and I think it is quite useless to have any further investigation.

Lord Ormidale—I have come to the same conclusion, although I must own that I was at one time under some little difficulty, of the nature of that suggested by your Lordship. But upon further consideration, and keeping in view the true position of Messrs M'Dougal, who now object to an interdict being kept up against them, I think it is impossible in ordinary fairness, and on legal principle, to hold that there has not been quite enough of injury here actually done or threatened to entitle the Court to sustain the interdict which the Lord Ordinary has granted. It may be that Messrs M'Dougal have only become partners in the paper mill in question subsequent to the period of investigation under the recent trial, but they have now for a considerable time been such, and I think it is important also to notice that Brown & Co. has been the descriptive name of the concern all along, and is so now. The two Messrs M'Dougal have been for a considerable time latent partners of that firm. The original interdict and all the proceedings from the beginning till now have been directed against Brown & Co., under that descriptive name. An interdict is a peculiar matter altogether, and the interdict here sought for is specially so. It is an interdict against the respondents discharging into the North Esk, from their works, impure stuff or matter of any kind, whereby the water may be injured to the damage of the inferior heritors. The respondents say that they have not done so. If so, let them go on as they have hitherto been doing. Then it will lie between them and the parties who hold themselves to be injured by their acts to raise the question whether or not there has been a breach of interdict. But in continuing the interdict,—and that is all the Lord Ordinary has done, and all that the Court now proposes to do,—we do not require positively to ascertain at present beyond all manner of doubt that the water has been polluted. It is enough that things have been done, and sanctioned by the respondents, whereby the complainers are entitled to say that there is reasonable apprehension that they are polluting the river. Now, can it be doubted that there is reasonable apprehension of that,—that if matters are allowed to continue as they are, and no interdict is granted, there is serious ground for believing that the water will be polluted? The respondents no doubt say that they have not polluted the water, but a man of skill, Mr Pattinson, has reported to the contrary, and I understand that no objections have been taken to his report. It seems to be a fact that there are deleterious substances used by Brown & Co. at their mill, and that these go into the river. Now, I think that is quite sufficient to entitle the Court to sustain the interdict which has been imposed by the Lord Ordinary. On these grounds, I concur with your Lordships in coming to the conclusion that the Lord Ordinary's interlocutor should be adhered to.

The Court pronounced the following interlocutor;—

"The Lords having heard counsel on the reclaiming note for James Brown & Company against Lord Young's interlocutor of 14th May 1874, Refuse said note, and adhere to the interlocutor complained of, with additional expenses, and remit to the Auditor to tax the same and to report."

Counsel for Respondents (Reclaimers)—Dean of Faculty (Clark), Q.C., and Keir. Agents—Menzies & Coventry, W.S.

Counsel for Complainers—Watson and Johnstone Agents—Gibson & Strathearn, W.S.

[*R.*, Clerk.

Wednesday, July 1.

FIRST DIVISION.

[Dean of Guild, Glasgow

JAMES MORRISON *v.* JOHN M'LAY AND OTHERS.

Dean of Guild—Street—Feuing Plan.

Where the owners of building stances in a street were bound by their titles to erect houses of "a style not inferior" to certain four story houses already erected in the street,—*held* that a row of shops one story high on the street line, with a building on the back green sixty feet high in the roof, did not comply with this restriction.

The appellant in this case presented a petition to the Dean of Guild in Glasgow, in which he asked, *inter alia*, for authority to erect certain buildings in St George's Road according to a plan annexed. The respondent M'Lay resisted the application, on the ground that the proposed buildings were in contravention of the restrictions and conditions contained in the petitioner's titles and his own, which provided that no buildings should be erected inferior in style to certain other houses already erected by Messrs Galloway & Lumsden, and that no buildings should be erected on the back ground having a greater height in the side walls than 20 feet. The proposed buildings were a line of shops one story high along the street, and on the back ground a public hall with side walls of 20 feet and a roof of 60 feet high. The buildings already erected were four stories high, the ground floors in some of them being occupied as shops. The Dean of Guild refused the application. The petitioner appealed.

At advising—

Lord President — The petitioner here is under certain restrictions which are contained in the contract of ground annual of his author James Foster with the trustees of the late Thomas Ferguson. They are in the following terms:—"Declaring always, as it is hereby expressly provided and declared, that the said second party or his foresaids shall be bound and obliged, within five years from and after the the term of entry aftermentioned, to erect, and thereafter to uphold and maintain in all time coming, upon the steading of ground hereby disponed, a house or houses of sufficient value to yield a yearly rent at least equal to double of the foresaid ground-annual or yearly ground rent, and the feu-duty after specified payable from the same, and which house or houses to front St Georges Road shall not be of a class inferior to the houses sometime ago built by James Galloway and Thomas Lumsden, masons and builders in Glasgow, on part of the plot of ground above described. . . . Declaring that the said second

party and his foresaids shall not be at liberty to erect upon the back part of the steading of ground hereinbefore disponed any building or buildings of a greater height than 20 feet in the side walls." Now the question is whether the building which the petitioner is proposing to erect fairly complies with these provisions. The model houses, which we have seen, of Galloway & Lumsden, are houses of a very common description in Glasgow, consisting of four stories, some having the ground floors occupied as shops while the upper floors are separate dwellings, others being occupied entirely as dwelling-houses, and none of them being self-contained. The style of the houses is very fairly represented on the plan, but the building or range of buildings proposed to be erected by the petitioner consists in front of only one story, which is to be occupied as shops, but in the middle of the range of shops there is an entrance of a more imposing character conducting to a building erected on the back ground, which is very low in the walls, but enormously high in the roof, and which is intended for a public hall. Of course this roof will be seen over the one story shops, and its aspect to passers by will be of rather an anomalous character, but the question is whether it is in a style inferior to the houses of Galloway & Lumsden, and I do not find that a very easy question to answer, but I am disposed on the whole to agree with the Dean of Guild, and that they are inferior in style, and would rather interfere with the successful feuing of building ground in St Georges Road. I am therefore for adhering to his judgment. I do not go particularly on the question whether the proposed building is in violation of the provision restricting the height of the side walls to 20 feet. That might be difficult to maintain, and though no doubt the roof is enormously high, the side walls do comply with the restriction. The style of the whole plan, however, is objectionable.

Lord Deas—One stipulation in these titles is, that houses shall be erected on the ground not inferior in style to the class of houses mentioned, which run along the line of St Georges Road, where the proposed shops are to be built. There is no question raised as to M'Lay's interest to complain; the only question is as to the meaning of the stipulation. The proposed buildings are a line of shops one story high, and behind them a building with walls 20 feet high and a roof of 60 feet, and I am clearly of opinion that in dealing with a street, a line of shops with such a roof running up behind them is an inferior style.

The other Judges concurred.

The Court adhered.

Counsel for Morrison—Watson. Agents—Ronald, Ritchie, & Ellis, W.S.

Counsel for M'Lay—Dean of Faculty (Clark), Q.C., and M'Laren. Agents—Duncan & Black, W.S.

Friday, July 3.

FIRST DIVISION.

[Sheriff of Forfarshire

ALEXANDER BAIRD *v.* WM. BRUCE MOUNT.

Sheriff—Summary Application — Mora — *Act of Sederunt, July* 10, 1839.

In a case where a landlord presented a summary application to the Sheriff for a remit to a person of skill to examine certain fields which he alleged had been badly cultivated by the tenant, whose lease had expired at Martinmas, the petition having been presented in January, *held* that the petitioner was shut out from the remedy prayed for by *mora*.

Mr Baird of Ury, in January 1874, presented a petition to the Sheriff of Forfarshire in terms of the Act of Sederunt, July 10, 1839, secs. 137, 138, in which he averred, *inter alia*, that the respondent, Mr Mount—"Entered into the possession of the farm at or about Martinmas 1859, and continued to possess the same till expiration of the said tack at Martinmas 1873: That by the said tack the tenant bound himself to properly labour, manure, and crop the farm in a fair and regular manner, and to observe the proper change of crops, and not to waste or deteriorate the farm by miscropping or improper management or culture, but that he should in every respect cultivate and manage the farm according to the most improved practice in the district: That it is improper management and improper culture, and contrary to the rules of good husbandry, and to the practice of the district, to sow turnips in any field without having previously cleaned the land by clearing it of weeds, and it is highly wasting and deteriorating to the land to omit such cleaning, or to perform the same in an imperfect and insufficient manner: That the respondent had three fields in turnip crop during the year 1873, being his waygoing crop: That it is obvious, from the state of the land and the crops thereon, that none of the said fields had been properly cleaned or cleared of weeds, either before sowing the turnips therein, or after the turnips were sown, and the land is thereby wasted and deteriorated, and the petitioner has suffered great loss and damage: That the turnip crops on the said fields are in course of being removed for consumption, and when the turnips are removed the fields will, in ordinary course of management, be ploughed up for the succeeding crop; but before that is done, it is necessary that the state of the fields, and the amount of damage which the petitioner has sustained by the failure of the respondent to properly clean and clear the same of weeds, should be judicially ascertained, and the petitioner is entitled to obtain decree against the respondent for the loss and damage he has thereby sustained, and the present application is therefore necessary." In the prayer of the petition he asked the Sheriff "to remit to a person or persons of skill to inspect and examine the said turnip fields on the farm of Castleton of Eassie, and to report whether the said fields, or any of them, had been omitted to be cleaned, or had been imperfectly and insufficiently cleaned and cleared of weeds before the sowing of the turnip crops therein, or had been imperfectly and insufficiently cleaned and cleared of weeds after the turnips had been sown; and if so, whether the land has been wasted and deteriorated there-