an implied liability may frequently arise from the mere fact of an endorser of a bill of lading transacting with the captain and taking delivery of the goods. Here we have some very important circumstances that I think were calculated to lead the captain—who was in entire ignorance of the contract—to assume that he was dealing with the parties to whom the cargo belonged, and who were taking delivery for themselves. In the first place, we have the letter of 7th March, in which they stated that they are consignees of the ship and cargo, and request him to go to particular brokers. In the second place, you have the terms of the bill of lading, which is the same as that in the case of *Cock* v. *Taylor*, and the very special terms of the endorsation. It is no doubt a very material circumstance here that the captain had no lien, and was bound to deliver the cargo either to the original shippers or to any body who came in their right, and I think it is a weaker case in that respect than *Cock* v. *Taylor*. But yet I think that upon the letter before referred to and the very special terms of the endorsement, the captain was fairly entitled to assume in the absence of any notice that the appellants were not agents, that he was dealing with parties taking this cargo on their own account, and therefore to hold them liable in payment of the freight to him.

Accordingly, upon both of these grounds, I think the judgment of the Sheriff-Substitute is right.

The appeal was therefore refused.

Counsel for Appellants (Defenders)—Trayner—J. P. B. Robertson. Agents—J. & J. Ross, W.S.

Counsel for Respondents (Pursuers)—Asher—Pearson. Agents—Webster, Will, & Ritchie, S.S.C.

Friday, May 23.

FIRST DIVISION.

[Sheriff of Lanarkshire.

STARK (INSPECTOR OF DENNY PARISH) *v.* BEATTIE (INSPECTOR OF BARONY PARISH).

Poor — Residential Settlement — Constructive Residence—Act 8 and 9 Vict. c. 83, sec. 76.

R left B, his parish of residence, owing to ill-health in February 1872, and went to the parish of D. His wife and family continued to live in B, in her husband's house, of which he took a new lease after he had himself left. He did not get regular work till the 6th of June, when he undertook an employment different from that to which he had been bred. He himself never returned there. In August his wife and family removed to D, where R then took a house where he continued to live till his death in April 1875. His wife received parochial relief from D in April 1876. *Held* that R was constructively resident in the parish of B down at least to the 6th of June 1872, and that B was therefore liable in repayment of the relief advanced by D.

The pursuer in this case was inspector of poor of the parish of Denny, and the defender was inspector of poor of the Barony parish of Glasgow.

William Russell was for ten years prior to February 1872 employed as a ship-captain, and during these years had a residential settlement in the Barony parish of Glasgow. In February 1872, becoming somewhat unwell, he went to live with his parents in the parish of Denny, but he left his wife and family in his house in the Barony parish. At Whitsunday following he took a new lease of this house for the next year, and he did not remove his wife and family to Denny till August. He himself had no employment in Denny till the 6th of June, when he got work as stocktaker in an iron-foundry. He continued to live with his parents until his family came to Denny in August, when he took a house on his own account. That was the position of matters at the date of his death on 13th April 1875. His widow applied for and obtained parochial relief from the parish of Denny in April 1876. The parish of Denny now sued the Barony parish for repayment of the advances it had made.

The pursuer pleaded, *inter alia*—"(1) The said William Russell having had at the date of his death a residential settlement in the Barony parish, which had not been lost at the date of relief, and his wife and family being chargeable thereto, and having been proper objects of relief, decree in terms of the declaratory conclusions should be granted. (3) The deceased William Russell having had at the date of his death a residential settlement in the defender's parish, the pauper for herself and her children then derived or inherited this settlement, and not having subsequently lost the same by her own non-residence, or acquired a new one by her own industrial residence, the defence should be repelled, and decree granted as craved."

The defender pleaded—"The derivative residential settlement of the pauper and her children in the Barony parish having been lost by absence, the defender is entitled to absolvitor, with expenses."

The Sheriff-Substitute (GUTHRIE) after proof pronounced this interlocutor:—

"Finds that the deceased William Russell, while in possession of a residential settlement in Barony parish, Glasgow, went in February 1872 to reside with his father in Denny parish for the benefit of his health, leaving his wife and family—except two young sons—at his hired house in Glasgow: Finds that the wife and family continued to live in said house till August 1872, when they removed to Denny parish, where Russell had got employment on 6th June: Finds that Russell's absence from his house and business in Glasgow was at first of a temporary and incidental nature, and that he had not formed an intention of remaining in Denny or removing his family from Glasgow until immediately before or about the said 6th of June: Finds therefore that at the date when the paupers Mrs Russell and her children became chargeable to the parish of Denny, on the 20th April 1876, their settlement in Barony Parish, Glasgow, derived from the said William Russell, was not lost by absence, and that the said parish is liable to relieve the pursuer of his advances on account of the paupers: Therefore decerns as craved."

He added this note—

"*Note.*— . . . . I am of opinion, however, that the residence of the deceased up till

the beginning of June 1872 must be held, in accordance with various recent cases (*Allan* v. *Shaw and King*, 24th February 1875, 2 Rettie, 463; *Milne* v. *Ramsay*, 23d May 1872, 10 Macph. 731; *Beattie* v. *Smith & Paterson*, October 25, 1876, 4 Rettie, 17; *Cruickshank* v. *Greig*, January 10, 1877, 4 Rettie 267), to have been still in Barony parish. His wife and children were there still living in the house which he had occupied for years, and which it appears he meant to retain. He visited them from time to time, and he had as yet entered upon no new employment or means of earning a living, but was still living as a guest in his father's house. The application for relief was made in April 1876, and I think the presumption is that if there had been any intention of removing in April 1872, four years before that, Russell would not have retained the house beyond the May term. I cannot give much weight to the suggestion—for it is no more than a suggestion—founded on some questions put to the doctor and not to the mother, that the illness of one of the children was the chief or only reason for the family's remaining in Glasgow. And though it was ingeniously argued that while the absence was at first experimental, a permanent character was impressed upon it when Russell determined not to go back to Glasgow, yet I think this argument fails for want of any evidence that the residence at Denny was experimental in the sense that the deceased had then an idea of permanently living there, and was trying how it would suit him. It was experimental in the sense that he was making an experiment upon his health; but the evidence we have is opposed to the idea that he then entertained at all the idea of giving up the life he had been leading as a seafaring man, and betaking himself to the very different occupation which he adopted in July."

The Sheriff (CLARK) adhered, and the defender appealed, and argued — All the cases referred to by the Sheriff were cases in which the man returned to the parish where his wife and family were; but here Russell never returned, and when that was so, the question must be regarded *retro* in the light of subsequent history. Now there could be no doubt that whatever might have been the case at the beginning, it ultimately became Russell's intention to reside permanently in Denny. He must therefore be treated as having intended to reside there from the first. The spirit of the Poor Law Statute was against taking into consideration minute questions of intention. *Hogart* v. *Petrie*, 13 June 1851, Poor Law Magazine. The pursuer's parish was therefore liable, adding the absence of the husband from February 1872 till his death subsequently to the period during which his widow had resided in Denny, viz., to April 1876, when she became chargeable. It would be said that her absence from Barony ought to begin *de novo* at the date of her husband's death, and that she in her own person as a widow must have been absent from Barony for four years and a day. But that would be unjust to Barony, as the family had been absent for more than the statutory period. The widow took up the husband's settlement as he left it—*Allan* v. *Higgins*, Dec. 23, 1864, 3 Macph. 309.

Argued for the respondent—(1) There could be no doubt that down at least until 6th June, when he got work, the deceased husband did not intend to reside permanently in Denny. The cause of his absence (the fact that he left his family in Glasgow and took a new lease of his house there) made that plain. Down to that date, therefore, his residence was constructively in Barony. (2) On the second point, the widow took up a residential settlement from her husband, but it was a settlement good and perfect in itself, and one that could be lost only by non-residence for four years and a day—*Kirkwood* v. *Wylie*, *infra*.

Authorities — *Crawford* v. *Petrie and Beattie*, Jan. 28, 1862, 24 D. 357; *Moncreiff* v. *Ross*, Jan. 5, 1869, 7 M. 391; *Cruickshank* v. *Greig*, Jan. 10, 1877, 4 R. 267; *Roger* v. *Harvey*, Dec. 21, 1878, 14 Scot. Law. Rep. 220; *Allan* v. *Shaw*, Feb. 24, 1875, 2 R. 463; *Kirkwood* v. *Wylie*, Jan. 19, 1865, 3 M. 398.

At advising—

LORD PRESIDENT—There is no dispute as to the facts of this case. The Sheriff-Substitute has found "that the deceased William Russell, while in possession of a residential settlement in Barony parish, Glasgow, went in February 1872 to reside with his father in Denny parish for the benefit of his health, leaving his wife and family—except two young sons—at his hired house in Glasgow; that the wife and family continued to live in said house till August 1872, when they removed to Denny parish, where Russell had got employment on the 6th June; and farther that Russell's absence from his house and business in Glasgow was at first of a temporary and incidental nature, and that he had not formed an intention of remaining in Denny or removing his family from Glasgow until immediately before or about the said 6th of June; and the conclusion which he draws from these facts is, that at the date when the paupers, Mrs Russell and her children, became chargeable to the parish of Denny, on the 20th April 1876, their settlement in Barony parish, Glasgow, derived from the said William Russell, was not lost by absence, and that the said parish is liable."

Now, the soundness of this judgment depends entirely upon whether or not the Sheriff is right in holding that the deceased William Russell continued within the meaning of the statute to reside in Barony parish, Glasgow, down to at least the 6th June 1872. The novelty of the case lies simply in this, that Russell, the person who acquired the settlement, after he left the Barony parish never returned. But it does not appear to me that that introduces any difficulty into the case if it can be affirmed that he continued to reside in Barony parish down to the 6th of June, because in that case the year which the statute requires did not begin to run until the 6th of June.

There has been some confusion in reading the cases which have occurred on the 76th section of the statute arising from not distinguishing between the construction of two words in that section. There is a series of cases—the earlier of the two series well known to your Lordships—which turned upon the construction of the word "continuously." In these cases it was held that a man might be absent from a parish and yet that that break of continuity might not be sufficient to prevent the acquisition of a settlement under the statute; and the principle upon which this opinion proceeded was that the word "continuously"

must be read in a reasonable sense, according to the habits of human beings and ordinary life, because absolute continuity of residence can hardly be affirmed of any human being—that during the absence of the person he was not to be held as resident in the parish, but that his absence being of an accidental and temporary character ought not to be taken into account. It did not proceed on the ground that although absent he was to be considered as still resident; on the contrary, it assumed the opposite, that he was absent and therefore not resident.

There is another class of cases in which the word "residence" is the word which was to be construed. In these cases it was held that residence does not mean actual residence, but that there may be constructive residence; and I presume, although the case has never occurred, that the residence may be constructive during the whole five years for anything there is in principle to the contrary. That being so, the question is, Whether this William Russell was resident in Barony parish between February and June 1872; and upon the authorities I cannot hesitate to say that he was. He was not resident according to the strict reading of the statute, but he was according to the construction which has been put upon it.

It is said that all the length this interpretation of the statute has gone is, that in acquiring a new settlement the residence may be constructive, but that the same rule does not apply to loss by non-residence. There is perhaps at first sight some colour given to this view by the opinions of some of the judges in *Crawford & Petrie* v. *Beattie*. I have not much sympathy with this opinion, because, as I observed in that case, and will now take the liberty to repeat, "it would be against all the principles of construction to hold that the same term is used in different meanings in the same section, unless there be something in the scope and purpose of the section itself, or of the context, to manifest the intention of using it in different meanings. But so far from that being so, it is clear that it would be most unreasonable that residence, of the kind which is necessary for retaining a settlement, should be of a different kind from that which is necessary for acquiring a settlement. Five years are necessary to acquire a settlement, and residence for one year out of every succeeding five is necessary to retain a residential settlement;" and the residence in the one case and in the other must be of the same kind.

Lord Deas—The question, whether it follows from the series of decisions that residence may be constructive for the whole period, has not yet arisen. I am not prepared to say how I should answer it. I do not see that it necessarily follows that the entire period of residence may be constructive. But as that is not the question here, I shall say no more about it.

Two things are decided and conclusively settled. First, that in considering the question of acquiring and of losing a residential settlement no distinction can be drawn on the construction of the statute. That, I think, is both reasonable in itself, and quite decided on the authorities. The other point which may now be held as settled is that during a portion of the period in which the settlement is either being gained or lost the alleged pauper may be constructively resident in the parish from which he is bodily absent.

In the present case there are two peculiarities in the matters of fact. In the first place, the father never came back to the Barony parish, which he left on account of ill-health, and secondly, that for a considerable period, while in Denny parish, he was not only able to work, but did actually engage in work. These differences in fact never occurred in any previous case, and it was not unreasonable to make it a question whether they do not so affect the whole period of absence as to cause it to be reckoned a period of non-residence. That is a new question, and I have considered it carefully; but I have come to the conclusion that these differences would make too narrow a ground to proceed upon, and that the decision ought to be that which has been arrived at in the Inferior Court.

Lord Mure and Lord Shand concurred.

The Court adhered.

Counsel for Pursuer (Respondent)—Asher—Dickson. Agents—J. & A. Hastie, S.S.C.

Counsel for Defender (Appellant)—Burnet—Low. Agents—Mackenzie, Innes, & Logan, W.S.

CIRCUIT COURT OF JUSTICIARY.

Thursday, May 8.

GLASGOW SPRING CIRCUIT.

H. M. ADVOCATE *v.* SCOTT.

(Before Lord Young and Lord Adam.)

Justiciary Cases—Breach of Trust and Embezzlement—Indictment—Relevancy—Want of Specification.

An indictment which charged the crime of breach of trust and embezzlement of the sum of £40,688, 1s. 2d., committed during the course of a year, (the money being the proceeds of 280 bills of exchange which the panel had got discounted for his employers,) and which did not aver when, where, or from whom the money alleged to have been embezzled was received—*held* irrelevant, on the ground of want of specification.

Observed (*per* Lord Young) that a charge of embezzlement made against a person exercising an independent employment, and who is not subject to his employer's orders like a clerk or servant, ought to be stated so as to show that specific sums or goods, received only for immediate conveyance to the employer, were appropriated, and that the case is not one of mere failure to satisfy the employer's claims on a final accounting over a long period.

In this case William Scott was charged with the crime of breach of trust and embezzlement, "in so far as you the said William Scott, having been during the period from 1st January 1877 to 30th