the Court, although when they merely place a liquidation under supervision they take the responsibility of statutorily supervising the liquidator, take absolutely no responsibility for his selection and appointment. That responsibility remains with the shareholders who have made the original appointment, and with the creditors who have tacitly accepted or acquiesced in it.

I therefore think that an application *ex parte* for confirmation of a voluntary liquidator is quite improper and outside the purview of the statute.

LORD MACKENZIE—I concur.

The Court refused the prayer of the note.

Counsel for Petitioners—Paton. Agents—Maxwell, Gill, & Pringle, W.S.

Friday, October 25.

FIRST DIVISION.

[Sheriff Court at Wigtown

WIGTOWN PARISH COUNCIL *v.* AYR PARISH COUNCIL.

Poor—Settlement—Residential Settlement—Continuous Residence — Absences from Parish of Residence—Poor Law (Scotland) Act 1898 (61 *and* 62 *Vict. cap.* 21), *sec.* 1.

The Poor Law (Scotland) Act 1898, sec. 1, enacts that "no person shall be held to have acquired a settlement in any parish in Scotland by residence therein unless such person shall . . . have resided for three years continuously in such parish. . . ."

K., who was born in the parish of W., went to reside in the parish of A. in September 1906. He got a job there as a coal-heaver, which afforded him steady employment except in the summer months of each year. He left A. in July 1907, and went into training with the Militia for three or four weeks, and thereafter was engaged in harvesting work for six or seven weeks at a distance from A. He returned to A. in October 1907, and took up his old employment. In the summer of 1908 he was absent from A. for more than three months, the first three weeks of which he spent in training with the Militia, and during the remainder of the time he was engaged in agricultural labour. He returned to A. in October 1908, and from that date until 27th June 1910, when he became chargeable, he was only absent therefrom for two or three days.

Held that K. had not acquired a residential settlement in the parish of A., in respect that he had not resided there for three years continuously within the meaning of the Poor Law (Scotland) Act 1898, sec. 1, and that W., the parish of his birth, was accordingly liable for his support.

The Poor Law (Scotland) Act 1898 (61 and 62 Vict. cap. 21), sec. 1, is quoted *supra in rubric.*

The Parish Council of Ayr, *pursuers,* raised an action in the Sheriff Court at Wigtown against the Parish Council of Wigtown, *defenders,* for payment of £14, 11s. 10d., expended by the pursuers in alimenting a pauper, James Kelly.

The *facts* were as follows—James Kelly, a native of Wigtown and unmarried, left that place early in 1903 in search of work and took up his abode in Ayr. During the following three years, though his residence was mostly in Ayr, he took work elsewhere when he could get it. In particular, he was employed on a job in Kilmarnock for several months in 1905, and he hired himself out for harvest work during 1904, 1905, and 1906. Kelly returned to Ayr in September 1906, the harvest work being finished, and shortly after his return he found employment as a coal-heaver with Mr Wm. Allan, coal merchant, Ayr. The employment lasted during the winter and spring, but failed him during the summer months, when the coal trade was slack. Kelly therefore left Ayr in July 1907, went into training with the Militia for three or four weeks in Dumfriesshire, and thereafter worked at the harvest in Kirkcudbrightshire for six or seven weeks. He returned to Ayr early in October, and continued in Mr Allan's employment during the following winter and spring. In the summer of 1908 Kelly again joined the Militia for three weeks in Dumfriesshire, and thereafter found work in Kirkcudbrightshire, first in thinning turnips and latterly at the harvest. About the beginning of October, after an absence from Ayr of over three months, he resumed his employment with Mr Allan. In the summer of 1909 Kelly went to Dumfries for the Militia training, but having been discharged as medically unfit, he returned to Ayr after an absence of two days, and continued to work in Mr Allan's employment until 27th June 1910, when owing to illness he applied for and received parochial relief from the parish of Ayr.

During the period from October 1908 to 27th June 1910 Kelly was not absent from Ayr for more than two or three days. After September 1906 when in Ayr he resided mostly in a model lodging-house called the "Trades Hotel." When he left Ayr each summer he took his whole possessions with him, and he had no engagement for work on his return. His evidence was to the effect that he returned to Ayr each autumn because he knew where he had a job to go to, that if during his absence from Ayr he had got a job he would have taken it, that it all depended on the pay, and that he returned to Ayr because he could make more money in Ayr.

On 19th December 1911 the Sheriff-Substitute (WATSON) found that Kelly had acquired a residential settlement in the parish of Ayr, which was subsisting at 27th June 1910, when he became chargeable, and therefore found that the defenders were not bound to relieve the pursuers of their disbursements on Kelly's behalf.

The defenders appealed to the Sheriff

(FLEMING), who on 24th February 1912 recalled his Substitute's interlocutor, and found that Kelly had not acquired a residential settlement in the parish of Ayr, and therefore found that the defenders were bound to relieve the pursuers of their disbursements on his behalf.

The defenders appealed, and argued—The present case was ruled by the case of *Mackenzie* v. *Cameron*, December 10, 1858, 21 D. 93. The defenders did not invoke the doctrine of constructive residence. The question was whether the pauper's absences from the pursuers' parish during the currency of the three years prior to 27th June 1910 were such as to constitute a breach in the continuity of his residence there. Every absence would not have this result. It was a question of circumstances and a question of degree. The Court had to decide what for a man of the pauper's mode of life was a reasonable degree of absence, saving the continuity of residence. Here it could be said that during the whole three years the pauper was substantially working in the parish of Ayr. For the last twenty-one months of that period he was not out of Ayr at all, so that the continuity of his residence was more marked towards the end of the qualifying period, which circumstance was regarded as important in *Mackenzie* v. *Cameron, supra.* Reference was also made to *Beattie* v. *Smith & Patterson*, October 25, 1876, 4 R. 19, 14 S.L.R. 22.

Counsel for the respondents was not called on.

LORD PRESIDENT—I have no hesitation in saying that I think the learned Sheriff is right. It is a question of fact and a question of degree. I do not think the doctrine of constructive residence arises. In order to lose a birth settlement a man must acquire a settlement by continuous residence. The question is whether this man ever had such a residence in Ayr as can be said to be continuous residence. I think he had not. Mr Watson quite properly has quoted the case of *Mackenzie.* That case has gone a very long way—much further than I should have been prepared to go. But we cannot take that case as a standard and then see whether this one comes so near it that the same result must follow. Each case must be determined by its own circumstances, and what I think distinguishes this case from *Mackenzie*, if it is necessary to distinguish it, is that the period which *in toto* was dealt with in *Mackenzie* was very much longer than the period in the present case. In *Mackenzie's* case, for nearly twenty years of his life the man had shown that the one place where he had got subsistence from his labour was the parish of Blair Atholl, and the only period of the year when he was not there was when he went home to his own parents' house, when employment was slack at Blair Atholl. Here you have not got the same continuity of time. After Mr Allan had once begun to employ him Kelly not unnaturally went back to Ayr, where he thought a job was waiting for him, but he would have been equally happy to go anywhere else if he could have got a better job. You have not got that long period of year after year which would enable you to say that Ayr was the only place where the pauper went for his livelihood, as it was possible to say of Blair Atholl in *Mackenzie's* case. I am therefore for adhering to the learned Sheriff's interlocutor.

The Court affirmed the interlocutor appealed against and dismissed the appeal.

Counsel for the Pursuers (Respondents)—Horne, K.C.—Valentine. Agents—M. J. Brown, Son, & Company, S.S.C.

Counsel for the Defenders (Appellants)—Johnston, K.C.—Hon. W. Watson. Agents—Tods, Murray, & Jamieson, W.S.

Tuesday, October 29.

FIRST DIVISION.

[Junior Lord Ordinary.

MACKINTOSH, PETITIONER.

Entail—Provisions to Younger Children—Free Rent—Deductions—Interest on Debt.

A deed of entail empowered the successive heirs to provide annuities for widows not exceeding one-fourth of the free rent "after deduction of all annual public and parochial burdens and interest of debts and provisions affecting the same at the time," and to grant provisions to younger children to the extent of five years' free rent "after deduction of all annual public and parochial burdens affecting the same at the time, but not of the existing liferents to widows or husbands." No mention was made of interest of debts.

Held, on a sound construction of the deed of entail, that in estimating the free rents in regard to the provisions for younger children interest on debt charged on the estate fell to be deducted.

Entail—Provisions to Younger Children—Free Rent—Deductions—Interest on Estate Duty—Finance Act 1894 (57 *and* 58 *Vict. cap.* 30), *secs.* 6 (8) *and* 9 (1).

An heiress of entail, who had succeeded to the estate subsequent to the passing of the Finance Act 1894, and thereupon became liable to pay estate duty, granted a deed whereby she made provision for younger children to the extent of five years' free rent of the estate. The entail provided that the free rent was to be computed as at the date of the deed of provision after deduction of annual burdens then affecting the same. The duty, though due, was not exigible till a date subsequent to that of the deed of provision.

Held that in estimating the free rent interest on the duty fell to be deducted.