Affirmed with costs.

Counsel for Appellant—Mr Pearson, Q.C., and Mr Mackintosh. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Respondents—Lord Advocate (Gordon), Sir J. B. Karslake, Q.C., and Mr Balfour. Agents—Adam & Sang, W.S.

Friday, April 17.

(Before Lord Chancellor Cairns, Lord Chelmsford, and Lord Selborne.)

MACBETH AND OTHERS *v.* ASHLEY AND OTHERS.

(*Ante*, vol. x, p. 513.)

Licensing Acts (*Scotland*) 16 *and* 17 *Vict. c.* 67, § 11; 25 *and* 26 *Vict. c.* 35, § 2—*Hours of Closing*—"*Particular Locality within any County or District or Burgh.*"

Under 25 and 26 Vict. c. 35, the hours for opening and closing licensed houses are fixed at 8 a.m. and 11 p.m. Section 2 gives a discretionary power to the licensing magistrates to vary these hours "in any particular locality within any county or district or burgh requiring other hours for opening and closing." The magistrates of a burgh defined by metes and bounds a certain part of the same, which included all the licensed houses therein, and passed a resolution that it was requisite that licensed houses in the particular locality thus defined should be closed at 10 p.m. This hour they inserted in the certificates. *Held* (affirming judgment of C. of S.) that the resolution was *ultra vires* of the magistrates, their discretionary power being to select a "particular locality," whereas they had virtually applied the exceptional rule to the whole burgh, an evasion of the statute, and opposed alike to the spirit and the letter thereof.

This was an appeal from a judgment of the First Division of the Court of Session, as to the extent of the power of magistrates to vary the hours of opening and closing public-houses in Scotland.

The Acts relating to public-houses in Scotland now in force are the Home-Drummond Act, (9 George IV.) the Forbes Mackenzie Act (16 and 17 Vict., cap. 67) and the last Act, (25 and 26 Vict., cap. 35). By the first Act no time was defined for opening and closing public-houses. But in the Forbes Mackenzie Act there were certain forms of certificates which specified definite hours for opening and closing the houses, one of the conditions being that the publican should not open his house before 8 o'clock in the morning or after 11 o'clock at night of any day; and that on Sundays the house was to be shut the whole day, except to lodgers and *bona fide* travellers. There was, however, a proviso in both the two last Acts which gave the licensing magistrates a limited power of varying the hours of opening and closing in particular localities. This proviso, as it stands in the latest Act, is as follows:—"Provided always that in any particular locality within any county or district or burgh requiring other hours for opening and closing inns and hotels and public-houses than those specified in the forms of certificates in said schedule applicable thereto, it shall be lawful for such justices or magistrates respectively to insert in such certificates such other hours, not being earlier that 6 of the clock or later than 8 of the clock for opening, or earlier than 9 of the clock or later than 11 o'clock in the evening for closing the same, as they shall think fit." Accordingly, on the occasion of renewing the certificates, the hours of 8 A.M. and 10 P.M. for opening and closing were inserted. The limits of the burgh described in the resolution of the magistrates were so drawn as to include all the public-houses and grocers' shops in the burgh. Though not including the whole of the area in the burgh, this resolution, or rather the proposal to alter the hours in the certificates in conformity therewith, was opposed by the various applicants for the certificates, who appealed to Quarter Sessions against it, but that Court dismissed the appeals, with costs.

The hotel-keepers next raised the present action against the magistrates, contending that the resolution and the certificates founded thereon were illegal and unwarranted by statute, and seeking to reduce and rescind the same so far as regards the alteration of the hours of closing from 11 to 10 o'clock. The defenders replied that the resolution was legal, and within the statutory powers; and further, that such an action was excluded by express sections in the Act, which enacted that no warrant, order, judgment, or decision made by any quarter sessions, justice or justices of the peace, or magistrate, in any cause, prosecution, or complaint, or in any other matters under the authority of the said Acts, should be subject to any form of review or stay of execution on any ground or for any reason whatever. Further, that by section 35 every action or prosecution against any sheriff, justice or justices of the peace, magistrate, or judge, &c., should be commenced within two months after the cause of action. The magistrates passed their resolution on 15th April 1872, and the summons in the action was served on 15th June 1872.

The Lord Ordinary (GIFFORD) held that the action was incompetent, and that the magistrates had acted within the powers given to them by the statute. He thought that it was enough that the area dealt with was only part of the burgh of Rothesay, and that it was immaterial that in point of fact all the public-houses were included in that part. But on reclaiming note against this interlocutor, the First Division were of a different opinion, and held that as the statute gave power only to the magistrates to vary the hours as to a particular locality within the burgh, they had in effec exceeded this power, and had altered the hours as to the whole of the burgh, and this they were not empowered to do. The LORD PRESIDENT, LORDS DEAS and JERVISWOODE, joined in this judgment, while LORD ARDMILLAN hesitated, and was inclined to support the Lord Ordinary, though he did not formally differ from the majority of his Court.

The Magistrates thereupon appealed to the House of Lords.

Argued for the appellants, The question is whether the justices in a county or burgh in Scotland have power to alter the time of closing all the public-houses within their county or burgh, or can only alter the hours as to some of those houses. The Court below has proceeded on the theory that the Legislature intended to allow fifteen hours for the keeping open of houses, and that the magistrates had no power to reduce these hours, except

in a small part of the burgh or county. But this view is not consistent with the existing statutes. The latest Act does not repeal the previous Acts, and the Forbes Mackenzie Act contains the enactment that the justices may in a particular locality alter the hours. If that statute had stood alone, there can be no doubt that the justices can have altered the hours as to all the houses within the county or burgh. [LORD SELBORNE—I also observe that the statute says "in any particular locality requiring other hours." I suppose the word "requiring" means, if the Justices in their discretion think fit to require?] The words are no doubt very vague. At the same time, there is no definition given, and therefore the word "locality" would naturally mean the whole locality—that is, the whole county or burgh. It cannot mean the locality of the particular inn or hotel. [LORD CHELMSFORD—The words are vague in the Forbes Mackenzie Act, but the later Act was passed for the very purpose of defining the words more clearly, and it says the justices may alter the hours in a "particular locality within any county or burgh," excluding the notion of its meaning the whole county or burgh.] The last Act, does not repeal the previous one, and therefore that previous Act still holds good. [THE LORD CHANCELLOR—Surely you cannot contend that the Legislature has given the justices power in each case to alter the hours as to the whole of their district, for, if so, they might alter the general law all over Scotland. Take the case of Edinburgh or Glasgow: do you say the Justices could alter the hours as to all the public-houses by merely describing the boundaries so as to include all the hotels, but leaving out a few places where there are no hotels? I can understand that there may he localities where they may alter the hours; as, for example, near a market, where perhaps farmers and country people come at an early hour and require refreshments; and the Lord President throws out a suggestion that the same reason may apply to miners coming up from a pit at an early hour. The locality mentioned by the Act must at least mean some area inside the burgh or county.] If the Legislature had plainly said so, that might have been arranged; but the enactment in the Forbes Mackenzie Act gives no clue to any restriction in point of area. [LORD SELBORNE—But surely you must read the latest enactment, which does contain a restriction, as in substitution of the earlier enactment and as superseding it.] There seems no reason why that should be so. It would be much fairer that the justices should have power given them to alter the hours as to the whole of the public houses, than merely as to a part of them. Even as regards Rothesay, the Legislature might have thought it a wise thing to leave it to the magistrates to cause the public-houses to be closed earlier there. The Lord President says that what the magistrates have here done is something not authorised by the statute. But the question is, What is that which is authorised by the statute? If the case depended on the statute of 16 and 17 Vict., then the magistrates would have the power as to all the public-houses. Nothing is said even in the last Act as to how the justices are to discover what is the kind of particular locality as to which they may alter the hours. Nothing is said about market places, or mines, or the sea shore or anything else. All is vague. Here the magistrates have certainly kept within the letter of the law, for the locality they describe is within the burgh, though it includes all the public-houses. If the Legislature chooses to use language so vague as this, and if the magistrates have kept within the letter of the law, though perhaps not within its spirit, the Court must hesitate before it interferes with the course taken by the justices.

Counsel for the respondents were not called upon.

In delivering judgment:—

The LORD CHANCELLOR—My Lords, the question, and the only question, to be determined in this case is, whether an order made by the Magistrates of the burgh of Rothesay was within the powers conferred upon them by the Act of Parliament under which they were proceeding, for if the order was within these powers, it was not for the Court of Session, and it is not for your Lordships, to examine into the discretion exercised by the Magistrates. The exercise of that discretion is entirely for them, and for them alone. My Lords, the question, in the view which I should submit of it to your Lordships, turns really upon one Act of Parliament—the 25 and 26 Vict. c. 35. It is true that before that Act, another Act, that of the 16 and 17 Vict., had been passed upon this subject; but if your Lordships will turn to the Act of the 16 and 17 Vict. you will observe that the form in which that enactment is couched is this—it gives in a schedule one form of certificate of licence to be granted to a hotel or public house, and in that form there occurs the condition that the house is not to be opened before eight o'clock in the morning, or to be kept open later than eleven o'clock at night; and then the 11th section of the Act provides, after declaring that the magistrates may grant a licence in the form to which I have referred, that "in localities requiring other hours for opening and closing public houses, &c. than those contained in the schedule, it shall be lawful for the justices or magistrates to insert in the schedule such other hours, not being earlier than six or later than eight o'clock in the morning for opening, or earlier than nine o'clock or later than eleven o'clock in the evening for closing the same."

The proviso therefore is a power given to alter or modify the particular form of licence which is contained in the schedule to that Act.

But when your Lordships turn to the Act of the 25 and 26 Vict., upon which I shall have immediately to comment, you will find that the form of certificate given by the earlier Act is entirely swept away and another form substituted for it. Therefore the proviso in the earlier Act, which was to operate upon the form of certificate given in that Act, of necessity comes to an end when the certificate given by the earlier Act is removed out of the way. It appears, therefore, to me sufficient to say that the certificate given in the earlier statute, being now at an end, and being a certificate which cannot be granted, the earlier statute itself is no longer to be considered.

My Lords, I then turn to the later statute; but before considering the words of it, I will remind your Lordships of what has been done by the Magistrates of Rothesay in this case. They have made an order substituting a different hour—an earlier hour—for closing, for the hour which your Lordships will find contained in the later statute to which I have referred. They have done that, not for the whole burgh in point of form, but for

a portion of the burgh, so far as regards metes and bounds. But the portion of the burgh for which their order has been made is admitted to contain all the hotels and inns and public-houses which exist in the burgh, and therefore though in form the order does not extend to every square yard of the burgh, for the purposes of licensing it really does comprise the whole of the burgh, because it comprises the whole of the hotels and public-houses in the burgh. Indeed, my Lords, it was not denied at the bar,—it was very properly assumed to be an order which practically did affect, and what is more important, which was meant to affect, the whole of the houses within the burgh which were to be licensed. Now, bearing that in mind, let me direct your Lordships' attention to the provisions contained in the later statute, the 25 and 26 Vict. That later statute, in place of the one and only form of certificate which had been contained in the schedule of the 16 and 17 Vict., provides, I think, three forms of certificates in the schedule. Each of these forms contains a condition that the house to which a certificate is to be granted shall not be opened earlier in the morning than eight o'clock, or later in the evening than eleven o'clock. These hours therefore are taken by the Legislature to be the hours which, as a general rule, are to be applied to all licensed houses. The second section of the Act provides that these forms of certificates to which I have referred shall come in place of the forms of certificates provided by the earlier Acts, and that it shall be lawful for the Justices, "where they shall deem it inexpedient to grant to any person a certificate in the form applied for, to grant him a certificate in any other of the forms contained in the schedule;" and then come these words, "provided always that in any particular locality within any county or district or burgh, requiring other hours for opening and closing inns and hotels and public-houses than those specified in the forms of certificates in said schedule applicable thereto, it shall be lawful for such justices or magistrates respectively to insert in such certificates such other hours, not being earlier than six of the clock or later than eight of the clock for opening, or earlier than nine of the clock or later than eleven of the clock in the evening for closing the same, as they shall think fit." Now, if your Lordships take these words in the proviso as they are to be literally interpreted, it appears to me to be beyond all doubt that they point to a discretion reposed in the magistrates, which is to be exercised not with reference to the whole county, district, or burgh, within their jurisdiction, but, as the words expressly are, with reference to a particular locality within (that is inside) the county or district or burgh, and I think your Lordships will easily see how reasonable and intelligible this provision of the Legislature was. The subject of the general hours for opening and closing public-houses is a matter, and has always been treated as being a matter, of great and imperial public moment. It has been treated as a matter to be reserved for and determined by the consideration of the Imperial Parliament. It has accordingly been a subject upon which Parliament has in this Act expressed its opinion with regard to what should be the general rule, by the certificate to which I have referred, prescribing the hours mentioned in the certificate. But, then, the Act takes notice that in any particular district over which the licensing authority shall exercise its power, there may be some reason why a portion of the district or locality within the district should have applied to it a different rule from that which is to be the rule of the district at large; in other words, that there should be a power of making an exception from that which is to be the general rule. But that is to be the form in which the discretion is to be exercised. There is to be a general rule, and there may be an exception; but if the exception is to swallow up the rule, it ceases of course to be an exception at all, and that which might fairly have been an exercise of discretion becomes no exercise of the kind of discretion mentioned in this Act, which is to be a discretion to select a portion of the whole district, and apply to it a rule different from the rule which is to apply to the whole district. That, my Lords, appeared to me to be the obvious and literal meaning of the words, and in truth the only way in which the literal meaning of the words was attempted to be met in the very clear argument which we heard upon the subject was by the Lord Advocate, who pressed this upon us. The Lord Advocate said, "Here is a power, a discretion given to the magistrates to take a particular locality within their district; that is, a discretion which they may exercise not only once, but again and again. They may first take one locality, and they may afterwards take another locality, and in that way they may traverse the whole of their district, and, in fine, by taking a number of localities they may ultimately take the whole district. Why, therefore, should they not take the whole of their district at once?" Now, my Lords, I will assume, though it is not for your Lordships now to decide, as the question has not arisen, that this may be a discretion which may be exercised more than once. That may be so, and upon that I express no opinion; but of this I am quite certain, that neither your Lordships nor any other Court, if they found that magistrates had, under the guise of exercising a discretion, taken portion after portion of their district, not with reference to the view of the particular wants or requirements of each portion they selected, but in order by degrees to take possession of the whole of their district, and, under pretence of exercising a discretion for each portion, virtually to subvert and change the general rule laid down by the Legislature; if, I say, your Lordships were to find, which I cannot imagine or suppose you ever would find, magistrates adopting that course for the purpose of doing what I must describe as evading an Act of Parliament, your Lordships would not be prepared to sanction, but would discountenance and prevent the exercise of a power which was used in that way. That, however, has not been done by the magistrates in this case. They have done that which they believed was within their power. They have, once for all, attempted, with regard to all the public-houses in their district, to change the rule laid down by the Act. That, in my opinion, is a power which has not been entrusted to them by the Legislature; and I therefore submit to your Lordships that the view taken by the Court of Session was correct, in reducing the order which was thus made by the magistrates. I therefore propose to your Lordships that the interlocutors appealed against should be affirmed, and the appeal dismissed, with costs.

Lord Chelmsford—My Lords, I am entirely of the same opinion. If this case depended upon

the 16th & 17th Vict., there might be some difficulty in determining the exact meaning of the word "locality" in the 11th section of the Act; but I should have had very little hesitation in coming to the conclusion that it could not have been intended to apply to the whole of a county, city, or burgh within the jurisdiction of the licensing magistrates, for these reasons:—The 11th section prescribes the form of certificate for inns and public-houses, and it expressly enacts that it shall not be lawful for the magistrates of any burgh in Scotland to grant any certificates in any other form than those contained in the schedule; and by the 12th section it is enacted that any certificate granted contrary to the provisions of the Act "shall be null and void to all intents and purposes." Now, if the word "locality" applied to the whole of the district under the jurisdiction of the magistrates, the very section which makes it unlawful for the magistrates to grant certificates in any other than the prescribed forms would enable them to supersede the provision expressed in the most peremptory terms, and virtually to repeal it; and if this might be done in one county, city, and burgh, why not, as was observed in the course of the argument, in every one throughout Scotland? But whatever may be the proper construction of the 16th and 17th Vict., we have nothing to do with it, except as introductory to, and in some respects explanatory of, the Act of the 25th & 26th Vict. It seems probable that the alternative meaning of the word "locality" mentioned by the Lord President might have suggested the necessity of more clearly expressing the intention of the Legislature, and accordingly, in the 25th & 26th Vict. the matter is made perfectly plain by the introduction of these words, "any particular locality within any county or district or burgh." Upon these words there can be no doubt that even if the word "locality" in the 16th & 17th Vict. had the construction which was contended for, it has been altogether superseded by the later statute; and that the magistrates have not, as was contended for by the Lord Advocate, power of licensing under the 16th and 17th Vict., and also under the 25th and 26th Vict. The magistrates have to deal with the latter statute only, and the particular localities within their jurisdiction requiring other hours for opening and closing public-houses than those specified in the forms of certificates contained in the Act, that is, where, from some peculiar circumstance connected with some peculiar locality in the judgment of the magistrates it is requisite that other hours should be inserted in the licences. Now, it must be conceded that this is a matter for the discretion of the magistrates in the proper exercise of their statutory powers; but upon this occasion, instead of confining themselves to a part of the burgh, they have endeavoured to apply their power to every part of the burgh, at all events to the part of the burgh containing all the public-houses to which their licensing powers extend, and therefore practically to the whole of the burgh.

This appears to me to be contrary not only to the spirit but to the very letter of the Act, because it is impossible to say that the limits which they have defined, which virtually comprehend the whole of the burgh, can be called "a particular locality within any county or district or burgh;" and I must say it appears to me something very like an attempt to evade the provisions of the Act of Parliament. Now the law will not allow that to be done indirectly which cannot lawfully be done directly; and therefore I have no doubt whatever that this was *ultra vires* of the magistrates of the burgh. I do not know whether it is at all important to consider the objection that the discretion of the magistrates can be exercised only when other hours than those named in the certificates are required for opening as well as closing public-houses. The words "opening and closing" give the power as to morning and evening both; and it may well be that a change as to opening might, from particular circumstances, be requisite, and not as to closing, or *vice versa*. And although the times for the opening and closing mentioned in the certificates comprehend a period of 15 hours, there is nothing to indicate that in any change to be made those should be the exact number of hours for which publicans are to be allowed to keep open their houses. I therefore agree with my noble and learned friend, that the interlocutors ought to be affirmed, and the appeal dismissed, with costs.

Lord Selborne—My Lords, I am entirely of the same opinion, and I will add but little to what has been already said by those of your Lordships who have addressed the House. With respect to the reasons on which the learned Lord Ordinary, who took a different view, seems to have proceeded, and with which Lord Ardmillan appears to have been disposed to agree, though yielding to the authority of the majority of the Judges in the Inner House, they appear to me, my Lords, to turn upon a view which I think it would be somewhat dangerous to encourage at all in dealing with Acts of Parliament of this description. Because in the letter of the magistrates' order, less than the whole of the burgh is comprehended in point of territorial limits, their Lordships seem to have been inclined to think that the strict language of the Act was satisfied, and that the Court, under those circumstances, ought not to interfere with the discretion of the magistrates. Now, I cannot but think that in that view their Lordships lost sight of a distinction between what is called an evasion of an Act of Parliament, where the Act is in derogation—if I may so say—or in restriction of the legal rights and liberties of the subject, and where the Act confers for public purposes powers which would not otherwise exist. It has been said in this House and elsewhere that with regard to such statutes as the Mortmain Act, and others of that kind, which restrict previously existing legal powers, a man is at liberty to evade them if that means no more than to keep outside of them; but if you keep outside of an Act which creates for public purposes licensing powers in magistrates, it is manifest that you do not exercise the power at all. Now, in this case, without meaning at all to deny that it is confided to the discretion of the magistrates to determine what particular localities within their jurisdiction require other hours for opening and closing than those specified, yet it is quite obvious that such discretion as they have is not an arbitrary discretion to define, with or without reasons apparent to themselves, any localities they please, but they must be such localities as they consider, in the honest and *bona fide* exercise of their own judgment, to require a difference to be made. The participle "requiring" is connected with the substantive "locality," and therefore it must be a requirement arising out of the particular circumstances of the place. The magistrates must, in the

exercise of an honest and *bona fide* judgment, be of opinion that the "particular locality" (I must use the language of the Act, though it does not seem to me to be the best English in the world) which they except from the ordinary rule is one which, from its own particular circumstances, requires the difference to be made. It is quite evident that the Magistrates have not proceeded upon that ground in this case, and therefore, without saying absolutely that no case could possibly be conceived in which there happened to be only one or two public houses situated within the district, and those really so situated that a good reason could be given for applying the exception to them—without saying that such a case would be impossible, it is enough to say that it is perfectly clear and on all hands conceded that that case does not exist here.

Interlocutor affirmed, and appeal dismissed, with costs.

Counsel for Appellants—Lord Advocate (Gordon) Q.C., Solicitor-General (Holker), Q.C., and W. A. O. Paterson. Solicitors—Simson, Wakeford, & Simson. Edinburgh Agents—J. & A. Peddie, W.S.

Counsel for Respondents—Southgate, Q.C., Kay, Q.C., and R. V. Campbell. Solicitors—Grahames & Wardlaw. Edinburgh Agent—A. Kirk Mackie, S.S.C.

Tuesday, April 21.

(Before Lord Chancellor Cairns, Lords Chelmsford and Selborne.)

JOHN WATT, JUN. *v.* JOHN LIGERTWOOD AND WILLIAM DANIEL.

(*Ante*, vol. ix. p. 20.)

Damages—Imprisonment—Contempt of Court.

A petitioner's agent in a Sheriff Court carried off the petition against the wish of the Sheriff. The Sheriff granted a caption for recovery of the petition, without giving the agent notice, and the agent was imprisoned. In an action of damages for wrongous issue of a process caption, against the Sheriff-Clerk and his Deputy,—*Held* (affirming decision of Second Division), that the Sheriff had acted regularly in granting a warrant to imprison the agent, and that no notice was necessary in the circumstances.

Expenses.

Judgment altered so far as to give the respondents their costs—no costs having been given in the Court of Session.

This was an appeal from a decision of the Second Division of the Court of Session. An action of damages was brought by the appellant, Mr Watt, against the Sheriff-Clerk and his Deputy for false imprisonment in the following circumstances:—Mr Watt, as law agent for Mr Mowatt, was about to present a petition for interdict to the Sheriff of Aberdeen, and on the day appointed for hearing the application, Mr Watt appeared before Mr Sheriff Thomson, there being also an agent present from his opponent to oppose the application. On 19th March 1867, Mr Sheriff Thomson being thus in Court, and the matter being mentioned, both agents were heard, and the Sheriff intimated that he would refuse the interdict. The Sheriff was then in course of directing the Sheriff-Clerk (Mr Daniel) then officiating for Mr Ligertwood, who was absent in London, to endorse the refusal on the petition, which was lying on the table. Mr Watt, on hearing the Sheriff's decision, said, then "I withdraw the petition," and he took up the petition. The Sheriff told him it could not be withdrawn, and must be left on the table, and if removed it would be treated as a contempt of Court. Mr Watt, however, kept the petition and walked away with it to his office. Mr Daniel then applied to the Sheriff for a caption to recover the document, and filled up the usual warrant, which the Sheriff signed, and the officer went with it. Mr Watt, on seeing the officer, tore up the petition and put it in the fire. The officer then apprehended Mr Watt, and lodged him in prison. He was released next day. He soon after commenced an action against the Sheriff, the Sheriff-Clerk, and the Sheriff-Clerk Depute, claiming £5000 damages and solatium for his imprisonment. The action, after an appeal to the House of Lords in 1870, was dismissed as against the Sheriff. The other defenders, however, were proceeded with. The pursuer alleged that the petition was his own document, and that at all events the Sheriff-Clerk had no right to issue without notice a warrant of imprisonment, which was incompetent, reckless, and illegal. The defenders contended that the document was part of the process, and was in the custody of the Court. The Lord Ordinary held the allegations to be irrelevant, and dismissed the action. On reclaiming note, the Second Division varied from that judgment, and pronounced an interlocutor to the effect that in the circumstances the petition was a document in the custody of the Court, that it was competent to the Sheriff to issue a summary order or warrant ordering the pursuer to restore the petition, failing which to be immediately imprisoned till that order was implemented. but that it was irregular to carry into execution a warrant on an ordinary process caption without notice, but as the pursuer, from his own illegal and culpable conduct, was in any view liable to be proceeded against in a summary manner, he was not entitled to damages against the Sheriff-Clerk or his Depute for an error in form committed by the Sheriff in the course of his official duties, and the action was dismissed, but no expenses were found due to either party. The pursuer appealed against that judgment, and there was a cross appeal by the respondents.

Counsel for the appellant contended that the Sheriff-Clerk Depute acted harshly and unjustifiably, and no warrant to imprison could lawfully issue without first giving notice.

Counsel for the respondents were not called upon.

At giving judgment—

The Lord Chancellor said that in 1867 an act was committed in the Sheriff-Court of Aberdeenshire which he was unable to describe in any other terms than as a gross and unjustifiable contempt of Court. A document which was in the custody of the Court was carried out of Court by the appellant, and this was done in defiance of the express order of the Sheriff, and after distinct notice from him that it would be treated as a contempt of Court. The question arises, What course was open to the Sheriff in these circumstances? It was contended for the appellant that the Sheriff