matter in the landlord's favour. Even if his Lordship's construction of the words in question were not adopted, it would, I think, be in any view impossible to read them as overriding and contradicting the plain language which precedes them.

We were referred to some reported decisions; but one does not derive much help from them, because, as I have already said, the case turns upon the true construction of the particular clause in question. Thus *Moncreiff* v. *Hay* (1842, 5 D. 249), founded upon by the Lord Ordinary, is no doubt an illustration of a pactional alteration or exclusion of the common law; but the language of the lease there under consideration was, though similar to, not identical with that of the lease now before us. Again, the case of *Lyon* v. *Irvine* (1874, 1 R. 512), upon which the reclaimer's counsel relied, seems to have no application here. The landlord, Mr Forbes Irvine, failed upon a technical but fatal point (arising from the form of procedure he had adopted), which was thus tersely stated by the Lord President — "The regulations" (*i.e.*, the regulations of the estate of Drum) "do not permit of instant removing, and this decree is for instant removing." The technical flaw in Mr Irvine's original application was incurable by this Court, and he failed accordingly.

It occurs to me to add, with reference to part of the arguments of counsel, that in a case of this kind, while considerations of alleged hardship arising to one or other of the parties may be relevant in construing ambiguous phrases in a lease, they can be of no importance, and are indeed incompetent, if the Court holds the language of the document to be fairly capable of only one construction. This view has been often judicially enunciated—for example, in the case of *Moncreiff* v. *Hay*, above referred to.

The LORD JUSTICE CLERK concurred.

The Court adhered.

Counsel for the Complainer (Respondent) — M'Clure, K.C. — Hon. W. Watson. Agents—Lindsay, Howe, & Company, W.S.

Counsel for the Respondent (Reclaimer) — Constable, K.C. — Hamilton. Agents—Sharpe & Young, W.S.

Thursday, March 18.

SECOND DIVISION.

(SINGLE BILLS.)

WHITE *v.* ROTHESAY TRAMWAYS COMPANY, LIMITED.

Process — Appeal from Sheriff Court — Failure to Box Prints—Motion to Repone —A. S., 10th March 1870, *sec.* 3 (1) *and* (3).

In an appeal from the Sheriff Court, the appellant having failed to box the prints until the day after the expiry of the fourteen days allowed by the Act of Sederunt of 10th March 1870, sec. 3 (1), moved, under sec. 3 (3), to be reponed, and explained that the failure to lodge the prints timeously was due to a change of agency, and that the Edinburgh agent, first instructed by the pursuer's local agent, had returned the case without having taken any steps, when it was too late to instruct another Edinburgh agent and to get the papers printed and boxed in time. The Court *reponed* the appellant on payment of two guineas of expenses.

The Act of Sederunt of 10th March 1870 enacts, section 3—"(1) The appellant shall during session, within fourteen days after the process has been received by the Clerk of Court, print and box the note of appeal, record, interlocutors, and proof, if any . . . And if the appellant shall fail, within the said period of fourteen days, to print and box . . . the papers required as aforesaid, he shall be held to have abandoned his appeal, and shall not be entitled to insist therein except upon being reponed as hereinafter provided. . . . . (3) It shall be lawful for the appellant within eight days after the appeal has been held to be abandoned as aforesaid, to move the Court . . . to repone him to the effect of entitling him to insist in the appeal, which motion shall not be granted by the Court . . . except upon cause shown, and upon such conditions as to printing and payment of expenses to the respondent or otherwise as to the Court . . . shall seem just."

The pursuer in an action of damages in the Sheriff Court at Rothesay appealed against an interlocutor of the Sheriff-Substitute there (MARTIN) assoilzieing the defenders. The process was received on 2nd March 1909, but the papers were not printed and boxed till the 17th March. The appellant moved in the Single Bills to be reponed, and explained that the pursuer's local agent had instructed an Edinburgh agent in the appeal, who took none of the steps required, and then returned the case at such a time as made it impossible for the local agent to instruct another Edinburgh agent and get the papers printed and boxed within the time allowed. He argued that these facts constituted cause shown within the meaning of the Act of Sederunt, and cited *Greig* v. *Sutherland*, November 3, 1880, 8 R. 41, 18 S.L.R. 39; *Boyd, Gilmour, & Company* v. *Glasgow and South-Western Railway Company*, November 16, 1888, 16 R. 104, 26 S.L.R. 84; *Donald* v. *Irvine*, March 17, 1904, 6 F. 612, 41 S.L.R. 420; *Nisbet* v. *Corrance*, July 15, 1905, 13 S.L.T. 287.

The respondent argued that the excuse offered was insufficient, and cited *Taylor* v. *Macilwain*, October 18, 1900, 3 F. 1, 38 S.L.R. 1; *Bennie* v. *Cross & Company*, March 8, 1904, 6 F. 538, 41 S.L.R. 381.

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

Counsel for the Pursuer (Appellant) — Forbes. Agent—Andrew Gordon, Solicitor.

Counsel for the Defenders (Respondents) —Munro. Agents — St Clair Swanson & Manson, W.S.