

LORD PRESIDENT—The facts of this case, so far as it is necessary to refer to them, are as follows:—The late James Little, writer in Annan, had four children, all daughters. He was possessed of some heritable property which would have gone to his daughters as heirs-portioners had he not left a deed of settlement by which he conveyed to his daughter Mrs Wilkin (the mother of the pursuer and defender here), and to the children of her body, a certain subject in Dumfriesshire called Guysgill. His other heritage in the burgh of Annan he conveyed to his four daughters equally and to the children of their bodies.

Mrs Wilkin on her father's death in 1854 was infeft as disponee of her father in the Guysgill property, and in one-fourth of the other subjects. She had three children, the present pursuer Mrs Watt, the defender Thomas Wilkin who was the youngest son, and another son Alexander who died intestate in 1879, and who is represented by the pursuer as executrix-dative.

Upon the death of Mrs Wilkin in 1857 her husband, who survived her, drew the rents of Guysgill and one-fourth of the rents of the Annan property as in virtue of the title of courtesy, and continued to do so down to the date of his death in 1877.

He left his entire estate to the defender, who represents him, and the present action is brought to compel the defender to account to the pursuer for the rents thus drawn by his father.

If the pursuer had demanded two-thirds of the rents of the entire heritable subjects for herself, and as representing her deceased brother, a different question would have arisen, namely, whether the husband of Mrs Wilkin was in any event entitled by courtesy to the rents of the property taken by his wife by singular title, but to which she was *alioquin successura*, on which question I give no opinion. For the pursuer has conceded by her first and second pleas-in-law that the defender is entitled, as representing his father, to a certain share of the rents of these lands, and the Lord Ordinary has found in terms of these two pleas-in-law to the following effect, namely, "that the father of the pursuer and the defender was only entitled to courtesy out of one-fourth *pro indiviso* of his wife's estate, and that the pursuer is a creditor of her father's representatives for the surplus rents of her mother's property not falling within said right of courtesy." Now, in dealing with this branch of the law I adhere to the views which I stated in *Lord Clinton's* case, that all questions about courtesy depend entirely on artificial rules of law fixed by authority, and that it is inexpedient in such cases to attempt any exposition of legal principles. Lord Kinloch in the same case said the right of courtesy "is more completely, than can be said in most other instances, *positivi juris*. It is governed by rules of which several rest on little better footing than that it has been so fixed."

The Lord Ordinary's interlocutor is in my opinion quite supported by that series of decisions which makes the law of courtesy.

LORDS MURE and SHAND concurred.

LORD ADAM, who was absent on Circuit when the case was debated, delivered no opinion.

The Court adhered.

Counsel for Pursuer—Mackintosh—Watt.
Agent—David Milne, S.S.C.

Counsel for Defender—Darling. Agents—
Bruce & Kerr, W.S.

Wednesday, November 18.

FIRST DIVISION.

[Sheriff of Dumfries.

DOUGAN v. M'CREDIES.

Process—Appeal—A.S., 10th March 1870—Omission to Lodge Prints in Due Time—Reponing.

Circumstances in which the Court sent an appeal from the Sheriff Court to the roll although the appellant had failed to lodge prints within fourteen days after the process had been received by the Clerk of Court, as required by sub-sec. 1 of section 3 of Act of Sederunt, March 10, 1870.

This was an appeal from the Sheriff Court of Dumfries and Galloway at Stranraer, and the respondent objected to its being sent to the roll on the ground that the appellant had failed to print and box the note of appeal, &c., timeously in terms of the Act of Sederunt, 10th March 1870. The appeal was taken on the 23d October 1885, and the time for boxing the papers in the appeal expired on the 6th November 1885 without their having been duly boxed.

A note was presented to the Court on the 14th November by the appellant John M'Creddie to be reponed, explaining as the grounds of the delay that he was a cattle-dealer, and that in the prosecution of his business he had to attend markets in various parts of the country, and was frequently away from his home for a considerable time; that his agent had written and telegraphed to him for instructions regarding the appeal, but had received no answer, owing it was afterwards discovered, to his never having received either the letter or the telegram; that his (the appellant's) father William M'Creddie was an old man of about 90 years of age, infirm, and unable to attend to business; and that his (the appellant's) agent on receiving no answer to his communications supposed that the appeal was not to be proceeded with, and thus the time allowed by the Act of Sederunt was permitted to expire.

Authorities—*Walker v. Reid*, May 12, 1877, 4 R. 714; *Sutherland v. Greig*, November 3, 1880, 8 R. 41.

The Court reponed the appellant upon payment of two guineas of expenses.

Counsel for Appellant—Orr. Agents—Martin & M'Glashan, S.S.C.

Counsel for Respondent—Dunsmore. Agent—T. Carmichael, S.S.C.