books of the bank fairly falling within the general scope of this remit which either party may request him to report."

Now, a very important matter for consideration is the accountant to whom this remit is to be made; and we shall very willingly name any gentleman that the parties can agree upon. If they can agree upon a person, we should consider it a great relief to the Court; but otherwise, of course, we must name some one ourselves.

SOLICITOR-GENERAL—Probably your Lordships will give us time to confer upon that.

Mr MILLAR—On the part of the pursuers, I should very much prefer that your Lordships should take the appointment into your own hands. I am not prepared to do anything which may be regarded as a recognition or adoption of the course which your Lordships have thought fit to take in regard to this matter. But I don't object to the proposal to continue the case for a day.

LORD JUSTICE-CLERK—Do you think that because the counsel suggest to the Court a good man to appoint under this remit your clients would thereby be prejudiced?

Mr MILLAR—I am warned by a case which occurred in the First Division of the Court, in which, because one of the parties took part in the adjustment of the issues, it was held elsewhere that he was precluded from taking any objection to the issues afterwards.

Lord COWAN—All risk of that may be entirely prevented by a saving clause inserted in the interlocutor, or by a minute. The object of the Court is, that the person to whom the remit shall be made for this preliminary inquiry should be one in whom both parties have confidence.

SOLICITOR-GENERAL—The parties must necessarily take some part in it, because on both sides we have been largely in consultation with accountants.

Lord NEAVES—It cannot in the least compromise the pursuers. In the case to which Mr Millar refers, the party who was held to be compromised had truly given in an issue.

Mr MILLAR—He objected to the issue of the other party, but he made certain suggestions for the improvement of it in point of expression.

Lord NEAVES—Did he not make these in writing? Nothing here is going in writing.

SOLICITOR-GENERAL—I would suggest that the inquiry should not be limited to the books of the bank, as is done in the interlocutor as read by your Lordship, but that it should extend to the relative accounts and documents.

LORD JUSTICE-CLERK—Surely; we will make it "books and relative documents."

Mr SHAND—I think anything beyond the books would be going into proof.

Lord NEAVES—Surely the bills referred to in the bill-book must be looked to.

LORD JUSTICE-CLERK—It seems to me unnecessary to say in the interlocutor anything more than the books, because what the accountant is directed to report could not be reported without examining the documents that the books refer to, and which are referred to in the books. Then we will let the case stand over till next week, that you may consider as to the person to whom the remit should be made.

Mr MILLAR—Perhaps your Lordships will allow us to see the draft of the interlocutor.

LORD JUSTICE-CLERK—Certainly; and we have no objection to the parties suggesting any error in figures or dates that may occur to them, but the substance of the interlocutor we will not touch.

Lord JUSTICE-CLERK—Then, in the case of the Western Bank against James Baird, the course which the Court intend to follow is substantially the same as in the case of William Baird's trustees, and the interlocutors to be pronounced will be the same down to the remit, and the remit will be in these terms—[Reads.]

Mr MILLAR asked for expenses, on the ground that the pursuers had substantially succeeded.

Expenses reserved.

On a subsequent day the Court made the remit to Mr Charles Pearson, C.A., Edinburgh.

Agents for Pursuers—Morton, Whitehead, & Greig, W.S.

Agents for Defenders—Webster & Sprott, S.S.C.

HEWAT *v.* HUNTER.

Poor—Settlement—Residence. Held that absences from a parish for several months at a time in the course of the year by a person engaged in service, even although he had a house and a wife and children resident in the parish, interrupted the continuity of his residence so as to prevent him acquiring a settlement by residence under the 76th section of the Poor Law Amendment Act.

This is an advocation from the Sheriff Court of Kirkcudbright. The advocator, inspector of the parish of Kelton, sued the respondent, inspector of the parish of Tongland, for the sum of £12, 5s., being the amount of aliment advanced to a pauper who had become chargeable on the parish of Kelton, and for future sums to be expended on his maintenance. The pauper was born in the parish of Tongland. In 1856 he removed to the parish of Kelton with his wife and family, and they resided there continuously until 1864, when he became chargeable upon Kelton. Between these dates the pauper had been absent for considerable periods at a time from the parish of Kelton. In Martinmas 1856, the date of his removal to Kelton, he went to service in Buittle parish, and after residing there for about a year he returned to Kelton. In 1858 he went to the parish of Kirkgunzeon, where he was engaged from March to August, and was employed until the 1st of May at any farm work he was told to do. Between March 1858 and August 1862 he entered into and fulfilled several separate contracts of service for periods of three, four, or five months duration in different parishes. During the currency of these contracts he never visited or resided in the parish of Kelton, except for a day or a night occasionally, and with his master's permission. In these circumstances, the question was, whether the continuity of the pauper's residence in the parish of Kelton for the five years subsequent to Martinmas 1857 was effectually interrupted by his residence in these other parishes? The Steward-Substitute held that it was, whether as regards the nature or duration of the absences, and accordingly found Tongland, as the parish of his birth, liable. The Sheriff altered, holding that the pauper must be held to have resided for five years continuously inthe parish of Kelton prior to becoming chargeable in the sense and meaning of the 76th clause of the Poor Law Act. The inspector of Kelton advocated.

A. R. CLARK and GUTHRIE SMITH for him argued—By residence the statute means personal presence in the parish—not the tenancy of a house by one's wife and family when he is living elsewhere. The doctrine of constructive residence

would introduce confusion into the law. This was not even the case of a sailor or commercial traveller, who had a house in one parish and no competing residence elsewere, but whose business frequently took him from home. The pauper's absence at his work could never be held incidental to his residence in Kelton, because he was under contract to live out of the parish for months at a time. No man could reside in more than one parish at a time. Here the residences during each winter in Kelton were so many distinct and independent residences, each commencing after the work, "for the season" during the summer was over. Hamilton *v.* Kirkwood, Nov. 13, 1863, 2 Macp. 107; Macgregor *v.* Watson, Mar. 7, 1860, 22 D. 965; Hodgert *v.* Petrie, 1 P. L. Mag. 9; Beattie *v.* Leighton, Feb. 20, 1863, 1 Macp. 434.

The SOLICITOR-GENERAL and BALFOUR, for the respondent, supported the interlocutor of the Sheriff, maintaining that the pauper's absences from the parish of Kelton were incidental only to the nature of his occupation, and could not be held to interupt the continuity of his residence.

At advising—

The LORD JUSTICE-CLERK—It appears to me to be impossible to support the judgment of the Sheriff. The period during which the pauper is said to have acquired a residential settlement in Kelton extends from Martinmas 1857 to Martinmas 1862, and that period is selected for obvious reasons, because if the respondent had begun earlier, he would have landed at a time when the pauper was not in the parish at all. Proceeding, therefore, to examine this period of five years which the respondent has been driven to select, we find that from Martinmas 1857 to Martinmas 1858 the pauper resided half a year in the parish and a half out; and if we take the period of eighteen months instead of a year, we find that he resided six months in the parish and twelve months out of it. In subsequent periods the terms and extent of the residence are of longer duration; but pervading the whole extent there is a constantly recurring absence. Thus he was absent for four months in 1860, and five months in 1861; again, in the winter of 1860-61, he was away for four months, and in the summer for three months. It seems to me that it is quite impossible to account for these frequent periods of absence in such a way as to be able to say in any reasonable way that there has been *de facto* a continuous residence; and if we cannot say this, then there has not been such a residence as is required by the 76th section of the statute. The only intelligible way in which I can understand the Sheriff's judgment is that he appears to have thought that the pauper maintained the continuity of his residence by means of the residence of his wife and children. If this be so, I think it right that such an idea should be at once and authoritatively rejected. I am of opinion that what the statute means by residence is personal residence, not the mere possession of a residence; and the only relaxation of this rule is that kind of absence which arises from the ordinary occupations of every human being—such a kind of absence as either accidentally or incidentally must necessarily occur from time to time in the life of every one; but that is not at all the case here. The pauper's repeated absences were for the most part occasioned by his entering into contracts of service which thus made his absence compulsory. On the authority of Beattie *v.* Leighton, which I think is conclusive on this point, I am quite clear that where as here a person shifts the scene of his industry for six or seven months at a time, this is a clear interruption of the continuity of residence required by the statute.

The other Judges concurred, and the judgment of the Sheriff was accordingly reversed.

Agent for Advocator—W. S. Stuart, S.S.C.
Agent for Respondent—Murray & Beith, W.S.

Saturday, July 7.

TRIAL WITHOUT A JURY.

(Before Lord Mure.)

CAMPBELL *v.* EDIN. AND GLAS. RAILWAY CO.

Reparation—Culpa. In an action of damages for loss of life—verdict for the defenders.

This is an action of damages at the instance of John Campbell, engine fitter, Glasgow, against the Edinburgh and Glasgow Railway Company, for injury sustained by him through the death of his son. The issue sent to trial was as follows:—

"Whether on or about 29th January 1864, the deceased William Campbell, when in the employment of the defenders, was killed by the packing of a hydraulic Bramah press, through the fault of the defenders, to the loss, injury, and damage of the pursuer?"

Damages laid at £300.

To-day his Lordship has decided in favour of the defenders in the following interlocutor, which sufficiently explains the facts of the case:—

"The Lord Ordinary having resumed consideration of the case with the proof adduced: Finds, in point of fact—(1st) That the deceased William Campbell, on or about the 29th day of January 1864, when in the employment of the defenders, was killed by the packing of a hydraulic press; (2d) That when this occurred the deceased was, at the request of Robert Gilchrist, a fellow-workman in the same department, and who had the charge of working that press, standing near the press in order to see a crank pin which had been made by the deceased, but which was too large for the wheel in which it had been inserted, removed from that wheel by means of the hydraulic press; (3d) That in so acting on Gilchrist's request, the deceased had to leave his ordinary place of work in the shop, which was contrary to the rules of the establishment, and that he was under no obligation to act on Gilchrist's request in the above respects, neither was it necessary that he should do so; (4th) That it is not proved that the said packing fell or was forced out of its place by or through the use of a defective washer, as set out on the record, or from a defect in any part of the machinery furnished by the defenders for the working of the said press, but that it fell or was forced out in consequence of two, instead of one, pieces of round packing having, contrary to the usual practice, been used in the working of the press on the occasion in question: Finds therefore that the deceased was not killed through the fault of the defenders. "DAVID MURE."

Counsel for Pursuer—W. N. M'Laren. Agent—J. M. Macqueen, S.S.C.

Counsel for Defenders—D. Mackenzie and R. B. Blackburn. Agents—Hill, Reid, & Drummond, W.S.