pensing with printing in whole or in part, and the appellant shall, upon the box-day or sederunt-day next following the deposit of such print with the clerk, box copies of the same to the Court; and if the appellant shall fail within the said period of fourteen days to deposit with the Clerk of Court as aforesaid a print of the papers required . . . or to box or furnish the same as aforesaid on the box-day or sederunt-day next thereafter, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein except upon being reponed as hereinafter provided."

Argued for the respondent—The appellant had urged no good reason for dispensing with the regulation of the Act of Sederunt. On the contrary, his explanation plainly showed that his failure to print the proof was deliberate and not due to inadvertence. That was sufficient to distinguish the case from *Boyd, Gilmour, & Company* v. *Glasgow and South-Western Railway Company*, November 16, 1888, 16 R. 104, where the decision proceeded on the ground that the omission was unintentional, and where Lord Rutherfurd Clark and Lord Lee both dissented from the principles laid down by Lord Young, upon which the appellant relied.

Argued for the appellant — *Boyd, Gilmour, & Company, ut sup.*, showed that the Court had an absolute discretion in the matter, and Lord Young's opinion was all in favour of a liberal construction of Acts of Sederunt. The objection taken to the appeal was purely technical, and no one would be prejudiced if the appeal were proceeded with. The provision of the Act of Sederunt was *ex facie* an alteration of a statutory provision (authorised by section 106 of the Court of Session Act), and should not be interpreted as strictly as if it were a section of the statute itself. It was to be observed that section 71 prescribed totally different rules as to printing from the Act of Sederunt.

LORD PRESIDENT—Even if we were to assign no greater rigidity to the Act of Sederunt than was contended for by Mr Cooper, I still think that his request must be refused.

The Act of Sederunt at least lays down what is the rule of practice, and the decision which has been cited is not an exception to the following of the rule, but merely shows that where the spirit of the rule would not be carried out by a literal compliance with it owing to exceptional circumstances it will not be misapplied.

But the case cited was a case of inadvertence, and the appellant here is constrained to admit that he did advert to this point, but he had at that time a theory, which on better consideration he is obliged to abandon, that the Court might be successfully moved not to hear the appeal in ordinary course but to send it to a Lord Ordinary. He accordingly adverted to the duty of printing, and takes his chance of not complying with it. He is now proposing to follow out the appeal in ordinary course, and he is asking us to absolve him from the consequences, not of an accidental omission, but of a deliberate and calculated contravention of the rule applicable to appeals.

LORD ADAM concurred.

LORD M'LAREN — I am of the same opinion, and I will only add that while there may be many cases in which an Act of Sederunt should be enforced in the spirit rather than according to the letter, it has been pointed out to us that this particular regulation is one which comes in place of a provision of an Act of Parliament. It is an enactment under the delegated authority of Parliament to repeal a parliamentary enactment, and to substitute for it something which experience has shown to be more suitable in practice. I must hold, then, that such a regulation should be interpreted in the same spirit as if it were in the original Act, because it is to all intents and purposes a statutory regulation.

LORD KINNEAR concurred.

The Court pronounced the following interlocutor:—

"The Lords having heard counsel on the competency of the appeal, Sustain the objections thereto, dismiss the appeal, and find the defender and respondent entitled to £5, 5s. of modified expenses," &c.

Counsel for the Appellant — Cooper. Agent—R. Ainslie Brown, S.S.C.

Counsel for the Respondent—R. Macaulay Smith. Agents—Lister, Shand, & Lindsay, S.S.C.

Friday, May 14.

FIRST DIVISION.

[Lord Kincairney, Ordinary.

SHIELDS *v.* DALZIEL.

Reparation—Landlord and Tenant—Negligence—Insecure State of Property.

The tenant of a shop and room, who had entered into occupation thereof in November 1895 on a monthly tenancy, raised an action against the landlord to recover damages for injuries sustained by the fall of a portion of the ceiling on 14th November 1896. The pursuer averred that in February 1896 he had complained to the defender's factor that the said ceiling was in an "apparently insecure condition" and requested that it should at once be put right; that the factor undertook to put it right; and that the pursuer relied on the assurance of the factor. He further averred that, the defect not having been remedied, he again in April directed the factor's

attention to the ceiling and requested him to have the matter attended to; that the factor again promised to have the ceiling put right; and that the pursuer, relying on the factor's assurances, was induced to continue his tenancy.

Held (*rev.* judgment of Lord Kincairney) that the pursuer had stated a relevant case, and was entitled to an issue.

Webster v. *Brown*, January 12, 1892, 19 R. 765, *distinguished.*

This was an action of damages concluding for payment of £300 raised by Mary Shields against David F. Dalziel.

The pursuer averred that her husband had been since November 1895 tenant of a shop and room in Glasgow belonging to the defender, conform to missive of lease, and that it was the defender's duty to keep the premises in proper habitable repair during the pursuer's tenancy.

The pursuer proceeded to aver—"(Cond. 2) In February 1896 the pursuer complained to the defender's factors that the ceiling of the said room was in an apparently insecure condition, and requested that it should at once be put right. The factor at first stated that there was little wrong with the ceiling, but ultimately undertook and promised to put it right. He further admitted that the ceiling required repair. The pursuer relied on the assurance of the said factor that the ceiling would be attended to at the earliest opportunity. Nothing, however, was done by the said factor, and again in the month of April his attention was directed to the apparently insecure condition of the ceiling, and an urgent request was made to him by the pursuer to have the matter attended to. The said factor again promised to have the ceiling put right and in a condition of safety, but again nothing was done. The pursuer, relying on the assurances of the said factor, was thereby induced to continue the tenancy of the said shop and room belonging to the defender."

The pursuer further averred that on 14th November 1896 a portion of the ceiling fell suddenly and without warning on her, inflicting serious injuries, which were detailed.

The pursuer pleaded that decree should be granted, she having sustained loss, injury, and damage through the fault or negligence of the defender.

The defender pleaded that the pursuer's averments were irrelevant.

The pursuer proposed an issue in common form.

On 2nd February 1897 the Lord Ordinary (KINCAIRNEY) found that the averments of the pursuer were irrelevant to support the issue; therefore disallowed said issue and assoilzied the defender.

Note.—"I am not able to distinguish this case from *Webster* v. *Brown*, January 12, 1892, 19 R. 765, and I consider myself therefore bound to hold the averments irrelevant. But for that judgment I should have been disposed to approve of the issue submitted."

The pursuer reclaimed, and argued—The Lord Ordinary was wrong. The present case was distinguishable from *Russell* v. *Macknight*, November 7, 1896, 24 R. 118, and from *Webster*, *ut sup.*, on which the Lord Ordinary based his decision. In these cases the pursuer deliberately took the house in spite of a patent and glaring defect. Here a possible source of danger was not detected by the pursuer for some months after occupation began. The tenant had complained to the landlord, and it was only on the strength of his undertaking to put matters right that the tenancy was continued. The case was really analogous to *M'Martin* v. *Hannay*, January 24, 1872, 10 Macph. 411, and *Fulton* v. *Anderson*, November 18, 1884, 22 S.L.R. 100. Since the case of *Smith* v. *Baker & Sons*, L.R. [1891], A.C. 325, followed in *Wallace* v. *Culter Paper Mills Company, Limited*, June 23, 1892, 19 R. 915, knowledge of a defect on the part of a pursuer was not necessarily a bar to recovering damages.

Argued for the defender—The Lord Ordinary was right. The present case was identical with *Websters*. There too there was the element of complaint made to the landlord's factor; while here also the tenancy had been continued for months after the promise to repair—for there was no undertaking—had been made. The tenancy was monthly, and inasmuch it was renewed each month after April, the tenant must be held to have accepted the house for each new monthly term with the ceiling in an "apparently insecure condition." The continuance of the tenant in occupation in the face of this known risk removed liability from the landlord—*Henderson* v. *Munn*, July 7, 1888, 15 R. 859.

LORD PRESIDENT—But for the supposed application of *Webster*, the Lord Ordinary says he would have allowed an issue, and it seems to me that, apart from that case, the action is clearly relevant.

As I read the record, the statement made is this—that at the time of the accident the pursuer was occupying the house as a monthly tenant, on an admission by the landlord that the house required repair in this essential matter of the ceiling, and on an undertaking that that repair would be made. If that be so, I think there is a clear ground of action, and although it has been pointed out that the statement involves a considerable lapse of time, and a carrying forward, through much procrastination, of the landlord's promise, I think the fair meaning of the record is that not merely the promise but the legal undertaking to execute the repairs was extant as a term of the tenancy when the accident occurred. And therefore I think the action quite good.

The case of *Webster* seems to apply to a very different state of matters, for the theory of the judgment is that the tenant accepted the house in its apparent and visible condition, which was exactly the same, when the accident happened as when the tenant entered. The bad stair was the cause of the accident, and it was no worse

then than it was, and was seen to be, at the time of the accident. In the present case the condition of the house was not the same, for the ceiling fell; what was visible when the tenancy began was a risk, and against this risk the landlord bound himself to protect the tenant. The facts here seem to me to necessitate trial by a jury.

LORD ADAM and LORD KINNEAR concurred.

LORD M'LAREN was absent.

The Court recalled the interlocutor reclaimed against, and remitted to the Lord Ordinary to adjust the issue.

Counsel for the Pursuer—Watt—Blair. Agent—W. K. Steedman, W.S.

Counsel for the Defender—W. Campbell—Clyde. Agents—Patrick & James, S.S.C.

Friday, May 21.

SECOND DIVISION.

[Lord Kincairney, Ordinary

BARONESS DE BELLET *v.* SCOTT'S TRUSTEES.

Reparation — Measure of Damages — Damages for Delay in Payment of Money—Interest.

Averments in an action of damages for delay in the payment of money due to the pursuer, which *held* irrelevant in respect that the defender had paid the principal sum and interest, and that the pursuer had not stated any special circumstances to displace the general rule that the measure of the damages for delay in the payment of money due is the interest only.

Elizabeth Isabella Johnstone Gordon, Baroness Roissard de Bellet, raised an action of damages for £11,000 against the trustees acting under the trust-disposition of the late Major Hugh Scott of Gala, the pursuer's first husband. After his death she married, in 1878, the Baron Roissard de Bellet. The Baron died in 1891. At that date the pursuer was possessed of heritable properties in France, in the purchase and improvement of which she averred that she had expended above £16,000. She further averred—"(Cond. 5) Immediately prior to the death of Baron Roissard a number of large mortgages affecting these properties were cleared off by the sale of a large villa and ground near Hyeres, but there remained a number of merchants, tradesmen, and others, with unsatisfied claims of small amount, and these smaller creditors pressed the pursuer for immediate payment. The pursuer consulted M. Paget, a notary at Hyeres, with a view to seeing what could be done to meet these claims, and the arrears of interest due on certain small mortgages secured on the said properties. M. Paget stated that with a sum of £400 he could satisfy pursuer's creditors and avert a sale of her estates. M. Paget, at the request of the English Consul, M. Jouve, undertook to arrange with pursuer's creditors to delay taking legal proceedings for enforcing their claims for six months, and also a delay of one year to redeem pursuer's gallery of oil paintings, bronzes, and works of art pledged by the late Baron Roissard to M. Crevelli for 6000 francs (£240). As the result of the pursuer's consultation with M. Paget in March 1893, the pursuer, the said M. Jouve, Mr Chapman, banker, Hyeres, and the Rev. C. Panter, D.D., English clergyman, on pursuer's behalf made repeated application to her sons, the said Mr. John Scott of Gala, and Mr Hugh Scott MacDougall of Makerstoun, and to Messrs Tods, Murray, & Jamieson, W.S., Edinburgh, the law-agents for the trustees and executors of the said deceased Hugh Scott (who had in their possession at this time a considerable sum of money belonging to the pursuer) for such a sum as would enable pursuer to pacify her pressing creditors. The letters addressed to the pursuer's sons were forwarded to the said Messrs Tods, Murray, & Jamieson, but said letters and the requests contained therein were totally disregarded by all these parties, the pursuer receiving no reply of any kind. In consequence of no moneys being forthcoming, the pursuer's heritable properties in France, and her valuable gallery of oil paintings and bronzes, were brought to sale by her creditors, and were sold for what could be obtained immediately. (Cond. 6) The foregoing properties having been brought to a forced sale, realised much less than their real value, and the pursuer has suffered great loss and damage in consequence. In particular, the property of La Tuilerie, which, had it been judiciously and voluntarily realised, would have brought not less than £7000, was sold for £1250; the property of La Clapiere, which in the same circumstances would have brought £5000, was sold for £1250; and similarly, the property of Pouzac, which if sold as aforesaid would have brought not less than £2500, was sold for £1000. The occasion when pursuer's said properties were disposed of was not favourable for selling in the south of France, properties being then diminishing in value. Shortly thereafter prices improved, and they are now, and shortly after the date of said sales were, greatly higher than at the time when the pursuer was forced to put them in the market. It was not the desire nor the intention of the pursuer to part with said properties, and she did so only because she was compelled by the diligence of her creditors. (Cond. 7) After the sale of pursuer's properties, which she bought for about £17,000 and sold for £3200, the pursuer, finding herself without means of support, returned to Scotland, and applied to her sons and to her daughter, and to the defenders, the trustees and executors of the late Major Scott, for aliment . . . (Cond. 8) On the date of calling of the said action for aliment (10th January 1894) the pursuer's law-agents received a letter from Messrs Tods, Murray, & Jamieson intimat-