the part of the proprietor of Logan, with reference to the time, the manner, the instrument, and the character of the only fishing which has been proved down to 1856, I am of opinion that such possession of the right of salmon-fishing as law requires has not been instructed prior to 1856; and that is conclusive. I therefore suggest to your Lordships that we recall the interlocutor of the Lord Ordinary, and decern in terms of the conclusions of this action.

The other Judges concurred.

Counsel for Pursuers—Solicitor-General (Clark) and T. Ivory. Agent—Donald Beith, W.S.

Counsel for Defenders—Millar Q.C. and Blair. Agents—Hunter, Blair, & Cowan.

Friday, June 13.

FIRST DIVISION.

[Sheriff of Lanarkshire.

JOHNSTON (INSPECTOR OF POOR, CAMPSIE) *v.* WALLACE (INSPECTOR OF POOR, GOVAN).

Poor—Settlement—Desertion—8 *and* 9 *Vict. c.* 83, § 80.

Where a husband, although remaining in Scotland, concealed himself and failed to aliment his wife—*held* that the conduct of the husband amounted to desertion in the sense of the Poor Law Act, notwithstanding that circumstances justified his going away.

This action was raised by the inspector of poor for the parish of Campsie against the inspector of poor of the parish of Govan, on 21st June 1871. It concluded for aliment given to Mrs Carson from August 1868 to August 1871, and for aliment given to her children from August 1868 to December 1869. It also concluded that the parish of Govan be ordained to relieve the parish of Campsie of the maintenance of Mrs Carson for the future.

Elizabath Murphy or Carson, and Jane and Elizabeth Carson, the paupers, were the wife and children of Andrew Carson. They were discovered in a state of destitution in Campsie parish on 29th August 1868, at which date they were removed to the poor house, and on 25th September of the same year Mrs Carson, having become insane, was removed to Gartnavel Asylum, while the children remained in the poorhouse for some time, when they were removed by their father. It appeared from the proof which was led in the case that Andrew Carson originally left his wife because, as he alleged, her conduct was unbearable—that she often threatened his life, and otherwise ill treated him. Further details are contained in the interlocutor of the Sheriff (*infra*).

On 22d August 1872, the acting Sheriff-Substitute (LAWRIE) pronounced an interlocutor assoilzing the defenders from the conclusions of the action. In a note to his interlocutor the Sheriff-Substitute stated the ground of his decision as follows:—

" . . . The cases of *Hay* v. *Skene*, 13th June 1850, 12 D. 1019; and *Carmichael* v. *Adamson*, 28th February 1863, 1 Macph. 452, settle that where a husband has no settlement in Scotland his desertion of his wife has the effect of reviving her maiden or birth settlement.

" In all the reported cases in which the husband's desertion was founded on, he had left Scotland. It has not yet been decided whether the wife's birth parish is liable when the husband remains in Scotland but conceals himself and fails to aliment his family. The Sheriff-Substitute thinks that the desertion contemplated by the Judges who decided *Hay* v. *Skene*, and *Carmichael* v. *Adamson*, must be something more than the desertion which is punishable under the 80th section of the Poor Law Act. He has given repeated consideration to the question, and he has come to be of opinion that the only desertion which revives the wife's birth settlement is the husband's wilful absence from Scotland, coupled with failure to support his wife and family left here. In other words, that the husband must have withdrawn himself from the jurisdiction of the Courts of Law in Scotland, which, had he remained here, could either have compelled him to support his wife, or, if he himself were a pauper, could have removed them all to his native country.

" The Sheriff-Substitute is further of opinion that the *onus* of proving that the husband is abroad lies on the parish where the wife was found destitute, and that it must continue to support her until, by proof of that fact, it shifts the liability to her birth parish. If these views be correct, it is unnecessary to say more than that, in the circumstances proved, and on the authority of *M'Crorie* v. *Cowan*, 24 D. 723, Campsie has no claim against Govan. . . . . ."

The pursuer appealed, and on 7th December 1872 the Sheriff (BELL), reversing the judgment of the Sheriff-Substitute, pronounced an interlocutor containing the following findings:—" . . . Finds that the proof instructs that Andrew Carson, the husband of the pauper Elizabeth Murphy or Carson, and the father of Jane and Elizabeth Carson, is a native of Ireland; that if he ever acquired a residential settlement in Scotland, which is uncertain, he lost it a good many years ago; that in point of fact he had no settlement in this country during any portion of the period embraced in the account of disbursements for his said wife and children annexed to the summons; and that his wife was born in the parish of Govan, which was the parish of her maiden settlement: Finds, farther, that it is proved that Carson deserted his wife and family about the end of the year 1867, and although he does not appear to have left the country, he kept his place or places of residence concealed, and contributed nothing to their support from the said date till the end of the year 1869, when he removed his children from the Govan Poorhouse, and has apparently taken charge of them since: Finds that, in consequence of said desertion, Carson's wife and children became paupers and entitled to parochial relief, and his wife was for sometime maintained in the Govan Poorhouse at the expense of the parish of Campsie, being the parish where she was residing when deserted, and where she became chargeable, and was then removed, in consequence of supervening insanity, to a lunatic asylum, where her board has been disbursed by the said parish, and the said children were boarded at the expense of the said parish in Govan Poorhouse till the end of the year 1869: Finds, in point of law, that it is settled by the cases of *Hay*, June 13, 1850, and *Carmichael*, Feb. 28, 1863, that a wife and children left destitute by the desertion of the husband and father, who is a foreigner, and has no settlement in Scotland, fall to be supported by the parish of

the mother's birth, that being her maiden settlement: Therefore, and under reference to the annexed note, recalls the interlocutor appealed against; finds that the paupers having been deserted by Andrew Carson, who is an Irishman without a settlement in this country, the parish of Campsie, as the parish in which they happened to be residing when they became destitute, is entitled to be relieved of its disbursements on their account by the parish of Govan, as the birth parish of Elizabeth Murphy or Carson. . . . .

"*Note.*—The Sheriff-Substitute, while recognising the authority of the cases of *Hay* and *Carmichael*, seems to think that the decision in these cases was influenced by the fact that the husbands had left Scotland when they deserted their families, and stated that it has 'not yet been decided that a wife's birth parish is liable when the husband remains in Scotland, but conceals himself, and fails to aliment his family.' The Sheriff cannot find that there is any room for distinguishing between the one desertion and the other. Desertion, as defined by the 80th section of the Poor Law Act, is simply the 'neglect' by a husband or father 'to maintain his wife or children, being able so to do.' In *Hay's* case it was the fact of the husband's desertion alone (he being an Englishman without a Scotch settlement) that the Court went upon, not that of his being furth of Scotland, for, on the contrary, Lord Moncreiff, who was in the minority, pointed out that 'for anything that appears in this case, he (the husband) may be still living in some part of Scotland.' In *Carmichael* it was not known where the husband and father was, except that he had gone to sea, and had not been heard of since. The broad proposition which was there affirmed was, 'that where a husband has no settlement, his desertion of his family has the effect of reviving his wife's maiden or birth settlement,' both for herself and the pupil children of the marriage. This proposition was in no respects based on the assumption that the deserting husband had left Scotland. All the Judges referred to the bare fact of 'desertion,' and gave no indication that they meant more by that word than a failure to maintain his wife and children by an able-bodied man. Their Lordships also took care to explain that the decision in the prior case of *M'Crorie*, March 7, 1862, did not militate against either that of *Hay* or of *Carmichael*, seeing that *M'Crorie* was the case of an undeserted, and the other of a deserted, wife. As regards the fact of the desertion in the present case, there can be no doubt. Carson's place of residence was, it seems, known for at least a portion of the time to certain parties, but they refused to disclose it, and it was known neither to the pursuer nor to his wife and children, who were pauperised by his failure to consort with them or do anything towards their maintenance. The defender himself admitted the desertion, and on 5th November 1869 issued a hand-bill offering a reward for Carson's apprehension. He took steps at the end of 1869 to relieve the parish of his children by removing them, but it does not appear where he has been since."

The defender appealed to the First Division of the Court of Session.

The argument submitted by the pursuer and defender are substantially embodied in the notes, as above quoted, of the Sheriff and Sheriff-Substitutes respectively.

Authorities relied on by the pursuer—*Hay* v. *Skene*, 12 D. 1019; *Carmichael* v. *Adamson*, 1 Macph. 452; *Wallace* v. *Turnbull*, 10 Macph., p. 675.

Authority relied on by the defender—*M'Crorie*, 24 D. 723.

At advising—

Lord President—It has been settled in the case of *Carmichael* v. *Adamson* that where a wife has been deserted by her husband (he having no settlement in Scotland) and has in consequence become an object of parochial relief, the parish bound to support her is the parish of her birth settlement. That is now the settled rule (though I did not quite concur in that decision), and we have now only to apply it.

Mrs Carson became an object of parochial relief in August 1868, and relief was afforded her by the parish of Campsie; after a month she became insane, and was sent to Gartnavel Asylum, where she continued.

The only question here is,—At the date of Mrs Carson becoming chargeable as a pauper, was she a deserted wife? There is some peculiarity in this case. One element of the previous cases is absent here, viz.,—the fact that the husband had left the country. The defender says that is an essential element; and further, that, even if running away and staying in the country amounted to desertion, here that was justifiable. The question is, are these circumstances relevant? If a man finds it necessary for his own safety to go away from his wife, he may be justified in going away, but I cannot say that he is justified in not maintaining her in his absence. The facts are, that he went away, and kept his place of abode concealed, and sent his wife no money. This was in 1866. Then he came back, and stayed for about a month, when he went away a second time, and is not heard of till after his wife has become chargeable. It is quite clear, on a consideration of the history of the husband and wife during this period, that he went away designing to keep himself concealed and undiscoverable, abandoning his wife to parochial protection. The parishes fulfil all the duty that was incumbent upon them in the way of making an effort to discover him, but fail. I am not prepared to say that this was not a deserted wife. I am not prepared to say that absence of the husband from the country is essential to desertion. Even if he remains in the country, though no doubt he is subject to apprehension—so long as he was not apprehended and was undiscoverable, he was deserting to all intents and purposes. I have come to the conclusion, therefore, that the Sheriff is right; and that this woman being deserted, the parish of her birth settlement is liable.

Lord Deas—I agree with your Lordship as to the law settled by previous cases. Then there can be no doubt that in the sense of the Poor Law Act a man may desert his wife without leaving the country—otherwise the provision in the Act for punishment by imprisonment would be meaningless. The deserting husband could not be imprisoned if he were out of the country. The facts are, that he goes away, and, though earning good wages, never inquires whether his wife and children are starving or not. He may have had reasonable cause for leaving, but there could be no cause whatever for his not contributing to her support; and this is an element in desertion, in the sense of the Poor Law, fully more important than the mere

fact of separation. In these circumstances, I am quite satisfied that the law settled as applicable to the case of a deserted wife must be applied here, and that the parish of her birth settlement is liable.

LORD ARDMILLAN—The real question here is, was there desertion? There is some difficulty in deciding that point, as the case is peculiar. But in consideration of the combined facts of separation, concealment by the husband of his residence, and failure to supply the necessaries of existence, I am disposed to hold that there was desertion, and therefore, though probably with less clearness than your Lordships, I am bound to concur in your Lordships' judgment.

LORD JERVISWOODE concurred.

The Court pronounced the following interlocutor:—

"Find that Andrew Carson, the husband of the pauper and the father of her two children, is a native of Ireland, without any settlement in Scotland; find that on the 29th August 1868 the pauper and her two children became proper objects of parochial relief, and received and continued to receive such relief from the parish of Campsie till the 24th of September 1868, when she was sent by the parish of Govan to a Lunatic Asylum as a pauper lunatic; find that on and after the said 29th of August, and on the said 24th of September, the said pauper and her children were deserted by her husband and their father; therefore refuse the appeal, and decern; find the appellant liable in expenses; allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Pursuer — Fraser and Burnet. Agents—Mitchell & Baxter, W.S.

Counsel for Defender—Solicitor-General and W. A. Brown. Agents—J. & R. D. Ross, W.S.

M., Clerk.

Tuesday, June 17.

SECOND DIVISION.

REID *v.* CALEDONIAN RAILWAY CO.

Jury Trial—Motion to set aside Verdict—Excessive Damages.

A traveller in a railway accident received a severe nervous shock, although without external signs of injury.—*Held* that damages at a rate of from two to three years' earnings were not "excessive" in terms of the statute, and rule to set aside verdict *discharged.*

This case, arising out of the Kirtlebridge accident on 2d October 1872, was tried before Lord Neaves and a jury on 21st March 1873. The jury returned a verdict for the pursuer, and awarded him £2000 damages. On Saturday, June 14, the defenders moved the Court to have the verdict set aside, on the ground of the damages being "excessive" in the sense of the statute. The Second Division granted a rule, and the case now came up for parties to show cause why the rule should not be made absolute.

For the defenders, it was argued that the damages awarded were "excessive" when viewed along with the circumstances. The pursuer had not received any visible bodily injury; the medical evidence only brought it up to a nervous shock. The scene in the station alone might have produced a severe shock on the system of a nervous person, even though not actually in the train. Surely this would not have grounded a claim against the Company for damages. The pursuer's injuries being of this nervous character, it would not be easy to say how great or small they were Certainly he did not make the least of them, and though at the jury trial he was unable to bear a journey from Stirling, yet within ten days thereafter he proceeded to Glasgow, whence he went to the Continent, where he now remains.

For the pursuer, it was argued that the damages given must be extravagant—"outrageous," to use a term applied by the Judges in several such cases. Here is a man with an income of £700 to £800 a-year, an income which, by the books produced, was rapidly increasing. Yet further, the progress and success of the pursuer's business depended in great measure on his own personal skill and exertions. This was proved by the evidence alike of his own partner and of those persons who employed his firm. The firm, since this accident to Mr Reid, has failed to secure as large a share of its clients' business as formerly. The sum granted, £2000, is on the lowest scale less than three years' income, and on a higher one only that made in two and a-half years.

As to the extent of injury, the medical evidence, with one exception, is very much against the Company, and the doctor who first saw the pursuer, together with his family attendant, are both of opinion that the shock was, and still is, a very serious one. Since the accident he has been quite unable to attend to business.

Authorities—*Landale* v. *Landale*, 3 D. 818; *Houlden* v. *Cooper*, 20th Dec. 1871, 9 Scot. Law Rep. 169 (not elsewhere reported); *Stewart* v. *Caledonian Railway Co.*, Feb. 4, 1870, 7 Scot. Law Rep. 277 (the only report bearing on this point).

At advising—

LORD NEAVES—In this case I think it probable that had I been on the jury the damages I should have awarded would have been less than the sum which was actually given. I do not, however, think the sum from even my point of view could have been less than £1500. When the jury take a more gloomy view of the evidence adduced, and, in place of £1500, which the presiding Judge would have been disposed to regard as proper compensation, give £2000, such a difference can scarcely be held outrageous or "excessive" in terms of the statute.

LORD JUSTICE-CLERK—The impression which has been made upon my mind also by the evidence is, that the point was one on which a jury might fairly be left to judge. It must be observed further that the defenders perilled their case upon an allegation against the pursuer's honesty, and that the attempt to impeach it having failed, such a course, with such a result, could scarcely tend to diminish the damages a jury might be likely to award.

LORD COWAN—I do not think that the mere exhibition of a harrowing spectacle such as this was, and the injury to the nervous system there-