

JULY 3, 1855.

DAVID BROWN, *Appellant*, v. WILLIAM GOLDIE, *Respondent*.

Appeal to House of Lords—Process—Printing Record—*The appellant, in an appeal to the House of Lords, omitted, in that part of his case setting forth the record, to print the pleas in law of the respondent :*

HELD, *That the omission was not sufficient to suspend the hearing of his case, though the House would, in settling the costs, order the appellant to pay to the respondent such additional costs as he had been put to by reason of the omission.*

Appeal to House of Lords—Process—Printing Record—*The appellant omitted to print in his case the statement of facts and pleas in law of the respondent :*

The House of Lords, *in respect of the omission, ordered the appellant to pay the respondent the costs of the day, and to amend his case within ten days, otherwise the appeal to be dismissed.*

The appellant brought two appeals against several interlocutors of the Court of Session, pronounced in two processes, in one of which he had been the pursuer, and in the other the defender. In both cases he was unsuccessful. The merits are immaterial for the present purpose. On the two causes being called—

*Lord Advocate* (Moncreiff) was proceeding to open the appellant's case.

*Anderson Q.C.*, for the respondent, *objected*—That the appellant had not complied with the standing orders of the House, inasmuch as he had not printed the entire records, but had omitted the pleas in law of the respondent in both instances. The order No. 177 required, "that in all cases of appeals from Scotland the appellant alone, in his printed case, shall lay before the House a printed copy of the record, as authenticated by the Lord Ordinary." The pleas in law of the respondent formed part of that record, and therefore should have been printed. The House cannot safely proceed to hear the case, without having before it the entire record, so as to know upon what both parties relied in the Court below.

*Lord Advocate.*—The appellant has complied with the standing order, as far as regards the presenting of the record to the House, but he has only failed to include a small portion of such record in his printed case. The respondent must be taken to know his own pleas; and the omission ought not to prevent the case being proceeded with, as it could not possibly prejudice the respondent.

*Anderson* replied.—Though the pleas which have been omitted are our own, still I am as ignorant of what they are as if they had been those of the appellant. The respondent always takes it for granted that the record is printed in the appellant's case, for it is the appellant's duty to print it; and it may happen that the printed cases are not exchanged until a day or two before the hearing. The hearing ought to be postponed, that the case may be amended; and we are entitled to the costs of the day.

LORD CHANCELLOR CRANWORTH.—We think that the appellant having complied with the standing order, so far as the House is concerned, and the only error being that he has not given to the respondent a printed copy of the respondent's own pleas, the hearing may go on. The respondent must necessarily have in his possession his own pleas in law. Though, however, we think the objection not sufficient to stop the hearing of the cause, we may hereafter consider what costs ought to be paid to the respondent in consequence of the omission.

LORD BROUGHAM.—The respondent must have in his possession a copy of his own pleas in law, and that in a printed form, for they would be printed in the Court below.

It was shortly afterwards discovered that not only the pleas in law, but the statement of facts of the respondent, were omitted in the appellant's printed cases.

*Anderson* called the attention of the House to this further omission.

The LORD CHANCELLOR said, that in such circumstances it was impossible to hear the cases; and the House thereupon made an order, that unless the appellant, within ten days, paid to the respondent the costs of the day in both appeals, and amended his printed cases, such appeals should stand dismissed, with costs.<sup>1</sup>

*Appellant's Agent*, Andrew Murray.—*Respondent's Agent*, James Crosbie.

<sup>1</sup> It was understood that the costs of the day were not paid, as ordered; consequently both appeals were dismissed with costs.