difficulty. If I thought this case to be clearly ruled by the previous judgment in *Simpson and Miles* I should have nothing to say, but simply to apply the rule of that case to the present, however much I may have differed in that case from the opinion of the majority of the Court. But it appears to be admitted that the case of *Simpson and Miles* does not rule this case. My brother on the right (Lord Deas) thinks that this case must be decided in the same way as if *Simpson and Miles* had never been heard of, and all your Lordships are of opinion that it differs materially in its circumstances. It certainly is carrying the principle of *Simpson and Miles* a good deal farther to apply it in the present case, and it is for that reason that I find myself in a position to dissent from the present judgment, for though of course I must apply *Simpson and Miles* to every case precisely similar, I do not consider myself bound to carry it one step farther.

The most material difference between the two cases is, that in *Simpson and Miles* when the pauper was absent from his home he was not resident in any other parish, but was on the sea, and that was a circumstance which certainly influenced very much the opinions of the Judges in the majority. But here it appears to me that when the pauper was absent from his home in Scalloway he was resident elsewhere, and resident within the meaning of the 76th section of the Poor Law Amendment Act. He was in the parish of Bressay, and was resident there in this sense, that he lived on land except when he was out fishing. He occupied a bed, and consequently a dwelling-house on land in Bressay. Every one knows that fishermen must ply their trade on land as well as at sea, and must come to shore in order to repair and dry their nets, to mend their boats, and to repair their tackle. They must come on shore likewise for the purpose of selling their fish, and sometimes, as in this case, for curing their fish. Besides, it is in evidence that the father of the pauper had a croft, and this pauper was employed in its cultivation and management.

It will hardly be disputed that if Williamson had resided in that way in Scalloway for five years continuously, he would have acquired a residential settlement in Scalloway. Therefore, this case involves the proposition that a man may, within the meaning of the 76th section of the Act, be resident in two places at the same time. For the case of *Simpson and Miles* upset the rule which had been established in the three previous cases of *Aberdeen Infirmary* v. *Watt*, *Hutcheson* v. *Fraser*, and *Macgregor* v. *Watson*. It did not proceed on a construction of the same word as these cases, for they proceeded on a construction of the word "continuous," while the case of *Simpson and Miles* proceeded on a construction of the word "residence." But the practical result was to destroy one rule and set up another. *Simpson and Miles* did establish this, that "residence" and "residing" within the meaning of the statute may be satisfied by constructive residence. That is, a man may be held to be "resident" when he is never present in the place at all; in short, that constructive residence may be accepted in place of actual residence. Now the circumstances of this case afford a very strong example of the application of this rule. It is proved that for the greater part of the five years this man was *de facto* eating and drinking and sleeping in the parish of Bressay; that he was always there except when he was at sea, not fishing at a great distance, but off the coast of Bressay, and that his residence at Scalloway was for a much shorter period.

All I shall say is, that I conceive "residence," in the meaning of the 7th section, to be actual and not constructive residence; but this case will establish the principle that something that is not personal residence will be sufficient for the acquisition of a settlement, and if that is so decided, I shall, of course, hereafter interpret the clause in that way.

Agents for Advocator—Stuart & Cheyne, W.S.
Agents for Respondent—J. & R. D. Ross, W.S.

Tuesday, January 5.

SECOND DIVISION

CLARK *v.* CLARK.

Reference to Oath—Bill—Charge—Alleged want of Value. Circumstances in which *held* that the terms of an oath were negative of the reference.

This was a suspension of a charge upon a bill, on the ground that no value had been received by the suspender. The question of value had been referred to the charger's oath. It appeared from the oath that the suspender had been sequestrated in November 1867, and at that time the charger was his creditor in a bill for £146, 17s. 8d.; and also that the suspender had been discharged in February 1868 under a composition-contract, whereby his creditors, including the charger, had agreed to accept of a composition at the rate of 7s. 6d. per pound. It farther appeared that some time after the charger had agreed by letter to accept of the composition the parties met at Greenock, when the suspender accepted a second bill for £147—namely, the bill now charged on. The suspender averred, with reference to this bill, that he accepted it as an accommodation to the charger, who was his brother, but the charger deponed in reference to it—"My brother gave me the second bill of his own free will. He said he had failed so shortly before, and he did not wish to take me in. Both he and I considered that the granting of the second bill was a rearing up of the debt."

The Lord Ordinary (MANOR) passed the note.

The charger reclaimed.

GIFFORD and DUNCAN for him.

BURNET in answer.

The Court reversed, holding that the terms of the oath were negative of the reference. The old debt was no doubt extinguished by the discharge following upon the composition-contract, and the suspender was under no legal obligation to grant the second bill; but every bankrupt was under a moral obligation to pay his debts in full if he became able to do so, and that obligation was sufficient legal consideration for granting the bill. It was also thought to be clear, from the passage in the oath above quoted, that the consideration referred to was the cause of the suspender accepting the bill.

Agent for Suspender—William Mason, S.S.C.
Agents for Charger—J. & R. Macandrew, W.S.

Thursday, January 7.

FIRST DIVISION.

FRASER *v.* CONNELL AND CRAWFORD.

Arbitration — Award — Ultra vires — *Compensation.*