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

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

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

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

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

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

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

Tuesday, June 4.

SECOND DIVISION.

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

Process—Peerage—Action of Exhibition and Producing.

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

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

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

Airth, and are now in the possession of the defender; but though the pursuer has repeatedly requested the defender to allow her to have access to or exhibition of these documents, he refuses to do so." Also, "that William Cunninghame Bontine of Ardoch and Gartmore, Esq., by his *curator bonis*, George Auldjo Jamieson, Esq., chartered accountant in Edinburgh, presented a petition in the claim of the pursuer to the said titles of Monteith and Airth in opposition to the claim of the pursuer, upon which sundry proceedings have taken place in the House of Lords before their Committee for Privileges, which are herein referred to. While the defender has given the said William Cunninghame Bontine and his advisers unlimited access to and use of the documents in his possession, and permitted them to produce, as they have produced, those which tend to support Mr Bontine's claim, he has refused the pursuer all access to them. It is not in accordance with the rules or practice of the House of Lords, or their Committee of Privileges, to make orders for the exhibition or production of the documents, and the pursuer has consequently been unable to obtain from that House or Committee an order for the exhibition or production of the requisite documents. Unless she shall obtain an order for production and exhibition as concluded for, she will be unable to recover highly material, and, as she believes, essential evidence, in support of her claims to the foresaid honours and dignities."

The pursuer pleaded "(1) As heir duly served and retoured to the last Earl of Monteith and Airth, and as the claimant of the titles, dignities, and honours above condescended on, the pursuer is entitled to exhibition of the whole of the said documents, and to have the same made available in proof and support of her claims to the said titles, dignities, and honours, under such conditions as the Court may appoint; (2) the pursuer is entitled to such exhibition in respect that the same is essential or highly material to her proving and establishing her said claims."

The defender pleaded "(1) The action ought to be dismissed, in respect it is incompetent; (2) the statements of the pursuer are not relevant or sufficient to support the conclusions of the summons."

The Lord Ordinary (MURE) sustained the second plea in law for the defender, and dismissed the action, with expenses.

The pursuer reclaimed to the Second Division of the Court.

BALFOUR and WATSON for pursuer.

ASHER and SOLICITOR GENERAL for defender.

Authorities cited—Stair iv. 33, 1. 2. 3.; Erskine I. 4, 1; *Lindsay Crawford* v. *Campbell*, 26th May 1826, Wilson & Shaw's Ap. vol. ii. p. 440; *Campbell*, 6 Macpherson, 632; H. L., 7 Macph. 101; *Campbell*, 1 Morison, 759.

At advising—

LORD JUSTICE CLERK—This is a very unusual and singular application. The conclusions in the summons are of the most vague and general kind, and amount to a petition for probation ancillary to a question in which we have no jurisdiction, viz., who is entitled to a Peerage. It amounts to an action in aid of the House of Lords. The Committee of Privileges alone is judge of the advisability of orders for documents, and it is incompetent for us to interfere. The views in the case of *Campbell* entirely to my mind rule this case. No doubt there is this distinction, that here there is a general service, but that does not appear to me to be of importance in a question of this kind.

LORD COWAN—I concur. This is an action for exhibition, and such as an heir usually would not be entitled to. It is substantially in aid of a claim now before the House of Lords. The case of *Campbell* is a direct authority; the mere expeding of a general service is not material. We have no evidence that the House of Lords would not do what justice to the parties required. I cannot take mere evidence of the minutes of the Committee on Privileges as conclusive, as it does not appear what would have been done if a special application had been made. The statement on this point amounts to nothing more than a statement of what the House of Lords consider fair and just, and it is out of the question for us to interfere.

LORD BENHOLME—I concur, on the ground that the action is incompetent.

LORD NEAVES—I lean to Lord Benholme's view that it is incompetent. The question here is the bearing of these documents on the distinction in the Peerage patent—a matter entirely out of our jurisdiction. The House of Lords must know its own forms and machinery for doing justice between claimants, and we cannot interfere to assist them.

We have the case of *Campbell*. It was argued that the want of service there was the turning point, but as dignities and titles of honour descend *jure sanguinis*, no one is bound to take service, so that the want of service cannot afford a distinction between the two cases, although, as the question there was one of propinquity, the absence of service might be of importance.

The vagueness of this demand is another element in my judgment—a general demand to walk into a man's charter-chest, and precognosce the title deeds, which the Court cannot entertain.

The Court unanimously found the action incompetent, and adhered to the Lord Ordinary's interlocutor in so far as it dismissed the action.

Agent for Pursuer and Reclaimer—John Shand, W.S.

Agents for Defender and Respondent—Dundas & Wilson, W.S.

Friday, June 7.

LOVE *v* LANG.

(Before seven Judges).

General Turnpike Act, 1 *and* 2 *Will. IV. c.* 43, § 70 —*Expenses—Petty Sessions.*

The justices in the Petty Sessions act ministerially under the above section of the General Turnpike Act, and have no power to award expenses.

William Fulton Love, the pursuer, who was clerk to the Turnpike Road Trs. of Beith and Largs, in January 1866 presented a petition to the Justices of the Peace for Ayrshire, under § 70 of the General Turnpike Act, craving to have a certain road shut up. The shutting up of the road was opposed by the defenders, Mr Lang of Groatholm and others. A proof was allowed by the Justices, and various procedure took place. The pursuer averred—"After the conclusion of the proof allowed by the Justices' order of 2d April, the said Patrick Blair,