made below the street level were erections struck at by the clause in the titles. Authorities cited—Bell's Prin. 994; *Boswell* v. *Inglis*, 6 Bell's Ap. 427; *Magistrates of Edinburgh* v. *Paton*, 20 D. 731.

Solicitor General (CLARK) and LANCASTER for the Petitioner.

The Court unanimously dismissed the appeal, on the ground that the object and intention of the servitude created here was to preserve light and access to the dominant tenement, with which the proposed buildings did not interfere; and that there was no allegation of risk or danger to the dominant tenement by the alterations proposed.

Agents for Appellant—J. & A. Peddie, W.S.
Agent for Respondent—J. Walls, S.S.C.

Tuesday, June 4.

FIRST DIVISION.

ROWE *v.* ROWE.

Interdict—Judicial Factor—Partnership.

One of three partners in a firm resolved to bring the co-partnery to a termination, and sent his co-partners written formal intimation to that effect. On the same day he presented a petition to the Sheriff, craving interdict against the other two partners from disposing of the company's property, using the firm name, &c., and for the appointment of a person to wind-up the company. The Sheriff, of consent of parties, appointed advertisement, and remitted to an accountant to wind-up the company's affairs; and, in respect of these appointments, found it unnecessary to grant the interdict craved. The Court affirmed the judgment of the Sheriff.

John Rowe and his two sons, Gavin Rowe and Thomas Rowe, carried on business together in co-partnery as manufacturers in Glasgow, under the firm of John Rowe & Sons, of which they were the sole partners. One of the sons, Gavin Rowe, resolved to bring the co-partnery to a termination, and to retire from the firm, and required the other partners to unite with him in joint measures for that purpose; and accordingly, on 17th January 1872, he gave formal written intimation to his partners. Upon the same day he presented a petition to the Sheriff, in which he craved—"1st, For interdict against the other two partners from disposing of any portion of the company's property, from collecting any debts due to it, from undertaking any obligations in its name, or from signing the name or firm of the co-partnery; and, 2d, For the appointment of a person to take possession of the company's property, with powers to collect and discharge accounts, to realize the assets, to pay debts, &c., and to divide the balance among the partners."

The Sheriff-Substitute (LAWRIE) pronounced the following interlocutor:—"The Sheriff-Substitute having heard parties' procurators, refuses, *in hoc statu*, the motion for interim interdict."

Against this interlocutor the petitioner appealed to the Sheriff (GLASSFORD BELL), who pronounced this interlocutor:—

"*Glasgow*, 18*th April* 1872.—Having heard parties' procurators, and resumed consideration of the whole process, recalls the interlocutor appealed against: Finds that the pursuer and defenders have been for several years past partners, carrying on business in Glasgow as manufacturers, under the firm of John Rowe & Sons, and that the said Gavin Rowe has, by letter dated 17th January 1872, intimated his retirement from said business as at that date: Finds that it thus becomes necessary that due provision should be made for the winding-up of said business, and the valuation of the company's estate, and the division thereof among the partners according to their respective rights and interests: Appoints, of mutual consent, the parties to concur in advertising the dissolution in the *Gazette* and local newspapers, as also to wind up the business with all convenient speed, and to complete the unexecuted orders: Further, and also of consent, remits to Mr William M'Kinnon, accountant in Glasgow, to collect all debts due to, and, so far as the assets will allow, pay all debts due by, the said firm; to regulate the custody of all monies that have been or may be collected belonging to the firm; to adjust and balance all the books thereof; and to apportion the profits or losses to the partners in accordance with their respective rights: Further, and in respect of the above appointments, Finds it unnecessary to grant the interdict craved: Finds no expenses due; and decerns."

The petitioner appealed.

R. V. CAMPBELL for him.

TRAYNER, for the respondents, cited *Collins and Feely* v. *Young*, 14th March 1853, 1 Macq. 385.

At advising—

LORD PRESIDENT—The prayer of this petition consists of two parts—1st, For interdict against the other two partners; and 2d, For the appointment of some one to take possession of the company's property, &c. As regards the first part of this prayer, there is no doubt that it is competent before the Sheriff, and it is also quite clear that under the circumstances he could not grant it.

As regards the second part of the prayer, I have great doubts as to its competency. If the appointment had been necessary to save from immediate destruction the assets of the company, the Judge Ordinary might have interposed a temporary arrangement. But this was not the case here, and the second part of this prayer appears to be in substance a prayer for the appointment of a factor on the estate, and that is not competent to the Sheriff.

But there is here a petition before the Court which is in part competent, and the Sheriff has pronounced an interlocutor, and, by consent of parties, arranged to do a certain thing, which may be of great use. Now I am not disposed to allow the appellant to escape the consent which he gave in the inferior Court, merely because he has come to think differently; and as to the contention that he did not consent, I take the interlocutors of the Sheriff as settling that point.

I therefore am of opinion that we should refuse this appeal, and leave either party to proceed to get a judicial factor appointed, if they should think fit.

LORD DEAS—I entirely agree with your Lordship. There is no doubt as to the consent of parties—the Sheriff's interlocutor is final upon that point. Such being the case, I do not think we have much to do with the question of the competency of part of the petition, for that does not touch the binding nature of an agreement between the parties.

LORD ARDMILLAN—There are two prayers in

this petition; the first for interdict, which the Sheriff-Substitute very properly refused; and the second for the appointment of a factor. Now, it is plain that the parties were all along aiming at some settlement of the second, in order that they might render the first unnecessary. This is clearly shown by the various interlocutors pronounced by the Sheriff:—

"*Glasgow, 29th February* 1872.—Having heard parties' procurators on the pursuer's appeal, in respect it is stated that they hope to be able to adjust a mutual minute, continues the diet for debate till the 5th March next."

"*Glasgow, 5th March* 1872.—On the joint motion of parties, who state that they have not yet completed the mutual minute referred to in the preceding interlocutor, on their motion, continues the diet till Monday the 11th instant."

"*Glasgow, 15th April* 1872.—Having heard parties' procurators, and resumed consideration of this process which has lain over of mutual consent since the date of the last interlocutor, assigns Tuesday the 16th instant as a diet for hearing parties."

Then, in the final interlocutor, the Sheriff, after appointing advertisement of mutual consent, and remitting to an accountant of mutual consents, "Finds it unnecessary to grant the interdict craved." Now, this is just the settlement which the parties appear to have been working towards, and there is quite sufficient proof of consent. I therefore agree with your Lordship that the appeal should be refused.

Lord Kinloch concurred, and said that it would overthrow all precedent if a person who had been taken down by the presiding Judge as a consenting party could come and overturn the judgment pronounced in consequence of that consent. There might be peculiar cases in which the Court would sanction such a proceeding, but this was certainly not one of them.

Agent for Appellant and Petitioner—John Latta, S.S.C.

Tuesday, June 4.

SECOND DIVISION.

MRS BARCLAY-ALLARDICE *v.* DUKE OF MONTROSE.

Process—Peerage—Action of Exhibition and Producing.

Action for exhibition and production of documents in *modum probationis*, as incidental to proceedings before a Committee of Privileges in the House of Lords, found incompetent.

Mrs Barclay-Allardice, only surviving lawful child of the deceased Robert Barclay-Allardice of Ury and Allardice, raised a summons against the Most Noble James Duke of Montrose, concluding that the defender ought and should be decerned and ordained to exhibit and produce before our said Lords all and sundry patents of honour and nobility, and other creations of dignities and honours, royal warrants and gifts, charters, dispositions, assignations, conveyances, procuratories and instruments of resignation, precepts and instruments of sasine, special and general services and retours thereof, apprisings, adjudications, reversions, tacks, and leases, bonds and obligations, letters of horning, inhibition, and other diligence, letters of correspondence, and all other writs, evidents, rights, titles, and securities of and concerning or in any way connected with the lands and Earldoms of Strathern and Monteith and Airth, or any of them, and lands and baronies of Kilpont and Kilbride, or either of them, and the titles of honour and dignities of Earl of Strathern, Earl of Monteith, Lord Graham of Kilpont and Kilbryde, and Earl of Airth, or any of them, made and granted prior to the 12th day of September 1694, and all inventories of the same: or otherwise to make the said writs and documents and inventories patent to the pursuer, or to a person or persons to be named by our said Lords, in such way and manner, and at such time or times, and place or places, as our said Lords may direct, with a view to the same being used and made available *in modum probationis*, and in proof and support of the pursuer's claims to the titles and dignities of the Earldom of Strathern, Earldom of Monteith, Earldom of Airth, and Lordship of Graham of Kilpont and Kilbryde, presently depending before the House of Lords and the Committee for Privileges of that House; and the same being so exhibited and produced, or made patent as aforesaid, our said Lords ought and should authorise and grant warrant to the pursuer, or to such other person or persons as they shall appoint, to take possession of the said writs and documents and inventories, or such of them as shall be selected in the course of the process to follow hereon, and to transmit or remove the same to London, subject to such conditions and safeguards as our said Lords shall ordain, and to exhibit and produce the same before the House of Lords or the said Committee for Privileges in proof and support of the pursuer's said claims, reserving to all parties concerned their rights and interests in the said writs and documents.

In the condescendence the pursuer stated that "she was duly served and retoured heir to the last Earl of Monteith and Airth; that upon the death of the said last Earl of Monteith and Airth, all the title-deeds, patents of honour, records, and documents of every kind which had been in his possession, came into the hands of the ancestors of the defender, and they are now all in his possession at his residence of Buchanan House, in the county of Stirling, or elsewhere. They comprise not only the patents of honour granted to the Earl's predecessors and the title-deeds of his different estates, but also many important documents connected with the Earldom of Strathern, the earlier Monteith Earldoms, and a great variety of other documents, having reference to and throwing light upon the said honours and dignities, and the families of which the pursuer is the representative;" that "the pursuer has claimed all the titles of Airth, Strathern, and Monteith by two several petitions presented to Her present Majesty, which were in like manner referred by Her Majesty to the House of Lords, and by them to their Committee for Privileges, and a good deal of discussion has taken place in her claim to the Earldom of Airth, her claim to the peerages of Strathern and Monteith having been allowed to stand over in the meantime. The proceedings in the said whole claims of peerage are herein referred to and held as repeated." That "with a view to instructing the pursuer's claim and right to these peerages, it is necessary for her to have access to the titles and documents which were in the possession of the last Earl of Monteith and