

that your Lordships have a perfect jurisdiction upon the third and fourth interlocutors, and upon the first interlocutor also. It was argued that the first interlocutor could not be brought here by appeal, because it was an interlocutor of the Lord Ordinary, which had not been taken to the Inner House. But it would be a great misfortune indeed, if that circumstance should exclude from review by this House an interlocutor of this sort, which could not go to the Inner House, because it was, by consent of all the parties, agreed, that the proceedings in the other case should govern the decision in this case. Of course, there could not be an appeal to the Inner House upon that. But on looking at the act, I find that there is nothing whatever to exclude such an interlocutor from the review of your Lordships. What is said is, "Nor shall any appeal to the House of Lords be allowed from interlocutors or decrees of Lords Ordinary, which have not been reviewed by the Judges sitting in the Division to which such Lords Ordinary belong. Provided that, when a judgment or decree is appealed from, it shall be competent to either party to appeal to the House of Lords, from all, or any of the interlocutors that may have been pronounced in the cause." So that it includes everything. In a common case, your Lordships might be slow to listen to an appeal against an interlocutor, which had not been brought under the cognizance of the Inner House, but your Lordships can have no such feeling with respect to an interlocutor which could not be brought before the Inner House, in consequence of an agreement to which the two parties had come with respect to the course of proceeding. Indeed, it would be contrary to all good faith to listen to such an objection, when the clear intention of the parties was, that the result of the one case should govern the result of the other.

*Lord Advocate.*—I do not understand your Lordships to reverse the interlocutor disallowing the exceptions. It is not a matter of interest to the parties, but I think it right to suggest to the House, that that would be a deviation from established practice.

LORD CRANWORTH.—I think that to reverse that interlocutor would be establishing a bad precedent, because it is not properly before us.

*Interlocutors of 31st January, 15th July, and 19th July 1855, reversed, and defenders below assoilzied; damages and expenses (if any) paid under the interlocutors below to be repaid. Appellants' Agent, John Leishman, W. S. Respondents' Agent, David Manson, S.S.C.*

JUNE 18, 1858.

ALEXANDER HAMILTON, *Appellant*, v. THOMAS ANDERSON, *Respondent*.

Judge—Contempt of Court—Sheriff-Substitute—Reparation—Damages—Summons—Relevancy—*A sheriff-substitute having, in the course of making up a record, ordered a particular statement by the defender to be expunged as untrue, and as reflecting on him as a Judge, the agent of the defender refused to do so, explaining in a minute his reasons to be, that the statement was relevant for the defence, that it was true, and that it was not intended as disrespectful to the Court. The sheriff-substitute, without further notice, suspended the agent for a month from his functions as a procurator before the Court; but the sheriff, on appeal, recalled this deliverance, and reponed the agent, who brought an action of damages for reparation, averring malice and want of probable cause.*

HELD (affirming judgment), *That the procedure of the sheriff-substitute was a judicial act, not in itself incompetent, or in excess of jurisdiction; and he was not liable.*<sup>1</sup>

The pursuer appealed, maintaining, in his case, that the judgments of the Court of Session should be reversed, because—“ 1. The order or warrant under which the appellant was suspended from his functions of procurator was inconsistent and self-contradictory, bearing to proceed upon disobedience of an order against the appellant, which order was never made. 2. The suspension of an agent for the neglect of an order on his clients was wholly irregular and unwarrantable. 3. The suspension was issued and ordered to take instant effect, without any premonition to the appellant—without any notice being given of any such step being in contemplation—and without any legal certioration from which such a result could be anticipated. 4. There was no contempt committed, and, consequently, no jurisdiction to punish for contempt. 5. It was the duty of the sheriff-substitute himself, if he thought the passage in question to be irrelevant or unnecessary, to have expunged it himself, in terms of the Statute 16 & 17 Vict. c.

<sup>1</sup> See previous reports 18 D. 1003; 28 Sc. Jur. 459. Jur. 608.

S. C. 3 Macq. Ap. 363; 30 Sc.

80, § 4. 6. The averments of malice and want of probable cause were improperly disregarded. 7. Inferior Court Judges, according to the law and practice of Scotland, have no absolute protection in reference to their actings as such, but are amenable to the consequence of injury occasioned by irregularity or misconduct by way of an action of reparation. 8. The Court of Session had failed to entertain or dispose of the declaratory and reductive conclusions of the summons on their merits. 9. Generally, the judgment of the Court of Session is at variance with the principles of law and justice, the appellant having suffered great wrong by reason of the unwarrantable acts of the respondent, and being entitled to redress for the wrongs so sustained."

The respondent maintained in his *printed case*, that the judgments ought to be affirmed: "1. Because the action was uncalled for, unnecessary, and incompetent as a means of obtaining a review of the sentence or order of suspension which had been passed against the appellant, inasmuch as that sentence or order had been reviewed and set aside by the sheriff before the institution of the appellant's action. 2. Because the sentence or order of suspension complained of by the appellant was a judicial act within the competency and jurisdiction of the respondent, and because no case has been stated by the appellant relevant to infer, that the respondent acted in excess of his jurisdiction, or otherwise than in the legitimate exercise of his judicial functions. 3. Because in regard to the matter complained of, the respondent not only acted judicially and within his jurisdiction, but also, because no relevant case of malice and want of probable cause, or other specialty, had been alleged or attempted to be made out by the appellant."

*Lord Advocate* (Inglis), and *Solicitor-General* (Cairns), for the appellant.—We do not say that a sheriff cannot in any circumstances suspend a procurator, but that the respondent could not do so in the present circumstances. What the respondent did was not a judicial act in substance, though it may have been so in form. But even, according to the terms of the interlocutor, it ordered the appellant's clients to strike out the offensive passage, and it was for the clients alone to consider whether they would comply. It was no fault of the appellant, that they did not comply, and the sheriff had no right to punish him by suspension for their not complying. The sheriff never ordered the appellant personally to do anything. The Judges of the Superior Courts are, no doubt, protected against actions in respect of judicial acts done in course of a suit, as in *Haggart v. Hope*, 2 Sh. Ap. 129; *Allardyce v. Robertson*, 4 W. S. 102; *Gibb v. Scott*, Elchie's Pub. Off. No. 9; *Oliphant v. M'Neill*, 5 Br. Sup. 573. But it was assumed throughout in the two first cases, that if malice was proved against an inferior Judge, he would be liable in damages. Malice here is alleged in the condescendence, and obviously existed in fact; for the sheriff might, if he chose, himself have deleted the offensive passage. The conduct of the respondent was wilful and groundless, and he was not entitled to protection.

*Sir R. Bethell* Q.C., and *R. Palmer* Q.C., for the respondent, were not called upon.

LORD CHANCELLOR CHELMSFORD.—My Lords, this case appears to me so entirely clear from doubt, that it is unnecessary to call for any argument on the part of the respondent's counsel. This is an appeal against interlocutors of the Court of the Second Division, affirming the interlocutor of the Lord Ordinary, by which he found "that the interlocutor or sentence pronounced by the defender, and for which damages are claimed, was a judicial act, not incompetent nor in excess of jurisdiction, and that an action of damages against the defender, for such an interlocutor or sentence pronounced by him as a judge, competently and within his jurisdiction, is not maintainable: Therefore, dismisses the action, and decerns: Finds the defender entitled to expenses."

In this case the appellant is a procurator, practising in the Sheriff-Court of Ayrshire, and the respondent is the sheriff-substitute in that Court, and this action arose out of certain proceedings before the respondent, as Judge. An application was made to the respondent for an interim interdict, which was granted by him, to certain persons of the name of Gilmour and Anderson against Gilchrist, in respect of the proposed removal of certain machinery and utensils from a mine, of which Gilmour and Anderson were the tenants to Gilchrist. That interim interdict having been granted, there was an application made for the purpose of discharging that interdict; and a statement was made on behalf of the defenders, in which there was a passage which was considered objectionable by the sheriff-substitute, and upon which the whole question arises. It is to be found in the fourth article of the defender's counter statement. It states, "Under this second lease the defenders for some time proceeded with the workings, but finding that they were getting into greater difficulties, and vastly increasing, in place of diminishing, their heavy loss, they resolved on abandoning the pit, as it had become unworkable to profit;" and, accordingly, on the 5th of June 1855, they addressed the following letter to the pursuer, (then the letter to the pursuer is set out), and it proceeds,—"The defenders, as a matter of course, nevertheless remained bound for a payment of the fixed rent of £300 of lordship, which has been duly accounted for;" and then comes the passage in question, "This notice of the abandonment of the pit was, in the space of a few days, followed by a petition for interdict, at the pursuer's instance, against the defenders, which your Lordships granted before hearing the defenders; but it has been finally disposed of by an eminent engineer to whom it was referred." Now it

appears that the respondent, the sheriff-substitute, took umbrage at this passage in the defenders' counter statement; he seems to have considered that it was some imputation upon him, that he had proceeded improperly and in an *ex parte* manner. I certainly cannot help regretting that he should have viewed the statement in that light; but, at the same time, there might have been circumstances connected with these proceedings which might have led him to regard it much more seriously than the words themselves seem to justify. However, acting upon his impression, on the 31st of October 1855, he made an order for the defenders to expunge this statement, which he describes as being "to the effect, that a petition for interdict at the pursuer's instance was granted against the defenders before hearing them." It appears by a note which is appended to that interlocutor, that there had been an application made to the procurator to expunge this, which was considered to be an objectionable statement; because in that note it is stated, "The procurator who signs the paper refuses to expunge the statement voluntarily, and the sheriff-substitute has no alternative but to pronounce the above interlocutor. He does so with extreme pain and reluctance." And it appears also, by that note, that the interlocutor was pronounced because the sheriff-substitute "felt that the statement was not only untrue in itself, but from the tone of the defender at the discussion to-day, it was obviously intended as disrespectful to the Court."

Now it has been insisted, on the part of the appellant, that the statement was in fact the statement of the defenders, and that the interlocutor was directed against them; that the procurator had nothing whatever to do with that statement; and, therefore, that any proceeding against him upon the refusal of the defenders to expunge that statement was wholly unwarranted. But there can be no doubt that the proceedings are, in fact, prepared by the procurator; he is an officer of the Court; he is answerable to the Court for the propriety of those proceedings; and it is obvious from what took place on this occasion, that the procurator himself was satisfied that he was the person who was responsible; and that, in fact, the statement was his own act, because, although in the note itself it is said, that "the tone of the defender at the discussion to-day was obviously intended as disrespectful to the Court," yet your Lordships must give a sensible meaning to the expressions which are used, and your Lordships must be perfectly aware, that as the person who would attend on behalf of the defenders before the Court, would be the procurator, it would be he who would justify the statement in the proceedings; and, therefore, if there were any disrespectful tone assumed to the Court, it would be he who would assume it, and not the defenders. And it is quite clear, that he, knowing the contents of this note which was appended to the interlocutor, assumes in the minute, to which I am about to refer, not that the defenders themselves were the persons who would be answerable for anything objectionable, but that he himself was answerable, not only for the particulars of the statement, but for anything to which the sheriff-substitute might object in the proceedings which had taken place in the Court, because he proposed, in answer to this interlocutor, and the note which was appended to it, to present a minute to the Court in these terms: "The defenders respectfully decline to expunge the passage referred to in the foregoing interlocutor, for the following reasons: first, because they consider the statement to be relevant to their defence; second, because it is a true statement; and third, because it is not in any degree disrespectful to the Court. The defenders' procurator takes this opportunity to disclaim any intention of offering disrespect to the Court in the passage complained of, and he submits that it does not bear such a construction."

Now, it has been suggested, on the part of the appellant, that this minute contains two heads of answer; one referring to the defenders, and the other to the procurator himself. But the minute was necessarily framed, first of all, upon the interlocutor of the sheriff-substitute, which is directed to the defenders themselves, as persons who are to frame the statement which had been made; and, therefore, he would, in this minute, necessarily introduce the name of the defenders. But that the procurator himself considered, that he was the person who was responsible, and that the statement was his own, appears clearly from the terms of the minute. "The defenders' procurator takes this opportunity to disclaim any intention of offering disrespect to the Court in the passage complained of." Now, if the passage complained of, as has been alleged by the appellant, must be considered to be the defenders' statement, and not the statement of the procurator, why should he assume to himself the authorship of that passage? And then he argues upon it. "And he submits that it does not bear such a construction. It is now within a few months of 40 years since he became a licensed procurator, and during that long period, the present is the first time that any statement made by him in judicial proceedings, has been called untrue or disrespectful to the Judge. He cannot but feel sore at the charge imputed to him. He is anxious to believe that the Court has misapprehended the meaning of the statement of fact in question; and, if so, he is hopeful that the Court will consider it proper to strike out the words in the note appended to the interlocutor, 'that the statement is untrue in itself,' which, the procurator submits, would only be an act of justice to him." Why "an act of justice" to him, if the statement is considered to be the statement of the defenders, and not the statement of the procurator?

Now I must express my very deep regret at the conduct of both parties in this matter. In

the first place, I think it is to be regretted that the sheriff-substitute took the view which he did of this statement, or that, taking that view, he did not act in a different manner. I think it would have been infinitely better if he had exercised the authority which was given to him, I think, by the act of 16 and 17 Vict. c. 80, § 4, by which the sheriff, before the record is adjusted and closed, is "to strike out of the record any matter which he may deem to be irrelevant or unnecessary." I think it would have been a more dignified course of proceeding, if he had adopted the mode that is pointed out by the act of parliament, and exercised the authority which is there given to him. But he was not bound to do so. He had his reasons, of course, for believing, that that statement was intended as a deliberate insult to him, and, under the circumstances, he thought he was bound to protect himself, by requiring the procurator voluntarily to expunge that passage from the statement.

Now it is very much to be regretted that the procurator did not comply, because the statement, although, perhaps, it might not be irrelevant, was wholly unnecessary. There was not the least occasion that this should remain a portion of the narrative of the transactions which had taken place. Therefore, a little yielding on both sides upon this occasion, would have prevented a very disagreeable contest, and one which, I cannot help feeling, might easily have been obviated, by a little forbearance on the one side and upon the other. But, however, the question here is, not whether the sheriff-substitute was justified, in point of propriety or good feeling, or good taste, in adopting the course which he has done, but whether he had authority to do the act, and whether it is possible for the appellant to contend successfully, that under the circumstances he can maintain an action against him.

Now the procurator having refused to expunge the statement on the 7th November 1855, the sheriff, upon a motion for leave to lodge a minute in reference to the immediately preceding interlocutor, (that is, the interlocutor requiring the statement to be expunged,) "and also the process for interdict alluded to therein, refuses the motion as incompetent, the defenders having failed to obtemper the said interlocutor." Therefore, on the 7th November 1855, the defenders, and the appellant, who was acting for them, were aware, that the sheriff-substitute insisted upon obedience to the interlocutor. Well, I think, then, there was ample time for them to have obeyed; but they refused to do so. I think here there is some forbearance on the part of the sheriff-substitute, because he does not act from the 7th November 1855 until the 21st November. Then, on 21st November, there having been a refusal to obey an interlocutor, which it was competent for the sheriff-substitute to pronounce, he then says, "In respect the defenders' procurator still refuses to obtemper the interlocutor of Court of 31st October, suspends him from exercising his functions as a procurator before the Sheriff-Court of Ayr, for one month from this date. And in order that the pursuer may not be obstructed in issuing his cause, ordains the clerk of Court *instanter* to withdraw from process the defences and relative productions." The question here is, whether it was competent to the respondent, under the circumstances which have been brought to your Lordships' attention, to issue this interlocutor, temporarily suspending the appellant from his functions. Now it is clear, that every Court must possess inherently in itself a power to prevent any contempt of its proceedings; and, undoubtedly, in general, it must exercise a controlling and censorial power and authority over the officers practising in the Court. It is clear that this particular interlocutor was within the competency of the sheriff-substitute. He had authority given to him, not only by the act of parliament to which I referred your Lordships, but also, I should say, at common law, to reform and to amend the pleadings, and to correct any irrelevancy in them. Well, now, who is the person who is always considered, in all Courts, responsible for the pleadings? Why, the legal adviser. I remember having seen a case, which I think is in Cowper's Reports, (*Price v. Fletcher*, Cowp. 727,) that Lord Mansfield, animadverting very strongly upon the prolixity of pleadings at that day, it having been the habit, in actions for breach of covenant, to set out upon the record the whole of the deed in which the covenant was contained, intimated, that if anything of that kind came before him in future, he would inquire who was the counsel who had prepared the pleadings. And so it must always be taken, that in all legal proceedings before the Court, the officer of the Court, the legal agent, the person who is entrusted with the preparation of those pleadings, is answerable for any irrelevancy or impertinence that may appear in them.

Then, it being competent to the sheriff-substitute to pronounce an interlocutor, which would have to be obeyed by the person who had prepared the proceedings, is it possible to say, that, in the absence of express malice on the part of the sheriff-substitute, he can be responsible, in an action for damages, for punishing a person who has refused obedience to his lawful interlocutor?

There is no allegation here of any express malice on the part of the sheriff-substitute. The averment is merely, that he did the act maliciously, and without reasonable and probable cause. But I apprehend, even supposing the sheriff-substitute could have been made responsible, under any circumstances, for this judicial act, which was within his competency, that, at all events, express malice—not malice involved in the act, or to be inferred from it—but express malice would be necessary, in order to found an action of this description against him.

It is unnecessary for me here to consider whether, if malice had been alleged, but yet the act

itself was within the judicial competency of the Judge, an action could have been founded against him. It is perhaps better, upon the present occasion, to confine ourselves strictly to the consideration of the case which is immediately before us.

Several cases have been cited on the part of the appellant, none of which appear to me to have any application to the particular case before your Lordships. I allude to the cases of *Hagart's Trustees v. Hope*, and *Robertson v. Barclay*; *Gibb v. Scott*, and *Oliphant v. M'Neil*. None of these cases were cases in which there had been judicial acts which had produced injury and damage to the party complaining. They were, all of them, cases in which defamatory words were spoken in the course of particular proceedings.

Within what limits judges may be protected in expressions which are used by them in course of delivering their opinions from the judgment seat, it is unnecessary for me here to consider. Those are cases which have no application to the present, which is a case, not of any defamatory expressions, but of a judicial act within the competency of the Judge who has performed it, unaccompanied with any proof, or any allegation, of any express malice on his part. And, therefore, it appears to me, that it would be contrary to all principle, as well as contrary to all authority, to say that, under circumstances like these, a Judge could be made responsible, in an action for damages, to the party who has suffered in consequence of that judicial act.

There seems to have been no doubt entertained at all by the learned Judges in the Court below, as to this action not being maintainable. The Judges, one and all, expressed a clear and decided opinion, in the first place, that this act was competent and within the jurisdiction of the sheriff-substitute; and, in the second place, that the mere allegation generally of malice, was not sufficient to found an action of this description.

I apprehend that this case is so perfectly clear, that it is highly important that your Lordships should express, in the most clear and unequivocal manner, the opinion which you entertain upon it, in order to prevent appeals of this description being brought to your Lordships' House, and to discourage persons from coming here with cases which really have no foundation either in principle or in authority. Under these circumstances, I feel bound to recommend to your Lordships that this interlocutor should be affirmed with costs.

LORD BROUGHAM.—My Lords, in this case the sheriff-substitute makes an order which he had an undoubted jurisdiction to make; an order which, I take it to be clear, from the practice of the Court below, and the manner in which all the learned Judges deal with that part of the case, he competently and regularly made upon the defenders and their procurator, who were bound to obey that order. Your Lordships will find, that the Judges, who well knew the practice both of the Sheriff-Court and of their own, had no doubt whatever that a regular order was made. The procurator had a course of proceeding open to him if he chose to object to the order. He might have appealed from the sheriff-substitute to his principal the sheriff-depute, and that would have brought the whole matter before him upon that first stage of the proceedings. He might have contended, (though I think he could hardly have done that under the circumstances,) that the order was beyond the competency of the sheriff-substitute. But he did not appeal; he refused to obey, and did not appeal. Then comes the next stage of the proceedings. The Court upon this refusal to obey, after a certain delay, pronounced his suspension for a month, with a correlative remedy to the suitor, to prevent the delay of his proceeding in consequence of the suspension of his legal agent. Upon that suspension the procurator brings his action.

Now, as I have no doubt whatever that both the orders were within the jurisdiction of the sheriff-substitute, that he had a right to make the order for expunging the allegation; and that upon that order being disobeyed, he had a right to censure, and if he chose to go beyond that censure, as he appears to have thought it is duty to do in this case, to suspend for a month (that being also within his jurisdiction); it is perfectly clear to my mind, that, in the circumstances of this case, an action against the Judge for an act which he did judicially, and in a matter within his jurisdiction, does not lie. It is unnecessary to give any opinion as to the conduct of the sheriff-substitute in this case, because the question simply here is, Does the action lie or not? I might perhaps have agreed with my noble and learned friend in rather regretting, that the sheriff-substitute took the view of the allegation which he did; but, nevertheless, I have nothing to do with that. And I might perhaps also regret that he went so far as to suspend this gentleman, who had been, as is stated, a practitioner in the Court for forty years without blame. It is possible, that if I had myself been sitting in the position of the sheriff-substitute, I might not have taken the same view; but that is perfectly immaterial to the question now before us. The question is, if he had a right to make the order, and it was a judicial proceeding, whether the action does or does not lie.

I cannot close the few observations which I have thought it right to add to those of my noble and learned friend in this case, without adverting to the full and elaborate, and, in my opinion, generally speaking, well grounded judgment, pronounced by the late Lord Justice Clerk Hope; and in so doing, I cannot, upon this the first occasion of referring to the lamented event which has happened within the last three or four days, help expressing my deep sorrow for the great loss

which the profession and the bench have sustained in losing that most able and learned and most industrious and most conscientious Judge.

LORD CRANWORTH.—My Lords, this case raises what would be a most important question, if it were a question, that in my view, at least, was involved in any sort of doubt. It is the case of an action by a practitioner in one of what I must call the Superior Courts against a Judge; not for something done extrajudicially, but because, according to the opinion of that practitioner in the Court, the Judge has made an order which he thinks was not a correct order. Now, if your Lordships were for a moment to tolerate the notion that such actions could be maintained, there could hardly be a case in which such an action might not be brought upon similar grounds; and I need hardly say, that the merely adding that it was done maliciously amounts to nothing at all. That would, in the opinion of the aggrieved party, be always true; or, at all events, it would be what he would be perfectly able to state.

I have said that this Court (the Sheriff-Court) must be considered as one of the Superior Courts. What is meant exactly by the Superior Courts, as the expression is applied in different countries, it is difficult to define; but I take it thus from the judgment of the very learned Judge whose loss we all deeply deplore, (Lord Justice Clerk Hope,) who gives this description of the Sheriff-Court:—"Their position is quite different from that of a Justice of the Peace" (alluding to a case of different circumstances, where an action had been brought against a Justice of the Peace, not for something that he had done, but for something that he had said extrajudicially in the opinion or judgment that he had pronounced): "The Courts are not only, to use an English phrase, Courts of record, (with great deference, I think that is a mistake, the term "Court of record" has a definite meaning,) but Courts of very high authority. Their jurisdiction in many branches of the law, and especially in regard to the ordinary transactions between man and man, is co-extensive with that of the Supreme Court. Their proceedings are conducted by regular pleadings in as formal a manner; their procedure is regulated by statute, and by the rules prescribed by the Supreme Court. Their Judges are permanent, not acting voluntarily on particular occasions as suits their own convenience, or according to the taste they have for particular cases. . . . Their functions are not limited, as that of the Justices, to a particular class of cases; their jurisdiction is not summary like that of the Justices." Therefore, as the Lord Justice Clerk points out, the sheriffs are Judges presiding in Courts of the very highest importance in that part of the United Kingdom.

Then, that being so, it appears that a case came before the Court, in which the Judge of the Court, though I do not go into the question whether he thought rightly or not, but he thought, that a certain portion of the pleadings was not only, as we should say in the Court of Chancery, impertinent, but scandalous,—that would be the true interpretation of what he meant to say; and he directed, that it should be expunged. Now, if that was wrong, the remedy of the party was obvious—to appeal against that direction. The parties do not appeal against that, but simply set themselves in defiance of the Judge, and say, "We will not expunge it; you have ordered something which you ought not to have ordered; and we tell you, that we do not mean to obey." And a long written minute is proposed, shewing why it is that the defender said, that they should not obey that order. In that minute, as was pointed out by my noble and learned friend on the woolsack, the professional person takes, in truth, the whole blame of that which had incurred the displeasure of the Judge upon himself, and, I dare say, very properly. He knew that he was the person who had prepared the pleadings, and he attempts to justify it, and says, "that he hopes that the order will not be persisted in, because he considers, that it will be personally offensive and injurious to him." The Judge, however, takes a different view of the case, and refuses to admit any such minute, and says, "You must obey the order." Now, that he was acting rightly, I think that there is the high authority of the Court of Session for saying, because the Lord Justice Clerk says, "I can view it in no other light than deliberate contempt of Court"—he thinks that the sheriff was perfectly right—"and I cannot reconcile the procurator's conduct with any other state of feeling than the desire to bring the matter to this issue. I am to triumph in my refusal, or the sheriff must take up the matter as contempt." If that was a correct view of the case, then the sheriff, even if this first order was wrong, had no other course to pursue. He could not, with propriety in the due discharge of his judicial duties, leave an order on record, as I may call it, directing something to be done, and have that met by a direct refusal on the part of the person who had to obey it, saying, "We will not appeal against your order, but we tell you that we do not mean to obey it." It was impossible for him, with a due regard to his position as the Judge of one of those Superior Courts, to pass that over.

I do not go through the case again, because I always feel, that to go over ground again is mere waste of time. I entirely agree with both my noble and learned friends who have preceded me. I think that here your Lordships cannot do otherwise than affirm this judgment with costs.

*Interlocutors affirmed with costs.*

Wotherspoon and Mack, W.S. *Appellant's Agents*; A. and A. Campbell, W.S. *Respondent's Agents*.