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 repone 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 repone 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-

ing to £121, 3s. 9d., and of a summary warrant threatened to be obtained for enforcing payment of these assessments. He also craved interdict against the respondent's levying or collecting the assessments. In February 1877 the Lord Ordinary on the Bills passed the note; and in June thereafter the complainer raised an action of declarator and interdict, based on the same allegations as those on which he founded the petition for interdict and suspension.

The circumstances which gave rise to these proceedings were, *inter alia*, as follows:—By the Banffshire Roads Act 1866, the Road Trustees were directed to impose a certain rate of assessment at their annual general meeting at Michaelmas of each year on all lands and heritages within the county. By section 72 of the Act, all assessments under the authority of the said Act were to be deemed and taken to be for the year from the 26th day of May immediately preceding to the 26th day of May subsequent to the date of imposing the same, and "shall be payable at such date as may be fixed by the trustees." The collector was directed, under sections 73 and 74, to make up assessment rolls and to give notice to the ratepayers, distinguishing the assessments for maintenance of roads from that for reducing debt (section 75). The assessments were to be levied from the proprietors, with relief as to the half of the maintenance assessment against their tenants (section 70). Further, by section 79, if such assessments were not paid within one month after the date of payment fixed by the trustees, interest at 5 per cent. per annum was chargeable until payment.

Mr Steuart received notices requiring him to make payment of the various assessments on his lands, amounting to £121, 3s. 9d. They were dated 20th November 1876, and the time of payment was stated to be 1st December 1876. No place of payment was specified. The following explanation was added:—"These assessments are all declared by the Commissioners of Supply and Road Trustees to be due and payable on the 1st December next, and as the full amount to be collected has to be disbursed 'twixt that date and the 20th, the collector hopes that as in former years prompt payment will be made."

It appeared, however, that while 55 landed proprietors, whose assessments amounted to £4677, received notice in these terms, there was a body of feuars and others in the various villages in the county, numbering 3450 individuals, who paid assessments varying from a few pence to four or five shillings in amount, the whole sum leviable from them being £823. These feuars received notices intimating that their assessments had been imposed and declared payable on 1st December, but that collection thereof would be made at a specified place on a specified day in March. If the parties called, however, these assessments might be paid at the collector's office in Banff at any previous date.

The explanation given by the collector on record was as follows:—"It would create great inconvenience to require parties throughout the whole county to pay the small sums of assessments due for house property at the collector's office in Banff. The landed proprietors pay six-sevenths of the whole assessment. With regard to the remaining one-seventh part, payable by house property, the collector makes collections at various convenient places throughout the county, and as the state of the weather during the first months of the year is so uncertain and usually so severe as to make these collections during said months inconvenient and often impracticable, the collector has usually postponed these collections until March. In thus acting, the collector has simply tried to meet the public convenience, and facilitate an easy collection of the money. This practice has been well known to the landed proprietors and others in the county, and instead of being objected to, it has been universally approved. The practice in no way affects the imposition of the assessment, and is a mere incident of the collector's system of collection."

The complainer presented the note on the ground that the collector's proceedings were wrongful and invalid, in respect that while the statute enjoined that the assessments should be imposed at one equal rate, he deferred his demand in the case of these feuars till March. He also failed to require from them payment of interest on their assessments where thus overdue, and so caused those who paid in December a loss corresponding to the amount of relief to which they would severally have been entitled if interest had been demanded. The conclusions of the action of declarator and interdict were of a similar nature.

The Lord Ordinary repelled the reasons of suspension and refused the interdict, and also dismissed the action of declarator, sustaining a plea that the pursuer's averments were not relevant or sufficient to support the conclusions of the summons.

The pursuer reclaimed, and the Court adhered, on the ground that the assessment was equally laid on, and that it was no violation of the provisions of the statute to dispense with the collection of sums of interest so infinitesmal that they could not be expressed by any current coin, where the purpose of postponing collection was to consult the convenience of the public.

Counsel for the Complainer and Pursuer (Reclaimer)—Guthrie Smith—Vary Campbell. Agents—Maitland & Lyon, W.S.

Counsel for the Respondent and Defender (Respondent)—Balfour—Lorimer. Agents—H. & A. Inglis, W.S.

Wednesday, November 28.

FIRST DIVISION.

[Sheriff of Lanarkshire.

COOPER *v.* MARSHALL.

Proof—Reference to Oath—Where Account prescribed and Compensation pleaded—Intrinsic or Extrinsic to the Reference?

A prescribed account, consisting of a number of items, payment of which was sued for, was referred to the oath of the defender. He had pleaded counter claims in compensation, and in his examination said that he "con-