firmed at two extraordinary general meetings of the company, it was resolved to cancel the said article 3 and to substitute for it an article by which the objects of the company were extended so as to include the business of sickness and guarantee insurance.

The prayer of the petition craved, *inter alia*, intimation in common form, and "such further intimation as to your Lordships shall seem proper."

On 14th May 1896 the Court appointed the petition to be intimated in common form, and to be advertised in the *Scotsman*, and *Aberdeen Free Press* newspapers.

No answers having been lodged, the Court on 26th May 1896 remitted to Mr C. B. Logan, W.S., to inquire and report as to the regularity of the proceedings.

Mr Logan reported that the proposed extension of business appeared to him to be covered by the provisions of the Companies (Memorandum of Association) Act 1890, but called the attention of the Court to two points—(1) Whether the petition should not be granted only upon the condition of the company altering its name—*Scottish Accident Insurance Company, Limited*, March 12, 1896, 33 S.L.R. 414; (2) Whether in terms of the statute and in view of the fact that no special intimation had been given to the policy-holders of the company, and that the advertisement ordered by the Court contained no indication of the nature of the petition, sufficient intimation of the proposed alteration had been given to the policy-holders.

Argued for the petitioners—(1) Change of name was unnecessary. Sickness insurance was merely an extension of the original accident insurance business, and guarantee insurance of the employers liability insurance business. Change of name had not been insisted on in the case of *The Northern Accident Insurance Company*, June 30, 1893, 30 S.L.R. 834; (2) The policies of the company ran from year to year, and therefore intimation to the policy-holders was unnecessary.

At advising—

LORD PRESIDENT—The view of the Court is that expression should be given in the title to the new branches of the business, and that distinctly. The terms in which that should be done are a matter of adjustment with the Board of Trade. The Court is also of opinion that further advertisement should be made.

I may take this opportunity of saying that in preparing petitions far less attention than is appropriate is paid to the question to whom intimation should be made. It is impossible for the judge who has charge of the Single Bills to detect or realise the necessity for further advertisement, yet sometimes the inept form "or such intimation as your Lordships may think proper" is adopted. The only protection is that we have a remit to an accomplished man of business who detects the deficiency in the advertisement, with the consequence of involving parties in greater expense than would have been necessary if the appropriate intimation had been made at first.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

> "Having resumed consideration of the petition, together with the report by Mr C. B. Logan, and heard counsel for the petitioners, Appoint intimation of article 3 of the original memorandum of association and of the new article of the memorandum proposed to be substituted therefor, to be made by advertisement once in each of the *Scotsman* and *Aberdeen Daily Free Press* newspapers; and appoint all parties having interest to lodge answers, if so advised, by the first box-day in vacation."

Counsel for the Petitioners—Sol.-Gen. Dickson—Glegg. Agents—Macpherson & Mackay, S.S.C.

Saturday, July 11.

SECOND DIVISION.

[Sheriff-Substitute at Glasgow.

PARISH COUNCIL OF RUTHERGLEN *v.* PARISH COUNCIL OF BARONY PARISH, GLASGOW.

Poor—Recourse—Parish Liable—Admission of Liability—Acquisition of Settlement by Residence.

A parish which had afforded relief to the illegitimate children of a married woman who had been deserted by her husband claimed repayment of its advances from the husband's parish of birth. The claim was resisted on the ground that a settlement by residence had been acquired by the mother in the relieving parish, and a joint investigation was made by the two parishes, in the course of which a signed statement was taken from the mother of the children, witnessed by the inspectors of poor for both parishes, in which she specified her successive places of residence during five years subsequent to her husband's desertion. These were all within the relieving parish. This statement was corroborated by the birth and death certificates of the pauper's children during the period in question. Thereafter the relieving parish withdrew its claim.

Eight years afterwards the question of the paupers' settlement having again been raised, *held* (1) that no conclusive admission of liability could be inferred from the withdrawal of the claim, but (2) that the statement of the mother so corroborated was in itself sufficient evidence of the acquisition of a settlement by residence in the relieving parish.

Poor—Residential Settlement—Interruption of Acquisition of Residential Settlement —Poor Law Act 1845 (8 *and* 9 *Vict. c.* 83), *secs.* 69 *and* 76.

Held that the acquisition of a residential settlement had not been interrupted by a pauper, at a time when she was not a fit object of parochial relief, having applied for and obtained relief.

In 1876 Rose Ann Rice married Robert Ferrier, a joiner, whose parochial settlement was the parish of his birth, viz., Rutherglen. A child Lillias Ferrier was born of the marriage.

In 1879 Robert Ferrier deserted his wife and went to America, his settlement at that time being still the parish of Rutherglen.

Thereafter Mrs Ferrier lived with a man named James Cross, a carter.

In 1883 Mrs Ferrier and Cross took up residence in Barony Parish, Glasgow.

Mrs Ferrier and Cross had four children. Their certificates of birth showed that they were Mary Cross, born on 25th July 1884 at 85 George Street, Mile End, Barony, David Cross, born on 10th January 1888 at 16 William Street, Mile End, Barony, John Cross, born on 31st January 1889 at 85 George Street, Mile End, Barony, and Ann Cross, born on 1st May 1891 at 8 Duncan Street, City Parish, who died in August 1891 at William Street, Mile End, Barony.

Lillias Ferrier died on 30th April 1888 at 16 William Street, Mile End, Barony.

In July 1892 James Cross died.

In August 1892 Mrs Ferrier was sentenced to seven days' imprisonment for assault, and her children were removed to the Barony Parish Poorhouse.

A claim was thereafter made by Barony Parish upon Rutherglen for the relief granted by Barony Parish to the children. A joint investigation was entered upon by the two parishes as to the settlement of the pauper children, Rutherglen contending that Mrs Ferrier had acquired a residential settlement in Barony Parish, and Barony Parish denying that she had done so. In the course of the investigation the following written statement was made by Mrs Ferrier and her niece Mrs Fulton:—

"23rd March 1893.

"*Robert Ferrier's Wife.*

"Pauper states she went to E. Rose Street, where she applied to City Parish, 13th July 1883, and left about one month after. After leaving above address I went to 18 William St., M.-E., 30 Coalhill St., 16 William St., M.-E., George St., M.-E., 30 Coalhill St., 16 William St., where daughter Lilly died on 13th April 1888. After she died I went to 85 George Street, where John was born 31/1/89. I then went to Coalhill St., then Duncan Street (lodging for 4 or 5 months with Mrs Dorrans), then to 18 William Street, M.-E., then E. Hill Street, then E. John Street, where I was living when my children were sent to poorhouse. I cannot specify the exact periods I was in any of the above-mentioned houses, but always had a house in my own or Cross's name.

ROSE ANN RICE or her **X** mark
FERRIER.

"J. P. Brand,
Witness

ROSE ANN RICE or her **X** mark
FULTON.

"Allan S. Edmiston,
Witness.

"Rutherglen, 23*rd March* 1893."

The witness J. P. Brand was the Assistant Inspector of Poor of Barony Parish, and the witness Allan S. Edmiston was the Inspector of Poor of the Parish of Rutherglen.

In May 1893 Barony Parish withdrew the claim of relief against Rutherglen.

On 31st March 1894 the two illegitimate children of Mrs Ferrier, David and John Cross, were found in the City Parish of Glasgow in a destitute condition, and were received into the City Parish Poorhouse as fit objects of parochial relief.

On 23rd November 1895 Mrs Ferrier died in Stirling poorhouse.

Thereafter the City Parish of Glasgow raised an action in the Sheriff Court at Glasgow against the parish of Rutherglen, or alternatively against the Barony Parish, for £38, 12s. 10d., the amount expended by them in maintaining the children David and John Cross.

The defenders, the parish of Rutherglen, refused to pay the sum sued for, on the ground that Mrs Ferrier had acquired a settlement by residence in the Barony Parish, and averred that the Barony Parish had admitted this fact by withdrawing their claim in May 1893. The defenders, the Barony Parish, refused to pay, on the ground that Mrs Ferrier had not resided in the Barony Parish continuously for five years without having applied for parochial relief for herself and her children.

A proof was led. It showed, *inter alia*, that in February 1888 Mrs Ferrier had applied for and received relief for her daughter Lillias, but that she had done this simply for the purpose of getting the Barony Parish doctor, who was reputed to be a specialist in consumptive cases, to attend upon her daughter, who was consumptive.

On 28th May 1896 the Sheriff-Substitute (SPENS) pronounced the following interlocutor:—"Finds that the children David Cross or Rice and John Cross or Rice became chargeable to the pursuers' parish on 20th March 1894, and are still chargeable: Finds these children were the illegitimate children of Rose Ann Rice or Ferrier, who died in Stirling poorhouse on 23rd November 1895: Finds these children had been abandoned by the mother, and were proper objects of relief on 20th March 1894 onwards till this action was raised: Finds it is not disputed by the defenders, either the parish of birth of Robert Ferrier, who was born in Rutherglen Parish, and who was married to Rose Ann Rice or Ferrier on 17th March 1876, or the Parish of Barony, where it is alleged the said Rose Ann Rice or Ferrier acquired a residential settlement after the desertion of the said Robert Ferrier, is liable for the maintenance of said children:

Finds no proof was led to establish that a residential settlement had been acquired by the said Rose Ann Rice or Ferrier in Barony: Finds it not proved that liability was admitted by Barony Parish *quoad* said children at any time so as to bar them in this action from disputing liability: Finds therefore the defenders, the Parish Council of the Parish of Rutherglen, are liable for the sum sued for, being the fair and reasonable amount for the aliment of said children from 20th March 1894 until the raising of the present action, with interest thereon from the dates of expenditure: Therefore repels the defences, and decerns against the defenders, the said Parish Council of the Parish of Rutherglen, in terms of the first alternative craving of the petition; as also ordains the said Parish Council of the parish of Rutherglen to free and relieve the pursuers, as craved, of all further advances on behalf of the pauper children, David Cross or Rice and John Cross or Rice," &c.

The defenders, the Parish of Rutherglen, appealed to the Court of Session, and argued—(1) The Barony Parish, by reason of the formal investigation in 1893 and the withdrawal of the claim made against Rutherglen, had already admitted that Mrs Ferrier had acquired a settlement in Barony. This admission of liability was therefore conclusive against them—*Dempster* v. *Lemon*, November 29, 1878, 6 R. 278. (2) The evidence showed that Mrs Ferrier had acquired a residential settlement in Barony. The certificate signed by Mrs Ferrier in presence of representatives of both Barony Parish and Rutherglen, and supported by the birth and death certificates of her children, was the best possible proof in the circumstances. (3) The residential settlement had not been interrupted, because the evidence showed that the woman was not a pauper when she received the relief for her daughter; she only asked relief in order that the parish doctor—a specialist in consumptive diseases—might attend her daughter.

Argued for the defenders, Barony Parish —(1) There was no evidence of a formal admission by Barony Parish that Mrs Ferrier had acquired a residential settlement in the parish. (2) The proof led was not sufficient to show that Mrs Ferrier had acquired such a settlement. (3) Even if the proof were sufficient, the residential settlement had been interrupted by her applying for and obtaining parochial relief in 1888—*Wallace* v. *Dempster*, Oct. 22, 1878, 8 R. 27.

At advising—

Lord Justice-Clerk—In this case the question is whether the Parish of Rutherglen or the Parish of Barony in Glasgow is chargeable for sums given in relief by the City Parish of Glasgow to certain paupers. The questions are, (1) Whether the Barony Parish made a final admission of liability, and (2) If not, whether the pauper acquired a residential settlement in Barony, and (3) If there was residence for the necessary period, whether the time of residence was interrupted by relief having been applied for and given to the pauper during the period.

As regards the first question, it is not in my opinion made out that there was admission by Barony of liability. As regards the second, the evidence is somewhat peculiar. The pauper is now dead, but there is in evidence a statement signed by her, which if true, shews that she did acquire a settlement in Barony, between the years 1883 and 1889. If that statement had been taken from her by the inspector of Rutherglen only, I should not have attached weight to it. Although signed, it would have been in fact nothing but a precognition, which is never admitted as proof, being taken by an interested party, and therefore not necessarily conveying a true deposition of the person examined. But the document is not in that position. It was taken and is authenticated by the signatures of both the representative of Barony and the representative of Rutherglen at the time. It is therefore certified at the time as truly expressing what the deceased had to state in evidence, had there been opportunity for examining her. I hold therefore that it is evidence, just as the recollection of what she stated to any person on the matter, not being precognition, would have been admissible. But I think it further to be more weighty than such recollection would have been. It is in truth her written statement of facts, deliberately made and accepted as deliberately made by both the parties. The next question is—Is it corroborated? I think it is substantially corroborated by the birth and death certificates of her children, which are produced, which fix her residence at various times in the places set forth in the statement. There is no contrary evidence, and I hold it sufficiently established that there was residence for the necessary period in Barony.

But it is said, and that is the third point, that residence was interrupted by parochial relief given in the spring of 1888. If this were the fact, it is strange that Barony should have withdrawn from its claim against Rutherglen. But I am satisfied that there was no true interruption, because although certain medical relief was given, the deceased was not truly a person entitled to parochial relief at the time, and got the medical treatment by deceiving the parochial authorities, and she was working and earning money at the time, and living in family with a man who kept her. All this was before Barony Parish at the time, and they on 11th June 1893 noted "claim withdrawn against Rutherglen." This, though it is not held final, may well account for paucity of evidence, as Rutherglen had no reason to suppose that Barony would raise any further question.

I move your Lordships to recal the interlocutor of the Sheriff-Substitute, and to decern against the Inspector of Barony.

Lord Trayner—I think the appellants have failed to show that any admission was ever made by the Barony Parish of its

liability for the relief of the paupers' mother, at least of such a nature as now to bar that parish from maintaining its present defence. On the other hand, I think the appellants have established that the paupers' mother acquired a residential settlement in Barony, between August 1883 and August 1889. Whether the acquisition of that settlement was barred by reason of parochial relief being afforded by Barony to the pauper's mother in the early part of the year 1888, is a more difficult question. But I have come to be of opinion that at the date when such parochial relief was afforded, the pauper's mother was not a proper object of parochial relief, and that the relief afforded did not therefore bar the acquisition of the settlement. I see no ground for holding that that settlement had been lost when the paupers became chargeable.

LORD MONCREIFF—Three questions have been argued to us. (1) Did Barony finally admit liability? (2) Assuming that it did not, did the paupers' mother, Mrs Ferrier, reside in the Barony Parish for five years between August 1883 and 31st January 1889? and (3) Was the acquisition of a residential settlement in Barony interrupted by Mrs Ferrier applying for and receiving parochial relief in February, March, and April 1888?

The evidence upon all three questions is narrow. On the first question I agree with the Sheriff-Substitute that it would not be safe on the evidence to hold that there was a final admission of liability on the part of Barony. There was a joint investigation which proceeded a considerable length, and at the conclusion of it Barony withdrew its claim against Rutherglen. But there is no sufficient evidence that a deliberate final admission of liability, duly authorised by Barony, was ever made. At the same time, the fact that this joint investigation was made and that Barony's claim was withdrawn may have this bearing on the second question, that it may excuse the absence of evidence which would otherwise have been looked for from Rutherglen to establish the successive residences of the paupers' mother in Barony parish.

On the second question the evidence is extremely narrow, and I have felt considerable difficulty in assenting to the view that continuous residence for five years in Barony is made out. The Sheriff-Substitute says in his note that Rutherglen Parish led no evidence whatever to show that a residential settlement had been acquired in Barony. It may be true that no parole evidence was led; but there are two important pieces of evidence — first a signed and witnessed statement by Mrs Ferrier, who is now dead, and her niece, Mrs Fulton, which is printed; and, secondly, the admitted dates and places of births and deaths of the paupers. The statement by Mrs Ferrier is entitled to weight, because it was taken on the joint examination by the representatives of the two parishes. In that statement she specified various residences all in Barony between August 1883 and the end of January 1889. Those residences include houses 85 George Street, 16 William Street, and 8 Duncan Street. It is important to note that the certificates of the births and deaths of the children corroborate this statement to a considerable extent. Mary was born at 85 George Street on 25th July 1884; David was born at 16 William Street on 10th January 1888; John at 85 George Street on 21st January 1889. Lillias died at 16 William Street on 13th April 1888; and Ann was born at 8 Duncan Street on 1st May 1891 and died at 16 William Street, August 1891. I understand that there is no evidence to the contrary. It is true that there is no further confirmatory evidence, but it is explained that it has been found impossible at this distance of time to obtain it. I therefore, although not without difficulty, agree that there is sufficient proof of continuous residence in Barony between 1883 and 1889.

On the third question—it is proved that in February, March, and April 1888 Mrs Ferrier applied for and got from Barony certain small supplies of medicine, value in all about 18s. If she was a proper object of parochial relief this was quite sufficient to prevent the acquisition of a residential settlement—*Dempster* v. *Lemon*, 6 R. 278. But there is, first, the evidence of Edmiston that she was not a proper object of parochial relief, and that she admitted that she had deceived the inspector of Barony, and this is minuted by Barony. Lastly, it is to be observed that if this defence on the part of Barony was well founded it was sufficient of itself to establish its case against Rutherglen whatever the proof of residence might have been. It is therefore all the more remarkable that Barony should have withdrawn its claim against Rutherglen if it had reason to believe that it was right as to interruption. This, like the other questions in the case, is narrow; but on the whole, I am of opinion that the judgment of the Sheriff should be recalled, and that judgment should be given against the Parish Council of the parish of Barony.

The Court pronounced the following interlocutor:—

> "Sustain the appeal and recal the interlocutor appealed against: Find in fact that Rose Ann Ferrier had acquired a residential settlement in the Barony Parish of Glasgow which she had not lost at the time of her death, and which enured to her children, the paupers: Therefore assoilzie the defenders, the Parish Council of the Parish of Rutherglen, from the conclusions of the action, and decern: and decern against the Parish Council of the Barony Parish in terms of the conclusions of the action."

Counsel for the Defenders, the Parish of Rutherglen—Salvesen—Orr Deas. Agents—H. B. & F. J. Dewar, W.S.

Counsel for the Defenders, the Barony Parish—D.-F. Asher, Q.C.—W. Thomson. Agents—Mackenzie, Innes, & Logan, W.S.