there should be a remit to a man of skill to report whether the existence of the steeple was attended with danger to life and property. I think it is a thousand pities that the remit was not made in the Bill Chamber, for most probably the proceedings would never have gone beyond the Bill Chamber had that been done. Therefore, I agree with your Lordship that Mr Crawford ought to have the Bill Chamber expenses. But when the parties got into the Outer House, I cannot say that Mr Crawford was altogether so well-behaved. He has a great many allegations on the record quite unjustifiable, as that the magistrates were making a mere pretext for the purpose of carrying through a job of their own, and that they had got up the cry of danger with the view of effecting a sale of the steeple. To that extent Mr Crawford was wrong; and, moreover, I think that as soon as Mr Bryce's report was produced, Mr Crawford ought no longer to have shilly-shallied about the matter, but ought to have given up the case entirely, reserving the question of expenses. Therefore, I also agree with your Lordship in holding he is not entitled to expenses in the Outer House; and as to the later expenses, I think he is entitled to these, inasmuch as he has obtained a considerable alteration on the interlocutor of the Lord Ordinary.

Agent for Reclaimer—W. K. Thwaites, S.S.C.
Agent for Respondents—J. Martin, W.S.

Friday, March 11.

SKINNER *v.* ANDERSON'S TRUSTEES.

Title to Sue—Conjugal Rights Act 1861—*Desertion—Order for Protection*—Curator ad litem. A lady who alleged that she had been deserted by her husband, brought an action against the trustees of her mother. She made a motion for the appointment of a *curator ad litem*. *Held* that the most convenient course would be to supersede consideration of the action to enable the lady to obtain an order for protectection under the Conjugal Rights Act.

This was an action at the instance of Elizabeth Anderson or Flann, now Skinner, and her husband, Thomas Flann, against the trustees and executors of the late Mary Anderson, Aberdeen, the mother of the female pursuer. for the purpose of obliging them to pay over her share of *legitim* and dead's part. Shortly after the institution of the action the female pursuer was placed in an asylum. The defenders pleaded that Thomas Flann had no title to sue the present action, in respect that he was not the lawful husband of the female pursuer, George Skinner, her husband, being still alive; and that the female pursuer had no title to sue without the concurrence of her lawful husband Skinner. A proof was allowed of these averments, and on 20th March 1869 the Lord Ordinary (MURE) found it proved that in 1846 Elizabeth Anderson was married to George Skinner, who in 1853 left Aberdeen and went to sea and has never since returned. He also found it not proved that Skinner was dead in June 1864.

Thereafter, in consequence of these findings, the Lord Ordinary found that Flann had no title to pursue the action, and in July 1869 he appointed a *curator ad litem* to Mrs Skinner, who was still in confinement.

In November 1869 Skinner returned to Aberdeen, and intimation of this action was made to him, but he did not enter appearance, and in the meantime Mrs Skinner had left the asylum.

In these circumstances the Lord Ordinary pronounced the following interlocutor:—"The Lord Ordinary having heard parties' procurators, on the motion of the defenders, to have the action dismissed, with expenses, in respect that the pursuer, Thomas Flann has been found to have no right or title to insist in the action; and that George Skinner, the husband of the female pursuer, who has returned to Aberdeen, has not appeared as a party-concurrer in the action; and, on the countermotion to have a *curator ad litem* appointed to the female pursuer; and made avizandum, and thereafter considered the closed record and whole process: Refuses the motion for appointment of a *curator ad litem:* Sustains the first plea in law for the defenders; and dismisses the action; and decerns: Finds the defenders entitled to expenses, of which appoints an account to be given in, and remits the same, when lodged, to the auditor to tax and report.

"*Note.*—The position of the female pursuer in this case is now very different from that in which she was when a *curator ad litem* was appointed to her in July last. She was then in a lunatic asylum, and her husband, though not proved to be dead, was not known to be alive; and if dead, and his death had occurred prior to the 30th of June 1864, she had a clear title to sue, in her own right, for the share of the moveable estate of her father sought to be recovered under the present action. The case was therefore, at that time, one fitted in the opinion of the Lord Ordinary for the appointment of a *curator ad litem*. But the pursuer is now no longer confined in an asylum, and her husband has come home to Aberdeen; and, although intimation of the dependence of this action has been duly made to him, he has not sisted himself as a party. In these circumstances it appears to the Lord Ordinary—having regard to the very decided opinion of Lord Moncrieff in the note to his interlocutor in the case of *Tait*, 4th June 1831, and to those of several of the Judges in the First Division when disposing of the case—that the pursuer has not now any title to insist in an action for the recovery of monies without the concurrence of her husband, to whom these monies, if recovered, would, *jure mariti*, exclusively belong.

"The main ground on which it was concluded that a *curator ad litem* should be named to the pursuer to enable her to proceed with the action, was, that under the Conjugal Rights Act 1861, married women are now entitled to take steps for the protection of property to which they may succeed, against a deserting husband. This, however, is not a proceeding under that Act; and it was not alleged that any such application was in contemplation. When such a proceeding is taken with success, it may be that the pursuer's title to sue such an action as the present will be materially strengthened. But, as at present advised, the Lord Ordinary would not be warranted in assuming that the pursuer must necessarily succeed in showing that she was deserted, and 'without reasonable excuse,' which is essential to her obtaining the protection of the statute."

Mrs Skinner reclaimed.

THOMS and RHIND, for her, pleaded that a *curator ad litem* should be appointed, or otherwise, that in the circumstances the action should be superseded to enable her to take advantage of the provisions of the Conjugal Rights Act 1861.

BALFOUR in answer.

At advising—

The LORD PRESIDENT—I cannot concur with the view of the Lord Ordinary. It appears to me that the claim of the pursuer, if well founded, is not to be got rid of because of the fact of her husband's absence, or of his refusal to concur in the action. The only question for decision is what is the most convenient and satisfactory way in which to establish a valid instance? The other question, as to whether the lady with a curator *ad hanc litem* would have a good title to sue, and, if her claim were established, to decree, it is now necessary to determine, because she alleges and offers to prove that she has been deserted by her husband.

In these circumstances I think this action should be superseded, to allow the lady to make application to the Court under section 1 of the "Conjugal Rights Act 1861" for an order for protection. The effect of that order, if obtained, will be to vest this claim in her own person, and to give her good title to sue the action. This seems to be a solution of the difficulty. It is an inexpensive and not a tedious course of procedure, although the husband may have to be cited edictally—and I beg that it be distinctly understood that, in the opinion of the Court, if this lady succeeds in getting an order for protection, that she has a good title and instance to sue in this action.

The other Judges concurred.

Agent for Reclaimer—William Officer, S.S.C.

Agents for Respondents—Hill, Reid & Drummond, W.S.

Friday March 11.

JOPP AND OTHERS *v.* SCORGIE.

Landlord and Tenant—Inædificatum solo cedit solo—*Dilapidation.* A sub-tenant had erected a small addition to his farm-house, which he found was not sufficient for the accommodation of his family. He entered into a contract with a builder to erect a more substantial structure in its place, and proceeded to pull down the building. A petition for interdict at the instance of the landlord *dismissed*, on the ground that the tenant desired to benefit, and not to dilapidate, the property.

This was a petition to the Sheriff of Aberdeen at the instance of Alexander and Andrew Jopp, as trustees of the late Sir James A. Gordon, proprietors of one-half of the lands of Auchnacant, in the parish of Foveran, and Mr J. A. West, proprietor of the other half of these lands, to have Alexander Scorgie, the sub-tenant of the farm of Brunthill of Auchnacart, interdicted from pulling down or removing a stone and lime addition which he had built and added to the farm house.

The facts of the case appear from the interlocutor and note of the Sheriff-Substitute (THOMSON):—

"*Aberdeen, 26th November* 1869.—Having resumed consideration of the cause, finds in fact that the respondent is sub-tenant of the subjects in question, under a lease which expires at Martinmas 1873: That he built a kitchen of single hollow brick, and with a tile roof, for the accommodation of his family, in 1866; that it became uninhabitable; that he conceived the intention of pulling it down, and of building a habitable kitchen on its site; that he entered into a contract for such new erection; that he pulled down part of the former kitchen: Finds in law that in so doing the respondent does not prejudice the rights of the petitioners as proprietors of the subjects: Therefore sustains the defence; recals the interim interdict formerly granted, dismisses the petition, and decerns: Finds the respondent entitled to expenses of process; allows an account thereof to be given in, and remits the same when lodged to the auditor of Court to tax and report.

"*Note.*—The removal complained of has occurred while there are yet four years of the respondent's lease to run. He erected the building because the existing house was not large enough for his family. It was built as cheaply as possible, of hollow bricks, and has been proved to have become unfit for habitation. The testimony of the witnesses as to its uselessness as a dwelling is unanimous, and is confirmed by the fact that the respondent had actually to hire a house in Newburgh, to which he removed his wife and all of his family who could be spared. Further, there is evidence to show that the respondent entertained no intention of dismantling the premises. He acted and spoke like a man who honestly purposed to rebuild what he was pulling down, but in a more substantial manner. It is highly improbable that he meant to divide his family during the remainder of the lease; and without an addition such as the kitchen in question there is not room for them in the house.

"The rule is well fixed in our law, *Inædificatum solo cedit solo*, but it is quite apparent from the more modern decisions of the Supreme Court that whatever may be the case in questions between liferenter and fiar, and lien and executor, the rule is less rigidly applied in questions between landlord and tenant; see the opinions of the Lords of the First Division, and especially of Lord Currie-hill, in the case of *Syme* v. *Harvey*, 14th Dec. 1861, 24 D. 202.

"In this case the erection was made for a special purpose, arising from the respondent's family circumstances. It became unfit for that purpose, and it is thought that his landlord is not entitled to interfere with him in making it fit for habitation either by repair or renewal."

On appeal the Sheriff (JAMESON) adhered.

The petitioners appealed.

BALFOUR and SHAND, for them, cited *Murray* v. *Bisset*, Hume's Decisions, 818, 21st May 1805; *Oliphant* v. *Thomson*, 1 S. 307; *Elwys* v. *Mawe*, 2 Smith's Leading Cases, 153.

RHIND, for the respondents, was not called on.

At advising—

The LORD PRESIDENT—This is a very special case. The sub-tenant of an agricultural subject erects a building of an unsubstantial and temporary nature because he has not sufficient accommodation for his family in the farm house. If he had possessed it till the end of his lease, I daresay it would not have been of very much value at that time, because the house was built of single bricks with a tiled roof. It was found not to answer, because it let in the rain and cold, and was not fit for human habitation. The tenant accordingly proceeds, in perfect good faith, to pull down this building which he had built, with the view of erecting a more suitable one in its place. At this point of time the landlord, without any warning, presents this note of suspension and interdict. I consider this to have been a nimious proceeding on the part of the landlord, who ought to have made inquiry if he imagined that his property was