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

ought to have issued a process caption, with all the accompaniments of that proceeding, and notice should have been first given to him to return the document within a certain number of hours, and failing its return, that a process caption would then issue. The process caption was a process applicable to the ordinary practice of borrowing documents from the Court and giving a receipt. In that case notice must be given before the document can be called back. But here the document had been taken wrongfully, and not borrowed or possessed rightfully. Such a proceeding, therefore, as the process caption was not appropriate to this case. What, then, could the Judge do, for clearly he must have had some remedy? In his (the Lord Chancellor's) opinion, the Judge might have treated it as a contempt of Court, and vindicated his dignity by at once committing the appellant. But there were two other courses open, both milder and gentler. He might have done what the Inner House said he ought to have done —namely, give notice to return the document, and failing its return, imprison him. Or thirdly, the Sheriff might have imprisoned the appellant, and kept him in prison until he returned the document. This last was the course actually followed. It is true the words process caption were put by some mistake at the head of the warrant, which was unnecessary. At the same time, the warrant to imprison was quite right, and the dignity of the Court could not have been properly vindicated without it. He (the Lord Chancellor) regretted that so long a litigation had followed, especially after the previous appeal to this House, and that so much money had been spent, or rather wasted, in such proceedings. But the judgment of the Inner House was in the main right, and the first appeal ought to be dismissed with costs. As to the cross appeal brought by Mr Ligertwood and Mr Daniel, the interlocutor of the Court of Session ought to be reversed so far as it found that the Sheriff had acted irregularly, and so far as it found no costs to be due to the respondents. He therefore proposed to reverse the interlocutor of the Court, and, in place of it, remit the case, with directions that the defenders (the respondents) should be assoilzied, with expenses.

Lord Chelmsford said he would have simply expressed his agreement with his noble and learned friend if it had not been that two learned Judges of the Second Division had held the Sheriff to have acted irregularly in not giving special notice before imprisoning the appellant. In his (Lord Chelmsford's) opinion no notice whatever was necessary. The case was regularly before the Sheriff when the document was taken away. Can there be a doubt that the Sheriff could issue a warrant of imprisonment against the appellant until he restored the document? It was said the Sheriff proceeded irregularly in issuing a process caption. But as to that, it rather appeared he was right enough. The position in which Watt stood was exactly the same as if he had borrowed the document, and as if the usual notice to return it had expired and yet he wrongfully detained it. The Lord Ordinary in this view very tersely and well described that a process caption was appropriate. It was quite plain a warrant could and should issue to imprison the appellant, as there was no excuse whatever for his conduct, and it was only astonishing that the Inner House could in such a case have made the defenders pay their own costs. As regards Mr Ligertwood, there was no pretence for making him a defender at all, for he was in no way answerable for his deputy. The worst that could happen was that the deputy should be responsible as if he was sheriff-clerk. Mr Ligertwood ought, therefore, to be wholly discharged from all liability. The judgment of the House, therefore, should be to alter the decision of the Inner House in favour of the respondents, and give them their costs.

Lord Selborne said he also concurred in the judgment proposed by the Lord Chancellor. The Lord Justice-Clerk differed from the other Judges, so that there were two Judges against two in the Court below. It would certainly be extraordinary in a case like the present, where the appellant had behaved so strangely, if the officers of the Court should be held liable for their own costs of this litigation, which had on various frivolous pretences been kept on foot no less than seven years. It would be hard that the respondents should be liable to this heavy expense, and the judgment of the House would correct that error in the decision of the Court below.

Affirmed with costs, and judgment varied.

Counsel for Appellant—J. Pearson, Q.C., and Robertson. Agent—William Officer, S.S.C.

Counsel for Respondent—Lord Advocate (Gordon) and Anderson. Agents—Tods, Murray, & Jamieson, W.S.

Friday, April 24.

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

LORD ADVOCATE *v.* JAMES DRYSDALE.

(*Ante*, vol. ix., p. 308.)

Teinds—Inhibition — Tacit Relocation — Bona fide *Perception.*

A lease was granted by the Crown to certain proprietors, for themselves and in trust for the whole other vassals of the Lordship of Dunfermline, of the teinds and feu-duties of their lands, in consideration of a *cumulo* tack-duty of £100. This lease expired on 23d March 1780; but it was admittedly continued by tacit relocation till 1838. In May and June of that year the Crown raised and executed an inhibition of teinds, and also obtained decree in an action of removing, putting an end to the lease as at 23d March 1839, so far as it related to subjects other than teinds. Thereafter the beneficiaries under the lease paid the feu-duties due from their lands to the Crown; but no teind duties were paid or claimed till 1868.

In an action at the instance of the Crown, as titular, against one of the vassals of the Lordship of Dunfermline for payment of arrears of surplus teinds since the date of the inhibition—*held* (affirming judgment) that the defender had a title sufficient to sustain the plea of *bona fide* perception.

In this action the Lord Advocate, on behalf of the Crown, claimed various sums, amounting, exclusive of interest, to £1136, 3s. 0d., being arrears