

LORD KINNEAR—I agree with the majority of your Lordships.

The Court adhered.

Counsel for Pursuers and Reclaimers—Campbell, K.C.—Macmillan. Agent—J. Gordon Mason, S.S.C.

Counsel for Defenders and Respondents—Ure, K.C.—Hunter. Agents—Webster, Will, & Company, S.S.C.

HOUSE OF LORDS.

(APPEAL COMMITTEE.)

Friday, February 19, 1904.

(Before the Lord Chancellor (Halsbury), Lord Macnaghten, Lord James of Hereford, Lord Robertson, and Lord Lindley.)

WALLACE-JAMES v. MONTGOMERIE & COMPANY, LIMITED.

(*Ante*, November 17, 1899, 37 S.L.R. 83, and 2 F. 107; March 8, 1902, 39 S.L.R. 517, and 4 F. 771; and December 18, 1903, 41 S.L.R. 137.)

Process—*Appeal to House of Lords*—*Appeal Sustained*—*Interlocutors of Court of Session Dealing with Several Questions*—*Only One Point Argued in House of Lords.*

In an action for interdict against interfering with a certain piece of land various questions of title to the land, title to sue, and possession were involved. The defenders appealed to the House of Lords against all the interlocutors of the Courts below, but at the hearing of the appeal argued only one of the questions in the case. The appeal was sustained.

Held, by the Appeal Committee, that the defenders were not entitled to an order for the reversal generally of the interlocutors appealed against, but only to an order for the reversal of the interlocutors so far as they related to the question argued before the House.

This was a petition to vary the draft judgment of the House of Lords in the appeal by *Mongomerie & Company, Limited*, in the action raised against them at the instance of *John George Wallace-James*, reported *ante* December 18, 1903, 41 S.L.R. 137.

The action concluded, *inter alia*, for interdict against the appellants interfering with a certain piece of land alleged to belong to the burgh of Haddington.

On 7th June 1901 the Lord Ordinary (KINCAIRNEY) pronounced an interlocutor finding (1) that the piece of ground referred to had from time immemorial been in the use and possession of the Provost, Magistrates, and Town Councillors of the burgh of Haddington, and (2) that it had been appropriated from time immemorial for the

use and enjoyment of the burgesses and inhabitants.

On 8th March 1902 the First Division affirmed this interlocutor.

The appellants appealed against the interlocutor of the First Division and against the whole of the Lord Ordinary's interlocutor as well as against certain earlier interlocutors, dated 23rd November 1898, 18th July 1899, and 17th November 1899, in the Outer and Inner House, but at the hearing of the appeal they argued only the point that the piece of ground in question had not been appropriated from time immemorial for the use and enjoyment of the burgesses and inhabitants of Haddington.

On 18th December 1903 the House of Lords sustained the appeal.

After the judgment of the House of Lords had been given, but before the draft order was passed, the respondent lodged a petition setting forth that the appellants were not entitled to a reversal of the whole of the interlocutors appealed from, as they had not argued all the points determined therein; and that in fact they had only argued the one point, viz., that the ground in question had not been dedicated from time immemorial to public use. In his petition the respondent accordingly craved the House to limit the order of reversal to that one point, in respect that a general reversal of all the interlocutors which dealt with other points than the point of appropriation to public use would warrant the inference that the important points not argued had been considered by the House.

The petition came before the Appeal Committee.

LORD CHANCELLOR—The question of title to the land in question was raised, but when the learned counsel came to argue the case he said he would not trouble the House with anything about title. That being so, he allowed that part of the interlocutor to stand.

The Order of the House was in the following terms:—"Ordered and adjudged that the said interlocutor of the Lords of Session in Scotland of the 17th day of November 1899, in so far as it finds the appellants liable in the expenses of the reclaiming note, and also the said interlocutor of the Lord Ordinary there of the 7th day of June 1901, in so far as it finds that the piece of ground referred to in the action has been appropriated from time immemorial for the use and enjoyment of the burgesses and inhabitants, and also the said interlocutor of the Lords of Session there of the 8th day of March 1902, so far as it adheres to the said finding of the said Lord Ordinary, and also in so far as it finds the respondent entitled to expenses, be, and the same are hereby reversed; and it is further ordered and adjudged that the note of suspension and interdict presented by the respondent (complainer below) be, and the same is hereby refused; and it is further ordered that the respondent do pay, or cause to be paid, to the said appellants the costs of the action in the Court of Session; and it is further ordered that the respondent do pay,

or cause to be paid, to the said appellants the costs incurred in respect of the said appeal to this House."

Agents for the Appellants—John Kennedy, W.S., Westminster; T. S. Paterson, W.S., Edinburgh.

Agents for the Respondent—A. & W. Beveridge, Westminster; Patrick & James, S.S.C., Edinburgh.

HIGH COURT OF JUSTICIARY.

Saturday, December 17.

(Before Lord Adam, Lord M'Laren, and Lord Kinnear.)

HUNTER v. WINTRUP.

Justiciary Cases—Suspension—Sale of Food and Drugs Acts—Certificate of Analyst—No Statement as to Weight of Sample Got for Analysis—Article Liable to Decomposition—Omission to State whether Change had Taken Place in Constitution of Article—Sale of Food and Drugs Act 1875 (38 and 39 Vict. c. 63), secs. 6, 18, 21, and Schedule.

In a suspension of a conviction under the Sale of Food and Drugs Acts 1875 to 1899, for selling adulterated butter, held (1) that, as under the schedule of the Act of 1875 it was in the discretion of the analyst to insert in his certificate the weight of the sample got for analysis or not as he thought fit, it was no objection that the analyst's certificate did not state the weight of the sample, and did not state whether it had been weighed, but (2) that the direction contained in the note appended to the schedule—that in the case of a certificate regarding "milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place" in its constitution—was imperative; and in respect that the analyst's certificate contained no report of the nature required, *sustained* the bill and *quashed* the conviction.

The Sale of Food and Drugs Act 1875 (38 and 39 Vict. cap. 63), sec. 6, enacts—"No person shall sell to the prejudice of the purchaser any article of food . . . which is not of the nature, substance, and quality of the article demanded." . . . Section 18 enacts—"The certificate of the analysis shall be in the form set forth in the schedule hereto, or to the like effect." Section 21 enacts—"At the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated." . . .

The schedule appended to the Act is as follows:— "*Form of Certificate.*

"To⁽¹⁾ . . . I, the undersigned, public analyst for the . . . , do hereby certify that I received on the . . . day of 18 . . . , from⁽²⁾ . . . , a sample of . . . for analysis (which then weighed⁽³⁾ . . .), and have analysed the same, and declare the

result of my analysis to be as follows:—I am of opinion that the same is a sample of genuine . . . ; or, I am of opinion that the said sample contained the parts as under, or the percentages of foreign ingredients as under:—

"*Observations.*⁽⁴⁾

"As witness my hand this . . . day of

"⁽¹⁾ Here insert the name of the person submitting the article for analysis.

"⁽²⁾ Here insert the name of the person delivering the sample.

"⁽³⁾ When the article cannot be conveniently weighed, this passage may be erased, or the blank may be left unfilled.

"⁽⁴⁾ . . . In the case of a certificate regarding milk, butter, or any article liable to decomposition, the analyst shall specially report whether any change had taken place in the constitution of the article that would interfere with the analysis."

The Sale of Food and Drugs Act 1879 (42 and 43 Vict. c. 30), section 2, provides that in the sale of adulterated articles it shall be no defence to allege that the purchase was made for analysis.

On 1st September 1904 John Hunter, grocer, High Street, Kirkcubright, was charged on a summary complaint at the instance of George Wintrup, county sanitary inspector, Castle Douglas (the officer entrusted by the County Council with the execution of the Sale of Food and Drugs Acts 1875 to 1899) with selling to the complainant, to his prejudice, half-a-pound of salt butter, which was not of the nature, substance, and quality of the article demanded, "in respect that it contained ninety-two per cent. of foreign ingredients, namely, foreign fat (as appears by the analyst's certificate dated the 19th day of August 1904, herewith produced, and a copy of which is appended to the schedule hereto), contrary to the provisions of section 6 of the Sale of Food and Drugs Act 1875, as amended by the 2nd section of the Sale of Food and Drugs Amendment Act 1879."

The schedule appended to the complaint contained the following certificate:—

"To Mr George Wintrup, County Sanitary Inspector, Castle-Douglas.

"I, the undersigned, public analyst for the stewardry of Kirkcubright and burghs of Kirkcubright, Dalbeattie, Castle-Douglas, Gatehouse, and New Galloway, do hereby certify that I received, on the 6th day of August 1904, from Mr George Wintrup, inspector, a sample of butter marked No. 247, for analysis (which then weighed . . .), and have analysed the same, and declare the result of my analysis to be as follows:—I am of opinion that the said sample contained the percentages of foreign ingredients as under—At least 92 per cent. of the fat present is foreign fat. This is a sample of margarine. As witness my hand at Dumfries this 19th day of August 1904. JAMES DAVIDSON."

At the trial of the case in the Sheriff Court the respondent objected to the certificate being received in evidence, in respect