would then apply. The cases of *Little*, *Fowler*, and *Valenti* (*cit. supra*) were in the respondent's favour, for they established that an agreement which operated as a bar might be inferred from such facts as were here proved.

LORD PRESIDENT—This is an action at the instance of a workman against his employer for damages at common law in respect of an injury which he received while working in his employment.

The preliminary answer is made that the workman has accepted compensation under the Workmen's Compensation Act, and that under the provisions of sec. 1, sub-sec. 2 (*b*), he cannot now claim at common law. The Lord Ordinary has given effect to that contention and dismissed the action.

The facts on which the plea is based are that for a long period a sum of 18s. a-week was admittedly paid to the pursuer and accepted. Parties however are not at one as to the footing on which these payments were made and received. The case so far differs from those of *Valenti* (1907 S.C. 695), *Fowler* (5 F. 394), and *Little* (2 F. 387), which were cited to us, in that there is here no written receipt, and indeed no writing at all, to which appeal can be made. I am of opinion, however, that the fact of there being no written receipt is by no means conclusive. After all a receipt is no more than a piece of evidence, and though a receipt bearing to be in respect of sums paid under the Workmen's Compensation Act would be very difficult to get over, it is of value as an item of evidence and nothing else.

But I think the question before us is a question of fact, and fact alone. The Lord Ordinary, who saw the witnesses and considered the whole circumstances, has found that the pursuer accepted the payments as compensation under the Workmen's Compensation Act, and I am not prepared to disagree with his determination. I do not propose to say more, because I look on this case as raising solely a question of fact. I am content to say that I agree with the Lord Ordinary's view that the payments in question were made and accepted as compensation under the Act.

LORD M'LAREN—I have come to the same conclusion. I think it must be taken as matter of common knowledge among persons in the class of life of the pursuer, that a claim of damages founded on fault is a claim for a single payment. It follows, I think, that where a person having such a claim has accepted weekly payments for many weeks—unless he has taken them as charity, and there is no suggestion of that here—he may be presumed to have accepted these as payments under the Workmen's Compensation Act, the only law which creates an obligation to make compensation by means of weekly payments. Very clear evidence would be required to displace that presumption, and I fail to see anything in the evidence here antagonistic to the plain inference that follows the acceptance of weekly payments.

LORD KINNEAR—I agree with your Lordship in the chair.

LORD PEARSON—I also agree.

The Court adhered.

Counsel for the Pursuer (Reclaimer)—A. M. Anderson—Hendry. Agent—John S. Morton, W.S.

Counsel for the Defender (Respondent)—Solicitor-General (Ure, K.C.)—Constable. Agents—Simpson & Marwick, W.S.

Friday, November 22.

FIRST DIVISION.

KINLOSS PARISH COUNCIL *v.* MORGAN AND OTHERS.

Charitable Bequest—Local Government—"Poor of the Parish"—Bequest to Parish Council for the Benefit of the Poor of the Parish—Poor Law Amendment (Scotland) Act 1845 (8 *and* 9 *Vict. cap.* 83).

A bequest of a sum of money to the Parish Council of K. "for the benefit of the poor of the parish of K.," and of a similar sum to the Town Council of F. "for the benefit of the poor of the burgh of F.," *held* to be for behoof of necessitous persons, irrespective of whether they were or were not in receipt of parochial relief.

Bequests in similar terms prior to the Poor Law Amendment (Scotland) Act 1845 and to the parochial boards for administration, *distinguished*.

By his trust-disposition and settlement the late Reverend J. A. Dunbar Dunbar of Seapark and Kinloss, in the parish of Kinloss and county of Elgin, *inter alia*, provided:—"(Fourthly) I leave and bequeath, in the first place, for the benefit of the poor of the parish of Kinloss the sum of two thousand pounds; and, in the second place, for the benefit of the poor of the burgh of Forres the like sum of two thousand pounds: Declaring that the legacy to the poor of Kinloss parish shall be paid over by my trustees to the Parish Council of that parish, to be administered by them for behoof of said poor, and that the legacy to the poor of the burgh of Forres shall be paid over by my trustees to the Town Council of Forres, to be administered by them for behoof of said poor. . . ."

Questions having arisen as to the administration of the bequest, a special case was presented for (1) the Parish Council of the parish of Kinloss (*first parties*); (2) Rachel Morgan and others, poor persons resident in that parish (*second parties*); and (3) Margaret Masson and others, paupers on the roll of the said parish (*third parties*).

The case stated that the testator, a clergyman in the Episcopal Church in Scotland, and proprietor of the estate of Seapark and Kinloss in the parish of Kinloss, "took a great interest in the parish

of Kinloss, and being of a charitable disposition he applied a large part of his means generously to the assistance of a great number of poor persons in the village of Findhorn and throughout the parish of Kinloss. This he did by periodical gifts of coal and other comforts as well as by donations of money. In dispensing this charity the deceased included as the objects of his bounty both poor persons in receipt of parish relief, who were on the roll of the parish poor, and poor persons who were not paupers and did not come under the description of legal poor. . . . The second parties hereto are poor persons resident in the parish of Kinloss who came within the latter category, and in the lifetime of the late Mr Dunbar Dunbar, though not paupers in receipt of parochial relief, they were in the habit of receiving from the deceased, especially at Christmas time, assistance usually in the form of gifts of coal. They are parishioners of the parish of Kinloss and resident therein, and have accordingly an interest in the due management and administration of the charitable bequest and legacy above mentioned. The third parties hereto are on the roll of the parish poor, and during Mr Dunbar Dunbar's lifetime, both before and after the date they were placed on the paupers' roll, were in the habit of receiving from the deceased gifts of various kinds. They are accordingly interested in the management and administration of the fund in question. . . ."

The *contentions* of the first and second parties were—"The first parties maintain that the bequest being given for the benefit of the poor of the parish, subject to administration by them as the proper parochial authority, is a bequest exclusively for behoof of the legal poor persons entitled to parochial relief. The second parties, on the other hand, maintain that the terms defining the objects of the bequest are open to construction, and that on a sound construction of the clause in question in said trust-disposition and settlement, the intention of the testator was to benefit the occasional poor or poor persons not in receipt of parochial relief, or at all events to include such within the class of persons entitled to participate in the benefits of the bequest."

The *questions of law* included the following:—"(1) Is the bequest for the benefit of the poor of the parish of Kinloss contained in said trust-disposition and settlement limited to the poor of said parish who are in receipt of parochial relief? or are the first parties entitled to apply said bequest for the benefit of poor persons who are not in receipt of such relief?"

Argued for first parties—"Poor" meant the legal poor. That presumption was strengthened by the fact that the administration of this bequest had been given to the proper parochial authority, viz., the Parish Council—*Liddle* v. *Kirk-Session of Bathgate*, July 14, 1854, 16 D. 1075; *Whyte* v. *Kirk-Session of Kinglassie*, June 14, 1867, 5 Macph. 869, 4 S.L.R. 95; *Flockhart* v. *Kirk-Session of Aberdour*, November 24, 1869, 8 Macph. 176, 7 S.L.R. 104; *Paterson's Trustees* v. *Christie*, February 1, 1899, 1 F. 508, 36 S.L.R. 384; Poor Law Amendment (Scotland) Act 1845 (8 and 9 Vict. c. 83), sec. 52.

Argued for second and third parties—The question was one of intention. The testator was in the habit of assisting poor persons whether they were on the roll of the parish or not. There was no presumption against these parties' contention from the fact that the Parish Council were the administrators — *Whyte* (*cit. supra*), *v.* opinion of Lord Curriehill at p. 880. The words "poor of the parish" were open to construction, *per* Lord Deas in *Flockhart* (*cit. supra*), at p. 182. The testator could not have meant to relieve merely the ratepayers.

LORD PRESIDENT—The late Rev. John Archibald Dunbar Dunbar, of Seapark and Kinloss, by a clause in his trust-disposition and settlement, left a legacy in the following terms—". . . [*His Lordship quoted the fourth purpose, sup.*] . . ." The question raised before your Lordships by this special case is whether the Parish Council of Kinloss, who are entitled to this legacy of £2000, are bound to administer it for the "legal" poor alone, as that expression has been currently used—that is to say, are they bound to put this legacy into their coffers along with the rates, or are they entitled to administer it as a separate fund and to apply the benefit of it to any such people as may be held to fall within the description of "poor" in the ordinary significance of that word.

Like all such matters, it turns on the question of testamentary intention, and if it had not been for the complication of authority, I should have thought the matter was too clear for argument. The result of putting this legacy into the coffers of the Parish Council would be, not the relief of the poor, but the relief of the ratepayers of the parish. That such was the intention of the testator cannot for a moment be suspected. There is, however, a certain amount of authority on the interpretation of the word "poor," but on consideration I have come to the conclusion that it does not stand in the way of giving to this bequest the effect which I believe the testator intended.

The decided cases all turned on what sums fell or did not fall to be dealt with under section 52 of the Poor Law Amendment Act of 1845 (8 and 9 Vict. cap. 83). Let me remind your Lordships of what that Act really did. It introduced for the first time into Scotland a thoroughly national system of poor law administration, and it created powers for a universal assessment for relief of the poor, but it also enabled the new poor law authorities who were created by the Act to make use of any existing funds that were devoted to the relief of the poor. Hence we have section 52, which transferred the existing funds to the new parochial boards. Now the questions raised on that section were whether certain bequests fell or did not fall within the words of the section. It is to be observed that that section only applied to

existing funds and had no application to any subsequent bequest, and now that it is more than half a century old it is obvious that the questions that arise under such a destination in modern times are very different from those that fell to be decided under that section. There is this further observation to be made, that the question which is now before us could not have arisen in the old days prior to 1845. For in these days the distinction between able-bodied poor and others, with regard to the right of relief, had not been settled, and if you had used the phrase "legal poor" in these days it would not have been known what you meant. The kirk-session, who were then the only body in charge of the poor, relieved any necessitous persons, and did not confine their relief to the legal poor in the modern sense. So that in these former days when a testator left a bequest for such purposes, it would never occur to him that any distinction could be drawn as to the persons to be benefited, according as he left the administration of the bequest to the then poor authority, viz., the kirk-session, or to others. He would believe that, however he destined it, it would be applied for the relief of necessitous persons in the same way. Consequently if in these decisions the words have got a certain significance, that interpretation has been put on them in the light of what I have been saying, and it will not necessarily apply to a bequest made by a modern testator under totally different conditions of the poor law.

There are expressions, particularly in the opinion of Lord Rutherfurd, in the case of *Liddle*, 16 D. 1075, that seem to go the length of laying down the law that the word "poor" means "legal poor" only. I do not think that that view of the law has been adopted in subsequent decisions, and I will only instance the dictum of Lord Deas in the case of *Flockhart*, 8 Macph. 176, at page 182, where he says—"I do not call in question the principle of the cases of *Bathgate* and *Linlithgow*, that the words 'for behoof of the poor' did not necessarily mean those who are called the 'legal poor,' that is to say, the poor who by law may claim relief; and that it is in every case a question of circumstances whether that construction is to be put on the words or not." I think that is a just statement of the law, and therefore, as far as authority goes, I do not think it can be said that poor "of the parish" is limited to the "legal poor" only.

I also think that the implication that was sought to be drawn from the fact that the body chosen to administer the bequest was the Parish Council loses its force when we consider that the parochial board existed solely for the purpose of administering the poor law, while the Parish Council has many other duties to perform. Where the body chosen existed only for the relief of the poor, the natural implication was that it was intended that the bequest should be administered in the same way as the only other funds in their hands. Here the selection of the Parish Council was no doubt occasioned by the fact that the testator wanted to benefit the people within two areas well known to himself, namely, the parish of Kinloss and the burgh of Forres; and therefore he selected the Parish Council of Kinloss and the Town Council of Forres to be the administrators, as best defining the areas to be benefited.

I think, therefore, that he used the word "poor" in the sense in which it is used in ordinary language, and that the word must be held to cover any necessitous person. The second alternative of the first question will therefore fall to be answered in the affirmative.

LORD M'LAREN—I agree that the Parish Council who put these questions are in no way restricted as to the class of persons who may be put on the roll of beneficiaries, except in so far that they must be poor persons in the ordinary sense. In so deciding we are in no way enlarging the meaning of the word "poor." It is the Poor Law Act and the decisions of the Court which, for the purposes of the administration of public funds, have put a limited meaning upon the word, or perhaps it would be more accurate to say, have divided the poor into two categories—those who from age or physical infirmity are unable to gain a livelihood by industry, and those who are able to work but who are unable to find employment. The first of these classes is the object of the benefits of the poor law, the second is not. But in the construction of Mr Dunbar's bequest we have nothing to do with this artificial distinction, because his bequest is to be applied for the benefit of the poor of the parish—a description of persons which includes able-bodied but necessitous poor, as well as those who are poor and infirm. I have no doubt that it would be open to this Parish Council to give assistance to persons having a legal claim as an addition to the relief given from the rates, as well as to others who have no claim upon the rates. I am of opinion that the second branch of the first question should be answered in the affirmative.

LORD KINNEAR and LORD PEARSON concurred.

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

Counsel for First Parties—C. A. Macpherson. Agent—Robert Stewart, S.S.C.

Counsel for Second and Third Parties—D. Anderson. Agents—Grieve & Simpson, W.S.