

Thursday, March 11.

SECOND DIVISION.

[Sheriff-Substitute of Lanarkshire.]

PARISH COUNCIL OF RUTHERGLEN
v. PARISH COUNCIL OF BLANTYRE.

Poor—Settlement—Residential Settlement—“Common Begging”—Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83), sec. 76.

A pauper, who was weak-minded and unable to earn her own livelihood, and who was ultimately certified insane and sent to the lunatic ward of a poorhouse, had resided for more than five years in the parish of B without receiving or applying for parochial relief. During that period she lived as a rule with her sister and brother-in-law, being with them all the winter and about half the summer, but in summer she was in the habit of running away from their house of her own accord, and remaining absent for periods varying from one to six weeks, but on one occasion extending to three months, during which she supported herself by begging. Her sister and brother-in-law were willing to keep her in their house rather than that she should go about begging, and she was therefore under no necessity to beg. *Held* that she had not acquired a residential settlement in the parish of B, in respect that during the period of residence relied on she had had “recourse to common begging” within the meaning of the Poor Law (Scotland) Act 1845, sec. 76.

This was an action brought in the Sheriff Court at Glasgow by the Parish Council of the Parish of Blantyre, against the Parish Council of the Parish of Rutherglen, in which the pursuers sought recovery of advances made, and relief against advances to be made, on behalf of a pauper named Marion Hunter, then being maintained at the cost of the pursuers in the lunatic ward of Hamilton Combination Poorhouse.

The question was whether the pauper, who had resided in the parish of Blantyre from May 1886 till March 1892 without applying for parochial relief, had during that period “had recourse to common begging,” and had consequently, notwithstanding such residence, failed to acquire a residential settlement in the parish of Blantyre.

The pursuers pleaded—“The pauper in question having been born in the parish of Rutherglen, and having acquired no settlement by residence elsewhere, the defenders are bound to relieve the pursuers of advances made and to be made by them on her behalf, and the pursuers are entitled to decree, with interest and expenses as craved.”

The defenders pleaded—“The defenders

are entitled to absolvitor with expenses in respect . . . (b) the pauper has a residential settlement in the parish of Blantyre.”

The Poor Law (Scotland) Act 1845 (8 and 9 Vict. cap. 83), sec. 76, enacts as follows:—“No person shall be held to have acquired a settlement in any parish or combination by residence therein unless such person shall have resided for five years continuously in such parish or combination, and shall have maintained himself without having recourse to common begging, either by himself or his family and without having received or applied for parochial relief.” . . .

A proof was allowed, by which the following facts were established:—“Marion Hunter, now aged fifty, was born in the parish of Rutherglen. She had always been to a considerable extent weak-minded, but for a time in her youth was employed somewhat irregularly in a bleach-work near Rutherglen, as long as her sister, who was then unmarried, could in a manner ‘herd’ her to her work and look after her. After the marriage of her sister to a miner named Jamieson, the pauper became more irregular, and thus became unable to support herself by work, and applied to and received relief from Blantyre, where she was then residing with the Jamiesons, but Rutherglen admitted liability, and repaid the advances till 1885, when Rutherglen instructed Blantyre to offer the poorhouse, which was offered and refused. In 1885, being with child, she again applied for relief, and was sent at the expense of Rutherglen to Paisley Poorhouse, where she gave birth to a child, which soon thereafter died. From the time when she left Paisley Poorhouse in May 1886 till March 1892 no further application for relief was made on her behalf. During this period she remained living in family for the most part with the Jamiesons at various houses in Blantyre parish, being constantly there with them in winter, but during the summer she occasionally absented herself for periods, of which the longest was three months, and the rest between six weeks and one week, being in Blantyre, however, the greater part even of the summer. During this period the only work she did was to attend in a half-hearted way to the children of the Jamiesons, and her absences were not due to industrial engagements elsewhere. Whether in Blantyre, in East Kilbride, or in other places to which she strayed in the summer months, she was in the habit of going about with a bag asking for help for a ‘puir body’ (that is, herself), so that she was generally known as ‘Puir Body,’ and receiving sometimes coppers, sometimes food, sometimes clothes. In so far as she did not support herself by begging in this manner she was supported by the Jamiesons. On 8th March 1892 she applied for relief to Blantyre, and was sent to Hamilton Combination Poorhouse, where she remained only four days. On 1st December 1894 she again applied to Blantyre for relief, and 2s. 6d. a week was given till 16th March 1896. She again applied to Blantyre for relief on 31st March 1896, when she was certified insane and sent

to the lunatic ward in Hamilton Combination Poorhouse on 20th April 1896, where she had subsequently remained."

At the proof William Brand, High Blantyre, deponed with regard to the pauper—"She is not able to earn her own livelihood. I would not consider her a common beggar or tramp; I consider it is probably weak-mindedness which makes her wander about. On many occasions she was on the tramp. I have frequently met her a long way from Blantyre. I never heard of or saw her doing anything to earn her own livelihood. . . . My impression is that occasionally when I met her begging she was living with her brother-in-law. . . . I have known her asking for alms in that way even when staying in Jamieson's house." Jamieson, the pauper's brother-in-law deponed, speaking of the year 1886—"No arrangements for relief having been come to, I refused to keep her. I have enough to do with myself. Afterwards, when she stayed in my house, it was simply because I did not want to see her on the street. From and after 1886 she stayed sometimes in my house. When none of us were in, she took the opportunity and ran away, and went perhaps to Cambuslang. . . . When the weather was favourable she ran away. She only came back when she could not subsist away. . . . I don't know how she lived when she was away for these periods. She was not able to earn her livelihood. She must have got it from some one. When she came back to me she brought back stuff which she must have got from people. I have seen her with jacket-bodices and skirts and bread. My boys have told me that they have met her on the road and got coppers from her. . . . I did not support her when she was away. I cannot imagine any other way that she can have earned her living except by begging. . . . I was not willing to support her during these years, I had plenty to do with myself. I did support her, but was not willing at all." Jane Elizabeth Martin, Homestone, Blantyre, deponed—"She used to call at my house begging. She seemed to be very destitute. She was rather peculiar. I thought she was weak-minded. She did not work any that I know of. She seemed to earn her livelihood by begging. She called at my house sometimes twice or three times a-week, and then again perhaps not for two or three weeks. . . . I have not seen her begging at any other houses. I have seen food in a bag which she had got from people. I never saw her with clothing, but I have seen her with money." Other witnesses gave similar evidence. Mrs Hales, Blantyre, deponed—"Marion Hunter is very weak in the intellect. She used to keep the baby, but she could not do much work. She could not be trusted even to keep the baby; she would sometimes go and leave it, or give it to a girl. . . . She used to come in to the shop with a half-penny and asked for two farthings. She would buy a farthing's worth of candy, and then she would say, 'Can you give me a cup of tea.' It was just an excuse for asking for the tea. She would beg tea or

anything that was on the table, but she never asked for money. I have not seen her accosting people on the road. Mrs Jamieson had a great deal of trouble with her; she was not easily managed."

On 7th December 1896 the Sheriff-Substitute (ERSKINE MURRAY) issued an interlocutor whereby, after sundry findings in fact to the effect above set forth, he found, "on the whole case and in law, that while so far as mere residence is concerned Marion Hunter's residence in Blantyre during these years might have been sufficient for the acquisition of a settlement, her residence is made ineffectual for that purpose by the fact that she had recourse more or less throughout the whole of that period to common begging; and therefore found the defenders, the Parish Council of Rutherglen, liable to the pursuers, the Parish Council of Blantyre, in the sum of £11, 10s. 8d. as craved, with interest; reserving to pursuers to move for decree for any further sums paid or to be paid by them on behalf of the said Marion Hunter subsequent to the 20th day of April 1896, with interest thereon as craved; and found the defenders liable to the pursuers in expenses."

He added the following note:—

"The question is, whether between 1886 and 1892 Marion Hunter acquired a residential settlement in the parish of Blantyre?"

"So far as mere residence is concerned, the Sheriff-Substitute is of opinion that she would have done so. Her home was with the Jamiesons. She was with them all the winters. She only left them for short intervals in the summers, not under any contract, but clearly for a temporary change and *animus revertendi*.

"It was further argued that from her state of mind Marion Hunter could not acquire a settlement. But she was only weak-minded; in the case of *Haddington*, 16 Shaw 268, this was not held sufficient. She cannot be considered to have been a lunatic till she was certified to be so. She could still have done some little work had she been looked after and 'herded.' The gain, however, would not have been worth the trouble, at least so her relatives thought.

"But then it is also clear that she resorted constantly to common begging. She never supported herself in any measure during that period except by begging, unless that in return for the lodging and partial board given her by the Jamiesons she gave an occasional help with the children. That lodging and partial board would not lead to her being, in the eyes of the law, unable to acquire a settlement, but her recourse to begging leads to that result.

"Both parties found on the cases of *Hay v. Cumming* and of *Forbes v. Marshall & Haswell*, 6th June 1851, 13 D. 1057. Those cases, however, have been discredited in some of their particulars by subsequent cases. For instance, it has been held that absences under contract go to show that a party had no *animus revertendi*, and there-

fore the acquisition of a settlement was thereby broken. But the doctrine laid down by the Inner House that the view of the Lord Ordinary (who held that a person could not acquire a settlement if she was in reality a proper object of parochial relief, though she did not ask for and did not get it) was wrong, has been confirmed by the subsequent cases. It was held by the Inner House that even aid by private benevolence did not intercept the acquisition of a settlement, and certainly the aid of relatives did not do so. But it is clear that the line must be drawn at common begging, in consequence of the words of the statute."

The defenders appealed to the Second Division of the Court of Session, and argued—The facts proved here did not amount to "common begging" in the sense of the statute. That expression, as there used, referred to the old system of licensed begging, and was therefore inapplicable to any kind of begging now in practice. Apart from that, the words only applied to the case of a person who lived continuously and habitually by begging, who had no other resource than begging, and who but for begging would have been a charge upon the rates. This pauper during the period in question only lived by begging occasionally. Her longest tramp only lasted three months. She did not beg publicly in the streets, but merely asked persons more or less known to her to help a "puir body." She went tramping and begging because from weakmindedness she had a desire for change and holidays rather than for steady work and continuous residence with her relatives. She did not require to beg, because her relatives were always willing to support her, and actually did support her during at least three quarters of the year. The criterion was not actual resort on particular occasions to begging, especially when explained by weakness of mind, but destitution due to inability to earn a livelihood, and want of friends willing to give support. Here there was no such destitution, for her sister's house was always open to her. They referred to *Hay v. Cumming and Forbes v. Marshall & Haswell*, both reported under date June 6, 1851, 13 D. 1057.

Counsel for the pursuers and respondents were not called upon.

LORD JUSTICE-CLERK—I see no ground for differing from the Sheriff-Substitute. As Mr Salvesen has said, the evidence is all on one side. It is to the effect that during the period in question, for weeks and sometimes even months, this woman was living by what is nothing else than begging. It is said that a definition of the term "common begging" in the Poor Law Act 1845, section 78, is required. All I am inclined to say is that it is proved in this case that this woman was living by common begging. If that be so, then she comes within the exception provided for by the section to which I have referred, and consequently she could not acquire a settlement in the parish of Blantyre although she resided

there for the requisite period under the statute.

LORD YOUNG concurred.

LORD TRAYNER—I agree. It is proved that the pauper had recourse to common begging during the period of residence which is relied on as giving her a residential settlement. But the statute is quite explicit, that the residence necessary for the acquisition of a settlement must be residence for a period without recourse to common begging. I think, therefore, no residential settlement was acquired.

We are asked to define "common begging." But the language is not technical. It is plain English, about the meaning of which I cannot suppose there is room for any doubt.

LORD MONCREIFF—I am of the same opinion. I think this woman was a common beggar in the plainest sense of the term.

The Court pronounced the following interlocutor:—

"Sustain the appeal: Recal the findings in fact in the interlocutor appealed against, and in lieu thereof find that the pauper Marion Hunter was born in the parish of Rutherglen, that she never acquired a residential settlement in the parish of Blantyre, and never lost her settlement in the parish of Rutherglen: *Quoad ultra* adhere to the interlocutor appealed against: Of new decern against the parish of Rutherglen for the sum of £11, 10s. 8d. as craved, with interest: Find the respondents entitled to expenses in this Court," &c.

Counsel for Pursuers and Respondents—C. K. Mackenzie—Cullen. Agents—Bruce, Kerr, & Burns, W.S.

Counsel for Defenders and Appellants—Salvesen—Deas. Agents—H. B. & F. J. Dewar, W.S.

Friday, March 12.

FIRST DIVISION.

HERITORS OF PARISH OF KINGHORN
v. PROVOST, MAGISTRATES, AND
TOWN COUNCIL OF KINGHORN.

Church—Repairs—Rule of Assessment—Custom of Parish Defined by Decree—Valued or Real Rent.

By a decree of the Court in 1761 dealing with a parish partly landward and partly burghal, it was found that repairs of the kirk and manse were in use to be paid half by the burgh, (the other half being paid by the landward heritors), and that "therefore they (i.e. the burgh) are lyable in the half of all the repairs on said kirk, manse, and office-houses in all time coming."