sanction the general rule that where a pauper is found destitute and relief is afforded, that the parish so affording relief will have a good claim of relief from the parish of settlement if there is an able-bodied father of the pauper accessible and able to maintain the pauper himself.

Lord Deas concurred.

Lord Mure—I concur, but with difficulty, as the sixth plea-in-law for the defender, to the effect that on 24th December 1873 Higgins was an able-bodied man and his daughter was therefore at that date not a proper object of relief, seems to me sound. But on the ground of the specialties in the case mentioned by the Lord President I do not differ. And further, on the authorities I find that the Court is acting in accordance with the rule followed in the case of *Dinwoodie* v. *Graham*, January 27, 1870, 8 Macph. 436.

Lord Shand—I concur. On 7th August 1874, when the parish of Maybole gave notice to the parish of Irvine, the pauper was a proper object for parish relief. For although the father was an able-bodied man, he was at a distance, and he had left the child destitute, and with no means of subsistence. It was then the duty of Maybole to relieve the child till some other provision was made. This being the case, the statute says that where any relief is given the parish which gives it shall recover from any parish to which the pauper belongs, or from the parents of the pauper. The statute gives the relieving parish an alternative, and here the parish of Maybole gets the benefit of the first alternative, which is all that is asked.

The Court adhered.

Counsel for Pursuer (Respondent)—Dean of Faculty (Fraser)—Moncreiff. Agent—J. Carment, S.S.C.

Counsel for Defender (Appellant) — Guthrie Smith. Agents — Morton, Neilson, & Smart, W.S.

Wednesday, June 12.

SECOND DIVISION.

[Lord Adam, Ordinary.

SIVRIGHT *v.* STRAITON ESTATE COMPANY (LIMITED).

Superior and Vassal—Casualty—Personal Title—Conveyancing Act 1874 (37 *and* 38 *Vict. cap.* 94), *sec.* 4, *sub-sec.* 4.

Held (*aff.* Lord Adam, Ordinary) that under the 4th sub-section of the 4th clause of the Conveyancing Act 1874 a singular successor in whose favour in November 1876 a disposition was executed and recorded was liable to the superior in payment of a casualty of a year's rent, although the superior had in 1873 granted a precept of *clare constat* in favour of the heir of the last-entered vassal (who was still in life), but which was not recorded till after the institution of the action.

Opinions (*per curiam*) that this case was ruled by the cases of *Ferrier's Trs.* v. *Bayley*, May 26, 1877, 4 R. 738, and *Rossmore's Trs.* v. *Brownlie and Others*, Nov. 23, 1877, 15 Scot. Law Rep. 129, and that the unrecorded precept of *clare constat* was merely a personal title which in virtue of the Conveyancing Act 1774 was swept away by the subsequently recorded disposition.

Counsel for Pursuer (Respondent)—Balfour—Pearson. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Defenders (Reclaimers) — Lord Advocate (Watson)—M'Laren. Agents—Welsh & Forbes, S.S.C.

Wednesday, June 12.

FIRST DIVISION

[Sheriff of Dumfries and Galloway.

BARCLAY *v.* NEILSON.

Lease—Farm Buildings—Obligation on Landlord to put Buildings in Tenantable Order.

A lease for nineteen years contained a declaration that the additions to the farm buildings and repairs thereon should be executed in a manner to be approved of by the landlord. There was no obligation on either landlord or tenant to execute them, and no specification of what they were to be. *Held* (1) that in the absence of any special stipulation to the contrary, the liability for repairs must fall on thel andlord, and, on the principle *noscitur a sociis*, that the liability for additions must also fall on him; and (2) that the measure of his liability was what was required for the cultivation of the farm in terms of his lease, and should be ascertained by a remit to a man of skill.

This was an action raised in the Sheriff Court at Kirkcudbright by John Barclay, tenant of the farm of Barstobrick, against his landlord, and concluded for decree that the defender should be ordained to implement the lease of the farm granted by him to the pursuer of date February 1869, "by making and completing the repairs and alterations on the houses and buildings on said lands and others thereby let, referred to in said lease, and agreed to between the parties," &c. The particular repairs and alterations asked were specified in the summons, and the Court were alternatively asked to have these ascertained. There was a further alternative conclusion for damages.

The clauses in question of the lease provided—"And with respect to the houses and buildings upon the said lands and others hereby let, it is declared that the additions to and repairs thereon shall be made and completed in a manner to be approved by the said Walter Montgomerie Neilson or his foresaids; and on the same being completed they shall be upheld and maintained in good tenantable condition during the lease, and left in like condition at the expiry thereof by the said John Barclay and his foresaids, and the proprietor shall have full power and liberty to have the said houses and buildings annually inspected by a competent person or persons appointed by him, and in case and so often as repairs are necessary,

shall be entitled to have them forthwith executed, and the expense thereof, as instructed by the tradesmen's discharged accounts, shall form a charge against the said John Barclay and his foresaids, and shall be paid, as he hereby binds and obliges himself and them to pay the same, alongst with the rent at the first term of Whitsunday and Martinmas next ensuing." There was no obligation on the landlord, nor was there any on the tenant, to erect or repair any buildings on the farm, nor was it anywhere specified what the "additions and repairs" were to consist of. The pursuer averred that there had been an arrangement come to between him and his landlord prior to the execution of the lease, by which the landlord undertook to make certain additions and repairs. This was denied by the defender.

The pursuer pleaded, *inter alia,*—"(2) The defender having agreed by the pursuer's lease to make and complete additions and repairs on the houses and buildings, the Court is entitled to ascertain and define these additions and repairs by a parole inquiry or remit, and the defender is bound to make them as ascertained. (3) In any view, the defender is bound by the lease, and *separatim* by common law, to put the buildings into good tenantable condition, and to repair or alter them so as to make them sufficient for the purposes of the lease."

The defender pleaded, *inter alia,*—"(2) The defender is entitled to absolvitor, in respect the obligations sought to be enforced are not incumbent on him under the lease of 22d February and 16th April 1869, which forms the contract between the parties. (3) The averments of an alleged agreement prior to the said lease are irrelevant—(1) in respect of the execution of the said lease; (2) they can only be proved by the oath of the defender, or by his writ, subsequent to the date of the said lease; and (3) they are unfounded in fact."

The Sheriff-Substitute (NICHOLSON) allowed both parties a proof of their averments.

The defender appealed to the Court of Session.

At advising—

LORD PRESIDENT—The pursuer in this case is the tenant and the defender is the landlord of the farm of Barstobrick, under a lease, dated in February 1869 for nineteen years from the term of Whitsunday in that year. There is nothing very remarkable in the lease except one clause, which gives rise to the contention of parties in this case. That clause is certainly very remarkable in its expression—[*Reads* ut supra]. Now this is all that the lease contains with regard to additions and repairs on the houses on the farm. There is no specification of what these additions and repairs are to be, nor is it said at whose expense they are to be made. On both of these points parties differ. The landlord says there is no obligation laid on him by words of the lease to make any additions or repairs. The tenant says it is plainly intended that the obligation shall be laid on the landlord, and although these additions and repairs are not specified in the lease, that, he says, was all arranged previously, and he is in a position to prove by parole evidence that certain additions and repairs were consented to by the landlord.

To prove the tenor of preliminary negotiations as part of the agreement for lease is quite out of the question; that cannot be listened to for a moment. But I can still less admit the landlord's view of the case, which is this—that the necessary effect of the way in which this clause has been blundered is, that there are to be no additions to nor repairs upon the farm buildings unless the tenant pays for them. I can fancy a clause in a contract providing that something is to be done but failing in its operation because the thing is not specified, and the party by whom it is to be carried out is not specified—by reason of its uncertainty it may, as a legacy if uncertain lapses, be void altogether. But that is not the case here; not only are new buildings mentioned, but repairs upon old buildings are also mentioned. Now, *prima facie* the liability must be upon the landlord; he is at common law liable to put the farm buildings in tenantable condition; it does not require, therefore, to be said by whom the existing buildings are to be repaired. The term "additions" must, I think, be interpreted on the principle *noscitur a sociis*—whoever is to bear the burden of the one is to bear the burden of the other. I extract therefore from this clause sufficiently clearly this much, that there are to be additions and repairs made, and further that the expense is not intended to be thrown as a burden, in what I hold to be such an exceptional way, on the tenant.

The next question is, How is this obligation to be worked out? In a different contract from a contract of lease there might be considerable difficulty about that, but there is not much difficulty in finding in a contract of lease a just measure of that liability. It is an obligation incumbent on the landlord at common law, and it is generally expressed in leases that the landlord will give his tenant such buildings as will enable him to cultivate the farm in accordance with the terms and conditions of his lease; that is what he is bound by common law to do.

It is, as I have said, altogether out of the question to allow the tenant to prove that certain arrangements were made before entering on the lease; but he is probably in a condition to show that certain buildings are required to enable him to cultivate his farm in accordance with the terms and conditions of his lease.

I think this is not a case for a proof at large. I think the amount of additions and repairs necessary for that end may be very satisfactorily ascertained by some man of skill, who will say what buildings are necessary to enable the tenant to cultivate his farm according to the terms and conditions of his lease.

LORDS DEAS, MURE, and SHAND concurred.

The Court pronounced the following interlocutor:—

> "Recall the interlocutor of the Sheriff-Substitute of 19th March 1878: Find that according to the sound construction of the lease between the parties, the appellant (defender) is under an obligation to make such additions to and repairs on the steading of the farm of Barstobrick as are necessary to enable the respondent (pursuer) properly to cultivate the farm according to the terms and conditions of the said lease: Of consent remit to Mr John Dickson, Saughton Mains, to visit the said farm and report to

the Court what additions and repairs are necessary for that purpose: Reserving in the meantime all questions of expenses."

Counsel for Pursuer (Respondent)—Dean of Faculty, (Fraser)—Burnet Agent—W. S. Stuart, S.S.C.

Counsel for Defender (Reclaimer)—J. P. B. Robertson. Agents—J. & A. Hastie, S.S.C.

Wednesday, June 12.

FIRST DIVISION.

Exchequer Cause.

[Lord Curriehill, Ordinary.

LORD ADVOCATE *V.* PRINGLE.

Revenue — Inventory - Duty — Value of Contingent Interest.

The executor of a deceased party gave up an inventory of the moveable estate, including as one item therein the value of a right of succession which was then contingent and uncertain, and estimated that value at £20. —*Held* that the Crown was not barred, by accepting payment of the stamp-duty upon this inventory, from claiming duty on the amount of a correct valuation of the expectancy as at the date when the inventory was sworn to, but was entitled to payment of duty upon that footing.

Question, Whether they were entitled to a payment of duty on the sum actually realised by the executor.

Revenue—Residue-Duty—Value of Contingent Interest.

The amount of residue-duty payable is determined by the amount actually realised, and in the event of the sale of a contingent interest by the executor, duty is payable not upon the price thereby obtained, but upon the actual value of the contingent interest, whatever that may turn out to be.

Thomas Turnbull of Crailing, Fenwick, and Briery Yards, died unmarried and intestate on 15th October 1874. He had for many years been of unsound mind and under curatory, and his personal estate had been accumulating till it had reached the sum of £205,235, 8s. 1d. An inventory of his estate was given up by his executors, upon which they paid the full amount of legacy and inventory duties demanded by the Commissioners of Inland Revenue, amounting together to £16,330, 1s. 4d.

In 1855 seven persons then alive—viz., Andrew Pringle, Mrs Beatrix Scott *alias* Piper *alias* Oyston, Janet Pringle, Robert Pringle, John Armour junior, Margaret Fulton, and William Barclay David Donald Turnbull—all stood in equally near degrees of relationship to Thomas Turnbull, being all children of cousins-german of his father William Turnbull. In the event therefore of all these persons surviving Thomas Turnbull, each of them would be entitled, as one of his next-of-kin, to one-seventh share of his moveable succession; but in the event of any of them predeceasing him the representatives of such predeceaser would not be entitled to any share of the succession, which would all belong to the surviving next-of-kin. In order to obviate this result as far as possible, and to secure to the representatives of predeceasers an interest in the succession, a joint arrangement and deed of agreement was entered into in 1855 by five of them —Margaret Fulton and William Barclay David Donald Turnbull declining to be parties to the agreement. The substance of this agreement was that the representatives of any predeceasers should have the same interest in the estate of Thomas Turnbull as would have belonged to the party they represented if he or she survived Thomas Turnbull. The two who were not parties to the agreement predeceased Thomas Turnbull, and accordingly their representatives were not entitled either as next-of-kin or under that agreement to any part or share in Thomas Turnbull's succession. Of the parties to the agreement two predeceased Thomas Turnbull, viz., Janet Pringle and Robert Pringle, and but for the agreement their representatives also would have been excluded from all interest in Thomas Turnbull's succession, the whole of which would have belonged absolutely to the three surviving next-of-kin, viz. — Andrew Pringle, Beatrix Scott *alias* Oyston *alias* Piper, and John Armour junior. These persons, however, after being decerned executors-dative to Thomas Turnbull, and expeding confirmation, and paying the inventory and legacy duties on the succession, were bound to divide the clear residue into five equal portions, and to pay one such portion, amounting it appeared to upwards of £37,000, to Andrew Pringle, as executor-dative and legal representative of Janet Pringle, who had died unmarried and intestate, and another portion to himself as an individual.

Janet Pringle had died intestate on 13th November 1858, and her brother Andrew Pringle was decerned her executor-dative *qua* next-of-kin on 5th February 1863, on which date he took oath to an inventory of her personal estate and effects. In that inventory her right and interest under the agreement was included as one of the items of her moveable estate. The agreement was narrated in the inventory, and the nature of the right and interest was clearly described — the entry concluding as follows:— "which right and interest may at present be valued at £20." The other items of the inventory amounted to £29, so that the whole did not exceed £49, upon which a stamp-duty of 10s. was paid, that being the amount payable on inventories in cases of intestate succession where the whole estate is above £20 and under £50. Janet Pringle's estate at her death fell to her two brothers Andrew and Robert, but as Robert died on 11th December 1859, and therefore predeceased Thomas Turnbull, Janet's interest in Thomas Turnbull's estate fell to be divided between her brother Andrew Pringle, her executor, and the children of Robert.

This action was now brought by the Lord Advocate, as representing the Crown, against Andrew Pringle, as his sister Janet's executor, and concluded that he should be ordained to exhibit upon oath and to record a full and true inventory of Janet Pringle's estate, or for decree for £784, 10s. as inventory-duty payable on a full and true inventory of her estate, if such inventory had been duly exhibited and recorded; and (2) for £1132, 11s. 3d. as residue-duty upon the estate as handed over to the heirs *ab intestato.*