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 forisfamiliated, if it is of such an age that forisfamiliation is possible, and, when forisfamiliated, 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 trustees and representatives of the deceased Andrew MacEwan, and all others, his heirs, and representatives whomsoever, of his whole intromissions, acts 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.

CRICHTON, 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.

The Court refused to give the respondent any expenses.

Agents for Appellant—D. Crawford & J. Y. Guthrie, S.S.C.

Agents for Respondent—Ronald & Ritchie, S.S.C.

Saturday, June 29.

SPECIAL CASE—GUILD AND OTHERS.

Fee and Liferent—Mineral Rents.

Held that the liferenter, and not the fiar, was entitled to the rent.

This was a Special Case between John Guild, merchant in Dundee, William Brown, merchant, Port Dundas, Glasgow, and William Guild, merchant, Newburgh, Fifeshire, a majority of the trustees acting under the trust-disposition and settlement of the deceased William Guild, brickmaker, formerly of Whitevale, Glasgow, on the first part; and James Guild, farmer, Balgonebarns, near North Berwick, brother of the deceased, a liferenter and fiar, and also the only trustee acting under the said trust-disposition and settlement of the said William Guild, other than the parties of the first part; Marion Guild or Learmonth, wife of John Learmonth, Whitehouse Terrace, Edinburgh, with consent of the said John Learmonth, as her administrator-in-law, and for his interest; Janet Guild, residing in Great Western Road, Glasgow; and Beatrice Guild or Lyon, residing in Oakvale Terrace, Hillhead, Glasgow, widow of the late George Lyon, engineer, Glasgow, liferentrices under the provisions of the said trust-disposition and settlement of part of the estates of the said deceased William Guild, on the second part.

William Guild died on 2d January 1866, unmarried, leaving a trust-disposition and settlement, and two codicils, dated respectively 20th August 1861, 13th July 1863, and 21st December 1865. Marion Guild or Learmonth, Janet Guild, and Beatrice Guild or Lyon, were the only sisters of the truster, and were aged respectively sixty-one, sixty-four, and fifty. Mrs Learmonth had no children. Under the trust-disposition and settlement, the trustees were directed to hold the residue of the truster's means and estate for behoof of the parties therein mentioned, and divide the same, *inter alia*, to the extent of one-fifth to each of his sisters for their liferent use allenarly. Besides personal property, which was insufficient to pay his debts, the truster's estate consisted of heritable property at Camlachie, in the municipality of Glasgow, comprising feu-duties, dwelling-houses, and about 12 acres of land, in which there existed near the surface a thick stratum of clay. Part of these 12 acres had been let for the purpose of excavating the clay, and had been wrought by Mr Hodge, brickmaker, Glasgow, from 1845 to 1855. From 1855 to 1864 Mr Guild, the truster, wrought and used the clay in the said part of the 12 acres for brick-making; and, shortly before his death, but before the execution of the last codicil, he gave up brick-making, and let the clay in the said portion of the 12 acres to William Steven, brickmaker, Glasgow, for ten years from Candlemas 1865. The extent of this brick-field was about 15,000 sq. yards. Another part of the said 12 acres, extending to about 31,000 square yards, had been wrought as a clay-field from 1854, first by Hodge & Macdonald for about ten years, and afterwards by Hodge & Son, under a new arrangement made by the truster with them, for a lease of eleven years from Candlemas 1864. The arrangements above mentioned were made by binding missives between the truster and each of the tenants, but no formal lease had been executed prior to the truster's death. Formal leases were subsequently entered into between the trustees and the tenants in implement of the said missives. The lease to Messrs Hodge & Son provided for a fixed rent of £150 per annum, payable whether the clay was worked or not, with a lordship for all bricks made exceeding three tables or 1,650,000 bricks per annum, in the proportion which that number bears to the fixed rent of £150. Mr Steven's lease was in similar terms, the fixed rent being £120. The gross income of the residue of the estate was about £750 per annum, about £270 of which was derived from the brick-fields. The remainder was made up of house rents and feu-duties. There were bonds over the property, and the nett income was about £400 per annum. The brick-fields were said to be steadily rising in value. The trustees had no power to sell any part of the heritable property till the testator's youngest nephew or niece alive should have attained twenty-one years, which could not be the case till December 1874. At the time of the testator's death, the fair value of the ground let to Mr Steven and Messrs Hodge & Son was £4600. Its present fair value was 6s. per sq. yard, subject to a deduction of thirty per cent., in consequence of the rubbish filled into the excavations not having as yet become sufficiently consolidated to sustain buildings. The truster was in the habit of furnishing returns to the lands valuation assessor, in which he stated the annual value of the brick-fields at the fixed rents payable by his tenants. The rents appeared in the valuation rolls as the annual value of the brick-fields, and on this valuation the testator paid taxes.

Down to the date of this case the liferentrices had been paid sums to account of their interest in the estate; but a question was raised as to whether they were entitled each to one-fifth of the whole clay rents, and, if not, what was the extent of their interests in the clay rents. The liferentrices claimed their proportion of the whole clay rents. The trustees were divided in opinion. Those unfavourable to the liferentrices' claim contended that they were only entitled to the interest of the clay rents, at the rate of five per cent. per annum.

In these circumstances, the opinion and judgment of the Court was requested on the following questions:—

"(1) Did the whole clay rents of the brick-fields form part of the annual income of the trust, divisible among the liferentrices to the extent of one-fifth each?"

And if this question should be answered in the negative,

"(2) To what proportion of the said rents were the liferentrices entitled?

M'Laren for the first parties.

Balfour for the second parties.

At advising—

Lord Justice-Clerk—The question raised in this Special Case relates to the right of certain liferenters under a general settlement to participate in rents drawn from surface clay workings under a lease granted by the testator some years before his death, and terminating in 1875. It is