end to the liquidation and take means to reconstruct the company. That is what was done here. The scheme however proved abortive, and was abandoned. The proposal now is that out of the funds in the liquidation shall be paid the expenses of that abortive attempt. I think that is altogether incompetent and out of the question, and I am therefore for refusing the prayer of the note.

LORD MURE, LORD SHAND, and LORD ADAM concurred.

Counsel for Applicants—Jameson — Forsyth Grant. Agents—Ronald & Ritchie, S.S.C.

Wednesday, March 16.

SECOND DIVISION.

[Sheriff of Lanarkshire.

STRANG *v.* STIRLING STUART.

Lease — Landlord and Tenant — Agricultural Holdings (Scotland) Act 1883 (46 *and* 47 *Vict. cap.* 62), *sec.* 7—*Compensation for Unexhausted Improvements—"Determination of Tenancy."*

The Agricultural Holdings Act 1883 provides that a claim for unexhausted improvements must be intimated four months at least before the "determination of the tenancy," which is defined by the Act as "the termination of the lease by effluxion of time or from any other cause." A tenant by agreement with the landlord renounced his lease and undertook to remove from the arable lands and grass at Martinmas 1885 and from the houses at Whitsunday 1886. *Held* that the tenancy did not "determine" till Whitsunday 1886, being the date when all right of possession under the lease ceased, and that a notice of claim under the Act given four months prior thereto was good. *Held* further, that though the renunciation contained no reference to a claim for compensation for unexhausted improvements, the claim was not excluded.

The Agricultural Holdings (Scotland) Act 1883 (47 and 48 Vict. c. 62), sec. 1, provides—"Subject as in this Act mentioned, a tenant who has made on his holding any improvement specified in the schedule hereto, shall, from and after the commencement of this Act, be entitled on quitting his holding at the termination of a tenancy to obtain from the landlord as compensation under this Act for such improvement, such sum as fairly represents the value of the improvement to an incoming tenant." Section 7 provides—"Notwithstanding anything in this Act, a tenant shall not be entitled to compensation under this Act unless four months at least before the determination of the tenancy, he gives notice in writing to the landlord of his intention to make a claim for compensation under this Act." In the interpretation clause (sec. 42) "determination of tenancy" is defined as meaning "the termination of a lease by reason of effluxion of time or from any other cause."

William Strang was tenant of the farm of Parklee on the estate of Castlemilk, belonging to Captain James Stirling Stuart, conform to lease entered into in 1871 between the proprietor and Mrs Janet Rankine or Strang, whereby the farm was let to her for nineteen years from and after the term of Martinmas 1871 as to the arable lands, and Whitsunday thereafter as to the houses and grass. The rent was £125. William Strang had acquired right to the lease by assignation from Mrs Strang, with Captain Stirling Stuart's consent, in December 1883.

By renunciation dated 7th and 9th November 1885, William Sarang bound himself to pay the landlord £88, 19s. 8d. (whereof £25, 5s. 9d. was a balance of rent due at Whitsunday 1885, and £63, 13s. 11d. was the half year's rent due at Martinmas 1885), and also to pay £62, 10s. as the half year's rent due at Whitsunday 1886, before the stock and crop should be removed, and bound himself to remove from the whole subjects at the term of Martinmas 1885 as to the lands and grass, and at the term of Whitsunday 1886 as to the houses. This renunciation was accepted by the landlord Captain Stirling Stuart.

On 14th January 1886 Strange sent to the landlord a notice of claim for the sum of £48, 5s. 9d. in virtue of the Agricultural Holdings (Scotland) Act 1883, for unexhausted improvements, consisting of seeds, manure, and feeding stuffs. The landlord repudiated the claim as (1) not well founded, and (2) not intimated when the renunciation was arranged, and (3) not given timeously, *i.e.*, "four months before the determination of the tenancy," and refused on his part to appoint a referee. Strang raised this action, praying the Court to appoint a competent and impartial person to be a referee for the landlord along with William Fleming, his own nominee, to settle the difference between them as regards the claim.

The defender pleaded—"(1) The pursuer having abandoned any claim he might have for compensation under the Agricultural Holdings (Scotland) Act 1883, the petition is unnecessary, and should be dismissed. (2) The pursuer having failed to give notice of claim in conformity with the provisions of the said Act the petition should be dismissed."

The Sheriff-Substitute (GUTHRIE) pronounced this interlocutor:—"Finds that the pursuer William Strang was tenant of the farm of Parklee, on the estate of Castlemilk, belonging to the defender, conform to lease: Finds that the said lease was terminated by renunciation by the said pursuer, accepted by the defender, annexed thereto, and dated 7th and 9th November 1885, whereby the said pursuer renounced and gave up the said lease for all crops and years thereof yet to run from and after the term of Martinmas 1885 as to the arable lands, and Whitsunday 1886 as to the houses and grass: Finds that on 14th January thereafter the pursuer duly intimated to the defender, and to his factor and commissioner, a claim for compensation for improvements under the Agricultural Holdings (Scotland) Act 1883: Finds that the said claim is not excluded by the foresaid renunciation: Therefore repels the defender's pleas, and in respect that the defender has failed, for seven days after notice from the pursuer, to appoint a referee for settling the amount and mode and time of payment of compensation under the said Act, appoints Allan Kirkwood, Esq., land-agent, Glasgow, to be referee, to act along with the referee appointed by the pursuer in the premises, and decerns.

"*Note.*— . . . . The notice is said to have been too late, the ish of the lease being at Martinmas 1885, not at Whitsunday 1886. It seems to me that this is the ordinary case of a Whitsunday entry and Whitsunday removal, with the usual provision to enable the incoming tenant to labour the arable land at the preceding Martinmas—See Hunter on Landlord and Tenant, i. 384; *Earl of Hopetoun* v. *Wight*, July 10, 1863, 1 Macph. 1097—*aff.* May 27, 1864, 2 Macph. (H. of L.) 35. The point is clear, and needs no commentary.

"I do not think I can hold the tenant to be excluded from his statutory right to claim compensation by his having renounced the lease without reserving this claim. The statute which confers the right to compensation on a tenant gives it to him 'on quitting his holding at the determination of a tenancy' (sec. 1), and 'the determination of a tenancy' is said (sec. 42) to 'mean the determination of a lease by reason of effluxion of time, or from any other cause.' There is no more usual or natural cause, apart from expiry by effluxion of time, than renunciation or agreement, and it seems altogether inconsistent with the purpose and intention of the Act to hold that every renunciation shall exclude its operation unless the right of the tenant to claim compensation is expressly reserved. In renouncing a lease a tenant is presumably aware of the rights which the law confers at 'the determination of a lease,' and there is no reasonable ground for assuming that he waives or abandons them unless he expressly says so. The recent case of *Lyons* v. *Anderson*, June 25, 1886, is different from the present case. It related to a claim of damages by a tenant on the ground of *quasi* delict, and not to a claim strictly under the contract of lease or a statute, and the claim of damages had there been preferred, and apparently not insisted in, before the expiry of the lease. However that may be, the principle laid down in that and previous cases (*Waterston* v. *Stewart*, 1881, 9 R. 155) that a renunciation of a lease imports a renunciation of all claims under it cannot in my opinion be extended so as to make such a renunciation extinguish the statutory claim for compensation which comes into existence only by reason of the renunciation itself."

On appeal the Sheriff (BERRY) adhered.

"*Note.*—The question raised in this appeal is, whether the notice of intended claim lodged by the pursuer and his brother James Strang is a valid and effectual notice to claim compensation under the Agricultural Holdings Act 1883. Two objections have been taken on the part of the defender. . . . (1) That the renunciation of the lease, by expressly providing for certain payments to the landlord, impliedly exclude any possible claim for compensation on the part of the tenant; (2) that the notice was too late. . . . As to the first objection, I do not think that the renunciation, by expressly providing for payment of the rent to the landlord, necessarily excludes the tenant's claim under the statute, and were there any doubt on this point the provision in section 36 of the Act that any agreement by the tenant depriving himself of his right to claim compensation shall be void would prevent the tenant from being prejudiced in that way. The second objection is one of more general importance. Under section 7 of the statute it is required that to entitle a tenant to compensation he shall, 'four months at least before the determination of the tenancy,' give the statutory notice, and the question is, When did this tenancy determine? I am of opinion that it did not 'determine' till Whitsunday 1886. The renunciation which determined it bears to be 'from and after the term of Martinmas 1885 as to the arable lands, and Whitsunday 1886 as to the houses and grass.' Now, although the tenant gave up possession of the arable lands at Martinmas 1885, he remained in possession of the houses and grass till Whitsunday 1886. He did not quit the subjects therefore till the latter date, and I do not think his tenancy determined till then. It is true that, as was suggested, inconvenience may arise from the statutory notice being delayed till after a new tenant has interfered with the land. But, on the other hand, inconvenience might arise from requiring that notice be given at a very early date, and in construing the statute we can hardly take a balance of convenience or inconvenience on the one side or the other as a safe guide. In these circumstances I am of opinion that the notice which was given four months before Whitsunday 1886 was given four months before the determination of the tenancy, and was therefore sufficient within the statute. The case differs materially from that of *Hannan* v. *Ramsay*, decided in the Sheriff Court of Argyleshire, and referred to at the debate. The tenant there had quitted the houses, buildings, and pasture lands at Whitsunday 1884, and had merely a right to use the barns till the 15th March 1885. He was no longer after the former date in the position of tenant, and his tenancy had, as the Sheriff held, determined. Here the pursuer remained in possession as tenant of the house and pasture land till Whitsunday 1886, and, as I have said, his tenancy did not in my opinion determine till then."

The defender appealed, and argued—The action should be dismissed because (1) the tenant had not given timeous notice of his claim for compensation, and (2) by his renunciation the tenant was barred from insisting in any such claim. 1. Under section 7 of the Act the tenant was not entitled to compensation unless four months before the "determination of the tenancy" he gave notice of his intention to make a claim. Section 42, the interpretation clause of the statute, said that "'determination of tenancy' means the termination of a lease by reason of effluxion of time or from any other cause." The first question was, did this tenancy determine at Martinmas? The lease was one and indivisible. The Sheriff-Substitute was clearly wrong in saying this was the case of an ordinary Whitsunday entry, and this was evident from a reference to the authority here relied on—*Earl of Hopetoun* v. *Wight*. Then the entry was to the houses and grass at Whitsunday, and to the arable land subsequently at the separation of the crops—*Cf.* Jurid. Styles (4th ed.) i. 462, and (5th ed.) i. 569; Bell on Leases, ii. 146; Bell's Lect. (3d ed.) ii. 1201. Further, a comparison of sections 1 and 37 showed that the sum to be paid as compensation was to represent "the value to the incoming tenant." But the pursuer's contention would involve this, that the notice need not be given until two months after the incoming tenant has

taken possession of the farm. It was plain from section 28 that notice for removal must be given prior to the ish which was first in date. This was distinctly provided by the Sheriff Court Act of 1853, secs. 29, 30, and Sched. 1, to which section 28 of the Agricultural Holdings Act referred. The present lease therefore, *quoad* notice of removal, terminated at Martinmas 1885, and the statute intended this should be the termination of the lease, *quoad* notice of claim for compensation. If two different periods were taken it would lead to great inconvenience unless there was strict compliance with the provisions of the Act, the previously existing rights of the landlord were not taken away by section 110. In certain cases, *e.g.*, under the conventional forfeitures in the lease, the lease could be terminated and no notice of claim for compensation could be given. There would be no change in the law in that case—*Scott's Executors* v. *Hepburn*, June 14, 1876, 3 R. 816. 2. The tenant had abandoned all his claims by renouncing the lease—Hunter on Landlord and Tenant, ii. 251; *Jenkin* v. *Younger*, March 10, 1825, 3 S. 639; *Lyons* v. *Anderson*, June 25, 1886, 13 R. 1020.

The pursuer replied—1. The "determination of the tenancy" was clearly the term of Whitsunday 1886, the period at which the tenant finally quited possession of the farm. Till that term he did not relinquish possession under his lease, as though for purposes of agriculture he had quitted the farm as regards the arable land he was still in possession till that term of the houses. Any other rule would result in confusion. As long as he held possession of the houses the lease had not come to an end "by reason of effluxion of time or other cause." It was a Whitsunday ish—*Earl of Hopetoun* v. *Wight* (*supra*). 2. The claim was not barred by the renunciation. It was not a case of a conventional stipulation in the clauses of a lease. It was a claim given by statute, only arising when the holding came to an end, and which the tenant could not contract himself out of. There was in point of fact no reference to the claim in the deed of renunciation.

At advising—

Lord Justice-Clerk—The question here arises under the Agricultural Holdings Act of 1883 in regard to the notice given by a tenant to his landlord of his intention to claim the compensation to which under that Act he is held entitled. He held his farm by lease which terminated at Martinmas 1890, but at the term of Martinmas 1885 the tenant and his landlord entered into an agreement by which the tenant renounced his lease. Three months after that or at all events four months before the Whitsunday term 1886 he gave notice in accordance, as he maintains, with the provisions of the Agricultural Holdings Act for compensation for his improvements. The provisions of the renunciation were, that the lease was renounced as regards the arable lands at Martinmas 1885, and as regards the houses and grass at Whitsunday 1886. The simple question then arises, whether the notice given four months before Whitsunday 1886 is valid under the Act when so much of the holding as consisted of arable land had previously been renounced? The Sheriff has sustained its validity and I agree with him. The statute says that the notice must be given four months at least before the "determination of the tenancy." Now, it appears to me that the statute would be inextricable unless taken as referring to a specific part of the lease. There cannot be two terms for the "determination of the tenancy." There must only be one term, and four months before it the notice must be given. Now, I think the just and reasonable definition of the words "determination of the tenancy" is that period from which no further possession can be held under the lease. Though the renunciation terminated the right to the arable land from Martinmas, the lease continued as a title of possession down to 1886.

On the second point, whether the renunciation barred his claim under the Act, I think it would have been better had the parties provided for this in the actual deed of renunciation. There might quite well be two views taken. On the one hand the landlord might be entitled to say that he understood all other claims were renounced with the lease, and on the other hand the tenant might say that if it had been contemplated that he was to be deprived of his right to the benefits of the Act, such should have been specially provided for.

Lord Young—I am of the same opinion. The case, though trifling in the amount sued for, is of importance. The lease here terminated not by its coming to an end according to its own terms, but on an agreement between the parties to terminate it before its natural determination under the deed of lease. The agreement was come to in the beginning of November, and is in the form of a renunciation by the tenant accepted by the landlord. It terminated the lease at the term of Martinmas with respect to the arable lands, which of course means not all the lands of the farm which are arable, but the land which in the ordinary course of cultivation is to be under crop for the ensuing year. The incoming tenant was to have access to it at Martinmas 1885 for the ensuing year, and the outgoing tenant was to remain in possession of the houses and grass. Two questions have arisen. The first is, whether when a renunciation of a lease is made by the tenant and accepted as here by the landlord, it excludes a claim for compensation for unexhausted improvements under the Agricultural Holdings Act. I agree that it does not. I think the tenant's right at the time of the renunciation was what the statute law gave him, namely, to get compensation for unexhausted improvements within the meaning of the Act. If the parties were contemplating that right at all, and meant that it should be discharged as part of the other arrangements in the renunciation (and it would have been quite lawful to have so stipulated), they ought to have said so in express words. This not having been done, I am of opinion that the claim remains.

The second question, which is general, is exactly what would have arisen if the lease had run on to its natural termination, which would have been at Martinmas with respect to the land to be under tillage in the following season, and at Whitsunday with regard to the houses. This distinction is to be found in the case of almost all leases. There are two periods of entry and two of removal. The more common case is of entry at Whitsunday with respect to the grass

and houses, and at the following Martinmas with respect to the arable lands. Here the difference is only that the entry is at Martinmas with regard to the arable lands, and at the following Whitsunday with regard to the houses and grass. The question is, when the statute provides that the condition of the right to compensation is that notice shall be given four months for the determination of the tenancy, to which of these terms does it refer? It is not answered in the Act itself. The Act says that the determination of a lease "means the determination of a lease by reason of effluxion of time or from any other cause," but then again the lease terminated at one term as to one part of it and at another as to another part. It is a pity the statute did not notice a distinction so obvious, but it leaves us to do so now. I think the argument is not all on one side, in fact that there is room for reasonable argument on both sides, and in preferring, as your Lordship and the Sheriffs have done, the latter argument noticed by your Lordship, viz., when the tenancy totally ceases, I have in view the legal considerations that whatever opinion may be entertained as to the policy of the Act, and they may be many and varied, it is, or was in the view of the Legislature, a remedial one, intended to remedy what Parliament was of opinion was a grievance to the agricultural tenant. They had before the Act was passed to quit their farms leaving behind them improvements made at their own cost on the land of the landlord for his benefit without compensation to themselves. It is a rule and principle that remedial statutes are to receive a liberal as distinguished from a strict construction. The proper one therefore here is that the termination of the lease is when it is totally at an end. I do not think that is reasonably predicated when the tenant remains in possession of a substantial part of the farm when the time comes to give access to the incoming tenant to sow crop, because that is the meaning of going out at Martinmas. I think the termination of a lease must be considered as the total termination, when the tenant's connection with the land and holdings ceases. I do not think here that it took place till Whitsunday 1886. I therefore agree we should dismiss the appeal and affirm the judgment.

Lord Craighill and Lord Rutherfurd Clark concurred.

The Court dismissed the appeal and affirmed the judgment.

Counsel for Pursuer (Respondent)—Low. Agent—J. Young Guthrie, S.S.C.

Counsel for Defender (Appellant)—Graham Murray—C. K. Mackenzie. Agents—Graham, Johnston, & Fleming, W.S.

Wednesday, March 16.

SECOND DIVISION.

[Lord Fraser, Ordinary.

THOMSON *v.* THOMSON.

Husband and Wife—Action for Separation—Insanity—Title to Sue.

Held (*rev.* judgment of Lord M'Laren) that an action for separation at the instance of an insane wife is incompetent.

This was an action for separation and aliment on the ground of adultery and cruelty at the instance of "Mrs Mary Livingstone M'Callum or Thomson, presently residing at the Royal Lunatic Asylum, Gartnavel, near Glasgow, wife of James Thomson, clothier and outfitter in Glasgow, with consent and concurrence of Duncan M'Callum, wright and builder in Glasgow, her father, and the said Duncan M'Cullum, for any interest he has in the premises," against the said James Thomson.

The defender denied the adultery and cruelty, and pleaded, *inter alia*—"(1) No title to sue. (2) The pursuer Mrs Thomson being insane, and therefore incapable of giving authority to raise this action, and the pursuer Duncan M'Callum having no interest or title to pursue it, the action is incompetent, and should be dismissed."

On 25th January 1887 the Lord Ordinary (M'Laren) repelled the above pleas and allowed a proof.

"*Opinion.*—This case was argued on the question of title to sue. It is an action of separation and aliment instituted in the name of a lady whose state of mind has rendered necessary her confinement in an asylum, and it is instituted with the concurrence of her father as next-of-kin or nearest agnate. A curator *ad litem* was appointed in the course of making up a record, and he also insists in the action. There does not appear to be any precedent in the reported decisions of this Court for an action of separation instituted under such circumstances, and my first impressions were adverse to the claim of a father or guardian to sue for a separation in name of the daughter or ward.

"The arguments against the title are obvious. The action is in its nature strictly personal, and it is easy to see the objections to the prosecution of a claim in the name of an insane wife which she herself, had she been capable of giving instructions to a lawyer, might have declined to raise, and which, in the event of her recovery, she might disapprove.

"But there are also reasons of expediency in favour of the action. An insane wife might be condemned by fate to suffer every kind of cruelty and indignity at the hands of her husband if the right were denied to her of suing for separation in the only way in which she can prosecute legal measures—that is, through the intervention of her nearest relative or guardian.

"Having regard to the current of English authority, and particularly to the case of *Woodgate*, 30 L.J., Prob. and Mat. 197, I have come to be of opinion that the action is maintainable.

"The case of *Woodgate* underwent very careful consideration. The committee of the lunatic wife applied in the first instance to the Lords