mitted that he had agreed to become liable for the aliment on the part of the father." One can understand that when the mother in that case sought to establish against the defender by legal process his paternity of the infant and consequent liability at law to contribute to its aliment, a mere offer by him "to take the child into his own house and support it" was rejected by the Court as inadequate "while he denied the paternity." The mother had a clear interest (which the present pursuer has not) to establish, if she could, the fact of paternity while evidence of it was available, as this was the only means she had of relieving herself from the obligation of maintenance which was otherwise legally incumbent upon her. It is also to be observed that in *Keay* v. *Watson* the child, a female, was only seven years of age, which may well explain why (as Shaw's report bears) "one of their Lordships expressed an opinion that even the true father of a bastard child has no right of custody." Now in the present case we are not considering the demand of a mother, but a claim for aliment put forward by a third party, who stands in no legal relationship to the infant, and is under no legal obligation to support it. In a question with her, the defender's offer appears to me to be a sufficient and conclusive answer. I cannot see why, in the admitted circumstances of this case, the defender should be put to his defence in a proof upon the question of actual paternity.

A subordinate argument was advanced for the pursuer as regards the period between the mother's death in 1904 and the date (in 1907) when the child (a boy) reached the age of seven. But this contention, in my opinion, clearly fails, because a mother's right to the custody (even in a question with the father) of her bastard child of tender years is based upon natural considerations, and is purely personal to herself.

For these reasons I am for affirming the interlocutors appealed against.

The LORD JUSTICE-CLERK and LORD SKERRINGTON concurred.

LORD ARDWALL was absent.

LORD SALVESEN was sitting in the Justiciary Court at Glasgow.

The Court affirmed.

Counsel for the Pursuer (Appellant)—M'Lennan, K.C.—Maclaren. Agents—Oliphant & Murray, W.S.

Counsel for the Defender (Respondent)—Chree—Kirkland. Agent—Thomas J. Cochrane, S.S.C.

Friday, October 27.

SECOND DIVISION.

[Sheriff Court at Aberdeen.

OLD MACHAR PARISH COUNCIL *v.* ABERDEEN CITY PARISH COUNCIL.

Poor—Settlement—Deserted Children—Discovery of Father and Acquisition by Him of New Settlement—Liability for Maintenance of Children—Transference.

In 1905 four pupil children became chargeable, in respect of their father's failure to maintain them, to the parish of M., where they had a settlement derived from their father. The father, who had disappeared, was not traced till July 1909, when he was found to have acquired a settlement in the parish of A. He was in 1905 and continued to be able-bodied. On 14th July 1909 the parish of M. intimated to the parish of A. a claim of relief of liability for the maintenance of the children after that date.

Held that by the definite location of the father as an able-bodied man with a settlement in the parish of A., the parish of M. was freed, as from the date of their intimation, from liability for the maintenance of the children, and that they were entitled to recover from A. the sums expended in maintenance since that date.

Parish Council of Paisley v. *Parish Councils of Row and Glasgow*, 1908 S.C. 731, 45 S.L.R. 556, and *Leith Parish Council* v. *Aberdeen Parish Council*, 1910 S.C. 404, 47 S.L.R. 263, *considered* and *distinguished*.

Poor—Settlement—"Able-bodied."

Circumstances in which *held* (*distinguishing Knox* v. *Hewat*, January 12, 1870, 8 Macph. 397, 7 S.L.R. 230) that a man who did not earn enough to support his children as well as himself, was able-bodied within the meaning of the poor law.

Opinion (*per* Lord Dundas) that a man who cannot support his children, but is able to support himself, is "able-bodied" within the meaning of the poor law.

Per Lord Salvesen—"I think it would be dangerous to hold that in determining whether a man is able-bodied within the meaning of the poor law, regard should be had to anything but the physical (in which I include mental) condition of the man himself."

The Parish Council of Old Machar raised an action in the Sheriff Court at Aberdeen against the Parish Council of the City Parish of Aberdeen concluding for (1) repayment of certain sums expended by the pursuers on the maintenance of four pupil children of William Taylor, from and after 14th July 1910; and (2) relief of all future advances for the maintenance of the children.

The following narrative is taken from

the opinion of Lord Dundas—"William Taylor, the father of the said children, was born in 1871, in the defenders' parish, but had, by residence in the pursuers' parish, acquired a settlement there prior to 1905. He married in 1894, but he and his wife, though they visited one another, did not live together, Taylor mainly residing with his mother in Old Machar, and his wife with her parents, latterly in the parish of Dyce. In October 1905 Mrs Taylor became insane, and was removed to the Aberdeen Royal Asylum. Dyce claimed and Old Machar admitted liability for her maintenance. In December 1905 the children, whose maternal grandfather had died, were granted relief by Dyce at the request of the grandmother, and Dyce claimed and the pursuers admitted liability for their maintenance. The pursuers called upon Taylor to make arrangements for the support of his children, and on his failure to do so, brought a complaint against him, to which, on 20th February 1906, he pleaded guilty in the Sheriff Court, and (not having paid the fine) went to prison for thirty days. All that the pursuers managed to recover towards payment of their advances for the children was a sum of £10, which was realised by the sale of some furniture belonging to Taylor's mother. The children were boarded out in the parishes of Dyce and Newmills, and the pursuers have had to pay these parishes for their maintenance. About May 1906 Taylor left Old Machar, and the pursuers' inspector did not trace his whereabouts until 9th July 1909, at which date he was living in the defenders' parish, where he had by that time acquired a residential settlement. On 14th July the pursuers intimated to the defenders that Taylor had lost his settlement in Old Machar, and called upon them for relief, as from that date, of the children's maintenance. The defenders disputed, and dispute, liability."

The pursuers pleaded, *inter alia*—"(1) In respect the settlement of the said Maggie Jane Taylor, James Milne Taylor, Edward Alexander Taylor, and Mary Durno Taylor is that of their father the said William Taylor, who had prior to 14th July 1909 acquired a residential settlement in defenders' parish, the pursuers are entitled to decree as craved."

The defenders pleaded, *inter alia*—"(3) In respect that the pursuers' parish is the parish of settlement of the said children, the pursuers remain liable to maintain the said children so long as they continue chargeable and are proper objects of parochial relief, and the defenders are entitled to absolvitor, with expenses. (4) Alternatively, the said William Taylor, being a pauper in respect of the relief afforded to his children, his settlement remains during chargeability as at the date of its commencement, and the pursuers accordingly remain liable for the maintenance of his said children so long as they continue to be proper objects of parochial relief, and the defenders are entitled to absolvitor with expenses. (5) *Added by amendment*—On the assumption that the said William Taylor was an able-bodied man, his children were not proper objects of parochial relief, and the defenders are not liable in repayment of the sums disbursed by the pursuers for the maintenance of the said children."

The parties were in dispute as to whether Taylor was in 1905, and continued to be, an able-bodied man within the meaning of the poor law, and proof was allowed and led in regard thereto, the import of which was thus narrated in the opinion of Lord Dundas—"The proof discloses that Taylor was invalided home in 1901 from the South African war with a medal and three clasps, but a doctor on board ship allowed him to go home instead of to Netley Hospital when he landed. Then he worked for a time at Grandholm, getting 18s. a-week. Some years later he was medically passed for the militia, and served for about four years without a break until he was discharged in May 1909, when his conduct was certified as 'very good.' Taylor says that his plea of guilty in February 1906 was a mistake, and was given only because he could not get an agent to take up his case. At the proof he deponed—'I have been residing in Aberdeen for some time. I have a house of my own, and have paid my poor rates, 2s. 11d. Since I have been in Aberdeen I have just been travelling about selling tea and doing work for farmers at odd times.' As regards health, Dr Mitchell, who has known Taylor for sixteen years, says, 'I don't remember of him being ever ill. I think he was always a healthy man.' When Taylor was brought before the Sheriff early in 1906, Dr Mitchell examined him medically, and says, 'At that time I had no doubt he was a man fit to maintain his children.' As regards Taylor's account of his ailments in South Africa, including alleged sunstroke, Dr Mitchell states a distinct opinion that South Africa made no change or difference on him; that after his return he was 'quite an able-bodied man' and 'quite an intelligent man,' 'fit for a normal man's day's work,' but 'very much indisposed to doing regular work.' 'I think he is a Weary Willie.' 'Apart from his laziness I consider that Taylor is a normally strong man, physically and mentally.' The witnesses Hutcheon and Nelson, who have known Taylor for years, also say that his condition appears to have suffered no material change owing to his South African experiences, and that he was and is quite fit for the work of an able-bodied man. Mr Hutcheon states that when he got work for Taylor as a golf caddie about the end of 1905, the latter refused to do it. Taylor admits the work was got for him, but says he 'could make nothing out of it.' Against all this evidence there is only the opinion of two medical gentlemen who merely saw Taylor in 1909, and are disposed to put him down as neurasthenic. But their more or less theoretical opinions do not seem to be inconsistent with the facts above set out, and with Dr Mitchell's opinion pronounced with knowledge of the man. Thus Dr Robertson admits that in describing Taylor as not able-bodied he proceeds on the latter's 'subjective symp-

toms,' and on the assumed truth of his own story, apart from which there was nothing which would have led him to the same conclusion."

On 29th June 1910 the Sheriff-Substitute (HENDERSON BEGG) pronounced the following interlocutor—"*Finds in fact* (1) that in the month of December 1905 the four pupil children of William Taylor mentioned on record became chargeable to the pursuers' parish in respect of the refusal of their said father to support them; (2) that Taylor was then an able-bodied man, with a residential settlement in the pursuers' parish, and that he has continued to be an able-bodied man; (3) that the pursuers prosecuted Taylor for having neglected to maintain his said children, and that they obtained a conviction against him on 20th February 1906; (4) that since December 1905 the pursuers have maintained the said children, having however recovered £10 out of a small estate to which Taylor succeeded in April 1906; and (5) that the pursuers now claim payment from the defenders of the sums expended on the maintenance of the said children since 14th July 1909, at which date the said William Taylor is alleged by the pursuers to have lost his residential settlement in their parish and acquired a settlement in the defenders' parish: *Finds in law* (1) that in December 1905 the said children had a derivative settlement, through their father, in the pursuers' parish; (2) that their settlement remained and remains the same during chargeability; and (3) that the pursuers thus remain liable for the maintenance of the said children while continuing to be proper objects of parochial relief: Therefore assoilzies the defenders."

Note.—"In consequence of the mutual admissions of the parties, the proof has been practically narrowed down to the question whether Taylor has all along been an able-bodied man, and I think that I must answer this question in the affirmative. The only evidence for the defenders on this point is that of two doctors employed by them on 2nd September 1909 to examine Taylor, without any previous acquaintance with him. I prefer the evidence of Dr Mitchell, who has known Taylor for many years, and of Hutcheon and Nelson, who have known him for some years.

"But, nevertheless, I am of opinion that the law is against the pursuers. Their procurator cited several Local Government Board Arbitrations, in which their view of the law was sustained, viz.—*Fordyce* v. *Bellie*, Poor Law Magazine for 1904, p. 46; *Govan* v. *Snizort*, Poor Law Magazine for 1905, p. 31; and *Kilsyth* v. *Cumbernauld*, Poor Law Magazine for 1906, p. 147. But the opinions expressed by the arbiters in these cases have been over-ruled by the Court of Session in two subsequent cases, viz.—*Paisley* v. *Row and Glasgow*, S.C. 1908, p. 731, and *Leith* v. *Aberdeen*, S.C. 1910, p. 404. These cases seem to me to settle authoritatively that even a derivative settlement cannot be altered during chargeability. . . ."

The pursuers appealed, and argued—Till Taylor was discovered in July 1909 he was in desertion, for he was not accessible to the poor law authorities. During his desertion the children were entitled in their own right to relief from the pursuers' parish, where they had through their father a derivative settlement. In July 1909, however, Taylor had acquired a settlement in Aberdeen, for he had lived there for the requisite period; he was not pauperised by the relief afforded to his children, to the effect of preventing his acquiring a settlement; and he was, on the evidence, able-bodied, or at all events able to earn wages, and therefore not disqualified from acquiring a settlement—*Jack* v. *Thom*, December 14, 1860, 23 D. 173. In July 1909, therefore, when Taylor became accessible to the poor law authorities and could be forced to maintain his children, he was no longer in desertion, and the chargeability of the children in their own right ceased. The children therefore acquired their father's settlement in Aberdeen on his discovery, and any relief afforded them thereafter was not in respect of their own chargeability, and could be recovered from either Taylor himself or the defenders, in whose parish he had his settlement—*Wallace* v. *Turnbull*, March 20, 1872, 10 Macph. 675, 9 S.L.R. 417; *Anderson* v. *Paterson*, June 12, 1878, 5 R. 904, 15 S.L.R. 620; *Hunter* v. *Henderson*, December 22, 1894, 22 R. 331, 32 S.L.R. 169. There was nothing inconsistent in this with the cases relied on by the Sheriff-Substitute—*Parish Council of Paisley* v. *Parish Councils of Row and Glasgow*, 1908 S.C. 731, 45 S.L.R. 556, and *Leith Parish Council* v. *Aberdeen Parish Council*, 1910 S.C. 404, 47 S.L.R. 263—for in these cases the deserting husband or father was not discovered, and there was therefore no change of circumstances to interrupt the chargeability of the wife or children, and their settlement therefore could not change.

Argued for the defenders (respondents)—Taylor was not in any proper sense of the term able-bodied at any time from 1905 onwards, for he was labouring under disability to work so as to earn his subsistence—*per* L.J.C. Inglis in *Jack* v. *Thom*, *cit.*—or at least so as to earn a subsistence for himself and his children—*Knox* v. *Hewat*, January 12, 1870, 8 Macph. 397, 7 S.L.R. 230. That being so, either Taylor or his children, or both, continued to be chargeable without interruption in July 1906, and there could therefore be no change of settlement then. Further, Taylor never was, properly speaking, in desertion at all. Had the pursuer's inspector made the search he ought to have done he would have found Taylor in 1906 as he did in July 1909. Then either Taylor would have been compelled to support his children, or he would have proved unable to support them, in which case the pursuer's parish, as the parish of his and their then settlement, would have had to afford relief, and there could have been no change of settlement. On the other hand, if it was held that Taylor was in desertion until 1909, and was able-bodied all along, then on his discovery in July 1909 his children

ceased to be proper objects of relief, and any sums expended thereafter for the relief of either himself or his children were improperly expended—*M'William* v. *Adams*, 1852, 1 Macq. 120; *Lindsay* v. *M'Tear*, 1852, 1 Macq. 155; *Jack* v. *Isdale*, February 12, 1866, 4 Macph. (H.L.) 1, 1 S.L.R. 156. On this view it was the duty of the pursuers when they discovered Taylor in July 1909 to take the requisite steps to enforce his liability to support his children —*per* L.P. Inglis in *Anderson* v. *Paterson*, *cit.*—and if the pursuers did not do that, but improperly expended sums in the relief of the children, they could not recover from the defenders. The cases relied on by the pursuers did not support their argument. In *Hunter* v. *Henderson*, *cit.*, the man was not able-bodied, or the result would have been different—*per* Lord Rutherfurd Clark at p. 334. *Wallace* v. *Turnbull*, *cit.*, was inconsistent therewith.

At advising—

LORD DUNDAS — [*After the narrative above quoted*]—The only fact about which proof had to be led was whether or not Taylor was an able-bodied man in December 1905, within the meaning of the poor law, and has since continued to be so. The Sheriff-Substitute found in the affirmative, and I am of opinion that he was right, but as the matter was fully argued I shall briefly refer to the evidence.

[*His Lordship then dealt with the evidence ut supra.*]

I have therefore no doubt that the Sheriff-Substitute's decision on this disputed matter was quite right. Even if it be assumed that Taylor could not or cannot support his children, it is clear that he could and can support himself, as in fact he has done. And that is, according to the authorities, a sufficient basis for the proposition that he was and is able-bodied within the meaning of the poor law. I may refer to the well-known decisions in the House of Lords (*M'William* v. *Adams*, 1852, 1 Macq. 120, and *Lindsay* v. *M'Tear*, *ib.* 155) as establishing that the children of a man who can support himself, though he cannot support them, are not, while in family with him, "left destitute of all help," so as to be proper objects of parochial relief; for as Lord Deas put it (in *Hay* v. *Paterson*, 1857, 19 D. at p. 339), "the law presumes every able-bodied father to be capable of maintaining his family, however different the fact may be." In *Petrie* v. Meek (1859, 21 D. 614) Lord Justice-Clerk Inglis laid it down as "conclusively and directly determined" by these House of Lords cases, "that by an able-bodied man is meant one who suffers under no personal inability, bodily or mental, to work"; and in *Jack* v. *Thom* (1860, 23 D. at p. 180) the same great judge repeated even more explicitly that "the expression 'able-bodied' is a comparative term. What the statute means by an able-bodied man is a man not labouring under any disability (bodily or mental) to work so as to earn his subsistence." I do not think these authoritative statements (and others to the same effect could be readily furnished) can be held as in any way weakened by certain dicta (the accuracy of which I am for my own part disposed to doubt) in a very special and peculiar case (*Knox* v. *Hewat*, 1870, 8 Macph. 397), which was referred to at the discussion.

I assume, then, that Taylor was in 1905 and has continued to be an able-bodied man. On this footing the learned Sheriff-Substitute has decided the case against the pursuers, holding himself bound by two recent decisions to which he refers as settling authoritatively "that even a derivative settlement cannot be altered during chargeability." I cannot help thinking that the Sheriff-Substitute has misread or at least misapplied the cases on which he founds. They do, I apprehend, lay down a rule (which has already been laid down at least as far back as *Beattie* v. *Adamson*, 1866, 5 Macph. 47, and has been repeatedly followed ever since) that a derivative settlement cannot be lost during chargeability, but they also indicate clearly enough that the rule is subject to this qualification, that the state of matters may be altered when a change of circumstances occurs. I gather that the *Paisley* case (1908 S.C. 731) was sent to a court of Seven Judges in order to define the scope and effect of the decision by the House of Lords in the *Rutherglen* case (1902, 4 F. (H.L.) 19) which "exploded," as Lord Dunedin put it, "the doctrine of desertion as equivalent to death." The *Paisley* case disclosed that Daniel Wright was born in Glasgow, acquired a residential settlement in Row, deserted his wife and children in 1901, and had not been thereafter heard of. In 1902 his wife received parochial relief from Paisley, which was reimbursed by Row. But after a due time had elapsed, Row repudiated further liability on the ground that Wright had lost his settlement there by absence for the statutory period, and that his wife's derivative settlement there had therefore lapsed also. The Seven Judges unanimously rejected Row's contention, holding (in accordance with *Beattie* v. *Adamson*) that the wife was the pauper "in her own right," and that her settlement remained unchanged during her chargeability. But the Lord President's opinion in explaining his grounds of judgment seems to foreshadow, by way of distinction and contrast, such a case as the present. His Lordship points out that the deserted wife by accepting relief became herself the pauper, and that her derivative settlement was thereby fixed and remained "until there is a change of circumstances;" and he goes on to say that "the only change of circumstances must consist in the discovery of the husband alive," . . . when "if he is able-bodied it is he who is bound to support his wife . . . the husband, if able-bodied, however poor, is liable to support the wife." The *Leith* case (1910 S.C. 404) followed on precisely similar lines, except that the man had not deserted his family, but was incarcerated for a long term of penal servitude. I observe that Lord Dunedin indicated that if, when the father emerged from prison, his children went

back to him for a single day and then returned to the Leith Poorhouse "the change would have operated." He would by that time have lost his residential settlement, and the children, if still pupils and not forisfamiliated, would follow his fortunes in the matter of settlement. Now in this case it appears that Taylor had, prior to 14th July 1909, lost his residential settlement in Old Machar and acquired one in Aberdeen. He was and is, *ex hypothesi*, an able-bodied man. He is therefore, "however poor," liable to support his children, and if he fails to do so, it is, in my judgment, for the parish of his settlement, viz., Aberdeen, to do what may be right in the matter. The pursuers are in my opinion free, as from the date of their notice, of liability to maintain the children owing to the change of circumstances, viz., the definite location of Taylor as an able-bodied man with a settlement in Aberdeen. It was said that the pursuers' inspector might by a very little exercise of energy have traced this man much sooner than he did or (as was suggested) he chose to do; but I do not think the proof warrants these inferences, assuming the point to be in any view a relevant one. At the discussion the defenders asked and obtained leave to put upon record the following supplementary plea—"On the assumption that the said William Taylor was an able-bodied man, his children were not proper objects of parochial relief, and the defenders are not liable in repayment of the sums disbursed by the pursuers for the maintenance of the said children." I do not think this plea is of any material avail to the defenders. On the assumption (well-founded, as I hold) that Taylor was in the end of 1905, when the children were first relieved, an able-bodied man, it may well be that they were not at that time proper objects of parochial relief. But the pursuers' claim has regard only to the period after 14th July 1909. When Taylor disappeared from Old Machar about May 1906 his children became, I take it, proper objects of relief; and when he was subsequently located in 1909 as an able-bodied man with a residential settlement in Aberdeen, I think, as already explained, that the pursuers were entitled to call upon the defenders to relieve them, as from the date of their notice, of the maintenance of these children, who the defenders maintain on record were paupers in their own right, or to take such steps as they might think fit against Taylor.

I am therefore for sustaining the appeal and recalling the interlocutor appealed against. We should, in my judgment, re-affirm the Sheriff-Substitute's first four findings in fact, and add others, to the effect that in or about May 1906 Taylor left the pursuers' parish and was not traced until on or about 9th July 1909, when he was found to be residing in the defenders' parish, where he had acquired a residential settlement; and that on 14th July 1909 the pursuers intimated to the defenders that Taylor had lost his settlement in Old Machar, and called on them for relief of future maintenance of the children. We should, I think, also substitute for the Sheriff's second and third findings in law (the first being re-affirmed) findings to the effect that as from 14th July 1909 the pursuers are not liable for the maintenance of the children, and that the defenders must take such steps to make Taylor support his children, or otherwise in the matter, as they may be advised; and decern against the defenders for payment of the amount sued for.

LORD SALVESEN—In this case the pursuers seek to recover from the defenders certain sums which they have disbursed since 14th July 1909 for the maintenance of four pupil children of a man named William Taylor. Taylor was married on 7th December 1894, but after a year's residence with his wife he went to live with his mother, while his wife went to live with her own parents. The spouses, however, continued to visit each other from time to time, and as the result of their intercourse five children were born. In October 1905 Mrs Taylor became insane, but the children continued to reside with her parents till December 1905, when, their grandfather having recently died, they were granted relief by the parish of Dyce, where they were then residing. A claim was made on the pursuers, who admitted liability, William Taylor having acquired at that time a residential settlement in their parish. They endeavoured to recover from him the cost of his children's maintenance, and in February 1906 took criminal proceedings against him on a charge of neglecting to maintain his children, "he being able to do so." Taylor pled guilty to the charge libelled, and was sentenced to pay a fine of £5 or to a term of thirty days' imprisonment. He served the term of imprisonment.

On 19th April 1906 the pursuers instructed their law agent to take proceedings to recover from Taylor the advances made by them for the support of his children, and the law agent succeeded in recovering £10 on account of said advances. This sum of £10 formed part of the share of his mother's estate to which Taylor had then succeeded. No further steps were taken by the pursuers against Taylor, who in the month of May 1906 left the pursuers' parish and went to the adjoining parish of Aberdeen. The pursuers' inspector made certain inquiries to trace him, but according to his evidence he did not actually ascertain his address until 9th July 1909. By this time Taylor had acquired a residential settlement in the parish of Aberdeen, unless he had been already pauperised by the relief given to his children in the pursuers' parish. On 14th July 1909 the pursuers intimated to the defenders that William Taylor had lost his settlement in their parish, and called upon the defenders to relieve them of the future support of the four children then under their charge. This demand was refused, and the present action has been raised to determine the defenders' liability.

The only question of fact with regard to which the parties are at variance is whether

William Taylor was in December 1905 and continued to be an able-bodied person, and this question has been decided in the pursuers' favour by the Sheriff-Substitute. The importance of the question is this, that if at the time the pursuers admitted liability to maintain Taylor's children Taylor was himself a pauper, then the chargeability of the pursuers' parish, being once established, could not afterwards be affected by any change of residence on Taylor's part. If, on the other hand, when they admitted liability for Taylor's children Taylor was in fact able-bodied and not entitled to poor relief, but his children were entitled to be maintained owing to his desertion of them, a question of law arises which the Sheriff-Substitute has decided adversely to the pursuers.

Up to a certain point there is no difficulty in stating the legal principles that apply here. An able-bodied man is not entitled to poor law relief either for himself or for his children. If, however, such children have been deserted by their father, they may become proper objects of relief in their own right so long as the residence of the father cannot be ascertained, or where he has succeeded in putting himself beyond the reach of the poor law authorities. If, on the other hand, relief is granted to the children of a man because he is not able-bodied, the father is the pauper, and the children, as his dependants, take his settlement. It is essential therefore, in the first instance, for the decision of this case to determine whether, in point of fact, Taylor was able-bodied in December 1905 and thereafter.

It must be conceded to the pursuers that the first steps which they took after the children were thrown upon them for maintenance were consistent with the view that William Taylor was an able-bodied man. On no other footing were they entitled to bring the criminal complaint against him; and so far Taylor's attitude in pleading guilty to the charge supports their case. Too much stress, however, must not be laid upon this, as Taylor was without legal advice and the Court had nothing to proceed upon but his plea of guilty. The subsequent proceedings to recover the estate to which he had fallen heir and apply same in payment of the advances made for the support of his children are consistent with either view. No further proceedings were taken against Taylor, nor was there much time to do so, as he left the parish in May 1906.

Taylor's own account of himself is peculiar. He served in the South African war but was invalided home in 1901. According to his own evidence he suffered from sunstroke and has never recovered from the effects. He has never since had a job at which he earned steady wages, except once when he worked for a month, getting 18s. a-week. For some time he lived with his mother, who kept a small grocer's shop, in which he assisted her, acting also as a kind of nurse and housekeeper to his mother when she was disabled by illness from attending to her own affairs. Since December 1905, when his mother died, he has supported himself by going round the country as a pedlar selling tea, and also occasionally by doing work for farmers. He says he has never on an average made more than a shilling a day, just enough to keep himself. On the other hand, after he came home from the South African war he joined the militia and was passed by the doctor; and between 1904 and 1909 he served one year and 199 days in the Special Reserve and two years and 166 days in the militia. He has also had a house of his own in Aberdeen and has paid the poor rates applicable. The medical evidence is conflicting—Dr Mitchell, who has known him for sixteen years, being of opinion that he is able-bodied and quite fitted to maintain his children if he chooses to work, while two doctors examined for the defenders gave it as their opinion, proceeding mainly on subjective symptoms, that he is not able-bodied, and that he cannot perform a day's work of a normally healthy man owing to the nervous trouble from which he suffers as the consequence of his South African experience. Dr Mitchell admits that he is nervous, and that on the morning of the proof when he talked with him he noticed "exceedingly slight tremors in the head," which he attributed to excitement. He also stated, "I believe the man himself is convinced that he is not able to work."

On these facts I have come with some difficulty to agree with the Sheriff-Substitute in holding that Taylor was in 1905 and has since continued to be an able-bodied man in the sense of the poor law. It is clear that if he had had no dependants he had sufficient capacity for some forms of work to enable him to support himself, and that he has never required relief from the poor law authorities. If, therefore, he were not pauperised when his children's support was undertaken by the pursuers owing to his failure to provide for them, he was quite capable of acquiring a residential settlement for himself. It is true that there are some persons who may be able to support themselves without having recourse to the parish who are nevertheless not fit to maintain a family. An illustration of this is to be found in the case *Knox* v. *Hewat* (8 Macph. 397). There a man was burdened with a daughter, seventeen years of age, who was disabled from earning her livelihood by permanent disease. He was able to earn wages in good weather, but was entirely unable to obtain for his daughter the support which she required. The Lord Justice-Clerk in that case said—"I think it is proved that the father is not able-bodied. He could not probably have demanded relief for himself, but when the question arises in regard to his daughter I think it cannot be said that she is the child of an able-bodied man in the legal sense of these words"; and Lord Benholme, speaking of the father, in that case said—"His position depends not only on the extent of his means but on the weight of his burdens." These observations, if they are

to be regarded as of general application, create some difficulty, for the position of William Taylor is in some respects not unlike that of the invalid's father in the case of *Knox* v. *Hewat*. But there are two points of distinction which I think justify us in dealing with *Knox's* case as exceptional and special. The first is that the support of a permanently invalided daughter of seventeen is a different kind of burden from the support of children under puberty; and the second, which is more vital, is that the father was admittedly unable to work in wet weather through physical disability. In *Taylor's* case there was no physical disablement, although there may have been a disinclination for hard work which had become constitutional. I think it would be dangerous to hold that in determining whether a man is able-bodied within the meaning of the poor law, regard should be had to anything but the physical (in which I include mental) condition of the man himself; and it seems illogical to hold that a person supporting himself by work and paying poor rates, and so not entitled to parochial relief in his own right, must be treated as a pauper because of the extent of his family burdens.

As regards the legal question, I concur with Lord Dundas. The only point in the case which makes it special is that the discovery of the deserting father in an adjoining parish very soon after he had acquired a residential settlement there (which is the change of circumstances relied on) rather suggests a suspicion that no very strict inquiry was made as to his whereabouts till it was likely to prove fruitful. But even so taking it, the change had occurred without the connivance of the relieving parish's inspector and by the act of Taylor himself. This acquisition of a new settlement is a positive fact which is to be distinguished from the mere lapse of the period of time which involves the loss of a residential settlement, and in this case, as in that figured by the Lord President in the *Leith* case, involved a change of chargeability. I am therefore for recalling the judgment appealed from.

LORD JUSTICE-CLERK—I concur. I hold that the true test to be applied to such a case as this is found in the question, Has it been proved that the pauper is not able-bodied? If the evidence led on the part of those who aver that he is not, does not prove as fact that he is not, they cannot obtain a favourable answer to any plea founded on the averment. I think it would be a very dangerous thing to deal with cases where there is a disinclination to work as being cases of inability, except upon very clear grounds in fact. Here I entirely concur with your Lordships that there is not ground for holding that William Taylor was not to be classed among the able-bodied in the sense of the poor law.

Taylor's children obtained relief, they being necessitous, and therefore proper objects of relief in their own right, being deserted by their father. He was then, when found, dealt with as able-bodied, and therefore capable of acquiring a settlement.

But for *Knox's* case I should have had no difficulty. But as I agree with what your Lordships have said, I do not accept that exceptional case as ruling the present, but concur with your Lordships in holding that this case is distinguishable from *Knox*.

LORD ARDWALL was absent.

The Court pronounced an interlocutor sustaining the appeal, finding in fact in terms of the Sheriff-Substitute's first four findings in fact, and further "(5) that in or about May 1906 the said William Taylor left the pursuers' parish, and was not traced until on or about 9th July 1909, when he was found to be residing in the defenders' parish, where he had acquired a residential settlement; and (6) that on 14th July 1909 the pursuers intimated to the defenders that the said William Taylor had lost his settlement in Old Machar, and called on them for relief from the future maintenance of the said children: Find in law (1) that in December 1905 the said children had a derivative settlement through their father in the pursuers' parish; (2) that as and from 14th July 1909 the pursuers are not liable for the maintenance of the said children; and (3) that it falls to the defenders to take steps to make the said William Taylor support his said children, or otherwise, as they may be advised: Therefore decern against the defenders in terms of the crave of the initial writ."

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Counsel for Defenders and Respondents—Chree—A. R. Brown. Agents—Alex. Morison & Co., W.S.

Thursday, August 17.

BILL CHAMBER.

[Lord Kinnear.

LOGAN, PETITIONER.

Entail—Provisions to Widow and Children—"Free Yearly Value"—Aberdeen Act 1824 (5 *Geo. IV, cap.* 87)*—Mansion-House—Old Mansion-House within Burgh having Ceased to be Used as such.*

In a petition presented by an heir of entail in possession of an entailed estate, to have the amount of the annuity provisions, granted by his predecessor in favour of wife and daughters, fixed, and to have the latter charged on the entailed lands, *held* (*per* Lord Kinnear) that in the free yearly value of the estate, which lay entirely within a burgh, there was rightly included the rent of a house which was the old mansion-house of the estate but which had ceased to have that character.