

tion of the expenses of other contractors in whose contracts he may or may not be named as arbiter. This element seems to me to make it less likely that the counter-claims which thus arise for adjudication would be sent to the arbitration of the arbiter under the contract. But, although I feel the force of this argument, I am not prepared to differ from the view of your Lordship in the chair and of Lord Dundas that the words fairly construed cover the dispute raised by the pursuers' claim in the second alternative of the first conclusion of their summons.

On the second question, that of alleged disqualification, I agree with the Lord Ordinary that no disqualification has been relevantly averred, and, differing from the Lord Ordinary, I think that the pursuers' claim for £60, in connection with the separate seating contract, must go to proof.

The Court recalled the interlocutor of the Lord Ordinary, *sustained* the plea-in-law for the defenders added at the hearing so far as regarded the first conclusion of the summons, and to that extent *sisted* the action; *quoad ultra* allowed a proof.

Counsel for Pursuers—Macmillan, K.C.—Mitchell. Agents—R. C. Gray & Paton, S.S.C.

Counsel for Defenders—Macquisten—Scott. Agents—Alexander Morrison & Company, W.S.

Friday, June 30.

FIRST DIVISION.

[Sheriff Court at Elgin.

ALLOA PARISH COUNCIL *v.* URQUHART PARISH COUNCIL.

Poor—Settlement—Relief—Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), sec. 1—“Without having Received or Applied for Parochial Relief”—Relief Given to Woman for whose Behoof Money as Compensation for Death of her Husband had been Paid into and was Lying in Court.

The Poor Law (Scotland) Act 1898 enacts, sec. 1—“No person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall . . . have resided continuously in such parish . . . without having received or applied for parochial relief.”

A woman obtained on her own behalf and for behoof of her children in the Sheriff Court of S. £292, 18s. 4d. compensation for the death of her husband, under the Workmen's Compensation Act 1906, which sum was paid into court, quarterly payments of £12, 10s. being thereafter made to her out of the compensation. On 28th May 1911 they came to reside in the parish

of A, where they continued to reside. On 12th January 1914 she was ailing and so were her children, and, the current quarterly payment of compensation being exhausted, on the 12th, 19th, and 26th January and on subsequent occasions she received payments of relief from the inspector of poor at A. On each occasion there was still remaining a substantial amount of the compensation, but the actual quarterly payment was completely exhausted. In an action by the parish of A against the parish of the woman's birth settlement for repayment of the relief given and for relief from further payments, *held* that the woman was not a proper object of parochial relief on the occasions when the inspector of A gave it to her, that consequently she could acquire and had acquired on 29th May 1915 a residential settlement in A, which parish could therefore not succeed.

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

The Parish Council of the Parish of Alloa, *pursuers*, brought an action in the Sheriff Court at Elgin against the Parish Council of the Parish of Urquhart, *defenders*, concluding for decree for sums already paid as poor relief by the pursuers to Mrs Jessie M'Gregor or Anderson and her children, and to ordain the defenders to relieve the pursuers of all further alimentary or other advances to Mrs Anderson and her children so long as she or they might require parochial aid and her or their settlement was in the parish of the defenders.

The defenders *pleaded*—“(1) The said Mrs Jessie M'Gregor or Anderson having by non-residence for the statutory period lost the residential settlement acquired by her late husband in the parish of St Ninians, and not having acquired a residential settlement of her own, and having been born in the parish of Urquhart, that parish is the parish of settlement and liable for the maintenance of herself and her children. (2) The said Mrs Jessie M'Gregor or Anderson and her children having been destitute and proper objects of relief on the various dates specified in the initial writ, and the pursuers having given relief on behalf or on account of herself and her minor children to the extent of £4, 12s., the defenders are bound to repay the said sum to the pursuers.”

The *facts* appear from the note of the Sheriff-Substitute (VALENTINE), who on 1st July 1915 found in law that Mrs Anderson was not on any of the dates on which she received relief a proper object of parochial relief; that on 29th May 1914 she acquired a residential settlement in the parish of Alloa, and that the defenders were not liable to repay to the pursuers the sums paid by the latter to Mrs Anderson, and assoilzied the defenders.

Note.—“Mrs Anderson was born in the parish of Urquhart on 4th May 1871. On 6th July 1900 she married the late John Anderson, and there are five living children

of the marriage, the eldest of whom was born in January 1901. On 15th December 1910 Mr Anderson was killed by an accident, and thereafter Mrs Anderson as an individual and as guardian of her children was awarded compensation for his death. The sum of £292, 18s. 4d. was paid into the Sheriff Court of Stirling on her behalf on 10th March 1911, and the Sheriff ordered that she should be paid £12, 10s. quarterly out of that sum. At Whitsunday 1911 Mrs Anderson went to reside in the parish of Alloa, and she has since remained there. Her children have throughout lived with her and have been entirely dependent on her, with the exception that since 7th January 1915 the eldest girl has been earning 5s. a-week. From Whitsunday 1911 to December 1913 Mrs Anderson found the quarterly payment of £12, 10s., supplemented by what she made by keeping a lodger, sufficient for her support and for that of her children. At the New Year of 1914, however, she had exhausted the £12, 10s. which she had received at the last quarter day of Martinmas. She had for some time been unable to obtain a lodger, and three of her children were ailing, which caused her extra expense; she herself suffers from a weak heart and was then unwell. The attention of Mr Cowan, poor inspector of Alloa, was called to the case by the compulsory officer of the school board, who had learnt of it in the course of inquiries regarding the children. Mr Cowan went to see Mrs Anderson on or before 12th January 1914. The evidence as to the date of his first call is conflicting, but I am disposed to think that Mrs Anderson is right and that he first called some days before 12th January but found her too ill for much talk then. He told her that if she wished to apply for relief he would take the application. On 12th January Mrs Anderson called at the inspector's office, and having either then or previously made verbal application for assistance, received 12s. in name of relief. From 12th January the poor inspector was cognisant of all the facts of the case, including the fact that Mrs Anderson was receiving termly payments out of a sum of compensation money consigned in the Sheriff Court at Stirling. On 27th January, a few days before a meeting of the Parish Council, he wrote to the Sheriff Clerk to inquire about this, and was informed that there was a balance of £111, 19s. 8d., and that next quarter's payment would be due the following Monday. Further sums of 12s. in name of relief were paid to Mrs Anderson on 19th and 26th January. On 2nd February she received her quarterly allowance of £12, 10s., but after paying accounts and providing necessary clothing and boots for the children she had only £2, 5s. 5d. left. Thereupon, by the advice of Mr Cowan, she got him to apply on her behalf for an additional payment from the compensation money, and on 5th February she received from the Sheriff-Clerk a cheque for a further sum of £12, 10s. This she gave to Mr Cowan to keep for her, and he paid it out to her, beginning on 6th February, at the rate of £1 a week except

on one week when for a special reason she got £2. It was obvious that at this rate of expenditure nothing would be left for the last few weeks of the quarter. Mr Cowan pointed this out, but when Mrs Anderson replied that she needed the money he did not pursue the matter further. It does not seem to have occurred to Mr Cowan to suggest that the money must be spread over the quarter, or, if that was impossible, that application should be made to the Sheriff of Stirling to increase the quarterly grant. On 24th April the deposit in Mr Cowan's hands was exhausted. No application for a supplement was made to the Sheriff, but on May 1st, and again on May 8th, the poor inspector paid 14s. in name of relief. The quarterly payment came in on May 15th, and Mrs Anderson handed over £8 from it to Mr Cowan to be paid out weekly. This was exhausted on July 3rd, and on July 17th and 24th payments in name of relief, of 14s. each, were made as before without any attempt to have recourse to the compensation money. Since July 1914 Mrs Anderson has been able to live on her quarterly payments of £12, 10s. and has made no further application for assistance. It appears that in January 1914 the unexhausted balance of her compensation was £111, 19s. 8d., which was diminished by the various payments above mentioned. In these circumstances the question is whether the relieving parish of Alloa is entitled to recover from Urquhart, the parish of her birth settlement, the disbursements it has made. The statutory notice is admitted to have been given. It was not contended by either party that St Ninians, the parish of her husband's settlement at the time of his death, was liable, and the agent for the defenders admitted that if Mrs Anderson was a proper object of relief either in January or May, Urquhart was liable.

“By section 70 of the Poor Law (Scotland) Act 1845 the inspector of the poor and the board are bound on application after inquiry into the circumstances of the applicant to provide for the interim maintenance of a poor person not having a settlement in the parish if he be in other respects legally entitled to parochial relief, and by section 71 when relief has been afforded to a poor person found destitute in a parish the parochial board may recover the moneys expended on behalf of such poor person from any parish in Scotland to which he may ultimately be found to belong or from his parents or other person who may be legally bound to maintain him. The question is whether on the dates when the sums in question were paid Mrs Anderson was found destitute in Alloa and was legally entitled to parochial relief. The *onus* is on the pursuers to prove it. I am of opinion that she was not so entitled. Consider the beginning of January 1914. At that time it is true that she had no cash in hand, but she had admittedly estate in the hands of the Sheriff-Clerk of Stirling. I think it is for the pursuers to show that though she had such estate it was nevertheless not available for her support, and that she was therefore destitute. The Sheriff who had

originally, after inquiry into the woman's needs, directed the sum to be applied by quarterly payments of £12, 10s., had power under Schedule 1, sec. 9, of the Workmen's Compensation Act 1906, on application being made, to vary the manner of its application on account of variation of the circumstances of the various dependents or for any other sufficient reason. I cannot assume that if the Sheriff had been applied to he would not have varied the application of these funds to suit the circumstances. I think that to complete their case it was necessary for the pursuers to show that application had been made and had failed, or, if they could, that application would have been useless. In this case, on the contrary, I think it is clear that in January 1914 Mrs Anderson might have obtained from the compensation money what she needed. If she had done a month earlier what she did on February 2nd I see no reason to doubt that she would have obtained at the earlier time the £12, 10s. which she got on February 5th. That she could have maintained herself for a few days till the money arrived I have no doubt. She stated that she had not been just exactly refused credit though tradesmen had said 'it was time the account was paid.' She had maintained herself in the parish for two years and a half, and was known to have a regular though small income. I think in the circumstances Mr Cowan should have suggested an attempt to have recourse to the compensation money before granting poor relief. It appears that he takes the view that in such cases it is better policy to give partial relief at once than to exhaust the compensation and be then forced to give full relief. This may be very well so long as no questions with third parties are raised, but I think that the poor inspector cannot prejudice the position of another parish by any anticipation of the period of destitution.

"With regard to the relief given in May and July similar considerations apply. There was plenty of time before these dates to explain the circumstances fully to the Sheriff. There was still a large balance in the hands of the Court, and no attempt was made to reach it. In regard to the relief given in July, there is the additional circumstance that if Mrs Anderson was not a proper object of relief in January or May she obtained a settlement in Alloa on 29th May 1915 under section 1 of the Poor Law (Scotland) Act 1898. The meaning of that section is that a person acquires a settlement by three years' residence unless, *inter alia*, being entitled to relief, such person received relief, or having applied for it was improperly refused—*Jack v. Thom*, 1860, 23 D. 173, at 180.

"The suggestion was thrown out that the relief was not given *bona fide*, but with the object of preventing Mrs Anderson from acquiring a residential settlement in Alloa. I think that the *onus* of proving this would be on the defenders, and that there was no sufficient proof in the cross of the pursuers' witnesses that such was the motive. I think Mr Cowan behaved quite properly in going

to inquire at Mrs Anderson's house on receiving credible information that she was destitute; if this was a wrong course the most deserving poor might fail to obtain relief through diffidence. Of course, the fact that Mr Cowan had been the first to move in the matter made it all the more necessary for him when he learned that another parish was involved to take the greatest care that the case was really one for relief.

"If I am wrong in thinking that recourse should have been had to the compensation money, then I should be of opinion that relief had been properly given on each occasion. For the last quarterly payment of what in that view would be practically a terminable annuity being exhausted and the next not yet due, there were intervals when Mrs Anderson would have been entirely without means. In fact, a quarterly payment of £12, 10s. had proved at that time insufficient for her support. The case would have been similar to *Dinwoodie v. Graham*, 1871, 8 Macph. 436, 7 S.L.R. 258, from which it actually differs in respect that there was a fund in Scotland from which a payment could have been obtained for the support of Mrs Anderson and her family.

"A large number of cases were quoted. It was much pressed on me that where money had been advanced for the support of a destitute person and was recoverable from parents or other persons legally liable, the burden of recovering it from them lies on the parish of settlement, not on the relieving parish—*Rattray v. Coupar-Angus*, 1904, P.L.M. 14. This may be sound law, but I do not think it is applicable here. In such cases there is undoubtedly a pauper, and the question is, who is to be ultimately liable for relief properly given? A person may be a proper object of relief though a parent may have money—*Harper v. Rutherglen*, 1903, 6 F. 23, 41 S.L.R. 16. But here the question is, whether there was ever a pauper at all? It is clear that if the parochial board have taken up a case in which the party relieved is not a proper object it cannot recover from the parish of settlement—*Beattie v. Grosier*, 1881, 8 R. 787, 18 S.L.R. 536; *Kirkmichael v. Kilmarnock*, 1898, 35 S.L.R. 919. When the alleged pauper himself has a fund to which recourse may be had I do not think he is a proper object of relief. In *Campbell v. Macfarlane*, 1885, 12 R. 713 at 721, 22 S.L.R. 515, Lord Young put it so broadly as this—'If the pauper has estate, though not immediately realisable, he is not a pauper.' There is nothing inconsistent with this statement in *Forfar v. Davidson*, 1898, 1 F. 238, 36 S.L.R. 165, where, on the contrary, it is supported by the opinion not only of Lord Young but of Lord Trayner. Nor is *Dinwoodie v. Graham* inconsistent therewith, for in that case apparently the pauper had nothing but the £40 each year as it was paid; some of Lord Deas' expressions indeed cannot be reconciled with the dictum quoted from Lord Young, but even they do not assist the pursuers, for Mrs Anderson was not in the position, as I think, of not

being able to do anything for herself; the obvious thing to do she did not try, viz., to apply for a further grant from the compensation fund. It is not necessary for the relieving officer to wait till the very last shilling has been spent—*Cathcart v. Glasgow*, 1907, P.L.M. 153—but if he gave relief to a person possessed of substantial property the only claim that can arise is for repayment of money paid in error. Such a claim can only be made by the relieving parish against the 'pauper,' the parish of settlement being an entire stranger to the transaction. I think it significant that section 71 of the Poor Law (Scotland) Act 1845 while providing for the recovery of relief from the parish of settlement and from parents, &c., makes no provisions for its recovery from the pauper himself, not contemplating in my view that a person with estate could be relieved."

The pursuers appealed to the Sheriff (A. O. M. MACKENZIE), who on 6th August 1915 adhered to the Sheriff-Substitute's interlocutor and concurred in his note.

The pursuers appealed to the Court of Session, and argued—Mrs Anderson never acquired a settlement in the pursuers' parish by residence, for she had not resided there continuously for three years without having received or applied for poor relief—Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), sec. 1. On 12th January 1914 she did apply for and did receive poor relief, and at that date she was a proper object of poor relief and legally entitled to it. All destitute persons with the exception of able-bodied persons were legally entitled to poor relief, and Mrs Anderson was then destitute and was ailing. On her application for poor relief the inspector of poor was bound to relieve her, and if he did not do so his refusal to do so was improper—Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83), sec. 70—and consequently the pursuers had a right of relief against the defenders—Poor Law (Scotland) Act 1845, sec. 71. The fact that compensation for behoof of herself and her child had at that date been paid into the sheriff court at Stirling was irrelevant, for the application of that fund was in the discretion of the Court, which might have refused to make any payment—Workmen's Compensation Act 1906 (6 Edw. VII, cap. 58), Schedule I, sec. 5—and in any event she was not bound to live on credit or starve until it was decided whether a payment should be made to her or not. *Dinwoodie v. Graham*, 1870, 8 Macph. 436, per Lord President Inglis at p. 437 and Lord Deas *ibid.* 7 S.L.R. 258; *Forfar Parish Council v. Davidson*, 1898, 1 F. 236, per Lord Trayner at p. 243, 36 S.L.R. 165; *Harper v. Inspector of Rutherglen*, 1903, 6 F. 23, 41 S.L.R. 16, were all authorities for the proposition that where a person was actually destitute and there was no fund immediately available for his support he was a proper object of poor relief, and if he applied for or received it the process of acquisition of a residential settlement was interrupted. If relief was applied for by one not properly entitled thereto, e.g., by an able-bodied

person, and was granted to him, that had no effect on the acquisition of a residential settlement, but if a proper application for poor relief was improperly refused the settlement would be effected—*Jack v. Thom*, 1860, 23 D. 173, per Lord Justice-Clerk Inglis at p. 180. The Sheriffs were wrong and should be reversed.

The defenders were not called upon.

LORD PRESIDENT—My view of this case can be most aptly and most succinctly expressed by adopting, as I now do, the words of the learned Sheriff in confirming his Substitute's interlocutor, where he says—"The Sheriff-Substitute, in my opinion, has decided this case rightly, and I do not think that I can usefully add anything to the clear statement of the grounds of his decision which the note appended to his interlocutor contains."

LORD JOHNSTON—I think that this case presents a difficult question, looking not only to its own nature, but particularly to the nature of the fund, the rights in the fund, and the limitations upon rights of parties interested in the fund, which does not belong to the widow as an individual, but was intended to be made available for the maintenance and benefit of this family generally. I acquiesce in the judgment which your Lordship proposes only on the ground of the very exceptional circumstances, and not in the application of any general rule or principle of the poor law.

LORD MACKENZIE—I agree with the Sheriff and the Sheriff-Substitute.

LORD SKERRINGTON—I agree with your Lordship. It is purely a question of circumstances whether this woman fell within the statutory description of being a poor person. I do not think that she did.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Macmillan, K.C.—Maconochie. Agents—Traquair, Dickson, & MacLaren, W.S.

Counsel for the Defenders and Respondents—Solicitor-General (Morison, K.C.)—Paton. Agents—Bruce & Stoddart, S.S.C.

Saturday, July 1.

FIRST DIVISION.

STEEDMAN'S TRUSTEES v. STEEDMAN AND OTHERS.

Succession—Will—Construction—Object of the Gift—"Next-of-Kin."

A testator left a trust-disposition and settlement whereby he directed his trustees to "pay and convey" the residue and remainder of his estate and effects to his "nearest heirs and next-of-kin whomsoever in accordance with law." He left heritable and moveable property. His heirs *in mobilibus* claimed a share in the residue along with his next-of-