fits in question have been paid as dividend, or whether they have been converted into paid-up capital upon newly created shares—upon that question of fact I have come to agree with your Lordships, for the reasons which have been already stated, and which I do not think it necessary to repeat. I only observe what appears to me to be conclusive on the one side, and that is that the company did pay in money, or in what is equivalent to money, the £550 now in question as dividend upon existing shares. They issued to the shareholders a dividend warrant in perfectly clear and explicit terms, which is equivalent to a cheque, which could have been taken to the bank, and upon which the money must have been recovered. All that is equivalent to paying a dividend in money. It appears to me, therefore, that it is established by the agreement of parties as to the facts that the company did in fact pay this sum of £550 as dividend. Now, the argument upon the other side came to this, that notwithstanding that payment it must be held that in substance the transaction was the conversion of the profits into capital upon two main grounds. In the first place, Mr Blackburn said these accumulated profits were *de facto* part of the floating capital of the company, because they were used as part of the capital from the time when the profits were first reserved for the purposes of the company's business. Secondly, he said that it was known to the company, and was apparently found in fact, that no shareholder would refuse his shares and prefer to take the money as dividend, and in point of fact probably no shareholder did. Now, these are considerations of fact which might or might not have weight if we were balancing equally well proved facts against one another, but the observation I make upon them is, that they are not to be found in the special case. They are statements of fact only, and I decline to draw from what is stated any inference to the effect that the undivided profits were used as part of the floating capital of the company. That may or may not be, but it is a matter of fact, which, if either of the parties intended to found upon it, it was necessary to put to the other party and obtain his agreement to its being stated. Therefore I think we must exclude from consideration all argument based upon inferences of fact which are not to be found in the special case itself. We know nothing except what is set forth in explicit terms by the parties themselves. From what is so set forth I can gather nothing except that this £550 in dispute was paid as dividend, and therefore it belongs to the party having interest in the dividend accruing to the shareholders, and not to the party interested in the capital stock of the company.

LORD M'LAREN was absent.

The Court answered the first question of law in the affirmative and the second in the negative.

Counsel for the First and Third Parties—Blackburn. Agents—Macandrew, Wright, & Murray, W.S.

Counsel for the Second Party—Clyde, K.C.—Macmillan. Agents—Graham, Johnston, & Fleming, W.S.

Thursday, June 29.

SECOND DIVISION.

[Sheriff Court of Lanarkshire at Glasgow.

PARISH COUNCIL OF GREENOCK *v.* PARISH COUNCIL OF GOVAN COMBINATION.

Poor — Settlement — Illegitimate Minor Pubes — Mother of Illegitimate Child Acquiring Derivative Settlement through Marriage.

The derivative settlement of the mother of an illegitimate child, acquired by her marriage subsequent to the child's birth, does not enure to the child after attaining puberty.

An illegitimate child was born in the parish of A. Subsequent to the child's birth its mother married and acquired through her husband a derivative settlement in the parish of B. While the child was in pupilarity its mother died, and after it had attained puberty it became chargeable. *Held* that the settlement of the pauper was in the parish of A.

Poor — School — Blind and Deaf Mute — Whether Maintenance in Blind Asylum has Effect of Pauperising Child—Education of Blind and Deaf Mute Children (Scotland) Act 1890 (53 *and* 54 *Vict. cap.* 43), *sec.* 7 (1).

The Education of Blind and Deaf Mute Children (Scotland) Act 1890 (53 and 54 Vict. cap. 43) provides for the education of blind and deaf mute children out of the school fund of the parish in which the parent of such a child resides, and enacts as follows:—section 7 (1)—"The parent of a blind or deaf mute child shall not, by reason of any payment made under this Act in respect of the child, be deprived of any franchise, right, or privilege, or be subject to any disability or disqualification."

Held that the maintenance of a child in a blind asylum by a school board in terms of the above Act had not the effect of pauperising the child.

This was an action raised in the Sheriff Court at Glasgow by the Parish Council of the parish of Greenock against the Parish Council of the Govan Combination.

The pursuers sought to obtain relief from the defenders in respect of advances made on behalf of a pauper named Andrew M'Ilwraith M'Alpine in the following circumstances, set forth in a joint minute for the parties, whereby it was admitted—"(1) That Andrew M'Ilwraith M'Alpine

was born on 21st June 1887 at 410 Mathieson Street, Glasgow, in defenders' parish, and is the illegitimate son of Elizabeth M'Ilwraith, who was born at Cullibacky, County Antrim, Ireland, in 1862, and on 31st August 1888 married John M'Alpine, a carpenter, residing in Cardwell Bay, Gourock. (2) That the said Elizabeth M'Ilwraith or M'Alpine and the said John M'Alpine resided as man and wife in Greenock down till 1895, and that in September of that year the said Elizabeth M'Ilwraith or M'Alpine died in Greenock Infirmary, having through her husband, the stepfather of the pauper, a residential settlement in pursuers' parish. (3) That the said Andrew M'Ilwraith or M'Alpine resided in family with his mother and stepfather down till the date of his mother's death, thereafter in Tighnabruaich for one year and ten months, and thereafter in his grandmother's house in Drumfrochar Road, Greenock, for two years and six months. (4) That in January 1900 Andrew M'Ilwraith M'Alpine was admitted to the Glasgow Blind Asylum, and was maintained there by the Greenock School Board in terms of the Education of Blind and Deaf Mute Children (Scotland) Act 1890, until June 1903, when he reached sixteen years of age. (5) That the advances specified in pursuers' account produced are for subsequent maintenance, and are correct, and that pauper was at time of relief a suitable object."

The pursuers pleaded—"The pursuers having made said advances on behalf of the pauper, and the defenders' parish being the pauper's parish of settlement, the defenders are bound to relieve the pursuers of said advances, and decree should therefore be granted as craved, with expenses."

The defenders pleaded—"(1) The pauper's settlement not being in the defenders' parish, they are not liable for relief, and are entitled to be assoilzied, with expenses. (2) The pauper having a derivative residential settlement in the pursuers' parish by virtue of his mother's settlement in that parish, and they being accordingly liable for his maintenance, the defenders are entitled to be assoilzied, with expenses."

On 18th January 1905 the Sheriff-Substitute (DAVIDSON) found that the settlement of the pauper was in the parish of Govan, and that the pursuers were entitled to be relieved as craved.

The defenders appealed to the Court of Session, and argued—The mother's settlement enured to her illegitimate child, just as a father's to his legitimate child; therefore at puberty the pauper in question took his mother's derivative settlement in Greenock—*Inspector of Poor of St Cuthberts* v. *Inspector of Poor of Cramond*, November 12, 1873, 1 R. 174, 11 S.L.R. 64; *Simpson* v. *Miles & Auld*, June 6, 1883, 10 R. 928, 20 S.L.R. 631; *Hay* v. *Thomson*, February 6, 1856, 18 D. 510; *Greig* v. *Young*, June 21, 1878, 5 R. 977, 15 S.L.R. 645; *Caldwell* v. *Dempster*, July 20, 1883, 10 R. 1263, 20 S.L.R. 845; *Primrose* v. *Milne*, February 27, 1890, 17 R. 512, 27 S.L.R. 356. The settlement of an illegitimate child continued to be that of its mother after puberty until lost by non-residence—*Wallace* v. *Caldwell*, November 7, 1894, 22 R. 43, 32 S.L.R. 38; *Parish Council of Shotts* v. *Parish Council of Bothwell and Rutherglen*, November 24, 1896, 24 R. 169, 34 S.L.R. 136; *Kerr* v. *M'Kie*, November 1, 1895, 5 Poor Law Magazine 657. The cases relied on by the respondents did not affect the present question—*Greig* v. *Adamson & Craig*, March 2, 1865, 3 Macph. 575; *Craig* v. *Greig & Macdonald*, July 18, 1863, 1 Macph. 1172; *Greig* v. *Ross*, February 10, 1877, 4 R. 465, 14 S.L.R. 346. Even if the pauper did not take his mother's derivative settlement after puberty, still the respondent's parish was chargeable in respect that M'Alpine became a pauper before attaining puberty, when he was maintained by the School Board under the Blind and Deaf Mute Children (Scotland) Act 1890. Section 7, sub-section 1, of that Act only saved the parent from disqualifications; it did not save the child from becoming a pauper when in receipt of parochial relief—Education (Scotland) Act 1872 (35 and 36 Vict. cap. 62), sections 43 and 44; Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), section 1, were also referred to.

Argued for the respondents—After the death of the pauper's mother the principle on which a derivative settlement was founded ceased to apply to his case, he being a member of no family the dispersion of which derivative settlements were designed to prevent—*Adamson* v. *Barber*, May 30, 1853, 1 Macq. 376. The derivative settlement of a child was lost on forisfamiliation, or at puberty if the parent was dead—*Craig* v. *Greig & Macdonald*, *cit. sup.*; *M'Lennan* v. *Waite*, June 28, 1872, 10 Macph. 908, 9 S.L.R. 566; *Ferrier* v. *Kennedy*, February 8, 1873, 11 Macph. 402, 10 S.L.R. 257. These cases were uncontroverted by those cited for the appellants. Though on emerging from pupilarity a pauper child might have a residential settlement, acquired by its father for himself and his family, the pauper in question had no such settlement in Greenock, because that of his mother's husband was acquired only for himself and his own family—*Allan* v. *Higgins*, &c., December 23, 1863, 3 Macph. 309; *Beattie* v. *Mackenna & Wallace*, March 8, 1878, 5 R. 737, 15 S.L.R. 427; a step father's settlement did not enure to the legitimate child of his wife—*Parish Council of Shotts* v. *Parish Council of Bothwell and Rutherglen*, *cit. sup.* The pauper's mother did not acquire a settlement in Greenock for herself—*Crieff* v. *Fowlis-Wester*, July 19, 1842, 4 D. 1538; *Grant* v. *Reid & Miller*, May 25, 1862, 22 D. 1110. Having no residential or industrial settlement, and no derivative settlement, the settlement of the pauper was in the parish of his birth. Maintenance in terms of the Education of Blind and Deaf Mute Children Act did not pauperise the child or parent; such relief was given out of school rates, not poor rates, and poverty was the only necessary qualification for parochial relief; it was further necessary that the recipient should be a fit object.

At advising—

LORD KYLLACHY—The pauper in this case was born in the parish of Govan in the year 1887. He was the illegitimate child of a woman who died when he was eight years old. At the time of her death she had no residential settlement — that is to say, had no settlement obtained by her own residence. But she had a derivative settlement in the parish of Greenock obtained by her marriage, subsequent to the pauper's birth, to a man who had a residential settlement in Greenock. The pauper in January 1900, while still a pupil, was admitted into the Glasgow Blind Asylum, and was maintained there for some years by the Greenock School Board under the provisions of the Blind and Deaf Mute Children (Scotland) Act 1890. But apart from that circumstance, as to which a question arises, it is common ground that he did not become an object of parochial relief until September 1903, when, being then a minor, he applied for relief to the parish of Greenock.

The present question arises between Govan as his parish of birth, and Greenock, the parish of his mother's derivative settlement. It is not suggested that the pauper had acquired any residential settlement for himself.

The first point to be determined is whether the pauper's admission to the Blind Asylum while still a pupil amounted to receipt of parochial relief. If it did, there is no doubt that, having become chargeable during pupilarity, and having since continued chargeable, his mother's settlement, although derivative and acquired simply by marriage, was his parish of settlement. For during pupilarity an illegitimate child takes its mother's settlement however acquired, and parochial relief having been once obtained there can be no change of settlement while it continues.

It is not, however, in my opinion possible to hold that the reception of this pupil child into the Blind Asylum made him a pauper. That question depends on the construction of the Blind and Deaf Mute Children Act of 1890, and it does not appear to me that payments out of the school fund, such as are there provided, had the effect of pauperising either the child or its parent.

It must therefore be taken that the pauper attained puberty without having become chargeable under the poor law. And therefore the question is what settlement he took when he attained puberty. Did he retain his mother's derivative settlement, or did he on attaining puberty take a settlement in his own parish of birth.

The authorities on this branch of the poor law are not perhaps quite harmonious, but there are some propositions which are I think clear—(1) An illegitimate child stands towards his mother's settlement in the same relation as a legitimate child stands towards his father's settlement. (2) Up to puberty a legitimate child takes his father's settlement whatever it is and however constituted. (3) Similarly an illegitimate child takes up to puberty his mother's settlement, whatever it is and however constituted, whether by residence or birth or marriage. (4) On the other hand, at puberty a legitimate child takes his father's residential settlement—that is to say, the settlement, if any, acquired by his father's own residence — and retains that settlement until it is lost in the manner provided by the 76th section of the statute. (5) Similarly an illegitimate child takes at puberty any residential settlement acquired by its mother—that is to say, any settlement acquired by its mother's own residence—and retains the settlement until lost in terms of the statute.

The first of these propositions has never been questioned. The second and third have at least been long settled, particularly by the cases of *Hay*, 18 D. 510; *Dempster*, 10 R. 1263; and *Primrose* v. *Milne*, 17 R. 512. The fourth and fifth propositions have, on the contrary, been the subject of controversy, but may be held as now firmly established as regards legitimate children by the case of *St Cuthberts* v. *Cramond*, 1 R. 174, and as regards illegitimate children by the case of *Wallace*, 22 R. 43.

The appellant in the present case seeks to deduce from the principles thus established a further proposition which they certainly do not cover, and which is this—that an illegitimate child not merely takes before puberty his mother's settlement whatever it is,—not merely takes after puberty his mother's residential settlement if acquired by herself, — but also takes even after puberty his mother's settlement however acquired, including, as in the present case, a derivative settlement acquired by her through marriage. In other words, the suggestion is that an illegitimate child takes after puberty his mother's settlement whatever it is, just as he would have done if he had become chargeable before puberty.

Now, I am of opinion that there are no grounds in principle or social expediency to justify such an extension of the doctrine of *St Cuthberts* v. *Cramond* and of *Wallace* v. *Caldwell*, or (if it is preferred so to put it) of the doctrine of *Hay*, *Dempster*, and *Primrose*. These cases are all themselves exceptional. They all involve modifications on grounds of social expediency of what is, I think, the undoubted primary rule, viz., that expressed by Lord Barcaple in the case of *Craig* v. *Greig*, 1 Macph. 1172, where he says—"The primary rule, or rather principle, in this matter is, that every pauper, in the widest sense of that word, in which it means every person, old or young, who must be supported by a parish, ought to be supported by his own parish — that is, the parish of his birth or of his own residential settlement." That is the undoubted primary rule, as I have said; and although, as Lord Barcaple goes on to point out, there have been modifications made upon it by way of exception, no one has yet, so far as I know, proposed to make the further modification, the further exception which

is suggested here—an exception and modification to the effect that after his mother's death and after his own puberty an illegitimate child takes the settlement of his stepfather — the settlement of his stepfather as possessed at his mother's death.

I am not myself prepared to sanction such a result, and therefore I am, on the whole matter, of opinion that the pauper takes his own birth settlement, and that the interlocutor of the Sheriff should be affirmed.

LORD KINCAIRNEY — I agree. I am of opinion that the settlement of this pauper is in the parish of his birth.

LORD STORMONTH DARLING—The case for Govan Combination involves the rather startling proposition that when a lad of sixteen, eight years after his mother's death, becomes a proper object of parochial relief, the burden of maintaining him falls, not on the parish of his birth, but on the parish in which his mother had, at the time of her death, acquired a residential settlement through marriage.

The primary ground of liability, as explained by Lord Barcaple in *Craig* v. *Greig*, 1 Macph. 1172, at p. 1191, is that every pauper entitled to relief ought to be supported by his own parish, *i.e.*, the parish of his birth or the parish of his own residential settlement. But the course of decision—mainly induced by certain considerations of social duty and humanity—has superimposed upon that primary ground of liability certain modifications, which are now quite as firmly fixed as the original rule itself. Thus, the wife of a living husband and the pupil (or unemancipated) lawful children of a living father follow his settlement. Nay, more, a settlement thus acquired through a father is not lost by a pupil child after the father's death by the child's attainment of puberty, but is retained in his own right until he loses it by his own failure to fulfil the statutory conditions (*St Cuthberts* v. *Cramond*, 1 R. 174). In the case of a bastard similar considerations have led to the rule being fixed that during pupilarity the child's settlement is that of its mother, to the exclusion even of the parish of its own birth (*Caldwell* v. *Dempster*, 10 R. 1263), and that that settlement, however derived, is not lost even by the death of the mother, the child being still a pupil at the date of chargeability (*Primrose* v. *Milne*, 17 R. 512). The only case cited to us in which a residential settlement derived from the mother was held to be still available to the bastard after pupilarity was that of *Wallace* v. *Caldwell* (22 R. 43), but that was a case in which the settlement had been not merely acquired by the mother's own residence (as distinguished from a settlement derived through marriage), but the residence had been continued in the same parish by both mother and son for some years after the bastard's attainment of puberty.

The argument for Govan has for its foundation the theory that in the case of a bastard a settlement derived from the mother is attended by the same consequences as the settlement derived by a legitimate child from its father, and in particular that it may continue after the child's attainment of puberty, even when it was derived through the mother's marriage and the mother herself is dead. I think this is an unwarrantable extension of the doctrine applied in *Primrose* v. *Milne* and *Wallace* v. *Caldwell*. The analogy seems to me to fail when the settlement attributed to the bastard after puberty is not the mother's own settlement, but a settlement derived from a husband with whom, of course, the bastard never had any connection. There is no decision which requires us to carry the theory of derivative settlement so far, and the reasons which have induced the Court to adopt it do not apply to the present case.

I would only add that I do not think that the education afforded to M'Alpine at and after January 1900, under the Blind and Deaf Mute Children (Scotland) Act 1890 had the effect of making him a pauper while he was still a pupil.

I am therefore of opinion, with the Sheriff-Substitute and your Lordships, that Govan is liable.

LORD JUSTICE-CLERK — The case for Govan is that the rule applied in the case of legitimate children, whereby the settlement of the father rules even after puberty, and applies to the children till another settlement is acquired, must logically be applied in the case of a bastard having his mother's settlement. I do not think that there is any ground for so holding. The rules in regard to such cases are rules of policy modifying the law of birth settlement.

I agree that there is no ground for carrying the modification to the extreme that would be the result of giving effect to the contention of Govan Parish.

The Court dismissed the appeal and affirmed the interlocutor appealed against.

Counsel for the Pursuers and Respondents—Younger, K.C.—Spens. Agents—Cadell, Wilson, & Morton, W.S.

Counsel for the Defenders and Appellants—Solicitor-General (Salvesen, K.C.)—Deas. Agents—Mackenzie, Innes, & Logan, W.S.

Saturday, July 1.

SECOND DIVISION.

[Lord Ardwall, Ordinary.

GREEN *v.* PETER REID & COMPANY, AND ANOTHER.

Reparation—Slander—Newspaper—Criticism of Management of a Public Institution—Action of Damages by the Secretary—Innuendo—Dishonesty in Application of Hospital Funds—Jobbery.

The following letter appeared in a newspaper published in W.—"*The B. Hospital Management.* Sir—Is there