

parishes, there being no dispute that the pursuer was entitled to relief from the one or from the other.

It appeared that, from a period anterior to the month of March 1852, down to July 1852, the pauper resided in the parish of Shotts, sleeping beside the furnaces of the Shotts Ironworks, some of which are in Shotts and some in Cambusnethan, and living partly by occasional employment which he obtained, and partly by the unsolicited charity of his fellow-workmen. In July 1852, he obtained regular employment in the Shotts Ironworks, and continued there till March 1857, when he was dismissed, and went to England, subsisting, it did not appear how, for a period of six months. At the end of these six months, he again returned to Shotts, and resumed his employment in the works, and continued in that employment till about March 1859, when he removed to the parish of Cambusnethan. It was in these circumstances maintained by Dalmeny (the parish of birth) that there had been a residential settlement acquired in the parish of Shotts, and that that settlement was not affected by the gap of six months during which the pauper was absent—(1) because that absence was a mere incident, which did not affect his residence; and (2) because, even if the absence did break the continuity of the residence, the residence in Shotts must be held to have begun at least in March 1852, whereby the five years necessary to a residential settlement were completed in March 1857, before the six months' absence began.

The Lord Ordinary (JERVISWOODE) decreed against the parish of Shotts, holding that the pauper had acquired a residential settlement in that parish, beginning in July 1852, when he obtained regular work there, and not interrupted by the six months' absence in England.

The Inspector of Shotts reclaimed.

FRASER and DEAS for him.

WATSON and TRAYNER for Dalmeny.

R. V. CAMPBELL for pursuer.

The Court (LORD BENHOLME diss.) recalled the Lord Ordinary's interlocutor, and found that there had been no residential settlement acquired, and that the parish of birth was liable.

The majority of the Court, while conceding that a residential settlement did not imply an industrial settlement, but only the absence of common begging, were yet of opinion, upon the evidence—(1) that prior to July 1852, when the pursuer obtained regular employment, there was no satisfactory evidence of such residence in the parish of Shotts as would constitute a residential settlement; (2) that the pauper's subsequent residence in Shotts was interrupted in March 1857 by his six months' absence in England, which was not proved to be *incidental* to his employment or otherwise consistent with his retaining his connection with the parish of Shotts. Their Lordships held that the *onus* of proving residence, and especially of proving that a *hiatus* in the period of residence was incidental and not interruptive, lay always upon the parish of birth, and that in this case the parish of birth had not discharged itself of this *onus*.

LORD BENHOLME took a different view of the evidence, and held that, looking to the circumstances as a whole, the fair inference was (1) that the pauper's absence in England did not interrupt his residence in Shotts, but (2) that even if it did there was five years' residence before that absence began, in respect that the pauper resided in Shotts, and was not a common beggar from March 1852, and

not merely from July 1852 as assumed by their Lordships.

The parish of Shotts was therefore assolized, and decree pronounced against the parish of Dalmeny, with expenses. The pursuer having moved for the expense of appearing and taking decree against the unsuccessful parish, their Lordships refused to allow any expenses to the pursuer, as his appearance in the Inner-House was unnecessary.

Agents for Shotts—Waddell & Mackintosh, S.S.C.

Agents for Dalmeny—Duncan, Dewar and Black, W.S.

Agent for Cambusnethan—Alexander Wylie, W.S.

Tuesday, February 11.

FIRST DIVISION.

MACFARLANE, PETITIONER.

Diligence — Arrestment — Dependence — Recal. Arrestment used on the dependence, against private estate of a party, *recalled*, on the ground that the dependence on which the arrestment was used was a dependence against the party solely in the character of executrix.

This was a petition for recal of arrestments. An action had been raised against Macfarlane, but he having died, a summons of transference was raised against his widow. Arrestments were used on the dependence against her private means and estate. She petitioned for recal.

CLARK and LEE for her.

N. C. CAMPBELL in reply.

The Court unanimously recalled the arrestment on the ground that the dependence, as appearing from the closed record, was a dependence against the petitioner as executrix of her deceased husband, and in no other character, and therefore was not a dependence that would justify arrestment against her private means and estate.

Agents for Petitioner—A. & A. Campbell, W.S.

Agents for Respondent—Murray, Beith, & Murray, W.S.

Tuesday, February 11.

SECOND DIVISION.

THOMAS CANT PETITIONER.

Bankrupt — Petition for Discharge — Bankrupt Act (49th section) — Objection to Discharge. Held that the qualifications of the 49th section of the Bankrupt Act, though necessary to enable a creditor to vote and rank in the sequestration were not imperative in the case of a creditor objecting to a bankrupt's discharge.

This was a petition by a bankrupt for the discharge of his sequestration. The sequestration was granted in May 1864. The trustee in the sequestration was discharged on 27th October 1865. The present application was presented on 27th September 1867. Upon its being presented, objections were lodged for a party who claimed to be a creditor in the bankrupt estate, and who had been given up as such in the bankrupt's state of affairs, but who had not ranked in the sequestration, or qualified as a creditor for purposes of voting and ranking, in terms of the 49th section of the statute. The grounds of objection were, *inter alia*,