REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL, WHICH, THOUGH NOT ORIGINATING IN SCOTLAND, DEAL WITH QUESTIONS OF INTEREST IN SCOTS LAW.

HOUSE OF LORDS.

Thursday, May 20, 1909.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Gorell, and Shaw of Dunfermline.)

BROOK *v.* MELTHAM URBAN DISTRICT COUNCIL.

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Local Government—Sewers—Duty to Receive Waste from Factories—Sufficiency of Purification Works to Deal with Waste—Rivers Pollution Prevention Act 1876 (39 *and* 40 *Vict. cap.* 75), *sec.* 7.

The Rivers Pollution Prevention Act 1876, sec. 7, provides that every sanitary authority having sewers under their control shall give facilities for carrying into such sewers liquids from factories within their district, ... "provided also that no sanitary authority shall be required to give such facilities as aforesaid where the sewers of such authority are only sufficient for the requirements of their district."

Manufacturers claimed to have waste liquids from their factories received into the sewers of a local authority. The actual drain pipes were admittedly large enough, but the sewerage system included purification works which were only sufficient for the other requirements of the district.

Held that "sewers" included the purification works which were part of the system through which the sewage flowed.

Guthrie, Craig, & Company v. *Magistrates of Brechin*, 1888, 25 S.L.R. 288, 15 R. 385, *distinguished.*

The appellants, who were Yorkshire manufacturers, claimed for an order against the Local Sanitary Authority (respondents) to allow the liquids from their factories to empty into the respondents' sewers. The County Court Judge held that certain outfall or purification works in the respondents' sewerage system were insufficient to receive the appellants' liquids, and dismissed the case on the ground that such works were "sewers" in the meaning of the proviso quoted *supra*. This order was reversed by the Divisional Court (CHANNELL and SUTTON, JJ.), and restored by the Court of Appeal (VAUGHAN WILLIAMS, MOULTON, and BUCKLEY, L.JJ.).

At the conclusion of the argument for the appellants their Lordships gave judgment as follows:—

LORD CHANCELLOR (LOREBURN)—In my opinion the Court of Appeal came to the right conclusion in this case. Section 7 of the Rivers Pollution Prevention Act of 1876 gives certain rights to manufacturers of carrying the liquids proceeding from their factories or manufacturing processes into the sewers within their district. But if that is examined, to put it in one sentence, it is merely by way of grace and of favour. I need not repeat what has been very well said by Channell, J., and Moulton, L.J., on that subject. The right, whatever it is, is qualified by two provisos, and Mr Danckwerts very legitimately tried to steer his argument between those two provisos. Looking at the second proviso, my own view is that this is a case in which "the sewers of such authority are only sufficient for the requirements of their district." The word "sewer" does not necessarily bear the same meaning as in the Public Health Act 1875, whatever the meaning in that Act may be. I think that in the present case it includes these works which are a part of the system through which the sewage flows to the river where it ultimately escapes. That will be sufficient to justify the decision of the Court of Appeal, and it is, indeed, following it. It is therefore unnecessary to say anything with regard to the meaning of the first proviso beyond this—that a strong argument might perfectly well have been addressed to the House in reference to that proviso also.

LORD MACNAGHTEN and LORD GORELL concurred.

LORD SHAW—I agree, but in doing so I should like to refer to the Scotch case of *Guthrie, Craig, & Company* v. *Magistrates of Brechin*, 15 R. 385, 25 S.L.R. 288, which has been referred to. In my opinion the highest deference is rightly paid to any judgment of that very great and distinguished Judge the late Lord President Inglis; but I dissent from the view which seems to have been entertained by Channell, J., that that judgment in the Scotch Court was in any way a disturbing factor in the present case. I may say, personally, that I cannot better express the judgment which I should form upon the merits of that case, and its relation to the present case, than by repeating the judgment of the learned County Court Judge in the present instance. He says, "the judge" (referring to Lord President Inglis) "there speaks of pipes, but he is distinguishing the pipes from the land and the sewage farm to which the sewage was carried. So far as it appears there was no piping, there was nothing artificial, but the pipes referred to there were pipes which carried sewage on to a farm, and then it was disposed of by course of nature; there were no artificial works." That case, so far as fact is concerned, shows the whole width of the distinction from the present case, in which you have a series of artificial works, the entry to which, no doubt, is the pipe which drains through the locality, but the exit from which is the effluent pipe, and it is only when the sewage reaches the effluent pipe that it becomes innocuous in the sense of the statute, and the statutory duty of disposal of the sewage is not performed until the effluent pipe is reached and the discharge therefrom in that innocuous condition, or in innocuous circumstances, occurs. But for that Scotch decision, which has, I think, been misapprehended, and so treated as a disturbing element, I presume that all the learned Judges in the courts below would have been unanimous in their judgments, in the sense adopted by the Court of Appeal. I think that the decision arrived at by the learned Lords Justices was right.

Appeal dismissed.

Counsel for Appellants — Danckwerts, K.C. — Ellison. Agents — Van Sandau & Company, Solicitors.

Counsel for Respondents — Scott Fox, K.C.—Lowenthal. Agents—Rawle, Johnstone, & Company, Solicitors.

HOUSE OF LORDS.

Monday, July 19, 1909.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, James of Hereford, Atkinson, Collins, Gorell, and Shaw, with Nautical Assessors.)

ABRAM LYLE & SONS *v.* OWNERS OF STEAMSHIP "SCHWAN."

(ON APPEAL FROM THE COURT OF APPEAL IN ENGLAND.)

Ship—Unseaworthiness—Defective Cock—Bill of Lading—Exceptions—Exercise of "Reasonable Care and Diligence" by Owners.

The pumping apparatus of a ship was fitted with a cock of an unusual and dangerous character, as a result of which sea water entered the hold and did damage. By the bills of lading the ship-owners were protected from liability provided they had exercised "reasonable care and diligence in connection with the ship." The evidence shewed that the chief engineer (who had also inspected the vessel in the course of building) had failed to inform himself of the defective construction of the cock, and that he was unaware during the voyage in question of the danger arising therefrom.

Held that the ship was not seaworthy, that reasonable care and diligence had not been exercised, and that the owners were accordingly liable in damages.

The cargo-owners appealed against the judgment of the Court of Appeal (LORD ALVERSTONE, C.J., VAUGHAN WILLIAMS and BUCKLEY, L.JJ., with Nautical Assessors) dismissing their action for damages and reversing the judgment in their favour pronounced by DEANE, J.

The *facts* and the material clauses of the bills of lading are given in the opinions of Lords Atkinson and Gorell.

Their Lordships gave judgment as follows:—

LORD ATKINSON—In this case the plaintiffs sued to recover damages in respect of a cargo of sugar shipped on board the steamship "Schwan" to be carried from Bremen to London. The greater part of the cargo had been seriously injured, if not entirely destroyed, in transit by reason of the main hold of the ship having been flooded with sea water to the depth of about 4 feet. There is no controversy as to the extent of the damage done to the sugar, nor as to the cause of it, and the only question for decision is whether or not the shipowners are protected by the tenth clause of the bill of lading, which again resolves itself in effect into two questions—(1) Was the ship seaworthy when loaded, that is to say, reasonably fit to perform the service which the shipowner engaged her to perform, viz., to carry these goods to their destination; and (2) if not sea-