incompetent arbitration. His objections are clearly stated, and there is not any very satisfactory answer given to them. The respondent frankly admits that he has not in his possession the means of answering them. I do not think in these circumstances the Court with its eyes open should allow such a case to go on with the case of *Hunter* before us, in which the other Division entertained a similar question under this Act. I think we should do the same. I therefore agree with your Lordships that we should pass the note.

Lord Adam—The 7th section of the Act says—"Every . . . notice . . . shall state, as far as reasonably may be, the particulars and amount of the intended claim." I should have thought that under that provision so many particulars at least should be set forth as would show the claim was a relevant claim. Now, from all that is said here the claim may be relevant or irrelevant, legal or illegal. It is said and admitted by the respondent that he does not know whether he has a relevant claim or not—only let him go to the arbiters, and they being good arbiters, will decide that question. But if the claim is not a legal claim the arbiters are not arbiters at all. Therefore, in the exercise of our admitted discretion, I think we should be very wrong if we sent such a claim to the arbiters.

Lord Shand was absent from illness.

The Court passed the note and remitted the case to the Lord Ordinary.

Counsel for the Complainer and Reclaimer—Balfour, Q.C.—R. Johnstone. Agents—Hamilton, Kinnear, & Beatson, W.S.

Counsel for the Respondents—D.-F. Mackintosh—Salvesen. Agent—Thomas Dalgleish, S.S.C.

Tuesday, December 20.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

NIXON (INSPECTOR OF PORT-GLASGOW) *v.* ROWAND (INSPECTOR OF BURGH PARISH OF PAISLEY).

Poor—Birth Settlement—Lunatic.

A pauper became chargeable after attaining the age of puberty, who had been deserted by her father, and whose mother was dead. She was of weak mind. *Held*, upon the evidence, following the case of *Cassels* v. *Somerville*, 12 R. 1155, that the state of her mind was not such as to render her incapable of acquiring a settlement in her own right; and, following the cases of *Greig* v. *Greig and Macdonald*, 1 Macph. 1172, and *M'Lennan* v. *Waite*, 10 Macph. 908, that as she had not acquired a residential settlement in her own right, her settlement was in the parish of her birth, in preference to any derivative settlement she might have had previously.

Bridget Tonner, a pauper, was relieved by the Inspector of Poor of Port-Glasgow in 1879. This was an action of relief at his instance against the Burgh Parish of Paisley, where the pauper was born. The date of her birth was 16th May 1863. Her mother died in May 1879. Her father was an Irishman, who had deserted his wife and child in 1864, but had returned to live with them in 1878, and again deserted his child upon the death of his wife. Between 1864 and 1879 the pauper lived with her mother in Port-Glasgow.

It was admitted in the case that the pauper had not acquired a residential settlement in her own right when she first became chargeable.

The two points maintained by the defender were—1st, that she had a derivative settlement in Port-Glasgow through her mother; and 2nd, that by reason of mental weakness she was incapable of acquiring a settlement in her own right, and that her settlement was therefore that of her father, which was not in Scotland.

With regard to the 2nd point, the evidence led before the Lord Ordinary was to this effect—Dr Clouston deponed that he found the pauper to be, not an idiot, but a congenital imbecile of a marked type, and that he did not think she was fit to do anything to earn her livelihood. Dr Littlejohn stated that she was an imbecile, and unable to do anything for her own subsistence—mentally and physically imbecile. Dr Taylor, one of the parochial surgeons in Port-Glasgow, said he found she understood what he said to her, and could give tolerably intelligent replies to his questions, and that she had evidently had no education. "I saw no physical appearances to lead me to class her as a congenital imbecile. I had no difficulty in advising the board that she was a proper object to be received into the ordinary wards of the poorhouse. I had no difficulty in certifying that she was not a lunatic, insane, an idiot, or of unsound mind, all of which questions we have to answer Yes or No. At the same time I was obliged to say she was weak in her intellect, but that is not sufficient to render her incapable of working." Dr Leslie, medical officer to the Scottish National Institution for the Education of Imbecile Children at Larbert, deponed that he had examined the pauper, and that his opinion was that she was "feeble-minded, but nothing approaching an idiot;" that she could count up to three, and that he did not see why she could not be taught more if under proper tuition.

The Lord Ordinary (Kinnear) on 13th July 1887 repelled the defences, and decerned against the defender in terms of the conclusions of the summons, and found the pursuer entitled to expenses, &c.

"*Note.*—It is admitted that the pauper had not acquired a residential settlement in her own right when she first became chargeable.

"But it is said that she had a derivative settlement in Port-Glasgow through her mother. The mother died in May 1879, when the pauper was sixteen years of age, and the father, who had deserted his wife and child in 1864, but had returned in 1878, and had been living in family with them in Port-Glasgow, again deserted his child upon the death of his wife, and has not since been heard of. When the pauper first became chargeable therefore she had attained the age of puberty. Her mother had died, and she had been deserted by her father. In these cir-

cumstances I think the cases of *Greig* v. *Greig and Macdonald*, 1 Macph. 1172, and *M'Lennan* v. *Waite*, 10 Macph. 908, are in point, and that the pauper's settlement must be held to have been in the parish of her own birth in preference to any derivative settlement she may have had previously.

"It is said that by reason of her mental weakness she was incapable of acquiring a settlement in her own right, and must therefore take the settlement of her father, which is not in Scotland. I think the case of *Cassels* v. *Somerville*, 12 R. 1155, is conclusive upon that point. That decision, as I understand it, establishes a general rule which, in the common interest of all parishes, ought not to be departed from except upon grounds of distinction much more substantial than any that can be found in the circumstances of the present case."

The defender reclaimed, and argued—The pauper was a congenital imbecile, *i.e.*, a perpetual pupil. In such a case the settlement was in the birth parish of the father, which here was not in Scotland. In *Cassels'* case, referred to by the Lord Ordinary, the pauper was more intelligent than in this case—*Milne* v. *Ross*, December 11, 1883, 11 R. 273; *M'Currie* v. *Cowan*, March 7, 1862, 24 D. 723; *Hay* v. *Skene*, June 13, 1850, 12 D. 1019; *Greig* v. *Young*, June 21, 1878, 5 R. 977; *Caldwell* v. *Dempster*, July 20, 1883, 10 R. 1263; *Lawson* v. *Gunn*, November 21, 1876, 4 R. 151; *Milne* v. *Henderson and Smith*, December 3, 1879, 7 R. 317; *Watson* v. *Caie and Macdonald*, November 19, 1878, 6 R. 203.

The pursuer argued—This case could not be distinguished from *Cassels*. It was only an idiot who could not acquire a settlement in her own right, and the pauper here was not an idiot.

The Court, without delivering opinions, adhered.

Counsel for the Defender and Reclaimer—M'Kechnie—J. Clark. Agent—D. Lister Shand, W.S.

Counsel for the Pursuer and Respondent—D.-F. Mackintosh—Wallace. Agent—Adam Shiell, S.S.C.

Wednesday, December 21.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

DUNBAR *v.* CHIENE (WILSON & DUNLOP'S TRUSTEE).

Agent and Client—Law-Agent—Factor—Whether entitled to Credit for Business Charges.

The management of an estate, to which the proprietor succeeded in 1865, was conducted during his minority by his mother. He attained majority in 1869, but owing to the state of his mind, she continued to manage the estate until her death in 1873. During the whole of this period she acted under the advice of the family law-agents. On her death the proprietor executed a trust-deed, which, however, was never acted upon, and his brother undertook the management of the estate. He had no legal authority. The family agents were appointed by him factors and law-agents, and acted as such. In 1875 a *curator bonis* was appointed, who raised against the trustee on the law-agents' estate an action of accounting for their intromissions with the rents of the estate. *Held* that they were entitled to set off against any sums that might be due by them, the amount of the business accounts and fees due to them as law-agents and factors on the estate.

In 1865 Edmund Paterson Balfour Hay succeeded to the estate of Carpow, and to the estates of Mugdrum, Leys, and Randerston, while he was still in minority. These estates were managed by his mother until he attained majority in January 1869, and subsequently until her death on 6th September 1873. Messrs Wilson & Dunlop, W.S. Edinburgh, were the family law-agents. In order to provide for the term of Martinmas next after Mrs Paterson's death, Mr Hay's brother, Mr Peter Hay Paterson and Messrs Wilson and Dunlop, ultroneously undertook the management of the estate.

On 18th October 1873 Mr Hay executed a trust-deed in favour of three trustees, Mr Peter Hay Paterson, Sir William Dunbar of Mochrum, Bart., and Lord Elibank. This deed was never acted upon, Sir William and Lord Elibank both refusing to accept. Accordingly Mr Paterson, with the approval of his sister and other relatives, gratuitously assumed the office of guardian or curator to his brother, and continued to act in that capacity, managing the estates, with Messrs Wilson & Dunlop as the family factors and law-agents, down to 6th July 1875, when Sir William Dunbar was appointed *curator bonis* to Mr Hay.

On 10th March 1879 Messrs Wilson & Dunlop executed a trust-deed for behoof of creditors in favour of George Todd Chiene, C.A., Edinburgh.

Sir William Dunbar raised this action of count and reckoning against Mr Chiene, as such trustee, to ascertain and recover the balance which he alleged was due to him on the intromissions of Messrs Wilson & Dunlop with the rents and estates of his ward. He averred that from 1873 to 1875 Messrs Wilson & Dunlop had without authority, and on their own responsibility, intromitted with the rents and income of Mr Hay's estate to an amount exceeding £15,000, and that they had not accounted therefor; that a large part had not been expended for behoof of the ward or his estate, which the pursuer estimated at £5000; that an account was opened in Mr Paterson's name with the Commercial Bank of Scotland at Newburgh on 6th November 1873, into which Mr Wilson or Messrs Wilson & Dunlop paid certain rents uplifted by them; that Mr Paterson from time to time drew sums out of this account, and for a considerable portion of these, the pursuer averred, he had failed to account to the pursuer or to establish that they were applied *in rem versum* of Mr Hay. The pursuer further averred that Mr Wilson had no legal warrant or authority to pay these sums to Mr Paterson's credit, and that he was fully aware that Mr Paterson had no legal title to intromit with the funds, or manage Mr Hay's estates.

The defender replied that Messrs Wilson &