If there were no difficulty in the case but that the testing clause had not been filled up although it could still be so, I am not sure whether it would have fallen within the scope of the statute. But I think it is a matter of doubt and difficulty whether the testing clause can be filled up in this case, and so I am for allowing the proof that the disposition and settlement was subscribed by the parties and witnesses.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"The Lords having resumed consideration of the amended petition, and heard counsel for the petitioners, allow them a proof that the disposition and settlement produced and founded on in the petition was subscribed by the now deceased James Addison, mentioned in the petition as maker thereof, and by George Miller and John Alexander Rankin, also mentioned in the petition as witnesses of the subscription of the said James Addison; grant diligence at the petitioners' instance against witnesses and havers; and grant commission for their examination to Professor Berry, Glasgow, whom failing, to Professor Roberton, Glasgow."

Counsel for the Petitioner—M'Laren. Agents—Ronald, Ritchie, & Ellis, W.S.

Wednesday, February 24.

SECOND DIVISION.

[Lord Mackenzie, Ordinary.

ALLAN *v.* SHAW AND KING.

Pauper—Residential Settlement—Act 8 *and* 9 *Vict., c.* 83, *sec.* 76.

A pauper who was in the course of acquiring a residential settlement in one parish removed to a neighbouring parish for four weeks; after the third week he brought his wife and furniture to the parish to which he had gone. *Held* that this removal was a break in the continuity of the residence in the first parish sufficient to prevent the acquisition of a residential settlement there.

This was an action at the instance of Thomas Allan, inspector of the poor for the parish of Cambusnethan, for the recovery of the sum of £49, 17s. 8d., which had been expended by that parish on a pauper, Charles Hood, between October 1871 and June 1874. The action was brought against the Inspector of the Poor for the parish of Kilbarchan, the place of the pauper's birth settlement, and the Inspector of the Poor for the parish of Shotts, where it was alleged that the pauper had obtained a residential settlement within the meaning of the 76th section of the Poor Law Amendment Act, by residing there continuously between the months of May or June 1861 and October 1866.

On the part of the parish of Shotts it was denied that such residential settlement had been acquired there, the continuity of the residence having been broken by the removal of the pauper to other parishes during the currency of the five years.

It was admitted that either the parish of Kilbarchan, the place of birth settlement, or the parish of Shotts, the place of alleged residential settlement, must be liable, and the case came to depend between them. A proof was allowed to the Inspector of the parish of Shotts of his averments of the interruption of the continuity of the pauper's residence in that parish for five consecutive years.

On the 8th of December the Lord Ordinary issued the following interlocutor:—

"*Edinburgh, 8th December* 1874.—The Lord Ordinary having heard counsel, and considered the closed record, proof, and process, finds that Charles Hood, the husband of the pauper Mrs Mary Shields or Hood, and the father of the paupers Marion Hood, Mary Hood, George Hood, and Charles Hood, was born in the parish of Kilbarchan; that he became chargeable as an invalid pauper in the parish of Cambusnethan on 16th October 1871; and that he died in that parish on or about 30th October 1871: Finds that the said Charles Hood did not at any time before he and his wife and children became objects of parochial relief reside for five years continously in the parish of Shotts: Finds that the settlement of the said Charles Hood was, on 16th October 1871, in the parish of Kilbarchan as the parish of his birth: Decerns against the defender John Shaw, Inspector of Poor for the parish of Kilbarchan, in terms of the conclusions of the summons: Assoilzies the defender James King, Inspector of Poor for the parish of Shotts, from the conclusions of the summons; and decerns: Finds the defender John Shaw liable in expenses to the pursuer, and also to the defender James King: Allows accounts of said expenses to be given in, and remits the same when lodged to the Auditor to tax, and to report.

"*Note.*—It is averred for the parish of Kilbarchan, which is the birth settlement of Charles Hood, a miner, the husband and father of the paupers, that he resided continuously, within the meaning of the 76th section of the Poor-Law Amendment Act, between May or June 1861 and October 1866, in the parish of Shott, and thereby acquired a residential settlement in that parish for himself and family.

"According to the proof, Charles Hood resided and worked as a miner at Bowhousebog, in the parish of Shotts, from about the month of July 1861 to 31st December 1861. He then left that place for Garscadden, in the parish of Old Monkland, where he stayed about a fortnight, but not finding the work at that place to suit him he returned to Annieshill, in the parish of Shotts, and resided there until about a week before his marriage in 1862 to Mary Shields, when he removed to Bowhousebog, in the same parish, where he resided until 9th July 1863. He was married on 3d May 1862. After the marriage Charles Hood and his wife resided in a room, which he rented and furnished, in his father's house in Bowhousebog.

"On 9th July 1863 Charles Hood went to Rosehall, in the parish of Old Monkland, to work as a miner, and he remained at Rosehall until 2d October 1863, when he returned to Bowhousebog, where he resided at first in the room in his father-in-law's house which he formerly rented, and afterwards in houses taken by him, until 25th October 1866. He then left for Clydesdale Row in the parish of Cambusnethan, and resided there until 24th June 1867.

"The question between the parish of Kilbarchan,

in which Charles Hood was born, and the parish of Shotts, in which it is averred that Charles Hood acquired a residential settlement, is, whether his residence from 9th July to 2d October 1863 in Rosehall, in the parish of Old Monkland, interrupted the continuity of Charles Hood's residence, and prevented him from acquiring a settlement by residence in the parish of Shotts. It is important, therefore, to ascertain what was the character of that residence of twelve weeks in Rosehall.

"According to the evidence of his wife, Charles Hood left Bowhousebog for Rosehall, which is nine or ten miles from Bowhousebog, to better his condition. During the whole of his residence at Rosehall he worked at his trade of a miner in the pit there. For the first three weeks or thereby he lived in lodgings at Rosehall. During that time his wife resided at Bowhousebog, in the room which he continued to retain and pay rent for in his father-in-law's house, and her husband supported her, and went to see her on the Saturdays. It is proved by Andrew Lees, the contractor under whom he was working at Rosehall, that Charles Hood's wife came to Rosehall and told him that if he was going to work there he was to take a house. Charles Hood accordingly took a house in the Rows, near the pit at Rosehall, and removed his furniture to that house from the room in Bowhousebog, which he then gave up, and his wife and he thereafter resided in that house at Rosehall as sole tenants thereof until 2d October 1863. His wife depones that he only lived in lodgings at Rosehall for about three weeks before he took a house. Andrew Lees depones that he only had the house at Rosehall for a month before he left on 2d October 1863. It does not clearly appear from the proof whether he lived in lodgings or resided in the house which he took during the other five weeks of the twelve weeks that he remained at Rosehall. Charles Hood was not under contract to work for any specific period while at Rosehall, and was not obliged to give notice before leaving. He left on a day's notice, and returned to Bowhousebog, where he and his wife again took the room in his father-in-law's house in which they had formerly resided, and thereafter resided in Bowhousebog until 25th October 1866. His wife depones that during the time she and her husband lived together in Rosehall he had nothing to do with Bowhousebog or any other place in the parish of Shotts. According to Andrew Lees' evidence, Charles Hood's reason for leaving Rosehall and returning to Bowhousebog was that he thought that he could make a shilling or eighteenpence more wages per day at Bowhousebog. Lees also says that Charles Hood spoke frequently about going away for a fortnight before he went, but his wife states that while staying at Rosehall he did not say anything to her about going back to Bowhousebog, although she repeatedly asked him to go back.

"Such being the facts as disclosed by the proof, the Lord Ordinary is of opinion that Charles Hood's residence in Rosehall—at all events during the time that he and his wife kept house there—was an industrial residence, entirely separate from previous and subsequent residence in Bowhousebog. If, after lodging for three or thereby weeks at Rosehall, he had returned to Bowhousebog, and had never given up his residence in that place until 25th October 1866, that absence might have been regarded as a tentative proceeding on his part to see whether the work at Rosehall would suit him. But after he gave up his residence at Bowhousebog he ceased to have any connection with that place, and during the time that he and his wife had a house and resided at Rosehall that house was his only residence or home. His absence from Bowhousebog was not accidental, and his residence in Rosehall was not incidental to or in any way connected with his former residence in Bowhousebog, but was, the Lord Ordinary thinks, entirely subversive of it. He left Bowhousebog in the hope of getting better wages at Rosehall, and he afterwards returned to Bowhousebog because he expected to get higher wages there. But for that expectation he might not have returned to Bowhousebog.

"It was maintained for the parish of Kilbarchan that Charles Hood during the whole time of his residence at Rosehall intended to return to Bowhousebog. The Lord Ordinary is of opinion that no such intention is proved. All that appears from the proof is that he spoke to Lees about returning to Bowhousebog for a fortnight before he went, and that he did not do so to his wife. But, supposing that such intention were proved, the fact is that for at least four weeks he had an industrial residence in Rosehall, and had no house in or other connection with Bowhousebog. The Lord Ordinary considers that mere intention to return to Bowhousebog, even if proved to have existed during the whole residence at Rosehall, cannot, in the circumstances of this case, affect the decision. The question here is one of fact, and not of intention.

"Such being the view which the Lord Ordinary takes of the proof, he is of opinion that Charles Hook did not, during the period between July 1865 and 25th October 1866, reside for five years continuously in the parish of Shotts, and that he did not acquire a settlement by residence therein under section 76 of the Poor-Law Amendment Act."

The Inspector of the parish of Kilbarchan reclaimed against this interlocutor.

Reclaimer's authorities — *Mill* v. *Ramsay*, 10 Mur. 732; *Beattie* v. *Leighton*, 1 Mur. 434; *Hamilton* v. *Kirkwood and Smith*, 2 Macph. 107; *Mackenzie* v. *Cameron*, 21 D. 93; *Hutchinson* v. *Fraser*, 20 D. 545; *Hay* v. *Cumming*, 13 D. 1057; *M'Gregor* v. *Watson*, 22 D. 965; *Hasting* v. *Sempill*, 8 P. L. M. 331.

Respondent's authorities—*Hewat* v. *Hunter*, 4 Macph. 1033; *Crosbie* v. *Taylor and Greig*, 8 Macph. 39; *Allan* v. *Burton and Higgins*, 6 Macph. 358; *Beattie* v. *Kirkwood and Adamson*, 23 D. 915.

At advising—

Lord Neaves—My Lords, this is a case of considerable nicety, in the arguing of which previous decisions of a conflicting character have been brought face to face, and we have now to say to which category this case belongs.

I have come to the conclusion that in the circumstances it is best to follow the conclusion which the Lord Ordinary has arrived at, and the more so as these cases in the law of settlement do not affect the position or interest of the pauper or materially that of the parish, while it is very desirable that there should be a fixed rule, which may be, as far as possible, of general application; and which may be stated thus:—That where a party is resident in one parish and deliberately removes to another parish, and settles there for the purpose of working, then that removal shall, in the absence of strong evidence to the contrary, be held as a severance of the residential settlement in the former parish.

In this case the pauper came into this situation when he removed his wife and furniture to the house that he had taken in the parish where he was working, but no sooner.

If the question were to be determined by the lapse of time, it would be very difficult to draw the necessary line, and there would be no guide until all possible cases had been exhausted, and a sort of prescriptive period established.

I therefore think that the safer and better course here is to adhere to the interlocutor of the Lord Ordinary.

LORD ORMIDALE—I am of the same opinion. I cannot resist the conclusion forced upon me by the circumstances of this case, which show that the pauper had entirely quitted the parish of Shotts. The question might have been attended with more difficulty had it arisen immediately after the first two months' residence, because during that time the pauper had left in the parish of Shotts his house, his wife, and any furniture that he may have been possessed of, and returned there every Saturday. But after these two months a change takes place; the wife goes to her husband, and takes with her the furniture to a house that he has taken, where they reside for one month. Under these circumstances, I can have no doubt that the Lord Ordinary's decision is well founded.

I only wish to say that I by no means imply that continuous personal residence is in every case necessary to prevent loss of residential settlement. It would be unreasonable to hold anything of the kind. A person's house and wife may be in one parish, and he himself may not, from necessary circumstances, be able to be there continuously, but only for a longer or shorter time at intervals. He may even be compelled to leave the parish against his will, in consequence of a conviction in a criminal charge, and be imprisoned in another parish, and yet the legal continuity of the residence will not be impared. So also in the case of a sailor compelled to be absent from his residential parish in pursuit of his duty. The continuity of the residence would not be affected by such unavoidable breaks.

Then, as to the length of the time of absence, I am not favourably inclined to consider that as a good test. Here we have an absence of a month from the parish of Shotts on the part of the pauper with his wife. I incline to think that in these circumstances an absence of a week would have been equally effectual in the meaning of the 76th section of the Poor Law Act, or even a shorter time might be enough if it be clear that the pauper has given up and abandoned his residence in the parish from which he has removed.

To some extent it is a question of intention we have to consider, and in these poor law cases it must be gathered from the plain overt acts of the party.

LORD GIFFORD—I arrive at the same result. In some aspects this is a nice and delicate question. Probably it is true that, after the numerous cases that have been decided on this branch of the law, questions under it will become more and more delicate, lying as they will do between the extremes of the previous cases.

Here the question is, did the absence interrupt the continuous residence in the parish of Shotts? Is that residence so severed that the pauper belonged no longer to that parish, and formed a connection with the parish to which he had removed.

I think that we have here every element of complete severance. There was at first, no doubt, a sort of experimental residence in the parish whither he had gone, but that came to an end when he removed his wife and goods, and then the severance from the parish where he had been residing was complete. The residence in the new parish was no longer experimental, but permanent. The point at which this residence ceased to be experimental depends not so much on lapse of time, as on circumstances and the proceedings of the party. The consideration on which the experiment is made is of little consequence. The change from the experimental to the permanent character of the residence is the important point, and here we have that shown by the removal of the wife and furniture to the new parish, which completed the severance from the old. This is a case, moreover, of a householder where the circumstances are more clear and conclusive than when the pauper has no house of his own, as in the cases which have occurred of servants living in their master's house. I am even inclined to think with Lord Ormidale that a shorter period than a month would here have been enough to complete the severance from the former parish.

LORD JUSTICE-CLERK—I agree with the views just expressed, but I think the case a narrow one; and I confess that I have not arrived at this conclusion with the ease that some of your Lordships have done.

The important matter, no doubt, is to try to find a rule that will be easy to follow, and be of the widest general application, and I must say that the meaning of the term "continuous residence" is not one bit more clear or better understood now than it was at the passing of the Act. The reason is, that it must depend to a great extent upon the circumstances of each case.

The question here shortly is this—Is the parish of Shotts to be liberated from obligation to which it would have been liable had the pauper resided continuously the statutory period of five years.

There is here no question of principle involved. We have simply to try and find what is the rule applicable to this case.

The pauper lived with his father-in-law, having taken a room in his house, where he placed some few articles of furniture. When he went to the parish of Old Monkland in search of work he did not at first apparently mean to take his wife with him, but at her request he did remove her and his furniture to a house that he had taken in that parish. He always grumbled and wanted to go back, so he never seems to have had any specific intention of staying, but still the connection with the parish of Shotts was severed, so that I think we must be guided rather by his acts than by any presumed intention as to the purpose and duration of his stay in the parish of Old Monkland.

He went there in hopes of better work, and no doubt had the work been better he would have stayed there and might never have returned to the parish of Shotts at all.

I agree with what has been said by your Lordships as to the desirability of having a fixed rule as far as possible for cases of this kind.

Counsel for Pursuer—Alison. Agents—Morton, Neilson, & Smart, W.S.

Counsel for Defender King—Jamieson and Crichton. Agents—Waddell & M'Intosh, W.S.

Counsel for Defender Shaw—Brown & Guthrie-Smith. Agent—A. J. Dickson, S.S.C.

Tuesday, February 23.

FIRST DIVISION.

[Sheriff of Midlothian.

APPEAL—W. T. DOW & CO. IN HENRY JACOBSEN'S SEQUESTRATION.

Bankrupt—Affidavit—Principal Officer of Bank—Marginal Addition.

Held that an affidavit claiming in a sequestration might be sworn by the assistant manager as a principal officer of a bank within the meaning of the Bankruptcy Act 1856, sec. 25, and that a marginal addition subsequently made on the said affidavit was duly authenticated by the initials of the deponent and the Justice of Peace before whom it was sworn.

Bankrupt—Voucher—Decree in Absence—Conjunct and Confident.

Held that a decree in absence obtained against a bankrupt by a conjunct and confident person was not a sufficient voucher of debt.

Bankrupt—Arrestment in Security—Bankruptcy Act 1856, sec. 108.

Held that it was not necessary for a creditor who had used arrestment in security within sixty days of bankruptcy to value such security in his affidavit, seeing that it was transferred to the trustee by sec. 108.

Henry Jacobsen, grain and commission merchant, Glasgow, having become insolvent, his estate was sequestrated, and a general meeting of his creditors was held on January 5, 1875, for the election of a trustee. There were proposed Messrs Carstairs and Balgarnie as trustee and trustee in succession and Mr James A. Robertson, and the former gentlemen were declared to be elected by a majority in value of the creditors present. In the competition which thereupon arose for the office of trustee both parties lodged notes of objection to the votes of certain creditors. Messrs Carstairs and Balgarnie objected to the vote of the Union Bank in respect of an affidavit by John Affleck, designing himself banker in Glasgow and one of the principal officers of the said bank. The objectors objected to the said affidavit as inept, in respect that it was not made by the secretary, manager, cashier, clerk, or other principal officer of the bank, as required by the "Bankruptcy (Scotland) Act 1856," section 25. They further objected to the validity of the said vote, in respect that there was no designation in the mandate of the party at the meetings of creditors on whose sequestrated estates the mandatories were authorised to attend and vote. The affidavit was in the following form:—

"At Glasgow, the 4th day of January 1875 years,—In presence of Joseph Alexander Wright, Esq., one of Her Majesty's Justices of the Peace for the county of Lanark. Compeared John Affleck, banker in Glasgow, and one of the principal officers of the Union Bank of Scotland, incorporated under Act of Parliament, who being solemnly sworn and interrogated, depones, that Henry Jacobsen, sometime grain and commission merchant, Hope Street, Glasgow, and presently residing at Holyrood Lodge, Edinburgh, was at the date of the sequestration of his estates, and still is, justly indebted and resting-owing to the said Union Bank of Scotland the sum of Five hundred and seventy-seven pounds two shillings and fivepence (£577, 2s. 5d.) sterling, conform to state of debt annexed, and extract decree herewith produced. Depones, that no part of said debt has been paid or compensated to the said bank, and that they hold no other person than the bankrupt bound for the debt, and no security for the same∧.—All which is truth, as the deponent shall answer to God.

JNO. AFFLECK, *Deponent.*
JOSEPH A. WRIGHT, *J.P.*

(Written on margin.)

∧ other than arrestment of the sum of £50 in the hands of the Royal Bank of Scotland, being sum in deposit-receipt, dated on or about 3d December 1874, J. in name of the said Henry Jacobsen, A. conform to execution of arrestment, dated 18th December 1874. Further depones, That the deponent and said bank put no value on said arrestment J. in security, so that it cannot be deducted from the said sum of £577, 2s. 5d. A. W., *J.P.*

Mr Robertson objected to, *inter alia*:—

"I. Oath by Frederick Jacobsen, merchant, Bernard Street, Leith, claiming to be ranked and vote for the sum of £590, 7s. 5d.

"The claimant's debt is alleged to be constituted by a decree of the Court of Session, obtained at his instance against the bankrupt, dated 19th and extracted 30th December 1874, for—

"(1) The sum of £438, 5s. 6d. sterling, with £65, 10s. interest from 30th December 1871.

"(2) The sum of £80, with 10s. 11d. of interest from 6th November 1874.

"(3) The sum of £5, 7s. the expense of said decree; and—

"(4) The sum of 14s. the expense of extract.

"The objector objects to this vote on the following grounds:—

"(1) This decree was obtained by the claimant, who is the brother of the bankrupt, in absence of the bankrupt. It was instituted during the dependence of a process of *cessio* raised by the bankrupt, with the sole apparent object of enabling him to obtain sequestration in the event of said summons being dismissed, as was done by the First Division of the Court.

"(2) Neither the oath nor the decree set forth how or for what the sums decerned for became due to the claimant.

"(3) No account or voucher showing the nature, origin, or constitution of either of the two first sums of principal set forth in this claim, were produced in the process in which the decree was obtained, nor is any such produced with the oath.

"(4) The sum of £80 set forth in the claim was stated in the summons, on which the decree followed to be vouched by an acknowledgment of debt granted by the bankrupt within sixty days of bankruptcy.