

Thursday, November 9.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

WEST CALDER PARISH COUNCIL v.
BO'NESS AND CARRIDEN PARISH
COUNCIL AND SHOTTS PARISH
COUNCIL.

Poor—Settlement—Desertion—Acquisition of Residential Settlement by Husband Living Apart from Wife and Family—Constructive Residence—Poor Law (Scotland) Act 1898 (61 and 62 Vict. c. 21), sec. 1.

S., having a residential settlement in West Calder, in September 1898 deserted there his wife and family, who became chargeable to that parish and remained so till March 1899, when the wife discovered S. residing in the parish of Shotts. She left the poorhouse and with her family returned to West Calder, where she was occasionally visited by her husband, at first surreptitiously owing to a warrant having been issued for his arrest, and was given by him small sums of money for her support. On 3rd June 1899 S. removed his wife and family to Shotts parish, where they remained till 15th May 1902, when he again deserted them, and on the 28th May they again received relief. West Calder maintained that S. had acquired a residential settlement in Shotts, having resided for more than three years prior to May 1902 in that parish. Shotts maintained that S. had not acquired a residential settlement in its parish, inasmuch as prior to 3rd June 1899 S. was constructively resident in West Calder, where his wife and family were, and where he was visiting them.

Held that S. had acquired a residential settlement in Shotts.

Poor—Relief—Admission of Liability—Continuance of Liability—Interruption of Relief—Poor Law Act 1845 (8 and 9 Vict. c. 83), sec. 70.

With regard to a case of a wife and family, who had received relief owing to the husband's desertion, an inspector of poor wrote—"I am instructed to admit liability in this case." The wife and family remained in the poorhouse from their admission till 23rd November 1903, when they left of their own accord and "drifted up and down for four days in search of" the husband, when they again, on 27th November, applied for relief and were sent back to the poorhouse.

Held that as the wife and family had not become self-supporting during their absence from the poorhouse, there had been no interruption of liability, and that the admission was still binding.

The Poor Law Act 1845 (8 and 9 Vict. c. 83), sec. 70, makes provision that where an application for relief is made by any poor

person entitled to relief, the relieving officer of the parish shall, notwithstanding such poor person may not have a settlement in the parish, "afford to such poor person such interim maintenance as may be judged necessary until the parish or combination to which such poor person belongs, be ascertained, and his claim upon such parish or combination admitted or otherwise determined, or until he shall be removed."

The Poor Law (Scotland) Act 1898 (61 and 62 Vict. c. 21), sec. 1, enacts—"From and after the commencement of this Act no person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall, either before or after, or partly before and partly after, the commencement of this Act, have resided for three years continuously in such parish, 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. . . ."

In this action the Parish Council of the Parish of West Calder sued for the sum of £39, 17s. 6d. alleged to have been expended by them on behalf of a pauper, Jane Gordon M'Neil or Stone, wife of Robert Stone, a miner, and their four children, from 27th November 1903 to 3rd June 1904.

The action was directed against (1) the Parish Council of the Parish of Bo'ness and Carriden (Stone's birth parish), and (2) the Parish Council of the Parish of Shotts, in which it was alleged that Stone had acquired a residential settlement.

The pursuers averred—" (Cond. 1) On 27th November 1903 Jane Gordon M'Neil or Stone and her four children, who were then all proper objects of parochial relief, applied for relief to the inspector of poor at West Calder. The said inspector sent Mrs Stone and her four children on the same day to Lintlithgow poorhouse, where they remained till 3rd June 1904. They were maintained in said poorhouse from said 27th November 1903 till 3rd June 1904 by the pursuers. An account is produced showing that the amount expended by the pursuers on behalf of said paupers from 27th November 1903 till 3rd June 1904 was £39, 17s. 6d., the sum sued for. (Cond. 2) The said Jane Gordon M'Neil or Stone is the wife of, and the said four children are the lawful children of, Robert Stone, miner, whose present address is Gavieside, West Calder. The said Robert Stone was born in the parish of Bo'ness and Carriden, and his birth settlement is there. Stone is able-bodied and capable of maintaining his said wife and children."

These averments were admitted by the defenders.

The pursuers further averred that when Mrs Stone and her children became chargeable on 27th November 1903 Stone had acquired a residential settlement in the parish of Shotts. The particulars of the residence in virtue of which he was alleged to have acquired this settlement were stated at the bar as follows:—In September 1898, Stone, who was living in West Calder (in which at that date he had a residential settlement), deserted his wife

and family, who thereupon became chargeable to the parish of West Calder, and were maintained by the said parish till March 1899, when, having ascertained that the husband was living in Clelland in the parish of Shotts, they left the poorhouse and returned to West Calder. Thereafter Stone, who continued to live in Clelland, occasionally visited his wife at West Calder, and made occasional contributions towards her support and that of his family. In the meantime a warrant had been issued for Stone's arrest for deserting his wife and family and failing to provide for them, in consequence of which these visits to his wife were surreptitiously made. In the beginning of May 1899, Stone, when visiting his wife and family in West Calder, was informed that if he would remove them to Shotts no proceedings would be taken against him in respect of the warrant, and on 3rd June 1899 he accordingly took his wife and family to Clelland, in the parish of Shotts, where they remained till 15th May 1902, when he again deserted them.

After Stone's desertion in May 1902 his wife and family were maintained by the pursuers in Linlithgow poorhouse from 28th May 1902 till 23rd November 1903, and again from 27th November 1903 to 3rd June 1904. The sum sued for in the present action was the alleged cost of their maintenance during the latter period.

In their answers the Parish Council of Shotts denied that Stone had acquired a residential settlement in the Parish of Shotts. They maintained that at the time of his desertion in 1899 Stone had a settlement in West Calder, where he had resided since 1871, that his residence in the parish of Shotts did not commence till 3rd June 1899, when he removed his wife and family to Clelland, that it terminated on 15th May 1902, when he again deserted them, and that Stone therefore had not resided for three years continuously in the parish of Shotts.

They further averred (Ans. 3)—“From 3rd June 1899 till 15th May 1902 the said Robert Stone resided with his wife and family at Clelland, but on 15th May 1902 he deserted them, and on 28th May 1902 they became chargeable to the parish of Shotts. On the same day, 28th May 1902, the inspector of poor of the parish of Shotts sent to the inspector of poor of the parish of West Calder, the usual statutory notice claiming relief, and on 17th June 1902 particulars of the claim were sent. After due inquiry, the inspector of poor of the parish of West Calder admitted liability, and instructed the inspector of poor of the parish of Shotts to have Mrs Stone and her family removed to the combination poorhouse at Linlithgow, which was done on 20th January 1903, and chargeability to the parish of Shotts then ceased. Mrs Stone and family remained in Linlithgow poorhouse from 20th January 1903 till 13th February 1903. On 17th February 1903 Mrs Stone and her family turned up in Clelland, but were sent on by train to West Calder, and the parish of West Calder repaid to the parish of

Shotts the railway fares. From 19th February 1903 until 23rd November 1903 Mrs Stone and her family were maintained in Linlithgow poorhouse at the charge of the parish of West Calder. On leaving said poorhouse on 23rd November Mrs Stone went to Motherwell, and from there on 27th November 1903 to Clelland, where she applied for relief. The inspector of poor of the parish of Shotts sent her and her family, as on former occasions, to West Calder, and the inspector of poor of the parish of West Calder on same date, 27th November 1903, sent her to the poorhouse at Linlithgow, where she was maintained at the charge of the pursuers until 3rd June 1904.”

The pursuers pleaded—“The pursuers, as the relieving parish, are entitled to recover the sums expended by them upon the said paupers from the defenders to whose parish they may ultimately be found to belong, with expenses.”

The defenders the Parish Council of Bo'ness and Carriden pleaded—“The said Robert Stone having acquired a residential settlement in Shotts Parish prior to 27th November 1903 which was subsisting at said date, or alternatively not having lost his residential settlement in the parish of West Calder at said date, these defenders are entitled to absolvitor, with expenses.”

The defenders the Parish Council of Shotts pleaded—“(2) The said Robert Stone not having acquired a residential settlement in the parish of Shotts, these defenders are not liable in relief, and should be assoilzied. (3) *Et separatim*, the parish to whom the paupers are chargeable being (1) the parish of Bo'ness and Carriden as the birth settlement of the father, or, and alternatively, (2) the parish of West Calder as (a) the residential settlement, or (b) in respect of the admission founded on, these defenders should be assoilzied.”

A proof was allowed.

The import of the evidence sufficiently appears from the following passages:—

(1) *On the Question of Residential Settlement.*

Robert Stone—*examined for pursuers*—“(Q) Did you visit your wife and the family after you first went to Clelland?—(A) No, I never visited her all the time until she came over to where I was stopping. I had never seen her from the time I left her until she came into the house. She was only looking for me at the time. I remember her and the family coming to live steadily with me at Clelland in June. (Q) Had she come to see you at Clelland before that?—(A) She came once on the Friday. (Q) Immediately before she came to stay?—(A) Yes. (Q) How long before the time she came over with the children to stay was it that she came to see you at Clelland?—(A) We were a week or two before we got a house. (Q) Was she living at Clelland with you before you got a house in Clelland?—(A) No, she only stopped one night, the night she found me out. That was a good two or three weeks before we got the house. I went to see her at West Calder a week after she came to see me. I think

it was on a Friday night that I went. I just stopped that night with her. I went again two or three times to see her at West Calder. (Q) Over what period did the two or three times go, would it be three weeks or more?—(A) Yes. (Q) Was it just during the few weeks before she came to live with you at Clelland?—(A) Yes, it was weeks after she came to see me. On the occasions when I went to see her I went on the Friday night, and I stopped over the Saturday on one occasion. Until she found me out at Clelland I had never gone to West Calder to see her. . . . *Cross.*—I knew about a warrant being out for my apprehension at West Calder. That was a reason why I did not go back and see my wife and family till my wife came and saw me at the time of the Hamilton Fair. When she came in April and told me that the warrant would not be enforced I afterwards went and visited her at West Calder. . . . I visited her at succeeding week-ends till she came to Clelland in June. I stayed with her in her house at West Calder on these occasions. I gave her money from time to time for household purposes. . . . *Re-examined.*—The reason why I left West Calder in August 1898 was owing to a dispute in the house. I intended to go and find work elsewhere, and not to return to West Calder.”

Mrs Stone—*examined for pursuers.*—“I was in the poorhouse up till March 1899. I then thought that I would make my way to Motherwell, where his folk belonged to. On a Friday in the month of April I went to Motherwell and saw his brother, who told me that he thought I would get him in Clelland. I walked to Clelland the same day, and I went to Cossar’s house. My husband was not in, and I waited till he came in. This was the first time I had seen him after he left me in August 1898. I stayed all night, and came home to West Calder on the Saturday. He came to see me the following Friday, and he stayed till early on the Sunday morning. He came in through the window about eight or nine o’clock at night. I suppose he was feared to come any other way. He gave me some money at that time, but I cannot remember how much. He did not come to see me the next week-end, but he sent me some money. He came the following Saturday again, a week later, and went away on the Sunday morning. He came every Saturday for a time. The house I lived in at West Calder was one of the colliery houses. They never bothered me for any rent for it. My husband came to see me, I think, four or five times altogether. I think I went through once to see him at Clelland before I went to live with him.”

(2) *As to the Admission of Liability.*

William Millar, Inspector of Poor, West Calder—*examined for pursuers.*—“On 14th January 1903, however, I admitted the claim made by Shotts, and removed the wife and family to Linlithgow poorhouse on the 20th of the same month. They left Linlithgow poorhouse on the 13th of February. They came to West Calder, went

on to Shotts, and applied there. Shotts sent them back to West Calder, and on the 19th I sent them back to Linlithgow poorhouse. From that time Mrs Stone and her family were detained by my parish in the Linlithgow poorhouse till 23rd November 1903. She then left the poorhouse and went to Shotts. She left of her own accord. I cannot exactly say where she went when she left the poorhouse, but she landed in Shotts. Shotts sent her again to me on the 27th. . . . I sent them to the medical officer, got them certified, and had them removed to the Linlithgow poorhouse. They remained there till 3rd June 1904. The claim now made refers to the expense of the keeping Mrs Stone and her family during the period from 27th November 1903 to 3rd June 1904. . . . *Cross.*—When Mrs Stone and her family left the poorhouse on 23rd November 1903 they were struck off the poor roll. There is an entry in my roll book that she was struck off on 23rd November.”

Statutory notices of chargeability were sent by the parish of Shotts to the Inspector of Poor for West Calder on 28th May 1902 (first chargeability), and 26th September 1902 (second chargeability). The notices were in the following terms—

“*Parish Council Office, Shotts,
28th May 1902.*

“Sir,—In terms of the 71st section of Act 8 and 9 Vict. cap. 83, I hereby give you notice that the above-named poor person has become chargeable to this parish, which claims relief from your parish as the parish of settlement. An early admission of liability is requested.”

In the particulars of claim sent by the Inspector of Poor, Shotts, to the Inspector of Poor, West Calder, he stated—“Claim is made on your parish in respect of a retained residential settlement, for proof of which you are referred to your own books, and the rent-books of the owner of the house she occupied at Clyde Street, West Calder. Your admission of liability, with instructions, will oblige.”

The admission of liability by West Calder was as follows—

“*Parish Council Office, Knowe Tap,
West Calder, 14th January 1903.*

“*Jane M’Neil or Stone.*

“Mr King, Inspector of Poor, Shotts.

“Dear Sir,—I am instructed to admit liability in this case. Kindly have them sent on to Linlithgow poorhouse, and oblige.—Yours faithfully,
WILLIAM MILLAR,
Inspector.”

Following on this admission an account (£35, 17s.) was rendered by the Parish Council of Shotts to West Calder, and on 13th February 1903 it was duly paid.

On 16th February 1905 the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—“(1) Finds that Robert Stone was a pauper, and that his wife and family were maintained by the pursuers from 27th November 1903 to 3rd June 1904 at a cost of £39, 17s. 6d., being the sum sued for: (2) Finds that the pauper had not at 27th November 1903 a settlement by residence in the parish of West Calder: (3) Finds that the pauper

had not at that date acquired a settlement in the parish of Shotts: (4) Finds that the parish of Bo'ness and Carriden is the parish of the pauper's birth: Sustains the second plea-in-law for the Parish Council of the Parish of Shotts, and repels the plea-in-law for the Parish Council of the Parish of Bo'ness and Carriden: Assoilies the Parish Council of the Parish of Shotts, and decerns against the Parish Council of the Parish of Bo'ness and Carriden in terms of the conclusion of the summons: Finds the Parish Council of the Parish of Bo'ness and Carriden liable in expenses to the pursuers and to the Parish Council of the Parish of Shotts: Allows accounts," &c.

Opinion.—"In this action the Parish Council of West Calder sues for the sum said to have been expended in the maintenance of a pauper named Robert Stone from 27th November 1903 until 3rd June 1904. The conclusion is directed primarily against the parish of Bo'ness and Carriden as the admitted parish of birth. There is another conclusion which is thus expressed, 'or otherwise, and in the event of its being instructed that at and subsequent to the said 27th day of November 1903 the said Robert Stone had a settlement by residence in the parish of Shotts, then the other defenders, the Parish Council of the Parish of Shotts, should be decerned' to pay the sum sued for.

"The claim is made by West Calder as the relieving parish, and in the ordinary case would have raised no question except between Bo'ness and Carriden and Shotts. But these defenders have complicated the case by a plea that the pauper had a residential settlement in West Calder at and prior to 27th November 1903, and that therefore these defenders should be assoi-
lied.

"It is true that the pauper had a residential settlement in West Calder as far back as 1871, and seems to have retained it until 1898. But I think it manifest from the proof that he left West Calder in August 1898, and was absent from West Calder for greatly more than three or than four years. This is only a question on the proof and pleadings, and I do not think it capable of dispute or requiring discussion. It is, besides, admitted by Bo'ness and Carriden in the answer to condescendence 3. It appears to me, therefore, that decree must be pronounced in terms of the first conclusion.

"It may not be necessary to go further. But Bo'ness and Carriden pleads—"The said Robert Stone having acquired a residential settlement in Shotts parish prior to 27th November 1903, which was subsisting at that date, or alternatively, not having lost his residential settlement in the parish of West Calder at said date, these defenders are entitled to absolvitor with expenses.' I have already expressed my opinion that the alternative part of that plea is unfounded, because of the length of the absence of the pauper from West Calder, during a part of which time his actual residence appears to be unascertained. With regard to the part of the

plea which affirms the acquisition of a residential settlement in Shotts, I am of opinion, on the principle of constructive residence, that the residence of the pauper with the effect of acquiring a settlement did not begin until June 1899, when the pauper's wife and family joined him in Clelland, and came to an end before June 1902, the full term of three years' residence not having been completed. The cases of *Deas v. Nixon*, June 17, 1884, 11 R. 945, 21 S.L.R. 637, and *Kilmarnock v. Leith*, November 25, 1898, 1 F. 103, 36 S.L.R. 107, seem to be in point, especially the latter.

"I shall therefore sustain the second plea for Shotts, and repel the plea for Bo'ness and Carriden, and decern against Bo'ness and Carriden for the sum concluded for."

The defenders, the Parish Council of Bo'ness and Carriden, reclaimed.

Argued for the reclaimers—*Settlement*—As Stone was in desertion after he left West Calder he could not be held to be constructively resident with his wife and family there. The present case was governed by that of *Greig v. Simpson*, October 25, 1888, 16 R. 18, 26 S.L.R. 19. Stone had acquired a residential settlement in Shotts for the three years dated from September 1898, the date when he left West Calder. The case of *The Parish Council of Kilmarnock v. The Parish Council of Leith*, November 25, 1898, 1 F. 103, 36 S.L.R. 107, was also in point, for Stone could not while in desertion be held as regarding his wife's house as his home. The case referred to by the Lord Ordinary was distinguishable. So, too, was the case of *Beattie v. Stark*, May 23, 1879, 6 R. 956, 16 S.L.R. 544. The fact that Stone made occasional contributions towards the support of his wife and family in West Calder did not interrupt the acquisition of a settlement in Shotts. Neither did his visits to his wife. These visits were surreptitiously made. As soon as he could get a house he removed his wife and family from West Calder. Such element as might infer a constructive residence in West Calder was absent.

Argued for the respondents, the Parish Council of Shotts—(1) *Settlement*—Stone had not acquired a settlement in Shotts as he had not been continuously resident there during three years. Prior to his desertion in 1898 he had a settlement in West Calder. The reason why he left was on account of a dispute with his wife, and his absence at first was incidental and temporary. His home was then in West Calder though he himself had gone away. From 28th May 1899 he was contributing to the support of the West Calder home. In doing so he must have regarded it as his home. His wife and family and all his belongings were there. He visited there every week-end till June 1899, when he removed them to Shotts. The question turned on what was his home during the five or six days from 28th May 1899 to 3rd June 1899. The canons of construction laid down in *Beattie v. Stark* (*ut supra*) were in point. The *Kilmarnock* case (*ut supra*) was in

the respondents' favour, for there it was held that the pauper's residence was where he was maintaining his wife and family. Though Stone was *de facto* in desertion he was resident, in the sense of the statute, in West Calder. After his wife found him he recognised his obligation to contribute to her support, and so set up of new his home in West Calder. The important period here was the interval from 28th May 1899 to 3rd June 1899, and he had then no home in Shotts, for he was living in lodgings. His home was in West Calder, and remained so till he removed his wife and family to Shotts on 3rd June. (2)—*Admission of Liability*.—Assuming Stone had acquired a settlement in Shotts, liability had been formally admitted by West Calder, and therefore West Calder was liable—Poor Law Act 1845 (8 and 9 Vict. cap. 83), sec. 70; *Beattie v. Arbuckle*, January 15, 1875, 2 R. 330, 12 S.L.R. 210; *Young v. Gow*, February 9, 1877, 4 R. 448, 14 S.L.R. 452. In *Brechin Parish Council v. Montrose Parish Council*, December 6, 1904, 7 F. 207, 42 S.L.R. 150, the circumstances were different.

Argued for the respondents, the Parish Council of West Calder—*Admission of Liability*.—The admission of liability given by West Calder was only binding so long as chargeability against them existed. That chargeability ceased on 23rd November 1903, when Mrs Stone and her family voluntarily left the poorhouse and went to Shotts. There had been a material change of circumstances since the admission was given. The test of change of circumstances was the cessation of chargeability, and that had happened here—*Brechin Parish Council v. Montrose Parish Council*, *ut supra*.

LORD PRESIDENT.—The pauper's chargeability has happened in the parish of West Calder. The pauper is a miner who prior to the autumn of 1898 had acquired a residential settlement in West Calder, his birth settlement being in the parish of Bo'ness. In September 1898 he deserted his wife and family, who had resided with him in West Calder, and went to the parish of Shotts, where he found work. In the spring of the next year, 1899, in the month of April or May—the exact date is uncertain—his wife, who had started on a tour of discovery, found him in the parish of Shotts, and communicated to him the fact that a warrant for his apprehension had been issued. She promised to let him know what the authorities were likely to do in the matter of his apprehension. The authorities in West Calder seem to have told her that if he would put an end to his state of desertion, and take his wife and family to live with him in Shotts, the warrant would not be put in force. His wife having given him this information, he, being no longer in fear of apprehension, seems to have made two or three week-end visits to his wife in the parish of West Calder, and upon these occasions to have given her certain sums of money. He himself meantime continued to reside actually in Shotts and set about

getting a house for his wife and family there. He secured a house on 3rd June 1899, and there and then removed his wife and family to Shotts.

Now, chargeability happened at such a date that in order to have the three years' residence which is necessary for the acquisition of a settlement, the 3rd of June will not do as the commencement of the three years. It is necessary for this purpose to draw back the residence for a few days previous to 3rd June, namely, the days between 28th May and 3rd June. The question therefore comes to turn upon this—where was this man resident between 28th May and 3rd June 1899.

It is somewhat difficult to reconcile all the decisions on the matter, and I do not think that any particular advantage would be served by going through these decisions. But the opposing views of the two parishes which are here concerned may be shortly stated.

The view of the parish of Bo'ness—which of course wishes to charge Shotts with liability in respect of a residential settlement—is very simple. They say that *de facto* he was resident in Shotts after 28th May—that indeed he had as a matter of fact resided there from the autumn of the preceding year. The parish of Shotts retort that he cannot be held to have resided in Shotts for the period between 28th May and 3rd June, because at that time his wife and family were established in West Calder, and that, consequently, according to the decisions, his home must be held constructively to be in West Calder and not in Shotts.

Upon the facts I do not think that the contention of Shotts can be upheld. It is true that there are many cases in which the place where a man is maintaining his wife and family is held to be the place of his true residence. But there is no such general proposition as this, that wherever a man's wife and family are, there he must be held to be. On the contrary, the real question is where he himself is, and the position of his wife and family is just one of the items of evidence which may go strongly to solve that question.

The case seems to me more near the case of *Greig v. Simpson*, 16 R., than any other. In that case a tailor in Leith had gone to Cupar, leaving his wife and family in Leith. He could not at the moment establish them in Cupar, and he took lodgings there for himself, but eventually removed them to a house in Cupar, and never came back to Leith. It was held that after he had gone to Cupar, leaving his wife and family in Leith, he had left Leith, and consequently that his residence in Leith was not continuous for the necessary period.

I think the facts here are substantially the same. I think when this man left West Calder in the autumn of 1898 he never really went back again. He gave up his home then, and I cannot look upon those casual week-end visits to his wife after she discovered him, coupled with the giving her money, as a re-establishment of the

home which *de facto* he had abandoned. If that is so, there can be no question of constructive residence at all. The man was himself resident in Shotts, and there he remained for the period of three years. Therefore upon these grounds I am of opinion that the Lord Ordinary's interlocutor ought to be recalled on this matter, and that, as between the birth-parish and Shotts, Shotts is liable, because the pauper acquired a residential settlement there.

LORD ADAM—The question in this case is whether the pauper Stone had acquired a residential settlement in the parish of Shotts when he became chargeable on 28th May 1902. The facts are very short and simple. It appears that the pauper had been residing for apparently a good many years in the parish of West Calder. He, deserting his wife and family, left West Calder about the end of August or September 1898. He left it intending finally to leave it, and he then took up his residence—in lodgings no doubt—in the parish of Shotts in the month of September, and in the parish of Shotts he continued to reside personally up to the date when he became chargeable. If he is to be held to have been resident in the parish of Shotts from August or September 1898 to the date of chargeability, of course that is sufficient length of time to give him a residential settlement in Shotts.

The facts in this case which raise the question are these, that from August or September 1898 to the 3rd of June 1899 he lived alone by himself in Shotts. During that time his wife and family continued to reside in West Calder, apparently in the house in which he had left them, and the controversy in this case is whether the three years are to run from August or September 1898, when the pauper himself ceased to reside in West Calder and came to live in Shotts, or whether they are to run from the 3rd of June 1899, when he was joined in Shotts by his wife and family.

I suppose if from August or September 1898 until chargeability in 1902 there had been no visits paid by him to his wife in the circumstances which your Lordship has stated, there would be no question about the settlement at all. What has raised the controversy between the parties is this, that in the month of April 1899 this deserted wife discovered that her husband was living in Shotts. After that date the pauper went back, apparently never to reside, but he went back and visited her, apparently several times, between May and 3rd June in the old house where she had been living with her family in West Calder, and it is said that these visits interrupted the acquisition of a residential settlement by the pauper in the parish of Shotts, and that he must be held to have been constructively living with his wife and family in the parish of West Calder. It is said that, being constructively living in West Calder, he could not acquire a residence in Shotts at the same time, and that therefore the requisite period of three years does not exist. That contention is

supported in the first place by the *Kilmarnock* case. It is said that that case established that the man had a residence with his wife and family although he never went near them except to pay them his wages once a week. But that is a very different case from this. In the *Kilmarnock* case it was held, rightly or wrongly, but in obedience to prior authorities, that the man was truly living with his family in Ayr, because they could not reside with him at Kilmarnock where he was working, because he could not get a house for them, and he visited them regularly and paid them his wages. The Court held that he was constructively resident in Ayr. But that is a very different case from this. In this case the man left West Calder with the intention—the expressed intention—of never returning to West Calder. He personally had severed his connection with West Calder altogether, and when his wife discovered him what took place was that it was arranged there and then, not that he was to go back to West Calder, but that she and his family should join him in Shotts, and accordingly they did join him there on 3rd June 1899. I think on these facts, beyond doubt, the pauper was residing continuously in Shotts from August or September 1898 until he became chargeable. Therefore I agree with your Lordship that the interlocutor should be reversed.

LORD M'LAREN—I agree entirely with the observations made by Lord Kinnear in one of the cases—I think *Greig v. Simpson*—as to the limits and meaning of constructive residence. Constructive residence is not a separate thing distinct from actual residence, but only means this, that according to the ordinary use of language “residence” does not mean that a man is to be every moment of his life in one place, and therefore that he may still be resident notwithstanding absences more or less prolonged, the degree of absence that would destroy residence being a pure question of fact on which it is impossible to lay down any definite rule. In this view of constructive residence I hold that all the decisions that have been made the subject of argument, and particularly the two that were most referred to—the case of *Kilmarnock* and *Ayr*, and the case between *Leith* and *Cupar*—are perfectly consistent, because if you admit that a man has definitely abandoned his residence, *animo remanendi*, you cannot continue it by any theory of construction. That was the ground of decision as explained by Lord Mure in *Greig v. Simpson*, where his Lordship says he is unable to admit the supposition that a man who had definitely abandoned *Leith* as his residence, and was only waiting for a house to take his wife to, could be held to be constructively resident there. In the *Kilmarnock* case the ground of the decision was that the elements of residence in *Kilmarnock* were awaiting during the period that the man's wife and family were obliged to live in *Ayr*, because the fact of his working in that place was not sufficient to make it his residence if his home was in another

locality. The present case, I think, is really ruled, if authorities are to rule such cases, by *Greig v. Simpson*, because it is perfectly clear on the evidence that when the pauper left West Calder, after a disagreement with his wife, as he himself says, he had definitely abandoned his residence there, and had no intention of returning, so that he was neither there in fact nor in intention from the time that he went to Shotts. I cannot admit that his having paid occasional visits to his wife towards the latter end of this period, and while he was looking forward to her coming to Shotts, that these occasional visits, which were no doubt made under pressure, and apparently with the view of arranging for their coming together again, can be held to re-establish the residence at West Calder in any true sense of the term. I am therefore of opinion with your Lordships that we should alter the interlocutor and hold that Shotts is liable.

LORD KINNEAR—I am entirely of the same opinion.

As to the effect of the admission of liability given by West Calder—

LORD PRESIDENT—We now have to decide the question that was left over, namely, the question as between Shotts, whom we have just held to be the parish liable as in a question with the parish of birth, and the parish of West Calder. Now, the ground upon which Shotts says that West Calder is liable is not that the settlement is truly in West Calder, because that has really been determined as a matter of fact the other way, but that they have got an admission of liability in distinct terms. It is contained in the letter of 14th January 1903, which is in response to several applications for payment of relief and a request for an early admission of liability. In that letter the Inspector of West Calder, writing to the Inspector of Shotts, says—"I am instructed to admit liability in this case."

Looking to the terms of section 70 of the Act of 1845 and the decisions that have been given by the Court in *Beattie v. Arbruckle* (2 R. 330) and *Young v. Gow* (4 R. 448), it would be idle to say that this admission does not bind. Accordingly the only question really is not whether the admission binds, but whether it applies to the sum of £39 odds, which is the sum which was expended for the relief of the pauper after a certain date, 27th November, the point being that upon the 23rd November the pauper with her children left West Calder poorhouse of her own accord, drifted up and down for four days in search of her husband, turned up at Shotts on the 27th, asked for relief, and was promptly sent back by the Shotts Inspector to West Calder. It is said that interrupted the chargeability, and that consequently the admission which was made for the period before that does not apply to this period.

I cannot think that what was said in those cases which I have cited leads to any such result. It seems to me that once there is a proper admission of liability which binds, that liability must cease in a proper

sense, that is to say, that the pauper in some way or other must be shown to have become self-supporting again or to have come to be supported by somebody else, as would be the case if she had married. But here there is nothing of that sort. There is merely four days' undeterminable absence during which she does not seem actually to have got parochial relief, and during which, as she herself says, she did not earn anything at all because she had too much to do with the children. I am clearly of opinion that the admission still binds, and that, as in a question between Shotts and West Calder, West Calder is liable.

LORD ADAM—I concur.

LORD M'LAREN—I am of the same opinion.

LORD KINNEAR—I also am of the same opinion.

The Court pronounced this interlocutor:—

"Recal the said interlocutor: Find that Robert Stone acquired a residential settlement in the parish of Shotts which was subsisting at 27th November 1903: Sustain the first alternative of the plea-in-law for the defenders, the Parish Council of the Parish of Bo'ness and Carriden, and assoilzie said last mentioned parish from the conclusions of the summons; and in respect of the admission of liability by the Parish Council of the Parish of West Calder to the Parish Council of the Parish of Shotts, assoilzie also the said last mentioned parish from the conclusions of the summons: Find the Parish Council of the Parish of West Calder liable in expenses to both defenders; allow accounts thereof to be given in," &c.

Counsel for Pursuers and Respondents (The Parish Council of West Calder)—Watt, K.C.—A. M. Anderson. Agents—W. & J. L. Officer, W.S.

Counsel for Defenders and Reclaimers (The Parish Council of Bo'ness and Carriden)—Guthrie, K.C.—Orr Deas. Agent—Thomas Liddle, S.S.C.

Counsel for Defenders and Respondents (The Parish Council of Shotts)—Younger, K.C.—M. P. Fraser. Agent—D. Hill Murray, S.S.C.

Friday, November 17.

SECOND DIVISION.

[Sheriff Court of Perthshire
at Perth.]

STEWART v. HANNAH.

Reparation — Slander — Innuendo — Relevancy — Privilege — Malice — Facts and Circumstances Inferring Malice.

A law-agent, appointed to wind up an executry estate, but from whom the agency had been taken, and against