in their hands they would have been bound to do so, and I am further disposed to hold that if Athya & Co. had presented the bill for acceptance in as much as it had never been delivered to them, the appellants would have been entitled to retain it. Is Martini in any different position? It is certainly to be said for Martini that he gave value for the bill, which leads one to think that he regarded it as a document at least binding on the drawers. The Sheriff-Substitute has a favourable impression of the frankness of his evidence. But his evidence substantially comes to this, that he knew, in the first place, from the memorandum that the bill had been delivered under the condition that it was not to be held as delivered, and in the second that it would only be accepted by the appellants on the condition that "an equal amount of free bills maturing" should be given in exchange for it. Taking his evidence as a whole, it is an admission that he knew that the bill had been sent to be used only subject to conditions, and that these conditions had not been implemented, and so I am prepared to hold that in the very special circumstances of this case, to use the words of the Sheriff in his interlocutor, Steel & Craig were entitled against the general rule to retain the document.

The Court therefore recalled the Sheriff's interlocutor, and assoilzied the defenders.

Counsel for Pursuers (Respondents)—Balfour—Robertson. Agents—J. W. & J. Mackenzie, W.S.

Counsel for Defenders (Appellants)—Kinnear—Pearson. Agents—Crombie & Field, W.S.

Saturday, December 21.

SECOND DIVISION.

[Sheriff of Aberdeen and Kincardine.

ROGER (INSPECTOR OF RHYNIE PARISH) *v.* HARVEY (INSPECTOR OF GARTLY PARISH) AND MORISON (INSPECTOR OF CLATT).

SIMPSON (INSPECTOR OF KINCARDINE O'NEIL) *v.* KENNEDY (INSPECTOR OF COULL).

Poor — Residential Settlement — Where Pauper's Family Resided in Parish different from that where Pauper Worked.

A farm labourer took a house within a parish, in which and in neighbouring parishes he worked for nearly thirty years. His wife and family continuously resided there, but he only returned home for the Saturday or Sunday every two or three weeks. His engagements were never sufficiently long in the parish where his house was to found a settlement based upon personal residence, but he was at one time long enough engaged in another parish to give him such a settlement. *Held* that the circumstances of the case were not distinguishable from those of *Cruickshank* v. *Greig*, Jan. 10, 1877, 4 Ret. 267, and that a residential settlement had been acquired in the parish of his house.

In the first of these actions James Roger, inspector of poor for the parish of Rhynie, sued James Harvey and John Morison, respectively, inspectors of poor for the parishes of Gartly and Clatt, for payment of a sum disbursed on behalf of a pauper named Helen Grassick or Scott. The pauper was wife of George Scott, farm servant at Auchmenzie, parish of Clatt, and on 22d Sept. 1877 she had become chargeable to the parish of Rhynie (where she was then residing) in respect of having become insane. She had married George Scott in June 1848, and till Whitsunday 1877, when she had taken up her residence in Rhynie, she had resided in a house at Knappertknowes in Gartly parish, rented by her father until 1854, and subsequently by her husband. Scott, her husband, from the time of his marriage to the date of chargeability of his wife, was sometimes employed at jobbing work, but for the greater portion of that period he was employed as a farm-servant on six-monthly engagements. When so employed at jobbing work he resided in the house occupied by his wife and family at Knappertknowes; but when under six-monthly engagements as a farm-servant he resided on the farm where he happened to be at the time, and visited his wife and family once a week, or once a fortnight, on Saturdays, and usually remained with them from Saturday night till Sunday evening or Monday morning. Scott's engagements were in Gartly and some of the neighbouring parishes. In particular, he was engaged continuously on various farms, all in the parish of Gartly, for a period of six and a-half years from Martinmas 1851 to Whitsunday 1858, and thereby acquired a residential settlement in that parish. He was afterwards engaged at intervals on several farms in that parish for periods of six months until Martinmas 1871. From that date to 23d September 1877, when his wife became chargeable in Rhynie, a period of five years and ten months, he had been constantly employed at Auchmenzie in the parish of Clatt. Scott's birth parish was Rhynie.

The pursuer maintained that Scott and his wife had a residential settlement in Gartly or in Clatt.

He pleaded, *inter alia*—"(1) The settlement of the said Mrs Helen Grassick or Scott is either in the parish of Gartly, where her husband had a house, and where he maintained his wife and family, with whom he lived when engaged at jobbing work, and periodically visited when under half-yearly engagements, or otherwise her settlement is in the parish of Clatt, where for five years and ten months he remained continuously under six-months' engagements."

The defender Harvey pleaded, *inter alia*—"(1) The residence of the said George Scott's wife and family in the parish of Gartly, while he himself was resident in other parishes, is insufficient to establish a residential settlement therein for his wife. (3) Even assuming that the said George Scott did at one time acquire a residential settlement in the parish of Gartly, the residence of his wife in that parish (he himself being resident elsewhere) is insufficient to enable him to retain such a residential settlement, and the same has been lost by reason of his failure to reside in the said parish continuously for at least one year during each subsequent period of five years, and the defender, as inspector of the poor of the said parish of Gartly, is entitled to be assoilzied, with expenses."

The defender Morison pleaded, *inter alia*—"(2) The residence of the said George Scott so ac-

quired has not been lost by absence from the parish of Gartly since Martinmas 1871, his work at Clatt during that period having been incidental to his residence in Gartly, which was still maintained."

The Sheriff-Substitute (DOVE WILSON) found that the settlement was in Gartly parish, and therefore decerned against the inspector of that parish. He added this note:—

"*Note.*—The facts of this case as admitted by the parish of Gartly do not seem to me to differ in any material respect from the case of *Cruickshank* v. *Greig*, 10th January 1877, 4 R. 267, however well they may illustrate the aptness of the remark made there by Lord Gifford—'that cases of this class have a tendency to get narrower, each successive case presented being in advance of and more difficult than its predecessor.' The facts are the familiar ones, the results of the want of cottages for labourers at the places where they work, which again is a result in part of the law of settlement, which makes the having of a home in a parish a ground for imposing on it the burden of maintaining a pauper.

"In this case the pauper married and set up house in the parish of Gartly in the year 1848. Till 1854 the house was taken and the rent paid by his father-in-law, but from that date till 1877 the pauper was himself the tenant, and there all along the pauper's family lived. The pauper himself did not live there, but was a labourer at farms on half-yearly engagements, only returning home for the Saturday or Sunday night every two or three weeks. Thus far the facts are exactly those of *Cruickshank* v. *Greig*. The points where they differ are, that in that case the pauper had been long enough engaged at farms in the parish of his house, after first taking it, to have himself acquired a residential settlement—while in this case it is said that his engagements were never long enough at one time in the parish of his house to have founded a claim for a settlement upon his personal residence. It is also said that the pauper here was long enough at one place in another parish (Clatt) to have acquired for him a settlement there. The case of *Cruickshank* v. *Greig* was therefore a case of retaining a settlement, while this is a case of acquiring one, and of acquiring one in the face of five years' personal residence at one place in another parish from that where his family resided.

"Neither of these differences seem to me to be material. Of course, if the case of *M'Gregor* v. *Watson*, 7th March 1860, 22 D. 965, which was relied on in the lower Court in *Cruickshank* v. *Greig*, was still a precedent, the difference would be material. In that case it was held, in circumstances like the present, that the residence of the wife and family was not the residence of the husband, and did not count in the acquiring of a settlement to him. But *Cruickshank* v. *Greig*, although it does not say so, really overrules that case. It is impossible to give any reason for laying down that there is to be a difference in the character of the residence for acquiring and the residence for retaining a settlement. The statutory rule as to residence for each purpose is exactly the same, and the word residence must mean the same in both cases. The only way the matter can be affected by the difference between acquiring and retaining is that there is a presumption in favour of retaining which there is not for acquiring, and that in case of doubt the presumption may have a certain value. But here there is no room for doubt. As soon as the law has settled the meaning of the word residence there is an end to any doubt about where this pauper's residence was, and if the question of where the pauper's home is settles the matter, there is no doubt that the pauper's home was at his house at Gartly. For nearly thirty years his home was there, and the place where he personally might be was only an accident depending on where he got work. Whether he got his work in Gartly or out of it—whether he got work a long time or a short time in it, or in one of the adjoining parishes—did not in the least affect the question of where his residence was, if consideration is due at all to the place where his family or headquarters were. It seems to me to be clear that, if the actual residence of the pauper at the farms is to be disregarded, and his constructive residence at the house is to be regarded, in any question of settlement the rule must apply both to acquiring and retaining. If this be so, there can be no question that the pauper acquired a settlement in Gartly. . . . ."

The Inspector of Gartly appealed to the Court of Session.

Authorities quoted—*Beattie* v. *Smith and Paterson*, Oct. 25, 1876, 4 R. 19; *Milne* v. *Ramsay*, May 23, 1872, 10 Macph. 734; *Cruikshank* v. *Greig*, January 10, 1877, 4 R. 267; *M'Gregor* v. *Watson*, March 7, 1860, 22 D. 965.

The second case, of *Simpson* (*Inspector of Kincardine O'Neil*) v. *Kennedy* (*Inspector of Coull*), which raised a similar question, and was also an appeal from a decision by the Sheriff-Substitute of Kincardine (DOVE WILSON), was heard at the same time with the above. The only point of difference, as stated by the Sheriff-Substitute in his note, was that "Kincardine O'Neil got no benefit from being the parish of the residence of the pauper, inasmuch as the shops at which his earnings were spent were in another parish."

At advising—

LORD JUSTICE-CLERK—These cases are of some importance, and must be decided in accordance with the precedents in this branch of law.

In the first case the pauper has occupied a house in the parish of Gartly in Aberdeenshire from 1848 to the present time, where his wife and family resided. He himself has worked in different places in that county, sometimes in the parish of Gartly, and sometimes outside it, but keeping on that house, and returning to it for the Saturday and Sunday every two or three weeks.

The other case is almost identical, the returns of the pauper to his house being somewhat more frequent, and the period during which he has occupied his house not quite so long.

The question is, Whether in these two cases a settlement has been acquired in the parish in which the pauper maintained a house. I shall assume in the former case that no settlement had been acquired in Gartly without reckoning the period since 1871, during the whole of which the pauper has been working in other parishes. If he had worked long enough at farms in the parish of Gartly to have acquired a settlement in that parish, the case would have been identical with that of *Cruickshank* v. *Greig*, 4 R. 267. But I shall

assume in the appellant's favour that this was not so.

It has been often said in these cases, and it cannot be too steadily kept in view, that these provisions in the Poor Law Act as to settlement are provisions of positive law, and that they do not carry out any natural or moral obligation. There is no natural or moral obligation on a man, simply because he lives in a particular ecclesiastical division, to support another man who lives or was born in the same ecclesiastical division. It is in vain to look for any judicial principle in cases of settlement, the only legitimate question being, what has the statute provided? In both the cases before us I think the contest is between the parish of the pauper's birth and the parish where his wife and family resided. In the case of *Roger* v. *Harvey* I do not think it can be maintained that the pauper's settlement was in Clatt, for this plain reason, that the pauper's absence therefrom on the occasions when he returned to his house are sufficient to destroy the continuity of residence required by the statute. In the case of *Simpson* v. *Kennedy* there is no parish other than that of Kincardine O'Neil, where the pauper's house was, in which he could be said in any sense to have resided for five years.

Something like a principle has sometimes been evolved from the provisions of the Poor Law Act, viz., that the parish which has obtained the fruits of a pauper's earnings is liable for his support. I think the principle is somewhat fanciful, because when we come to the case of a birth settlement the liability of the parish of birth depends in no degree on any benefit derived from the pauper's industry, but is matter of positive enactment, and that solely because it is essential to have some law by which a radical and ultimate liability should be established. But it is plain that equity, if we are at liberty to take equitable considerations into view at all, is against the parish of residence. So far from thinking that the balance ought to be held against the parish of birth, as has been sometimes contended, I should rather be inclined to lay down the contrary rule, viz., that the presumption ought to be against the parish of residence. Looking to the common sense of the matter, the pauper in each of the cases before us has been the tenant and occupant of a house in a particular parish for upwards of twenty years. That looks very much as if he resided there. But it is contended that because he worked outside that parish, the parish of his birth must be liable. Now keeping in view the decisions in *Greig* v. *Miles and Simpson*, 5 Macph. 1132, and *Cruickshank* v. *Greig*, I do not think that contention can be successfully maintained. I think that if a man maintains a house where his wife and family reside, and whither he returns when his avocations permit, that house is in general his residence in the sense of the Poor Law Act. I do not say that the case of a farm labourer is necessarily identical with that of a sailor, for a sailor while at sea cannot possibly acquire a settlement if the house in which his wife and family reside is not to be regarded as his residence. In the case of a labourer it is perhaps more a question of circumstances, and less may suffice to retain a settlement than to acquire one. To hold that a man resides where his wife and family are is, I think, the general rule, though there may be cases to which it does not apply. But I am clearly of opinion that the rule does apply to cases like the present, where the paupers have all along worked in neighbouring parishes and returned to their homes at short intervals.

Lord Ormidale and Lord Gifford concurred.

The Court adhered in both cases.

Counsel for Pursuer (Respondent)—Darling—Dickson. Agent—George Andrew, S.S.C.

Counsel for Harvey (Appellant) — Moncreiff —Murray. Agents—Gibson-Graig, Dalziel, & Brodies, W.S.

Counsel for Morison (Respondent)— Dean of Faculty (Fraser)—Reid. Agents—R. C. Gray, S.S.C.

Wednesday, January 15.

FIRST DIVISION.

CITY OF GLASGOW BANK LIQUIDATION—(*OSWALD'S CASE*) OSWALD AND OTHERS (OSWALD'S EXECUTORS) *v.* THE LIQUIDATORS.

Public Company—Winding-Up—List of Contributories—Right of Representatives of Deceased Trustee to be Removed from List.

The names of several trustees appointed under a trust-disposition and settlement containing the usual clause of survivorship were entered on the register of a company as in right of stock previously held by the truster. There was no notice of the clause of survivorship. One of the trustees having died previously to the liquidation of the company, *held* that his personal representatives could not be included in the list of contributories, although no intimation of his death had been given to the company.

Trust—Trustee—Termination of Office by Death—Clause of Survivorship Implied.

Opinion that in all *mortis causa* destinations to a number of trustees there is an implied destination to the survivors or survivor.

Partnership—Termination of, by Death—Intimation.

In the case of an ordinary partnership no notice of the death of a partner is necessary as in a question with the public.

Question, Whether this doctrine applies in all circumstances to partners of joint-stock companies?

John Clinkscales, bookseller in Johnstone, died on 8th February 1869, leaving a trust-disposition and settlement by which he nominated his widow and two other persons to be his trustees and executors. By a codicil he made certain alterations on his settlement, and in it, *inter alia*, there occurred the following words — "Trustees — David Palmer, Edinburgh; Robert Oswald, Edinburgh." The trust-disposition contained the usual destination to the survivors or survivor of the persons named. The widow alone accepted office, and *ob majorem cautelam* executed a deed of assumption, also containing the clause of survivorship found in the deed, in favour of the two trustees mentioned in the codicil. On exhibition of these deeds the Commissary of Had-