the extract decree of absolvitor in favour of Mr Smith, which embraces decree for expenses in favour of the charger, who was Mr Smith's agent? As a second extract of the decree would only cost £1, 3s., and could be got by any one, this sum is the whole pecuniary interest involved in the present suspension, to which it may be added, that it seems very immaterial in whose hands the formal extract decree may remain. There is no other dispute between the parties. . . .

"It is quite fixed in law and in practice that a defender who obtains decree of absolvitor with expenses is entitled to an extract of that decree at the expense of the unsuccessful pursuer. This is a matter of every-day practice, and was recognised in the case of *Hunter* v. *Stewart*, 18th Nov. 1857, 20 D. 60. Mr Smith, who had been defender in the action at Mrs Williams' instance, and who succeeded in obtaining decree of absolvitor with expenses, was therefore entitled to an extract of that decree at Mrs Williams' expense. He obtained that extract accordingly. It is No. 16 of process in the present suspension, and admittedly Mrs Williams, the suspender, must pay therefor. The same extract decree of absolvitor embodies and contains a decree for the expenses, which was allowed to go out and be extracted in name of Mr Thomas Carmichael, who had been Mr Smith's agent, and who had been the disburser of these expenses; and the question is, whether Mr Carmichael, the present respondent, on receiving payment of those expenses, is bound to give up the extract decree of absolvitor which really belongs to his late client Mr Smith, and which merely contains as an accessory or pertinent the decree for expenses. The Lord Ordinary thinks that he is not. The extract decree of absolvitor is really Mr Smith's voucher. It is his discharge for the claim made upon him by Mrs Williams, and the mere circumstance that it also contains the decerniture for expenses does not entitle Mrs Williams to demand or obtain possession thereof. The circumstance that the decree for expenses went out in the name of the agent makes no real difference. The extract decree of absolvitor is still Mr Smith's discharge, only it is his agent and not he who will sign the receipt for expenses. It is the decree for absolvitor that is the main thing, and this might in some cases be an important step in the defender's progress of titles. The same principle would apply to a decree of declarator obtained by a pursuer. A pursuer would not in general be bound to give up such decree merely on payment of the expenses. The expenses in such cases are the mere accessory. It may be otherwise when the decree is in a petitory action for a sum of money which, as well as the expenses, is to be paid. It was suggested that a separate extract should have been got for the expenses. The Lord Ordinary does not think this necessary. It certainly is unusual, and in any view it would have been at the suspender's expense.

"Holding the suspender, therefore, to have been wrong in her demand for the delivery of the extract decree of absolvitor, the Lord Ordinary has refused the note of suspension, and expenses must follow."

This interlocutor not having been reclaimed against has become final.

Counsel for Suspender—Adam. Agents—A. & A. Campbell, W.S.

Counsel for Respondent—M'Kechnie. Agent—Thos. Carmichael, S.S.C.

Saturday, May 23.

FIRST DIVISION.

[Sheriff of Lanarkshire.

JAMES HENDERSON *v.* WALTER MACLELLAN AND OTHERS.

Interim Interdict—Continuance—Intimation.

Interim interdict was granted in the Sheriff-court up to a certain day, and on that day was continued in absence of the respondent by an interlocutor which *inter alia* ordained parties' procurators to be heard on the following day, which order was obeyed. A complaint of breach of interdict, said to have been committed after the continuance of the interdict, was dismissed by the Sheriff as irrelevant, on the ground that it did not aver personal knowledge of the continuance on the part of the respondent. *Held* that the respondent having once entered appearance in the cause must be held to know all that took place in it, that he knew what his procurator knew, and the original interdict having been duly intimated, its continuance required no fresh intimation.

On July 31, 1873, the Sheriff-Substitute of Lanarkshire (DICKSON) granted interim interdict at the instance of James Henderson, engineer, Leith, against Walter Maclellan and others, iron merchants, Glasgow. The interdict was to remain in force until August 4, and on that day the Sheriff-Substitute (CLARK) pronounced the following interlocutor:—Having heard the procurator for the petitioner, no appearance being made for the respondents,—on the craving of the petitioner's procurator, Continues the interim interdict already granted till the future orders of Court, and appoints parties' procurators to be heard on the grounds of action and defence to-morrow, in chambers, at half-past 12 o'clock afternoon." On September 3, 1873, the petitioner Henderson presented a petition and complaint, with concurrence of the procurator-fiscal, charging the respondents with various acts in breach of interdict during the month of August, subsequent to August 4.

The defender lodged the following minute of defence:—"(1) That the statements in the petition were irrelevant and insufficient to support the prayer thereof. (2) That the pretended interdict referred to in the petition was never served on, or otherwise intimated to, the defenders, at the petitioner's instance, prior to the service of the present complaint. (3) A denial of the statements in the petition; and explained, that the defenders were in entire ignorance of an interdict having been granted against them on 4th August last; that they had no intention of showing any disrespect to the orders of the Court; and that the interdict referred to having been now brought under their notice, they will pay respect thereto until the same be recalled."

The Sheriff-Substitute pronounced the following interlocutor:—

Glasgow, 29th October 1873.—Having heard parties' procurators on and considered the closed record,—for the reasons stated in the note, finds that the petition does not set forth a relevant complaint of breach of interdict against the respondents; therefore sustains the preliminary defence, and dismisses the petition; Finds the respondents

entitled to expenses, allows an account thereof to be given in, and remits the same, when lodged, to the Auditor of Court to tax and report, and decerns.

"*Note.*—The petitioner complains that the respondents committed breach of an interim interdict, which was originally granted on 31st July until 4th August, and was, by interlocutor of the latter date, continued till the future orders of Court. It sets forth five specific acts of alleged breach of the interdict, on various dates between 6th and 27th August.

"They could have been in violation only of the order of Court continuing the interdict, that which granted it having ceased to be in force before these dates.

"The respondents' procurator contended that the petition is irrelevant, because it does not set forth that the interlocutor continuing the interdict was served on the respondents, or that they knew personally that it had been pronounced. The petitioner's procurator pleaded that service of the interlocutor of continuation was unnecessary, and that the defenders' personal knowledge was to be inferred from the steps in the proceedings averred in the petition; farther, that the averment, that the respondents infringed the petitioner's rights under the patent "in utter contempt and in violation of the interdict,' supplemented any want of specific averment of personal knowledge, and necessarily inferred such knowledge.

"There is no doubt that in a *quasi* criminal complaint like the present, the complainer must set forth facts sufficient to infer the offence complained of, *i.e.*, conduct in violation and contempt of the orders of Court.

"The averment of service of the interdict is ambiguous, being that, 'after the said interdict was granted and served on the respondents,' they violated it on the occasions complained of. This apparently means service only of the interlocutor granting the interdict, not of that which continued it, and which the petitioner's procurator admitted was not served or otherwise formally intimated.

"It is settled that a party's mere private knowledge of the interdict having been granted against him is not sufficient to found a complaint of this nature, seeing that the complainer may, for reasons satisfactory to himself, have resolved not to use it; and the party interdicted is not bound to obey it so long as the complainer has not by some formal act intimated the intention to put it in force; *Clark* v. *Stirling*, 14th June 1839, 1 D. 955, per Lord Mackenzie.

"There is no fixed rule as to the mode of intimation. It may be by notarial act, or by service by an officer of Court, or even by verbal notice (per Lord Mackenzie, in *Clark* v. *Stirling*). But it must be some act on the part of the complainer used for the purpose of intimation.

"The Sheriff-Substitute is not prepared to say that service of the original interlocutor, combined with the defenders' personal knowledge of its having been continued, would not suffice in a case like the present, seeing that the service, combined with the craving for continuance of the interlocutor, sufficiently indicated the petitioner's intention to put the interdict in force.

"But he does not see how service of the original interdict can be held not only to render unnecessary any intimation of the interlocutor of continuation, but also to supply the want of the respondents' personal knowledge of the continuation.

"A party cannot be guilty of contempt of an order of Court of which he had neither private knowledge nor formal intimation. Still more is personal knowledge of the interlocutor of continuation essential in this case, seeing that the defenders' knowledge of the granting of the interdict originally is not averred, and it is not said that it was served on them personally.

"Accordingly, supposing the petitioner were to prove all his averments on these heads, without proving more, there would not be ground for punishing the respondents as in contempt of Court; and the petition must be held as irrelevant; *Ritchie* v. *Dunbar*, 1849, 11 D. 887.

"Nor can the absence of sufficient averments in point of fact to infer an offence of this kind be supplied by the words of style on which the petitioner founds; for in charges of criminality, fraud, contempt of court, and the like, the words stigmatizing the conduct in question must be supported by averring facts which indicate that the alleged offence has been committed. See *Wilson* v. *Dykes*, 1872, 2 Couper's Justiciary Reports, 183, where the Lord Justice-Clerk (Moncreiff) observed, —'As regards the use of the terms "wickedly and feloniously," I may remark that when general words implying criminal animus or intention are used in a libel to characterize acts in themselves indifferent or innocent, something must be stated beyond the general words to indicate the *species facti* which render the act criminal. If the particular act libelled be one to which the general words may reasonably apply, no farther specification may be necessary.' . . . 'But if, as here, the legal result of the specific facts alleged is to leave the act innocent, the general words will not be sufficient as an allegation of crime.'

"In the present case it is thought that, inasmuch as knowledge of the interdict having been granted is of the essence of a charge of contempt of Court for violating it, the absence of an averment of such knowledge cannot be supplied by the general charge of contempt.

"If the question arose on an objection to the relevancy of an indictment for such an offence, the specification of the charge in the minor would be held insufficient to support the major.

"The same principle must apply here, although the manner of its application is different."

The petitioner appealed to the Sheriff-Principal (Dickson), who adhered to the judgment pronounced by himself as Substitute.

The petitioner appealed to the Court of Session.

At advising—

Lord President—I have no doubt at all about this case. Interdict was granted on July 31, and on the same day the Sheriff ordered it to be served on the respondent, his interlocutor being in the following terms:—"Having considered the foregoing petition, Appoints a copy thereof and of this deliverance to be served upon each of the therein-designed defenders, and ordains them to lodge a notice of appearance in the hands of the clerk of Court within three days after such service, with certification; and, *quoad* the interim interdict craved, appoints parties or their procurators to be heard before the Sheriff-Substitute, within his chambers, County Buildings, Glasgow, on Monday the 4th day of August next, at 10 o'clock

forenoon, till which time grants interim interdict as craved." The complaint goes on to state that service was made accordingly. There is no doubt that the alleged breach of interdict did not take place before August 4, and so was not committed during the period for which interdict was originally granted, but the interdict was continued by the interlocutor of August 4. This was not the granting of a new interdict, and by that time the respondent entered appearance. Now, after a party has entered appearance, and been represented by his procurator, he must be held to have known personally all the orders pronounced by the Court in the case, and I can see no reason why the same rule should not be held to apply here. The interlocutor of August 4 was as follows:—"Having heard the procurator for the petitioner, no appearance being made for the respondents,—on the craving of the petitioner's procurator, Continues the interim interdict already granted till the future orders of Court, and appoints parties' procurators to be heard on the grounds of action and defence to-morrow, in chambers, at half-past 12 o'clock afternoon." From this it appears that the respondents' procurator was not present on that occasion, but in obedience to the order pronounced on that day for a hearing on the following day, the procurator appeared and was heard on the grounds of action, so that it is quite clear that parties' procurators were aware on August 5 that the interdict had been continued. Now the presumption is, that a party knows all that his procurator knows. It may be as a matter of fact that this is not always the case, for the procurator may not always communicate to him that which is being done, but I cannot think that in such a case as this an allegation of personal ignorance could be enough; the party must say that he was excusably ignorant; but to say that it is necessary for the complainer to say that the defender has personal knowledge is absurd, after the latter has entered appearance. As soon as he has done so he must be held to know everything which takes place in the cause.

Lord Deas—I am of opinion that the Sheriff-Substitute went wrong in October 1873, and that the Sheriff went equally wrong in February 1874. The question of relevancy, I think, does not necessarily involve the question whether personal knowledge is essential. The question at present is, whether enough has been stated to bring the case into Court. To say more would be inconsistent with practice. I agree also with your Lordship as to the presumption that the party knows all that his agent knows, and all that takes place in Court. I do not wish to say any more at present on the question of relevancy, but I must say I think the mode of procedure here is, to say the least of it, very doubtful. It seems extraordinary to say that in a *quasi* criminal proceeding a party is first to be judicially examined and then afterwards the complaint to be found irrelevant. I agree with your Lordship that the part of the Act of Sederunt referred to (July 1839, § 66) does not apply here.

Lord Ardmillan—I agree with Lord Deas in thinking that the Sheriff must have been following some established practice, but I think that the judicial examination of the respondent should not be taken until the Sheriff is satisfied of the complaint. But that does not relieve us from the necessity of considering the question of relevancy here. The continuance of the interdict created no change in the existing state of things, and the original interdict having been duly intimated, its continuance required no further intimation.

Lord Jerviswoode concurred.

The Court pronounced the following interlocutor:—

"Recall the interlocutors of 29th October 1873 and 18th February 1874 complained of, Repel the objections to the relevancy of the petition and complaint, and remit to the Sheriff to allow the parties a proof in common form, and decern: Find the appellant entitled to expenses: Allow an account thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Pursuers—Dean of Faculty (Clark) Q.C., and Alison. Agent—T. F. Weir, S.S.C.

Counsel for Respondents—Watson and Asher, Agents—Maconochie & Hare, W.S.

Saturday, May 23.

SECOND DIVISION.

(Before Lords Benholme, Neaves, and Ormidale.

SPECIAL CASE—HASWELL AND JAMIESON, AND NOTE FOR MARK J. STEWART.

(WIGTOWN BURGHS ELECTION.)

(*Ante*, p. 482.)

Election—Ballot Act, 1872—35 *and* 36 *Vict. c.* 33 *—Objections to Votes.*

Under the Ballot Act, 1872,—*Held* (1) That any mark on the back of voting papers other than the number of the paper vitiates the vote. (2) That it is essential to a valid vote that the cross prescribed by the Act should be made to the right hand of the candidate's name, and without the addition of any other mark.

This case was adjusted in terms of Lord Ormidale's interlocutor of 7th April 1874, in order to obtain the judgment of the Court on objections to eleven voting papers for Mr Stewart and to eight voting papers for Lord Advocate Young.

The following were the grounds of the first class of objections:—It was objected (1) to the ballot papers, Nos. 64 and 1146, that they were not marked with a cross in terms of the Ballot Act and relative schedules, and contained marks whereby the voter could be identified; (2) No. 57, that instead of being marked with a single cross to the right of the candidate's name, it was marked with two crosses, neither being in the proper place, but one diagonally below the name to the right, and the other diagonally below the name to the left, and was so marked that the voter could be identified; (3) No. 634, as not being marked with a cross at all, but with a single stroke, whereby the voter could be identified; (4) No. 143, that it was not marked with a cross at the right hand of the candidate's name, and outwith the space for the candidate's name, and void from uncertainty, but with a cross above the name, and was so marked that the voter could be identified; (5) No. 61, that it was not marked with a cross on the right of the candidate's name,