

will—*Selkirk v. Coupland*, January 6, 1886, 23 S.L.R. 456; and the trustee was entitled to it under the Bankruptcy Act without raising an action to enforce his right—*Selkirk v. Service*) Oct. 22, 1880, 8 R. 29.

Argued for the respondent (the bankrupt)—The appeal was incompetent. The question at stake here was as to the right of property in the certificate, and that could not be raised and determined in the bankrupt's examination. In *Coupland* a minute setting forth the facts was required to be lodged before the Court pronounced a decision. No such material had been put before the Court here. In any event the Sheriff was right. The trustee had been allowed access to the permit book, and he knew the terms of the certificate. The certificate itself was purely personal, analogous to a pilot's licence, and did not vest in the trustee. Authorities cited—*Delvoitte & Co. v. Baillie's Trustees*, Nov. 16, 1877, 5 R. 143; *Yuille v. Rushbury*, July 4, 1888, 15 R. 828; *Philp's Executor v. Philp's Executor*, February 1, 1894, 21 R. 482.

At advising—

LORD PRESIDENT—This appeal is not a very satisfactory proceeding, if the object of parties be to ascertain the ultimate rights of the trustee and the bankrupt respectively to this certificate of licence. But we must consider the matter as it is presented to us, and I think that, *prima facie*, the trustee is entitled to have delivered to him the permit book, as being one of the books of this bankrupt trader, and the licence, as being a document relating to the business of the bankrupt. What right the trustee may have to make use of the certificate of licence, and his power of disposing of it, must depend upon questions which we are not in a position to decide: as thus—if it be the fact that the bankrupt is tenant of these premises, and is using the certificate to carry on the trade, the trustee may or may not be in a position to take the business and get the licence transferred to a purchaser of the business from him; if, on the other hand, the bankrupt can make out some such case as that suggested at the bar, that may lead to another result. On that I do not pronounce.

It seems to me that the question is, in whose hands, in the first instance, shall these documents be? And I answer that by saying, they should be in the hands of the trustee.

As regards procedure, the Sheriff has, in the first place, merely ordained the bankrupt to allow the trustee to have access to the book. That seems an inadequate remedy and an inadequate satisfaction of the trustee's right. And accordingly I think that must be recalled. As regards the question disallowed, that raises the matter of the certificate in a very unsatisfactory way. I must say I do not think the question was necessary at all, except as a matter of mere politeness. The trustee's right to the certificate in no way depended upon the willingness of the bankrupt to give it up. Therefore I think we should go a step further, and save any questions which may arise in

the Court below by remitting to the Sheriff to order the licence to be produced and delivered to the trustee.

LORD ADAM, LORD M'LAREN, and LORD KINNEAR concurred.

The Court recalled the deliverance of the Sheriff as to the permit book, and remitted to the Sheriff to order the licence to be produced and delivered to the trustee.

Counsel for the Appellant—Sol.-Gen. Dickson—H. Johnston. Agent—James Purves, S.S.C.

Counsel for the Respondent—Salvesen—W. L. Mackenzie. Agent—J. A. Pattullo, S.S.C.

Wednesday, July 8.

SECOND DIVISION.

[Sheriff of Dumfriesshire

MURRAY v. JOHNSTONE.

Property—Club—Common Property—Alienation of Club Property by Majority of Members.

A curling club having won and become the owners of a cup presented for competition—held (*diss.* Lord Young) that the majority of the members at a meeting specially called to consider and determine as to the disposal of the cup, were not entitled, against the wishes of the minority, to present the cup to the skip of their highest winning rink at the competition.

In 1869 Sir Sydney H. Waterlow, sometime M.P. for the County of Dumfries, presented a silver cup, since known as the Waterlow Cup, as a trophy to be played for by the curling clubs of Dumfriesshire. The inscription on the cup was as follows:—"Dumfriesshire Challenge Cup. Presented to the Curling Clubs of the county by Sir Sydney H. Waterlow, M.P., 1869, to be played for annually, and open to all comers resident in the county. The winner three consecutive years to keep the cup."

In 1889 a proposal was brought forward to make at the next annual meeting of the Dumfriesshire curling clubs an alteration in the condition under which the cup was played for. Notice of this proposal was given to Sir Sydney H. Waterlow, who in reply intimated that he would be satisfied with any alterations which met with the approval of the majority of the clubs. Thereafter at a meeting of representatives from all the curling clubs of Dumfriesshire on 9th October 1890 certain regulations for the competition for the Waterlow Cup were adjusted. These regulations, *inter alia*, provided "that each club desirous of competing for the cup must send out not less than one-half of their rinks of four players each, but no club to send less than three rinks. . . . The club which has gained the highest number of shots per rink shall be the winners, and the skip of

the highest winning rink from the winning club shall be the holder of the cup till next match. The cup shall become the property of the club winning twice in succession or three times in all (after date December 1890)."

The cup was won in 1891 and 1893 by the Upper Annandale Curling Club, and as there was no play in 1892, the cup became the property of the club as having been won by them twice in succession. The skip of the highest winning rink from the winning club in both years was Michael Johnstone, Archbank, Moffat, and the cup was handed over to him as custodian for the club.

In November 1893 a special general meeting of the Upper Annandale Curling Club was called, the business being stated, *inter alia*, 'to decide as to the disposal of the Waterlow Cup.' At this meeting, held on 16th November, forty-four members out of a total of eighty-seven were present, and two motions were submitted to the meeting with regard to the cup—(1) That the cup be kept by the club as their own property, and (2) That it be presented to Michael Johnstone. On taking the vote it was found that there was a majority of votes in favour of presenting the cup to Michael Johnstone, and on the result of the vote being communicated to the latter he accepted the cup. The minority protested, and in consequence of a requisition, a special general meeting of the club was held in February 1894, attended by fifty members, at which meeting a motion to rescind the resolution gifting the cup to Michael Johnstone was unanimously carried. The secretary thereafter applied to Michael Johnstone for the cup, but the latter refused to part with it.

William Murray and four other members of the club, as individual members, and also as a committee elected to represent the club, raised an action in the Sheriff Court at Dumfries against Michael Johnstone, to have the defender ordained to deliver up the cup to the pursuers, or to the president or secretary of the club.

On 11th October 1895 the Sheriff-Substitute (CAMPION) pronounced an interlocutor finding that the cup, according to the conditions on which it was played for, had become the absolute property of the club, that the members of the club had power at the special general meeting of 16th November 1893 to make a gift of the cup to defender, and that they were not entitled at any subsequent meeting to rescind said gift, and therefore assailing the defender.

The pursuers appealed to the Sheriff (VARY CAMPBELL), who on 12th November adhered.

The pursuers appealed, and argued—The cup was the property of the club. The property of the club was the common property of the members of the club so long as they remained members. No doubt it differed from the usual case of common property in this respect that the right of the individual members could not be enforced or attached till the dissolution of the club. But nevertheless a member had a contingent right in the assets of the club,

and was entitled to object to any of its property being put to uses not reasonably incidental to the purpose for which the club existed. It was clearly *ultra vires* of a majority of the club to give away club property—in *re St James Club*, 1852, 2 De G. M. and G. 383. In the case of moveables which were common property the consent of all the proprietors was required, just as in the case of heritable property—*Stair*, i. 7, 15; *Rankine on Landownership*, p. 510, &c. Unincorporated companies require to act by unanimous resolution in disposing of their property—*Lindley on Company Law*, 5th ed. p. 315. It was admitted that the committee managing a club were entitled to make use of its funds for purposes reasonably incidental to the object for which the club was formed, just as in the case of a company the majority could spend money for purposes reasonably incidental to the carrying on of the business of the company—*Hutton v. West Cork Railway Company*, 1883, L.R., 23 Ch. D. 654, opinion of Bowen, L.J., p. 671. But directors, or the majority of the shareholders of a company, and the managers or the majority of the members of a club, were not entitled to give the property of the club in gratuities to themselves or any of their number—*York and North Midland Railway Company v. Hudson*, 1853, 16 Beavan, 485, or to dispose of the property on objects not in accordance with the purposes of the company or club—*Tomkinson v. South Eastern Railway Company*, 1887, L.R., 24 Ch. D. 675. The analogy of the law of incorporations could be extended to this case. The members of incorporations were trustees, and could not by a majority make a gift to themselves of the property of the incorporation—*Howden v. Incorporation of Goldsmiths*, June 2, 1840, 2 D. 996; *Thomson v. Incorporated Candlemakers of Edinburgh*, March 16, 1855, 17 D. 765.

Argued for the defender—A club was not in any proper sense of the term a corporation at all. Its purpose was not to hold property. Whatever might be the interest of the members of this club in the cup, it was not a proprietary interest. You might no doubt have a case where the property of a club was illegally diverted from club purposes. But what was the purpose of a curling club? To promote curling. Then what more legitimate act could a curling club do in order to promote curling than to give a trophy to the person who had been mainly instrumental in winning it. As to the method of voting adopted in this case, if the rules did not contain any provision on the subject the vote of the majority present at a meeting properly summoned must be held to rule. The interlocutors of the Sheriffs should be affirmed.

At advising—

LORD JUSTICE-CLERK—The pursuers and defenders are not at variance as to any of the practical facts of the case. In 1869 Sir Sydney Waterlow presented a cup for competition by the curlers of the county of Dumfries. It was presented as a challenge

cup, but one of the conditions—as engraved upon the cup itself—was that “the winner for three consecutive years” was “to keep the cup.” The rules for competition were adjusted by representatives of the various clubs in the county, and approved of by Sir Sydney Waterlow, and some alterations were made several years ago, which were adjusted by all the competing clubs, Sir Sydney Waterlow declaring himself satisfied with any rules adjusted by them. Each club, in order to compete, required to send to the competition “not less than one-half of their rinks of four players each,” and no club could compete unless it sent at least three rinks to the competition, twelve players being thus necessary to enable any club to compete. The following rule was one of those adjusted and acted on—“The club which has gained the highest number of shots per rink shall be the winners, and the skip of the highest winning rink from the winning club shall be the holder of the cup till next match. The cup shall become the property of the club winning twice in succession or thrice in all.” Under this latter part of the rule the Upper Annandale Club became successful in winning the cup finally, and it is common ground between the pursuers and the defenders that the cup became the property of the club and was so at the time of the transaction which has led to the present proceedings. The question which has arisen in this case is whether the Upper Annandale Club, having become the owners of the cup, a majority of the club, at a meeting convened “to decide as to the disposal of the Waterlow Cup,” had the power, against the protest and objection of a minority of members of the club, to part with the property, and to make a gift of it to an individual, handing over the cup to him as his absolute property. It appears that an actual majority of the whole members of the club afterwards passed a resolution to rescind the gift. Both the Sheriffs have considered this matter, and hold that the gift made could not be rescinded. I do not think it is necessary to consider whether this could be done or not, assuming that the action of the majority of the first meeting in making a gift of the cup was not *ultra vires*, as I think that the case can be decided on the question of right of the majority to make the gift against the objections of the minority. The opinion I have come to is that this cup having come to form part of the property of the club, having been won as a prize by the club, members of the club are entitled to object to its being gifted away without their consent, and to insist upon its being restored to the possession of the club. It may be that this cup is of no great intrinsic value. As to that we have no information, but it may also be, and probably is, of considerable value. Such property, often of great value, won in a similar manner and under similar rules, is held by many clubs and associations throughout the country. Such trophies may be held, after being finally won by one competing club, either as trophies without their being used as competition challenge prizes within the

club, or they may be—as was proposed to be done here—used in the club competitions as challenge prizes. Every member of the club has an interest in them, and is, I think, entitled to object to their being alienated at the will of a majority. I hold that a majority cannot insist on acting for the club, and doing such an act in name of the club, so as to bind unwilling members. The subject in question is not their property to dispose of, but is only their property along with others, in respect of membership of the club. And there is nothing in the constitution of the club giving such power.

I cannot but express my regret that such a question should have been brought before a court of law, but as it has come before this Court, and a judgment is insisted on, there is no alternative but to deal with it, and I think we must do so by recalling the judgments of the Sheriffs and pronouncing a decree for delivery.

LORD YOUNG—I agree in thinking that this is a deplorable litigation. Two questions are raised in the case—(1) Has this cup been won by the Upper Annandale Curling Club so as to entitle them to keep it according to the rules of the game of curling, and the terms upon which it was presented for competition; and (2) If the cup has been won by the club, have they validly made a gift of it to the skip of their highest winning rink at the competition?

The case has been dealt with by both of the Sheriffs on the assumption that the cup was won by the Upper Annandale Curling Club, and that they were the owners of it. The only question considered by them was whether the cup had been validly gifted to the defender. Both Sheriffs are of opinion that the cup was validly gifted to the defender, and they therefore decided the case in his favour, and held that he was entitled to keep the cup.

I therefore, in the first place, address myself to the question whether the decision of the Sheriffs on this matter is right or not, and I may say at once that I am of the same opinion as the Sheriff. In my judgment the cup was validly presented by the club to the defender, and no revocation of the gift could be made at any subsequent meetings of the club. An argument has been presented to us on the application of the law of common property to this case. No authority appears to have been suggested to the Sheriffs that the law of common property had been infringed by the presentation of the cup to the defender. But such an argument was addressed to us. In my opinion the law of common property is ridiculously inapplicable to a case of this kind. The idea of the law of common property applying to the money or the furniture in possession of the officers of a club is extravagant on the face of it. No club could be carried on on such a footing. This club, I suppose, has no property except the annual subscription of half-a-crown from each of its members. I suppose it is contended that in accordance with the maxim *melior est prohibentis* if one member objects no use can be made of club pro-

party. I do not doubt that the courts of law could be called upon to restrain the officers of a club from acting corruptly or improperly with the property of the club, but that has got nothing to do with the law of common property. I do not understand that in the present case our opinion is asked about the propriety of the conduct of the officers of the club. A meeting of the club was held to consider whether the cup should be presented to the skip of the winning rink. A majority of the meeting considered that it should. The law of common property applies no more to this cup than to a box of cigars or a dozen of champagne presented as a club prize. Or suppose a meeting of a club was held to consider whether £50 should be given to the Royal Infirmary. One member objects. *Melior est prohibentis*. Is the gift therefore invalid? This would be extravagant. The law of common property has no application. I am therefore of opinion with the Sheriffs that what was done was legal, and that if the cup was the property of the club they validly presented it to the defender.

But I desire to state an objection that occurs to me to the pursuers invoking the authority of the Court. The cup was presented by Sir Sydney Waterlow in 1869, upwards of a quarter of a century ago, to the curling clubs of the county of Dumfries. What are they? Are their numbers fixed? Nobody seems to know how many there are. To whom did he, or more probably his election agent, give the cup? Nobody knows. It is said that rules were originally framed to regulate the competition. Who framed them? Again the answer is "We do not know." The rules to be effectual would require to be made by representatives of the various clubs and to be approved by Sir Sydney Waterlow. There is no evidence to that effect. The statements made by the pursuers that the cup was won by the Upper Annandale Curling Club, and that the cup is in the possession of the defender, are admitted by the latter, but *quoad ultra* not known and not admitted. In these circumstances where there is no evidence to show that the cup ever passed from Sir Sydney Waterlow, he is the proper person to settle this dispute, and to decide who is entitled to the cup. I think he is the only proper person. This would end the unseemly litigation in this Court. I do not think it is seemly for this Court to determine as to the winning of a sporting cup or a box of cigars or a gallon of brandy, and we should avoid as far as we with propriety can from interfering in a matter of the kind.

Although I have adverted to this as in my opinion a good reason for our not determining the matter, I am quite willing to decide the case on the ground taken by the Sheriffs, that at a meeting of the club properly called, the cup was presented to the skip. I agree with the Sheriffs that there was no illegality in this, and no impropriety on account of which we can interfere. If the cup was legally presented, it was impossible for the club to change their mind and revoke the gift.

LORD TRAYNER—I am unable to regard this case in any aspect of it as one of importance, and I should have been glad if the parties had seen their way to settle their differences otherwise than by an appeal to the courts of law. I cannot speak in commendation of the conduct of either party. The pursuers might very well, on the one hand, have been content to acquiesce in what was done by a majority of the members of their club present at a meeting specially called to consider and determine as to the disposal of the cup in question; on the other hand, the defender would have taken a course worthier of himself if he had declined to take the cup, seeing that a very considerable number of the members (I believe a majority of them) objected to its being given to him. But as the parties stand upon their legal rights, and ask to have the case determined by a court of law, I think we are bound to decide the question submitted to us, and that question, as it appears to me, is not a question of sport; it has nothing to do with the rules under which the cup was competed for, or the fairness with which the competition was conducted; it is neither more nor less than a question of property.

It has been suggested that the property of the cup is or may be still vested in the original donor. I cannot take that view. I think his right of property ceased when he handed over the cup to the person to whom he gave or sent it, to be held for the benefit of the successful competitors. It was then a delivered gift, and the donor could not recal it. It was no longer his. But as between the parties to this case no such question is raised. It is admitted that the cup was won by the club, and it is at this stage that we are alone concerned with any question of property in it. The club having won the cup, and thus become the owners of it, could the club by a majority, and against the wishes of the minority, make a donation of the cup to one of its members or to a stranger? That appears to me to be the only question raised by this appeal, and viewing the case in that light I have felt no difficulty in disposing of it. The cup is the property of the club, but the club not being a corporation cannot hold any property apart from its constituent members. The cup is therefore the property of the members of the club. Each member of the club has as much right and interest in the cup as another. It is quite true that each member has that right only so long as he remains a member, and cannot, even during his membership, sell or transfer his interest. But so long as he remains a member he has a joint right with all other members in everything that belongs in property to the club. This view of the rights of a member of a club is not without authority, some of which was cited at the debate. If I am right so far, I think the question is solved. No one can be deprived of his property except by his consent or by the action of the law, and consequently the majority of the members of this club cannot deprive the minority of what belongs to them. Had it been a

question of administration of the property or assets of the club, it would have been a different matter. But it is not administration, it is alienation.

Had I been of opinion that the club by a majority of its members was entitled to give this cup away, I should have agreed with the Sheriff that the resolution passed at the meeting of 16th November 1893 was conclusive, and could not have been gone back upon. But I think the resolution came to at that meeting by a majority was *ultra vires*, and not binding on the club. I think therefore that the interlocutors appealed against should be recalled, and decree granted in terms of the first conclusion in the prayer of the petition.

LORD MONCREIFF—This case was argued and decided in the Sheriff Court on the assumption that the cup presented by Sir Sydney Waterlow in 1869 was finally won by, and became the property of, the Upper Annandale Curling Club in 1893. That the cup had become the property of the club is one of the findings in the interlocutor of the Sheriff. Substitute which the defender asks us to affirm, and I do not think we should go back on that finding, which, so far as I am able to judge, is in accordance with the truth of the case. Whatever may be the true meaning of the conditions under which the gift was made and held, the donor could not and never desired to revoke it. During the twenty-four years between 1869 and 1893 he left it to the competing clubs to regulate the competition. It is not for the defender to object to the regulations under which the cup was played for. He was a member of the Upper Annandale Club. He played for the cup as skip of one of the rinks of that club, and it must be held that he did so in knowledge of and under the rules and regulations which governed the competitions. He as an individual did not in any view win the cup; the successful rinks won it, and won it as I hold for their club.

The cup having thus become the property of the Upper Annandale Club, the next question is, whether it was effectually gifted to the defender under a resolution passed by a majority of the club. It would have been a handsome act if the club had unanimously voted for giving the cup to the defender. He was skip of the winning rink for two of the years in which it was won for the club, and as probably the club did not possess any local habitation in which to keep it, it was not unreasonable that it should be given to the defender if that course were legal. But the question is, had a majority the power to do so against the wishes of a substantial minority?

I am of opinion that it was beyond the powers of a majority of the club to alienate the trophy. The cup was the common property of all the members although it was won for the club by the exertions of individual members. And although, as I have said, it would in the circumstances have been a graceful act to give it to the defender, it is not surprising that some

members of the club, especially those other than the defender who played in the winning rinks in 1887, 1891, and 1893, should prefer that the cup should remain as evidence of their success, and not pass as his absolute property into the hands of an individual member who might any day cease to be a member of the club.

The law of common property is most familiar to us in relation to heritable subjects. The application of the law to moveable subjects is not so well defined or illustrated by decision. But I see no reason to think that in principle the law is not the same. In the case of heritable subjects, while the general rule is that any one proprietor can prevent any extraordinary use of the subject or alterations upon its conditions without his consent, there is an exception to the rule, viz., that necessary operations in rebuilding or repairing cannot be so prevented, and if all parties cannot agree, the will of the majority rules. So in regard to moveables, anything necessary for, and properly incidental to, the purposes of the joint proprietorship may be done by a majority.

The right of a member of a club (not proprietary) in the property of the club is of a peculiar description. While the club exists as a going concern, he is not entitled to insist on a sale and a division of the price. When he dies, his right, such as it is, does not pass to his representatives, and if he retires from the club his whole interest therein ceases. But as long as he remains a member of the club his right is one of common property.

The test whether in any particular case the disposal of club property by a committee or by a majority of members is or is not *ultra vires* is to inquire whether the proposed use or disposal of the article or fund is incidental to the purposes and proper management of the association. If it is not, a resolution so to dispose of it will not be sustained. In the present case if they had merely resolved that the cup should be held for the club by the defender as long as he remained a member, the resolution might have been justified as a reasonable act of management. But what is proposed is to alienate the club's property, and this I think cannot be done by the vote of the majority.

In the course of the argument it was urged that in this view it would be illegal for a majority of the members of a club to make a present out of the club funds to a secretary on his retiring, or to an old servant, or to present a medal or other prize to a member. Such a question seldom, if ever, arises. If the gift proposed is substantial, it is usually made or eked out by private subscription among the members. If it is trifling, nobody objects. But if objection were taken by a minority, each case would depend upon its own circumstances, and fall to be decided according as the gift was or was not fairly authorised by the constitution and purposes of the club. Here what is proposed to be done is not to buy a prize or souvenir for the defender, but to present him with a valuable trophy,

which was presented to the club as a body and intended to remain its property.

On the whole matter I am of opinion that the appeal should be sustained, and that the defenders should be ordained to deliver up the cup to the pursuers. He would have acted wisely if he had adhered to his original resolution to refuse the offer.

The Court pronounced the following interlocutor:—

“Sustain the appeal: Recal the interlocutor appealed against: Ordain the defender to deliver to Mr John Young, secretary of the Upper Annandale Curling Club the silver trophy known as the ‘Waterlow Cup,’ the property of the club, which was handed over to the defender as custodian for the club for the season 1893-94, within twenty-one days from the date hereof, and decern.”

Counsel for the Pursuers—Salvesen—Constable. Agent—G. Brown Tweedie, Solicitor.

Counsel for the Defender—H. Johnston—Clyde. Agents—J. & A. Hastie, Solicitors.

Thursday, July 9.

FIRST DIVISION.

[Lord Moncreiff, Ordinary.

MACDONALD AND OTHERS v.
WELSH AND OTHERS.

Mines and Minerals—Reservation of Coal in Feu-Contract—Liberty to “Search and Work Out” Coal except in Prohibited Area—“Shank or Open”—“Close or Garden”—Construction.

A superior granted a feu-contract in which he reserved the coal in the subjects feued, with liberty “to search for, work out, and dispose of the said coal . . . and provided that in searching for or working said coal we do not shank or open the ground within the house, office houses, close, or gardens to be built or made upon the said lands.”

In an action for interdict raised by the subsequent proprietor of the feu against the superior’s successor, to prohibit him from boring for coal at a spot within 13 yards of a main-door of the mansion-house, and situated in an enclosed piece of ground, partly in lawn and partly laid out in flower-beds, the respondent pleaded that the operation of boring did not fall within the definition of “opening or shanking,” and that the place where the work was being done was not within the prohibited area.

Held, on a proof, (1) that boring was covered by the exception; (2) that the *locus* was a garden in the sense of the feu-charter, and therefore was part of the prohibited area.

Opinion (per Lord Kinnear) that even if boring did not fall within the

definition of “opening the ground,” yet the right to bore being ancillary to and an incident of the right of searching for and working the coal, the respondents had no right to exercise it within an area where they were prohibited from searching for and working the coal.

Opinion (per Lord President and Lord Kinnear) that when the right of the owner of the minerals to interfere with the surface is expressly defined in his titles, the common law of neighbourhood had no application.

This was an action of suspension and interdict at the instance of the most Reverend Angus Macdonald and others, trustees for the Roman Catholic Church in the Archdiocese of St Andrews and Edinburgh, against Mr John Welsh, S.S.C., Edinburgh, and others.

The complainers were the heritable proprietors of the house and lands of Mount Vernon, at Liberton, near Edinburgh, and the respondents were the proprietors of the coal on Mount Vernon, and the assignee of his mineral rights.

The complainers craved the Court to interdict the respondents “from boring for coal or in any way opening the ground, and from depositing materials on any portion of the close or gardens of the complainers’ mansion-house of Mount Vernon.”

The Lord Ordinary (MONCREIFF), after a proof, on 6th March 1896 granted interdict.

The questions raised in the action and the purport of the proof are sufficiently indicated in his Lordship’s opinion, *infra*.

Opinion.—“The original feu-charter by which the complainers’ predecessors acquired the lands in the immediate neighbourhood of Liberton, which are now called Mount Vernon, was granted to Joseph Cave by George Lord Rosse, therein designed Master of Rosse, on 11th September 1728. The granter reserved the coal of the lands disposed by the following reservation—‘But excepting and reserving always to me, the said George Master of Rosse, and my heirs and successors, the whole coal of the lands hereby disposed, and declaring that it shall be free leisum and lawful to me and my foresaids to search for, work out, and dispose of the said coal, we always paying and satisfying all dammages which the said Joseph Cave or his said son, or his foresaids, shall sustain thereby; and provided that, in searching for or working said coal, we do not shank or open the ground within the house, office-houses, close, or gardens, to be built or made upon the said lands by the said Joseph Cave, or his said son, or his foresaids, for their own proper dwelling.’

“It will be seen from the terms of the reservation that the lands were bought for the purpose of erecting and making a dwelling-house, offices, and gardens.

“The respondents are now proprietors of the coal, and the complainers proprietors of the surface and other minerals. The respondents have recently proceeded to bore for coal at a spot within 13 yards of one of the main entrances of the mansion-house. The complainers seek to have them