

The Obligation to Support the Widow:  
Settlement, the New Poor Law and the Scottish Local State

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Elizabeth Cousland presented herself before the inspector of the Poor in Paisley on 9 September 1850. It was a Monday, the Queen was enjoying her summer visit at Balmoral, and the previous day Cousland's husband had become critically ill with the consumption that must have been developing for months or years.<sup>1</sup> With seven children to support, including a three-month-old daughter, Cousland was desperate to gain some aid. Her simple request would not be resolved for more than a decade. The Cousland case provides a window into the arcane world of the New Scottish Poor Law, one that reveals important distinctions between the Scottish and English experiences of poverty and relief.

Paisley was at the center of such concerns, with a volatile economy and a knowledgeable, dedicated Poor Law inspector who was engaged in the national conversation. At the middle of the nineteenth century, Paisley had a population of almost 48,000, being then as now the largest town in Scotland.<sup>2</sup> The town's fancy-textile-based industry had staggered through a disastrous collapse in the early 1840s and a less severe one in 1847-48, but in 1850 the economic footing seemed good. Paisley, through its Town Council, was active in national affairs; in early 1850 alone the Council issued petitions to Parliament regarding the Corn Laws, Soap Tax, University

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<sup>1</sup> Paisley Central Library [PCL], *Paisley Poor Law Records*, Statements of Cases, vol. 11/6, Statement no. 4402; *The Spectator Archive*, <http://archive.spectator.co.uk/article/7th-september-1850/5/scotland> While Peter's last name was recorded as McMurrich in the Poor Law record and *The Poor Law Magazine* article based on the case, it was reported as McMurray in census and statutory records.

<sup>2</sup> *The Census of Great Britain in 1851, Condensed Report* (London, 1854), p. 105.

Tests and the Poor Laws.<sup>3</sup> Having already taken over the manufacture and distribution of gas for the town, following a cholera outbreak in 1849 the Town Council was pursuing acquisition of the waterworks.<sup>4</sup> For the recreation of the middle classes the town had an active curling community, at least one bowling green, and cricket was quickly gaining popularity.<sup>5</sup>

Among Paisley's working class, there was little time for sport; no football clubs were formed until 1877. After the economic collapse of 1841, the method of manufacture of the iconic Paisley shawl shifted from highly skilled handloom weaving to favour the faster, cheaper block printing, and the shawls were gradually falling out of fashion.<sup>6</sup> Simultaneous with the decline in shawl manufacturing came a transition to thread making in the famous factories owned by the Coats and Clark families, who were not yet joined into one concern. While handloom weaving and printing were male occupations, the thread factories and shawl finishing sheds employed mainly women, resulting in a community that was fifty-three percent female.<sup>7</sup> The workers of Paisley had a history of activism, particularly in strong support of Chartism in the 1830s and for relief of the unemployed in the early 1840s.<sup>8</sup> While they had no direct voice in Paisley's governance, the thousands of operatives living in one- and two-roomed flats who were one or two pay packets away from destitution had to be constantly on the minds of the men who did run the town's affairs.

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<sup>3</sup> R. Brown, *A History of Paisley from Roman Times down to 1884*, vol. II (Paisley, 1886), p. 336.

<sup>4</sup> Brown, *History of Paisley*, pp. 340-41.

<sup>5</sup> Brown, *History of Paisley*, pp. 372-5, 408.

<sup>6</sup> Brown, *History of Paisley*, p. 403.

<sup>7</sup> Brown, *History of Paisley*, p. 408.

<sup>8</sup> T.C. Smout, 'The Strange Intervention of Edward Twistleton: Paisley in Depression, 1841-3', in T.C. Smout (ed.), *The Search for Wealth and Stability: Essays in Economic and Social History presented to M.W. Flinn* (London, 1979), pp. 222, 233-4.

Accordingly, Paisley had a strong tradition of voluntary support for the poor, though a weak one in successful compulsory assessment.<sup>9</sup> Benefactors not only contributed to the kirk's fund for relief of the poor and the Town Hospital (the precursor to the poor house), they established additional institutions to minister to the poor and working classes. For example, when in the 1790s Margaret Hutcheson, the wife of a day labourer, unexpectedly inherited a West Indian fortune from her brother, she founded and endowed a charity school for poor orphans and the children of the town's poor in addition to other significant charitable gifts and legacies.<sup>10</sup> When trade collapsed in 1841, the Town Council first called for such traditional voluntary contributions to relieve the unemployed, but their best efforts (as the capital of the town's leading citizens melted away) were insufficient. By 1843 the Town Hospital was £830 in debt.<sup>11</sup> Parliament's recognition that revision of the Scottish Poor Law was necessary came in large part because of the inability of Paisley to cope with the distress. Under the new Law, which came into effect in the autumn of 1845, support for the poor ceased to be dependent on bourgeois altruism. When Elizabeth Cousland was faced with imminent destitution, she accessed a right to relief that was newly articulated but had been a bone of serious contention for decades.<sup>12</sup>

The inspector she appealed to was James Shaw Brown, who had a long personal history of bridging the gap between the poor and the better off in Paisley. The university-educated son of a prosperous blacksmith, his first professional position was as a teacher at Hutcheson's Charity School. In 1834 he was elected to be the manager of the Town Hospital, and was the only candidate considered for the position of Poor Law inspector after the passage of the New Poor

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<sup>9</sup> R. Mitchison, *The Old Poor Law in Scotland: The Experience of Poverty, 1574-1845* (Edinburgh, 2000), pp. 185-7.

<sup>10</sup> Brown, *History of Paisley*, p. 101.

<sup>11</sup> Brown, *History of Paisley*, p. 221; *Parliamentary Papers*, Poor Law Inquiry (Scotland) Appendix, Part I, 'Containing Minutes of Evidence taken at Edinburgh, Glasgow, Greenock, Paisley, Ayr and Kilmarnock', 1844, p. 575.

<sup>12</sup> Mitchison, *Old Poor Law*, pp. 148, 178, 208; M.A. Crowther, 'Poverty, Health and Welfare', in W. H. Fraser and R.J. Morris (eds), *People and Society in Scotland 1830-1914* (Edinburgh, 2000), p. 267.

Law.<sup>13</sup> Brown had been keeping detailed records of applicants for relief in Paisley Burgh Parish since 1839 on a folio form he had designed himself, he or the Council enamored of the craze for statistics that was then sweeping Britain.<sup>14</sup> By 1850 he was considered something of an expert on poor relief in Scotland, having been called with the Paisley delegation to testify before the Parliamentary committee examining the Poor Laws in Scotland prior to their revision.<sup>15</sup>

Cousland probably did not know it, but in applying for relief in Paisley she was ensuring that she and her family would be cared for in precise accordance with the Law.

Brown carefully included Elizabeth's name and details on the case record he created, but gave primary place on the application to her sick partner, Peter McMurrich. He noted that while both Cousland and McMurrich had earlier marriages, the couple had been wed by a justice of the peace in Glasgow in August, 1844. The seven children were an amalgamation of McMurrich's son with his first wife, three children Cousland had had with her first husband, James Hutton, and three daughters McMurrich and Cousland had together, including the infant, Jean.

McMurrich, when he was well, worked as a calico printer and gamekeeper. The two oldest boys, James Hutton (13) and John McMurrich (10) each were recorded as earning 2/6 per week as tearers (printers' assistants), but if they had been working assisting their father/step-father their income was jeopardized as well. Cousland was considered unable to work due to caring for little Jean.<sup>16</sup> Block printing was a skilled trade, and while the family was not rich, McMurrich had

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<sup>13</sup> 'The Late Mr James Shaw Brown', in *The Poor Law Magazine and Parochial Journal*, 4 (May, 1876), p. 239; National Records of Scotland [NRS], SC58/42/10, David Brown, Testament, 18 November 1837, [accessed via *Scotland's People* [www.scotlandspeople.gov.uk](http://www.scotlandspeople.gov.uk)]; PCL, *Court Book and Corporation Minute Book 1840-1850*, vol. 1/28, Paisley Town Council Minutes, 16 September 1845.

<sup>14</sup> M.J. Cullen, *The Statistical Movement in Early Victorian Britain: The Foundations of Empirical Social Research* (New York, 1975); PCL, *Paisley Parochial Board Minute Book*, vol. 7/19, Paisley Parochial Board Minutes, 11 December 1861.

<sup>15</sup> *Parliamentary Papers*, Poor Law Inquiry (Scotland), Appendix, Part I, 'Containing Minutes of Evidence taken at Edinburgh, Glasgow, Greenock, Paisley, Ayr and Kilmarnock 1844', pp. 571-9.

<sup>16</sup> PCL, *Paisley Poor Law Records*, Statements of Cases, vol. 11/6, Statement 4402.

supported them adequately. When McMurrich died two days after their application, the inspector placed the family on Paisley's list of casual paupers to receive aid from the parish.<sup>17</sup>

It was not so simple as Paisley supporting the impoverished family, however. Since McMurrich was a native of Cardross, Argyllshire, and in fact had only lived in the Paisley Burgh Parish for a year and a half before his death, he did not have a 'settlement' in the parish – that is, while he was entitled to poor relief generally, he did not have the right to receive funds raised by the poor rates in Paisley for either himself or his family. Concerned that relief be distributed appropriately, Brown wrote to the poor law inspector in Cardross requesting reimbursement for the aid given to McMurrich's children. For good measure he also requested reimbursement for the three Hutton children from the parish where Elizabeth had lived with her first husband and where two of the children had been born: Bonhill, Dunbartonshire.<sup>18</sup>

On 19 September, Cardross's inspector responded to the request and Cousland's claim began to come apart. While Cardross was willing to repay McMurrich's expenses and a small allowance for his son John, the inspector reported that McMurrich's first wife was alive, was last known to be in Glasgow, and had purportedly gone off with a soldier.<sup>19</sup> However they may have lived and been regarded by their neighbors, Cousland and McMurrich could not be legally married, the three youngest children in the family were bastards, and Cousland herself was of suspect morals. Cardross would not admit responsibility for Cousland or her children.

James Brown, who prided himself on the combination of accuracy and compassion with which he carried out his duties, was left holding a bag that he was certain was not his.<sup>20</sup> Under

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<sup>17</sup> Report of the Cousland case in 'Arbitration Cases', *The Poor Law Magazine for Scotland*, 3 (1860), pp. 183-7.

<sup>18</sup> 'Arbitration Cases', p. 183.

<sup>19</sup> 'Arbitration Cases', p. 183.

<sup>20</sup> Perhaps the best example of Brown's pride in the job he did was his prickly response to accusations of mistreatment of a disabled girl in Paisley published in *The Scotsman* in 1862: 'How Stories About Lunatics are Got Up'. *The Poor Law Magazine*, 4 (1862), pp. 273-80.

the rules of the New Poor Law, the parish that first acknowledged that a pauper needed relief was responsible for sustaining that pauper until the parish to which he or she rightfully belonged could be billed for the expense. Brown was absolutely certain that Cousland and her brood did not have a settlement in Paisley, but the question of where in fact responsibility for them lay would be argued over the entire course of the 1850s. Throughout that decade Brown and his fellow inspectors grappled not only with the facts of the Cousland/Hutton/McMurrich case but with the shifting landscape of the Poor Law in Scotland.

While the Parliament at Westminster passed the Act for the Amendment and Better Administration of the Law Relating to the Relief of the Poor in Scotland in 1845 for the whole of Scotland, it was implemented at the most local level.<sup>21</sup> Newly created parochial boards were to oversee relief, and it would be administered by newly-hired inspectors. There was an Edinburgh-based Board of Supervision, but in the early years of the law it neither claimed nor exercised strong central control.<sup>22</sup> For most of the nineteenth century, the Board ‘spent most of their time considering appeals against inadequate relief’ rather than imposing a uniform interpretation of the law.<sup>23</sup> It was only in the early 1860s that the Board began to require even uniform record keeping from the Parishes (and then James Brown was nevertheless given special dispensation to continue the use of his 1839 folio forms).<sup>24</sup> The enactment of the New Poor Law, then, first came at the parish level, where it was subject to a wide variety of interpretation by the various inspectors, all of whom were eager to keep an expensive family like Elizabeth Cousland’s off their ledgers. When these parish-level interpretations came into conflict they were resolved in the courts or through extra-judicial consultations with sheriffs or other knowledgeable arbitrators.

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<sup>21</sup> A. Paterson, ‘The Poor Law in Nineteenth-Century Scotland’, in D. Fraser (ed.), *The New Poor Law in the Nineteenth Century* (New York, 1976), pp. 174-6.

<sup>22</sup> Paterson, ‘Poor Law in Nineteenth-Century Scotland’, p. 176.

<sup>23</sup> Crowther, ‘Poverty, Health and Welfare’, p. 273.

<sup>24</sup> **Parochial Board Minutes, 11 Dec. 1861.**

Particularly difficult questions in the courts moved upward from the Sheriffs' Courts through appeals to the Courts of Session, the Scottish Supreme Court, and in very rare cases to the House of Lords. Decisions from these courts at all levels then flowed downward to influence the extra-judicial conflicts in arbitrations and discussions among the inspectors. In this way, although the law itself came from the Parliament of the United Kingdom, interpretation and implementation of the New Poor Law for Scotland was an organic expression of Scottish values from the local level, a clear example of the local state in action.

A number of historians have explored the idea of the 'local state' in nineteenth century Scotland. The idea of a local state originated from sociologist Cynthia Cockburn in 1977, and since the 1990s has been adopted by historians of Scotland to describe the peculiar system of government for Scotland within the United Kingdom.<sup>25</sup> Although Scotland retained its distinctive legal system and religious autonomy under the Union, there was no administrative structure for these institutions at the national level. Instead, towns, counties, and parishes managed areas such as policing and education that were left to Scottish control. Graeme Morton wraps such local oversight into the idea of a Victorian civil society that was managed primarily by voluntary organizations rather than national bureaucracies.<sup>26</sup> Relief for the poor, originally managed through the Established Churches in both Scotland and England, fell into the same category. The New Poor Law and its administration are often mentioned in descriptions of the local state, but

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<sup>25</sup> C. Cockburn, *The Local State: Management of Cities and People* (London, 1977). A synopsis of the 'local state' in Scotland is provided by T.M Devine, *The Scottish Nation: a History 1700-2000* (New York, 1999), pp. 287-9.

<sup>26</sup> G. Morton, 'Civil Society, Municipal Government and the State: Enshrinement, empowerment and legitimacy. Scotland, 1800-1929', in *Urban History*, 25, 3 (1998), pp. 348-67. Similarly, see J.D. Myers, 'Scottish Nationalism and the Antecedents of the 1872 Education Act', in *Scottish Educational Studies*, 4, 2 (1972), pp. 73-92; A. Bain, 'The Beginnings of Democratic Control of Local Education in Scotland', in *Scottish Economic and Social History*, 23, 1 (2003), pp. 7-25; D. G. Barrie, 'Anglicization and Autonomy: Scottish Policing, Governance and the State, 1833 to 1885', in *Law and History Review*, 30, 2 (May 2012), pp. 449-94.

the process of how the system worked in practice has not been significantly explored.<sup>27</sup> Audrey Paterson's 1976 overview of the New Poor Law remains the most detailed description of the Scottish Law in comparison to its English counterpart and its execution across the nation, particularly focused on the development of the Board of Supervision's role.<sup>28</sup> Concerned with national practice, Paterson did not burrow deeply into the process of negotiation between parishes and development of policy from the local level. Andrew Blaikie's work, by contrast, examines the local contest between applicants and administrators in defining settlement and eligibility for relief, but has not tied the conclusions of those negotiations upward to shifting legal interpretations at the national level.<sup>29</sup> The case of Elizabeth Cousland offers an opportunity to bridge this gap. Over the decade through which her case was debated, the accepted interpretation of the Poor Law changed repeatedly, each new decision altering where responsibility for her and her family might lie.

Much of the scholarship that has been undertaken regarding the poor and their access to relief has sought out the voices of the poverty-stricken, most often in the form of petitions for relief, and women (widows in particular) are shown to have taken an active role in obtaining support for themselves. The officials in charge of poor relief are frequently portrayed in such scholarship as faceless, parsimonious bureaucrats subjecting supplicants to a precise and vicious law.<sup>30</sup> The law was not so clear-cut, however. Poor Law inspectors in each parish interpreted the law as they went along, compensating for the morass of practical detail omitted from the 1845

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<sup>27</sup> Morton mentions 'the...independence of the burgh, particularly in the relief of the poor,' p. 365, a point reiterated by Devine, p. 288.

<sup>28</sup> Paterson, *passim*, particularly pp. 178-83.

<sup>29</sup> A. Blaikie, 'Nuclear Hardship or Variant Dependency? Households and the Scottish Poor Law', in *Continuity and Change*, 17, 2 (2002), pp. 253-80; A. Blaikie, 'Accounting for Poverty: Conflicting Constructions of Family Survival in Scotland, 1855-1925', in *Journal of Historical Sociology*, 18, 3 (2005), pp. 202-26.

<sup>30</sup> In addition to Blaikie's extensive work in rural Scotland, see L. Baker, 'Survival Strategies of Widows in Dijon during the French Revolution', in *Womens Studies*, 31 (2002), pp. 53-65; P. Sharpe, 'Survival Strategies and Stories: Poor Widows and Widowers in Early Industrial England', in S. Cavallo and L. Warner (eds), *Widowhood in Medieval and Early Modern Europe* (Harlow, 1999), pp. 220-39.

Act.<sup>31</sup> The legal angles pursued to resolve the details were contingent on the imagination of the bureaucrats, and thus on their assumptions about the society in which they lived.

Focusing on the bureaucrats' arguments in cases relevant to Cousland's brings to light an intriguing, somewhat surprising discourse regarding women and the nature of marriage in Victorian Scotland. In 1850, a woman was assumed to take on her husband's legal persona – including his Poor Law settlement – at marriage and to retain it throughout the rest of her life, even when widowed.<sup>32</sup> By 1860, a woman's personal settlement was considered merely suspended throughout the duration of her marriage, to be restored to her upon widowhood. This changed interpretation of settlement developed from arguments regarding women's legal competence, ability to head families, and generally to affect their own situations.

Arguments regarding poor relief were always weighted with knowledge of cost and the desire to shift paupers off the parishes' rolls when possible, no matter what the rationale given. Nevertheless the change from an assumption of perpetual dependence to one of interrupted independence is significant, and congruent with developing historical interpretations of women's position in nineteenth-century Scotland. Recent work by David Meredith and Deborah Oxley finds that in general, working-class women in Paisley received a greater share of household resources than similar women in the London satellite Wandsworth in the latter half of the nineteenth century, suggesting a more important economic role for the Scotswomen relative to their husbands and sons.<sup>33</sup> Eleanor Gordon and Gwyneth Nair, examining middle-class women in

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<sup>31</sup> Crowther, 'Poverty, Health and Welfare', p. 275.

<sup>32</sup> Most scholarship regarding coverture has addressed issues of property or citizenship (exclusively addressing English law), but it is evident that settlement fell under the same set of (vague) legal rules. See M. P. Baldwin, 'Subject to Empire: Married Women and the British Nationality and Status of Aliens Act', in *Journal of British Studies*, 40, 4 (2001), pp. 522-56; A. Erikson, 'Coverture and Capitalism', in *History Workshop Journal*, 59, 1 (2005), pp. 1-16; L. Tabili, 'Outsiders in the Land of Their Birth: Exogamy, Citizenship, and Identity in War and Peace,' in *Journal of British Studies*, 44, 4 (2005), pp. 796-815.

<sup>33</sup> D. Meredith and D. Oxley, 'Blood and Bone: Body Mass, Gender and Health Inequality in Nineteenth-Century British Families', in University of Oxford *Discussion Papers in Economic and Social History*, 118 (2013), pp. \*\*.

nineteenth-century Glasgow, find that these propertied Scottish women took surprisingly public roles in society. They were frequently accorded a substantial degree of power in businesses and other financial matters, sometimes even while their husbands or fathers were still living.<sup>34</sup> James Brown himself, Paisley's Inspector of the Poor, had at least three unmarried and self-supporting sisters, which may well have influenced his thinking regarding women's capacities for independent economic action.<sup>35</sup> The existence of these debates around the proper settlement of widows argues that ideas about gender and marriage were far from uniformly settled in favor of women's disability even in the most respectable elements of Scottish society. In the guise of arguments regarding settlement, bureaucrats and judges were articulating their beliefs about their own wives, sisters, and daughters. Elizabeth Cousland's Poor Law case is a microcosmic case study in the nineteenth-century government of Scotland, demonstrating how the local state responded to dual pressures from Westminster and conflicting local interpretations in developing a national practice that reflected fundamentally Scottish values.

The New Poor Law for Scotland is often presented as a near-clone of the English law passed in 1834, but it contained differences that affected the distribution of relief and execution of the law. Most significantly, Article 68 included the provision, 'nothing herein contained shall be held to confer a right to demand relief on able-bodied persons out of employment.'<sup>36</sup> The equation of pauperism with an inability to work prevented the development of a workhouse

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<sup>34</sup> E. Gordon and G. Nair, *Public Lives: Women, Family and Society in Victorian Britain* (New Haven and London, 2003), pp. 161-6.

<sup>35</sup> NRS SC58/42/69, David Brown Testament; Census of Scotland, Paisley Burgh, Middle Church Parish, 1841 & 1861; Ann Brown Testament, 14 May 1908, all access via *Scotland's People*.

<sup>36</sup> An Act for the Amendment and Better Administration of the Law Relating to the Relief of the Poor in Scotland 8 & 9 Vict. c. 83 [Poor Law (Scotland) Act], Article LXVIII.

system in Scotland.<sup>37</sup> Secondly, in Scotland the creation of Poor Law Unions among groups of parishes was an option, not a requirement as it had been in England. Subsequent years showed it was an option rarely taken.<sup>38</sup> Thus, administration of the law remained a local affair and questions of settlement retained currency in Scottish Poor Law debates long after they were a non-issue in England.<sup>39</sup>

These seemingly minor differences had an effect on the entire tenor of poor relief in Scotland as compared to England. Because paupers in Scotland were disabled by definition, Poor Law inspectors spent little energy on humiliating processes to dissuade applicants who were merely lazy. As Ian Levitt observes,

while industrial England in the first part of the nineteenth century directed its attention toward restricting relief in the interests of stimulating its market economy, Scottish attention was directed towards ensuring that all those entitled to relief actually received it.<sup>40</sup>

Balancing the right of relief, however, was the Parochial Board's responsibility to their ratepayers. Because rates were raised locally, they were to be distributed locally, not squandered on every disabled pauper that happened to wander through the parish. Yet it was expected that a person in need would apply for relief in whichever parish he or she happened to be. Thus, a great many of the cases brought to court were, like Cousland's, debates over which parish was obliged

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<sup>37</sup> Paterson, 'Poor Law in Nineteenth-Century Scotland', p. 175.

<sup>38</sup> Paterson, 'Poor Law in Nineteenth-Century Scotland', pp. 176-7.

<sup>39</sup> P. F. Aschrott, *The English Poor Law System: Past and Present*, second edition (London, 1902), pp. 143-7.

<sup>40</sup> I. Levitt, 'The Scottish Poor Law and Unemployment, 1890-1929', in Smout (ed.), *The Search for Wealth and Stability*, pp. 263-4.

to relieve a migrant pauper.<sup>41</sup> The inspectors of the Poor and their clerks spent endless hours in interviews and correspondence attempting to determine to which parish paupers rightly belonged. They parsed the nuances of the law and previous cases, debated the precise moment of forisfiliation (a Scottish term meaning independence from parents), what could be construed as migration and what was simply a temporary absence from home, what constituted a legal marriage, and drew out logical conclusions from expedient interpretations.

These interpretations led toward determination of the pauper's proper settlement, which was assumed by the Poor Law to be readily determined.<sup>42</sup> The Law of Settlement, which predated the New Poor Law by centuries and was supposed to define exactly to which parish an individual belonged, was quite straightforward and maddeningly vague, an English import that sat uneasily on Scottish tradition.<sup>43</sup> It recognized two primary types of settlement: birth and residential. Every Scot was born with a settlement in the parish of his birth, which the new Law made irrevocable. If he should happen to move out of his birth parish after reaching adulthood and live in a new parish for a specified period of time without requesting relief, the birth settlement would be suspended in favor of a residential (sometimes also called industrial) settlement in the new place.<sup>44</sup> The time required to gain a residential settlement had varied over time from three years to seven, and was established at five with the 1845 Act.<sup>45</sup> To maintain his acquired settlement he had to live in the new parish for at least one year in five.<sup>46</sup> Thus, when he was absent from a parish in which he had a residential settlement for four years and one day the

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<sup>41</sup> Crowther, 'Poverty, Health and Welfare', p. 279.

<sup>42</sup> Poor Law (Scotland) Act, Article LXX.

<sup>43</sup> 'The Law of Settlement', in *The Poor Law Magazine*, 3 (1860), pp. 120-1; *Greig vs Carse and Waite* [usually and hereafter referenced as *Prestonpans vs Dunse*] in 'Supreme Court Decisions', in *The Poor Law Magazine*, 2 (1860), p. 469.

<sup>44</sup> 'Law of Settlement', p. 121; *Parliamentary Papers*, Report from the Select Committee on Poor Removal; together with the Proceedings of the Committee, Minutes of Evidence, and Appendix July 1879', p. 961.

<sup>45</sup> Mitchison, *Old Poor Law*, p. 33.

<sup>46</sup> Poor Law (Scotland) Act, Article LXXVI.

residential settlement was lost. Every individual, on any given day, had just one parish of settlement – the trick was to properly determine which parish that was.

The forgoing description uses the male pronoun advisedly. Although the Act of 1845 specified that ‘every word importing the Masculine Gender shall extend to a Female as well as a Male,’ in practice paupers were assumed to be adult males.<sup>47</sup> The principle of settlement rested on the possibility of removal, the physical relocation of paupers to the parishes responsible for maintaining them.<sup>48</sup> The Act required that in the case of a removal to Ireland or England, the ‘poor person, his wife, and such of his children as may not have gained a settlement in Scotland’ would be sent away.<sup>49</sup> The law encouraged parishes to exchange funds, rather than the physical person of paupers, and within Scotland paupers were far more likely to be supported by their parish of settlement while living in a different parish than they were to be sent home.<sup>50</sup> The spectre of removal nevertheless haunted legal debates regarding settlement, bringing with it the potential for forcibly separated spouses and abandoned children. Thus, married women and children derived a settlement assigned to them from the person responsible for them, superseding any settlement based on that dependent’s own personal history. Such ‘derivative’ settlements were supposed to ensure that removal would not separate families.

Alas for the Law of Settlement, applicants’ lives did not always fit into the model imagined by those who wrote it, and the decades following the New Poor Law’s passage saw a plethora of variable policies as the theory of the law was worked out in practice. Women, in particular, applied for relief when they were living outside the model male-headed family, and caused consternation for Poor Law officials. Historians examining the English Poor Law have explored

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<sup>47</sup> Poor Law (Scotland) Act, Article II.

<sup>48</sup> Poor Law (Scotland) Act, Articles LVXXI & LVXXII.

<sup>49</sup> Poor Law (Scotland) Act, Article LXXVII.

<sup>50</sup> Poor Law (Scotland) Act, Article LVXX.

the conflicting gender dimensions of the English Law as women were variously (and sometimes simultaneously) defined as able-bodied workers, inherently disabled workers, and dependent domestic creatures with no proper economic role at all.<sup>51</sup> In Scotland, where Poor Relief was available only to those physically unable to work, the ideological tension over whether or not women ought to be self-supporting was somewhat removed from the question. Respectability was a factor, however, and Andrew Blaikie argues that individuals, particularly unmarried mothers, outside traditional families found it more difficult to gain relief because of the inspectors' or Parochial Boards' moral objections to their status.<sup>52</sup> Conflicting interpretations of Settlement Law regarding these women who were not explicitly included in it opened wide avenues for inspectors to argue that an undesirable pauper did not belong to their parish.

In the Cousland case, there were a large number of parishes that could potentially be considered for the family's settlement. Cousland's first husband, James Hutton, was born in Eastwood, Renfrewshire. The couple (Hutton and Cousland) obtained a residential settlement in Bonhill in August 1843, and two of their three children were born in that parish. Peter McMurrich, Cousland's second partner, was born in Cardross. He had lived in the town of Paisley since 1845, but had moved between the town's two parishes (Paisley Burgh and Abbey), so he had not acquired a residential settlement in either. Cousland and McMurrich's three girls were born in the town (one in Abbey and two in the Burgh parish) and would have birth

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<sup>51</sup> P. Thane, 'Women and the Poor Law in Victorian and Edwardian England', in *History Workshop*, 6 (1978), pp. 30-51; A. Clark, 'The New Poor Law and the Breadwinner Wage: Contrasting Assumptions', in *Journal of Social History*, 34, 2 (2000), pp. 261-81; M. Levine-Clark, 'Engendering Relief: Women, Ablebodiedness, and the New Poor Law in Early Victorian England', in *Journal of Women's History*, 11, 4 (2000), pp. 107-30; L. F. Cody, 'The Politics of Illegitimacy in an Age of Reform: Women, Reproduction, and Political Economy in England's New Poor Law of 1834', in *Journal of Women's History*, 11, 4 (2000), pp. 131-56; M. Levine-Clark, 'The Gendered Economy of Family Liability: Intergenerational Relationships and Poor Law Relief in England's Black Country, 1871 – 1911', in *Journal of British Studies*, 45, 1 (2006), pp. 72 – 89.

<sup>52</sup> Blaikie, 'Accounting for Poverty', p. 203.

settlements there when they reached adulthood. Finally, Cousland and her oldest child were born in Denny, Stirlingshire.

Each of the six parishes could have responsibility for some or all of the family. Inspector James Brown was required to notify immediately the parish(es) where he believed the pauper(s) had settlement, and accordingly he wrote to the inspectors of Cardross and Bonhill shortly after Cousland applied.<sup>53</sup> Bonhill, which had supported the family through an earlier downturn in their fortunes, admitted that the Hutton children had a settlement there. Cardross admitted liability for McMurrich and his son John, but also reported the nature of McMurrich and Cousland's relationship and refused any support for Cousland or her children. When Brown realized that Cousland was legally a widow, he wrote again to Bonhill, where Cousland and Hutton had gained a residential settlement before Hutton's death.

That parish again agreed to an obligation for the children who were born there, but refused support for the widow, citing the case of *Crieff vs Foulis Wester*. This case determined in 1842 (before the passage of the New Poor Law) that a widow could acquire (and thus by implication lose) a residential settlement after her husband's death, and that the resulting settlement would derive to her minor children. The Lord Ordinary in that case argued that a widowed mother, 'whose industry benefits the parish she resorts to', should have a settlement in her own right.<sup>54</sup> Cousland had been absent from Bonhill for more than four years and a day, thus under the principle of *Crieff vs Foulis Wester* had lost the residential settlement in that parish.

When Inspector Brown determined that McMurrich and Cousland were not married, it became evident that the children in the household would have different settlements among them. Illegitimate children derived their settlement from their mother, which might mean that Bonhill

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<sup>53</sup> Poor Law (Scotland) Act, Article LVXXI; 'Arbitration Cases', p. 184.

<sup>54</sup> *Crieff vs Foulis Wester*, 19 July 1842, in *The Scots Revised Reports: Court of Session Second Series*, volume II, 1840-1842 (Edinburgh, 1902), pp. 1148-51.

(which had supported Cousland's children from 1843-44 after Hutton's death and again in 1847-48 when McMurrich was out of work) had bound themselves to continue the relief when needed because the necessary time absent to lose a residential settlement had been re-set by the parish's recent provision of support. If Bonhill was still Cousland's settlement, that parish would be responsible for the younger children as well. Debate over this point may have been the subject of the seven letters Brown wrote to the Bonhill inspector in 1850 and 1851.<sup>55</sup> Bonhill finally agreed to take the case to arbitration in October 1851, the same month that Jean, the youngest Cousland/McMurrich child, died. No other parish agreed to participate in arbitration with Paisley and Bonhill, however, and the correspondence was suspended. Without an infant in the house Cousland did not qualify as 'disabled,' and while she remained officially on the casual list she was not receiving relief for herself.

A decision from the Court of Session a year later threw doubt onto the McMurrich children's claim against Bonhill. Since 1845, Scottish courts had found that even very young fatherless children, like the McMurrichs, had birth settlements that were obligated to support them in case their parents could not. The explanation given for this was that children were a part of their father's family and their need for support was wrapped up in his. When the father was absent, whether due to death, desertion, enlistment or transportation, he was no longer available to be the conduit through which relief flowed to the children. Abandoned and orphaned children became paupers in their own rights, with settlement in their own birth parishes. This principle was tested in the 1851 case of *Barbour vs Adamson*, in which the parishes of Glasgow City and Lochwinnoch contested over the support of a family after the father was transported for theft. Of his five children, only the two youngest were born in Glasgow. The Sheriff's Court that first heard the case determined that Lochwinnoch, the parish of the father's settlement, was

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<sup>55</sup> 'Arbitration Cases', p. 185. Only the dates, not the contents, of these letters have survived.

responsible for the entire family. On appeal, the Court of Session declared that Glasgow City must support the children born there, and that the other children were settled on the parishes of their births.<sup>56</sup> The following year in November, the case of *Hay vs Scott* concluded that a widow's derivative settlement from her late husband did not in turn derive to subsequent children born out of wedlock; such children would also be settled on the parish of their own birth.<sup>57</sup>

These two cases worked to split up responsibility for the Cousland/Hutton/McMurrich family among various parishes. Even if Bonhill was Cousland's settlement, it was not responsible for her McMurrich children. Instead, the parish of the children's birth was liable for them. Paisley Burgh was thus the parish of settlement for 7-year-old Margaret McMurrich, and Abbey would be responsible for 5-year-old Grace. Bonhill admitted settlement for the three Hutton children, and John McMurrich continued to be supported by his father's birthplace, Cardross. The settlements were only of theoretical importance, because James Brown took no new action. Paisley parish continued to carry the family on their casual list, but Cousland had taken several calico printers in as lodgers to the family's two-roomed flat, and all three of her boys were tearing (quite likely for the lodgers), so even before Jean's death any support given to the family was supplemental rather than their only resource.<sup>58</sup>

James Brown was offered a hope of relief from even the potential expense when, in 1853, a bombshell decision created shockwaves across the Scottish Poor Law system. Inspector

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<sup>56</sup> *Adamson vs Barbour*, 30 May 1853, *Reports of Scotch Appeals and Writs of Error, Together with Peerage, Divorce, and Practice Cases in the House of Lords*, Vol. I (Edinburgh, 1855), pp. 376 - 384. See also *Adamson vs Barbour*, 30 May 1853, *Reports of Cases* Vol. II, pp. 86-91.

<sup>57</sup> *Hay vs Scott*, 23 November 1852, *Reports of Cases decided in the Court of Session, Teind Court, Court of Exchequer, Court of Justiciary and in The House of Lords*, from 12 November 1852 to 20 July 1853, Vol. II (Edinburgh, 1853), pp. 36-8.

<sup>58</sup> *The Poor Law Magazine* report maintained that the children of the family 'continued in receipt of relief' from Paisley throughout the duration of the 1850s, but there is no extant record of how frequently or how much the family was paid. 'Arbitration Cases', p. 184. Information about the lodgers and employment from *Census of Great Britain 1851*, Paisley Middle Church Enumeration District 12, p. 16. Size of the flat determined from *Census of Scotland 1881*, Paisley (Middle Church) Enumeration District 56, p. 3.

Ebenezer Adamson of Glasgow City parish carried an appeal of his case against Lochwinnoch to the House of Lords as *Adamson vs Barbour*, insisting that his parish was not responsible for the children of a transported father whose settlement was elsewhere. This move pulled the decision about derivative settlements in the Scottish Poor Law out of Scotland, to be decided by justices more familiar with English precedent.

The Lord Chancellor, Baron Cranworth, declared in the May 1853 decision on *Adamson vs Barbour* that derivative settlements – whether in England or Scotland – were not created by statute law. From the start of the Poor Law, however, in accordance with the principles of coverture, ‘it was assumed that the wife must be with her husband, that children must remain with their father; and that any settlement gained by him was gained, not for himself alone, but for all his family.’<sup>59</sup> Cranworth believed this principle applied to a birth settlement as well as a residential one, drew on precedent from both England and Scotland to support his position, and concluded,

by the law of Scotland...legitimate children during nonage are to be considered as so far identified with their father, that it is to his place of settlement, however constituted that they are to look for relief when they are so circumstanced as to be entitled to relief at all. And I came to this conclusion because any other interpretation of the laws of settlement would or might lead to a harsh and violent severance of the domestic tie.<sup>60</sup>

The *Adamson vs Barbour* decision, based on a fear of family separation through removal, thus established a policy that an entire pauper family must have one settlement, based on the male

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<sup>59</sup> *Adamson v Barbour, Reports of Scotch Appeals*, p. 378.

<sup>60</sup> *Adamson v Barbour, Reports of Scotch Appeals*, pp. 382-3, emphasis in original.

head of the household. In Paisley, for the Cousland/McMurrich family, it meant that the McMurrich children and their mother (not to mention the Hutton children) should not have different settlements. Without willingness to cooperate from other parishes, however, Brown seems not to have pursued any new action in the immediate wake of *Adamson vs Barbour*.

Nevertheless, the case unleashed a flood of Poor Law decisions from the Scottish Courts in the years that followed that would ultimately have bearing on Cousland's case. The first, *Gibson vs Murray*, in June 1854, explicitly addressed the question of widows' settlements and how they would transfer to children. In the case, a widow's late husband, born in England, had no settlement in Scotland. The decision in *Adamson vs Barbour* prohibited the children of the union from being settled in the parish of their own birth. The question became: could a married woman somehow retain a birth settlement in Scotland if her husband did not provide her with a derived one?<sup>61</sup>

The justices revisited some arguments from *Crieff vs Foulis Wester*, including the idea that the death of a husband dissolved an entire family, which was then possibly reconstituted as a new family with the widowed mother as its head, from whom settlement could flow.<sup>62</sup> One of the justices considering *Gibson*, Lord Curriehill, argued in opposition to this precept by pointing out the legal disabilities a widow still suffered.

The death of a father leaving children in pupillarity has not the effect of transferring to their surviving mother the rights and powers of a father. She is not their guardian, and cannot interfere in the management of their affairs. She does not succeed to them in the event of their death without issue. The law does not view her residence as their home;

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<sup>61</sup> *Gibson vs Murray*, 13 June 1854, in *The Scottish Jurist: Reports of Cases Decided in the Supreme Courts of Scotland, and in The House of Lords on Appeal from Scotland*, vol. XXVI (Edinburgh, 1854), pp. 489-93.

<sup>62</sup> *Gibson vs Murray*, p. 490.

and their tutors, if they have any, regulate their education, and fix their place of residence. And although, while they are under seven years of age, the law generally prefers the widowed mother's claim to the custody of the persons of the fatherless children, yet this is only to secure for them a continuance of maternal care during their tenderest years. Even then she cannot insist upon continuing that charge, if she enter into a second marriage, or do anything which unfits her for the charge... The position of pauper children, therefore, in reference to their mother, is not materially altered by the death of their father; and I can see no principle for holding that event has, *per se*, and instantly, the effect of depriving them of the settlement, whatever it may be, which previously belonged to them.<sup>63</sup>

The Lord Justice-Clerk agreed with Curriehill, admitting, 'it seems to me to be entirely repugnant to the leading principle of the relation of marriage formed between the spouses, to hold that the maiden settlement of the wife can be the settlement of the children of the marriage.'<sup>64</sup> The justices' assumption regarding marriage in this case was that women had an inherent disability in the relationship and could not function as male-substitutes in the absence of their husbands.

While *Gibson vs Murray* ultimately concluded that without an identifiable settlement for a father, even legitimate children could derive a settlement from their mother, a case decided only a few days later set a precedent of female dependence that was to be immensely significant for Elizabeth Cousland. The case of *Hay vs Thomson and Manson* concerned a widow without a residential settlement either from her husband or acquired after his death. The court determined

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<sup>63</sup> *Gibson v Murray*, p. 491.

<sup>64</sup> *Gibson v Murray*, p. 492.

quite readily that marriage united man and wife to the extent that she took on his birth place, and it was held ‘that the parish of the husband’s and not of the wife’s birth, is liable for the relief of the pauper widow.’<sup>65</sup>

Six months after the *Gibson vs Murray* and *Hay vs Thomson and Manson* decisions, and a few months after the youngest of the Hutton children turned twelve and was no longer eligible for relief through the Bonhill connection, James Shaw Brown was pulled into the debate over widows’ settlements when his neighbor inspector, Robert Robertson of Abbey Parish, insisted that Paisley Burgh was responsible for the settlement of Cornelia Kerr Boyd, the English-born widow of Matthew Boyd. The late Mr Boyd had been born in Renfrew parish and moved to Paisley ultimately to become provost of the Burgh. After his death his widow returned to her native England for a number of years, came back to settle in Abbey parish in 1848, and fell into poverty. Abbey parish, certain that the widow was not theirs, brought the inspectors of both Paisley and Renfrew parishes into the Renfrewshire Sheriff’s Court. The sheriff, unable to arrive at a satisfactory conclusion, pushed the case upward to the Court of Session where it was heard in December 1854. At both levels the claim against Paisley was quickly dismissed as neither the widow nor her husband had lived long enough in the Burgh parish to acquire a residential settlement. The question was, could this respectable Englishwoman be banished to her own birthplace, or had she acquired her husband’s birth settlement along with her marriage vows? The sheriff-substitute had hesitantly determined that she had.

He has formed his opinion from the consideration that the relations of a wife to her husband are much more intimate than those of children to a father; and he grounds it on the assumption that the wife has not acquired this settlement since her husband’s death,

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<sup>65</sup> *Hay vs Thomson and Manson*, 23 June 1854, in *The Scottish Jurist*, vol. XXVI, p. 541.

but has only retained that which she actually possessed during his life. He thinks that on her marriage she acquired all the rights of personal status which her husband had, and that this right of settlement by birth was one of them.<sup>66</sup>

At the Court of Session the Lord President – the highest justice in the nation – was much more confident in referring to both *Hay vs Scott* and *Hay vs Thomson and Manson* to declare, ‘it is now a settled point that the widow takes the benefit of the husband’s settlement whether residential or birth.’<sup>67</sup> Lord Ivory, who was also hearing the case, came to a similar conclusion but added a caveat: ‘the doctrine of the union of marriage I could not carry the length the Lord Ordinary has done. It is dissolved at death, and we cannot, by supposing what might have happened, get out of the difficulty.’<sup>68</sup> In spite of this hesitation regarding the duration of the marriage bond, the Court reaffirmed the principle that an impoverished widow in last resort relied on her husband’s birth settlement, not her own.

At the end of 1854 it is worthwhile to step back from the maelstrom of cases and decisions generated from the New Poor Law and consider how the local state arrived at the position of discussing the nature of marriage and women’s legal existence within it. The Poor Law for Scotland began with a premise that all Scots, male or female, were equal under the law.<sup>69</sup> *Hay vs Scott*, like the earlier *Crieff vs Foulis Wester*, moved in the direction of considering a family as a collection of individuals rather than an indissoluble whole enshrouded

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<sup>66</sup> *Robertson vs Brown and Stewart*, 12 December 1854, in *The Scottish Jurist: Reports of Cases Decided in the Supreme Courts of Scotland, and in The House of Lords on Appeal from Scotland*, vol. XXVII (Edinburgh, 1855), p. 59, emphasis in original.

<sup>67</sup> *Robertson vs Brown and Stewart*, p. 61.

<sup>68</sup> *Robertson vs Brown and Stewart*, p. 61.

<sup>69</sup> Poor Law (Scotland) Act, Article I.

in the legal persona of the husband/father. Women in nineteenth-century Scotland, as Lord Curriehill detailed in *Gibson vs Murray*, had the same legal disadvantages as elsewhere in Britain and across Europe, but men in Scotland had personal experience with women who were capable and independent. Gordon and Nair found in Glasgow that

Women's money supported family firms; women were major investors in enterprises like the railways. Some women ran successful small (or occasionally large) businesses.

Women owned property; they employed lawyers and accountants; they administered large estates... The middle-class women of Victorian Glasgow were by no means without money, control of money, and the power that goes with it.<sup>70</sup>

In Paisley, James Shaw Brown had four sisters, and in 1837 they were left equal shares in their father's estate with their two brothers, their inheritances protected by the language of the testament against seizure or control from future husbands.<sup>71</sup> In spite of this protection, at least three of the Brown sisters never married. Two went into business dressmaking and the third expanded her property to such an extent that she was able to live off the rents and leave an estate of more than £4000 at her death in 1907.<sup>72</sup> Middle-class Scotsmen realized the expediency and propriety of *femme covert* during marriage, but all evidence suggests that many of them readily accepted the idea of women with a legal and economic identity that was independent of a husband or father.

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<sup>70</sup> E. Gordon and G. Nair, 'The Economic Role of Middle-class Women in Victorian Glasgow' in *Women's History Review*, 9, 4 (2000), p. 810. It is probable that men elsewhere in Britain and across Europe had similar experiences with women; the evidence of those experiences has yet to find its way into academic scholarship.

<sup>71</sup> **David Brown, Testament.**

<sup>72</sup> *Watson's Commercial Directory and General Advertiser for 1862-63* (Paisley, 1862), p. 21; NRS, SC58/45/16, Ann Brown Registered Trust, Disposition & Settlement, 1908, Paisley Sheriff Court Wills [accessed via *Scotland's People*].

*Adamson vs Barbour*, which the Lord Justice-Clerk hearing *Gibson vs Murray* denounced as ‘introducing a new [English] rule into the law of Scotland’ and as being based on expediency that unsettled all legal principles, disrupted the Scottish inspectors’ understanding of the legal landscape they inhabited.<sup>73</sup> Faced with a complex problem and a lack of centralized guidance except through the courts, the administrators of the Poor Law reacted with a method familiar in nineteenth-century Britain – they formed a society. In the mid-1850s Poor Law inspectors began to consolidate themselves into first regional and then a national Society of Poor Law Inspectors of Scotland. After 1855, contested cases that might previously have ended in court were debated among a group of inspectors at quarterly Society meetings, or were agreed to be brought to arbitrators rather than to a court. The Society began to publish a journal, *The Poor Law Magazine for Scotland*, in 1858, and to include in it not only synopses of court cases but also records of the arbitrations and debates it believed would interest its members.

In 1861 an editor of *The Poor Law Magazine* recalled the difficult days after the new law’s passage, when tensions were high between old managers of the poor and the new crop of inspectors, and several Parochial Boards were so frequently engaged in litigation that they retained law agents on salary. He cheerfully reported that since the establishment of the societies, ‘the jealous feeling which used to prevail, is now almost wholly eradicated’. Instead of ‘the asperity which used to have a permanent place in the correspondence of inspectors’, the men met ‘each other openly, and as equals...and whilst they still differ[ed] they [did] so with a full regard to each other’s honesty of purpose’.<sup>74</sup>

James Brown’s actions regarding Elizabeth Cousland modelled the process preferred by the Society. While support for the family was clearly in contest, Brown never moved to take the

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<sup>73</sup> *Gibson vs Murray*, p. 492.

<sup>74</sup> *The Poor Law Magazine for Scotland*, 4 (1861), pp. 82-4.

case into court. Instead, he continued to keep Cousland and her younger children on his casual list and to pursue new avenues for their relief as cases made them apparent. His active interest in the Cousland case revived in late 1856, spurred by two factors. First, the case of *Hay vs Thomson and Beattie* (May 1856) settled definitively that an illegitimate child took the settlement of its mother, no matter how that settlement was obtained.<sup>75</sup> For Brown, this was a new opportunity to find support from outside Paisley for the McMurrich children. Second, it is possible that he saw further expense for Paisley from the family on the horizon. By early 1857 at the latest, Cousland had a new lover.<sup>76</sup>

Brown began to focus on establishing Cousland's settlement in light of the decisions since *Adamson vs Barbour*, and in February 1857 considered her birth parish, Denny, as potentially liable for her support for the first time. Denny's inspector confirmed that the pauper had been born in his parish, but refused any reimbursement to Paisley on the ground that the widow must rely on her late husband's settlement. James Hutton had been born in Eastwood, Renfrewshire, and Brown also wrote to that parish's inspector, who refused payment with no explanation.<sup>77</sup> At the same time, Inspector Brown was embroiled in another case that had a bearing on Cousland's position. Though he was reluctant to carry cases into court, Brown did regularly seek judicial opinion regarding knotty cases with his fellow inspectors to determine proper settlement. The second issue of *The Poor Law Magazine* included an opinion rendered by Mr Sheriff Bell of the Lanarkshire Sheriff's Court on a case contested between Brown, Robert Robertson of Abbey Parish, and Ebenezer Adamson of Glasgow City.

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<sup>75</sup> I have not been able to locate the arguments for *Hay vs Thomson and Beattie*; the decision in the case is referenced in *Prestonpans vs Dunse*, p. 428.

<sup>76</sup> PCL, *Paisley Poor Law Records*, Statements of Cases, vol. 11/6, Statement 4402.

<sup>77</sup> 'Arbitration Cases', *The Poor Law Magazine* 3, p. 185.

The inspectors agreed on the following order of events: the pauper was born Margaret Lochhead in Abbey Parish in 1808. At eighteen years old she married Charles Lang, a lifelong resident of Paisley Burgh Parish. She moved into a residence with him in that parish, obtaining with her marriage a derivative settlement in Paisley Burgh. Lang died in 1835 and his widow returned to Abbey Parish, but retained the settlement in Paisley.<sup>78</sup> If she had remained a widow and lost all residential settlements, her settlement of last resort would have been in Paisley, based on her husband's birth there. However, it was difficult to survive as a widow in nineteenth-century Scotland and Margaret was still a young woman. In 1838 she married Andrew Brown. Brown was Irish by birth, and had immigrated with his parents to Scotland in 1817, when he was eight years old. He resided in Abbey Parish with his family until his marriage to Margaret. By that time he had secured a residential settlement in Abbey, which derived to Margaret with their marriage. Retaining a residential settlement, however, required residence in the parish for at least one year in five. In the case of an immigrant like Brown, who had no birth settlement in Scotland, the loss of a residential settlement meant that he and his family could be removed to Ireland if they applied for relief before another settlement was gained.

Either unaware or dismissive of the danger to their settlement, the Browns moved from Paisley to Glasgow's Barony Parish a year after their marriage. Just a few days after the move Andrew enlisted in the 64<sup>th</sup> Regiment of Foot and was soon sent abroad. He did not return to Scotland in his lifetime, dying at sea between Bombay and Chatham in 1853. Margaret, unsupported by her husband for fifteen years, found work as a fringer and winder, living in a series of lodgings in Glasgow City Parish. She was usually able to support herself, but for a month in 1847 and three weeks in 1850 she was ill and applied to the City Parish for temporary

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<sup>78</sup> This and all other details of Margaret Brown's case come from Mr Sheriff Bell, 'Opinion' in *The Poor Law Magazine*, 1 (1858), pp. 94-100. Mrs Brown is referred to by her given name to avoid confusion with Mr James Brown.

relief, which was granted. Her final illness (diagnosed only by her primary symptom, dropsy), beginning less than a month after her husband's death in 1853, rendered her unable to work. In May 1854, then 46 years old, she returned to Paisley Burgh, where she was supported by her relatives. She became either too ill or too expensive for those relatives to maintain, and she applied for relief from Paisley on 6 February 1855. James Brown was certain that Margaret Brown was a deserving pauper but did not properly belong to Paisley Burgh Parish. He suggested to Ebenezer Adamson that Glasgow City ought to support Mrs Brown 'in respect of a residential settlement.' Glasgow refused to admit the pauper, 'and subsequently a claim was made on Abbey, the parish of the pauper's birth, which was also refused.'<sup>79</sup>

In both these applications to Glasgow City parish and to Abbey, Brown was claiming a settlement for Margaret in her own right, rather than relying on the derivative settlements from either of her late husbands. He claimed that, first, 'a married woman whose husband is a foreigner and has no settlement in Scotland, may acquire a settlement for herself by her own residence, apart from her husband during his lifetime.'<sup>80</sup> From this reasoning, Glasgow City parish should have reimbursed Paisley for Margaret's costs based on her many years of residence there, in spite of her concurrent marriage to a husband who did not have a Glasgow City settlement. Secondly, he argued, 'if there is no residential settlement open to the pauper, the parish of her own birth is primarily liable.'<sup>81</sup> Under this argument, Abbey parish was responsible for Margaret because of her birth there, just as it would have been for a male pauper.

The Glaswegian inspector, Adamson, maintaining his perspective that a family settlement derived inevitably from a male head, countered that in fact a woman could not obtain a residential settlement of her own while apart from her living husband. He continued that soldiers

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<sup>79</sup> Bell, 'Opinion', p. 95.

<sup>80</sup> Brown based this argument on *Thomson vs Knox*, 28 June 1850. Bell, 'Opinion', pp. 95-6.

<sup>81</sup> Brown based this argument on *Hay vs Skene*, 13 June 1850. Bell, 'Opinion', p. 96.

were exempt from residency requirements because their absence was compulsory. Andrew Brown, therefore, in spite of his fifteen-year absence, had never lost his residential settlement in Abbey Parish. Margaret Brown, in Adamson's estimation, had her settlement in Abbey Parish because it derived from her late second husband, not through her own birth.<sup>82</sup>

Robert Robertson, Abbey Parish's inspector, brought in a point that the Paisley inspector had neglected to consider: that Margaret had been married twice. Robertson agreed with Brown that a married woman could acquire a settlement apart from her husband, in the peculiar circumstance of marriage to an immigrant and subsequent abandonment, and he also maintained that enlistment was itself a voluntary act, therefore Andrew Brown's absence was not involuntary and he had relinquished his Abbey settlement while in India. However, Robertson then brought to bear cases from the early 1850s, including *Hay vs Scott*, *Adamson vs Barbour* and *Hay vs Thomson*, culminating in the 1854 Robertson vs *Stewart and Brown* decision that a widow reverted to her husband's birth settlement, and added the claim that if a second husband had no birth settlement then the first husband's settlement should apply. Thus, he argued that death and even remarriage did not necessarily sever the bond of a derivative settlement. Robertson therefore allowed that Margaret, as a deserted wife, may have acquired a residential settlement in City parish in her own right (that point would have to be settled by Sheriff Bell, the arbitrator), but she had lost both potential settlements in Abbey – her own birth settlement through the act of marriage, and her second husband's residential settlement due to his long absence from the parish. Her first derivative settlement, in Paisley, had to be seriously considered.

Sheriff Bell, on hearing all sides, did not fully agree with any of the positions. He thought it was possible that an abandoned married woman could obtain her own residential settlement –

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<sup>82</sup> Bell, 'Opinion', p. 96.

the point was as yet undetermined by law and would continue to plague the courts for the rest of the century – but Margaret Brown had not in fact gained such a settlement due to her repeated illnesses.<sup>83</sup> When she drew casual relief in 1847 and 1850, she interrupted her progress toward earning a residential settlement, regardless of whether or not that settlement was possible.

The question of which of her husbands' birth settlement should apply (given that Margaret had certainly not gained a residential settlement of her own) was more easily settled in Bell's mind. Andrew Brown had voluntarily abandoned his family through enlisting, he maintained, and thus had lost his residential settlement in Scotland. Similarly, Margaret had voluntarily surrendered the derivative settlement gained from her first husband when she re-married. Bell found Robertson's theory that Margaret could revert to her first husband's settlement invalid, meaning that Scottish-born Margaret should be tied to her late husband's birth settlement in Ireland. In addition to the potential injustice of removing a native Scotswoman to another nation, there was no hope of reclaiming Paisley's costs from an Irish parish. If at all possible, a properly Scottish settlement had to be found for the widow. Thus, Bell pronounced that the law did not in fact *end* a woman's own personal settlement at marriage: it only *suspended* it. When or if she no longer had a derivative or residential settlement, her own birth settlement would again become active. The Sheriff's final decision was that Abbey Parish had to bear the cost of care for Margaret Brown because of her birth there.

Bell delivered his opinion in his chambers on 15 September 1858. When he did, Elizabeth Cousland was tending to her seventh child, a boy born in October 1857. She still was not married, and the infant's father, John McFarlane, had died soon after his son's birth.<sup>84</sup> Armed

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<sup>83</sup> Between 1875 and 1902 there were six (often contradictory) Supreme Court decisions on the issue of settlement for deserted wives in Scotland. *The Scots Digest of the Cases Decided in the Supreme Courts of Scotland*, 1873 to 1904, vol. II (Edinburgh, 1905), pp. 1562-3.

<sup>84</sup> PCL, *Paisley Poor Law Records*, Statements of Cases, vol. 11/6, Statement 4402.

with Bell's decision that a widow could fall on her own birth settlement, Brown reinvigorated his quest for a proper settlement for Cousland's brood. Perhaps convinced that he would not persuade any individual parish to agree unilaterally to responsibility for the family, he began attempting to arrange an extra-judicial settlement similar to the one regarding Margaret Brown. He obtained agreement from the inspectors of Cardross, Bonhill, and Eastwood to participate in an arbitration overseen by the MP for Greenock and author of *Treaties on the Scottish Poor Law*, Alexander Murray Dunlop.<sup>85</sup> Denny's Parochial Board twice refused to join with the other parishes, even when directly requested by Dunlop to do so in early May 1860.<sup>86</sup> At last, the other four parishes agreed to move forward without Denny's cooperation.

The inspector of Cardross likely had little fear going into the arbitration that Cousland's settlement would be found to be in his parish. Cardross had already admitted liability for Peter McMurrich, and had paid support as needed for McMurrich's one son born in wedlock. Dunlop concluded that because McMurrich and Cousland were not legally married, neither the mother nor the children had gained a derivative settlement from the father's parish. While McMurrich had provided financial and presumably emotional support to Cousland and her children, that relationship did nothing to alter her legal status. Without a marriage, other social and biological relationships had no effect on settlement.<sup>87</sup>

Dunlop had to be more creative in his analysis of Bonhill's position. Cousland and her husband Hutton had held a residential settlement there, and two of their three children were born in the parish. Dunlop maintained that the derivative settlements enjoyed by children were separate from those granted to wives or widows; that Bonhill's admission of liability for the

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<sup>85</sup> J. Foster, *Members of Parliament, Scotland, 1857-1882* 2<sup>nd</sup> ed. (London, 1882), p. 116.

<sup>86</sup> Falkirk Archives, A821.00/02, Denny Parochial Board Minutes, 10 January 1859 and 14 May 1860.

<sup>87</sup> The development of this precedent was summarized in 'On Birth Settlement', in *The Poor Law Magazine*, 11 (1869), pp. 145-6.

Hutton children in 1848 did not imply any responsibility for their mother, Hutton's widow, nor therefore for her subsequent children out of wedlock. Cousland's own residential settlement in Bonhill, gained in tandem with her first husband, was held to have lapsed due to her absence after 1844, as permitted in *Crieff vs Foulis Wester*. The legitimate children of her marriage, however, continued to derive their settlement from their late father until they were old enough to be considered forisfamiliar. This decision, separating a woman from both her late husband's and her legitimate children's settlements, may simply have been legal contortions to prevent parishes having to pay for an irregular family's support. However, it was also a salvo in the argument regarding women's settlements and a challenge to the *Adamson vs Barbour* principle of settling an entire family in the same parish.

With Cardross and Bonhill managed, Dunlop was left with only Eastwood to consider, which he disposed of in a sentence. Yet that sentence was dependent on a Supreme Court case that had been concluded only months earlier and overturned a half decade of decisions since *Hay vs Thomson*. From the arguments advanced in the *Robertson vs Stewart and Brown* and *Margaret Brown* cases, both of which Paisley was involved with and which overlapped chronologically with Cousland's case, it was reasonable for Inspector Brown to expect that Hutton's birth parish, Eastwood, would be responsible for his widow. By the time Cousland's case came to arbitration, however, the legal landscape had changed. The case of *Prestonpans vs Dunse*, heard before the Scottish Supreme Court in February 1860, determined that

a widow who has lost a residential settlement possessed by her late husband at his death, and has not acquired another by her own residence or remarriage, has, on falling into

poverty, her settlement in the parish of her own birth, and not in the parish of her deceased husband's birth.<sup>88</sup>

The arguments in support of this decision were vehement regarding the capacity of women to affect and maintain their own settlements. They included this statement from John Waite, Poor Law inspector for the parish of Dunse, worth quoting at length:

The pervading idea which forms the foundation of the whole argument for [linking a widow to her husband's birth settlement] is, a supposed identification of husband and wife, enduring even after the death of the husband.

It is understood that this was, at one time, a doctrine of the law of Hindostan, but the defender must take leave to deny that it ever was a part of the law of Scotland. It is common enough to hear it said, that during the subsistence of a marriage, the personality of a wife is sunk in that of the husband, and the saying is undoubtedly true, in so far, at all events, as the law of settlement is concerned. But it is equally true, that on the husband's death, the *persona standi* of the widow again takes place. She becomes again a free woman, at least equally mistress of herself as before marriage, and equally capable of acquiring, or of losing a settlement. Why then should her future settlement be made to depend not upon her own acts, and upon facts connected with her own individual history, but upon vague and uncertain conjectures as to what would have been the settlement of her deceased husband if he had survived?<sup>89</sup>

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<sup>88</sup> *Prestonpans vs Dunse*, pp. 420-1; 'Arbitration Cases', p. 186.

<sup>89</sup> *Prestonpans vs Dunse*, p. 424.

It was argued in contrast that,

so long as [a pauper] remains a widow, and does not acquire for herself a new settlement, she is to be so identified with her late husband that her settlement is to be regulated in the same manner as if he were still alive and residing with her.<sup>90</sup>

The written arguments for both sides were laid before the whole court (twelve justices, plus the Lord President), who submitted six opinions between them.

The minority justices based their arguments by and large on the legally slippery term of settlement and what exactly was ‘derived’ to a wife and then a widow. Their assumption was that the woman’s legal persona was extinguished by marriage: ‘the right which she acquires through her marriage is a right to all the contingent rights that belong to him.’<sup>91</sup> They thus developed interpretations of what ‘would have come into operation had he been the pauper’, and statements such as, ‘the widow is, derivatively just the husband surviving’.<sup>92</sup> They were concerned with the settlement of any children (although there were none in the case), raising again the bugaboo of *Adamson vs Barbour* and the fear of separated families.<sup>93</sup> The majority opinions, in contrast, focused on the meaning and duration of the marriage bond, arguing that while a wife did assume her husband’s persona during marriage, as Lord Curriehill wrote ‘the dissolution of the marriage by her husband’s death restores her to a position as distinct and independent as that of an unmarried person. She is once more unmarried when the marriage tie has been dissolved.’<sup>94</sup> A

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<sup>90</sup> *Prestonpans vs Dunse*, p. 430.

<sup>91</sup> *Prestonpans vs Dunse*, p. 459.

<sup>92</sup> *Prestonpans vs Dunse*, p. 459 (emphasis in original), p. 468.

<sup>93</sup> *Prestonpans vs Dunse*, pp. 468-9.

<sup>94</sup> *Prestonpans vs Dunse*, p. 462.

widow's settlement might change 'not because of anything which her husband might have done if he had lived, but because of what this woman did'.<sup>95</sup>

Although it was a 7-6 decision, the Court's conclusion reflected an understanding of even poor women as fully capable and responsible for their own affairs. This interpretation was readily embraced by Mr Dunlop, who immediately excused Cousland's late husband's birth settlement, Eastwood, from liability for the widow. 'The claim against Eastwood can no longer be maintained, since the decision by the whole Court in the case of *Prestonpans* and *Dunse*.'<sup>96</sup> He declared finally, 'I am therefore of opinion that the claim of the inspector of Paisley cannot be sustained against any of the three parishes'.<sup>97</sup> Because Paisley had agreed to abide by the arbitrator's decision, Paisley alone was responsible for the expense of supporting the pauper and her children.

Following the conclusion of the arbitration, James Brown did not pursue the case against Denny, although he potentially had the grounds for a court case. He was no doubt embroiled in the economic collapse that gripped the cotton industry in general and Paisley in particular in the late 1850s and early 1860s, and had in any event a long-standing preference for working through the informal systems of the Poor Law rather than the courts. His authority on issues of relief was well respected across Scotland, so much so that he was called again to testify for a Parliamentary Select Committee examining the Poor Law in Scotland in 1869 and was remembered with a loving obituary in *The Poor Law Magazine* upon his death in 1876.<sup>98</sup>

Brown may also have been willing to let the Cousland case drop because she was no longer his problem. Her last child, the McFarlane boy, was born in a two-roomed flat on Cotton

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<sup>95</sup> *Prestonpans vs Dunse*, pp. 463-4.

<sup>96</sup> 'Arbitration Cases', p. 186.

<sup>97</sup> 'Arbitration Cases', p. 186.

<sup>98</sup> *Parliamentary Papers*, Minutes of Evidence Taken Before the Select Committee on Poor Law (Scotland), 18 June 1869, pp. 291-314; 'The Late Mr James Shaw Brown.'

Street in Abbey Parish. The census of 1861 showed her calling herself Elizabeth McMurray and that she and her three teenage daughters were all employed in the town's mills. Ten years later she remained in Abbey and was married, still with her youngest son and raising a grandchild.<sup>99</sup> Though her husband was unemployed, she was working as a winder, her son was a message boy, and her 7-year-old grandchild attended school. In spite of her near-decade as a casual pauper in Paisley while she had a young family and no male partner, she had come through without being removed, incarcerated, or separated from her children. She died in 1883 of probable heart disease.<sup>100</sup>

Elizabeth Cousland's case spanned a full decade, over which time legal interpretation of her position shifted. It was reasonable in 1850 for Inspector Brown to pursue the parishes in which both her late husband and the father of her younger children had settlements, and to virtually ignore Cousland's own birthplace. A decade later, the legal precedent existed conclusively to deny the applicant any settlement based on her relationships and instead cast her onto her own history and the good graces of the parish that first recognized her need. The case was complicated not only by Cousland's irregular marriage status but also by the changing legal landscape against which it was played out and the conflict between English and Scottish interpretations of coverture and settlement. The local state model of government allowed the Poor Law inspectors considering her case to bounce potential responsibility for her around almost endlessly. In the absence of any meaningfully centralized administrative structure, every case had to be considered individually at the local level, with decisions based on the inspector's own individual interpretation of the law and subsequent court decisions, seasoned by their preconceptions about the proper structure of society. It was not an efficient system, but by

<sup>99</sup> NRS 559/010014, *Census of Scotland*, Abbey Parish, 1861, 1871, White, J – Cousland, Elizabeth, *Statutory Marriages 1865* [accessed via *Scotland's People*].

<sup>100</sup> NRS 579/000772, Elizabeth White, *Statutory Deaths*, 1883.

prioritizing local decision making it fostered a set of best practices that reflected Scottish understanding and ultimately Scottish ownership of the system. When, in the mid-1860s, the Board of Supervision did begin to require more uniformity across the system, the practices imposed were founded on the nearly two decades of informal national consensus-building that came before.