that he had a license and a supplemental one which enabled him to do so. There seems to be a mistake as to what a supplemental license is. That is a license which is got after the year has run out, and becomes as good a license as one taken out for the whole period. It is not an occasional license which entitles a person to let out for hire on one or two occasions and no more. But on the facts found to be proved in the 2d head, two difficulties are suggested by the defendant. It was said, in the first place, that if his license entitles him to keep two horses for hire, he is entitled to take other horses not kept for hire and employ them as post-horses when the two licensed horses are disabled by the work which they have already done. In other words, the permission contained in the license is this—You may keep as many horses as you like, and let them out for hire, provided you never have out on hire at one time more than the number allowed by the license. It is scarcely necessary to remark that that is an impossible construction. It would enable a master of post-horses to carry on a greater business than he was entitled to by his license. That wont do, for it would simply be a fraud upon the revenue. But there is another objection which is certainly more difficult, and requires further consideration. It is said that in the 2d head of the case it is not found that the defendant kept any more than two horses for hire, and yet the charge is that he did so. The case says that he had four horses, that two of these were kept for hire and two for labour. [Reads 2d head.] The only question of difficulty is that the case is not well stated. But there are no means of amending that, and the question therefore is—Are the facts before us sufficient to support a conviction? I think that depends on a construction of the 15th section of the Act of Parliament [Reads]. We are all agreed that there are two offences specified in this action, but the difficulty is to define them. It was contended to us for the defendant with great plausibility, that the first offence is letting a horse for hire, and the second is keeping a horse for hire without a license, or beyond the number—that the essential difference between the offences is, that the one is letting and the other keeping for hire. If that were the true construction, we must give judgment for the defendant. But it is not the true construction. The essential difference is this, that the one offence is committed by a man who has a license, and the other by a man who has not. The question comes to be whether the facts before us are sufficient to justify a conviction of the second of these offences. I think they are. It is not found in so many words that he kept more than two horses for hire, but it is found that he kept two and let more. A man's purpose may be confined in his own breast unless it be divulged. He may tell you his intention in keeping horses or he may let them. It seems to me that the latter is the common way of arriving at the purpose. They may be kept for other purposes, but that wont relieve him of the Act of Parliament. Therefore I think, when the Justices state in the special case that two plough-horses were let for hire occasionally, they were justified in concluding that it was proved he kept for hire more horses than he had authority for in his license.

The other Judges concurred, and the conviction was accordingly affirmed.

Agent for the Crown—Solicitor of Inland Revenue.

Agent for Defendant—Alexander Morison, S.S.C.

Saturday, Jan. 19.

FIRST DIVISION.

WILSON'S EXECUTORS *v.* SOCIETY FOR THE CONVERSION OF THE JEWS AND OTHERS.

Process—M.P.—Amendments after Closing Record.

A claimant held not entitled to amend his condescendence after the record had been closed and a proof partly led.

The late Isabella Wilson, by testament, appointed the pursuers to be her executors, and *inter alia* directed them to divide the residue of her estate among four charitable societies. One of these was called in the will "The Society for the Conversion of the Jews." After Miss Wilson's death, certain persons claiming to be the next of kin to her raised this process for the purpose *inter alia* of having it determined who was in right to the foresaid bequest. They contended that the bequest was null and void from uncertainty; that there was no society bearing the title as given in the will; and while there were many societies in existence having similar designations, it was impossible to determine which Miss Wilson meant to benefit. The raisers were Mrs Ogg and others, and claimed to be related to Miss Wilson through their grandmother, who they alleged was a cousin of Miss Wilson's grandfather. They alleged that Miss Wilson's father was John Wilson, and her grandfather George Wilson. When the case came into Court a society, bearing the name of the "Scottish Society for the Conversion of Israel," &c., appeared to claim the bequest. There also appeared a claimant called James Wilson, who alleged that he was one of Miss Wilson's next of kin, and nearer than the other claimants, in respect that his grandfather was a brother of the grandfather of the testatrix. In his claim he alleged that Miss Wilson was the daughter of John Wilson and the granddaughter of another John Wilson, and that his father was James Wilson of Glasgowego. After the record was closed a debate took place as to the procedure in the cause when the Scottish Society for the Conversion of Israel objected to discuss the question as to the validity of the bequest with two sets of claimants, both of whom could not be next of kin, and who had different averments as to the testatrix's grandfather's name through relationship with whom they both claimed.

The Lord Ordinary (Ormidale) found that those claiming to be next of kin should establish their propinquity before the case went further. They were both allowed a proof of their averments, and a commission was granted to take the evidence of aged and infirm witnesses who could not attend the proof in Edinburgh. That commission has been partly executed. Thereafter the claimant, James Wilson, proposed before the diet of proof that he should be allowed to amend his record to the effect of calling the grandfather of the testatrix George in place of John, and to describe his father as of Gettyhill in place of Glasgowego. He alleged in a minute that these were mere errors "which occurred through the haste with which the first inquiries were necessarily conducted," and were afterwards discovered by the country agent in the course of his investigations.

The other claimants opposed the motion, and after hearing parties, Lord Ormidale refused it, giving the following explanation of his reasons for so doing:—"It was acknowledged on the part of the claimant Wilson, that the erroneous statements in the record, which he desires to have

corrected, are not of the nature of mere clerical errors, and it is clear they are not so. It is also plain, the Lord Ordinary thinks, that the alterations referred to do not relate to matters falling under the category of *res noviter venientes*, and accordingly the form of proceeding applicable to matters of that description, has neither been adopted or proposed to be adopted by the claimant Wilson. The recent case of Campbell *v.* Campbell, 10th February 1865, 3 M'P. 501, cited by the claimant Wilson, appears to the Lord Ordinary to be adverse rather than favourable to him. That case was treated by the Court as an exceptional one, in respect of a principle which has no application to the present."

The party Wilson reclaimed against this interlocutor, but the Court to-day adhered to the same, and found Wilson liable in additional expenses to each of the other claimants modified to £4, 4s. to each.

Wilson declined a proposal to which the other claimaints assented, that he should be allowed to make the proposed alterations, on his paying expenses since the date of revisal of his claim.

Counsel for Wilson—Mr Brand. Agent—Robert Denholme, S.S.C.

Counsel for the Society—Mr Orr Paterson. Agents—J. & A. Peddie, W.S.

Counsel for the other Claimants—Mr MacLean, Agent—William Miller, S.S.C.

SECOND DIVISION.

FORSYTH *v.* NICOLL.

Poor—8 and 9 Vict., c. 83, s. 73—Offer of Poorhouse—Competency of Application to Sheriff.

A pauper having applied for relief, and been offered admission to a poorhouse, which he declined, held that he could not competently apply to the Sheriff on the ground that he had been refused relief.

This was an advocation from the Sheriff Court of Elgin. The advocator had been for several years in receipt of outdoor parochial relief from the parochial board of Duffus. In June 1865, this outdoor relief was discontinued, and an offer was made to him of admission to the Morayshire Union Poorhouse, which is a poorhouse erected under section 61 of the Poor-Law Act of 1845, by Duffus and other contiguous parishes. The advocator refused this offer, and applied to the Sheriff-Substitute, who, proceeding on the ground that poorhouses erected under the Act 1845 were for the relief of the "aged, and other friendless, impotent poor," and that this pauper did not come within the enumerated class (he not being friendless in the sense of the Act, inasmuch as he had a wife able to earn her own subsistence, who resided with him) held that the Parochial Board was not entitled to insist on the pauper entering the poorhouse, but was bound to furnish him with outdoor relief in the parish of his settlement. The Sheriff (B. R. Bell) reversed this judgment, holding that the offer of the poorhouse was a valid tender of relief, and that therefore, there being no refusal of relief, the pauper's application to the Sheriff, under sec. 73 of the Act, was incompetent. Forsyth advocated.

RETTIE, for him, argued—Before the passing of the Poor Law Amendment Act, the parochial relief provided by law for the poor was out-door relief—"needful sustentation." In cases where it was necessary to provide house accommodation, the parish was bound to provide it also, but under the old law a parish was not entitled to say to a proper object of relief, You shall not get sustentation unless you also take lodging. This was clear from the terms of the proclamation of the Privy Council of 11th August 1692, as ratified by Act of Parliament in 1698, which, after providing for raising funds in every parish for the maintenance of the poor, proceeds thus, "and such poor as are not provided of houses for themselves or by their friends, the heritors are to provide them with houses on the expense of the parish." This was the last provision on the subject prior to the present Act. The subsequent proclamation of 1698 referred to correction houses for beggars, vagabonds, and idle persons. There were houses for the poor in existence when the present Act was passed, but the Report of the Royal Commissioners on the Poor-Laws in 1844 showed that they were used for those helpless persons who were unable to take care of themselves. The Commissioners stated that the Scottish system was essentially one of outdoor relief. This being the state of the law at the date of the present Act, that Act provided for the erection of poorhouses in populous places where none already existed; and it carefully described the classes of poor for whose benefit they were to be erected; (1) the "friendless, impotent poor," and (2) those poor persons who, from weakness or facility of mind, or from dissipated or improvident habits, were "unable or unfit to take charge of their own affairs." It was plain from this careful description of classes, that the Legislature did not intend the poorhouse to be used for all classes of the poor at the discretion of the parish. What was called the poorhouse test could only be legally applied to the dissipated and improvident. It was not alleged that the present applicant fell under that class, and seeing that his wife was able to take care of him, he was not so "friendless" that the benefit of the poorhouse could be forced upon him as a condition of his receiving parochial relief. The cases of Watson *v.* Welsh, 26th Feb. 1853, 15. D. 448; and Mackay *v.* Baillie, 20th July 1853, 15 D. 975 were cited.

GIFFORD and C. G. SPITTAL, for the respondent, were not called upon.

The reasons of advocation were repelled.

At advising,

LORD JUSTICE-CLERK—This application was presented to the Sheriff under the 73d section of the Act of Parliament, and it was impossible for the applicant to go to the Sheriff under any other section. In order to justify the application, it was necessary for the applicant to establish that he was a proper object of parochial relief; and the Sheriff has found that he was such an object of relief, but that relief had not been refused.

The only ground of objection to the Sheriff's judgment is that the relief offered was relief which the Parochial Board could not insist on the applicant taking—that it was not legal relief. For a pauper is a poor person entitled to the relief which law provides, and with a legal claim to demand it, and if a parochial board has attached an illegal condition to the relief offered, the poor person is entitled to apply to the Sheriff on the ground of a refusal of relief. The question in this case is whether the offer of the poorhouse to the applicant was a satisfaction of his legal claim to relief.

I concur in a remark that was made in the course of the argument by my brother on my left (Lord Benholme), as to the sentimental matter in the preamble of the 60th section of the Act, and that the enacting part of the clause is alone of importance. The notion that the poorhouse system was introduced into Scotland for the first time by