than a mile between the main line of railway and the mine.

In the case of *Caton* v. *Summerlee and Mossend Coal Company* I expressed the opinion that an accident happening in a place on a private railway 230 yards away from the mine could not be held to have happened on, in, or about the mine, and it appears to me that, as regards the place of the accident in the present case, still less is there ground for holding that expression to apply to it. The case of *Turnbull* v. *The Lambton Collieries* in the English Court, which was quoted at the debate, appears very much to resemble the present. There the injured man was driving waggons with coal along a private line, and was injured by his head striking a waggon on the Coal Company's private line near the end of the line furthest from the pit. It was held that the case was clearly not one to which "on in or about" could apply, and that the word "adjacent" in the Act of 1887 meant physically adjacent. It is true that in that case the private line was some miles long, but the accident happened about three-quarters of a mile from the pit, and I am unable to see—if the principle of that decision was right, as I hold it to have been—that a place 800 yards distant can be held to be "adjacent." It would be difficult, indeed impossible, to draw a line between "adjacent" and "non-adjacent," unless it may be taken at the place where the sidings at the pit end and the road for transit from the pit must be reasonably held to begin, the traffic having left the pit and being on its journey to another place.

My opinion therefore is that both questions should be answered in the negative.

The Court answered the questions of law in the affirmative, recalled the award of the arbitrator, and remitted to him to award compensation.

Counsel for the Claimant and Appellant—George Watt, K.C.—Wilton. Agent—P. R. M'Laren, Solicitor.

Counsel for the Respondents—Campbell, K.C.—Hunter. Agents—W. & J. Burness, W.S.

Tuesday, December 6.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

PARISH COUNCIL OF BRECHIN *v.* PARISH COUNCIL OF MONTROSE.

Poor—Pauper Lunatic—Derivative Settlement—Effect of Relief Given to Son on Acquisition by Father of Residential Settlement — Change of Circumstances after Admission of Liability — Lunacy (Scotland) Act 1857 (20 *and* 21 *Vict. c.* 71), *sec.* 75.

X, a lad aged fourteen years, residing in family with his father in the parish of M, received parochial relief from that parish in November 1876. The father of X was an able-bodied man who at that date did not have a settlement in the parish of M, and the parish of B, the birth parish of X's father, in March 1877 admitted its liability to relieve the parish of M for payments made on behalf of X. X, who was weak-minded, was never forisfamiliated or able to maintain himself, and continued to receive parochial relief intermittently. In September 14, 1891, he was placed by the order of the Sheriff in an asylum as a pauper lunatic. In May 1877 X's father had resided in the parish of M for the five years necessary to give him a residential settlement there, unless he was to be regarded as a pauper in respect of the relief given to his son in November 1876.

In an action by the parish of B to recover the disbursements made by it on behalf of X, after the statutory notice claiming relief had been sent by it to the parish of M, *held* (1) that X, being incapable of acquiring a settlement, followed the settlement of his father; (2) that X's father was not made a pauper by the relief given to his son while living with him in 1876, and consequently acquired a residential settlement in the parish of M in May 1877; (3) that the admission of liability for X, rightly made by the parish of B in March 1877, was not binding after X's father acquired a settlement in the parish of M; and accordingly (4) that the parish of M was liable to relieve the parish of B for the disbursements made by it on behalf of X from one year prior to the date at which the statutory notice claiming relief was sent.

The Lunacy (Scotland) Act 1857 (20 and 21 Vict. c. 71), sec. 75, enacts—"Every pauper lunatic detained in any district asylum under this Act shall be deemed and held to belong and be chargeable to the parish of the legal settlement of such lunatic at the time the order for his reception in such asylum was granted, and the expense of his maintenance at such district asylum shall be defrayed by such parish accordingly."

In April 1903 the Parish Council of Brechin brought this action against the Parish Council of Montrose and the Parish Council of Marykirk, concluding that the defenders the Parish Council of Montrose should be ordained to make payment to the pursuers of (1) £131, 19s. 7d., being the amount disbursed by the pursuers in relieving William Crocket, presently an inmate of the Montrose Royal Lunatic Asylum, from 6th October 1896 to 15th February 1903, and (2) £21, 5s. 1d., being interest on the amount so disbursed, or otherwise that the defenders the Parish Council of Marykirk should be ordained to make payment to the pursuers of (1) £166, 5s. 6d., being the amount disbursed by the pursuers in relieving the said William Crocket from 24th October 1894 to 15th February 1903, and (2) £32, 19s. 3d., being interest on the amount so disbursed, and that the defenders, or whichever should be found liable, should be ordained to relieve

the pursuers of all disbursements that might require to be made by the pursuers for the said William Crocket during the time he might continue a proper object of parochial relief.

A proof was led, which disclosed the following facts:—The pauper William Crocket was born in the parish of Marykirk on 4th November 1862.

John Crocket, his father, was born in Brechin and resided for some time in Marykirk, but at Whitsunday 1872 went to reside in Montrose. On 15th August 1878 he applied for and received relief from the parish of Montrose. From that date to his death in August 1898 he repeatedly received parochial relief from Montrose.

In 1874 William Crocket lost his right hand by an accident, and was then and continued to be a person of weak mind, and incapable of earning a livelihood. He first received parochial outdoor relief from the parish of Montrose on 11th November 1876, at which date he was residing in family with his father, who was at that time, so far as the evidence went, an able-bodied man. The outdoor relief afforded to William Crocket while resident with his father was continued till 11th April 1877, when he was placed in Montrose Royal Lunatic Asylum by order of the Sheriff. He was discharged from the Asylum "recovered" on 18th December 1877. He was again in the Asylum from 12th May 1879 till 9th March 1891, and on 11th September 1891 he was once more placed in the Asylum under an order of the Sheriff, and continued to be an inmate of the Asylum at the date of the action.

During the intervals when he was not confined in the Asylum he was an inmate of poorhouses for short periods. On one or two occasions he was sentenced to short terms of imprisonment for assaults. Occasionally he returned to his father's or mother's house, but never remained there long, and was entirely beyond their control.

Soon after the date at which William Crocket for the first time received parochial relief a claim was made by the parish of Montrose on the parish of Brechin for the relief granted to him, on the ground that he was at that date unforisfamiliated, and that his father having no residential settlement, the parish of the father's birth was liable.

By a letter dated 6th March 1877 sent by the Inspector of Poor of Brechin to the Inspector of Poor of Montrose, this claim was admitted by the parish of Brechin, and the advances made by the parish of Montrose on behalf of the said William Crocket were repaid by the parish of Brechin.

On 24th October 1895 the Inspector of Poor of Brechin gave notice in terms of section 71 of the Act 8 and 9 Vict. c. 83, and section 78 of the Act 20 and 21 Vict. c. 71, to the Inspector of Poor of Marykirk, that William Crocket had become chargeable to the pursuers, and claiming relief and repayment of charges incurred on his behalf. On 6th October 1897 a similar notice was given to the Inspector of Poor of Montrose. Both defenders denied liability.

The sums sued for were the amounts, with interest, disbursed by the pursuers on behalf of William Crocket from dates one year prior to the dates at which the statutory notices of claim were sent to the defenders respectively.

The pursuers pleaded—"(1) The said William Crocket having been born in the parish of Marykirk, the pursuers are entitled to decree against the Parish Council of that parish. (2) Or otherwise, the said William Crocket not having been forisfamiliated, and being of weak intellect, the pursuers are entitled to decree against the Parish Council of Montrose as the parish of his father's settlement."

The defenders the Parish Council of Montrose pleaded, *inter alia*—"(2) The pursuers' predecessors having through their inspector of poor admitted liability to these defenders' predecessors for the relief of the said pauper on 6th March 1877, the pursuers are barred from insisting in the present action as against these defenders. (4) The pauper's father not having acquired a settlement in the parish of Montrose, these defenders are entitled to absolvitor from the conclusions of the summons with expenses."

The defenders the Parish Council of Marykirk pleaded, *inter alia*—"(4) The said William Crocket, by reason of natural infirmity and accident, never having been capable of maintaining himself, and never having been forisfamiliated, had no settlement other than that of his father. (5) The said John Crocket and William Crocket having acquired a settlement in the parish of Montrose, which the latter has never lost, these defenders are entitled to absolvitor with expenses."

On 10th June 1904 the Lord Ordinary (STORMONTH DARLING) pronounced the following interlocutor:—"Decerns against the defenders the Parish Council of the Parish of Montrose in terms of the first two petitory conclusions of the summons, with interest on the sum of £131, 19s. 7d. at the rate concluded for from the date of citation until payment: Further, decerns against the said defenders in terms of the last conclusion of the summons for relief: Assoilzies the defenders the Parish Council of the Parish of Marykirk from the conclusions of the summons so far as directed against them, and decerns."

Opinion.—"The pauper in this case was born in the parish of Marykirk on 4th November 1862. He first received parochial relief from the parish of Montrose on 14th November 1876, and he has continued a pauper with some quite insignificant intervals ever since. On 14th November 1876 he was residing in family with his father, who was at that time, so far as the evidence goes, an able-bodied man, but the boy had, through an accident, lost his right hand and he had always been somewhat weak-minded. A claim for the relief thus afforded was made by Montrose on the parish of Brechin, which was the parish of the father's birth, and the claim was, by letter of 6th March 1877, admitted by Brechin, there being no doubt that the lad, though a few days over the age of fourteen, was

still in point of fact resident with and dependent upon his father, and there being also no doubt that the father had not at that time acquired any residential settlement.

"On 11th April 1877 the lad was admitted to the Montrose Lunatic Asylum by order of the Sheriff, but he was discharged on 18th December 1877. On 12th May 1879, however, he was again certified as a lunatic and re-admitted to the Montrose Asylum, and once more, after an absence of only a few weeks, he was certified and re-admitted on 11th September 1891. He still remains an inmate of the asylum on the Sheriff's order of 1891.

"Now, the Lunacy Act of 1857, by section 75, provides 'that every pauper lunatic detained in any district asylum under this Act shall be deemed and held to belong and be chargeable to the parish of the legal settlement of such lunatic at the time the order for his reception in such asylum was granted, and the expense of his maintenance at such district asylum shall be defrayed by such parish accordingly.' I am not sure whether Montrose is, strictly speaking, a 'district asylum,' but that is of no consequence, because it is at all events a public asylum, and the case of *Palmer* v. *Russell*, 10 Macph. 185, decides that there is no distinction in respect of chargeability between a pauper lunatic in a district asylum and a pauper lunatic in any other lawful asylum to which the sheriff may have sent the lunatic. Accordingly the expense of liability for the expense of this pauper's maintenance since 11th September 1891 must depend on what was the parish of his legal settlement at that date.

"Now at that date there had been a change of circumstances from those existing on 6th March 1877, when the parish of Brechin made its formal and deliberate admission of liability. The change was this—John Crocket, the pauper's father, had, at Whitsunday 1877, completed the period necessary to give him a residential settlement in the parish of Montrose, and he had been admitted to the poors' roll of that parish on 15th August 1878. From that time onwards till his death in 1898 he retained his residential settlement, and was from time to time relieved by Montrose. Montrose now maintains, contrary to its own action at and subsequent to August 1878, that John Crocket, the father, never acquired a residential settlement. The contention is founded on the view that the relief afforded to the son on 14th November 1876 had the effect of pauperising the father, but that seems to me contrary to the decisions in *Milne* v. *Henderson*, 7 R. 317, and *Milne* v. *Ross*, 11 R. 273.

"If then there was a material change of circumstances after the time when Brechin made its formal admission of liability on 6th March 1877, I am of opinion that Brechin is not bound by that admission. I admit that in *Beattie* v. *Arbuckle*, 2 R. 330, *Young* v. *Gow*, 4 R. 448, and several other cases, it was decided that where one parish has deliberately admitted to another liability for the support of a pauper it cannot withdraw that admission and open up the question of liability on the ground that the admission was made in error either as to the facts or as to the law. But it is fully recognised in these cases that, although a deliberate admission must be treated as having been good when it was made, and therefore not to be gone back upon, circumstances may emerge to render it no longer binding. Thus Lord Gifford in *Arbuckle's* case says—'If, then, the admission be binding, the only question that remains is, for how long? The answer is, at long as the pauper is chargeable and the circumstances remain the same.' Here I do not proceed on the specialty that Montrose knew the fact of its having admitted John Crocket, the father, to the poors' roll, and did not communicate that fact to Brechin, because I do not impute *mala fides* to Montrose in thus failing to communicate a fact which it probably regarded as immaterial. It is enough, in my view, that there was a change of circumstances, and that Brechin was not to blame for not sooner discovering the change. The only effect of its not having been discovered earlier is greatly to limit the period for which Brechin can have recourse against Montrose. The disbursements for which repayment is sued date only from 6th October 1896, *i.e.*, from one year preceding the written notice required by the statute. For these disbursements I think Montrose is liable.

"There is no case against Marykirk, because the pauper has never been self-supporting in the sense of the poor-law. He has always either been in receipt of relief or has lived (for very short periods) by begging. His settlement, therefore, has been all along derivative. It was the father's birth parish, viz., Brechin, till Whitsunday 1877, when the father acquired a residential settlement, viz., Montrose. As Brechin was liable at the date of the lunatic's first admission to the asylum on 11th April 1877, the 75th section of the Lunacy Act had the effect of continuing Brechin's liability till his discharge on 18th December in that year. But after that date, and particularly at the crucial date of his final admission on 11th September 1891, the liability lay no longer on the parish of the father's birth but on the parish of the father's residence."

The defenders the Parish Council of Montrose reclaimed, and argued—(1) The father of the pauper had not acquired a settlement in Montrose at the time when relief was first given to his son in November 1876, and the giving of that relief to a son not forisfamiliated was in effect given to the father, who then became a pauper. Accordingly the father could not after that date acquire a derivative residential settlement in Montrose. The father was an invalid at the time and not able-bodied, and therefore was a proper object of parochial relief. This distinguished the present case from *Milne* v. *Ross*, Dec. 11, 1883, 11 R. 273, 21 S.L.R. 207; *Milne* v. *Henderson and Smith*, Dec. 3, 1879, 7 R. 317, 17 S.L.R. 197. Brechin being the father's birth settlement was accordingly liable. (2) Alterna-

tively, the son William Crocket was the pauper. His chargeability went back to November 1876, and if he was then properly put on the roll as a pauper, the parish of Brechin, upon which he was originally a burden, must continue to bear the charge. There was no real break in the continuing pauperism of this man, so that there was nothing to bring the liability of Brechin to an end. Moreover, Brechin was bound by the letter dated 6th March 1877 sent by its Inspector of Poor admitting its liability. That was an admission deliberately made, and could not be withdrawn—*Beattie* v. *Arbuckle*, Jan. 15, 1875, 2 R. 330, 12 S.L.R. 210; *Young* v. *Gow*, Feb. 9, 1877, 4 R. 448, 14 S.L.R. 452. Reference was also made to *Beattie* v. *Wood*, Feb. 9, 1866, 4 Macph. 427, 1 S.L.R. 151; *Beattie* v. *Adamson*, Nov. 23, 1866, 5 Macph. 47, 3 S.L.R. 44; *Campbell* v. *Deas*, Nov. 14, 1893, 21 R. 64, 31 S.L.R. 82.

Argued for the pursuers and respondents —(1) The case was ruled by the decision in *Milne* v. *Henderson and Smith*, *sup.*, which had been followed in *Milne* v. *Ross*, *sup.* These cases settled that relief given to a son who had never been able to maintain himself did not make the father, with whom he resided in family, a pauper when the father was able-bodied. Therefore John Crocket, the father of the pauper here, was not pauperised and rendered incapable of acquiring a residential settlement in Montrose by the relief given to the son in November 1876. The attempt to distinguish the present case on the ground that John Crocket, father of the pauper, was an "invalid," and therefore not able-bodied in the sense of the poor law, failed on the facts, and further though at the time of the relief the father was in bad health, he was able to earn wages; and relief afforded in these circumstances did not bar the acquisition of a residential settlement — *Jack* v. *Thom*, December 14, 1860, 23 D. 173. (2) When the admission was made by Brechin it could not have been withheld, but the circumstances in which the admission was made had totally altered, and an admission made in one set of circumstances was not binding in a different set of circumstances.

Counsel for the defenders and respondents, the Parish Council of Marykirk, were not called on.

At advising—

LORD ADAM—This action is brought by the parish of Brechin against the parishes of Montrose and Marykirk in order to recover from one or other of them the amount of certain disbursements made by the parish of Brechin in respect of a pauper William Crocket. The amount of the disbursements is not in question.

The pauper William Crocket is at present an inmate of Montrose Lunatic Asylum, where he is detained under an order for his reception granted by the Sheriff-Substitute of the county of Forfar, of date 14th September 1891. The 75th section of the Lunacy Act of 1857 provides that a pauper lunatic detained in an asylum shall be chargeable to the parish of his settlement at the time the order for his reception in such asylum was granted The question therefore in this case is, what was the parish of settlement of William Crocket on 14th September 1891, and that leads to the consideration of his past history.

He was born in the parish of Marykirk on 4th November 1862. When quite young he lost his right hand by an accident, and was then and is still of weak mind and incapable of earning a livelihood. He was in the Montrose Lunatic Asylum from April 1877 until 18th December of that year, when he was discharged cured. He was again in the Asylum from 12th May 1879 till 9th March 1891, when he was discharged cured, and, as has been stated, he was again received in the Asylum on 14th September of that year, where he remains.

In the intervals, when he was not confined in the Lunatic Asylum, he seems to have wandered about the country supporting himself by begging. He was in prison on two occasions for short periods for assaults; he was also an inmate of poorhouses for short periods; and he returned occasionally to his father's or mother's house. He was, however, entirely beyond their control, and never remained long with them. From bodily and mental weakness he has never been able to maintain himself. He has never been forisfamiliated or acquired an independent settlement for himself.

On 13th November 1876 he received parochial relief in the shape of weekly payments from the parish of Montrose, where he was living in family with his father. These payments ceased on the 5th April 1877.

Montrose as the relieving parish claimed relief from the parish of Brechin as being the parish of his father John Crocket's settlement, and that claim was admitted by Brechin on 6th March 1877. Brechin was the father's birth settlement.

At Whitsunday 1877, however, John Crocket had resided in Montrose for the five years requisite to give him a residential settlement there. On 15th August 1878 he was admitted to the poor's roll of that parish on the ground that he had a residential settlement there. From that time until his death in August 1898 there is no doubt that Montrose recognised him as having a settlement in that parish, and repeatedly gave him parochial relief. It is now maintained, however, by Montrose that this was done in error, and that the relief given to his son in November 1876 had the effect of pauperising the father, and therefore that he had never acquired a residential settlement in Montrose. It was settled, however, in the cases of *Milne* v. *Henderson*, 7 R. 317, and *Milne* v. *Ross*, 11 R. 273, that relief given to a son who was unable to maintain himself had not the effect of pauperising the father.

It was maintained, however, that these cases were distinguishable from the present. in respect that in each of them the father was an able-bodied man, and was not therefore, and could not be, a proper object of parochial relief, whereas in this case the father was not an able-bodied man, but was

"invalided," whatever that may mean,

There is no evidence to show what John Crocket's bodily condition was at this time or how he maintained himself, but the cardinal fact is not disputed that he had never applied for or received parochial relief, and accordingly when he had completed his five years of residence in Montrose he acquired a residential settlement in that parish.

I think accordingly that subsequent to Whitsunday 1877 William Crocket had a derivative residential settlement in the parish of Montrose. If that be so, I do not understand it to be disputed that Montrose continues to be the parish of his settlement.

It was further maintained by Montrose, on the authority of the cases of *Beattie* v. *Arbuckle*, 2 R. 330, and *Young* v. *Gow*, 4 R. 448, that Brechin could not insist in its present claim of relief, being bound by the admission of liability for the pauper given on 6th March 1877. It appears to me that these cases have no application to the present case. What was decided in these cases was that an admission made as to the liability for a pauper was binding on the parish making it, and could not be withdrawn although made in error as to the true facts of the case. But in this case when the admission was made there was no error as to the facts, because Brechin was liable as the parish of the father's settlement as it then was, and rightly made the admission.

The admission, no doubt, was binding so long as William Crocket was receiving relief in 1876 and 1877, but when that chargeability ceased so also the admission made with regard to it ceased to have any further binding effect. The admission made by Brechin must be taken as true at the time it was made, *i.e.*, that John Crocket, the father, then had a birth settlement in Brechin. But when John Crocket acquired a residential settlement in Montrose the admission had no bearing on the new facts of the case, and did not affect the liability of Montrose to aliment the pauper son, whose settlement followed that of the father. It is not the law that an admission of liability, rightly made in one set of circumstances, is binding in a totally different set of circumstances. There is no evidence that Brechin knew of or made any admission of liability with reference to the new state of facts which had emerged since their admission of liability in 1877.

These were the only questions argued to us, and I am of opinion that the Lord Ordinary's interlocutor is right and should be adhered to.

The LORD PRESIDENT, LORD M'LAREN, and LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuers and Respondents, the Parish Council of Brechin—Salvesen, K.C. — Lamb. Agents—R. Addison Smith & Co., W.S.

Counsel for the Defenders and Reclaimers, the Parish Council of Montrose—Campbell, K.C.—Deas. Agents — W. & J. Burness, W.S.

Counsel for the Defenders and Respondents, the Parish Council of Marykirk—Ure, K.C.—Hunter. Agents—Dove, Lockhart, & Smart, S.S.C.

Tuesday, December 6.

SECOND DIVISION.

[Sheriff-Substitute at Paisley.

BRYCE & COMPANY *v.* CONNOR.

Master and Servant — Workmen's Compensation Act 1897 (60 *and* 61 *Vict. cap.* 37), *First Schedule* (11) *and* (12)—*Review of Weekly Payments—Certificate of Medical Practitioner Appointed under the Act.*

On 7th December 1903 a workman, one of whose eyes had been injured, was awarded by the Sheriff the maximum weekly payment permissible under the Workmen's Compensation Act 1897 for total incapacity. On 1st June 1904 the workman submitted himself for examination in terms of section 11 of the First Schedule to one of the medical practitioners appointed for the purposes of the Act, and the latter granted a certificate stating that the workman was unfit for his usual occupation of a mason's labourer, but was "quite fit for any work where he would not have to exercise for the safety of life or limb that nice discrimination as to distances for which the sight of two eyes is necessary."

In an application by the employers, under section 12 of the First Schedule of the Act for review of the weekly payment, *held* (*diss.* Lord Young) (1) that the certificate was conclusive evidence of the workman's condition at the time of the examination; and (2) that, in the absence of any offer by the employers to prove that the workman was in fact earning wages or that there was work available to him within his capacity, the arbitrator, in view of the terms of the certificate, was justified in refusing to reduce the weekly payment previously awarded.

The Workmen's Compensation Act 1897 (60 and 61 Vict. cap. 37), First Schedule (11) provides—"Any workman receiving weekly payments under this Act shall, if so required by his employer . . . from time to time submit himself for examination by a duly qualified medical practitioner provided and paid by the employer . . . but if the workman objects to an examination by that medical practitioner, or is dissatisfied by the certificate of such practitioner upon his condition when communicated to him, he may submit himself for examination to one of the medical practitioners appointed for the purposes of this Act, . . . and the certificate of that medical practitioner as to the condition of the workman at the time of the examination shall be given to the employer and workman, and shall be conclusive evidence of that condition. . . .