appears that this suit against the defender for an injunction was one—of citing foreigners by service out of the jurisdiction to appear in such an action as that in which the costs here in question were awarded. And this being so—that is to say, the subject-matter being one on which their jurisdiction could be exercised—and the defender being well cited according to the practice of the English Courts to the particular suit, all that is necessary for the jurisdiction which they exercised was afforded. The fallacy of the argument maintained to us seemed to be the assumption that unless the defender were made amenable in a way known to the Scottish Courts he could not be made a party to the suit. This, I think, is erroneous. The English Courts have their way, and the Scottish Courts have theirs, but the competency of an action before either is not to be tested otherwise than by the rules by which procedure in these several Courts is governed. No doubt if judgment is pronounced in a foreign Court, and the validity of that judgment is questioned before the Courts in Scotland, then if there has been a failure in anything which is essential to the administration of justice, there may be an inquiry as to the validity of the judgment. But here there is no pretence for saying that all that was really necessary for the doing of justice between the pursuers and the defender in the Courts of England was not observed. The defender was personally cited in Scotland, and thus was made aware of the suit in which an injunction was asked. He might have appeared. Had he appeared, his defences would have been considered, and it is, as I think, immaterial on the point of jurisdiction—the practice of English Courts being that which was followed—that the defender was cited not in England but in Scotland, which was the place of his domicile. The result as regards the justice of the thing is just that which it would have been if, having been accidentally in England, he had been cited there to appear in the suit. Such, shortly, is my view of the case, and agreeing besides in that which your Lordship has said, I have no hesitation in concurring in the judgment by which the interlocutor of the defender should be affirmed.

Lord Rutherfurd Clark—I am of the same opinion. I cannot doubt that the English Courts have always the power to prevent wrong being done within the territory of England and Wales, and that is all they endeavoured to do when they granted the injunction. No doubt when the wrongdoer is outwith the territory there may be apparently more difficulty in explicating their jurisdiction, but in reality there is no such difficulty, because in certain cases (of which this is obviously one) they are entitled, by statute, to order service against a defender outwith their jurisdiction, and to command him to answer to them in the Court of Chancery, where the jurisdiction undoubtedly exists.

The Lord Justice-Clerk was absent.

The Court adhered.

Counsel for Reclaimer—J. P. B. Robertson—Jameson. Agents—Dove & Lockhart, S.S.C.

Counsel for Respondents — Keir — Kennedy. Agent—John Macpherson, W.S.

Thursday, February 19.

FIRST DIVISION.

[Sheriff of Chancery.

MAITLAND *v.* MAITLAND.

Succession — Service — Destination — Sheriff of Chancery.

Two claimants to the estates and to the earldom of the deceased Earl of L. presented to the Sheriff of Chancery competing petitions for service as heir of tailzie and provision in the lands. They had also presented to the Queen petitions claiming the earldom, and these petitions were before the House of Lords Committee on Privileges. The Sheriff sisted procedure pending the decision of the Committee on Privileges on the claims to the earldom, but the Court, in respect that it had not been shown that no person could be served heir of tailzie and provision to the estates unless he were recognised by Her Majesty as Earl of L. at the time, *recalled the sist.*

The Right Honourable Charles Maitland, twelfth Earl of Lauderdale, died unmarried on or about 12th August 1884, last vest and seised in certain lands and heritages. Competing petitions for service were presented to the Sheriff of Chancery by Sir James Ramsay Gibson Maitland of Barnton, Bart., and Major Frederick Henry Maitland of the Bengal Staff Corps.

Sir J. R. G. Maitland prayed to be served nearest and lawful heir-male of tailzie and provision in special of the deceased twelfth Earl in his lands, and likewise nearest and lawful heir-male of tailzie and provision in general of the said twelfth Earl. He claimed, according to the pedigree set forth in his petition, descent from the fourth son of Charles sixth Earl, and to be nearest and lawful heir-male of James (ninth) Earl of Lauderdale and of Anthony (tenth) Earl of Lauderdale, and that he was also nearest and lawful heir-male of tailzie and provision in special of Charles Maitland (twelfth) Earl of Lauderdale.

In objections to this petition Major Maitland claimed to be descended from the fourth son of the sixth Earl, and so entitled to prevail over Sir James, whom he alleged to be descended from the fifth son of the sixth Earl. He presented a competing petition also craving to be served nearest and lawful heir-male of tailzie and provision in special of the deceased twelfth Earl in his lands, and likewise nearest and lawful heir-male of tailzie and provision in general of the said twelfth Earl.

A minute was put in for Major Maitland stating that the petitioner had presented a petition to Her Majesty the Queen, claiming the honours, titles, and dignities of Earl and Viscount of Lauderdale, which petition had been referred to the Committee on Privileges for their decision thereon, and craving the Sheriff to sist further procedure in the petition for service till the decision of the said Committee on Privileges had been obtained.

By interlocutor of 6th January 1885 the Sheriff, having heard parties on the minute, sisted further procedure for three months.

"*Note.*—The destination in all the entails is

the same, and both petitioner and objector crave service under that branch of it which is thus described, viz., 'To the said James, Earl of Lauderdale's, or the said Anthony, Earl of Lauderdale's heirs-male succeeding and to succeed to the title and dignity of Earl of Lauderdale.'

"The petitioner has presented a petition to Her Majesty claiming the title and dignity, and it has been referred to the Committee on Privileges for their consideration and report. He now moves that further procedure be sisted in the petition for service until the Committee shall have arrived at a decision.

"The motion is opposed by the objector, who desires that procedure should go forward in the service as if no petition claiming the earldom had been presented to the Queen and referred to the Committee on Privileges.

"It was urged that the question of succession to the title could quite competently be entertained in this Court, and that there was no reason, therefore, for delay till the Committee on Privileges should have reported.

"Had no step been taken to submit the question of right to the earldom to the Committee on Privileges, I should have had no hesitation about proceeding; for there is no doubt of the competency of this Court to entertain such a question when its determination is necessary to explicate a petition for service. But now that it has been submitted to the Committee, there being no ground at present for supposing that it will not be disposed of with reasonable despatch, it would be unseemly and inconvenient that the same inquiry should simultaneously be proceeded with here.

"I asked counsel for the petitioner whether he was in possession of any document showing whether or not any order had been pronounced by the Committee, but was answered in the negative. In those circumstances I do not feel disposed to accede to his motion for an indefinite sist, and have therefore limited it to three months.

"Should it appear when these have expired that progress is being made, it can then be prolonged."

The objector (Sir J. G. R. Maitland) appealed to the Court of Session.

Argued for him—There should be no delay in settling who was entitled to the estates—the proof required to make out a title to them was different from that required for the title of Earl of Lauderdale. It did not appear that no person could be served heir of tailzie and provision to the estate unless he were recognised as entitled to the title of Earl of Lauderdale. The question which of the claimants was entitled to service might go on to a decision before the Sheriff of Chancery although the Committee on Privileges were dealing with the question of the title. The lands were in Scotland, and the Scottish Courts must aid the claimants in getting their rights determined. There was nothing to prevent the Sheriff of Chancery proceeding with the competing petitions.

Authorities—*Dunbar* v. *Sinclair*, 1790, M. 7395; *Earl of Banbury*, 2 Salkeld 509, and 3 Salkeld 242; Ersk. i. 2, 8; *Wright* v. *Sharp*, January 16, 1880, 7 R. 460.

Replied for the respondent—The whole question was one of expediency. The Sheriff had fully considered the matter, and had decided that a sist was desirable until the decision of the Committee on Privileges had been obtained.

Authorities—*Lovat* v. *Fraser*, July 18, 1884, 11 R. 1119; *Hunter* v. *Weston*, January 31, 1882, 9 R. 492.

The only clause in the deed of entail that needs to be referred to is the destination, which is quoted in the opinion of the Lord President.

At advising—

Lord President—The Sheriff of Chancery had before him competing petitions for service, one at the instance of each of the two parties now before us, and each party prayed his Lordship to serve him nearest and lawful heir of tailzie and provision in special to the deceased Charles Maitland, twelfth Earl of Lauderdale, in the lands of Thirlstane and others. The deed of entail under which the parties asked to be served heir of tailzie and provision in special was made by James, Earl of Lauderdale, upon 27th July 1840, and the destination was "To and in favour of my brother the Honourable Sir Anthony Maitland, and the heirs-male of his body, whom failing to my or his heirs-male succeeding or to succeed to the title and dignity of the Earl of Lauderdale, whom all failing to my own nearest lawful heirs whomsoever." The Sheriff, on the motion of Major Maitland, postponed proceedings in these petitions for a period of three months, and the reason why he did so was because steps had been taken by both parties to support their pretensions to the title of the Earl of Lauderdale. Petitions have been presented to the Queen, which have been remitted to the House of Lords, and by them remitted to the Committee on Privileges, and the Sheriff thought that there was sufficient reason for postponing the inquiry into these applications for service. The ground upon which he has proceeded is the special terms of the destination, and if it could be made quite clear that no person could be served heir of tailzie and provision to the estates unless he were recognised by Her Majesty as Earl of Lauderdale at the time, then I should have thought there was great force in the argument we have heard in support of the Sheriff's interlocutor. But that has not been made clear. It may be a question of very great importance to be hereafter determined—but I do not in the meantime deal with it—whether the clause in question is to be read as calling heirs-male of the entailer and his brother, with the addition that the heir-male who happened to be the Earl of Lauderdale shall be heir-male in succession, or whether the construction is as contended for by Major Maitland, that nobody can succeed under that destination except a person who is *de facto* as well as *de jure* Earl of Lauderdale at the time. But unless that were made much clearer than it has been, I do not think it is a good ground for postponing this inquiry. Whether it would be expedient after the inquiry has been made to go on serving the party who proved himself to be the nearest heir-male is another question, and will be judged of when the time comes, but in the meantime I must say I do not think there is sufficient reason for postponing the inquiry. I am not anxious to say more than is necessary to

express the view I entertain, and therefore I do not enter into any of the arguments submitted as to what the Sheriff of Chancery might or might not do in the way of deciding incidentally upon the question of right to the peerage. All I desire to say at present is that I do not think there has been sufficient cause made out for postponing the inquiry.

LORDS MURE and SHAND concurred.

The Court pronounced the following interlocutor:—

"Recal the interlocutor of the Sheriff of Chancery of 6th January last in the petition of Sir J. G. R. Maitland, and also recal the interlocutor of the Sheriff of Chancery of 6th January in the petition of Major F. H. Maitland: In the conjoined actions allow the petitioner Sir J. G. R. Maitland to lodge a condescendence of his averments within the next ten days, and the respondent Major F. H. Maitland answers thereto within ten days thereafter."

Counsel for Sir James Gibson Maitland—Mackintosh—Pearson. Agents—John Clerk Brodie & Sons, W.S.

Counsel for Major Maitland—J. P. B. Robertson—Graham Murray. Agents—Tods, Murray, & Jamieson, W.S.

Thursday, February 19.

FIRST DIVISION.

[Lord Lee, Ordinary.

NEILSON *v.* NEILSON AND OTHERS.

(*Ante*, vol. xx. p. 816; vol. xxi. p. 94; and vol. xxii. p. 265.)

Trust—Assumption of New Trustees—Pendente lite nihil innovandum—*Interdict.*

While a dispute was pending among testamentary trustees relative to the subject-matter of a litigation in which the trust was interested, a proposal for the assumption of a new trustee was intimated by a quorum of the trustees. The remaining trustee raised a suspension and interdict to prevent the assumption, alleging that the person proposed was the nominee of certain of the trustees who had an interest in the dispute and were disqualified from voting, and was not neutral but prepared to give effect to their views. *Held* that interdict should be granted pending the litigation, but that on the litigation being decided, the respondents, being a quorum of the trustees, were entitled to assume the new trustee.

William Neilson, iron and coal-master, Mossend, died on 24th May 1882. He left a trust-disposition and settlement, dated 1st December 1880, by which he nominated as his trustees and executors his wife Mrs Ann Yule or Neilson; his brother Hugh Neilson, iron and coal-master, Summerlee, near Glasgow; his son James Neilson; James Thomson, engineer; and James M'Creath, mining engineer.

The trust-disposition contained certain special powers, and, *inter alia*, the following:—"*Third* I provide and declare that in all matters in regard to which the interest of any of my trustees as an individual is in conflict with the interest of any beneficiary under these presents, and in transactions with partnerships or companies in which they are partners or shareholders, the vote of such trustee shall not be counted in the determination of such matters, but the adverse interest of any trustee, or the fact of his being an interested party, shall not otherwise affect his power to act."

At the time of his death William Neilson was a partner of the Mossend Iron Company. After his death a question arose between his trustees and executors on the one hand, and the Mossend Iron Company on the other, as to the right of his trustees to avail themselves of an option given by the contract of copartnery to the executors of a deceasing partner to become partners of the company, on their intimating their intention to the surviving partners in writing within two months after the day of decease. By the terms of the trust-disposition and settlement this was a question on which two trustees (Hugh Neilson and James Neilson) were disqualified from voting through being partners of the Mossend Iron Company.

A meeting of trustees took place on 21st July 1882, at which Mrs Neilson and Mr M'Creath (being a majority of the trustees who were entitled to vote upon the question) determined to intimate to the Mossend Company that they elected to claim the right to become partners in William Neilson's stead. Mr Thomson did not vote. The Mossend Iron Company did not admit the alleged right of the trustees to become partners of the concern, and Mr M'Creath resigned while the dispute was pending, and before any proceedings were taken to enforce the claim, and thereafter an action of declarator to have the question determined was raised by Mrs Neilson, with her children's consent, as beneficiaries, which was, at the time when the present note was presented, depending before the Court. On 17th December 1883 Mrs Neilson, while this action was in court, received a letter from Messrs Mitchell, Cowan, & Johnston, writers, agents for the trustees, calling a meeting of William Neilson's trustees for the 21st of December, to consider "the proposed assumption of Mr James Bunten, Anderston Foundry Company, as a trustee in room of Mr M'Creath, resigned."

Mrs Neilson presented the present note of suspension and interdict against her co-trustees (Hugh Neilson senior, James Neilson, and James Thomson), to have them interdicted from assuming into the trust Bunten or any other person who was nominee of or identified in interest with Hugh Neilson senior and James Neilson, and to interdict Hugh Neilson senior and James Neilson from voting on the question of the proposed assumption of Bunten, or on any question of the assumption of a trustee entitled to vote on matters touching the Mossend Company or the share of the late William Neilson therein; further, to interdict Bunten, if assumed, from voting as trustee and executor in any matter touching the interest of William Neilson or of his trust-estate in the Mossend Iron Company, or in any other matter in which the interest of any trustee as an individual was in conflict with the interest of any of the beneficiaries under William