Act 1573, cap. 55, said nothing about the four years being continuous. If the pursuer's contention were unsound, imprisonment even for a day would interrupt the running of the four years. A new period would have to begin to run with the spouse's release, only perhaps to be broken in turn by a similar term of imprisonment for some trifling offence. There could surely be no greater proof of the *animus* to desert than the fact that the prisoner on being released did not return to his wife. Even in the case of the long prescription, where possession for forty years "continually and together" was required, it was never proposed to deal with the term of a party's compulsory absence, and consequent inability to act, through banishment or foreign service except by way of deduction—*Duke of Lauderdale* v. *Earl of Tweeddale*, M. 11,193; *Whitefoord* v. *Earl of Kilmarnock*, M. 11,196; *Graham* v. *Watt*, July 15, 1843, 5 D. 1368.

The Lord Ordinary granted decree of divorce.

Counsel for the Pursuer—J. H. Millar. Agent—F. M. H. Young, S.S.C.

Saturday, March 19.

OUTER HOUSE.

[Lord Pearson.

MOLLESON (PRINGLE PATTISON'S CURATOR).

Judicial Factor—Competition—Sequestration of Land Estate.

The *curator bonis* of a deceased lunatic presented a petition for the sequestration of the ward's estate, and the appointment of a judicial factor to receive the rents. Competing claims to the estate were presented by (*a*) the disponee under a *mortis causa* disposition executed some years before the ward became insane, and (*b*) the ward's next-of-kin. The petition was opposed by the disponee, who had recorded the disposition in the register of sasines. Petition granted, on the ground that neither party was in possession, and that there was a competition for the estate which presented elements of reasonable doubt as to the rightful claimant.

This was a note presented by T. A. Molleson, C.A., *curator bonis* to the late Mrs Pringle Pattison, praying for the sequestration of the deceased's estate, and the appointment of a judicial factor to receive the rents. The circumstances of the case are fully stated in the opinion of the Lord Ordinary.

An *interim* appointment having been made, the Lord Ordinary on 19th March 1898 sequestrated the estates and appointed Mr Molleson as judicial factor.

Opinion.—"Mrs Pringle Pattison of The Haining died there on the 3rd of this month, leaving heritable and moveable property of considerable value. She was predeceased by her husband, who died on 12th June 1888. Upon his death a petition was presented for the appointment of a *curator bonis* to her, founded upon two medical certificates which bore that she was of unsound mind and incapable of managing her affairs, or of giving directions for their management, and that she had been in a like state of mind for several years. One of the certificates described her as being in a state of semi-fatuity. The petitioners were Jane and Euphemia Bowers, in the character of first cousins of Mrs Pringle Pattison, and her only or nearest relatives resident in Scotland, and the petition was served upon certain persons who were described as her other nearest relatives. Mr Molleson, C.A., was appointed curator, and remained in the possession and management of the estates until the ward's death.

"Immediately upon her death, competing claims were made to the estates. Professor Seth (who is a relative, not of Mrs Pringle Pattison but of her husband) claimed as sole executor and universal disponee under a disposition and settlement by the deceased, dated in January 1875, more than thirteen years before the curator was appointed. The Misses Bowers claimed as two of the next-of-kin and heirs-portioners; and one of them proceeded with her lawyer to the mansion-house, and claimed to take possession of it, and of all the effects therein.

"In these circumstances Mr Molleson, who was lawfully in possession, but whose active title had fallen by the death of the ward, sealed up the repositories, and made application to the Court for the sequestration of the estates and appointment of a judicial factor, suggesting that an interim factor should be appointed until the note should be advised. The application set forth that Professor Seth (now Pringle Pattison) concurred in it, and that he approved of Mr Molleson being appointed to the office. But it is now explained at the bar that his concurrence was for the limited purpose of maintaining Mr Molleson in possession until the repositories were opened after the funeral, and that this purpose having been served, his concurrence must be deemed to be withdrawn.

"He now asks me to recal the interim appointment and to refuse the note. The next-of-kin and heirs-portioners desire to have the estate sequestrated, and the appointment continued, in view of the competing claims.

"The cases discussed before me were the following:—*M'Donald*, 11 D. 1028; *Elliot*, 5 D. 1075; *Speirs*, 5 R. 75; *Fraser*, 18 D. 264; *Lady Hawarden*, 23 D. 923; *Campbell*, 1 Macph. 991, *aff.* 2 Macph. (H.L), 41; *Munro*, 11 D. 1202; *Calton*, 8 Macph. 713; *Aikman*, 21 D. 1374.

"The position of parties as to title is this. Two of the next-of-kin have petitioned the Sheriff of Selkirk to be decerned executor-dative, but no petition has been presented for service as heir. The disponee under

the will of January 1875 has completed his title to the lands, by recording it in the register of sasines on 9th March. On 14th March one of the next-of-kin signeted and served a summons of reduction of the will of January 1875 (with the infeftment thereon), on the ground that it is not the deed of the deceased. The propinquity of the alleged next-of-kin and heirs-at-law is not admitted by the disponee; but he neither claims those characters himself, nor points out anyone else as entitled to them.

"Notwithstanding the infeftment of the disponee, I think I must take it that neither party is in possession. Certainly that is so as regards the moveable estate. And as regards the heritage, mere infeftment is not enough—see the cases of *Elliot*, 5 D. 1075; *Spiers*, 5 R. 75. The Court will not appoint a factor in a competition if one of the parties has already obtained possession; but such possession must (in the words of Lord Westbury) 'be unequivocal and peaceable; that is to say, possession must have been clearly attained before the competition arose'—*Campbell*, 2 Macph. (H.L.) 45. The peculiarity of this case is, that when the competition arises, the estate is found in the hands of a judicial factor, who, though his active title had lapsed, was in a very real sense continuing the possession of the deceased. In such a case it seems hopeless for either competitor to maintain that he is in possession in the sense above explained.

"But even if neither is in possession, the appointment will not be made unless there is really a competition, and a competition depending on something more than bare averments. As Lord Westbury put it in the case of *Campbell*—'It may be deduced from the cases, particularly the case of *Munro* v. *Graham*, that the Court will not act upon mere allegation.' And here the disponee under the deed of 1875 says that that accurately describes the case of his opponents.

"A very brief examination of the cases of *Campbell* and of *Munro* will show what is meant by 'mere allegation.' In *Campbell's* case the success of one claimant depended on proving the illegitimacy of a person who had enjoyed an undivided repute of legitimacy for years. The point was thus put by Lord Westbury—'Here the case of the appellant rests entirely on the averment that the respondent's father was illegitimate. He has undoubtedly stated a circumstantial case, but it at present rests entirely on allegation. All presumptions and probabilities are in favour of the apparent prior title of the respondent.' And his Lordship proceeds to show from the uncontested facts that the respondent's father had been recognised as legitimate throughout his life and had been called in several legal proceedings as the heir entitled to succeed, and that he and the respondent had for fifty years made assertions of right inconsistent with the appellant's case. So also in the case of *Munro*, 11 D. 1202, where two children who had all along been acknowledged as genuine were alleged to be supposititious, the Court in refusing to make the appointment proceeded on the absence of anything in the undisputed facts to give colour to this bare averment, as well as on the silence of the petitioner in circumstances where he ought to have taken action.

"Now there is a presumption for sanity, and this case might have been governed by those decisions if the deceased lady had been recognised and treated as a sane person until her death. But she was of unsound mind for the last ten years of her life, and (according to the statements of the medical men) for several years previously. Of course these dates do not carry one back to the date of the deed; and even if they did, a person of unsound mind may succeed in making a perfectly good and valid will. But this mental unsoundness in later life is a salient fact in the case; and without pretending to define how far the presumption for sanity in January 1875 is weakened or displaced by it, I think it does raise the averments of the next-of-kin out of the category of 'mere allegation.' Nor can it be left out of view that an action of reduction of the disponee's title has been raised and served, though the averments in it are meagre. It is true that no title has been expede by the pursuer of the reduction; and it would appear from the answers of the Misses Bowers that they do not admit that she is one of the heirs-portioners of the deceased. But having regard to the very short time which has lapsed since the death, I do not think I ought to decide this question on the footing that those respondents do not include among them the heirs and next-of-kin merely because they have not completed their title.

"Then it is said that even if the averments are examined on their merits, they disclose no case of equality of rights or equality of legal position; that the strength of the disponee's position under the will of 1875 cannot be brought into comparison with the position of the relatives averring merely that this will, simple and intelligible as it is, is not the deed of the deceased. Lord Fullerton, in the case of *Munro*, put the question—'Is it a competition of such a kind as that the parties stand on equal titles?' But it does not appear to me on the authorities that equality of position is required before a factor will be appointed. If it were there could hardly be such an appointment; for in almost every case the position of one claimant is *prima facie* better than that of the other. What is really required is a stateable case not founded on mere averment but in harmony with and deriving support from the uncontested facts, and in course of being put in train for decision. I think we have that here.

"It will be clearly understood that in deciding for the appointment I do nothing which could possibly affect the ultimate decision on the merits of the competition. Moreover, the appointment, like others of its class, is subject to being recalled on a change of circumstances. Undue delay in prosecuting the action of reduction might, for example, constitute a ground for recal."

Counsel for the Judicial Factor—Crole. Agents—Strathern & Blair, W.S.

Counsel for Professor Seth — Rankine, Q.C.—C. K. Mackenzie. Agents—Melville & Lindesay, W.S.

Counsel for the Next-of-Kin—Sol.-Gen. Dickson, Q.C.—Guy—Cook. Agents—A. P. Purves & Aitken, W.S., and Andrew Clark, Solicitor.

VALUATION APPEAL COURT.

Thursday, February 17.

(Before Lord Low, Lord Kyllachy, and Lord Stormonth Darling).

MELROSE BURGH COMMISSIONERS *v.* ROXBURGH DISTRICT LUNACY BOARD.

Valuation Cases—Public Buildings—District Asylum.

The rule in valuing asylums is to take the sum which a public body bound to provide asylum accommodation for a district or a parish would give for the accommodation which it needs, and there is no rule that the valuation is to be fixed according to the accommodation provided at so much per bed.

Held that there was no ground for disturbing a valuation arrived at by the assessor and the valuation committee, "having regard to the normal accommodation" at £4 per bed, and "in no way out of proportion to" the capital expenditure on the asylum, and in which the asylum and outbuildings were valued as a *unum quid*.

This was an appeal at the instance of Commissioners for the burgh of Melrose and Provost Turnbull, as a ratepayer in said burgh, against a decision of the Valuation Committee of the County Council of Roxburgh, by which the Melrose District Asylum was valued at £780, and the outbuildings thereof at £120.

The Assessor in valuing the asylum had fixed its value at £900, and had valued the outbuildings separately. Against this valuation the District Lunacy Board also appealed, and maintained that the asylum should be valued at £578. The present appellants submitted that it ought to be valued at £1357.

The appeals were heard together, and from the evidence led the Valuation Committee held that the following facts were established.—"The normal accommodation provided for patients in the asylum is 224, but by the conversion of the chapel into a temporary dormitory, accommodation has been made available for a larger number of patients, the number during the year ending Whitsunday 1897 having varied from 250 to 276. The houses and other premises entered in the valuation roll, other than the asylum, are used in connection with its administration and management only. The cost of the asylum and its attendant buildings, inclusive of site, being the whole capital expenditure, exclusive of cost of alterations and repairs, has been £45,779."

The following table as to the rating of other asylums in Scotland was put in by the District Lunacy Board :—

Names of Asylums.	Number of Patients.	Asylum Rating.	Amount of Rating per Accommodation for one Patient.	Cost.	Cost per each Patient accommodated.
		£	£ s. d.	£	£
Ayr	420	1,000	2 7 7	47,000	111
Elgin	218	380	1 14 10		
Fife and Kinross	510	1,670	3 5 5	67,487	132
Haddington ..	149	350	2 6 11	18,000	120
Govan	480	2,000	4 3 4	120,000	250
Inverness	508	880	1 15 4	50,000	108
Midlothian ..	160	850	3 7 9	38,144	165
Stirling	692	1,400	2 7 8	115,600	196
Perth	365	700	1 18 4	60,000	164
Argyll	450	915	2 0 8	90,000	200
Banff	160	345	2 3 3	20,000	125
Melrose .. .. In Burgh	224	500 (or 620)	2 4 7	40,600†	181
Barony Parochial Asylum	850	3,700	4 7 0	267,250	314
Glasgow City Parish Asylum ..	550	2,500	4 10 10	168,126	305
Lanark District Asylum	500	2,000*	4 0 0	152,427	304
	6236	19,190	42 13 6	1,254,634	2675

* Including Superintendent's house and cottages.
† Exclusive of Medical Superintendent's house and cottages.

The Valuation Committee sustained the appeal of the District Lunacy Board to the extent of £120, and fixed the valuation of the asylum at £780, in which the Assessor acquiesced. In the case stated for the present appellants they explained the grounds of their decision as follows:—"The County Valuation Committee were of opinion that the premises belonging to the District Lunacy Board, and entered in the valuation roll, other than the asylum proper, were truly adjuncts or pertinents of the asylum proper, and that regard must be had to the aggregate valuation of the whole. They were also of opinion that having regard to the normal accommodation of 224 beds, and the value of £4 per bed, sanctioned in the case of the *Barony Parochial Board*, April 2, 1877, 4 R. 1149 (No. 122), a sum of £900 fairly represented the value of the whole property situated within the burgh of Melrose, *i.e.*, outbuildings as well as asylum, and that these outbuildings being already entered at £120, £780 was a fair valuation of the asylum alone, making a valuation of £900 in all within burgh. Such a valuation appeared to the Committee to be in no way out of proportion to the capital expenditure (on which it would be equivalent to about 2 per cent.), keeping in view the character of the property, the situation, the description of the buildings, and the use to which they are put. On this point the Committee had in view the opinions of the Judges, as to cost as a basis of valuation, delivered in *St Cuthbert's Co-operative Association* v. *Assessor for Edinburgh*, March 20, 1896, 23 R. 681."