equivalent to a statute or Act of Sederunt. I think it always in the discretion of the Court to deal with these matters. My opinion is that where the reporters on *probabilis causa litigandi* are equally divided, the Court may, and if they think fit ought to, admit the applicant to the poor's roll.

LORD TRAYNER—I agree with your Lordship. I think the question was settled, and not for the first time, in the case of *Ormond*. A rule being once fixed should not be gone back upon, and there is no reason in the present instance why it should.

LORD MONCREIFF was absent.

The Court refused the prayer of the note.

Counsel for the Pursuer and Respondent—C. J. L. Boyd. Agent—A. Bowie, S.S.C.

Counsel for the Defender and Appellant—A. Duncan Smith. Agent—P. F. Dawson, W.S.

Friday, June 17.

SECOND DIVISION.

FRASER'S TRUSTEES *v.* ROBERT MAULE & SON.

Lease—Notice to Terminate Lease—"Whitsunday"—Removal Terms (Scotland) Act 1886 (49 and 50 Vict. c. 50), sec. 4—Calendar or Lunar Month.

By written lease A let to B & Company a stable and workshop for eight and a-half years from the term of Martinmas 1900, "with a break in the said lease in favour of either party at Whitsunday 1904, on the party desiring the break giving written intimation of her or their intention to take advantage of the same six months at least before the said term of Whitsunday 1904."

On 27th November 1903 B & Company gave intimation of their intention to terminate the lease, and maintained that their notice was timeous, because (1) "Whitsunday" 1904 in the lease meant 28th May 1904, and (2) even if "Whitsunday" 1904 meant 15th May 1904, 27th November 1903 was six lunar months before that date.

Held (*diss.* Lord Young) that in order to take advantage of the break in the lease intimation required to be given six calendar months before 15th May 1904.

By lease dated 25th and 28th February 1901 Mrs Fraser, at that time sole trustee under the trust-disposition and settlement of Robert Fraser, let to Robert Maule & Son, drapers and upholstery warehousemen, Edinburgh, certain premises at Sunbury, Edinburgh, consisting of a stable and coach-house and a workshop, "and that for the space of eight years and six months from and after the term of Martinmas 1900, which is hereby declared to be the said Robert Maule & Son's entry thereto, with a break in the said lease in favour of either party at Whitsunday 1904, on the party desiring the break giving written intimation of her or their intention to take advantage of the same six months at least before the said term of Whitsunday 1904."

By letter dated and delivered on 27th November 1903 Robert Maule & Son gave notice to the trustees then acting under Mr Fraser's trust-disposition that they desired "to terminate the lease at the removal term of Whitsunday (28th May) 1904." By letter dated 28th November 1903 Mr Fraser's trustees acknowledged the letter, but refused to accept the notice as sufficient intimation in terms of the lease that the same was to be brought to an end at Whitsunday 1904, in respect that it was not given six months before the term of Whitsunday 1904, which they maintained was 15th May 1904. They accordingly intimated that they held Robert Maule & Son bound by the lease for the remainder of the eight and a-half years which had still to run. Robert Maule & Son on the other hand maintained "(1) that the term of Whitsunday should not be construed in two different meanings in the same clause of the lease, and (2) that the word 'month' in the lease meant lunar month, and that, even if notice had to be given six months before 15th May 1904, such notice had been given in respect that there was a period of six lunar months between 27th November and 15th May."

For the settlement of the point a special case was presented to the Court by (1) Mr Fraser's trustees and (2) Robert Maule & Son.

The question of law was—"On a sound construction of the lease, was notice to terminate the lease at Whitsunday 1904 timeously given by the second parties to the first parties?"

Argued for the first parties—Sufficient notice of removal had not been given. (1) Where Whitsunday was mentioned in a lease it meant the 15th of May; that date was the legal term of Whitsunday—*Hunter* v. *Barron's Trustees*, May 13, 1886, 13 R. 883, 23 S.L.R. 615. The Removal Terms (Scotland) Act 1886 specially enacted (sec. 4) that where warning to remove was required 40 days before Whitsunday the date of warning must be calculated as prior to 15th May, not 28th May. (2) By the law of Scotland the word "month" meant a calendar month—*Farquharson* v. *Whyte*, February 3, 1886, 13 R. (J.C.) 29, 23 S.L.R. 360; *Smith* v. *Roberton*, February 10, 1826, 4 S. 442; Interpretation Act 1889 (52 and 53 Vict. cap. 63), sec. 3.

Argued for the second parties—Section 4 of the Removal Terms Act 1886 was a statutory declaration that for the purposes of removal and entry Whitsunday and Martinmas were to be the 28th May and the 28th November respectively. In the clause under construction there was no doubt that Whitsunday 1904, at which the break was to occur, was 28th May 1904, and six months before said term must mean 28th November,

otherwise the term of Whitsunday would have two different meanings in the same clause. The case of *Hunter, supra,* was in their favour, as in that case Whitsunday was construed to mean 26th May. It showed that the term Whitsunday was not a fixed date, but was open to construction. (2) The word month should be construed as lunar month. It primarily meant a period of 28 days—*Campbell's Trustees* v. *Cazenove,* October 20, 1880, 8 R. 21, 18 S.L.R. 4, opinion of Lord Young, 23.

LORD JUSTICE-CLERK — Although this may be in some respects a hard case for the tenants, I am satisfied that they did not give sufficient notice of their intention to terminate the lease at Whitsunday 1904. The legal term of Whitsunday is 15th May, and although by the Act of 1886 the terms of removal and entry were—for convenience and to prevent anomalies caused by variety of local usage—fixed for another date, the 15th of May was specially declared to be the term, forty days before which warning of removal had to be given. Accordingly I think that where, as in this case, notice has to be given six months before the term of Whitsunday, it must be given six months before the 15th of May.

As to the contention that "six months" meant "six lunar months," I have no doubt that in all cases, in the absence of express stipulation, "month" means "calendar" and not "lunar month."

LORD YOUNG—I cannot say that I have had any difficulty with this case. The lease is for the space of eight years and six months after the term of Martinmas 1900, which is declared to be the date of entry. By the Removal Terms Act of 1886 the Martinmas term of entry to subjects such as we have here is 28th November, so that it is quite clear that the term of entry specified in the lease as Martinmas 1900 is 28th November 1900.

By the lease power is given to either party to terminate the lease at Whitsunday 1904 on giving written notice to the other party six months at least before the said term of Whitsunday 1904. Here again it is quite clear that in terms of the Statute the term of Whitsunday 1904 at which the lease was to terminate on notice being given was 28th May 1904. The tenant entered on 28th November 1900, and was entitled to remain and exclude every one else down to 28th May 1904. Between these dates he had an absolute right to occupy the premises as tenant under the lease because of the statutory enactment, that for the purposes of entry and removal the terms of Whitsunday and Martinmas are 28th May and 28th November.

It is admitted that notice of removal was given on 27th November 1903, six months before "the said term of Whitsunday 1904" mentioned in the lease, which as I have already shown is by Statute held to be 28th May 1904. I am therefore of opinion that the tenant in giving notice six months before the statutory term of removal has given all the notice that the law requires, and that the argument that more than six months' notice is necessary is a mere subtle argument without any foundation in law or good sense.

LORD TRAYNER—I am of the same opinion as your Lordship in the chair. This lease provides in the first place that the term of entry is to be Whitsunday 1900, and in the second place that there is to be an optional break at Whitsunday 1904 on certain intimation being given. It is this latter clause with which we have to deal, and in determining the date at which notice of intention to break the lease had to be given I do not think it relevant to consider what was the date of entry to or the ish from the premises.

The term of Whitsunday is fixed by statute; it is the 15th of May. This was not altered by the Removal Terms Act 1886, which was passed only to secure uniformity in the terms of entry and removal, and expressly provides that 15th May is to remain the legal term for the purpose of calculating the date at which notice of removal has to be given. The provision in this lease is exactly the same as if the parties had reserved the right to give notice of removal at a specified time, and I am of opinion that the "term of Whitsunday 1904," six months before which intimation was to be given, was the 15th May 1904.

With regard to the other point raised, I do not think there is any doubt that "month" in this case means "calendar" and not "lunar" month.

LORD MONCREIFF was absent.

The Court answered the question in the negative.

Counsel for the First Parties—D. Anderson. Agent—William Fraser, S.S.C.

Counsel for the Second Parties—Cooper. Agents—G. M. Wood & Robertson, W.S.

Friday, June 17.

SECOND DIVISION.

CONSTABLE'S TRUSTEES *v.* CONSTABLE.

Succession — Terce — Profits Derived from Minerals—Rent of Mansion-House.

Held that a widow is not entitled to terce out of the profits derived from a mineral field on her deceased husband's estate, nor from the rent of the mansion-house on his estate, if let.

William Briggs Constable of Benarty, in the county of Kinross, died in 1898, leaving a trust-disposition and settlement, whereby, *inter alia,* he directed his trustees, in events which happened, to hold and apply the residue of his estate for behoof of his children equally "after providing for all legal rights of my wife."

The truster was survived by his widow and three children.