

told during the debate that the estate of Wilson will pay at least 10s. per £1. That makes the case not very important in point of money. But I am of opinion that the pursuers must have decree.

LORD RUTHERFURD CLARK—I am of the same opinion. I think the business was carried on by the defender. He says so in various letters, and his statement is in my judgment in accordance with the fact. He was carrying on the business at the time when the goods were ordered of which the price is here sued for. In these circumstances I hold that the true legal view is that the defender was the purchaser of the goods, and is therefore liable for the price. I therefore agree that the interlocutor ought to be altered.

LORD LEE—I have no difficulty in assenting to the doctrine that a trustee who, in carrying on a business under such a trust as that now before us, orders goods for the purposes of the business, either personally or by another deriving authority from him, must be liable in payment of the price. Nor have I any difficulty in holding with your Lordships that this trust was acted on for some time by the parties. But I have difficulty on the question whether the account sued for was incurred during a time when the trust-deed really represented the relation in which the defender stood to the pursuers. The question is, whether the goods charged for in this account were supplied to the defender's order or to the order of anyone authorised by him? The allegation in condescendence 4 is—"The whole of the said account was incurred with the knowledge and approval of the defender and on his behalf, in his conduct of the said business as trustee for Mr Wilson, and on the order of himself or persons authorised by him." If that is true, then the defender is liable without doubt. The view of the Lord Ordinary is—"I think it quite clear that the defender and the late Matthew Wilson never stood towards each other in the relation of principal and agent or master and servant in connection with Wilson's business." I cannot say that their relations never took that shape, but my difficulty is that there were two periods at which the relation constituted by the trust appears to have been superseded. The first was in 1870, the second in 1882. I think that the correspondence of 1870 shows that the pursuers accepted the defender's intimation as sufficient notice that the trust was then suspended, and that it was not until the defender agreed to continue the trust that the former relation was resumed. I refer particularly to the letters between 25th August and 13th September 1870, as proving that the trust was suspended at that time. But the question is, whether there was not another suspension of the trust in 1882. A letter from the defender to the pursuers intimating his unwillingness to continue in the trust has been read. This was followed by two letters, dated 28th December 1882, and 5th January 1883, which your Lordship has noticed. In the letter of 5th January the pursuers intimated to Mr Wilson their wish that "your orders in future should be countersigned by Mr Stephenson," and they added, "we think this arrangement is proper and necessary in the interests of Mr Stephenson as well as in yours and our own."

What is the meaning of these letters. I think it can only be that any orders not so countersigned by the defender would not be regarded by the pursuers as given with his authority, and I should have thought it incumbent on the pursuers to show that the orders, the payment of which is sued for in this account, were so countersigned by the defender. But no argument was addressed to us on this point. It was not contended that there was any change in the relations between the pursuers and the defender at this time in point of fact. I therefore cannot dissent from your Lordship's judgment, but I wish to say, that if it had been shown that these letters were acted upon after January 1883 I might have come to a different conclusion.

The Court recalled the Lord Ordinary's interlocutor, repelled the defences, and gave decree for the sum of £175, 7s. 7d. with expenses.

Counsel for the Pursuer (Reclaimant)—Sol.-Gen. Robertson, Q. C.—G. W. Burnet—Salvesen. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for the Defender (Respondent)—Comrie Thomson—MacWatt. Agents—Mack & Grant, S.S.C.

Friday, October 26.

FIRST DIVISION.

[Sheriff of the Lothians and Peebles.

GREIG (INSPECTOR OF POOR OF CITY PARISH, EDINBURGH) v. SIMPSON (INSPECTOR OF POOR OF SOUTH LEITH).

Poor—Settlement—Residential Settlement—Continuity of Residence.

A workman came to reside in the parish of South Leith at Whitsunday 1879. On 9th April 1884 he left his wife and family in a house which he had taken there, and entered on a business engagement in Cupar, where he lived in lodgings. His wife and family remained in the same house in South Leith until 26th May 1884, when he removed them to a house which he had taken for a year in Cupar, and in which he lived with them until the month of October following. Between 9th April and 26th May he had visited his wife and children nearly every Saturday, and had remained with them until the following Monday morning.

Held that a residential settlement had not been acquired in the parish of South Leith by himself and his family.

In November 1887 George Greig, Inspector of Poor of the City Parish of Edinburgh, raised an action in the Sheriff Court of the Lothians and Peebles at Edinburgh against Andrew Craig Simpson, Inspector of Poor of the parish of South Leith, concluding for payment of £20, 11s. 4d. of outlay by him between 10th September 1886 and 30th September 1887, for the aliment of Abigail Simpson Morham, widow of John Wilson Morham, tailor's cutter, who died on 29th June 1886, and for the aliment and support of their

children, and for relief of all future payments on their behalf.

The following facts were established in the proof:—

The pauper was married to the deceased John Wilson Morham on 27th August 1875. At Whitsunday 1879 the parties went to reside at 44 Albert Street, Leith Walk, in the parish of South Leith, and they resided there until Whitsunday 1881. Morham and his wife and family thereafter lived for more than two years at No. 3 North Elliot Street, also in the said parish of South Leith.

On 9th April 1884 Morham went to Cupar in pursuit of his business as a tailor's cutter; he lived in lodgings there until 26th May 1884, at which date he removed his wife and children from North Elliot Street, South Leith, where he had left them, to a house which he had taken for them in Cupar. Between 9th April and 26th May, Morham had been in the habit of returning to Leith on the Saturdays and spending the Sundays with his wife and family. In November 1884 Morham and his wife and family finally left Cupar. He died on 26th June 1886. The pauper became chargeable in the pursuer's parish on 10th September 1886.

The pursuer contended that the pauper had a settlement in the parish of South Leith, in respect that her husband occupied and resided with his family in various houses in the parish between Whitsunday 1879 and Whitsunday 1884; that Morham had thus acquired an industrial residential settlement in the said parish, which at his death was transmitted to his wife and family, whose settlement was and still continued to be in the parish of South Leith.

The defender contended that previous to the date at which Morham removed to Cupar (9th April 1884) he had not resided for the period of five years continuously in the parish of South Leith, and therefore that he had not acquired a residential settlement in said parish.

On 4th February 1888 the Sheriff-Substitute (RUTHERFORD), after findings in fact to the effect already stated, found that a residential settlement had been acquired by the deceased in the parish of South Leith, and decreed for the amount sued for.

“*Note.*—The Sheriff-Substitute had the benefit of an ingenious argument on the part of the defender in this case, but he does not think it necessary to enter into a discussion of all the authorities that were cited. The doctrine of constructive residence in the acquisition of a settlement is now settled by a series of decisions, and as Lord Shand observed in the case of *Wallace v. Beattie*, 1881, 8 R. 345, ‘the real test in questions of this kind is, where is the person's home?’ In the present instance the Sheriff-Substitute thinks that it is not doubtful that the home of the pauper's husband, for the period of five years from the 26th of May 1879 to the 26th of May 1884, was in the parish of South Leith. It is true that for about six weeks prior to the term of Whitsunday 1884 he himself was absent in Cupar, where he had got work. But his home still continued to be in South Leith where his wife and family still resided in the house which he had taken up to the Whitsunday term, and he joined them there as often as he could from a Saturday to a Monday. That he considered

his home to be in South Leith is evident from his letter to his wife, dated Sunday 18th May, in which he says, ‘I am glad to think that I will be home beside you next Sunday, and then the Sunday after that I will have you all over here and settled.’”

The defender appealed to the Court of Session, and argued that the facts as set forth by the pursuer showed that the pauper lived for exactly five years in the parish of South Leith, and that being so, the question came to be, did her husband by leaving South Leith for Cupar within the five years break his own settlement and that of his wife and family, or did the fact that his wife and family continued to reside in the house they had occupied in South Leith, continue his residence in spite of his absence in Cupar? The point was decided in 1851 in the case of *Hodgert v. Petrie*, 1 Poor Law Mag. 350, and in *Hastings v. Semple*, 1866, 8 Poor Law Mag. 331, and 1 S.L.R. 123. The principles there laid down had ruled the practice since, and it was most undesirable that any alteration in that practice should now be made. The rule was, that when the head of the house removed his residence, then the severance from the parish residence was complete; and it should not be held to be postponed until the last member of the family left, or the last piece of furniture was removed. In the present case the position of Morham was just as if he had asked a neighbour to give his family shelter until the home he had taken for them was ready. When a husband changed from one parish into another, even if his family might not immediately come with him, the time of his residence in the parish was computed from the date of his first arrival in it. So looked at, the pauper's husband had not a five years' continuous residence in South Leith.—*Hamilton v. Kirkwood*, November 13, 1863, 2 Macph. 107; *Hewat v. Hunter*, July 6, 1866, 4 Macph. 1033; *Allan v. Shaw*, February 24, 1875, 2 R. 463; *Wallace v. Beattie*, January 6, 1881, 8 R. 345; *Deas v. Nixon*, June 17, 1884, 11 R. 945.

Argued for the respondent—So far as the intention of the pauper's husband could settle such a question, it was clear that he regarded South Leith as his residence until he finally removed his family and furniture on 26th May 1884 to Cupar, for he referred to it in his letter to his wife as “home.” Besides, he was merely a lodger in Cupar; if he had obtained a better place in Edinburgh or Leith than he had got in Cupar he would never have removed his family to Cupar at all. There was no evidence in the case that when he went to Cupar in the prosecution of his business he went there *animo remanendi*. At the time he went to Cupar his taking a house and bringing his family to join him was a future event. Supposing that instead of settling in Cupar he had moved about as a journeyman tailor, could it have been urged that he had lost his Leith residence? Being a mere lodger, his position was just as if he had moved from place to place. His residential settlement in South Leith was not interrupted until he removed his family to Cupar on 26th May 1884—*Greig v. Miles*, July 19, 1867, 5 Macph. 1132; *Moncrieff v. Ross*, January 5, 1869, 7 Macph. 331; *Cruickshank v. Greig*, Janu-

ary 10, 1877, 4 R. 267; *Harvey v. Rodger & Morrison*, December 21, 1878, 6 R. 446.

At advising—

LORD MURE—In this case the Sheriff-Substitute has proceeded upon the view that John Wilson Morham, the pauper's husband, after he went to reside at Cupar still continued to view South Leith as his home; and he thinks that as Morham's wife and children still continued to reside in South Leith, and as he visited them frequently on Saturdays during the time he was in Cupar, that Morham's constructive residence must in these circumstances be held to be South Leith. The Sheriff-Substitute in coming to this conclusion to a considerable extent has gone upon the ground that Morham in writing to his wife spoke of South Leith as "home." Now, while this expression may be taken as of some importance in considering Morham's intentions, it can hardly be viewed as conclusive of the present question, which must depend largely on the whole facts of the case. These are very clearly explained in the evidence of Mr Miles, who says—"I was a draper in Cupar for some years. I was engaged in business there in 1884. I required a cutter in the spring of that year. I was a draper, but I also carried on a tailoring business. It was in the month of March that I required a cutter. I advertised in the *Scotsman*, and had several applications in writing, including one from John Wilson Morham, North Elliot Street, Edinburgh. I came across and saw Mr Morham, and engaged him. The terms of his engagement were £2, 2s. 6d. a-week, and a month's warning on either side. He came over to Cupar about the middle of March, but I could not give the exact date. I arranged lodgings for him with Mrs Stark, 16 Crossgate. He was with me for seven months. He left in the month of October, having got another situation in Edinburgh." The result of this evidence is to make it clear, I think, that Morham entered into a permanent engagement with Miles, and that he made up his mind to go and settle in Cupar. And we have all this confirmed by the widow, who states that as soon as her husband got employment from Miles he proceeded to take a house for his family in order that they might all live together in Cupar. I may observe that what the statute deals with is not a "home" but "personal residence," and that being so we find from the evidence that Morham resided in Cupar from 9th April 1884; that he first took lodgings for himself, and thereafter a house for himself and family. It is possible that if he could have got a house from the first he would have taken it, but it is likely that going there in April he had to await the arrival of the term; and that during the interval he went into lodgings. From that time onwards, it is clear, I think, that he intended to make Cupar his permanent residence and not again to return to Edinburgh. In this state of the facts I cannot see any room for the principle of constructive residence—a principle which in some of the cases to which we were referred seems to have already been carried far enough. Upon these grounds therefore I am unable to concur in the views which have been expressed by the Sheriff-Substitute, and I think his interlocutor should be recalled.

LORD ADAM—This is an action by the Inspector

of Poor of the City Parish of Edinburgh against the Inspector of Poor of the parish of South Leith, in order to obtain repayment of certain advances made by the pursuer to Abigail Simpson Morham and her children, and in order that he may be relieved of any future demands on their behalf. The ground of the pursuer's claim is that the pauper's husband, John Wilson Morham, had an industrial residential settlement in South Leith, in respect that he had resided there from Whitsunday 1879 to Whitsunday 1884. If this contention is made out, then of course there can be no relevant answer to the demand of the pursuer for relief from past and future advances. In reply, however, the defender alleges that Morham went to Cupar on or about the 9th April 1884, and that therefore the five years' continuous residence in South Leith was not made out. The whole question is one of time, and in determining it certain dates and facts have to be kept clearly in view.

Morham was a tailor's cutter, and in March or April 1884 he made an engagement with a Mr Miles, a draper in Cupar, on the terms that he was to receive £2, 2s. 6d. a-week, with a month's notice on either side. This engagement was viewed by Morham as one of a permanent character, for he immediately proceeded to Cupar, took lodgings for himself, and shortly after took a house for himself and his family. He continued to reside at Cupar, but (until he was joined by his wife and children) he almost always went back to South Leith on the Saturdays and spent the Sundays with his family. But for this Morham's residence in Cupar was from 9th April 1884 till October (when, getting a better situation, he returned to Edinburgh) continuous. Now, what is the effect in law of such a residence as this of Morham's at Cupar? It is said that Morham did not personally reside at Cupar, but that he was constructively resident in South Leith with his wife and family. In cases of constructive residence, however, the absence is generally temporary in its character; the party intends to return to the parish or district in which he is held constructively to reside, and that is what distinguishes the present case from those of ordinary constructive residence. Here the residence which Morham took up in Cupar was intended to be a permanent residence, and he arranged that his wife and children should come over to him there as soon as he had succeeded in securing a house. He never intended to return to the parish of South Leith, therefore his personal permanent residence was Cupar, and it is the personal permanent residence that must, in cases like the present, be looked for.

Upon these grounds I think the judgment of the Sheriff-Substitute is wrong, for Morham's absence from South Leith after 9th April 1884 certainly broke the continuity of his residence there. In coming to this decision I do not think that we are in any way going against the principle of the earlier decisions to which we were referred.

LORD KINNEAR—The question we have to determine is, whether the residence of Morham at Cupar from the 9th April 1884 and onwards was casual, or whether, Cupar being recognised as his permanent personal residence, it is his absence therefrom that is to be viewed as casual?

Now, on the evidence it is clear, I think, that Morham intended to leave Leith and settle in Cupar, and that he began a period of industrial settlement in Cupar in April 1884.

With regard to the decisions to which we were referred, the only ones which have any application are those, the principles of which are in accordance with the views expressed by your Lordships, and in which I concur. As to the other class of cases connected with constructive residence, these have not to my mind any bearing on the present case. The only question which we have to consider is, whether the permanent residence of this man was, after 9th March 1884, Cupar? And I, for my part, think it was.

The LORD PRESIDENT was absent from illness.

LORD SHAND was absent on circuit.

The Court pronounced the following interlocutor:—

“Sustain the appeal, recal the interlocutor appealed against, and find as matter of fact (1) that John Wilson Morham, a tailor's cutter, died on 29th June 1886, survived by his wife Mrs Abigail Simpson or Morham, and several young children; (2) that on 10th September 1886 the said Mrs Abigail Simpson or Morham became chargeable to the City parish of Edinburgh, in which she was residing with her children, and that she was at that time and has ever since continued to be a proper object of parochial relief; (3) that between the 10th September 1886 and the 1st October 1887 the pursuer as Inspector of Poor of the said City parish advanced to Mrs Morham for behoof of herself and her children sums amounting in all to £20, 11s. 4d., conform to account No. 4 of process; (4) that the said John Wilson Morham had not continuously resided in the parish of South Leith for the period of five years immediately preceding the 26th May 1884: Find in these circumstances in point of law that the said John Wilson Morham had not acquired for himself and for his wife and children a residential settlement in that parish, which they retained at his death, and that the appellant, the Inspector of the parish of South Leith, is not liable for the sum sued for, or for the future alimont of the said Abigail Simpson or Morham and her children; therefore sustain the defences, assoilzie the defender from the conclusions of the action, and decern,” &c.

Counsel for Appellant (Defender)—Guthrie Smith—Salvesen. Agents—Snody & Asher, S.S.C.

Counsel for Respondent (Pursuer)—Balfour, Q.C.—J. A. Reid. Agents—Curror, Cowper, & Curror, W.S.

Friday, October 26.

SECOND DIVISION.

[Sheriff of Renfrew.]

SMITH & M'BRIDE v. SMITH.

Partnership—Goodwill—Right to Use Firm's Name.

James Smith and Joseph M'Bride carried on business under the firm name of “Smith & M'Bride.” The partnership was dissolved in 1884, James Smith buying the goodwill of the business, which he continued to carry on under his own name of James Smith, but without having renounced his sole right to the firm's name of “Smith & M'Bride.” In 1885 Joseph M'Bride, along with William Smith, brother of James Smith, and D. M'Kelvie, set up a similar business in the same town under the firm of “M'Bride, Smith, & M'Kelvie.” In 1887 M'Kelvie retired, and Joseph M'Bride and William Smith continued the business, but designated their firm as “Smith & M'Bride,” which was the name of the original partnership between Joseph M'Bride and James Smith. *Held* that the latter was entitled to interdict Joseph M'Bride and William Smith from using the firm name of “Smith & M'Bride.”

Previous to August 1884 James Smith and Joseph M'Bride carried on business in partnership as aerated water manufacturers at premises in Sugarhouse Lane and Waverley Lane, Greenock, under the firm name of “Smith & M'Bride.”

Upon 20th August 1884 the firm was dissolved by agreement between the partners, under which M'Bride sold to Smith for £300 his share and interest in the business, and Smith took over all the liabilities of the firm, and obtained right to collect all debts due to the firm, and to the goodwill of the business. The following notice of dissolution of partnership appeared in the *Edinburgh Gazette* of 22nd August 1884—“The co-partnership hitherto carried on by Smith & M'Bride, aerated water manufacturers in Greenock, by the subscribers, the sole partners thereof, has this day been dissolved by mutual consent. The subscriber James Smith has acquired the said business, with goodwill, and whole machinery and stock-in-trade. He will continue to carry on said business in his own name, and he is authorised to receive payment of all outstanding debts due to said firm, and he undertakes to pay all liabilities due by the firm.” Thereafter James Smith continued to carry on business in his own name at the same premises as formerly.

Upon 24th December 1885 M'Bride formed a partnership with William Smith, brother of the said James Smith, and David M'Kelvie, and under the firm of “M'Bride, Smith, & M'Kelvie” they carried on business as aerated water manufacturers at 61 Nicolson Street, Greenock, until 27th August 1887, when M'Kelvie retired from the partnership. Thereupon M'Bride and William Smith continued to carry on the business, but changed the name of the firm to “Smith & M'Bride.”

In September 1887 James Smith brought a petition in the Sheriff Court at Greenock against