Martinmas 1878 by non-residence: Therefore sustain the appeal; recal the interlocutor of the Sheriff-Substitute of March 27, 1882; the interlocutor of the Sheriff of August 20, 1883; assoilzie the defender from the conclusions of the action."

Counsel for Pursuer (Respondent)—Sol.-Gen. Asher, Q.C.—J. Burnet. Agents—W. & J. Burness, W.S.

Counsel for Defender (Appellant)—J. P. B. Robertson—Pearson. Agents—Pearson, Robertson, & Finlay, W.S.

Tuesday, December 11.

SECOND DIVISION.

[Lord Adam, Ordinary.

BEATTIE AND MUIR *v.* BROWN.

Poor—Settlement—Deserted Wife—Effect of Admission by Parish — Poor Law Amendment (Scotland) Act 1845 (8 *and* 9 *Vict. c.* 83), *secs.* 70, 71, 76, 78, 79 *and* 80.

Held that in a question of liability between parishes an admission of liability made by A to B, after full inquiry, does not bar A's claim for relief as against C on subsequently ascertaining that the true liability was in that parish.

A wife deserted by her husband acquired a residential settlement in a parish in which she supported herself for a time by her own industry. She thereafter became chargeable in another parish, and while she was receiving relief her husband came and stayed with her for two months unknown to the parochial authorities, and without contributing to her support. In an action by the relieving parish against that in which she had acquired a settlement, for reimbursement of the sums expended on her, the latter parish maintained, *inter alia*, that the desertion was interrupted by the return of the husband. *Held* that in the circumstances the desertion remained uninterrupted.

This was an action at the instance of the Inspectors of Poor of the Barony Parish, Glasgow, and of the parish of Kirkcaldy, against the Inspector of Poor of the parish of the Dundee Combination, for declarator that a pauper named Margaret Rowan or Lawson, wife of Peter Lawson, had at the date when she became chargeable a residential settlement in Dundee, and for payment of the sum of £152, 11s. 7d., being the alleged amount of alimentary advances made to her between March 1874 and May 1882. The action was raised in May 1882.

It was admitted that the pauper was first relieved by Barony in 1873, and that notice was sent to Kirkcaldy, as the parish of settlement of her husband, he having been born there and acquired no other, and to Dundee on the ground that the pauper had a residential settlement there as hereinafter explained; that Kirkcaldy ultimately (in 1874) admitted, and Dundee refused to admit, liability; also that on 11th September 1878 Kirkcaldy gave notice to Dundee, and Dundee again refused to admit liability.

The pursuers averred that the pauper was a deserted wife, her husband, whose birth settlement was in Kirkcaldy, and whose residence at the time of the action was unknown, having deserted her in 1861 in Glasgow; that from 1863 to 1872 she had supported herself by keeping a shop in Dundee, and acquired a settlement there; that in 1872 she had gone to Glasgow, where she became chargeable in 1873, and had ever since continued to be a proper object of relief; that she became insane in 1873, soon after becoming chargeable, and was placed in an asylum; that in 1874 Kirkcaldy, under misapprehension as to her true settlement, admitted liability, and had supported her ever since, either in an asylum or with friends, or after she recovered her reason, which she did in 1881, as a recipient of out-door relief; and that the notice by Kirkcaldy to Dundee in 1878 was given after ascertaining the true settlement.

The defender did not admit that any residential settlement had been acquired in Dundee. He denied that Kirkcaldy's admission was made under any misapprehension or error, and averred that it was made after full inquiry and consideration of a full statement of particulars sent by Barony, a copy of which, stating, *inter alia*, that the pauper had lived eight years and six months in Dundee, was referred to and founded on.

He pleaded—"(3) In respect of the admission of liability made by the parish of Kirkcaldy to the Barony Parish on 12th February 1874, the pursuers are not entitled to decree of declarator and payment as craved. (4) In the circumstances the pursuers are barred by *mora* from insisting in the present claim. (5) The pauper in question not having acquired any settlement in the parish of Dundee, the defender is not liable for the sums sued for. (6) In any event, the parish of Dundee is not liable except to the extent of disbursements or advances made from the date of the statutory notice of 11th September 1878, and for one year prior thereto, in terms of section 78 of the Lunacy Act 1857."

The Lord Ordinary (Adam) on 16th December 1882 assoilzied the defender.

"*Opinion.*—In the month of May 1873 the pauper Margaret Brown or Lawson became a proper object of parochial relief, and received, as such, relief from the Barony Parish of Glasgow.

"She became insane in November 1873, and continued in that state till May 1881, when she was struck off the lunacy roll as recovered, but she is still in receipt of parochial relief.

"The Barony Parish was not the parish of the pauper's settlement, and accordingly on the 27th May 1873 that parish sent statutory notice that the pauper had become chargeable to the parish of Kirkcaldy as the parish of birth of the pauper's husband.

"It has been ascertained apparently that the pauper had been deserted by her husband in the year 1861; that she had lived and supported herself in the parish of Dundee from Martinmas 1863 till Whitsunday 1872, when she went to Glasgow. The Barony Parish accordingly, of the same date, gave notice of the pauper having become chargeable to the parish of Dundee on the ground that she had acquired a settlement by residence in that parish.

"The result of the matter was that Dundee re-

fused to admit liability, but that Kirkcaldy after full inquiry admitted liability.

"The object of the present action is to recover payment from Dundee of the sum of £152, 11s. 7d., being the amount of alimentary advances, including interest, alleged to have been made by the pursuers, the inspectors of Barony and Kirkcaldy, on account of the pauper. In truth, however, the inspector of Barony has no title or interest to appear in this process. It is not disputed that all advances he may have made have been repaid to him by Kirkcaldy. The action is in effect brought by the inspector of Kirkcaldy for sums defrayed by him in respect of the pauper.

"It further appears that on 11th September 1878 Kirkcaldy gave statutory notice to Dundee of their claim to be relieved of liability for the pauper on the ground that it had been ascertained that that parish was liable in respect of the industrial residence there of the pauper, and there is an alternative claim made for the sum of £52, 16s. 7d., being the amount disbursed subsequent to the said notice, and for a year previous.

"It appears to me, on the authority of the case of *Young* v. *Gow*, 4 R. 448, and the cases there referred to, that in a question between Barony, the original relieving parish, and Kirkcaldy, the latter must be held to be the parish of settlement of the pauper, however the fact may be, seeing that Kirkcaldy after full inquiry made that admission. But is that admission to be held as binding on Kirkcaldy in a question with Dundee? When the pauper became chargeable the inspector of Barony claimed against both parishes, and gave to each all the particulars in his possession as regards the pauper, and in particular he communicated to Kirkcaldy the fact of her residence in Dundee. It does not appear that any correspondence took place between Kirkcaldy and Dundee, and it cannot be said that any direct admission of liability was made by Kirkcaldy to Dundee. I think, however, that the position of the matter is very much the same as if Barony had called both Kirkcaldy and Dundee in an action in which Kirkcaldy—whether by its own admission or not is not material—had been found liable, and Dundee assoilzied, in which case I think there could be no subsequent question as between Kirkcaldy and Dundee.

"Further, Dundee refused to admit liability, and, no doubt in consequence of the admission of liability on the part of Kirkcaldy, Barony acquiesced in that refusal. I think, therefore, that any claim now made at the instance of Barony would be successfully met by the plea of *mora* and acquiescence.

"The liability of the parish of settlement is truly to the relieving parish, and not to any other parish, and if Kirkcaldy, being under no legal obligation to relieve Barony, ultroneously chose to do so, I think that all pleas that would have been pleadable against Barony are pleadable against Kirkcaldy. It is clear that if Dundee had admitted liability that would have been conclusive as between Dundee and Barony, and it appears to me on the same grounds that Barony's acquiescence in the non-liability of Dundee is equivalent to an admission that that parish was not liable in a question with them, and that that admission is binding on Kirkcaldy.

"On the whole matter, therefore, I am of opinion that the defender is not liable for the advances sued for.

"I am further of opinion that in no view could Kirkcaldy recover advances prior to 11th September 1877, as no notice was given till 11th September 1878."

The pursuers reclaimed, and argued—(1) Kirkcaldy was not barred by the admission to Barony from its claim against Dundee. (2) The pursuers were at least entitled to reimbursement for the year previous to the statutory notice of 1878, and therefore the defender ought not to have been assoilzied. In *Methven's* case (*infra*) there was a written admission, which does not appear from the report, but is mentioned in the Lord President's opinion.

Authorities for pursuers—(1) *Lemon* v. *Cameron*, January 19, 1864, 2 Macph. 454; (2) *Methven* v. *Arthur*, February 4, 1869, 7 Macph. 477.

Argued for the defenders—An admission once made is conclusive as to that fact, alike to the parish to which it is made and to other parishes. This was an admission after full inquiry and obtaining full particulars.

Authorities for defenders—*Young* v. *Gow*, February 9, 1877, 4 R. 448; *Beattie* v. *Arbuckle*, January 15, 1875, 2 R. 330; *Watson* v. *Caie and Macdonald*, November 19, 1878, 6 R. 202; *Dempster* v. *Lemon*, November 29, 1878, 6 R. 278.

The Court on 20th March 1883, after hearing counsel, recalled the Lord Ordinary's interlocutor, and remitted the cause to the Lord Ordinary with instructions before answer to allow the parties a proof of their respective averments, and to proceed with the cause.

In consequence of Lord Adam's illness the cause was transferred to and the proof was taken before Lord Lee.

On 24th July 1883 the Lord Ordinary pronounced the following interlocutor, from which, and from the note thereto appended, the facts fully appear:—"Finds that the expenses attending the maintenance of Margaret Rowan or Lawson as a lunatic pauper were defrayed by the Parochial Board of Kirkcaldy from 4th March 1874 to 15th May 1881, and that she was during said period destitute, and a proper object of parochial relief: Finds that during said period the parish of Dundee was the parish of the settlement of the said Margaret Rowan or Lawson, and that the expenses incurred as aforesaid are recoverable by the pursuer John Muir, as inspector of Kirkcaldy, from the defender, in so far as applicable to the period subsequent to 11th September 1877, and prior to said 15th May 1881, and to no further extent; and appoints the cause to be enrolled in order that effect may be given to this interlocutor, and that the conclusions of the summons may be disposed of: Further, grants leave to reclaim, &c.;

"*Note.*—This case having been already before the Inner House upon a reclaiming-note against Lord Adam's judgment of 16th December 1882, that judgment was recalled, and the cause was remitted with instructions before further answer to allow the parties a proof of their averments respectively, and to proceed with the cause.

"In consequence of Lord Adam's illness the cause was transferred, and the proof has been taken before me.

"The facts of the case as now ascertained appear to me to be as follows:—

"Margaret Rowan or Lawson became chargeable in the Barony Parish, Glasgow, in May 1873. She was, and is, a married woman. Her husband Peter Lawson was born in the parish of Kirkcaldy. Having acquired no settlement by residence, his settlement was, and is, in that parish. He deserted his wife about 1861; she had been in Gartnavel Asylum before that, but having been discharged, she went, after living with a sister in Glasgow for some years, to Dundee, and took a shop in Hawkhill. There she maintained herself from 1864 to 1872, a period of fully eight years. At the commencement of her residence in Dundee she heard that her husband was in Edinburgh, and went to see him. She found him living with another woman, but he promised to leave that woman and to go to Dundee and live with her. He never went, however, and she did not see him again until about four years ago in Glasgow.

"At the time when she became chargeable in 1873, and during the eight years preceding, I think it clearly proved that Margaret Rowan or Lawson was a deserted wife. The fact was intimated to Kirkcaldy at the time, and I see no reason to doubt it. A claim was made in May 1873 by Barony upon Kirkcaldy, as the parish of the husband's settlement, and Kirkcaldy, after making inquiries about a supposed residential settlement of the husband in Edinburgh, but without considering the possible effect of the wife's residence as a deserted wife in Dundee, admitted liability. The pauper was transferred from Gartnavel to the Fife District Asylum, and there she was kept from 4th March 1874 till 5th September 1878 as a lunatic pauper on the roll of Kirkcaldy parish, and chargeable to Kirkcaldy. On 5th September 1878 she was removed to her friends in Glasgow, upon the recommendation of the medical superintendent, continuing to receive from Kirkcaldy aliment as a boarded-out pauper on the lunacy list until 15th May 1881.

"On 11th September 1878 notice was given by Kirkcaldy to Dundee that 'Margaret Rowan or Lawson, lunatic, had become chargeable, and that Dundee was held liable, as the parish of the pauper's settlement, for the repayment of all sums advanced, or that might thereafter be advanced. It was not, however, contended before me that Dundee could be held liable in any view for the advances before 11th September 1877, being one year prior to the date of the notice.

"From 15th May till 9th July 1881 the pauper ceased to be chargeable, but she again became chargeable on the latter date as an ordinary pauper, and was admitted to Kirkcaldy Poorhouse, where she remained until 12th December 1881. She was then removed to Glasgow, and continued to receive out-door relief from Kirkcaldy till 6th March 1883, when she was readmitted to Kirkcaldy Poorhouse. There she remained till 1st June 1883, when she again went to Glasgow, where she is still receiving relief as an out-door pauper.

"Since May 1881 the pauper does not appear to have been treated as a lunatic, but as an ordinary pauper, and no new notice appears to have been given when she became chargeable on 9th July 1881.

"About four years ago, and during the period between 5th September 1878 and 15th July 1881, when the pauper was living in Glasgow upon an allowance of five shillings a-week, it appears that her husband stayed with her about two months, but without contributing to her support. This, however, was unknown to the parochial authorities, and under circumstances which, if Dundee was liable at the date of the notice of 11th September 1878, would scarcely seem to warrant Dundee in maintaining that the pauper ceased to be a deserted wife, and to be chargeable as such. For a clandestine visit of a husband to a lunatic wife would not, in my opinion, found a plea, on the part of a parish which ought previously to have admitted liability and undertaken the charge of the pauper, that desertion had come to an end.

"I therefore hold, in point of fact—(1) That at 11th September 1878 the position of Margaret Rowan was precisely the same as when liability was admitted by Kirkcaldy, viz., she was a deserted wife, who had resided as such for eight years in Dundee, and had become a proper object of relief as a pauper lunatic; (2) that from 1874 till 15th May 1881 Kirkcaldy afforded relief to her as alleged; (3) that at 15th May 1881 there was a break not shown in the account libelled; (4) that the advances made since that break have been as to an ordinary pauper; and (5) that no fresh notice of chargeability has been given since that break.

"The questions of law are — (1) Whether Kirkcaldy is precluded from alleging that at 11th September 1878 Dundee was the parish of this pauper's settlement? (2) If not, whether the pauper's settlement was in Dundee or Kirkcaldy? (3) If in Dundee, to what extent or effect can the present claim of relief be maintained, seeing the relief afforded since May 1881 has not been under the Lunacy Acts, and in continuation of the former chargeability, and that no notice has been given under the Poor Law Act?

"Upon the first question I need give no opinion, because I assume that the judgment of the Inner House recalling Lord Adam's interlocutor implies that the admission given to Barony is not sufficient to preclude a claim by Kirkcaldy as the relieving parish, upon Dundee as the true parish of the pauper's settlement. The claim is a statutory claim of relief, and not a *condictio indebiti*.

"Upon the second question it is right to say, that although the point was not conceded, it was not argued that the pauper's residence in Dundee (if she was a deserted wife) was insufficient to give her a settlement in that parish. It was not maintained that in the case of a deserted wife, a woman whose husband has a birth-settlement in Scotland cannot *stante matrimonio* acquire a settlement apart from her husband. I did not understand the opinion of Lord Curriehill in *Paterson* v. *M'Donald* (5 P.L.M. 417) to be disputed, as showing the result in such a case of the doctrine that desertion is equivalent to death. The dispute was as to the fact of desertion, which I think continued at and subsequent to the date of the notice in September 1878.

"Upon the third question I think that, upon the authority of the case of *Methven* v. *Arthur* (7 Macph. 477), Kirkcaldy, as the party defraying the expense, is entitled to recover from Dundee as the parish of the lunatic's settlement, and as I think that Dundee did not cease to be that parish

by reason of the husband's return for two months in 1879, I am of opinion that the claim should be sustained as regards all the charges and advances for the period from 11th September 1877 down to 15th May 1881. But I hold that the pauper having ceased to be chargeable at that date, and no fresh notice having been given when she became chargeable as an ordinary pauper on 9th July 1881, the claim cannot be sustained as regards the charges and advances made subsequently to 15th May 1881—*Beattie* v. *Greig* (2 R. 923)."

The defenders reclaimed, and argued—(1) There is nothing in common between desertion in the sense of the Poor Law Act, secs. 79 and 80, and desertion in the sense of the consistorial courts. (2) A woman deserted by her husband can acquire a residential settlement conditional on her husband's return.

Argued for pursuers—Suppose the desertion not to be proved, it could not be said in the husband's absence that his birth-settlement was chargeable, for he might have acquired another settlement. It was not for pursuers to prove what his settlement was. But desertion was established in point of fact.

Authorities for the defender—(1) *Gray* v. *Fowlis*, March 5, 1847, 9 D. 811; *Carmichael* v. *Adamson*, February 28, 1863, 1 Macph. 452; *Masons* v. *Greig*, March 11, 1865, 3 Macph. 707; *Beattie* v. *Greig*, July 9, 1875, 2 R. 923; *Greig* v. *Simpson and Craig*, May 16, 1876, 3 R. 642.

At advising—

Lord Justice-Clerk—This case, between three inspectors of poor, presents a question of some difficulty. But I regret to see these proceedings, because they are an example—and a very strong one—of that unnecessary and useless expense which is sometimes incurred in questions in which the immediate interests involved are in no proportion to the merits. It is unnecessary for me to resume the facts.

I am of opinion that Kirkcaldy is not precluded by the admission alleged to have been made to the Barony Parish from claiming relief from the parish of Dundee.

I quite agree that where an admission has been made by a parish, in a question with another parish which has been charged with liability, the parish making it must be kept to it, and cannot be allowed to revert from it, provided that there was no misrepresentation or concealment of the facts affecting the liability; and we have on several occasions applied this doctrine in the administration of the Poor Law Statute. But here no admission was made to the parish of Dundee, and I do not think that an admission made, as here, can come to the benefit of Dundee, which was not a party to the negotiations between the parishes of Kirkcaldy and Barony, and to which the admission was not made.

There remains the further question as to the extent to which the present claim for relief can be maintained against Dundee, and this involves the determination of the question whether the industrial settlement here acquired had not been lost or interrupted by the alleged return of the pauper's husband?

I am of opinion that it has been satisfactorily established that the pauper was deserted by her husband. The evidence is quite conclusive that he abandoned his wife in Glasgow. After living for some time in Glasgow, she went to Dundee, and lived there for eight years. As to the question how long the settlement in Dundee lasted, and whether the husband remained in desertion, I am of opinion that the desertion did not terminate. I think he came back, not in order to resume cohabitation, but in order to see if he could obtain any means from his wife.

In regard to the whole case, I think the Lord Ordinary's interlocutor should be affirmed. He has not dealt, however, with the period subsequent to 15th May 1881, and as regards that period I think some provision falls to be made.

Lords Young, Craighill, and Rutherfurd Clark concurred.

The Lord Ordinary's interlocutor was altered by deleting the words "and to no further extent" after the words "15th May 1881."

Counsel for Pursuers—Mackintosh—J. A. Reid. Agents—Curror & Cowper, S.S.C.

Counsel for Defender—Guthrie Smith—Kennedy. Agent—John Macpherson. W.S.

Tuesday, December 11.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

ROBERTSON *v.* POLICE BOARD OF GREENOCK.

Property—Property in Burgh—Street—Building Line of Street—Powers of Magistrates to Regulate Building Line of New Buildings in order to Improve Street—General Police and Improvement (Scotland) Act 1862 (25 *and* 26 *Vict. c.* 101), *secs.* 161 *and* 162.

By the General Police and Improvement (Scotland) Act 1862, sec. 162, the commissioners of police of a burgh to which the Act applies are empowered, "when any house or building any part of which projects beyond the regular line of the street, or beyond the front of the house or building on either side thereof," is taken down in order to be altered or rebuilt, to require the owner to set it back to the line of the adjacent buildings as the commissioners may direct, for the improvement of the street, compensation being given to the owner for any damage thereby caused. The magistrates of a burgh were proprietors of one house in a street which had always stood 4 feet back from the general line of that street. They acquired for public purposes three other houses in the division of the street in which that house stood, and proceeded to erect on the site of the four houses a building which stood in the line of the house originally belonging to them. The greater part of that division of the street had its building line thus set back 4 feet. The proprietor of two other houses, structurally connected and immediately adjoining that which had always stood 4 feet back, proposed to take them down and erect a new building on their site, without setting them back 4 feet, so as to be in line with the magistrates' building. *Held* (1) that it was within the power of the magistrates to require the new buildings to be set back 4 feet so as to be in line with the other houses in that