

missible. Their case is, that under the bills of lading reference is made to the charter-party simply as regulating the rate of freight, and that, nothing appearing on the face of the bills to import the other conditions of the contract, they are unaffected by it. They plead that they acquired right to these bills of lading for value, and they appeal to the doctrine recognised in the case of *Fry* and previous cases, that onerous holders of bills of lading may take the cargo, subject only to the conditions appearing on the bills, or imported by reference on the face of the bills. The case is distinguishable from the present in the circumstance that the freight was there due for a mere portion of the cargo, and that the holder of the bill of lading was a stranger, wholly ignorant of the terms of the charter-party. Here Messrs Maclean & Hope knew the conditions, and could not give the first bill of lading, or take right to the other bills of lading, honestly ignoring the conditions of the shipment as appearing from the contract of charter. They state themselves, in a letter of the 1st February 1865, as under a heavy claim for demurrage in regard to the vessel. If liable in demurrage, they could be so only under the charter-party, under which also this claim arises. The case seems to me to be clearly within the authority of *Kerr v. Deslandes*, where, under similar circumstances—not stronger, but less conclusive—liability was inferred against the holder of a bill of lading.

The other judges concurred.

Agents for Maclean & Hope—Millar, Allardice, & Robson, W.S.

Agents for Respondent—Henry & Shiress, S.S.C.

Friday, June 5.

INNES v. IRONSIDE.

Poor—Residential Settlement—Absence from Parish—Birth Settlement—Erroneous Admission of Liability. Circumstances in which held (1) that a person being able-bodied did not affect the capacity of his residence for acquiring a settlement by relief afforded to his wife in another parish; (2) that a derivative residential settlement acquired through the husband had not been lost, the parties living during their absence from the parish in a state of recognised pauperism; (3) that an admission of liability by the parish of birth, made in error, was not binding.

This is an advocacy from the Sheriff-court of Aberdeen of an action in which the inspector of poor of the parish of Fyvie sues the united parishes of Tullynessle and Forbes for the sum of £16, 11s., on account of advances made by the pursuer to Mrs Margaret Forrest or Cruikshank from the 14th of August 1862, being the date of the statutory intimation. The pursuer makes the following statements:—“1. James Cruikshank, gardener or labourer, the husband of Mrs Margaret Forrest or Cruikshank, was born in the parish of Fyvie. 2. The said James Cruikshank went to the united parishes of Tullynessle and Forbes in the year 1837, where he resided till Whitsunday 1857, with the exception of a month's absence in Fifeshire. 3. The said Margaret Forrest or Cruikshank went to reside with James Cruikshank in the year 1840, and acted as his housekeeper till the 17th day of May 1857, when she was married to him. 4. James

Cruikshank did not receive parochial aid from the united parishes of Tullynessle and Forbes till the year 1855, about two years before he left the said united parishes of Tullynessle and Forbes, and had, consequently, acquired a residential settlement therein. This fact was admitted by the defender's predecessor, Mr James Smith, in a letter, dated 11th May 1850, addressed to the inspector of poor of the parish of Banff, which is herewith produced. 5. The said James Cruikshank and his wife left the united parishes of Tullynessle and Forbes at Whitsunday 1857 (26th May of that year), and went to the parish of Premnay, where they remained two years. 6. Thereafter, the said James Smith addressed a letter to the Rev. John Mann, inspector of poor of the parish of Premnay, dated 21st June 1858, which is herewith produced. In this letter Mr James Smith requested the Premnay inspector to treat Cruikshank as he would treat one of his own poor, showing thereby that he still looked upon him as a pauper belonging to the said united parishes of Tullynessle and Forbes. 7. The said James Cruikshank and his wife left the parish of Premnay at Whitsunday 1859, and went to the parish of Inverury, where James Cruikshank died on the 25th day of September 1860. 8. The said Margaret Forrest or Cruikshank left the parish of Inverury at Whitsunday 1861, and went to the parish of Methlic, where she only remained till Martinmas of that year, when she went to the parish of Meldrum. 9. The said Margaret Forrest or Cruikshank left the parish of Meldrum at Whitsunday 1864, and went to the parish of Old Machar, where she presently resides. 10. The said James Cruikshank and his wife, after they left the said united parishes of Tullynessle and Forbes at Whitsunday 1857, continued to receive parochial aid. 11. The pursuer, the said William Ironside, who for some time previously had supported the said Margaret Forrest or Cruikshank, intimated the chargeability of the defender to the said John Innes, as representing the parochial board of the said united parishes of Tullynessle and Forbes, by written notice sent to him upon the 14th day of August 1862—all in terms of the Act 8 and 9 Vict., cap. 83, intituled ‘An Act for the Amendment and Better Administration of the Laws relating to the Relief of the Poor in Scotland.’ 12. The chargeability, which commenced as aforesaid, still continues; but the defender disputes his liability, and refuses or delays to repay the said advances, or to relieve the pursuer of the aliment of the said Margaret Forrest or Cruikshank.”

The letters referred to in these statements are:—

Inspector of Poor, Tullynessle, to Inspector of Poor, Banff.

“Tullynessle, 11th May 1850.

“Sir,—James Cruikshank has acquired a settlement in this parish. I wish you would apply to him for support to his wife. He is in receipt of good wages.—I am, &c.,

“JAMES SMITH, Inspector.”

Inspector of Poor of Tullynessle to Inspector of Poor of Premnay.

“Tullynessle, June 21, 1858.

“Dear Sir,—James Cruikshank has sent along petition to the chairman of this parochial board enumerating his ailings, &c. I am afraid my last note to you was not explicit enough, and has been misunderstood by you. I had no wish to prevent you giving him what aid you saw necessary. Treat him as you would do one of your own poor in simi-

lar circumstances. I hope to see you soon.—I am,
&c.,

"JAMES SMITH.

'Rev. John Mann, Inspector of Poor, Premnay.'

The defender made the following counter-statements:—"1. In the month of May 1849, Elizabeth Shearer or Cruikshank, the first wife of the said James Cruikshank, who was then residing apart from her said husband in the parish of Banff, became an object of parochial relief, and got relief from the inspector of poor of that parish from the 25th day of said month of May until the 1st January 1851, at which latter date she removed from the said parish of Banff. 2. A statutory notice was, on said 25th May 1849, sent by the inspector of Banff to Mr John Scott, the inspector of Fyvie at the time, intimating that the said Elizabeth Shearer or Cruikshank had become chargeable. 3. At the time the said Elizabeth Shearer or Cruikshank became chargeable in Banff parish, her husband, the said James Cruikshank, was residing in the said united parishes of Tullynessle and Forbes, but had not acquired a residential settlement there, and the parochial board of said parishes therefore refused to relieve Banff of the burden of supporting his wife. 4. The inspector of poor of Banff addressed a letter, dated 15th June 1850, to the inspector of Fyvie, in which he stated that he had been in correspondence with the woman's husband, and also with the inspector of Tullynessle, and that he was informed that he had resided in that parish, first for four years, and afterwards for three years, with an interval of upwards of one year, and that, consequently, he had not acquired a settlement there; and also that Cruikshank stated that he was not able to give anything towards his wife's support. 5. In July 1850, the inspector of Fyvie wrote to the inspector of Banff a letter, admitting the liability of the former parish for the support of Cruikshank's wife, a copy of which is herewith produced, and afterwards repaid to the said inspector of Banff the whole advances made by him to Elizabeth Shearer or Cruikshank during the time she resided as a pauper in that parish."

In answer to the last statement it is stated by the pursuer that the inspector of Fyvie admitted his liability, in consequence of the misrepresentations made by the inspector of Banff.

The pursuer pleaded that the defender's parish being at the time of the death of Cruikshank his residential settlement, the pauper had derivatively through him a settlement in that parish.

The defender maintained the following pleas:—"1. Neither the said James Cruikshank nor the said Margaret Forrest or Cruikshank having ever acquired a settlement in the united parishes of Tullynessle and Forbes, the defender is not bound to support the latter, or to relieve the pursuer, as representing the parish of the husband's birth settlement, of the burden of maintaining her. 2. The said James Cruikshank not having a settlement in the said united parishes when he received parochial relief through his first wife, and not being in a position to acquire a settlement by residence so long as that relief was continued, had acquired no residential settlement there at Whitsunday 1857, when he left said parishes. 3. The pursuer's parish of Fyvie having admitted liability as the parish of Cruikshank's birth, after ample time for inquiry, and in the full knowledge of the place of his residence in May 1849, and, consequently, that he had then no existing residential settlement in the defender's parish, repaying at the same time the sums advanced for the support of Cruikshank's first

wife, is barred from now opening up the question of his settlement as at that date with the present defender. 4. The letter of 11th May 1850, produced by the pursuer, having been written by the defender's predecessor in office, *per incuriam*, and before he had made full inquiry, and having been immediately followed by a disclaimer of liability on his part, cannot now be founded on against the defender; and this more particularly, seeing that the alleged admission of liability was not at the time or since, until now, taken advantage of. 5. But even supposing that the said James Cruikshank had, previously to May 1849, acquired a residential settlement in said united parishes, and that he retained it when he left at 15th May 1857, that settlement had been lost, in terms of the 76th section of the statute, more than twelve months before application was made for parochial relief by his widow, the present pauper."

The Sheriff-substitute (J. COMRIE THOMSON) pronounced the following interlocutor:—"Having resumed consideration of this cause, finds it proved that the pauper's husband, the deceased James Cruikshank, resided continuously in the defender's parish from the year 1837 till Whitsunday in the year 1857: That at the last-mentioned date the pauper and he left the defender's parish: That the said James Cruikshank died in the parish of Inverury in September 1860: That it is unnecessary to decide whether the residence of Cruikshank in the defender's parish prior to 1857 conferred upon him a settlement or not, in respect of the following finding, viz.:—That such a settlement, if acquired, was not retained by the pauper, by reason of her own and her husband's absence from the defender's parish for upwards of five years subsequent to Whitsunday 1857, without either of them having resided during said period in the said parish continuously for one year: Finds that no ground of liability on the part of the defender, other than that founded on a residential settlement, is averred on record: Therefore sustains the defender's fifth plea in law; Assolizies the defender from the conclusions of the libel, and decerns: Finds the defender entitled to expenses of process: Allows an account thereof to be given in; and remits the same, when lodged, to the Auditor of Court to tax and report."

"*Note.*—The ground upon which the above judgment proceeds renders it unnecessary to dispose of some very important and delicate questions which were raised by the defender. It would be difficult to overcome the fact, for example, that on 2d July 1850 a letter was written by the then inspector of the pursuer's parish admitting liability, and that that parish then repaid the advances which had been made by the parish of Banff on behalf of James Cruikshank's first wife. That fact is admitted by the pursuer, and no relevant or even plausible explanation is offered of the mistake, if it was indeed a mistake. It would, in the opinion of the Sheriff-substitute, be highly inexpedient to allow such questions to be re-opened after a lapse of seventeen years, except on very substantial grounds. (See the remarks of their Lordships of the First Division of the Court in *Scott v. Anderson*, 15th July 1854, 16 D. 1094.)

"It is also a question of some difficulty whether, seeing that during the period of Cruikshank's residence in the defender's parish, his lawful wife, living apart from him, was in receipt of parochial relief in Banff, he was in a position for acquiring a settlement by residence.

"If the view of the Sheriff-substitute on the judgment pronounced be well founded, it is superfluous to deal with these aspects of the case.

"It is not averred that, prior to the passing of the present Poor-law Act, the pauper's husband had become a proper object of parochial relief.

"It is not disputed, as matter of fact, that after leaving Tullynessle in 1857, neither the pauper nor her husband again resided within that parish. The husband died in 1860. The pauper's settlement in Tullynessle was derived from him. If he acquired a settlement there, it is to his absence that the law looks during his life in the event of his losing it; and on his death the widow, who had the settlement only through him, and who inherited it from him, must be held, if she remain absent, to carry on that absence which her husband had begun.

"The decision seems justified by the course followed by the Second Division in the case of *Allan v. Higgins, &c.*, 23d December 1864, 3 Macph. 309."

The Sheriff (JAMIESON) altered, and pronounced the following interlocutor:—

"The Sheriff having considered the reclaiming petition and answers, No. 17 and 19 of process, and the minute No. 18, appoints the copy of the record appended to the said reclaiming petition to be withdrawn as irregular; and having considered the proof adduced and whole process, sustains the pursuer's appeal, and recalls the interlocutor appealed from: Finds it proved that the pursuer's husband, the deceased James Cruikshank, resided continuously in the parish of Tullynessle from the year 1840 to the term of Whitsunday 1857, and maintained himself by his own industry until the year 1855, when he received some casual aid from the parochial authorities for first time: Finds it proved that, at Whitsunday 1857 he removed with his wife to the parish of Premnay, and that in January 1858 the inspector of that parish sent to the inspector of Tullynessle a statutory notice that Cruikshank had come chargeable as a pauper: Finds it instructed that he received parochial aid from that time from Premnay up to his death, on 25th September 1860, and that the pauper, his widow, continued to receive parochial aid till December 1866. In these circumstances, Finds that James Cruikshank acquired a residential settlement in the united parishes of Tullynessle and Forbes, and that the same has not been lost by the absence of the pauper and of her husband from the said united parishes, and that the same is still the parish of the said pauper's settlement: Therefore decerns against the defender, in terms of the conclusions of the summons: Finds the defender liable in expenses, of which allows an account to be given in, and, when lodged, remits the same to the Auditor to tax and report.

"*Note*—There are several questions of difficulty raised in this case which it is proper to notice:—

"(1) The Sheriff would have at once adopted the Sheriff-substitute's judgment had the pauper and her husband supported themselves during the period of four years subsequent to Whitsunday 1857, when they removed from the defender's parish. But as they were not only in indigent circumstances, but actually chargeable, and statutory notice had been given of James Cruikshank's chargeability, and the defender's predecessor did not deny that he was a proper object of parochial relief, he could not lose his former residential settlement while in a state of recognised pauperism. The same rule applies to his widow, the pauper,

who followed the settlement of her husband,—See *Beattie v. Adamson*, Nov. 23, 1866, 5 M. p. 47.

"(2) It appears that in 1849 Cruikshank's first wife, while living separate from him, was relieved by the inspector of Banff, where she resided, and continued to be supported by him from the parochial funds until her death in 1855. No steps seem to have been taken to prosecute Cruikshank for these advances, or to compel him to support his wife. Prior to 1849 he had acquired a residential settlement in Tullynessle, and continued after that year, as before it, to maintain himself, his house-keeper, and their daughter; and there is no reason to hold that his existing settlement in the defender's parish was affected by this failure of conjugal duty on his part, or by the circumstance that his wife was supported by the inspector of Banff, who obtained relief, not from Tullynessle, but from Fyvie, the pursuer's parish.

"(3) This last circumstance is one of the difficulties of the present case, regarding which the Sheriff-substitute indicates an opinion, but did not require to decide, from the view he adopted of the first point already adverted to. It is true that the pursuer's predecessor admitted the liability of the Parochial Board of Fyvie, as the parish of Cruikshank's birth, to relieve the parish of Banff of these advances, but it now plainly appears that this admission was made in error. It proceeded on information communicated in a letter from the inspector of Banff (No. 7-2 of pro). But that it was erroneous is distinctly proved by the evidence in this action —(Proof, pp. 1-10)—which shows, as already observed, that Cruikshank resided continuously in Tullynessle from at least 1840 till 1857. It cannot, therefore, affect the question raised in this case."

The defender advocated.

SOLICITOR-GENERAL and THOMSON for him.

CLARK and HARRY SMITH in answer.

At Advising—

LORD JUSTICE-CLERK—This case arises out of a claim made for the expenses of supporting Margaret Forrest, widow of the deceased James Cruikshank, a pauper, by the parish of Fyvie against the parish of Tullynessle. James Cruikshank, the deceased, was born in Fyvie, but resided in Tullynessle continuously, and with only a few weeks break, from about the year 1840 down to Whitsunday 1857. From 1857 till his death, which happened on the 25th September 1860, he resided at Premnay or at Inverury. His widow, the pauper, resided after his death in Inverury, Old Meldrum, and Old Machar.

In 1856 and 1857 James Cruikshank received relief as a pauper from Tullynessle. There is contradictory evidence as to the source of the payments; it is said that he got these payments from a fund at the disposal of the Kirk-Session of Tullynessle; but it seems to be proved by extracts from the books of the Parochial Board of Tullynessle that, in May 1856, and again in May 1857, he got meal at the cost of the Board as a casual pauper. He does not seem ever to have been enrolled as a regular pauper, nor received relief otherwise in Tullynessle. He applied for and received parochial relief in January 1858 while at Premnay. He was admitted to be then chargeable, and he continued to be supported as a pauper till his death; and his widow, from his death in 1860, was, and still continues, chargeable as a pauper.

The claim in the action is restricted to advances made or to be made since August 1862, at which

time a statutory notice was given by the pursuers, the parish of Fyvie, who had been paying the sums necessary for the support of the pauper. We have nothing to do with sums paid previously to this notice, either to the pauper Margaret Forrest or her late husband. There is no attempt made to recover any sum paid by the pursuer for support of the first wife of the deceased, who had received support during Cruikshank's life, or for the support of Cruikshank himself; the case relates exclusively to payments made to the widow, and those payments made after the notice of 1862.

The claim rests upon the fact, that at the date of Cruikshank's death he had a settlement in Tullynessle; that his widow became chargeable against the parish of his settlement on his death, and that she continues chargeable. It is established by evidence beyond the reach of question that, from 1840 certainly down to May 1856, Cruikshank had a residence in Tullynessle, and lived upon his earnings, supporting by his earnings the pauper, then his housekeeper, and a daughter. No doubt can be entertained that, in point of fact, he had an industrious residence for this long period of time in Tullynessle, and nothing occurred in his history pointing to his pauperism till 1856. He continued in Tullynessle till Whitsunday 1857, when he went to Premnay, where, before a year of residence, he became a proper object of relief, and was admitted a pauper on the roll of that parish. Dying in 1860, his widow was put upon the roll.

The case *prima facie* in favour of Fyvie is clear enough. The defence of Tullynessle is rested upon three grounds:—(1) that Cruikshank must be held as a pauper while resident at Tullynessle, because his first wife, then living separate from her husband, was supported as a pauper by Fyvie; (2) because the parish of Fyvie is said to be barred by an admission made touching the condition of Cruikshank on the 2d July 1850; and (3) that, *esto* Tullynessle were otherwise liable, the liability has ceased by reason of the non-residence of the pauper or her husband in Tullynessle since 1857.

I am of opinion that none of these defences is well founded. I think that the mere fact of support having been given to Cruikshank's wife, when living in separation from her husband, will not cause him to be a pauper while he was able-bodied and earning a subsistence for himself and the females who resided with him. The parish so paying might have proceeded against him for relief for their advances if they chose; their failure to follow out proceedings to make the relief effectual can never pauperise him. There is no evidence of any demand against him, or any request of his that the support should be given.

As to the plea of bar arising from the alleged admission, there appears to me to be several conclusive answers. In the first place, the admission was made to the parish of Banff, which disbursed the relief to Cruikshank's wife, and in reference to that special case only. The pauper whose support is in dispute is the widow of the deceased, a different party altogether, for the party relieved died, and the deceased married the pauper, and no claim could arise, in so far as she was concerned, before 1860. In the next place, the admission was made clearly on the faith of a statement made by the inspector of Tullynessle, in correspondence with Banff, and communicated to Fyvie, touching the duration of Cruikshank's residence in Tullynessle, which was untrue. The admission is made on the 2d July or

the 15th of June; we have the letter embodying the statements as to Cruikshank's residence in Tullynessle.

Tullynessle happened to be believed in a material point of fact which the inspector who made it had manifest opportunities of ascertaining, and so escaped for a certain time the support of a pauper legitimately theirs. I should think it the extremity of injustice to subject a parish, whose only fault in the matter was too implicit credence to the statements of the other, to such consequences as a transfer of that liability. I altogether repudiate the doctrine maintained by the counsel of Tullynessle—that a parish receiving such a statement as to matters in fact necessarily falling to be within the knowledge of the parochial authorities, was bound to have disregarded the statement, and to have instituted inquiries for themselves. This would be a plain encouragement to bad faith or recklessness of statement, and can receive the sanction of no Court. We have no question here as to payments disbursed by Fyvie in error originating in this misstatement. I do not say what my opinion would have been had the demand gone further and embraced them; but what we have to do with is as to payments made after the error was discovered and notice given.

The case of *Scott* and *Anderson* does not appear to be applicable; it was a case in which effect was given by the Court to a long series of payments as affecting the proof of a very obscure and difficult question of fact. There is no matter of doubtful fact here, and in that case there was no case of mistaken fact arising from representations made by the other parish.

Strange enough, the parish of Tullynessle, in May 1850, had made an admission, in correspondence with Banff, that Tullynessle was Cruikshank's parish of settlement. It was retracted on the footing of a supposed broken residence, since disproved. In this case, when the discovery was made of the error in fact which led to the payments, it was retracted. The retraction was made in a short time in one case, and after a considerable time in the other; but the retraction should receive as much effect in the one case as in the other, if made on the discovery of the true state of the facts.

As to the loss of settlement by non-residence, it seems hopeless after the decision in the case of *Beattie v. Adamson*, 23d November 1866, 5 Macph. 47, as I view that judgment. Here the question is as to the settlement of Margaret Forrest. Her settlement was acquired no doubt derivatively from her late husband's; but her own settlement, when she became chargeable, was Tullynessle—Has she ceased to be chargeable to Tullynessle because they have hitherto escaped payment of the sums truly due by them? Her settlement, once fixed, does not change while chargeability remains. That she resides in a parish different from the parish truly chargeable can really make no difference. Confessedly, notice was given by Premnay of the application of Margaret Forrest, if so, as it turns out, they were the true parties liable. Evading liability, in consequence of a mistake arising from their inspector's misstatement of fact, can never absolve them, though the claim may be lost by the true parish by virtue of the statute. The *ratio* of the judgment in the case of *Beattie*, as I read the exposition of the law as expressed by the presiding judge, and adhered to by the majority of the Court, appears to have been because a pauper pupil had been admitted on the record—no doubt but incau-

tiously—to have been a proper object of parochial relief chargeable on the parish which was sought to be made liable, could not lose the position thus acquired by a cessation of the residence of the father, through whose residence there she derivatively had acquired the settlement. She was dealt with as a party having a settlement of her own, and the principle was, that, once in that position, the settlement remained while chargeability continued. Here the pauper, in 1860, had certainly of her own right a settlement in Tullynessle, though obtained derivatively through her husband; but having thus in 1860 this settlement, and continuing a pauper, she remained chargeable. I do not see how the previous non-residence of her husband for a period insufficient to destroy her right to obtain support from Tullynessle originally, can, in combination with her non-residence after she was chargeable, infer the loss of her settlement. When once established that she had a settlement in Tullynessle in 1860, I confess I do not see how her non-residence in that parish can affect her right—Tullynessle being truly under obligation to support her, if only a demand had been made for payment. She was all along in a condition of pauperism. Nothing is more common than for paupers to reside in parishes different from the parish of their settlement as fixed by residence. If the parish of settlement pays for their support, it surely cannot be contended that the mere fact of their non-residence can operate to alter their liability. If they fail to pay, the fact of non-payment of what is due cannot surely create any favourable distinction. Least of all, if the failure to pay arose from the absence of a demand for payment, arising from error as to material facts induced by misstatements made by their inspector. There is no sanction in the Statute for distinguishing between the effect of non-residence in a parish where the parish of settlement does, and where it does not, discharge its legal obligation of supporting its paupers. If non-residence alters liability where the party is admitted as a pauper in the case of non-payment, it must do so also where there is payment. The question as to loss of a settlement may affect the pauper materially. The case might be that of a foreigner, who, losing the settlement acquired by residence, would have no other. If it be admitted that the pauper might have resided for twenty years—while receiving aid from the parish of her settlement—in a parish different from that acquired by her own residential settlement, without losing her right, the fact that the parish truly liable has got another parish to pay cannot surely affect the question. If mere absence from a parish where chargeability exists will not do, it will not do here. Notice does not affect the question further than as to recovery of payments made before it is given. But if it did, notice was given within the two years after the deceased pauper ceased to reside in Tullynessle. I agree with the Sheriff in his decision of the case.

LORD COWAN—after narrating the leading facts—The first question raised is, that the payments by Fyvie to Shearer are to be held as a recognition by that parish of Cruikshank's settlement being, not Tullynessle, but Fyvie itself, although Cruikshank had all the time from 1840 had his industrial residence in Tullynessle. To this there are several answers.

1. Fyvie having paid any of these advances arose from Tullynessle's representations that no

residential settlement had been acquired by Cruikshank in that parish. 2. That as Cruikshank was able-bodied, Fyvie could not legitimately make advances to Shearer, or seek relief of such advances from the poor's funds of any parish, their only relief being against the husband, who was bound to support his wife. And 3. That such advances to Shearer would not affect the legal settlement of Cruikshank himself, whose industrial settlement was indisputably Tullynessle; so that if he had fallen into poverty when resident in that parish his right to relief was indisputable.

Accordingly, what was the fact? Cruikshank did not remove from the parish until 1857, and being in poverty, he was admitted on the list of casual poor of Tullynessle, and got allowances of meal during the years 1856 and 1857.

Cruikshank married Margaret Forrest, the pauper, before leaving Tullynessle at Whitsunday 1857. They went to the parish of Premnay, where they became chargeable.

Premnay gave statutory notice to Tullynessle on 23d January 1858. This led to the letters from Tullynessle of 30th January, 10th June, and 21st June 1858, to Premnay, and to advances to Cruikshank by Premnay, of which relief was demanded from Fyvie, and repayment made by that parish in February 1859. For the advances by Premnay, thus repaid by Fyvie on February 1859, Tullynessle was responsible, as it was under their letters that Premnay made those advances.

Keeping these facts in view, the second plea in defence has to be considered, viz., that the residential settlement in Tullynessle of Cruikshank, and, through him, of his widow the pauper, has not been retained, under the second branch of § 76 of the statute. After Cruikshank left Tullynessle in 1857, he did not return before his death, in 1860, and the pauper has not resided within the parish. Hence it is said that, at the date of the statutory notice, 14th August 1852, the pauper and her husband were upwards of four years absent from the parish, and their residential settlement was consequently lost. The answer to this plea is, that for at least two years before leaving Tullynessle Cruikshank had been receiving relief as a pauper chargeable on that parish; that after his removal to Premnay, on obtaining relief there, statutory notice was given to Tullynessle in January 1858; and that the advances made by Premnay were under the sanction of Tullynessle, although Fyvie, acting on the erroneous statements made by Tullynessle, relieved Premnay of those advances, and continued to support Cruikshank during his life, and his widow after his death, without giving notice until 1862 to Tullynessle.

The general question argued by defender is not therefore raised by the facts. The statutory notice by Premnay kept the liability of Tullynessle for the pauper's support an open claim against that parish. The advances by Premnay, given in compliance with Tullynessle's instructions, cannot be viewed in any light other than as made by Tullynessle itself. No doubt Fyvie paid those advances to Premnay, although no statutory notice had been given to Fyvie; but this was not until January or February 1859, between which date and the date of the statutory notice to Tullynessle, in August 1862, no less period than four years intervened. I hold Premnay to have supported the pauper on the requisition of Tullynessle during the year 1858. It is only after January 1859 that Fyvie recognised the claim made by Premnay for advances on ac-

count of the pauper. A settlement may be acquired derivatively by adding the residence of the pauper claiming the settlement to that of the person, father or husband, from whom it is alleged to be derived. To this effect see *Allan v. Higgins*, 23d December 1864, referred to by the Sheriff-substitute. And on that authority it may, in like manner, be retained should five years elapse without one year's residence of either within the parish.

Whether it would be so in such a case as that stated by me in *Beattie v. Adamson*, 23d November 1866, does not seem to have been decided, and it is not necessary to decide it in this case.

The specialities in the facts are conclusive against the plea, supposing it otherwise well founded; for relief was here given to Cruikshank while in the parish of Tullynessle, and afterwards when resident at Premnay, although Fyvie through misconception repaid those advances to Premnay. See *Johnston v. Black*, 13th July 1859, &c.

The other judges concurred.

Agents for Advocate—Renton & Gray, S.S.C.

Agent for Respondent—John Auld, W.S.

Saturday, June 6.

FIRST DIVISION.

MACOME v. DICKSON.

Landlord and Tenant—Furnished House—Taxes.

In the letting of a furnished house, the taxes in respect of tenancy or occupancy are, by the custom of the country, paid by the landlord, unless otherwise stipulated.

Dickson took a three-years' lease of a furnished house from Macome, no special stipulation being made as to the payment of taxes on the house. A question arose as to the tenant's liability for payment of these taxes. The Sheriff-substitute (STEELE) found the tenant liable for the taxes under deduction of the landlord's proportion. The Sheriff (HUNTER) reversed, and found that, "according to the usage of the district, all such taxes are either paid by the landlord or deduction of the amount allowed by him to the tenant: Finds in law, that the usage is to be held to constitute, *ipso jure*, an integral part of the contract; and, *second*, that the defender is therefore entitled to have deduction from the rent of the amount of taxes payable by the tenant."

The landlord appealed.

J. M'LAREN for appellant.

WATSON, for respondent, was not called on.

LORD PRESIDENT—Apart from the seven-pence of income-tax, I have no doubt as to the rest of the case, and I am not disposed very much to refine in such a question, or to affect to decide it on any clear principle beyond this, that there is no doubt of the understanding, not confined to the west country, but very general, that in the letting of a furnished house the tenant pays no taxes. On that simple ground, I think the Sheriff is right.

LORD CURRIEHILL and LORD DEAS concurred.

LORD ARDMILLAN—I am of the same opinion. No exception to the general practice has been established, and it cannot be presumed that a man who takes a furnished house takes it on a different understanding from what is usual. Besides, we have the evidence of the house-agent, who let the house, and who understood that the taxes were, as usual, to be paid by the landlord.

Agents for Appellant—Millar, Allardice, & Robson, W.S.

Agents for Respondent—Tawae & Bonar, W.S.

Saturday, June 6.

SECOND DIVISION.

BONAR v. ANSTRUTHER.

Bond of Provision and Annuity—5 Geo. IV., c. 87 (Aberdeen Act) 3d Section—Reddendo and Tenendas Clauses—Increasing Annuity.

An heir of entail in possession executed a bond of provision and annuity in favour of his widow, but providing that in no case was she to receive more than one-third of the free yearly rent of the estate. It was further provided by the bond that, when certain preferable burdens should expire, the annuity, if reduced by the previous clause, should be again increased. Held (1) that the omission in the bond of annuity of the reddendo and tenendas clauses did not invalidate the deed, there being a valid obligation constituted by it upon the grantor and the succeeding heirs of entail to infest the widow in the annuity; (2) that the 3d section of the Aberdeen Act conferred a power to grant an annuity to expand on the ceasing of any former liferent.

In this action the pursuer, Mrs Louisa Bonar, seeks to enforce a bond of provision and annuity, dated 5th August 1834, granted in her favour by her late husband, Colonel Robert Anstruther of Thirdpart. By this bond he, as heir of entail infest in the lands, and in virtue of the powers conferred upon heirs of entail by 5 George IV. cap. 87, section 1, bound and obliged himself and the succeeding heirs of entail to infest the pursuer in a free yearly annuity of £700 per annum out of the said lands of Thirdpart and others; provided, however, that in no case was she to receive more than one-third of the free yearly rent of the estates, after the deduction of all preferable burdens. The deed further provided that whenever these preferable burdens should expire, and, in particular, an annuity of £1000 a-year granted to Lady Anstruther, Colonel Anstruther's mother, that then the annuity to the pursuer should be increased to the full amount of £700, or to a sum amounting to one-third of the yearly rent of the estate.

Colonel Anstruther died in 1856, and upon his death it was discovered that one-third of the free annual rent of the estate, after deduction of preferable burdens, amounted to £425, and this sum has been annually paid to Mrs Anstruther, the pursuer. Lady Anstruther died in 1865, whereupon the pursuer claimed the increased annuity under the bond; and her claim being refused, she brought the present action against the heir of entail in possession of the estate.

The defences were, that the bond of annuity was invalid, in respect of the omission of two essential clauses—viz., the reddendo and tenendas—and that the annuity had not been constituted a burden on the entailed estate in the manner prescribed by the Statute; and that, even if the bond was valid, the Act contained no provision by which the annuity could be increased upon the expiration of another annuity.

The Lord Ordinary (ORMIDALE) repelled both these pleas.