lant on 30th January 1915 was not necessary for the protection of any crop. I think that was no answer to the appellant's contention. To say that on a particular day it was not necessary for the protection of any particular crop to shoot rabbits does not in the least degree infer that the tenant was not entitled to shoot rabbits as an ordinary agricultural operation for the protection of the farm.

The law is laid down, I think, with admirable clearness in the opinion of the Lord Justice-Clerk (Moncreiff) in the case of *Inglis*, 10 Macph. 204, which was cited to us, to the effect that "if the tenant is put under no restriction by the terms of his lease he is entitled to destroy rabbits as an ordinary agricultural operation necessary to the cultivation of the farm." And by Lord Cowan when he says—"It must be held to be quite fixed that where there is no stipulation to the contrary, and no obligation, expressed or implied, to the effect that the landlord has reserved to himself the rabbits on a farm, the agricultural tenant is entitled at common law to kill them, and so to protect himself against damage to the crops."

In my view the justification for the common law right is stated in both these opinions with perfect clearness, and, as I read these opinions, no limitation is placed upon the right. It is not said, in particular, that if at any time there be no necessity for the protection of any crop to shoot rabbits, then the tenant's common law right is gone. That limitation, it has been suggested, is placed upon the right by an *obiter dictum* of Lord Rutherfurd Clark in the subsequent case of *Fraser* v. *Lawson*, 10 R. 396. If so, all I say, in common with the learned Professor of Scots law, is that I should regard the limitation as futile, because it is perfectly obvious that under no conceivable conditions could it be shown that on an ordinary agricultural farm it was not necessary to shoot rabbits for the protection of the crop.

However that may be, it appears to me that this case is really covered by authority. I refer to the case of *Stuart*, 5 Coup. 526, which was cited to us, in the reasoning in which I desire to express my entire concurrence. Mr Steuart contended to us that we were not here entitled to assume that the lease under which the tenant held did not contain a reservation to the landlord of a right to shoot rabbits, and that that might be so, and that, accordingly, there might possibly be no common law right in the person of the appellant's author James Weir. To that contention I think the complete answer is that the learned Sheriff-Substitute has found that Weir is tenant of the farm, and has, in effect, found that there is no reservation of the right to kill rabbits, and even that there may be no lease in writing of the farm at all.

Mr Steuart referred us to the 1st section of the Day Trespass Act and the 12th section of that statute as supporting his view. I do not think the 12th section has any application to this case at all. But the proviso at the end of the 1st section was, I think, complied with by the appellant in this case when he pleaded the common law, because it runs thus—"Provided always that any person charged with any such trespass shall be at liberty to prove by way of defence any matter which would have been a defence to action at law for such trespass." And it would certainly have been a complete answer to an action at law to plead the permission of a person who had a common law right to kill rabbits. Accordingly I come to the conclusion without hesitation that the Sheriff-Substitute was wrong when he found that the fact stated in the 10th finding was a conclusive answer to the plea that the common law right in the person of James Weir protected the appellant from a prosecution under the Day Trespass Act.

Upon the question whether the Sheriff-Substitute was right in holding that the appellant was not *bona fide* employed by James Weir for reward to take or destroy ground game, I am very clear that that was a question of fact for the Sheriff-Substitute alone to determine, and that on that question he is final. It was, no doubt, said that we were entitled to look at the grounds upon which he had reached the conclusion that this was not a *bona fide* permission, and that these grounds were to be found set out in the 6th article of the Stated Case. Well, be it so, I think the facts there set out were sufficient to warrant the Sheriff-Substitute in coming to the conclusion that there was no *bona fide* permission here, and that if he came to that conclusion we ought not to disturb his finding.

I am for answering the question put to us in the negative.

LORD SKERRINGTON—I concur.

LORD CULLEN—I also concur.

The Court answered the question in the case in the negative, and quashed the conviction.

Counsel for the Appellant — Patrick. Agents—Kessen & Smith, W.S.

Counsel for the Respondent — Crurie Steuart. Agents—J. & F. Anderson, W.S.

COURT OF SESSION.

Friday, February 26.

OUTER HOUSE.

[Lord Dewar, Ordinary.

KIRKCALDY AND DYSART PARISH COUNCIL *v.* TRAQUAIR PARISH COUNCIL.

Poor—Settlement—Derivative Settlement—Woman with Pupil Children the Offspring of a Bigamous Marriage Entered into in Good Faith.

A woman entered into a bigamous marriage with a man in the *bona fide* belief that his first wife was dead. On the man's death she and her pupil children became chargeable.

Held that the putative wife did not

derive a settlement from her putative husband either for herself or her pupil children, and that the parish of his settlement was not liable for their relief.

The Parish Council of Kirkcaldy and Dysart, *pursuers*, brought an action against the Parish Council of Traquair, *defenders*, for declarator that the parish of Traquair was the legal settlement on 5th March 1914 of Jeanie Lumsden or Maguire, of Bernard Maguire, Peter Maguire, and George Maguire, the pupil children of Jeanie Lumsden or Maguire and the late Joseph Maguire, and that the defenders were liable for their relief and for repayment of sums already advanced on their behalf.

The circumstances of the case were narrated in the opinion of the Lord Ordinary, thus—"The *facts*, upon which both parties are agreed, are briefly as follows:—In December 1902 the pauper woman Jeanie Lumsden gave birth to an illegitimate child at Dysart, where she resided. In December of the following year she went through a form of marriage with Joseph Maguire at Kirkcaldy. Maguire's wife was then alive, but he falsely informed Lumsden that she was dead, and she believed him. Maguire and Lumsden lived together in Dysart, and four children were born to them, three of whom are alive and all are in pupilarity. In May 1903, and again in July 1905, February 1908, and December 1908, Maguire and his dependants, that is Lumsden and her family, became chargeable in Kirkcaldy and Dysart parish. In August 1910 they removed to the parish of Auchterderran, where Maguire died on 18th November 1912. On 25th November 1912 Lumsden applied for and obtained relief for herself and her children. On 28th February 1914 she and her family returned to Dysart. They still reside there and are in receipt of parochial relief. In these circumstances the pursuers—the Parish Council of Kirkcaldy and Dysart—have brought this action against the Parish Council of Traquair (which is the parish of Maguire's birth) concluding for declarator that the defenders are liable in relief for the sums which the pursuers have already paid, or may require to pay, for the support of the pauper woman and her children."

The defenders pleaded, *inter alia*—"(3) The said Jeanie Lumsden not being the wife of the said Joseph Maguire did not acquire his settlement of birth, and decree of absolvitor should accordingly be pronounced. (4) The pupil children of the union between Jeanie Lumsden and Joseph Maguire being dependants of their mother (who is the pauper) the parish of her settlement (which is not Traquair) is liable for their relief, and decree of absolvitor should accordingly be pronounced.

The following authorities were referred to in argument—Graham on Poor Law, pp. 172-192; *Barbour* v. *Adamson*, May 30, 1853, 1 Macq. 376; *Caldwell* v. *Dempster*, July 20, 1883, 10 R. 1263, 20 S.L.R. 845; *Rutherglen Parish Council* v. *New Monkland Parish Council*, 1907 S.C. 1053, 44 S.L.R. 757; *Rutherglen Parish Council* v. *Glasgow Parish Council*, May 15, 1902, 4 F. (H.L.) 19, 39 S.L.R. 621; *Purves Trustees* v. *Purves*, March 16, 1895, 22 R. 513, Lord Kincairney at p. 517, 32 S.L.R. 379; *Petrie* v. *Ross*, June 9, 1896, 4 S.L.T. 63; *Edinburgh Parish Council* v. *Kirkcaldy Parish Council*, 1912, 2 S.L.T. 267; *Greig* v. *Adamson*, March 2, 1865, 3 Macph. 575; *Shotts Parish Council* v. *Bothwell and Rutherglen Parish Councils*, November 24, 1896, 24 R. 169, 34 S.L.R. 136.

LORD DEWAR—The question raised in this case is whether the obligation to support a pauper woman and her children—where the woman has entered into a bigamous marriage in the *bona fide* belief that the wife of the man was dead—falls upon the settlement of the putative husband.

[*After narrating the facts as quoted above*]—There is an averment on record that the defenders admitted liability, but there is no plea to the effect that they are bound by their admission, and no argument was presented on that question. The only ground upon which the pursuers maintain that they are entitled to relief is that Lumsden derived through her putative marriage Maguire's settlement.

It is a novel question on which there is no direct authority, and very little which has even an indirect bearing. It appears to be settled that children of a putative marriage are legitimate—Fraser, Parent and Child, p. 27; and *Petrie* v. *Ross*, 4 S.L.T. 94. And legitimate pupil children take their settlement from their father. They take it directly through him when he is alive and indirectly through their mother when he is dead. But the peculiarity of this case is that although the children are legitimate, their mother was never their father's wife, and is not now his widow. But she is the surviving parent, and the children, including her illegitimate child, take her settlement whatever it may be. The question is, did she derive one from Maguire? The pursuers say she did, on the ground that although the marriage is null, yet she entered into it in the *bona fide* belief that there was no impediment, and is therefore entitled to claim all the advantages which a valid marriage confers upon a woman so long as her claims do not impinge upon the rights of the lawful wife. I was not referred to any authority in support of that proposition, but I see no reason why the law should not protect, so far as it can, an innocent woman as it protects her children in such circumstances. But then the woman does not make any claim. It is the Parish Council of Kirkcaldy and Dysart who claim to be relieved from the obligation of alimenting her and her children. She does not appear to have any interest in that claim. At all events she does not make it, and it is not made on her behalf. Then although the law may protect the woman as far as possible, it cannot give her the status of a wife, and that appears to be essential in a question of settlement. The principle upon which the decisions that a wife and legitimate pupil children can have no settlement apart from the husband and father is based is that the family must be kept together. The

father is the head of the family, and it is assumed that his wife and children will reside with him, and any settlement gained by him is gained not for himself alone but for the whole family—*Barbour* v. *Adamson*, H.L., 1 Macq. 376. That principle clearly cannot be applied in a case like this. The law does not assume that this family was kept together by the father. It does not recognise him as the head. It was his duty to reside with his lawful wife, and any settlement he acquired was acquired for her and her family.

It is a narrow question, but on the whole the defenders' argument appears to me to be more in accordance with the decisions than that presented by the pursuers, and I accordingly think they are entitled to be assoilzied from the conclusions of the summons with expenses.

The Lord Ordinary assoilzied the defenders.

Counsel for the Pursuers — Solicitor-General (Morison, K.C.)—Graham Robertson. Agent—James Ayton, S.S.C.

Counsel for the Defenders — Constable, K.C.—MacRobert. Agents—Scott & Glover, W.S.

Friday, May 21.

SECOND DIVISION.

[Sheriff Court at Edinburgh

CHRISTIE'S TRUSTEE *v.* LEITH, HULL, AND HAMBURG STEAM PACKET COMPANY, LIMITED.

Bankruptcy — Sequestration — Vesting of Estate—Tantum et tale—Bond of Annuity under Superannuation Scheme for the Benefit of Employees in Mercantile Company.

A superannuation scheme instituted by a company for the benefit of certain of its employees provided for the company and the employees contributing in the proportions of two-fifths and three-fifths respectively the premiums necessary to purchase bonds of annuity payable at sixty years of age from an insurance company. The employee was bound to pay his proportion to his employers as long as he remained in their service, and it might be collected by deduction from his salary. If he left their service before the age of sixty he became entitled to a bond of annuity equivalent in value to the amounts paid or to the surrender value of the policy. If he died in the service of the company his representatives became entitled to repayment of all sums paid on his behalf by himself and the company, and if he died before the age of sixty-five his representatives were entitled to his annuity up to the time at which he would have reached that age. An employee having become bankrupt while in the company's service his trustee claimed the policy. *Held* (*diss.* Lord Dundas) that the bankrupt could not have demanded delivery of the policy while in the company's service, and that accordingly his trustee was not entitled to obtain possession of it.

Charles Simon Romanes, C.A., Edinburgh, trustee on the sequestrated estates of Thomas Christie, Grangemouth, *pursuer*, brought an action in the Sheriff Court at Edinburgh against the Leith, Hull, and Hamburg Steam Packet Company, Limited, Leith, *defenders*, for declarator that a policy of annuity granted by the Edinburgh Life Assurance Company in favour of Mr Christie and all benefits conferred under it had vested in the pursuer as the trustee on Mr Christie's sequestrated estate, and for decree of delivery of the policy, or failing delivery for payment of £300.

The policy in question was taken out by the defenders under the provisions of a benefit fund which they had instituted with the view of providing superannuation pensions for their clerical staff, of which Mr Christie was a member.

The rules of the benefit fund provided, *inter alia*—Article 31—"Subject to sections 39 and 42, the company undertakes in the case of all members of the clerical staff of the company who at 31st December 1906 were over thirty years of age and under sixty to contribute yearly until the 31st December immediately before such members shall respectively attain the age of 60, for the purchase of annuities, the sums respectively set opposite their names in the fourth column of the Scheme of Allocation and Contribution hereinbefore referred to, and so long as the company shall continue so to do the said members of the staff shall pay yearly the sums respectively set opposite their names in the fifth column of the said scheme. . . ." Article 34—"The annuities provided for in this scheme shall be purchased from the Edinburgh Life Assurance Company or from some other first-class British insurance company. So long as the prospective annuitant is in the service of the company his share of the premium shall be paid to the company, which may collect the same by deductions when paying his salary, and which shall be entitled for any period not more than one year to retain any premium collected before handing it on to the insurance company. . . ." Article 36—"If a member of the clerical staff of the company leave the service of the company for any reason whatever (other than death) before the age of sixty, the company's contributions on his behalf shall forthwith cease; but he shall be entitled to receive from the company a bond of annuity in his favour corresponding to the amounts paid or to be paid on his behalf by himself and the company and the fund (if any), whether by way of single payment or annual premium or both; and if he shall at any time thereafter before reaching the age of sixty elect to surrender the said bond of annuity to the assurance company by which it shall have been issued he shall be entitled to receive from it forthwith repayment of all such amounts paid to it in respect of said bond.