SUMMER SESSION, 1907.

HOUSE OF LORDS.

Monday, May 13, 1907.

(Before the Earl of Halsbury, Lord James of Hereford, Lord Robertson, and Lord Atkinson.)

MURRAY'S TRUSTEES *v.* TRUSTEES OF ST MARGARET'S CONVENT.

(In the Court of Session, July 19, 1906, 43 S.L.R. 774, 8 F. 1109.)

Property—Servitude—Building Restrictions —Prohibition against "Any Building of an Unseemly Description."

A restriction upon ground prohibiting the erection of "any building of an unseemly description" is not sufficiently definite to be capable of being enforced.

This case is reported *ante ut supra.*

Murray's Trustees, the pursuers (respondents in the Division) appealed to the House of Lords.

At the conclusion of the appellants' argument:—

EARL OF HALSBURY—The question in this case is certainly reduced to a very simple one, and that is whether your Lordships are able to give a definite legal meaning to the restrictive words of this covenant. I confess I have been looking in vain for some definite guide as to what is suggested to be the real meaning. Both the learned counsel who have addressed your Lordships have, I think, failed to give any definite meaning to the words. What may reasonably be "seemly" appears to be a question rather of the personal conduct of the individuals engaged than any characteristic of the building which is supposed to be itself an infraction of the covenant that has been entered into.

I really do not feel it necessary to say any more about the matter except that I concur with the judgment of the Court of Session, and I think the appeal should be dismissed. I am wholly unable to follow the reasoning which alters the applicability of such words as are used here into some definite meaning which a Court can enforce. I am not aware of anything which will give in the ordinary use of language such an effect to these words as to render that meaning capable of being enforced.

For these reasons I move your Lordships that the appeal be dismissed with costs.

LORD JAMES OF HEREFORD—I concur.

LORD ROBERTSON—I think this is a very clear case, but the law on this subject of servitudes affecting real property is one which requires delicacy of statement, and I shall most usefully express my opinion by saying that I entirely concur in the whole of the judgment of Lord Kinnear.

LORD ATKINSON—I concur. I think the judgment of the Court of Session was right.

Appeal dismissed with costs.

Counsel for Appellants—Scott Dickson, K.C.—Constable. Agents—Blair & Cadell, W.S., Edinburgh—Martin & Leslie, Westminster.

Counsel for Respondents—The Dean of Faculty (Campbell, K.C.)—Chree. Agents —Wm. Considine, S.S.C., Edinburgh—John Kennedy, W.S., Westminster.

Monday, May 13.

(Before the Earl of Halsbury, Lord James of Hereford, Lord Robertson, and Lord Atkinson.)

M'DOUGALL *v.* NISBET.

NEILSON *v.* R. B. WILSON & COMPANY.

(In the Court of Session, November 17, 1904, 42 S.L.R. 108 and 111, 7 F. 55 and 60.)

Process—Appeal to House of Lords—Cause Ruled by Decision of their Lordships Subsequent to Appeal — Joint-Petition by Parties for Order.

Form of *joint-petition* to the House of Lords by the parties in a cause under appeal which is ruled by a decision in another cause given subsequent to the taking of the appeal.

These cases are reported *ante ut supra.*

M'Dougall, petitioner in the Glasgow Dean of Guild Court and appellant in the

Court of Session, and R. B. Wilson & Company, defenders in the Glasgow Dean of Guild Court and appellants in the Court of Session, appealed to the House of Lords.

Subsequent to the petitions of appeal being presented (no cases having yet been lodged) their Lordships decided the case of *Hamilton and Others* v. *Nisbet*, March 17, 1907, 44 S.L.R. 392, which decision admittedly ruled the causes. The parties thereto presented joint-petitions.

The petition in *M'Dougall* v. *Nisbet* was in the following terms (adjusted with the officials):—"That a petition of appeal against (1) an interlocutor of the Dean of Guild of Glasgow (Baron Inverclyde) dated 9th June 1904, and (2) certain interlocutors of the First Division of the Court of Session in Scotland dated respectively 17th November 1904 and 22nd December 1904 has been presented to your Right Honourable House.

"That on 13th March 1907 your Right Honourable House delivered judgment upon a petition and appeal in which the present respondent was appellant, and the respondents were (1) David Hamilton, William Hamilton, and James B. Hamilton, oil refiners and merchants and paint and colour manufacturers, sole partners of and trustees for their firm of J. & D. Hamilton, oil refiners and merchants and paint and colour manufacturers, 118 Queen Street, Glasgow; (2) Lewis Maclellan, oil refiner, &c., Glasgow; and (3) the School Board of the Burgh of Glasgow, 129 Bath Street, Glasgow.

"That the appellant and the respondent are agreed that the said judgment delivered by your Right Honourable House on 13th March 1907 in the said cause governs the present petition and appeal, and that in respect thereof the present petition and appeal ought to be sustained and the interlocutors complained of therein reversed.

"Your petitioners therefore humbly pray that your Lordships may be pleased to order and adjudge that the said petition and appeal be sustained; that the said interlocutor of the Dean of Guild of Glasgow of the 9th day of June 1904, and the said interlocutors of the Lords of Session in Scotland of the First Division, of the 17th day of November 1904 and the 22nd day of December 1904, be reversed, and that the cause be remitted back to the First Division of the Court of Session in Scotland, with directions to recal the report or determination of the Master of Works of the City of Glasgow of the 19th day of April 1904, and to make such other order or to remit the cause to the Dean of Guild Court of Glasgow with such directions as may be consistent with the judgment to be issued by your Lordships, and to find the respondent liable to the said appellant in his expenses of process in both Courts below; and, further, to order that the respondent do pay or cause to be paid to the said appellant the costs incurred in respect of the said appeal in your Lordships' House, as the amount thereof shall be certified by the Clerk of the Parliaments: And, further, to order that the said respondent shall repay to the said appellant any expenses already paid to the respondent by the appellant under the interlocutors reversed."

The causes were thereupon put out for hearing.

Counsel explained the position and intimated that parties were agreed.

Orders appealed from reversed, cases remitted to the Court of Session, and orders made as prayed for in joint-petitions.

Counsel for the Appellants—Morrison, K.C. Agents—Webster, Will, & Company, S.S.C., Edinburgh—Grahams, Currey, & Spens, Westminster.

Counsel for the Respondents—M. P. Fraser. Agents—Campbell & Smith, S.S.C., Edinburgh—Martins & Leslie, Westminster.

HIGH COURT OF JUSTICIARY.

Monday, Tuesday, and Wednesday, March 18, 19, *and* 20.

(Before the Lord Justice-General, Lord M'Laren, Lord Stormonth Darling, Lord Dundas, and Lord Salvesen.)

H. M. ADVOCATE *v.* BROWN.

Justiciary Cases—Procedure—Insanity in Bar of Trial—Insanity not Pleaded but Question Raised by Crown.

In a criminal prosecution in the High Court, the Court is entitled to consider information, from whatever source it may come, tending to show that the accused is insane and incapable of pleading, and, as the circumstances of the particular case may demand, may either (1) order a preliminary inquiry, or (2) allow the case to proceed and go to a jury, when the jury in considering their verdict must first decide whether the accused is sane and capable of instructing a defence, before entering on the further questions in the case.

Circumstances in which the Court, the Crown having produced medical certificates of the accused's insanity, and counsel for the accused having intimated that personal instructions for the defence as from a sane person had been received, and that the accused desired to plead not guilty and go to trial, *allowed* the case to proceed in ordinary course, and *charge to jury* (*per* Lord Justice-General) in the circumstances.

Justiciary Cases—Procedure—High Court Case—Objection of a Preliminary Nature—Insanity — Reservation of Matter for Second Diet and Accused not Called upon to Plead at First Diet—Criminal Procedure (Scotland) Act 1887 (50 *and* 51 *Vict. cap.* 35), *secs.* 29 *and* 41.

The Criminal Procedure (Scotland) Act 1887, section 26, makes provision for