

The Court answered the first two questions in the affirmative.

Counsel for the First Parties—Fraser—Pearson.
Agent—John Martin, W.S.

Counsel for the Second Party—M'Laren—
Moncreiff. Agent—John Carment, S.S.C.

Tuesday, November 27.

FIRST DIVISION.

[Sheriff of Banff.]

ROBERTSON *v.* BARCLAY.

Process—Reponing—Failure to lodge Prints—Act of Sederunt, March 10th, 1870.

Circumstances held insufficient to entitle an appellant to be reponed against a decree pronounced upon failure to lodge prints in an appeal within 14 days after the process had been transmitted.

Observed (per the Lord President) that if a respondent intends to give an appellant time to print beyond what the Act allows, it should be so stated in writing.

This was an appeal from the Sheriff Court of Banff. In terms of the 2d sub-section of section 3 of the Act of Sederunt, 10th March 1870, the appellant was bound to have lodged the printed papers on 19th November. He failed to do so, and on 24th November presented a note to the Lord President asking to be reponed, in terms of the 3d sub-section of section 3 of the Act. It was stated that the delay had been caused in consequence of negotiations that had been proceeding between the parties' agents in the country for a settlement of the case. The only proposal made in writing was one by the appellant's agent, made on 20th October. The offer was therein declared to be open for three days only. Parties' agents had various meetings and conversations on the matter, but the only proposal made by the respondent's agents was, that this appeal, and another connected with it, should be abandoned, and a sum of £10 paid by the appellant in name of expenses. It was stated that the respondent's agent had agreed to allow the prints to be received after they were due, on the ground that the appellant's agent had difficulty in communicating with his client.

At advising—

LORD PRESIDENT—One of the leading objects of all recent legislation and recent regulations introduced by Acts of Sederunt is to expedite the procedure of the Court; and accordingly by this Act of March 10, 1870, a term is assigned within which certain steps must be taken by an appellant. The tendency of these regulations is to enforce performance of these steps within a certain time. Here the party has a time assigned him within which his prints in the case must be lodged. He has this indulgence, that within eight days after the appeal has been held to be abandoned he may move the Court to repon him to the effect that he may insist in the appeal; but the Act of Sederunt provides that "the motion shall not be granted . . . except upon cause shown."

Now, the question that we have to answer here is,—has cause been shown for the appellant's omission to perform this duty? The only cause alleged is this, that the parties' agents were wasting in useless verbal negotiations the time that should have been otherwise employed, thereby clearly violating the spirit of these regulations. And what were these negotiations? They were not really negotiations at all. The respondent had made a proposal that was not at all likely to be entertained, and it was for the purpose of communicating that proposal to his client that the agent lost all this time.

This is, in my opinion, a very bad case of failure to perform the duty required of him. Indeed, I am inclined to say, as a general rule, that conversations and verbal negotiations are not to be taken as cause shown. If an agent intends to give a party time, let him state so distinctly in writing. Such an excuse as this we cannot entertain.

The Court accordingly refused to repon the appellant.

Counsel for Appellant—Mair. Agent—William Officer, S.S.C.

Counsel for Respondent—Guthrie. Agents—Gibson-Craig, Dalziel, & Brodies, W.S.

Wednesday, November 28.

FIRST DIVISION.

[Lord Young, Ordinary.]

STEUART *v.* SOUTER.

Public Burdens—Road Assessment—Mode of Collection.

A collector of road assessments under a County Road Act, leviable from proprietors in a county, who included a large number of feuars in scattered villages paying assessments of very small amount, was in use, in accordance with the notice sent to the feuars, to postpone collection of the assessments due by them till March, whereas, in terms of the notice as served upon the larger proprietors, payment was demanded and obtained from them in December. No interest was charged on the assessments of the feuars where payment was delayed, although the collector was empowered by the statute to charge it at the rate of 5 per cent. The resolution of the Road Trustees had made the assessments payable by all alike at 1st December.—*Held* that in these circumstances one of the larger landed proprietors was not entitled to a declarator that the mode of collecting from the feuars was illegal, and that all collections must be made of even date, nor to an interdict against the same practice being followed in future.

Andrew Steuart of Auchlunkart, in the county of Banff, presented a note of suspension and interdict against Alexander Souter, collector of county road assessment under the Banffshire Roads Act 1866, craving suspension of certain assessments levied under the Act, in respect of certain lands of which he was proprietor, amount-