has in point of fact cleaned his land to the extent usual in the district, is he to be liable in damages because he did not 'properly' clean his land, judging, not by the extent of his cleaning, but by the growth of the weeds? The petitioner's procurator himself stated that after July it was almost impossible to clear away the weeds, owing to the great growth of the turnips consequent on the moisture of the season. As framed, the Sheriff considers that the minor proposition does not come to or correspond with the major proposition. On the whole, the Sheriff feels bound to sustain the respondent's first preliminary plea.

"The fields cannot have been so very badly cleaned after all, as the turnips in one of them seem to have been valued over to the petitioner at £13, 5s.; another, at £11, 10s.; the third (in which there was finger-and-toe), at £6 per 200 poles."

The petitioner appealed to the Court of Session.

Argued for him—The incoming tenant suffered damage by having his land thrown out of rotation, and that is a relevant allegation of injury. The only questions which arise are (1) whether the process is competent, and (2) whether it is barred by *mora*. The respondent has no reason to urge the latter plea, as the delay was all in his favour.

Authorities—*Gordon's Trs.* v. *Melrose*, June 25, 1870, 8 Macph. 906; *Fraser* v. *M'Donald and Jackson*, June 6, 1834, 12 S. 684; *Hall* v. *M'Gill*, July 14, 1847, 9. D. 1557.

Argued for Mount—Competency in a matter of this kind means appropriateness of remedy. "Extraordinary dispatch" was not necessary and not made use of.

At advising—

LORD PRESIDENT—This petition is framed in terms of the Act of Sederunt July 10, 1839, secs. 137, 138. It states specifically the injury complained of and the remedy which is sought, and that is "to remit to a person or persons of skill to inspect and examine the said turnip fields on the farm of Castleton of Eassie, and to report whether the said fields, or any of them, had been omitted to be cleaned, or had been imperfectly and insufficiently cleaned and cleared of weeds before the sowing of the turnip crops therein, or had been imperfectly and insufficiently cleaned and cleared of weeds after the turnips had been sown; and if so, whether the land has been wasted and deteriorated thereby, and what amount of loss and damage the petitioner has thereby sustained; and, thereafter, may it please your Lordship to decern against the respondent for payment to the petitioner of the amount of loss and damage so reported, with expenses." Now it is obvious that in terms of that prayer the procedure contemplated is that there shall be an examination by a person of skill, and a report as to the facts, and an estimate of the damages, for which the Sheriff shall decern. Now if this had been an action of damages in which the pursuer or petitioner undertook to establish the facts, the course proposed would not have been too late, but being, as it is, a summary application, I think the Sheriff-Substitute took a proper view in holding that it was too late, and I quite agree with him. If the party wanted to do the thing at all he ought to have done it at once. Now the emergency which led to the interest of the petitioner to have such summary despatch arose in October last. If it had been competent or desirable to convert this petition into an ordinary action of damages and to have a proof, I do not say that January would have been too late to do so, but, as I think that cannot be done, we must refuse it on that ground.

The other Judges concurred.

The Court pronounced the following interlocutor:—

"Recal the interlocutor of the Sheriff dated 9th March 1874, and of new Refuse the petition, and decern: Find the respondent entitled to expenses both in this Court and the inferior Court: Allow accounts thereof to be given in, and remit the same when lodged to the Auditor to tax and report."

Counsel for Baird—Guthrie Smith and Mackintosh. Agents—Henry & Shiress, S.S.C.

Counsel for Mount—Robertson. Agent—Neil M. Campbell, S.S.C.

Friday, July 3.

FIRST DIVISION.

BUTCHER *v.* MYLES.

Process—Printer.

In this case their Lordships having had their attention called by the respondent's counsel to the disgracefully inaccurate state of the printed papers, and to the fact that no printer's name appeared on them, ordained the printer to appear personally at the bar. He did so accordingly, and stated by his counsel that the state of the print was caused by the neglect of his workmen, during his own temporary absence from illness. After expressing his regret for what had happened, he was warned by the Lord President and dismissed from the bar.

Wednesday, July 8.

SECOND DIVISION.

LIGERTWOOD AND DANIEL, PETITIONERS.

(*Ante*, vol. v. 329; vol. vii. 527; vol. ix. 20; vol. xi 491; 6 Macph. 1112; 8 Macph., H.L., 77; 11 Macph. 960.)

Expenses—Appeal.

Circumstances in which the expenses of a petition for applying the judgment of the House of Lords were given to the petitioners.

This was a petition at the instance of John Ligertwood, Sheriff-clerk of Aberdeenshire, and William Daniel, Sheriff-clerk Depute,—to apply the judgment of the House of Lords; to recal the interlocutor of the Second Division of date 28th October 1871, reversed by the House of Lords; "to sustain the defences and assoilzie the petitioners from the whole conclusions of the libel, and decern: Further, to find the petitioners entitled to their expenses incurred in the Court of Session, and the expenses of this application and procedure therein," &c.

The House on 24th April 1874 ordered "that the defenders (respondents in the original appeal) be assoilzied from the conclusions of the summons in the action in which the said interlocutor was

pronounced, with the expenses incurred by them in the Court of Session."

Counsel for Messrs Ligertwood and Daniel now asked for expenses, together with the expenses of this application.

Counsel for Mr Watt appeared, and stated that he desired to draw the attention of the Court to two points. (1) That the practice in such cases was not to allow the expenses of an application such as the present. (2) That in the first of the two appeals (*see previous reports*) taken to the House of Lords, Mr Watt had been successful, and accordingly this did not fall under the finding in the judgment sought to be applied. No expenses were given in the Court of Session on the interlocutor reviewed under the first appeal.

On the second point—[LORD JUSTICE-CLERK—That is a matter which will properly come up hereafter, and can be discussed before the Auditor.]

On the first point, it was argued—This is an application which has been already made and refused, as reported in the case of *Dunnet*, where the Lord President observed that the expenses of the petition for applying the judgment of the House of Lords were never granted to the petitioner. It was necessary for him to apply; and where no opposition was offered, he must himself bear the expense of that step. The prayer of the petition in that case *quoad ultra* was granted.

Authority—*Dunnet*, March 8, 1839, 1 D. 689.

LORD JUSTICE-CLERK—In the case of *Dunnet* it may be observed there was no opposition made to the application. Here, if there is not exactly opposition, there is at least criticism. I see no reason why, if there is a necessary expense caused by the unsuccessful party, he should not be found liable for it.

LORD ORMIDALE—An application of this kind is a necessary part of the expense of a litigation in which the petitioners have been successful; and I am disposed upon that ground to hold that they are entitled to the expenses of it as against the unsuccessful party.

LORDS BENHOLME and NEAVES concurred.

The Court granted the prayer of the petition.

Counsel for Petitioners—Robertson. Agents—Tods, Murray, & Jamieson, W.S.

Counsel for Mr Watt—Rhind. Agent—W. Officer, S.S.C.

Thursday, July 9.

FIRST DIVISION.

[Lord Shand, Ordinary.

THE REV. JOHN BELL LORRAINE AND OTHERS *v.* THE MAGISTRATES OF PEEBLES.

Church—Burgh—Parish—Bells—Interdict.

Interdict granted (*diss.* Lord Ardmillan) against the magistrates of a burgh authorising the bell of the parish church to be rung on Sundays for other purposes than calling the congregation of that church to worship.

Mr Lorraine, the minister of the parish of Peebles, as representing the Kirk Session, raised an action of suspension and interdict against the Magistrates of the Burgh, the object of which, as stated in the prayer of the petition, was "to interdict, prohibit, and discharge the said respondents from causing the bells in the steeple of the parish church of Peebles, or any of them, to be rung, and from granting any warrant or order to ring the same on Sundays, or national or parochial fast-days, except for the purpose of calling the public to worship in the parish church, or in the case of funerals or of fires, unless with the consent of the complainers, or at least from causing the said bells to be rung, or granting any warrant or order to ring the same for the purpose of summoning meetings of Voluntary Church Associations, or similar associations, without the complainers' consent, and to interdict, prohibit, and discharge the respondents from causing the said bells to be rung, or granting any order to ring the same at fifteen minutes before six o'clock, or about that time in the evening on said days, unless when public worship is to commence at that hour in the parish church, or at any other hour on said days when public worship is not about to commence in the parish church, except with consent of the complainers."

The steeple of the parish church in which the bells hang was built by and was the property of the town council, and formed part of the church. There were three bells, one of which was almost unserviceable. It had never been rung on Sundays or national or parochial fast-days, excepting on one occasion, and then under instructions from the complainers. The smaller of the other two bells was placed in the steeple in or about 1843. The bell had never been rung on Sundays or national or parochial fast-days, but it had been the custom to ring it at stated hours on other days for the use and convenience of the inhabitants of the burgh. The remaining bell had been in the steeple since it was built, and from time immemorial it had been rung on Suudays and national and parochial fast-days at the times fixed for public worship at the parish church. The practice had always been to ring the bells for about a quarter of an hour before the time for the commencement of public worship in the parish church. It had been used exclusively as a parish church bell—and had been wholly under the control of the minister and kirk session, and it had been rung on Sundays and national fast-days at, and only at, such times as were appointed by them.

At a meeting of the town council on 13th October 1873 it was resolved by a majority that in future the bells in the steeple of the parish church should be rung on Sundays at eleven o'clock in the forenoon, at a quarter before two in the afternoon, and at a quarter before six in the evening, communion Sundays excepted, and that the officers should be instructed to begin on Sunday, 19th October, at the hour fixed.

The complainers objected, on the ground that "the said resolution was contrary to uniform and immemorial practice in regard to the ringing of the church bells in Peebles. It was contrary to such practice for the town council to fix the hours for ringing the bells; and it was contrary to such practice to ring the said bells when public worship was not about to commence in the parish church. The object of the resolution to ring the bells at fifteen minutes before six o'clock on Sunday even-