

in the affirmative we are deciding anything contrary to Lord Adam's view as to the proper mode of enforcing the Board's right. That question is not specifically raised in this Special Case. The question put to us is, what are the rights and obligations of the parties, and, agreeing with your Lordships as to the obligations of the Duke of Fife, I do not see that we are called on to consider how that obligation is to be enforced since the parties have not thought fit to raise that question.

The Court answered the first question in the negative, the second in the affirmative, and superseded consideration of the third.

Counsel for the First Party—Dundas—Clyde. Agents—J. K. & W. P. Lindsay, W.S.

Counsel for the Second Party—H. Johnston—Campbell. Agent—Alexander Morrison, S.S.C.

Wednesday, February 24.

## SECOND DIVISION.

[Lord Low, Ordinary.]

PARISH COUNCIL OF BRECHIN *v.*  
PARISH COUNCIL OF BARONY  
PARISH, GLASGOW, AND PARISH  
COUNCIL OF PERTH.

*Poor — Settlement — Forisfiliation —  
Weakness of Mind.*

The father of a girl of sixteen years of age, who travelled about the country during the winter months as a hawker, and lived in lodging-houses in the towns he visited, left his daughter in charge of the keeper of one of the lodging-houses. The girl was congenitally of weak mind, but not insane, and the arrangement upon which she was left was that she should receive her food and clothing in return for such services as she was able to render in taking charge of children and in simple household work. Her stay at the lodging-house was terminated after about a year by her running away, and she was afterwards found wandering about the roads, and was taken in charge by an inspector of poor. *Held* (*aff. judgment* of Lord Low) that she had not been forisfiliated, and that her father's settlement was liable for the sums expended on her maintenance.

This was an action at the instance of the Parish Council of Brechin against the Parish Council of the Barony Parish of Glasgow and the Parish Council of Perth, concluding for decree ordaining one or other of the defenders to make payment to the pursuers of the amount disbursed by them in relieving a pauper, Jessie Marshall, in the Brechin Almshouse, between certain dates specified, and further, to free and relieve the pursuers of all further disbursements made or to be made for her aliment.

The pauper was born in the Barony Parish of Glasgow. Her father was born in the parish of Perth, and had never acquired a residential settlement.

It was ultimately admitted that the disbursements had been properly made by the pursuers.

The defenders, the Parish Council of the Barony Parish of Glasgow, maintained that the pauper was an imbecile, and owing to mental incapacity had never been capable of earning her livelihood or of supporting herself, that she had never been forisfiliated, and accordingly that she took her father's settlement, and was chargeable against the parish of Perth.

The defenders, the Parish Council of Perth, on the other hand, maintained that the pauper had been forisfiliated, that she had not acquired a residential settlement in the parish of Perth, and that the parish of her birth, being the Barony Parish of Glasgow, was consequently liable for her relief.

A proof was allowed, by which the following facts were established:—The pauper was born on 12th July 1876. She was not insane, but had been weak-minded from her birth or soon thereafter. Her father worked as a painter in summer, when he sometimes had a house, and as a hawker during the winter months, when he resided in lodging-houses in the different towns he passed through. In April 1893 the pauper was left by her father in a lodging-house at Laurencekirk, kept by a man named Laing. She remained there, receiving her board and lodging, but no wages, in return for assisting his wife in her housework and in looking after her children, till the spring of 1894, when she ran away to Montrose. Laing went after her and took her to Brechin, where he tried to get the Inspector of Poor to admit her to the Almshouse, but the Inspector of Poor refused to do this, and Laing took the girl back to Laurencekirk. She ran away again in a few days, and again went to Montrose, where she was admitted to the Almshouse, and received relief. On 31st May 1894 she went to join her father in Brechin, where he was staying in the Model Lodging-House. He left her there on 15th July, making no provision for her maintenance. The keeper of the lodging-house kept her till the 20th, when he took her to the Inspector of Poor, who, on a report from a medical man, that though not insane she was mentally and physically weak, and could not earn her own living, admitted her to the Almshouse, where she remained till 7th August, when she was taken out by her sister and her stepmother. She went with them to Montrose. In September she went to stay with a lodging-house keeper in Montrose called Kemlo, from whom she received her board and lodging, but no wages, in return for doing housework. She stayed with him for about two months. In the end of 1894 and beginning of 1895 she was living with her father. Early in 1895 it was arranged that she should go to live with a Mrs Sturrock, who lived near where her father stayed in

Forfar. She was to do housework in return for her board and lodging. She went for a day or two but was taken away again by her stepmother, who wanted her to look after her child. The pauper often worked for Mrs Sturrock, getting her food in return, and going back to her father's house at night. Mrs Sturrock also sometimes took her in and kept her in return for housework done by her, when her father and stepmother were away hawking. In April 1895 Jessie Marshall ran away, and she was discovered to have been in the Brechin Model Lodging-House with a pedlar and his wife, along with whom she had left Brechin on 12th April. On 26th April she was found on the road near Brechin in a very dirty and uncared for condition by a female tramp, and brought by her to the Inspector of Poor, who, on a medical certificate similar to the certificate formerly given, admitted her to the Brechin Alms-house, where she stayed till 29th June 1896, when she was taken away by her father. In October 1896 the girl returned alone to Kemlo's lodging-house in Montrose, where she still was at the date of the proof, getting her board and lodging, but no wages, for doing housework. The girl never at any time received wages for any work she did.

The girl's father deponed that he had not had to support her from the time she came out of the Montrose Almshouse.

There was evidence that Jessie Marshall went to lodging-houses in various places alone, paying for her own lodging.

The Lord Ordinary (Low) on 3rd December 1896 pronounced the following interlocutor:—"Finds that the pauper Jessie Marshall, mentioned on record, has not been forisfamiliated, and has therefore not acquired any residential settlement in the parish of Brechin; that her settlement is in the parish of Perth, being that of her father's birth, and not in that of the Barony Parish of Glasgow, being that of her own birth: Therefore decerns against the defenders the Parish Council of Perth, conform to the conclusions of the summons: *Quoad ultra* assoilzies the defenders the Parish Council of the Barony Parish of Glasgow from the conclusions of the summons, so far as directed against them, and decerns: Finds the pursuers and the defenders the Barony Parish entitled to their expenses against the defenders the Parish Council of Perth," &c.

*Opinion.*—"The sole question in this case appears to me to be whether Jessie Marshall was forisfamiliated when she received parochial relief.

"In considering whether the circumstances of a particular case amount to forisfamiliation the capacity of the child is an important element. In this case I do not think that there is any doubt as to the pauper's mental condition. She is not a lunatic, or insane, nor do I think that she could properly be described as an imbecile. She is, however, congenitally of weak mind. So far all the witnesses agree, although they vary somewhat in their estimate of her capacity. Her mental

capacity appears to me to be not greater than that of a child of seven or eight years old. She can do simple household work under supervision, and she is fond of young children, and can be entrusted to look after them, but that is no more than can be said of many girls of twelve years. Further, although she can be entrusted with one message, if she is given two or three she becomes confused. In that respect she seems to be inferior to an ordinary intelligent child of seven or eight. It is therefore clear that she was not fit to leave her father's family and to lead an independent life.

"It appears that the pauper's father travelled about the country in winter as a hawker, and lived in lodging-houses at the various towns which he visited. In summer he worked as a painter, and sometimes was able to take a house of his own. One of the lodging-houses in which Marshall used to stay was that kept by Mr and Mrs Laing at Laurencekirk. About April 1893 Marshall left his daughter with the Laings, where she remained several months. His account how she came to stay with the Laings is as follows:—"I had left her with Laing when I was passing through. She had asked to be allowed to remain there to keep Mrs Laing's baby. I left her with Laing under the arrangement that he was to give her her meat and her clothes, and whenever he got tired of her he was to hand her over to me." Laing says—"Her father left her in my charge for her keep till such time as he would come back." Mrs Laing says—"It was her wish to stay for a time, and her father's wish also. She was to look after my children. I have a family of young children. She was not to do much in the way of housework. The bargain with her father was that she was to be handed over to him when she tired of us."

"I think that that evidence shows that when the girl was left with the Laings she did not pass out of her father's family and become free of his paternal control. She was left under a temporary arrangement made by her father, and considering the wandering life which he was leading, I think that it was a very prudent arrangement. It was just such an arrangement as a man in Marshall's position might have made for a child of seven or eight years old who was able to assist sufficiently in a household to be worth her board and lodgings.

"The pauper's stay with the Laings came to an end by her running away. She did so twice. The first time Laing found her, and brought her back, but she ran away again a few days afterwards, and was found wandering about the roads, and taken to the Inspector of Poor of Brechin.

"In these circumstances I think that it is clear that she was not forisfamiliated, and the expense of her maintenance during the time when she was in the Brechin Alms-house must therefore be borne by the parish of her father's settlement."

The defenders, the Parish Council of Perth, reclaimed and argued—The pauper had been

forisfamiated. Whether she had been so or not was a question of fact—*Fraser v. Robertson*, June 5, 1867, 5 Macph. 819. The material considerations were (1) age; (2) whether the person in question was resident in his father's house; and (3) whether he was earning his own livelihood. In this case the pauper, when she was left by her father with the Laings, was sixteen years of age. After that she did not generally reside with her father. While she was with the Laings she was earning her own livelihood so that at least for a year before she first received parochial relief she was self-supporting. But even if she had not been really supporting herself she would have been forisfamiated in virtue of her separation from her father and his family. It had been so held in the case of a boy bound apprentice at fourteen and thereafter living in his master's house, although his labour was inadequate to his support—*Heritors and Kirk-Session of Cockburnspath*, June 9, 1809, F.C. The present case was a *fortiori* of that one, because the pauper here was self-supporting. Even if the father had simply deserted the girl she would have been forisfamiated, but here the case was stronger because he had left her in a house where she was to get board and lodging free for her work. This pauper was not insane but only weak-minded. That condition of mind did not prevent forisfamiation—*Walker v. Russell*, June 24, 1870, 8 Macph. 893; *Greig v. Ross*, February 10, 1877, 4 R. 465. A person of weak mind, not being insane, could acquire a residential settlement even if not capable of earning his own living—*Cassels v. Somerville & Scott*, June 24, 1885, 12 R. 1155. This pauper was therefore not incapable of forisfamiation. She had in fact been forisfamiated, and the parish of her birth was consequently liable.

Counsel for the respondents were not called upon.

LORD JUSTICE-CLERK—I think we do not require to call for any reply, and that we are in a position to decide this case upon the facts as they have been explained to us by Mr Campbell. This child did not live with her father, but in a lodging-house at Laurence-kirk. She did not take up her residence there of her own accord, but she was put there by her father who arranged that she was to return to him when either she or the lodging-house keeper desired that she should do so. In these circumstances it seems to me impossible to regard this girl as occupying an independent position, and I am of opinion that the Lord Ordinary has given the right decision in the case.

LORD YOUNG—This girl was never forisfamiated, although she was left by her father in a lodging-house, where she got her food in return for going messages and looking after children while he was going about the country hawking. In the circumstances that was a very judicious arrangement for the father to make. His position was that he was able to support himself, but he was not able to support this

girl. I think the parish of the father's settlement is liable.

LORD MONCREIFF—I am of the same opinion.

LORD TRAYNER was absent.

The Court adhered.

Counsel for the Pursuers—Ure—Dove Wilson. Agents—Webster, Will, & Ritchie, S.S.C.

Counsel for the Defenders, the Barony Parish of Glasgow—D.-F. Asher, Q.C.—Deas. Agents—Mackenzie, Innes, & Logan, W.S.

Counsel for the Defenders, the Parish of Perth—W. Campbell—Craigie. Agents—Menzies, Bruce-Low, & Thomson, W.S.

Wednesday, February 24.

### FIRST DIVISION.

[Sheriff of the Lothians and Peebles.

PATON v. M'KNIGHT.

*Process—Amendment—Expenses—Court of Session Act 1868 (31 and 32 Vict. cap. 100), sec. 29.*

In an action raised in the Debts Recovery Court for the half-year's rent of a piece of ground, the defender denied the contract of lease, and after a proof the Sheriff-Substitute granted decree against him.

The defender appealed to the Court of Session and proposed to amend his record by adding an averment, with corresponding pleas-in-law, to the effect that, whereas the pursuer had pretended to let him a piece of ground free of all restrictions, he had ascertained in course of the exercise of his right as tenant that the pursuer's right to part of the ground was disputed, and that conterminous proprietors enjoyed certain servitudes over the rest. It was not disputed that the proposed amendment was relevant.

The Court allowed the defender to amend his record as proposed upon condition of his finding caution for a sum estimated to cover the expenses of the proceedings in the Sheriff Court.

James Paton, printer, Edinburgh, raised an action in the Sheriff Court of the Lothians and Peebles against John M'Knight, builder, concluding for payment of £30, being the half-year's rent of certain subjects.

The pursuer averred that by holograph letter dated 5th June 1895, written to him by Mr William Ormiston, acting on behalf of the defender, the defender offered to lease from him for a period of ten years a certain piece of ground at the annual rent of £60, and that by letter dated 7th June the pursuer accepted that offer. He