

date. I do not consider the decision in that case to interfere with the condition of children, whether below or beyond puberty, who are unemancipated, and are residing in family, either with their father, or with their mother after the father's death. But, in regard to all emancipated children, I hold the case to settle that their arrival at puberty *eo ipso* discharges any settlement derived from a parent, and, in default of any other settlement, throws them on the parish of their birth. Applying this principle to the present case, I think the pauper's settlement in 1868, when she became chargeable, was not in her mother's place of settlement, but in the parish of her own birth; and, therefore, that the parish of Contin, in which she was admittedly born, must bear the burden of her maintenance.

LORD DEAS—I concur with your Lordship in the chair, and I accept Lord Kinloch's explanation.

LORD ARDMILLAN—A pupil cannot acquire a settlement in its own right, but goes with the family, and is a burden on the means of the surviving parent. But, if the father dies, the child is forisfamiliarated, if it is of such an age that forisfamiliaration is possible, and, when forisfamiliarated, a child goes upon its own settlement. Now, here the pauper is above pupillarity, and the father is dead, so she has no settlement but her own, which, in this case, is the parish of her birth.

Agents for Contin—Adam & Sang, W.S.  
Agents for Dunse—J. & J. Turnbull, W.S.

Friday, June 28.

## SECOND DIVISION.

### MACEWAN'S TRUSTEES, PETITIONERS.

#### *Bankruptcy—Trustee's Discharge.*

Procedure in application for discharge of representatives of a trustee who died during the dependence of the sequestration.

The estates of Barker & Co., commission merchants, Glasgow, were sequestrated on 31st March 1864. Andrew MacEwan was appointed trustee, and paid dividends to the creditors, by which the estate was nearly exhausted. The bankrupts were discharged. Thereafter, on 11th June 1860, Andrew MacEwan died. The amount of the estate in the hands of the petitioners, who are the representatives of Mr MacEwan, was £20, 1s. 5d. The Bankruptcy (Scotland) Act of 1856 made no provision as to the mode in which the representatives of a trustee dying undischarged after a final distribution of the sequestrated estates should apply for the deceased's intromissions, and therefore the representatives of Mr MacEwan presented this application.

MONCREIFF for the petitioners—*Brown's Trustees*, Nov. 17, 1864, 3 Macph. 56.

The Court, after remitting to the Accountant of Court to inquire if the statements were correct, pronounced this interlocutor:—

*Edinburgh, 28th June 1872.*—The Lords having resumed consideration of the petition, with the report of the Accountant in Bankruptcy, appoint the petitioners to lodge the unclaimed dividends in bank, in terms of the statute; and to transmit the Sederunt Book to the Accountant in Bankruptcy; Exoner and discharge the petitioners, as the trus-

tees and representatives of the deceased Andrew MacEwan, and all others, his heirs, and representatives whomsoever, of his whole intromissions, act and management, as trustee foresaid; and grant warrant to and authorise the Sheriff-clerk of the county of Lanark, or other custodier of the bond of caution, to deliver up the same to the petitioners, as trustees foresaid, upon delivery of a certified copy of this interlocutor; and farther, to ordain the expenses of this application to be paid out of the funds belonging to the said sequestrated estates; and decern; and remit to the Auditor to tax the expenses now found due, and to report.

Agent for Petitioners—James W. Moncreiff, W.S.

Saturday, June 29.

### MUIR V. LAMB.

#### *Appeal—Expenses—Withdrawal.*

Where a party has appealed to the Court of Session against an interlocutor pronounced in the Sheriff-court, and moves for leave to withdraw the appeal after it has been received but before it is sent to the roll, the respondent must himself bear any expense that he has incurred in consequence of the appeal being taken.

Lamb having raised an action against Muir in the Sheriff-court of Glasgow, the latter appealed against an interlocutor appointing a proof for the 2d of July. Lamb's Glasgow agents informed their correspondents in Edinburgh of the appeal, and requested appearance to be entered. This was accordingly done. Before the fourteen days allowed to the appellant to print and box his appeal had elapsed, he lodged a note, on 29th June, craving for leave to withdraw his appeal.

J. M. LEES, for the respondent, moved that the interlocutor should contain a finding of expenses, to cover charges for correspondence, entering appearance, &c. It was settled in the case of a reclaiming note being allowed to be withdrawn that the interlocutor shall contain a finding of one guinea of expenses to cover expenses of correspondence; *Kirkwood v. Knox*, June 4, 1868; *Perceval*, May 27, 1868; *Macleod v. Inglis*, Nov. 30, 1870, 8 Scot. Law Rep., 156. And in the case of a reclaiming note there is no appearance to be entered. As a respondent is entitled to insist in an appeal, though the appellant wishes to withdraw it, he may have to consider whether or no he should do so. Precisely the same correspondence takes place whether an appellant withdraws his appeal with the Court's leave or abandons it, *de facto*, by failure to print; and in the latter case he is entitled to three guineas of expenses; A.S., March 10, 1870, iii. 5. In such a case the appeal does not appear in the Single Bills. But as that enactment might be intended to be of a penal character, the respondent only asked for the same finding as in the case of a reclaiming note being withdrawn by leave of the Court. Such a finding should be inserted, otherwise the respondent would have to bear charges that will be made against him, and which have necessarily been incurred through the appellant's actings.

CRIGHTON, for the appellant, replied, that in the case of *Kirkwood* the reclaiming note had appeared in the Single Bills, whereas this appeal had not. There should be, therefore, no finding of expenses.