is this question which renders the case of the general importance which it would not otherwise have.

I say in possession of *a* residential settlement, for it is very difficult to understand whether the contention is that she now possesses derivatively a residential settlement from her husband, which he never had himself, or has actually or constructively by virtue of the statute acquired one for herself. I do not make use of the terms "settlement," "residential settlement," and "derivative," as in themselves conclusive of anything. "Settlement" is indeed a statutory term; "residential settlement," or rather settlement by residence, a statutory rubric term; and "derivative" is neither one nor the other, and I use them, not as advancing the argument *pro* or *con*, but as shorthand modes of expressing well understood and defined legal results from certain *species facti*.

In the first place, nothing, I should think, is better settled than that no husband can have more than one settlement at the same time, and equally that no wife can take from her husband more than one settlement. If she loses that after his death she does not, as he would have done, revert to another settlement of his, but to one of her own—*Hay* v. *Carse*, 22 D. 872. At the date of the pauper's husband's death, what was his settlement? If Aberdeen, then not merely at the date of his death but "from and after the commencement of this Act" (the Act of 1898) it had been and continued Aberdeen. Now the section of the 1898 Act does not say that every person either before or after, or partly before and partly after, he has resided industrially in a parish for three years, shall be held to have acquired a residential settlement in that parish, but merely that such residence shall be a condition of the acquisition, but not to the exclusion of all other conditions. One of these other conditions which, in my opinion, the law would have implied in the application of this provision is that chargeability should not have occurred between the termination of the three years' residence founded on and the passing of the Act. And in the case of actual chargeability at the date of the Act the implication arises expressly on the proviso to the statutory enactment itself. The pauper's husband had not only become chargeable between the expiry of the three years and the passing of the Act, but was actually chargeable at the passing of the

Act, though not on the principle of settlement, but merely of being found destitute. The pauper's husband, though he was by chargeability denied the advantage of the statute, was, however, not without a settlement. He had at least a birth settlement in some parish in Ireland. His widow could at any rate only take from him that settlement which he himself had, and that settlement was neither Aberdeen nor Banff.

It does not, however, follow that in the case of the widow of a man who has no settlement in Scotland and no other known settlement elsewhere, she, or rather the parish which is bound to relieve her under the Act of 1845, sec. 70, is left at her husband's death without recourse. The Court has, actuated by convenience rather than principle, and by an Act savouring of legislative rather than judicial function, fixed certain rules to meet such cases. It is worth while to see how these rules have grown up and what they are.

The first authority to which I refer is *Hay* v. *Skene* (12 D. 1019). A Scotswoman with a birth settlement in Old Machar married an Englishman whose settlement in England was unknown, and who did not acquire a residential settlement in Scotland. He deserted her, and she became insane and chargeable in Edinburgh. Was Edinburgh, as merely the relieving parish, entitled to relief from the pauper's birth parish? There was a decided difference of opinion in the Court, Lord Moncreiff dissenting from an affirmative answer to that question. But there was no difference of opinion as to the legal situation with which the Court had to deal. All the Judges agreed that on marriage, and by reason of the consequent merging of the woman's separate person in her husband, a woman takes her husband's settlement. Lord Justice-Clerk Hope says—"It is not in the mere relation of marriage alone, independently of the effect of that relation in regard to settlement under the poor law, that the settlement of the husband becomes the settlement of the wife. No doubt, considering the nature of that relation, it was natural to expect that such should be the case. But still it is the result of the interpretation actually given to the poor law. Originally no settlement was created except one by birth or industrial residence. And it is an addition to or interpretation of the law so constituted which makes the husband's settlement that of the wife. But it might have been otherwise settled — especially in the event of desertion." It having been settled, and on a principle well known to the law, that on marriage the husband's settlement became that of the wife, what this case determined was that, on considerations of expediency, where a wife is deserted by a husband having no settlement in Scotland and no known settlement elsewhere, the *onus* of finding the husband's settlement and therefore the wife's should lie, not upon the relieving parish, but upon the parish of the wife's birth. Just as in *Adamson* v. *Barbour* (1 Macph. 376), considerations of expediency and propriety and public interest had weight in fixing a rule, so they had here. But that these considerations overrode principle is, I think, admitted by the Judges in the majority, and is certainly maintained by Lord Moncreiff in the minority. Notwithstanding that Lord Moncreiff's view was forcibly maintained by Lord President Inglis, then Lord Justice-Clerk, in *Hay* v. *Carse* (22 D. 872), and subsequently in the case of *Carmichael* v. *Adamson* (1 Macph. 452), yet his Lordship formally recognised the rule of *Hay* v. *Skene* as now a fixed rule in the administration of poor law in deciding *Greig* v. *Simpson* (3 R. 642). But although it is generally now said that a Scotswoman, wife of a foreigner, on desertion reverts to her own settlement, that only means, as I understand, that to get rid of such liability the parish of settlement which would have been hers if unmarried must not only show that she is married, but must find her husband's parish of settlement.

I can see no reason why the death of the husband with no settlement in Scotland and no known settlement, should have any other result than the desertion of the same husband, viz., that *onus* of finding the husband's true settlement should rest on the wife's ante-matrimonial parish of settlement, which should be required to relieve the relieving parish until that *onus* is discharged. *Gibson* v. *Murray* (16 D. 936) was an extension of *Hay* v. *Skene* (*supra*) and of *Adamson* v. *Barbour* (*supra*) in conjunction.

M'Crorie v. *Cowan* (24 D. 723) shows the impossibility of supporting *Hay* v. *Skene* (*supra*) on principle, however convenient the rule may be in practice. For it determined that where the wife of an Irishman, who was living in Scotland but who had no acquired Scots settlement, became insane, the relieving parish had no recourse against the birth parish of the insane wife. The judgment was the unanimous judgment of the whole Court, and proceeded on the principle repeatedly expressed by members of the Court, "that being a married woman she cannot have any settlement of her own apart from her husband, or any settlement that is not his settlement; that her fate in this subject is linked to his; and that the circumstance which here occurs, of her husband not having a settlement in any parish in Scotland does not exclude the application of the general rule." That this decision is difficult to reconcile with *Hay* v. *Skene* (*supra*) is pointed out by Lord Justice-Clerk Inglis, who concurred in it. But both decisions stand and fix rules in *paribus casibus*. I may further quote, as bearing on the point at issue, the ground of his judgment as stated by Lord Justice-Clerk Inglis. He arrives at his judgment "on the broad and simple ground that a married woman is in law incapable, *stante matrimonio*, to have any settlement in her own right or independently of her husband. If her husband has a settlement, that also is her settlement. If her husband has no settlement, just as little has she. She is, in my opinion, as completely incapable of possessing a settlement in her

own right during the subsistence of the marriage as she is to have a separate domicile from her husband, or to enjoy any other personal status or franchise in her own right." Consistently with this general principle thus authoritatively stated it is difficult to understand how the pauper here could emerge from the married state, on the death of her Irish husband, with a settlement which was not and never had been her husband's, and was not even her own ante-matrimonial settlement, but one acquired by residence *stante matrimonio*. I say "by residence," but I am unable to say by whose. It cannot be by the residence of a husband who was acquiring thereby a settlement for himself. For that was not the case. It cannot be by the residence of the wife, for *stante matrimonio* she cannot acquire a settlement for herself, even when deserted (*Gray* v. *Fowlie*, 9 D. 811). It must be then through some mysterious process of reasoning by the residence of the wife through the husband, attributing to her his residence, and attributing to his residence, so attributed to her, an effect which it did not have in relation to himself. But if by her husband's residence the pauper acquired a settlement by virtue of the Act of 1898, she did not do so at her death merely, but at the date of the Act, and constructively at the earlier date of September 1897, and continued to have that settlement till her husband's death. That is to say, for eight years husband and wife had different settlements, a thing wholly opposed to principle authoritatively recognised and already referred to.

The case of *Falkirk* (2 F. 998) differs materially from the present. The three years' residence of the husband had been completed before his death, his death occurred before the date of the Act, his wife's chargeability commenced after his death and after the date of the Act. But the husband never himself applied for or received relief. The *Falkirk* case thus admits of being distinguished at two essential points from the present. But I recognise that the grounds of judgment cannot be reconciled with the opinion I hold on the present case. It would not be appropriate that I should canvass the grounds of judgment stated by the learned Judges who decided it. I content myself with saying that I respectfully endorse the views stated by Lord M'Laren, who dissented.

I therefore think that the parish of Aberdeen, as the relieving parish, is ultimately entitled to be reimbursed by the deceased husband's parish of settlement, which was the wife's if and when that is ascertained, and that it is only on a necessary extension of the rule of *Hay* v. *Skene*, which I must recognise, and not on principle, that the parish of the wife's birth may be resorted to *primo loco*, and until it discharges the *onus* of establishing the husband's actual settlement as at his death.

The Court pronounced this interlocutor—

"Find in fact in terms of the seven findings in fact in the interlocutor of the Sheriff-Substitute of Banff dated 23rd January 1909: Recal the findings in law in the said interlocutor, and in lieu thereof find in law (1) that in respect of the three years' residence of her husband in Aberdeen prior to 16th September 1897 the pauper Mrs Smith had acquired, as at the effective date of her chargeability, a derivative residential settlement in Aberdeen, and (2) that this being so, the Parish Council of the City Parish of Aberdeen has no claim of relief against the Parish Council of the parish of Banff: *Quoad ultra* affirm the said interlocutor appealed against," &c.

Counsel for Pursuers (Appellants)—Constable, K.C.—A. R. Brown. Agents—Macpherson & Mackay, S.S.C.

Counsel for Defenders (Respondents)—M'Lennan, K.C.—A. M. Mackay. Agents—Alex. Morison & Company, W.S.

Friday, December 3.

SECOND DIVISION.

[Lord Guthrie, Ordinary.

CUTHILL *v.* INVERKEILOR PARISH COUNCIL.

Poor—Process—Local Government Board—Complaint—Court of Session Action for Adequate Relief—Competency—Relief—"Inadequate"—Offer of Poorhouse—Poor Law (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 83), *secs.* 74 *and* 75.

The relief offered to a pauper by a parish council may be "inadequate" within the meaning of sections 74 and 75 of the Poor Law (Scotland) Act 1845, as well from its form as from its amount. An offer of admission to the poorhouse is therefore open to complaint to the Local Government Board for Scotland on the ground of being "inadequate" and to review by a court of law as provided for in these sections.

Poor—Relief of Pauper—"Inadequate"—Offer of Poorhouse — Unsuitability to Circumstances—Poor Law (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 83), *sec.* 74.

Circumstances in which *held* that an offer of admission to the poorhouse made by a parish council to a pauper was "inadequate" as being unsuitable to the then position of the pauper.

The Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83) enacts—Section 74—"In every case in which any poor person shall consider the relief granted to him to be inadequate, such poor person shall lodge or cause to be lodged a complaint with the Board of Supervision, which Board shall and is hereby required, without delay, to investigate the nature and grounds of the complaint; and if upon inquiry it shall appear that the grounds of such complaint are well