and South-Western Railway Company as creditors in these obligations would be entitled, in the event of these clauses not being inserted in the deed, to complain of that, and to hold that these deeds should be held null and void, because the protection here intended was a protection in their favour. I am of opinion that these words "under pain of nullity" should be part of the clause. It may be that the Glasgow and South Western Railway Company may be advised that without these words their object is served; that is a matter for their consideration. But if they insist on these words forming part of the obligation, in my opinion they should be inserted.

The Court approved the clauses printed above.

Counsel for Petitioner — Muirhead — Blair. Agents—Hunter, Blair, & Cowan, W.S.

Counsel for Railway Company—Mackintosh—Jameson. Agents—John Clerk Brodie & Sons, W.S.

Tuesday, February 17.

SECOND DIVISION.

[Lord M'Laren, Ordinary.

DAY AND OTHERS *v.* BENNIE.

Jurisdiction—Foreign—Court of Chancery—Injunction against Domiciled Scotsman and Order for Costs—Interdict—Preventive Jurisdiction.

A trader in England applied to the Court of Chancery for an injunction to prevent a trader domiciled and carrying on business in Scotland, circulating in England and Wales catalogues which he alleged to be pirated from his. The writ was served in Scotland, by leave of the Court of Chancery, under the rules of Court made in pursuance of the Judicature Act 1875, and no appearance having been entered a decree of injunction restraining the publication complained of within the territory of the Court of Chancery was pronounced with costs. An action having been brought in the Court of Session to recover these costs, the defender pleaded that the proceedings in the Court of Chancery were of no effect, since he was not subject to the jurisdiction thereof. *Held* that the Court of Chancery had jurisdiction to prevent a wrong being done within its own territory; therefore that this plea ought to be repelled.

William Day and others, who were domiciled and carried on business as engineers in England, at Newington Ironworks, Falmouth Road, London (under the firm of R. Waygood & Co), instituted an action in the Chancery Division of Her Majesty's High Court of Justice, being one of the Divisions of the Supreme Court of Judicature in England, against John Bennie, who carried on business in Glasgow as an engineer at the Star Engine Works, Moncur Street, in which they claimed an injunction to restrain him, his tenants or agents, from printing, publishing, disposing of, or circulating in England or Wales any catalogues published by the plaintiffs. (2) damages. (3) the delivering up to the plaintiffs by him of all catalogues containing such infringement, together with the manuscript of the same, (4) such further order or other relief as the case required, and (5) costs.

On motion made and cause shown, leave was granted by Mr Justice Kay for service out of the jurisdiction of the said Court, and on 21st December 1883 the writ was served personally upon the defendant at his works in Glasgow. He did not enter appearance or deliver a defence, and on 24th January 1884 notice of motion for judgment in default of appearance was served upon him, and a detailed statement of the claim was filed. Upon motion for judgment on the default of delivery of a defence, judgment was pronounced by Mr Justice Kay on 2d February 1884, restraining him from publishing, disposing of, circulating, or permitting to be published, disposed of, or circulated, &c., "within the jurisdiction of this Court," the catalogues complained of, and ordering him to pay the plaintiffs "their costs of this action, such costs to be taxed by the taxing-master." Damages were not insisted for. In pursuance of the order the bill of costs was, on 12th August 1884, taxed at the sum of £61, 1s. 2d., conform to certificate by the taxing-master.

This action was raised by Day and others (who stated that the action was necessary because the Judgments Extension Act 1868 does not apply to judgments of the Chancery Division) to have Bennie ordained to pay that sum. They stated in their condescendence—"(2) The said Chancery Division was the competent and appropriate Court having jurisdiction to entertain the said action. Certain Acts of Parliament which extend to Scotland, more particularly the 'Supreme Court of Judicature Act 1875,' and amending Acts, including the rules made in virtue thereof, as after mentioned, have conferred on the said Chancery Division authority or jurisdiction in a limited class of cases to grant leave to serve a writ of summons on a defendant out of the territorial jurisdiction of the said Court. The class of cases in which, and the conditions on which, such leave is granted, and the forms and modes of procedure, are defined by the rules of the said Supreme Court, made under the authority of the foresaid Acts, which came into operation on October 24, 1883, and which are referred to, specially Order xi. rule 1 (*f*), which states that 'service out of the jurisdiction of a writ of summons may be allowed by the Court or a Judge whenever,' *inter alia*, 'any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be prevented or removed, whether damages are or are not also sought in respect thereof;' rule 2, which enacts that the said Court or Judge shall have regard to the comparative cost and convenience of proceeding in England, or in the place of residence of the defendant; and rule 4, which provides that no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction. Under the said Acts and rules the pursuers proceeded."

The defender denied sending his catalogue into England.

He stated (Stat. 4)—"The defender took no

notice of the Chancery proceedings referred to in the condescendence, being advised that the Court of Chancery had no jurisdiction over him, and had no means of enforcing their decrees except through the Scottish Courts, where the defender was prepared to defend himself on the merits, and also on the question of jurisdiction. The defender is domiciled in Scotland, he constantly resides there, and carries on business there only. The issuing of the said 'writ of summons' for service on the defender in Scotland, and the granting of the 'leave' or 'order' for service of the said writ upon the defender in Scotland, and the whole proceedings following thereon, were incompetent and illegal proceedings, the said Chancery Division of the High Court of Justice having no jurisdiction over persons domiciled and resident in Scotland, and, in particular, having no jurisdiction over the defender. It would have been extremely inconvenient and expensive for the defender to have taken part in a litigation in the Courts in London, and it would have been more convenient and less expensive for both parties to have had any questions between them tried in the Courts of Scotland."

The defender also stated—"He did not know, and is not bound to know, the rules of a foreign court, and he was entitled to refuse to recognise its jurisdiction over him, which he believed he would have done by appearing in obedience to the said writ of summons. Further, as he was not desirous of circulating his catalogue in England, it was of no consequence to him what injunction might be granted by the English Courts, and he relied on the protection of the Courts of Scotland in the event of the pursuers seeking to enforce any judgment for costs or otherwise against him in Scotland."

In reply to these statements the pursuer stated —"Denied that the issuing of the said writ of summons, the granting of the leave or order of service, and the whole proceedings following thereon were illegal and incompetent, and averred that the said Court of Chancery had or acquired jurisdiction over the defender to pronounce against him the judgment now sought to be enforced. Had the pursuers resolved to seek interdict or damages against the defender for the infringement of their legal rights under the foresaid statute, committed by the defender's publication and distribution of his said catalogue within Scotland, they would have resorted to the Courts of Scotland, but as they had no trade in Scotland they did not regard the injury thereby done them as sufficient to render such action expedient. On the other hand, as the only wrongful acts which the pursuers in the said action sought to have restrained were committed, and threatened to be committed, within the territorial jurisdiction of the said Court of Chancery, to which the injunction craved and granted was limited, and as the witnesses to be adduced if necessary in proof thereof by the pursuers were resident in or near London, it would have been more inconvenient, at least equally expensive, and as the pursuers believe and were advised, doubtfully competent to have tried that question in the Courts of Scotland. Further, explained and averred that according to the law of England the defender could, under the foresaid rules of Court, 1883, order xii. rule 30, have moved the Court of Chancery to set aside the service upon him of the said writ, or to discharge the order authorising such service, and that without entering conditional appearance in the said action, or at his option, could have entered appearance, and under order xxv. rule 2, have raised the question of the jurisdiction of the Court as a point of law in his pleadings, and that if he made it sufficiently appear to the said Court that the Court had no jurisdiction over him, or that the cause of action had not arisen within England, or that the issue therein raised would be more conveniently tried in the Courts of Scotland, or that the case was not a proper one for leave to serve out of the jurisdiction being granted, then the said service would have been set aside, or the said order discharged, or the action otherwise dismissed, and probably with costs to the defender; that the averments now made by him with regard to the infringements complained of by the pursuers would have constituted a competent and relevant defence to the said action; that under order xii. rule 22, the defender could have appeared and stated whatever defence he had at any time before judgment was entered; and further, that under order xiii. rule 10, he could within a reasonable time after judgment, entered by default, have applied to the said Court to set aside or vary the said judgment upon such terms as might be just. The defender, however, in full knowledge of the consequences of his default, refrained from appearing to state the defence he now states, and to ask the inquiry he now demands into the merits of the said action, and from bringing before the said Court the questions he now raises."

The pursuers pleaded—"(2) The pursuers having obtained judgment against the defender for costs of a Court having jurisdiction to award the same, are entitled to decree, conform to the said order and certificate of the taxing-master. (5) The judgment, so far as here sought to be enforced, being confined to the costs of the action, and these being matters of process governed by the law of the Court pronouncing it, ought to be accepted as final; and the defender is not now entitled to open up its merits or question the propriety of the same."

The defender pleaded, *inter alia*—"(2) The defender not being subject to the jurisdiction of the Chancery Division of the High Court of Justice in England, the proceedings founded on by the pursuers are of no effect as against him. (3) The said writ of summons, service, judgment, and whole proceedings in the said Court being in violation of the rules of international law, and of the 19th Article of the Treaty of Union between England and Scotland, they ought to be disregarded, and the defender assoilzied with expenses."

The Lord Ordinary (M'Laren) pronounced this interlocutor:—"Repels the defender's second and third pleas in law: Appoints the cause to be enrolled for further procedure, and grants leave to reclaim against this interlocutor."

"*Opinion.*—The question in this case is, whether the Court of Session ought to enforce a decree of the High Court of Justice (Chancery Division) for £61, 1s. 2d., being the costs incurred by the pursuer in obtaining an injunction against the defender, restraining him from infringing the copyright of the pursuer in his

trade catalogues. The defender pleads (1) that he was not subject to the jurisdiction of the High Court of Justice, and that the decree is therefore ineffective; and (2) that the judgment against him is ill-founded on its merits.

"It appears that the defender is resident in Scotland, being engaged in business in Glasgow, and the pursuers do not allege that the defender is or was subject to the jurisdiction of the Supreme Courts of England *ratione domicilii*, or on any general ground. But they maintain that, as the injunction of the High Court only restrains the defendant from publishing, disposing of, or circulating the contents of the catalogues 'within the territorial jurisdiction of the said Court,' the High Court of Justice had jurisdiction in the matter of the complaint, and that the defendant was bound to obey. If the injunction was competently granted, it follows, in my apprehension, that the Court of preventive jurisdiction was also entitled to make an order for the payment of the costs of the application, as it has done. I have then to consider what are the grounds and limits of the preventive jurisdiction which every Supreme Court must exercise, and whether, according to our views of international law, these limits have been exceeded by the learned Judge who granted this injunction.

"I have not been referred by counsel to any authority in our own law directly applicable to such a case; but it appeared to me that some light might be thrown on the question by an examination of the principles of jurisdiction which are developed in the text of the civil law. I am the more disposed to rely upon that source of authority, because the questions of jurisdiction which are there raised relate to the administration of justice by different courts under the same sovereignty, and are therefore closely allied to the questions which have arisen as to the limits of the spheres of action of the English and Scottish courts.

"It appears to me that it may be collected from what remains of the writings of the Roman jurists on this subject that two general grounds of jurisdiction were recognised,—the one depending on the authority which the judge possessed, in virtue of his office, over such persons as were resident within his territory, and the other depending on his authority to regulate disputes or causes of action arising within that territory.

"The first of these grounds or reasons of jurisdiction is the well-understood *ratio domicilii;* the second, which includes the *ratio contractus, ratio delicti,* and *ratio rei sitæ,* may be considered as a jurisdiction which does not imply any general authority over the person of the defender, but which is founded on the principle that every person, be he native or foreigner, who takes benefit by the laws of a state, or who is alleged to have transgressed those laws, must submit his claims in the matter of the benefit taken or right infringed to the adjudication of its constituted authorities. It is on such considerations, as I understand, that the injunction in question proceeds; because under it the defendant, although not subject *ratione domicilii* to the jurisdiction of the High Court of Justice, is restrained from infringing the plaintiff's rights 'within the territorial jurisdiction of the said Court.'

"If this were the case of an action founded on contract, I should be indisposed to hold that the decree of an extra-territorial court had any obligatory force against an inhabitant of Scotland who was not found within the territory of the judge pronouncing it, or cited there.

"The rule of the Roman law (l. 19, *de judiciis*), which makes the locality of the contract a sufficient foundation of jurisdiction, has been received, as was observed by the Lord President in *Sinclair* v. *Smith* [*cit. infra*], with this qualification,—that the party to be sued on the contract must be found at the time within the judge's territory where the contract was made and is to be enforced. In addition to the authorities cited by his Lordship, I may point out that the limitation, '*si ibi inveniatur*,' is contained in the text of the law itself (V., 1, 19, in pr.); and according to Savigny, § 371, this qualification existed in the earlier and best period of the Roman jurisprudence.

"It would seem, then, that this Court ought not to enforce an English decree against a Scotch debtor where there is no other ground of jurisdiction than that he is a party to a contract which was made in England. I am not aware that such a case has arisen for decision in this Court.

"But where the jurisdiction of the extra-territorial court is founded *ratione delicti*, the question is more complicated, and it is necessary to weigh all the considerations before pronouncing a judgment which would by implication deprive the decision of a co-ordinate court of the authority presumably due to it.

"(1) In the first place, I do not understand that in the Roman jurisprudence the personal presence of the respondent within the judge's territory was a necessary element of jurisdiction *ratione delicti.* No such requirement is to be found in the passage in the code usually cited on this subject—Code III. (*ubi de criminibus*), sec. 1. Questions of crimes, it is said, are to be tried either where they were commenced or consummated — *ubi commissa vel inchoata sunt*—or where the accused persons are found—*vel ubi reperiuntur qui rei esse perhibentur criminis.* If it is questioned whether this law is applicable to civil procedure founded on delict, the passage in the next title (Code III. 16), seems to be directly in point, where it is said that in cases of violence or disputed possession, there the judge of the local court shall decern against the person who has disturbed the state of possession. And it is impossible to examine the voluminous prescriptions regarding interdict which are contained in the 43d Book of the Digest, without perceiving that the jurisdiction is an essentially local one, to be explicated on the spot by the judge of the country or district where an aggression has been committed or threatened against its laws or the rights of its citizens. On this subject Savigny has a very important observation (vol. viii. sec. 371, 6), where he insists that the *forum delicti* is by no means to be regarded as a particular application of the jurisdiction founded on obligation and known as *forum contractus*; for, he proceeds, the *forum delicti* is not founded on the voluntary submission of the party, and is not subject to the restrictions prescribed with respect to jurisdiction founded on obligation (*i.e.*, the restriction that the respondent must be found within the territory). He adds that it is a

jurisdiction founded on the enforced submission of the party, consequent on his violation of the law, and that it is a jurisdiction established, not in the interest of the defender, but very clearly in the interest of the demandant.

"(2) Next, I am not satisfied that if the question of jurisdiction were to be tested by the opinions and practice which regulate procedure in Scotland, the result would be different from that which I should deduce from the civil law. It is quite clear that in the cases of which *Sinclair* v. *Smith* is the leading authority, the Court did not at all consider the question of the limits of preventive jurisdiction. I collect from the Lord President's observations upon the case of *Grant* v. *Peddie* [June 14, 1822, 1 S. 495 (H. of L.) 1 W. and S. 716], and the *forum originis*, that his Lordship was most anxious to avoid the expression of opinion upon any question of jurisdiction other than the question raised by the case, which was an action of damages in respect of breach of contract. But there is no obvious analogy between such a case and an action of interdict to restrain the violation of a statutory right. There is very little authority on the subject of the limits of preventive jurisdiction as exercised by our Courts. In the absence of authority, it may perhaps be said that the jurisdiction is unlimited, except in so far as reason and convenience in the particular case impose limitations. *Prima facie*, I should assume the jurisdiction to be as wide as the necessity of restraining infringements of public or private right within the territory may from time to time prescribe. The absence of the infringer from the territory would not, in my apprehension, be an obstacle to the exercise of the jurisdiction, where the other constituent elements of preventive jurisdiction are present. I should not, for example, assume that an Englishman or a foreigner would be able with impunity to make use of the facilities of the post-office for the circulation of libellous matter in Scotland, for the publication of private letters or other unregistered copyright matter, or for the dissemination of documents containing incitement to aggression upon the rights of citizens of Scotland. I do not know that in some of the cases here supposed the court of the wrongdoer's domicile would consider itself competent to give redress otherwise than by an action founded upon a decree of the Scottish Court. And there is this distinction between an interdict and an action upon contract, that in our practice interdict is an extraordinary action, to the institution of which service, in the proper sense of the term, is unnecessary The note, with its prayer, is addressed directly to the Court. It is, without any preliminary notification to the respondent, presented to the Judge in the Bill Chamber, who, without knowing whether the respondent is within or without the territory, grants an interim interdict or other provisional order, and at the same time directs intimation of the action to be made to the respondent, and to such parties as he conceives to be entitled to notice. Such intimation is not 'service.' It is a proceeding entirely within the control of the Court, and I can well believe that in the case of a foreigner respondent alleged to be infringing the rights of a Scotch complainer, while withdrawing his person from the jurisdiction, the Lord Ordinary on the Bills would direct personal as well as edictal intimation to be made to the absent respondent, should such personal intimation appear to be necessary to explicate the jurisdiction, or otherwise expedient.

"(3) For the purposes of the present case, I have thought it not irrelevant to consider what would be the limits of jurisdiction of this Court in cognate matters. But I am far from saying that we are to apply the rules and practice of the Scottish Courts in such matters as an absolute test of the regularity of the procedure of the English Courts in the assertion of their jurisdiction. Each country has its own rules conditioning the exercise of its jurisdiction, and if the rules of the territorial court are reasonably consistent with general international law, justice requires that the court of the domicile, when set in motion by the holder of the decree, should recognise the decree and give effect to it.

"When it is considered (1) that private international jurisprudence is not a positive and ascertained thing, like municipal law, but is only the prevailing opinion of authors and jurists, and (2) that the preventive jurisdiction claimed by the High Court of Justice in the case before me derives a certain support (I do not need to go further) from the civil law, the best authority in such questions, I should not think it consistent with international obligation to refuse effect to this decree merely because in a parallel case the Court of Session might not consider it a case for granting interdict. I am far from saying that we should not grant interdict under similar circumstances; but that is not the criterion by which, in my apprehension, the case ought to be determined. I shall therefore repel the plea to the jurisdiction. Every foreign decree is to some extent examinable, but as the case may go elsewhere, I shall say nothing at present as to the other objections which were urged at the bar."

The defender reclaimed, and argued—The proceedings in the English Court on which the order for the costs here sued for was pronounced could have no effect against him. He was not subject to the jurisdiction of the English Court or resident in England, and the judgment had been obtained against him in default of appearance—*Schibsby* v. *Westenholz and Others*, Dec. 10. 1870, L.R., 6 Q.B. 155. The Courts of England and Scotland were as independent of each other within their respective territories as if they were the judicatories of two foreign states—Lord President in *Orr Ewing, &c.* v. *Orr Ewing's Trustees*, Feb. 29, 1884, 11 R. 629. They were separate Courts, each with rules of their own. Fry, J., in the case of *Rousillon* v. *Rousillon*, 1880, L.R. 14 Ch. Div. 351, in considering the true principle on which the judgments of foreign Courts are enforced in England, laid down at p. 371 that the Courts of England "considered the defendant bound where he is a subject of the foreign country in which the judgment had been obtained; where he was resident in the foreign country when the action began; where the defendant in the character of plaintiff has selected the *forum* in which he is afterwards sued; where he has voluntarily appeared; where he has contracted to submit himself to the *forum* in which the judgment was obtained." None of these tests were presented in this case. This was not a case where the defender was liable to English Courts *ratione contractus*—*Sinclair* v. *Smith*,

July 17, 1860, 22 D. 1475; nor where the action had arisen *ex delicto*—*Kermick* v. *Watson*, July 7, 1871, 19 Macph. 985. The decree was at best one in absence—*Baird* v. *Mitchell*, July 14, 1854, 16 D. 1088—and the summons was not served within the territory in which the supposed delict was committed—*Barbers of Edinburgh* v. *Wilson & Blair*, M. *Forum Competens*, Jan. 26, 1743; Bar's International Law (Gillespie's translation), pp. 567, 579.

The pursuers replied—The proceedings in England were *prima facie* reasonable. They were instituted to protect the pursuers, who were domiciled in England, from having their catalogues pirated and the piracies circulated within the territorial jurisdiction of the English Court. Although the defender was outwith the territory of England, yet Rule I. (f) of the rules of the Supreme Court provided exactly for such a case. Service out of the jurisdiction was allowable whenever any injunction was sought as to anything done within the jurisdiction. The proceedings were unexceptionable. In order to render them nugatory it was incumbent on the defender to prove irregularity.

At advising—

Lord Young—I cannot say that I have found this case attended with much difficulty, and it is only necessary to state the facts of it—and they may be stated with brevity—to show how clear, in my judgment at least, it is. The pursuers, William Day and others, are engineers in London, and made an application to the Chancery Division of the High Court of Justice in England for an injunction to restrain the defender, who is an engineer in Glasgow, from circulating in England and Wales, by his agents and servants, pirated copies of the illustrated catalogue issued by them as applicable to their own trade. The Court of Chancery saw fit, although the defender was resident in Glasgow, to order service of the application for injunction to be made on them, and service was made regularly according to the custom of that Court. The defender did not see fit to oppose. Although he was in point of fact circulating pirated copies of the catalogue within the jurisdiction of the English Court, he did not appear. The Court thereupon granted the injunction, and with costs. The bill of costs was ultimately taxed, as we should express it, at £61, which is a large sum. The present action has been brought to recover that sum as due to the pursuers on the decision of a Court of competent jurisdiction. The defender makes two pleas in answer, and we have no concern with any other—that (1) "The defender not being subject to the jurisdiction of the Chancery Division of the High Court of Justice in England, the proceedings founded on by the pursuers are of no effect as against him;" (2)—which is the same in another form—that "The said writ of summons, service, judgment, and whole proceedings in the said Court being in violation of the rules of international law, and of the 19th Article of the Treaty of Union between England and Scotland, they ought to be disregarded, and the defender assoilzied with expenses." The Lord Ordinary pronounced an interlocutor repelling these two pleas, and granted leave to reclaim, leaving it to the defender to make any other objection against the decree of £61 as found due by him in accordance with the judgment of the Court of Chancery. I am of opinion that the Court of Chancery had jurisdiction. They exercised it, and that *prima facie* shows jurisdiction. I quite admit that it might be shown here, in an action to enforce an English or a foreign decree, that the proceedings had been irregular, that there was no jurisdiction in reality, and that it would be unconscionable to enforce the decree. On such a case being stated to us we should refuse to enforce the decree. But here there is nothing of that kind. The complaint is most intelligible. A London tradesman complained of a Glasgow tradesman violating his rights at his home in England, and appealed to his own Court to protect him against that illegal violation of his rights within the territory in which he resided, and within the domicile of the Court of Chancery's jurisdiction. This is a most natural and intelligible ground of jurisdiction, and when the party was challenged and did not appear, I cannot see anything irregular or unconscionable in the Court granting the injunction and costs. Therefore on the only pleas decided by the Lord Ordinary, and on which we have heard argument, I am of opinion that his interlocutor is right.

Lord Craighill—I also think the Lord Ordinary's interlocutor is right, for the reasons which have been explained. These I shall not repeat at length—all that I desire to do being to present in the briefest way the more material considerations by which I am influenced in concurring with this judgment. The reclaimer is the defender in the action, and he is sued for £61, 1s. 2d., being the costs of obtaining in England an injunction restraining him from continuing to infringe within the jurisdiction of the High Court of Justice the copyright of the pursuer in his catalogues. The defender pleads in defence that he is not subject to the jurisdiction of the Court, being a domiciled Scotsman, and not having been personally cited within the territory of the English Court.

The purpose of the present action no doubt is to get decree of a sum of money, and were this an ordinary debt not contracted in England it would be difficult to see upon what ground the jurisdiction of the English Court could be sustained. My persuasion is that in such a case the English Courts would not hold that they had jurisdiction over the defender. So far as I can see, the rule *actor sequitur forum rei* must in that case have been applied. But the sum here sued for is costs of a suit for injunction, and these are merely the accessories of the suit in which they were awarded. This consideration brings the question to this. In the first place, had the English Courts jurisdiction on the subject-matter relative to which an injunction was asked? The wrong complained of was done in England; the restraint asked for was to be operative in England and Wales; and so far these were obvious elements of jurisdiction. But these were not enough, for in the second place this other matter requires to be considered. The defender being a foreigner, there were means known to the English law for making the defender a party to the suit. Unless that were so, he could not be rendered amenable, because over him no jurisdiction could be exercised. But the English Courts have the means in certain cases—of which it

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