stances, the Sheriff-Substitute (SPEIRS) allweod parties a proof of their averments, while the Sheriff (CLEGHORN), on appeal, recalled the order for the proof, and found that the cheque was sufficient evidence of debt, and that the defender was bound to pay the pursuer its amount. The defender appealed to the Court of Session, and, at the close of last session, amended his defences on payment of the expenses. On the case being called again thereafter, it was submitted for the appellant that as the action founded only on the cheque, it was irrelevant, a cheque not being in itself a document proving debt on the part of the drawer to the payee. Their Lordships, after hearing counsel, ultimately allowed the case to stand over to allow the respondent's (pursuer's) counsel to consider the advisability of putting on the record a statement as to the value for which the cheque had been granted. This statement was afterwards put in, and a proof allowed thereon. The proof was recently taken before Lord Gifford.

At advising—

LORD JUSTICE-CLERK—My Lords, with regard to the question whether or not this cheque would by itself have been a good ground of action, it is not necessary to say anything, since the proof has disclosed the consideration for which it was given.

It is quite clear that this girl had been seduced by the defender, and that she had asked for some money, partly perhaps as a solatium for the injury done her, and still more as provision for herself and child (whose birth might be expected in a short time), since she was at once to quit the situation she held in the defender's father's house. In these circumstances the defender granted the cheque, showing that he thought that something was due from him to the pursuer.

The real reason of the granting of the cheque was no secret, and as to it there can be no question; but, then, the defender attached a condition, that the girl was to leave her situation and not to mention his name in connection with the matter.

The girl did leave the house, but before doing so she admitted to her mistress, the defender's mother, on being asked, that the defender was the person who had brought her into the situation in which she then was. Regarding this admission as a breach of the condition he had imposed, the defender withdrew from the bank all his money, so that when the cheque was presented there were no effects to meet it.

I do not think the defender was entitled to attach such a condition as this to the payment of the cheque; and further, the fact that the admission was wrung from the girl does not entitle the defender to refuse payment of a cheque granted for so serious a consideration as has been shown to exist here.

LORD NEAVES—This is a somewhat peculiar case, and the defender is in rather a curious situation. It is quite clear that he had had connection with the pursuer; she was with child to him, and he wished to get her out of the house, where she was in the circumstances obviously unfit to remain. But then, if he did so, he was bound to provide for her; he makes no provision except granting the cheque, and giving her £5 in ready money, attaching the condition that she should not mention his name. The mother of the defender having been warned by one of the other servants as to the pursuer's condition, asks her who had "taken advantage of her," when the pursuer acknowledges that it was the defender. But then the pursuer did not go and voluntarily trumpet the matter about, but only admits it when closely questioned by her mistress.

It is not possible to take the view that this man had validly imposed upon this woman the obligation of placing herself in so very unfavourable a position as this condition would reduce her to.

But it is abundantly clear that there were quite sufficient grounds for the granting of this cheque.

LORD ORMIDALE—I am of the same opinion. If it were necessary for the pursuer to prove the consideration for which this cheque was given she has abundantly done so.

But then there was the condition attached, which the defender says she contravened, so as to justify him in preventing her getting the money. I think it is a very open question whether it is competent to prove by parole evidence the existence of a qualifying condition in the face of such a document as we have here.

LORD GIFFORD—I am of the same opinion. The action is for the contents of a cheque granted to a person by name, which goes some length in showing a transaction between the parties.

But on the various grounds stated it is clear that the pursuer was entitled to something. As to the question of secrecy, I think it was a condition incapable of being fulfilled, and indeed there might be circumstances in which it would be positively illegal for a person in the situation of the pursuer to conceal the name of the father of her child.

Decree in terms of the conclusion of the summons.

Counsel for the Appellant and Defender—The Dean of Faculty (Clark), Q.C. and Mackintosh, Agents—Lockhart & Espie, S.S.C.

Counsel for the Respondent and Pursuer—J. C. Smith and Rhind. Agent—Allan Macaskie, S.S.C.

Tuesday, February 23.

FIRST DIVISION.

PETITION—ADDISON AND OTHERS.

Conveyancing (Scotland) Act, 1874, § 39—*Petition.*

Form of petition to have it found that a trust-disposition and settlement was subscribed by the granter and by the witnesses by whom it bore to be attested.

Conveyancing (Scotland) Act, 1874, § 39—*Trust-Disposition and Settlement—Subscription—Testing Clause—Proof.*

When the granter of a trust-disposition and settlement, subscribed by him and attested by witnesses, died without the testing clause being filled up, proof allowed that the deed was so subscribed and attested in terms of the 39th section of the "Conveyancing (Scotland) Act, 1874."

This was a petition by Mrs Margaret Inglis or Addison and others, widow and children of the deceased James Addison, to have the trust-deed executed by him declared a valid deed.

The petition was in the following terms;—

"That the said James Addison died at No. 532 St Vincent Street, Glasgow, upon the 31st day of December 1874. There was found in his repositories after his death a trust-disposition and settlement subscribed by him, and bearing to be attested by two witnesses subscribing. The subscriptions to said trust-disposition and settlement are as follows, viz.:—'James Addison,' 'George Miller, *witness;*' 'John Alexander Rankin, *witness.*' The said subscriptions are the genuine subscriptions of the said deceased James Addison, the granter of the deed, and of George Miller, a partner of the firm of James Miller & Company, bolt and rivet manufacturers, 204 Stobcross Street, Glasgow; and John Alexander Rankin, sometime clerk in the employment of the said James Miller & Company, now in the employment of Messrs Wingate, Birrell, & Company, insurance brokers, 4 Exchange Buildings, Glasgow, the said instrumentary witnesses. The said trust-disposition and settlement has not been completed by the insertion of a testing clause. The date on which it was signed by the granter and witnesses foresaid is to the petitioners unknown, but it is believed and averred to have been executed on a day between the 1st day of September 1871 and the 30th day of April 1873.

"The said trust-disposition and settlement was prepared on the instructions and employment of the said James Addison by Messrs Black & Honeyman, writers, Glasgow, and was engrossed by a clerk in their employment. In the draft of the deed as approved by the said James Addison, and in the engrossment as delivered to him for signature, his trustees are named and designed as follows, viz.:—'David Inglis junior, farmer, Powdrake, near Grangemouth; Andrew Armour, manager of Messrs R. S. Newall & Company, wire rope manufacturers in Glasgow; and George Black, writer, Glasgow.' But the names and designations of Mr Inglis and Mr Black have subsequently been deleted, and the testator has in his own handwriting substituted George Miller, of 'James Miller & Co., Stobcross Street,' as a trustee in place of the said David Inglis; and William Wylie, of Marshall & Wylie, tubemakers, Swanston Street, Glasgow, as a trustee in place of the said George Black. In a subsequent clause in said trust-disposition and settlement, the only clause in which the names of the trustees occur save that containing their nomination, the name 'David Inglis junior' is deleted, and the name 'George Miller' substituted in the testator's handwriting; and the name 'George Black' is also deleted, and the name 'William Wylie' substituted, also in the testator's handwriting. The said trust-disposition and settlement is produced herewith.

"The said James Addison has left estate and effects, heritable and moveable. His surviving representatives are the petitioners, his widow the said Mrs Margaret Inglis or Addison, and his daughters Mrs Elizabeth Addison or M'Naught, Margaret Addison, and Martha Addison (who have attained to majority), and a son and daughter James Addison and Margaret Addison, who are in their tenth and eighth years respectively. By the said trust-disposition and settlement the said James Addison, *inter alia*, appointed his trustees, and the survivors and survivor of them, accepting, to be tutors and curators, and tutor and curator, to such of his children as might be in pupilarity and minority at the time of his death.

"That by section 39 of the 'Conveyancing (Scotland) Act, 1874,' it is enacted, that 'no deed, instrument, or writing subscribed by the granter or maker thereof, and bearing to be attested by two witnesses subscribing, and whether relating to land or not, shall be deemed invalid or denied effect, according to its legal import, because of any informality of execution; but the burden of proving that such deed, instrument or writing so attested was subscribed by the granter or maker thereof, and by the witnesses by whom such deed, instrument, or writing bears to be attested, shall lie upon the party using or upholding the same; and such proof may be led in any action or proceeding in which such deed, instrument, or writing is founded on or objected to, or in a special application to the Court of Session, or to the Sheriff within whose jurisdiction the defender in any such application resides, to have it declared that such deed, instrument, or writing was subscribed by such granter or maker and witnesses.'

"May it therefore please your Lordships to appoint this application to be intimated on the Walls and in the Minute Book in common form, and to be served upon the said James Addison and Margaret Addison and their tutors and curators, if they any have; to allow answers thereto within eight days, and on resuming consideration hereof, with or without answers, to allow the petitioners a proof of the averments contained in this petition, and thereafter to declare that the trust-disposition and settlement above mentioned was subscribed by the said James Addison, the granter or maker thereof, and by the said George Miller and John Alexander Rankin, the witnesses by whom the said trust-disposition and settlement bears to be attested, and that the said trust-disposition and settlement is a valid deed, and entitled to effect according to its legal import; and to find the petitioners entitled to the expenses of the present proceedings out of the funds of the trust-estate of the said James Addison; or to do otherwise in the premises as to your Lordships shall seem proper."

The Court ordered the petition to be amended to the effect of deleting the words "and that the said trust-disposition and settlement is a valid deed, and entitled to effect according to its legal import," from the prayer of the petition.

After intimation and service in common form, the Court heard counsel on the question whether or not the testing clause could be filled up.

At advising—

LORD PRESIDENT—The 39th section of the Conveyancing Act 1875 provides:—[*His Lordship read the clause*]. The burden is laid upon the party founding on the deed to prove that it was subscribed by the granter. This petition is brought for the purpose of having it found that the deed was subscribed by the maker and the witnesses by whom it bears to be attested, and we are now asked to allow a proof that it is so. The condition of the deed, apart from the difficulty as to the names of the trustees, is that the testing clause is not filled up. Whether or not that is the particular sort of case which the Legislature had in view, there is no doubt that it is within the meaning of the statutes, provided that the testing clause cannot be now filled up.

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,