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.

A special case was presented for the opinion and judgment of the Court by (1) Mr Constable's trustees, and (2) his widow.

The case stated, *inter alia*, as follows:—The truster died infeft in the said estate of Benarty in the counties of Fife and Kinross. On the said estate there is a mansion-house which has been let to the second party at a rent of £30, and the said estate also contains a mineral field which the truster let in 1888 on a thirty-one years' lease. By said lease the tenants bound themselves and their successors whomsoever to pay to the proprietor and his heirs and assignees a fixed rent, or, in the option of the proprietor, certain royalties. The truster elected to take the royalties stipulated for in said lease, and treated the sums so paid as income. The said trustees (the first parties) have continued to take payment from the lessees of the said royalties. Since the death of the truster the said lessees have opened no new mines in the said mineral field. Two questions have arisen between the parties to this case, the first relating to the application of the royalties received from the said mineral field, and the second to the rent of the mansion-house. The first parties maintain that the said royalties form part of the capital of the trust estate, and fall to be held by them for behoof of the truster's children only. The second party maintains that the said royalties form part of the free annual revenue from the truster's heritage, and that she is entitled to one-third of the sums so paid in name of terce. Further, the second party maintains that she is entitled to one-third of the rent of said mansion-house, but the first parties decline to admit her contention.

The questions of law which are the subject of this report were the following—"(1) Is the second party entitled to terce out of the revenue derived from the mineral field? (3) Is the second party entitled to one-third of the free rent of said mansion-house in name of terce?"

Argued for the second party—The right of a widow to terce from the profits of coal workings was supported by decisions and had been acknowledged by the institutional writers—Stair, ii, 3, 74; Ersk. ii, 9, 57; Craig, ii, 8, 17; *Campbell* v. *Wardlaw*, July 6, 1883, 10 R. H.L. 65, 20 S.L.R. 748; *Baillie's Trustees* v. *Baillie*, December 8, 1891, 19 R. 220, 29 S.L.R. 196. The mansion-house being let, the second party was entitled to one-third of the rent—*Montier* v. *Baillie*, June 29, 1773, M. 15,859; *Logan* v. *Galbraith*, January 26, 1665, M. 15,842; Ersk. ii, 9, 48.

Argued for the first parties—The second party's contention as to coal workings was founded upon a misconstruction of the authorities, in which a distinction was drawn between conventional and legal liferents—*Waddell* v. *Waddell*, January 21, 1812, F.C.; *Wellwood* v. *Wellwood*, July 12, 1848, 10 D. 1480; Fraser, Husband and Wife, ii, 1099; *Lamington* v. *Lamington*, February 14, 1682, M. 8240; *Belschier* v. *Moffat*, June 30, 1779, M. 15,863; *Guild's Trustees* v. *Guild*, June 29, 1872, 10 Macph. 911, 9 S.L.R. 569; Bell's Pr. 1598; Bell's Com. i, 57; Bankton, ii, 6, 11. The mansion-house afforded no terce—Fraser, Husband and Wife, 1097; *Mead* v. *Swinton*, February 24, 1796, M. 15,873; Bell's Com. i, 56; M'Laren, Wills and Succession, i, 90; *Leith* v. *Leith*, June 10, 1862, 24 D. 1059.

At advising—

LORD JUSTICE-CLERK—In this case we had an able and learned argument addressed to us from both sides of the bar, but I confess that it does not present itself to me as a case of difficulty as regards either of the questions put. Whatever arguments may be founded upon very early cases in our law reports, I am satisfied that our law does not recognise that a right to terce includes a claim by the widow to terce out of the revenue derived from minerals. Even in the early cases there are several that decide quite clearly that terce does not affect the profits derivable from coal, and to mention only one distinguished writer Mr Bell in his principles excepts coal from the subjects falling under claim for widow's terce. Therefore I think that the first question must be answered in the negative.

I am of the same opinion in regard to the claim for terce on mansion-house rent. As regards this matter also, I find distinct authority against the widow's claim both in the Treatises and in decisions.

I am therefore in favour of answering the first and third questions in the negative.

LORD YOUNG concurred.

LORD TRAYNER—I think the authorities recognise a distinction between conventional and legal liferents. The former may confer greater or lesser rights according to the construction put upon the deed conferring the liferent, in view of what is expressed to be or held to have been the intention of the granter. But what is covered by a legal liferent is defined by the law itself. In the question before us I am of opinion that the preponderance of authority is in favour of the contention of the first parties that terce cannot be claimed out of the profits derived from the working of coal.

I am further of opinion that no terce can be claimed in respect of the mansion-house on the estate. It is admitted that no such claim could be sustained if the heir occupied the mansion-house, but it is said that such a claim emerges if the heir lets the mansion-house to a tenant. I think not. The mansion-house is the heir's, and he may occupy it to the exclusion of all others. If he is pleased to let it for the occupation of another, which is a matter entirely in his option, he exercises a privilege, proper to himself, from the exercise of which no claim arises to the widow.

I am therefore for answering the first and third questions in the negative.

LORD MONCREIFF was absent.

The Court answered the first and third questions in the negative.

Counsel for the First Parties—Craigie—A. M. Stuart. Agent—William Duncan, S.S.C.

Counsel for the Second Party—W. C. Smith, K.C.—W. T. Watson. Agent—H. Brougham Paterson, S.S.C.

Saturday, June 11.

FIRST DIVISION.

PHILIPPS *v.* HUMBER.

Reparation—Liability to Public—Invitation—Landlord and Tenant—Landlord not Liable for Injury Caused to Member of Public on his Premises by the Personal Negligence of his Tenant.

In an action against the proprietor of a waxwork exhibition for the death of a boy who had been killed by the accidental discharge of a gun in a shooting-gallery situated in the same premises as the waxworks, the evidence at the jury trial was that the defender charged twopence for admission to the waxwork exhibition, which charge included admission to the shooting-gallery, and that the shooting-gallery was let for a weekly payment to a tenant who had charge thereof, and who received for himself a small payment per shot from persons taking part in the shooting. No fault was shown in the structure of the shooting-gallery or in the arrangements for shooting. The boy entered the shooting-gallery while the tenant in charge thereof was engaged in cleaning the guns. It was by the accidental discharge of a gun, due to the negligence of the tenant in the course of cleaning it, that the boy was fatally injured. The jury having found for the pursuer, the defender moved for a new trial on the ground that the verdict was contrary to evidence.

The Court, holding on the evidence that the accident was attributable to the personal fault of the tenant and not to any structural defect in the premises or any other cause for which the landlord was responsible, set aside the verdict and granted a new trial.

Mrs Margaret Runciman or Philipps, 5 Laurie Street, Leith, brought this action against Henry Binnie, 3 South Lorne Place, Leith, and Walter James Humber, waxwork proprietor, 226 Leith Walk, Leith, conjunctly and severally or severally, concluding for £500 in name of damages for the death of her son James Philipps.

Walter James Humber was the only compearing defender.

The pursuer averred, *inter alia*, that Binnie was in the employment of Humber, who owned a waxwork show in Leith Walk. On the top flat of the waxwork was a shooting-gallery, to which entrance was obtained only through the waxwork, and which also belonged to Humber. The charge for admission made by Humber at a door of the premises in Leith Walk admitted to the waxwork and to the shooting-gallery. On 19th December 1902 the pursuer's son James Philipps, who was aged fifteen years, duly paid at the door in Leith Walk for admission to the premises belonging to Humber and ascended to the shooting-gallery. Binnie was in charge of the gallery, and, the pursuer averred, under the instructions of Humber. While in the gallery James Philipps was shot by a bullet from a Winchester repeating rifle which was being cleaned by Binnie, and died as a result of the injuries received.

The pursuer also averred:—It was the duty of Humber, who received payment from the public entering his premises, to make provision for the safety of the public when there. This he failed to do. In particular, it was his duty to have employed a competent and skilful man to attend to the shooting gallery. Binnie was not so, as Humber knew. Binnie had no experience in the management of guns. Further, it was the duty of Humber to have given special instructions to Binnie regarding the care of the guns used and the cleaning of them. In particular, it was his duty to give instructions to Binnie not to clean loaded guns when members of the public were in the gallery. This, however, he failed to do. He knew of and sanctioned the practice of cleaning loaded guns at a time when the public were in the gallery—a practice which is unusual, and which was highly dangerous to the frequenters of the establishment. He thus failed in his duty to the public whom he invited to his establishment, and who were entitled to rely on suitable and proper provision being made for their safety. It was his duty when the door of his waxwork was thrown open, as it was on the occasion in question, to see that every part thereof was safe for the public, and to this end to see that no loaded guns were then being cleaned. This he failed to do, and the accident which happened was a natural and probable result of his negligence. Binnie was also in fault, and was guilty of gross negligence in cleaning a loaded gun while persons were in the gallery, and the result which occurred was a probable and natural consequence of his negligence. He proceeded to clean a gun which he knew or should have known to be loaded at a time when its muzzle was pointed towards the pursuer's son, of whose presence and position he was well aware. It was his duty to have unloaded the gun first and then to have cleaned it, and this is the usual and proper and only safe method. Had he done so the accident would have been averted. For the fault of his servant Binnie, Humber was responsible.

The compearing defender admitted that he was proprietor of the waxwork show; that there was a shooting-gallery on the top flat of the house; that the access to the shooting-gallery was through the waxwork, and that James Philipps met his death from a bullet discharged from a