

Agents for Pursuer—Mackenzie & Kermack, W.S.
Agents for Defender—Hamilton & Kinnear, W.S.

OUTER HOUSE.

(Before Lord Kinloch.)

ADAMSON v. KNOX AND BEATTIE.

Poor—Settlement—Summons—Relevancy. A relieving parish sued the parish of a pauper's birth, and a parish in which the birth parish alleged that a residential settlement had been acquired. The pursuer did not himself allege that there was any settlement in the alleged parish of residence. Objection to the relevancy of the summons on that ground repelled (per Lord Kinloch and acquiesced in).

The inspector of the City Parish of Glasgow sued the inspectors of the parishes of St Ninian's and of Barony for relief of the support of certain paupers. He alleged in his summons that the husband and father of the paupers was born in St Ninian's, but he made no averment of a settlement of any kind in Barony. The condensation, however, contained the following statement:—

"Cond. 5. It is admitted by St Ninian's that the deceased James Davie was born in that parish, but it is maintained that at the time of his death he was in possession of a residential settlement in Barony, which that parish denies. According as this fact shall be determined in the present process, either St Ninian's or Barony will be bound to repay the pursuer's advances, and relieve the City parish of Glasgow of the future support of the pauper. In no point of view has the pauper a settlement in the said City Parish. The pursuer does not think it necessary to give the details of the residence of the said James Davie prior to his death, as these will fall to be set forth by the defenders in their defences."

In these circumstances Barony stated the following plea-in-law:—

"The pursuer's action, as against this defender, is irrelevant, in respect the summons contains no averment to warrant its conclusions against him."

The Lord Ordinary (Kinloch) repelled the plea, observing in his note:—

"The present action is raised by the City Parish of Glasgow against the parishes of St Ninian's and Barony, for the purpose of fixing on one or other of them the support of a widow pauper and her children. It is clear that the City Parish is itself not chargeable. No ground of chargeability against that parish is suggested from any quarter. The settlement is admittedly that of the pauper's deceased husband. Admittedly he was born in St Ninian's; and if no other settlement appears, St Ninian's is his parish of settlement. But it is alleged by St Ninian's that anterior to his death he had acquired a residential settlement in Barony. The parish of St Ninian's offers to establish the fact. The question therefore lies between St Ninian's as the admitted birth settlement, and Barony as the alleged settlement by residence.

"The Lord Ordinary has no doubt that the question has been competently raised by the City Parish calling the two others into the field in order to dispute their liability. This is the convenient form which has been adopted in modern practice for now a good many years.

"But the Barony Parish pleads as a preliminary defence that the action has been irrelevantly

directed against it, inasmuch as no positive statement has been made by the pursuer that the residential settlement was within that parish. What is averred by the pursuer is that it is 'alleged' that the residential settlement is within Barony; and accordingly St Ninian's not only avers this, but offers to prove it. It appears to the Lord Ordinary that this is enough. If the pursuer had committed himself to a positive statement that the residential settlement was in Barony, it might have been said with more justice that this was a reason for calling Barony and no other. What the pursuer does, and in the Lord Ordinary's view does properly, is to call the birth parish (admittedly liable if no other is), and also to call the other parish as that against which the birth parish avers a residential settlement. The matter will then be properly controverted between these two parishes."

Counsel for Pursuer—Mr Thomson. Agent—William Burness, S.S.C.

Counsel for St Ninian's—Mr Lamond. Agents—J. & J. Turnbull, W.S.

Counsel for Barony—Mr Burnet. Agent—John Thomson, S.S.C.

(Before Lord Ormisdale.)

M.P.—ROBERTSON'S TRUSTEES v. M'LEAN AND OTHERS.

Heritable and Moveable—Legitim. A person died, having feued a piece of building ground on which he was in the course of erecting buildings which were not completed at the time of his death. Held (per Lord Ormisdale and acquiesced in) that the cost of the whole buildings, when completed, formed heritable estate, out of which *legitim* was not payable.

This is an action of multiplepounding raised by the trustees under the settlement of the late John Robertson, plumber in Glasgow. The testator died on 20th January 1864, a widower, survived by an only daughter, Mrs M'Lean, who refused her testamentary provisions and claimed legitim. The estate consisted of moveable goods, amounting to £2427, 10s. 7d., but the trustees contended that of this amount the sum of £1335 was to be considered heritable, and that legitim was not payable out of it. Some time prior to his death, the testator, intending to retire from business, had entered into missives of feu of a piece of building ground at Bridge of Allan. He had got plans and estimates of a proposed villa prepared. These had been submitted to the superior, and approved by him. He had instructed a builder to make out specifications of the whole work to be done in constructing the house, and these had been prepared, and contracts entered into to the extent of £934. At the date of the testator's death, the building was roofed in and nearly ready for the plasterer. These facts appeared from the evidence of certain witnesses examined upon commission, and the parties in addition made the following joint-minute of admissions:—

"1. There was a verbal set of the under flat of the house in question, conform to plan thereof, to Dr Gordon, Bridge of Allan, for the year from Whitsunday 1864 to Whitsunday 1865, at the rent of £48 sterling per annum.

"2. As the house was not erected at the time of the lease being entered into, the accompanying tracing was delivered to Dr Gordon, to show the size and arrangement of the house he had leased.

"3. The mason and joiner work were being proceeded with at the time of Mr Robertson's