ther order of Court, and decern: Find the said Margaret Fisher liable to the petitioner in the expenses of both petitions now conjoined, and authorise the said John M. M'Leod, as judicial factor foresaid, to make payment of the taxed amount thereof to the petitioner: Find the said Margaret Fisher also liable to the said John M'Killop and Michael Dunbar in the expenses incurred by them, and authorise them to retain the amount thereof out of the share of the estate in their hands falling to her," &c.

Counsel for the Petitioner—C. S. Dickson—Christie. Agents—Simpson & Marwick, W.S.

Counsel for the Minuters — Graham Murray, Q.C.—Lees. Agent—Macpherson & Mackay, W.S.

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*Tuesday, November* 14.

## FIRST DIVISION.

[Lord Low, Ordinary on the Bills.

## KECHANS *v.* BARR.

*Bill—Suspension of Charge—Caution.*

In a case where the suspender of a charge on a bill produced a genuine signature utterly unlike that on the bill, and where the holder of the bill could not allege that the signature thereon was genuine, and had to admit that it differed from that on two other valid bills held by him—*held* that the note should be passed without caution.

Thomas Barr, wine and spirit merchant, Glasgow, was charged at the instance of William Kechans, merchant, Haywood, Lanark, to pay £1000, being the amount of a bill upon which his name appeared as an acceptor. Of this charge he brought a suspension, on the ground that the alleged signature was not genuine and was unauthorised.

Upon 28th June 1893 the Lord Ordinary on the Bills (Low) ordered answers, and appointed "the charger to produce the bill charged on, and the suspender to produce genuine subscriptions in real transactions bearing his signature of date prior to the charge."

In his answers the charger did not allege that the signature on the bills was genuine, but only that he "had no room to doubt the genuineness of the signature, . . . and that if the complainer did not in fact adhibit his signature, . . . he authorised this signature to be adhibited." He also explained that he had held two other bills purporting to be signed by the complainer which had been acknowledged as valid, but he admitted that the signatures on them differed widely from that on the bill now produced and from the signature of the complainer now exhibited.

The complainer produced a sheet of paper with his signature upon it subsequent to the date of the charge, but with the explanation that he was a very old man, who had not been in the habit of signing documents, and that consequently he had no earlier signatures to exhibit, that in the case of the other bills he had authorised the signature, which was written by his wife, but that here he had given no authority.

The Lord Ordinary on 18th July 1893 passed the note without caution.

The charger reclaimed, and argued—There was an invariable practice in such cases to require caution—*Ross* v. *Millar*, December 2, 1831, 10 Sh. 95 (Lord Cringletie's opinion); *Renwick*, November 24, 1891, 19 R. 163. If the complainer admitted that he had authorised the signing of the other bills, the *onus* was on him of proving he had not authorised the signature here.

The complainer argued—The Lord Ordinary was right. In the special circumstances caution should not be required. The signature in question was admittedly quite different from that now exhibited, and genuine—*Wilson* v. *Hart*, February 25, 1826, 4 Sh. 504; *Paterson* v. *Mitchell*, November 25, 1826, 5 Sh. 43; *Bruce* v. *Borthwick*, March 3, 1827, 5 Sh. 517; *Ross* v. *Millar*, *supra*.

At advising—

LORD PRESIDENT—I think we may adhere to the Lord Ordinary's interlocutor without infringing any of the general rules applicable to cases of this kind.

The complainer alleges that the document in question is a forgery, and upon the Lord Ordinary requiring him to produce several subscriptions in real transactions bearing his signature of date prior to the charge, he makes an explanation which accounts for the absence of documents of that character. He says that he is a very old man, that he does not write well, and that he is not in the habit of signing documents of the character required by the Lord Ordinary. He, however, produces in default a sheet of paper on which he has written his signature, and it is manifestly unlike the signature upon the bill on which the charge proceeded.

Now, the attitude of the respondent turns out to be more complicated than it appeared to be on record. The respondent is in possession of two bills dated prior to the one in question, each of which he held or holds as a valid instrument, and on both of them there is something which purports to be the signature of the complainer, and the respondent is constrained to say that the two signatures do not resemble the signature upon the bill upon which the charge proceeded.

That being so, and looking to the tone of the record, I cannot say that I read the case upon the ordinary footing of a man asserting that the signature upon a bill in his possession is a genuine signature, and that, coupled with the explanations made at the bar, seems to warrant the Lord Ordinary in passing the note without caution.

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.

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*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