LORD ADAM and LORD M'LAREN concurred.

LORD KINNEAR was absent.

The Court adhered.

Counsel for the Complainer—Galloway Agents—W. & F. C. MacIvor, S.S.C.

Counsel for the Respondent and Reclaimer — Burnet. Agents — Patrick & James, S.S.C.

Tuesday, November 14.

FIRST DIVISION.

[Sheriff of Stirlingshire.

LENNOX *v.* REID.

Landlord and Tenant—Heir and Executor —Action of Removing—Title to Sue—Agricultural Holdings (Scotland) Act 1883 (46 *and* 47 *Vict. cap.* 62), *sec.* 27.

The Agricultural Holdings (Scotland) Act 1883 by sec. 27 provides that "when six months' rent of the holding is due and unpaid it shall be lawful for the landlord to raise an action of removing before the Sheriffa gainst the tenant."

Held that a proprietor of lands, who had succeeded in June 1892, was entitled to raise such an action in respect of the six months' rent payable at Martinmas 1892 not having been paid, his right to do so not being affected by the fact that he might have to account for the amount of said half-year's rent to the executor of the last proprietor.

Mrs Peareth Lennox of Woodhead and Antermony succeeded to these lands as heir of entail to the Hon. Mrs Kincaid Lennox, who died June 26, 1892. In April 1893 she brought an action in the Sheriff Court at Stirling against Andrew Reid, farmer, Inchbreak, Lennoxtown, for the sum of £80, being the first half-year's rent of his farm for crop and year 1892, due at Martinmas 1892, but unpaid, and to have him ordained to remove at Whitsunday 1893 under the 27th section of the Agricultural Holdings (Scotland) Act 1883, which provides that "when six months' rent of the holding is due and unpaid it shall be lawful for the landlord to raise an action of removing before the Sheriff against the tenant." . . .

The defender averred that he was not due six months' rent, because upon his entry he had paid £40 in advance as security, which still remained to his credit.

To this averment the pursuer answered that the £40 was not an advance in security, but payment for an early entry.

The defender pleaded—"(1) No title to sue."

Upon 13th April 1893 the Sheriff-Substitute (BUNTINE) repelled the 1st plea-in-law for the defender, and allowed a proof.

"*Note.*—The pursuer is entailed proprietor of the farm of which the defender is tenant. She succeeded in June 1892.

"She avers that six months' rent of the holding was 'due and unpaid' at Martinmas last, and founds on the provisions of section 27 of the Agricultural Holdings Act 1883.

"The defender pleads 'no title to sue,' in respect that even if the whole half-year's rent was due and unpaid (which is denied) it was not all due to the pursuer, but only the part accruing after her succession to the estate in June last, the rest being due to the personal representatives of the deceased proprietor.

"The Sheriff-Substitute is of opinion that it is of no consequence to whom the half-year's rent is due if the tenant is in default.

"Undoubtedy the pursuer is the 'landlord' in the sense of the Act, viz., the person for the time being entitled to receive the rents, and if six months' rent is due and unpaid, then she is entitled to have the tenant removed.

"The defender, however, does not admit that the whole half-year's rent is unpaid, and produces certain receipts. It is tolerably plain from these and from defender's letter, No. 9/3 of process, that the rent is truly unpaid; but in the face of defender's denial a proof on this point has been allowed."

Upon 1st June 1893, after a proof, interim Sheriff-Substitute MITCHELL found that half-a-year's rent was due by the defender, gave decree for the same, and ordained the defender to remove.

To this interlocutor Sheriff LEES adhered.

The defender appealed to the First Division of the Court of Session, and argued—(1) Six months' rent was not in fact unpaid. (2) If it was, it was not due to the pursuer. Although conventionally exigible at Martinmas 1892 it was legally due at Whitsunday 1892, and therefore wholly due to the executor of the late proprietor. In any case only a part of it was due to the present pursuer, and that only under the Apportionment Act of 1870. She had no right to sue an action of removing.

Argued for respondent—(1) Six months' rent was unpaid. (2) The Apportionment Act regulated the rights of heir and executor *inter se;* but with these the defender had nothing to do. He was liable to be sued in an action of removing by the present proprietor in the lands, whose right was unaffected by the Apportionment Act.

At advising—

LORD KINNEAR—This is an action for removal of a tenant, founded on the 27th section of the Agricultural Holdings Act 1883, and for payment of £80 of rent alleged to have become due at Martinmas 1892. It is not disputed that if the rent sued for were in fact due to the pursuer, the conditions of the statute would be satisfied. But the defender pleads, first, that the pursuer has no title to sue for rent payable at Martinmas 1892, and secondly, that the defender had

already paid one-half of the rent exigible at that term, and is only liable on an accounting for the remaining portion or for £40 instead of £80.

The first of these two pleas is founded on the hypothesis that the rent exigible at Martinmas 1892 belongs to the executor of the late proprietor. The pursuer's averment is that the rent for crop and year 1892 was payable in equal portions at Martinmas 1892 and Whitsunday 1893, and this is not disputed. But the defender maintains that the legal terms were Whitsunday and Martinmas 1892, and therefore that as the portion conventionally exigible at Martinmas was legally payable at the previous Whitsunday, it vested in the late proprietor, who survived till the 26th of June 1892, and is now payable to her executor, and not to the pursuer as heir of entail in possession. I express no opinion as to the respective rights of heir and executor. These may depend on the practice of the estate or solely on the application of general rules to the special conditions of the lease. However that may be, the executor is no party to the process, and we cannot determine the measure of his right in his absence. But assuming for the purpose of the argument that in the division of rents between heir and executor the whole amount payable at the Martinmas term after the late proprietor's death, must fall to the latter, the pursuer has nevertheless in my opinion a perfectly good title to enforce the obligations of the lease, and the tenant has no concern with any question of division or apportionment between her and her predecessor. The supposed claim does not arise under the Apportionment Act, but it is a claim of precisely the same nature as that which the Apportionment Act gives to the executor for the rents accruing between Whitsunday and the 26th of June. It is a claim available against the heir in possession to account for the rents which she may levy. But the executor is not put in possession of the estate either by the Act or by the common law, and the proprietor in possession for the time being has an undoubted title to levy the rents. His right to do so is expressly reserved by the statute, in so far as regards apportioned rents. But in this respect the Act only follows the rule of common Law. The general rule is that the contract of lease is transmissible to the respective successors of the contracting parties, and that, to use the words of the first Lord Curriehill, "when such transmission takes place its obligations are prestable, not by or to the original parties or their legal representatives as such, but by and to the parties who shall be in the respective positions of lessor and lessee, or landlord and tenant, at the dates when these obligations become prestable." As between landlord and tenant, it is of no consequence whether the conventional terms correspond with the legal terms or not. It is the conventional terms, or, in other words, the terms of their contract which regulate their rights and liabilities; and if a tenant is bound by his contract to pay rent at a certain term, the obligation is prestable at that term to the landlord then in possession irrespective of the obligation of the latter to the representatives of the predecessor. If the defender had been interpelled by the executor from making payment to the pursuer the question might have been different. But it is not suggested that the executor has made any claim against him, and if such claim were to be made there can be no question that the landlord's discharge would give the tenant a sufficient answer.

The second question is one of fact. It is not disputed that a sum of £40 was paid by the defender at Whitsunday 1889. The question is, whether this was paid in advance or security of future rent, or whether it was paid for earlier entry to the houses and grass than the tenant was entitled to under the lease? The evidence has been very carefully examined by the Sheriff-Substitute, and I agree with the view he has taken of it. The most material consideration to my mind is that the subsequent conduct of the parties is consistent with the factor's account of their verbal agreement, and altogether inconsistent with the account of the defender. If the payment in question was made in advance or in security of future rents, it is not intelligible that the tenant should have consented to pay the full amount exigible at the next term, and continued to pay in full, term by term, until Martinmas 1892 without ever suggesting that he had already paid a sum to account.

LORD M'LAREN—It is important that it should be understood that the contract of lease is a real contract, and that the respective obligations of landlord and tenant are prestable by them and their heirs, and are therefore exigible by the heirs of the original parties when owing to death there comes to be a change of ownership. It would be especially inconvenient to tenants, and it might be fraught with injustice to their interests, if tenants who were ready to make a payment of their rent to the proper parties were obliged to inquire into the testamentary arrangements of a deceased proprietor, and to discover who, whether by intestacy or under a settlement, would be eventually, and as in a question of succession, entitled to a bygone rent. It is much more convenient, and is in accordance with the settled principles of the law, that the tenant should be entitled to pay over such a rent to the successor in the lands. The principle is not confined to the contract of landlord and tenant, but applies to other relations, *e.g.*, superior and vassal, and indeed to all contracts which are properly real contracts.

On the second point I agree with Lord Kinnear as to the necessary inference which must be drawn from the mode of payment which has regulated the relation of landlord and tenant throughout the lease.

The LORD PRESIDENT concurred.

LORD ADAM was absent at the hearing.

The Court adhered.

Counsel for Pursuer and Respondent—Dickson—Fleming. Agents—Dundas & Wilson, C.S.

Counsel for Defender and Appellant—Ure—Crabb Watt. Agents—Dove & Lockhart, S.S.C.

Tuesday, November 14.

FIRST DIVISION.

[Lord Wellwood, Ordinary.

CAMPBELL *v.* DEAS.

Poor—Settlement—Rehabilitation—Loss of Residential Settlement—Poor Law Act 1845 (8 *and* 9 *Vict. c.* 83), *sec.* 76.

A woman who had acquired a residential settlement in Greenock left that parish in 1881 and did not afterwards return to it. She received relief in another parish from April 1884 to August 1886. The relieving parish claimed against Inverkip, the parish of the pauper's birth, and also against Greenock. The former admitted liability and reimbursed the relieving parish. Greenock denied liability. From August 1886 to February 1887 the pauper was self-supporting, but at the latter date she again became chargeable, and the relieving parish recovered from Inverkip. In an action by Inverkip against Greenock for payment of the expense of the pauper's maintenance during this second period of chargeability—*held* that the pauper had been rehabilitated before the second period of chargeability began, and that having been absent from Greenock for more than four years and a day before its commencement, she had lost her residential settlement, and that this result was not affected by the fact that she had received relief in another parish during part of the four years.

Beattie v. *Adamson*, November 23, 1866, 5 Macph. 47, *distinguished.*

Opinion by Lord Adam approving the decision in that case.

This was an action at the instance of John Campbell, inspector of poor of the Inverkip district of the parish of Inverkip, against John Strachan Deas, inspector of poor of the parish of Greenock, for payment of £208, being the amount of advances made by the pursuer for behoof of a pauper Mary Ann Hill from April 1887 to October 1891.

The facts of the case as admitted by the parties were these—Mary Ann Hill was born in Inverkip parish in 1856. From 1863 to 1881 she resided with her father in Greenock. In 1881 her father died, at which date his parish of settlement was Greenock by reason of his continuous residence there. At her father's death Mary Ann Hill had through him a derivative residential settlement in Greenock.

In October 1881 Mary Ann Hill left Greenock, and she did not subsequently return to it.

In April 1884 Mary Ann Hill applied to the inspector of Cardross for relief, and being a proper object of relief she was on 19th May received into Dumbarton poorhouse. Statutory notices and formal claims of relief were duly made by the inspectors of Cardross and Dumbarton against Inverkip, and Inverkip admitted liability. Statutory notices were also sent by Dumbarton and Cardross to Greenock, and in October 1884 a claim was made against Greenock by Dumbarton but Greenock denied liability and the claim was withdrawn. After her admission the pauper remained an inmate of Dumbarton Poorhouse until 19th August 1886, when she left in search of work. The expense of her maintenance during this period was paid by Inverkip to the parishes of Cardross and Dumbarton.

On 14th February 1887 Mary Ann Hill again became chargeable to the parish of Cardross, and was received into Dumbarton Poorhouse. A statutory notice was sent to Inverkip. Inverkip admitted liability on 12th March 1887, and on the same day Inverkip for the first time gave statutory notice of chargeability to Greenock. Greenock did not admit liability.

On 14th June 1887 the pauper left the poorhouse, and from this date onwards she continued to be a proper object of parochial relief. She wandered from parish to parish, always applying for and receiving relief, and on the relieving parishes claiming against the parish of Inverkip, as the parish of birth, their claims were admitted, and the sums expended on her maintenance were repaid.

The defender pleaded, *inter alia*—"(3) Any residential settlement, if ever possessed by the pauper in the parish of Greenock, having been lost by her absence therefrom for four years, the defender is entitled to absolvitor."

The 76th section of the Poor Law Act 1845 provides—"And be it enacted, that from and after the passing of this Act no person shall be held to have acquired a settlement in any parish or combination by residence therein, unless such person shall have resided for five years continuously in such parish or combination, and shall have maintained himself without having recourse to common begging, either by himself or his family, and without having received or applied for parochial relief; and no person who shall have acquired a settlement by residence in any parish or combination shall be held to have retained such settlement if during any subsequent period of five years he shall not have resided in such parish or combination continuously for at least one year." . . .

On 16th November 1892 the Lord Ordinary (WELLWOOD) pronounced this interlocutor:—"Finds in respect of the decision of the Court in the case of *Beattie* v. *Adamson*, 5 Macph. 47, that the pauper Mary Ann Hill's residential settlement in the parish