rent since then. I agree, accordingly, with your Lordship that the presumption is that these properties fell within the wife's conveyance of *acquirenda* in the marriage-contract, and that that presumption is not overcome by the fact that the titles of the properties were taken in the wife's name as an individual.

LORD M'LAREN—I concur in the judgment proposed and in the views expressed by your Lordship. It appears from the dates of the title-deeds that the properties in question were in fact acquired by the wife during the subsistence of the marriage. Their character is therefore properly described by the general name of *acquirenda*, and it lies with the persons maintaining the contrary to displace the presumption that they fall under the conveyance in the marriage-contract. I agree that there is no evidence to displace this presumption, and accordingly that their disposal must be governed by the terms of the marriage-contract.

LORD KINNEAR was absent.

The Court found and declared in terms of the second conclusion of the summons.

Counsel for the Pursuers — Wilson — Grey. Agents—Carmichael & Miller, W.S.

Counsel for the Defenders—C. S. Dickson. —Guy. Agents—Ronald & Ritchie, S.S.C.

Thursday, November 3.

SECOND DIVISION.

[Sheriff of the Lothians, &c.

PAGE *v.* STRAINS.

Landlord and Tenant—Lease—Agreement —Construction — Whether Agreement between Landlord and Tenant Binding on Singular Successor—Act 1449, *cap.* 17.

A landlord of premises let on a lease at the yearly rent of £50, granted to the tenant in May 1891 this document—"This is to certify that Mr Strains gets five pounds reduction per annum after this date from his rent during expiry of lease." The tenant paid at least one half-year's rent at the reduced rate. In Martinmas 1891 the property was sold. In an action by the buyer against the tenant for rent at the rate in the original lease, the Court *assoilzied* the defender, holding that at the date of the sale he possessed under the original lease modified by the agreement, and that this was the limit of the pursuer's right.

By disposition dated 12th November 1891 William Slater sold the subjects at 15 Crown Street, Leith, to David Page, wine and spirit merchant there, with entry at Martinmas 1891. The premises were occupied by Alfred Charles Strains, as tenant under a lease from Slater dated 13th September 1888, for the space of six years from and after the term of Whitsunday 1889, at a rent of £50.

At Whitsunday 1892 Page called on Strains for a half-year's rent of £25, which Strains refused to pay, but tendered £22, 10s. as the proper rent.

Page brought an action in the Sheriff Court to sequestrate and secure the furniture and effects in the house for payment of the sum of £25, being the rent due at Whitsunday 1892, and in security of the succeeding two terms at the same rate, averring that his right of hypothec was in danger of being defeated.

It was proved that the rent originally was £50 per annum; Strains complained of it as being too high, and in January 1891 Slater agreed to reduce it by £5 and go to live in the house as a lodger, paying £15 a year for the room he occupied.

Upon 15th May 1891 Slater gave Strains this document—"This is to certify that Mr Strains gets five pounds reduction per annum after this date from his rent during expiry of lease;" and that at Martinmas 1891 the receipt given to Strains for his rent bore to be for £22, 10s. The entry of the yearly value in the valuation roll was £45 per annum. The document reducing Strain's rent was not shown to Page until after he had bought the property.

Upon 25th July 1892 the Sheriff-Substitute (HAMILTON) pronounced this interlocutor—"Finds it not proved in fact that William Slater, the defender's former landlord, agreed to reduce the rent payable under the lease by £5 a-year from Whitsunday 1891: Further, and *separatim*, finds in law that the certificate, in so far as it imports an agreement to the effect above mentioned, is not binding upon the pursuer: Repels the defences: Grants warrant to the Sheriff-Clerk to pay to the pursuer the sum of £25 sterling, consigned in his hands, being the half-year's rent due at Whitsunday 1892, and decerns."

The defender appealed—At the beginning of the debate the pursuer's counsel intimated that he admitted the Sheriff-Substitute's finding in fact to be wrong.

Argued for the appellant—He held under a lease with a rent of £45, because the certificate of 1891 must be read into the original lease. There had been possession under it, and the possession was shown by a receipt for the rent of £22, 10s. That was all that was required to make the Act of 1449 applicable to the case, and the modified lease was good against singular successors—*Neilson* v. *Menzies*, June 21, 1671, M. 15,231; Rankine on Leases, 134. The defender was not affected by the contract between the pursuer and Slater.

The respondent argued—The bargain as to the reduction of rent was a personal matter between Slater and the pursuer; it was not pleadable against the singular successor. The original rent was an essential part of the lease, which was shown to the pursuer when he bought the property, and he was entitled to get the rent stipulated in it. In analogous cases, where a reduction had been given to enable a ten-

ant to make meliorations on his farm, that reduction had not been given effect to in a question with a singular successor—*Turner* v. *Nicolson*, March 6, 1835, 13 S. 633; *Bruce* v. *M'Leod*, July 8, 1822, 1 Shaw's App. 213; Ersk. Inst. ii. 6, 29.

At advising—

LORD JUSTICE-CLERK—The case must be taken on the footing that the lease in question here was granted by Slater to Strains in September 1889. In May 1891 he granted this document—"This is to certify that Mr Strains gets five pounds reduction per annum after this date from his rent during expiry of lease." It is not disputed that if that document was part of the contract of lease at the time of the sale of the property to Page, that Page is bound by it, and he is not entitled to have the larger rent as originally stipulated for.

It was said that this latter part of the arrangement was not communicated to Page. That may be so, but that is a matter entirely between him and the seller of the property. The tenant has no responsibility for, and is not liable for, what the seller may have done or not done in his transaction with the buyer. In point of fact, under this arrangement the tenant had paid rent at the reduced rent.

Now, the question is whether the lease between Slater and Strains was or was not, at the date of the sale to Page, a lease for the subject at a rent of £45 per annum. I hold that it was. Originally the bargain was for a rent of £50, but it is contended that by a special bargain the rent was to be £45, and that Strains was holding the subject at a rent of £45. If that be so, then there is an end of the question. The pursuer cannot be in a better position than Slater was at the time he made the bargain and sold the property.

Certain cases were quoted to us, but I do not think they affect the question. They were cases in which the landlord allowed the tenant to retain part of the rent to make improvements upon the subject. These were held by the Court to be extrinsic bargains, outside the lease, and not binding upon the singular successors. But this case is one of stipulated rent only, and these cases have no bearing upon it.

LORD RUTHERFURD CLARK—I am of the same opinion, and I think the case to be quite clear. Beyond doubt, at the time when the pursuer bought the property, the tenant was possessing under the original lease as modified by the later writing. This is a sufficient title, and being clothed with possession it is good against a singular successor.

But we may dispose of the case on a simpler ground. The liquidation is used for the rent due under the original lease. It is plain that that rent is not due; for it was reduced by the subsequent writing. Whatever question may be raised as to his right to possess against a singular successor, the tenant cannot be liable for more rent than he has agreed to pay. There is no existing contract under which the rent claimed by the pursuer is due.

LORD TRAYNER—It is now conceded, and I think quite properly conceded, that the finding in fact by the Sheriff-Substitute is wrong. It must therefore be taken as the fact that at the time of the sale to the pursuer the defender held the subjects as tenant at the rent of £45. The lease, as originally expressed, set forth the rent at £50, but this was afterwards modified in a writing, under the hand of Slater, then the landlord, to the extent of £5 per annum. The lease accordingly on which the appellant held the property at the time of the sale was a lease the rent in which was £45. That is the limit of the tenant's liability, and the limit of the landlord's right.

The Court pronounced this interlocutor:—

"Recal the interlocutor appealed against: Find in fact that William Slater, the defender's former landlord, agreed to reduce the rent payable under the lease by £5 a-year from Whitsunday 1891: Find in law that said agreement is binding on the pursuer: Therefore dismiss the petition, and decern," &c.

Counsel for Appellant — M'Kechnie — Baxter. Agent—Donald Macpherson, L.A.

Counsel for Respondent — G. Stewart. Agents—Irons, Roberts, & Company, S.S.C.

Saturday, November 12.

FIRST DIVISION.

[Sheriff of Lanarkshire.

BRAND *v.* KENT.

Recal of Arrestments—Title to Sue.

A creditor, on the dependence of an action against his debtor, arrested the rents of certain houses in the hands of the debtor's tenants. A third party, alleging that he held an *ex facie* absolute disposition from the debtor to the subjects whose rents were arrested, presented a petition for recal of the arrestments used. Petition *dismissed*, on the ground that the petitioner had no title to sue.

James Kent, contractor, Coatbridge, on the dependence of an action raised by him in the Sheriff Court at Airdrie on 25th April 1892 against Alexander Gillon, house proprietor, Coatbridge, used arrestments in the hands of certain persons so as to attach the rents due by them to the said Alexander Gillon.

In May 1892 John Brand, coalmaster, Uddingston, presented a petition to the Sheriff Court at Airdrie, in which he called Kent as defender, to have these arrestments loosed, on the ground that the houses to which the rents applied belonged to him by virtue of an absolute disposition granted in his favour by Alexander Gillon dated 20th June and recorded 21st December 1891.