at once. In that case the servant has his claim for a month's wages, and it may be for board in addition, but he must leave and give up everything which is the property of his master. He is not entitled to remain in the house or office, or other premises of the master, against the master's will. It therefore follows that Clift was bound to leave the defenders' premises, and to give up everything which was their property, including the certificate.

If this petition had been framed so as to ask that the certificate and licence should be delivered up, I should have been inclined to grant the prayer of it. If an assignation had been asked, with the explanation that it would be used forthwith to have the licence transferred, I think the pursuers should have succeeded.

But the defect on the face of the petition as framed appears to be, that there is no statement or indication that Fraser is not to act upon the licence if assigned at once, and without any sanction being got by a transfer from the proper authorities. For aught that we see, Fraser might have used this certificate if assigned so as to have exposed Clift to penalties under the Act.

I am not disposed to differ from your Lordships' unanimous opinion on the question of expenses—although, looking to the defence maintained, substantially to the effect that the certificate was the property of the defender, I think the justice of the case would be met by finding no expenses due to either party.

The following interlocutor was pronounced:—

"Refuse the appeal, and decern; Find the appellants liable to the respondent in expenses, allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Petitioners — Campbell Smith. Agent—Thomas Lawson, S.S.C.

Counsel for Respondent — Kinnear — Young. Agent—W. N. Masterton, Solicitor.

Saturday, February 10.

SECOND DIVISION.

SPECIAL CASE—GREIG AND ROSS.

Poor—Settlement—Illegitimate.

Held that an illegitimate child on becoming a *minor pubes* ceases to be chargeable on the parish of his mother's settlement.

This Special Case was presented by the Inspectors of Poor for the Parishes of New Deer, Aberdeenshire, and Nigg, Ross-shire, for the opinion and judgment of the Court whether a pauper named George Ross or Pirie was chargeable on the parish of Nigg as the parish of his birth, or on the parish of New Deer, as the parish of his mother's settlement. The Case stated that the pauper was the illegitimate child of Alexandrina Ross or Robertson, and was born in the parish of Nigg on 5th May 1860. He received out-door relief from the parish of Rosskeen on 24th December 1874, being then upwards of fourteen years and seven months old, and statutory notice was given by the said parish of Rosskeen to the parishes of New Deer and Nigg. When the pauper so received out-door relief the said Alexandrina Ross or Robertson was the widow of George Robertson, to whom she had been married two years after the birth of the said George Ross or Pirie. The said George Robertson was born in the parish of New Deer, and his settlement at the time of his death in November 1872 was in his said birth parish. The settlement of Alexandrina Ross or Robertson in December 1874, following that of her said husband, was in the said parish of New Deer.

The pauper George Ross or Pirie remained in the house of his maternal grandmother, in the parish of Nigg, where he was born, till October 1868. A year after his birth his mother went away into service, but till her marriage she contributed to his support. After her marriage she removed him to Aberdeen, where he resided with her and her husband, was sent by them to school, and was for about three months with a shoemaker as message boy, at 2s. 6d. per week. In 1869 he removed with them to Edinburgh, and resided with them in Leith Walk, supported by his stepfather, the said George Robertson. For two months in 1871 he worked in a lead work at 4s. a-week. In September 1871 the pauper, being then eleven years and four months old, and residing in family with his mother and her said husband, fell over the bannister of the stairs and received a compound fracture of the thigh bone. He spent six months in the Edinburgh Infirmary, and was then discharged, but being of a scrofulous constitution he never fully recovered from the effects of the injury. On leaving the Infirmary the pauper resided with his mother and the said George Robertson until the latter's death in November 1872, and thereafter with his mother till February 1873. In that month the grandmother (who then lived in Invergordon, in the parish of Rosskeen, but had come to see her daughter in Leith Walk on the death of the said George Robertson) returned to Rosskeen, taking the pauper with her, the doctor having urgently recommended that he should try country air. Immediately on their arrival in Rosskeen she applied on his behalf for parochial relief. The 'Record of Applications' of that parish bore that formal application was made by the pauper on 6th March 1873; that he had no occupation, and was wholly disabled; that the inspector, ordered his admission to the poorhouse, and that the order was confirmed by the Parochial Board of Rosskeen on 26th April 1873. The grandmother, however, refused to allow the boy to enter the poorhouse, and with occasional charitable assistance she supported him in her house till 24th December 1874, when he was allowed outdoor relief, which was continued at the date of this case. Since the said accident the pauper had never worked for or supported himself, and had been unable to do so.

In these circumstances, Greig, the Inspector of New Deer, contended that the pauper, as an illegitimate *minor pubes*, was chargeable on the parish of Nigg, his birth-parish; and Ross, Inspector of Nigg, contended that the pauper, having always been unable to earn a livelihood, was still chargeable on the parish of New Deer, the derivative settlement of his mother.

Argued for Greig—It was settled by the whole Court in *Craig* v. *Greig & Macdonald*, 18th July 1873, 1 Macph. 1172, that the birth settlement of

a legitimate son, whose father was dead, revived on his reaching minority. When a child attains puberty all legal authority of the mother is at an end. *Lawson* v. *Gunn*, 22d Nov. 1876 (*supra* p. 118) was the case of an adult imbecile retaining the birth-settlement of her father. We do not dispute the law of *Hay* v. *Thomson*, 6th Feb. 1856, 18 D. p. 510, that the settlement of an illegitimate pupil child is the settlement of the mother, however that may have been acquired; or of *Carmichael* v. *Adamson*, 28th Feb. 1863, 1 Macph. 452, where a legitimate pupil child was held to be chargeable on the parish of the mother's birth, the husband, who had no settlement, having deserted.

Argued for Ross—The Case of *Craig* shows that puberty without emancipation is not sufficient to destroy the derivative settlement of a legitimate child (Lord Ormidale's opinion). The cases of a widowed mother and of the mother of a bastard are also put by Lord Deas. In *Fraser* v. *Robertson*, 5th June 1867, 5 Macph. 819, Lord Cowan held that a daughter aged 23, supported by her father, had her father's residential settlement. In *M'Lennan* v. *Waite*, 28th June 1872, 10 Macph. 908, Lord Kinloch said that after a father's death a mother may acquire a residential settlement for herself and the children residing with her, which they retain after pupillarity and till they leave the family. See also Lord Deas' opinion in *Ferrier* v. *Kennedy*, 8th Feb. 1873, 11 Macph. 402. In the *Lasswade* case, 6th March 1844, 6 D. 956, Lord Moncreiff laid it down as a fixed rule that an illegitimate child follows the settlement of its mother. See also *Hay*, *ubi supra*, pp. 530-534; *Gibson* v. *Murray*, 10th June 1854, 16 D. 926; *Hopkins* v. *Ironside & Wallace*, 27th January 1865, 3 Macph. 424; *Walker* v. *Russell*, 24th June 1870, 8 Macph. 893. Here the pauper was totally helpless, and was in the same position as an imbecile.

At advising—

Lord Justice-Clerk—[*After stating the facts*]—The pauper being illegitimate had while he was a pupil his mother's settlement. The mother married a man who was not the father of the pauper, and when in 1874 the pauper becomes chargeable he was actually not living with his mother. There has been no doubt since the case of *Craig* that where children are living in family, and one of them becomes minor and the father dies, there is necessarily forisfamiliation. But it is said that this rule does not apply to the case of illegitimate children living with their mother; that there is no *patria potestas*, or rather that in some undefined way the *potestas* devolved upon the mother, and that if children after pupillarity continue to live with her they may retain her settlement. There is no ground whatever for the contention. There is nothing analogous to the *patria potestas* in the case of an illegitimate child, for it has no father; and whatever the position of the mother may be during the years of pupillarity, when the child becomes *minor pubes* his birth settlement necessarily revives. In the case of *Ferrier* Lord Deas seems to have doubted whether, where a father dies and the child continues to live with and to be supported by the widowed mother, forisfamiliation necessarily followed. No such doubt, however, could arise in the circumstances of this case. It was said that the pauper, having since 1871 been disabled from self-support, was in the same position as a lunatic. There is no doubt a lunatic child may after majority continue the derivative settlement of its parent. But that arises from the fact that the lunatic has no mind, and cannot acquire a settlement.

Lord Ormidale—It has been authoritatively settled in the case of *Craig* v. *Greig and M'Donald*, 18th July 1863, 1 Macph. 1172, that the settlement of a pauper boy, 17 years of age, whose father died when he was in pupillarity, was his own birth parish, and not the birth parish of his father, although the latter had been the pauper's settlement so long as he was in pupillarity.

The only material difference between that case and the present is, that the pauper there was a legitimate, while here he is an illegitimate, child. But I fail to see how this difference can be held to affect the question to be disposed of. A legitimate child takes the settlement of his father so long as he is in pupillarity; but in the case referred to, of *Craig* v. *Greig and M'Donald*, it was determined that his own birth parish becomes his settlement immediately on his attaining the age of puberty, the father having previously died. Now, here, in place of the father having died while the pauper was in pupillarity, in the eye of the law he had no father, and consequently he had for his settlement from the beginning the birth parish of his mother; but I can see no reason why that should continue to be his settlement after he attained the age of puberty, any more than that the birth settlement of the father should not have continued to be the settlement of a legitimate son after he had attained the age of puberty, as was determined in the case of *Craig*. The *patria potestas* or paternal authority never existed in the present case, and in the case of *Craig* it had ceased to exist while the pauper was still in pupillarity. In both cases, however, the pauper's mother survived the date when the pauper attained the age of puberty, and was alive when he became chargeable; and in both also the pauper appears to have been for some time before he became chargeable unable from physical weakness to maintain himself, and was to some extent supported by his mother, but in neither does it appear that the pauper was afflicted with mental incapacity.

In these circumstances, I feel myself bound to hold that the pauper in the present case on his attaining the age of puberty lost his mother's derivative settlement.

Lord Gifford concurred, saying that the case was really decided by the decision of *Craig* v. *Greig and M'Donald*. Here there was no *patria potestas*, and the mother of a bastard could not be in a higher position than a lawful mother.

The Court pronounced the following interlocutor:—

> "The Lords having heard counsel on the Special Case, are of opinion and find—(1) That the pauper George Ross or Pirie is chargeable on the parish of Nigg, as the parish of his birth; (2) That he is not chargeable on the parish of New Deer, the parish of his mother's settlement: Find the party of the second part liable in expenses, and remit to the Auditor to tax the same and to report, and decern."

Counsel for First Party—Asher—Mackintosh. Agents—Stuart & Cheyne, W.S.

Counsel for Second Party—Innes—Kinnear. Agents—Macgregor & Ross, S.S.C.

Friday, February 23.

FIRST DIVISION.

[Sheriff of Lanarkshire.

BAILEY *v.* J. & D. ROBERTON.

Patent—Specification—Nature of Invention—Manner of Performance—Validity.

It is essential to the validity of the final specification of a patent that both the nature of the invention and the manner in which it is to be performed shall be distinctly set forth, and if that is clearly done and nothing is left to conjecture, it is immaterial that the language is inappropriate, or that the description of the nature and the manner is combined in one set of words.

Facts and circumstances in which *held* (*diss.* Lord Deas) that a specification of a patent was defective, on the ground that the manner of performing the invention was not sufficiently set forth.

Patent—Provisional Specification—Final Specification—Act 15 & 16 *Vic. cap.* 83*—Disconformity.*

Held (*per* Lord President, Lord Mure, and Lord Shand) that in order to comply with the provisions of the Patent Law Amendment Act (15 and 16 Vict. cap. 83) and to make a patent good at law, there must be identity between the invention as disclosed in each of the provisional and final specifications.

Circumstances in which *held* that the claim in the complete specification of a patent was wider and of a different kind from that in the provisional specification, and that the patent was therefore invalid—*diss.* Lord Deas, on the ground that although the provisional specification contained superfluous matter, that of itself could not void the patent, the provisional specification being a document for the information of the law officer alone, who, if he thought the title too large or insufficient, might allow or require it to be amended.

Patent—Novelty—Infringement.

Circumstances in which *held* (*diss.* Lord Deas) that a claim for an invention by a patentee was not a novelty, because a particular mode of using it was previously known to the public, and admittedly was in prior use.

William Bailey, of Wolverhampton, with consent of Henry Medlock, of Charles Street, St James', for his interest, and Messrs A. & W. Mactear, Glasgow, their mandatories, presented a petition to the Sheriff of Lanarkshire against J. & D. Roberton, butchers, Glasgow, applying for interdict under the following circumstances. By letters-patent, dated the 27th June 1866, a patent for an invention for "Improvements in preserving Animal Substances" had been granted to the petitioners in the usual terms. In the provisional specification which was lodged along with the petition "the nature" of the invention was declared to be as follows:—"The object of the said invention is to preserve animal substances, such as meat, poultry, game, and fish, for a long time in a fresh state, so that when eaten they cannot be distinguished from the same when recently killed; and for the preservation of hides. For this purpose we dissolve the ordinary commercial gelatine in boiling water, using about two pounds of gelatine to ten pounds of water. We then add, while hot, a volume equal to the volume of the solution of gelatine of a solution of bisulphite of lime (usually expressed by the formula $CaO, 2SO_2$) in water of about the specific gravity of 1070. While the solution of gelatine and bisulphite of lime is still warm and liquid we coat the substance to be preserved with it, either by dipping the substance into it or by brushing it over with two or three coats of the solution. If the substance has to be transported any distance in wooden vessels, the vessels should be saturated with some of the before-mentioned solution of bisulphate of lime in water, and when dry brushed over with the said solution of gelatine and bisulphite of lime. When the solution of gelatine and bisulphite of lime has firmly solidified on the surface of the animal substance, the latter may be packed, the vessel being closed as air-tight as possible. For the preservation of hides the interior surface only requires to be coated with the solution of gelatine and bisulphite of lime. The coating on the hides and the hides must be dried before they are packed. Before treating the animal substance other than hides as above, the viscera must be removed and the inside washed free from blood; it is then to be coated internally and externally as above described, and before it is cooked the coating of gelatine and bisulphite of lime must be removed by soaking it for a sufficient time in water."

The specification which was filed on 26th December 1866 was, *inter alia*, to the following effect:—"The nature of our said invention is to preserve animal substances, such as meat, poultry, game, fish, and other animal substances for a long time, and so that the same substances when so preserved, and although the animals from which the same are derived have been killed for a considerable time, cannot be distinguished when cooked from the like substances derived from similar animals which have been recently killed, and also for the preservation of hides.

"The manner in which our said invention is performed is as follows:—We employ a solution hereinafter distinguished as solution No. 1, being a solution of bisulphite of lime (usually expressed by the formula $CaO, 2SO_2$) in water of about the specific gravity of 1050, which specific gravity we find preferable to that of 1070. We sometimes form a solution, hereinafter distinguished as solution No. 2, by dissolving the ordinary commercial gelatine in boiling water, using from one part to two parts of gelatine in ten parts of water and adding ten parts of solution No. 1. In determining the proportion of gelatine to be used, we increase such proportion in inverse ratio to the decrease of the temperature of the place at which the solution is to be applied, using a larger proportion of gelatine when the temperature is low and a smaller proportion of gelatine when the temperature is high. Solution No. 2 is adapted for coating animal substances intended to be preserved, such as joints of meat, animals