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

Justices in Chancery for authority to promote the suit, and after a reference to the Master the desired authority was given. After a trial the judge, Sir Cresswell Creswell, granted decree of judicial separation.

"The practice of the English Courts in this matter rests on their common law jurisdiction, and is not derived directly from the statutes under which the present Court for Probate and Matrimonial Causes is constituted.

"There being no settled principle of the law of Scotland which would debar a lunatic wife from the exercise of such rights against her husband as may be claimed by married women under the circumstances set forth in this record, I am of opinion that the authority which is justly due to the decisions of a co-ordinate Court may be allowed to determine the question in favour of the competency of the action."

The defender reclaimed, and argued — The present case was ruled by *Reid* v. *Reid*, January 19, 1839, 1 D. 400. *Woodgate*, cited by the Lord Ordinary, and the other English cases on which the pursuers founded, did not apply. In England, before proceedings could be begun, there was a thorough investigation into the alleged lunatic's state of mind and affairs by way of petition to the Lord Chancellor, in the course of which an examination is held before a Master in Lunacy—Pope's Law and Practice of Lunacy, p. 51. Cognition was the analogous proceeding in Scotland. A married woman might be cognosced —Fraser's Parent and Child, p. 534—and after cognition the tutor-dative took the place of the lunatic. That course ought to have been followed here. Neither a *curator bonis* nor a *curator ad litem* had anything to do with the ward's person. *Mordaunt* v. *Mordaunt*, June 22, 1874, L.R., 2 Scot. & Div. App. 375, and the subsequent case of *Baker* v. *Baker*, April 6, 1880, L.R., Prob. & Div. 142, proceeded solely on the terms of the English Divorce Act.

Argued for the pursuers—This question admittedly came to be a mere question of procedure, for it was not disputed that had the wife been cognosced her tutor might have sued. But such circuity of action was to be avoided, especially here, where separation merely, not divorce, was what was asked for. A pupil could raise an action in his own name, and get a tutor *ad litem* appointed, and so might a wife—as she had done here—*Swan or Briggs*, January 29, 1853, 2 S. 184. The instance therefore was good, and the real purpose of the action was to get a suitable award of aliment for her. In England the committee of a lunatic wife might sue an action of divorce on her behalf—*Mordaunt* (*supra*)—or defend one—*Baker* (*supra*)—or sue an action of separation for her—*Parnell* v. *Parnell*, January 2, 1814, 2 Hag. Cons. Cas. 169; *Woodgate* (*supra*)—also a suit for nullity of her marriage—*Hancock* v. *Peaty*, March 19, 1867, 1 Prob. & Div. 335. These authorities ought to be followed in Scotland. It had also been held in England that the *ex facie* valid appointment of a guardian was not to be questioned in such suits—*Barham* v. *Barham*, June 13, 1789, 1 Hagg. 5.

After the hearing the Court gave the parties an opportunity of considering as to the amount of the aliment to be allowed to Mrs Thomson, but they failed to effect a settlement.

At advising—

Lord Justice-Clerk—I am of opinion that this action is in form and on the merits incompetent, and that it should be dismissed.

Lord Young—That is my opinion also. I think there are very strong and obvious reasons against allowing an action of separation to proceed in the name of a lunatic wife who owing to her lunacy is confined in a lunatic asylum. I think that such an action is highly inexpedient. I know no instance of it, and I am not prepared to make one now; and I am not influenced by the English authorities which were cited to us. I think, then, that an action of separation, and even still more of divorce, at the instance of a lunatic wife incompetent. She must of course be alimented, and an action of aliment may be brought in her name with the aid of any guardian whom the Court may assign to her. But we have no such action here. If the parties agree to convert this action into such, we might perhaps entertain it, though I do not think that is quite clear, because it seems to me doubtful whether an action for separation, with conclusion for aliment as incident to it, is one in which we can pronounce decree as we might do if it was an action for aliment only. If there is a dispute here between the lady's father and her husband as to the amount of aliment to be awarded, and the question is to be determined of consent, a reference had better be made to some third party than to this Court. But I think with your Lordships that we can of our own proper authority and jurisdiction only regard the action as one of separation and of aliment as incident to it at the instance of a lunatic wife, and thinking that such an action is not competent, I agree that we must dismiss it.

Lord Craighill—I must say I was surprised when I saw that the Lord Ordinary had sustained the competency of this action. It is one in which the lady's father took the initiative, because she herself was not able from her mental incapacity to form any judgment on her interests and rights. The instance in the summons, so far as she is concerned, might just as well have been left a blank. It would be a serious matter to entertain an action of separation without the knowledge of the wife. It is admitted that there is no authority in Scotland for the action, and though I have the highest respect for the law of England, yet the decisions of the Courts of England are not authorities binding on us here, and in the present instance I am not prepared to follow them. I think the action is one contrary to public policy, and that therefore as laid it incompetent, and should be dismissed.

Lord Rutherfurd Clark—I am of the same opinion. I am clear that we cannot sustain an action of separation at the instance of an admittedly insane wife. I should myself have been willing to have allowed a remit to ascertain the amount of the husband's estate if the parties had consented to it, but as this is not desired, we can only dismiss the action as laid.

The Court recalled the Lord Ordinary's interlocutor, sustained the first and second pleas-in-law for the defender, and dismissed the action.

Counsel for Pursuers and Respondents—M'Kechnie—Ure. Agents—Ronald & Ritchie, S.S.C.

Counsel for Defender and Reclaimer—Graham Murray—Hamilton Grierson. Agents—Clark & Macdonald, S.S.C.

VALUATION APPEAL COURT.

Wednesday, March 9.

(Before Lord Lee and Lord Fraser.)

PRESTONGRANGE COAL AND FIREBRICK COMPANY (LIMITED) *v.* ASSESSOR FOR HADDINGTONSHIRE.

Valuation Cases—Harbour—Consideration other than Rent—Improvement a Condition of Lease.

A harbour was let with power to the tenants to make improvements at their own expense, which improvements were made during the lease at a great cost. The Commissioners of Supply having held that this expenditure was truly a condition of the lease, and was a consideration other than rent, and an appeal having been taken—Lord Fraser was of opinion that their judgment was right; Lord Lee being of opinion, in the special circumstances of the case, that the entry could not be altered for the particular year. The Court being thus divided, the determination of the Commissioners *stood.*

At a meeting of the Commissioners of Supply for Haddingtonshire to hear appeals against the Assessor's valuations for the year running from Whitsunday 1886 to Whitsunday 1887, the Prestongrange Coal and Firebrick Company (Limited) appealed against an entry made by the Assessor of the harbour at Morrisonshaven, of which they were entered as proprietors and occupiers at a yearly value of £80. They contended that they were not proprietors but tenants under a lease at £20 from Sir George Grant Suttie.

They referred to a lease between Sir George and Kitto and others (to the tenants' right in which they were assigned), entered into in 1874, by which the minerals in Prestongrange were let to them for thirty-one years from 11th November, and the pay-office, stables at Morrisonshaven, &c., and the "harbour dues" for twenty-one years for the same term. The lease gave the tenants power to use the harbour for transporting the minerals and importing materials for the purposes of their works, with power "to make improvements on the said harbour by converting the site of the existing dam, or part thereof, into a wet dock, and by extending the piers and otherwise, all according to plans and specifications to be submitted to the said Sir George Grant Suttie, and to be approved of by him before the said improvements shall be commenced; but declaring that such improvements shall be at the sole expense of the said lessees, who shall have no claim for compensation or otherwise against the said Sir George Grant Suttie or his foresaids, and the said improvements shall not be commenced until all the requisite notices shall be given by the said lessees to the Board of Trade and Admiralty, or otherwise (should such notice be necessary); and it is further hereby stipulated that no one having a right to use the said harbour shall be interfered with or impeded by the lessees in the use of it; and the lessees shall further be bound to relieve the said first party and his foresaids from all claims of damages in connection with the said improvements at the instance of any party or parties whomsoever." This lease fixed the rent of £20 yearly for the dues at the harbour.

In 1875–76 and 1877 the harbour was deepened, breakwater re-built, &c., by the tenants at a cost of £8000. No additional rent was paid thereafter.

There was, in addition to the entry complained of, an entry in the valuation roll under which Sir George Grant Suttie was entered as landlord, and the Prestongrange Coal and Firebrick Company (Limited) as tenants, of the harbour at Morrisonshaven at a yearly rent of £20.

From 1877 to 1885 the company returned themselves as proprietors of the harbour, and were so entered in the valuation roll.

The Assessor contended that the tenants would not have improved the harbour at a cost of £8000 unless they were to get the benefit of it during the last ten years of their thirty-one years' lease of the minerals as an adjunct to them; also, that though the dues were only let for twenty-one years the harbour was truly let for thirty-one years, along with the minerals; also, that the expenditure contemplated when the lease was entered into was a condition of it, and formed a consideration other than rent. He referred to *The Dundee Harbour Trustees* v. *Stephen*, March 19, 1886, *ante*, vol. 23, p. 607; *Gosnell* v. *Assessor for Edinburgh*, January 27, 1885, 12 R. 571.

The appellants referred to *Coltness Iron Company*, March 1, 1882, 10 R. 21; *Gosnell*, February 24, 1883, 10 R. 665; *Marr Type-Founding Company*, February 9, 1884, 11 R. 563.

The Commissioners of Supply, after a proof, sustained the Assessor's valuation.

The company took a Case.

The Assessor appeared personally in support of his valuation.

At advising—

LORD LEE—The point raised in this case is attended with considerable difficulty.

By the lease the appellants enjoy (along with the minerals) the use of the harbour of Morrisonshaven for a period of thirty-one years. If they had the exclusive occupation of it as a distinct subject for that period, the Assessor would be clearly right in valuing that subject, irrespectively of the rent payable under the lease, in terms of the proviso attached to clause 6 of the statute. But this is not the state of the facts. For though they were also tenants of the harbour dues, their tenancy of the harbour dues was only for twenty-one years. This is not sufficient in my opinion to make them lessees of the harbour under a lease, the stipulated duration of which is more than twenty-one years, and therefore liable to be entered in the valuation roll as proprietors of the harbour. I am unable therefore to sustain the