

Town Council of a burgh shall have the like powers of opposing bills or provisional orders as are conferred upon County Councils by the Local Government Act, and the latter Act in turn incorporates by reference certain provisions of the Municipal Corporations Act 1872.

By the 55th section of the Act of 1903, therefore, the three Acts are combined, and in order to ascertain the procedure to be followed they must be read together; and it seems to me that that is plainly what is referred to in the prayer of the petition. When the petition was brought it appears that the pursuer understood that the defenders proposed to defray the expenses of opposing the bill both out of the assessments and out of the common good. If that had been the case the pursuer would have been right in founding upon the 55th section of the Act of 1903 in so far as the assessments were concerned. It turns out, however, that the defenders do not propose, and never have proposed, to defray the expenses out of the assessments but out of the common good, and seeing that the Act of 1903 refers to assessments only and does not in any way affect the right of a Town Council to deal with the common good, it is clear that the provisions of the 55th section have no application to the case as it now stands.

That also is sufficient for the disposal of the case as laid, but there was another ground upon which the pursuer anxiously contended that he was entitled to decree, and upon which (although it is not raised upon record) it may be desirable that we should express our opinion.

It was contended that, at all events, the defenders were bound to adopt the procedure directed by the Municipal Corporations Act of 1872. Now it may be that the language of the 2nd section of that Act is wide enough to include the common good of a burgh; but in the first place, the Act is an enabling Act conferring upon what is called the "governing body" powers which it did not previously possess; and in the second place, the 8th section expressly saves "any rights or powers now possessed or enjoyed by any governing body." If, therefore, the Town Council of a royal burgh have otherwise power to apply the common good to such a purpose as that in question, they do not require to take advantage of the powers conferred by the statute. Now, no authority was cited, nor indeed was any serious argument submitted to us, to the effect that it is incompetent for a Town Council acting in good faith to defray out of the common good the expenses of opposing a Bill in Parliament, which in their judgment is prejudicial to the interests of the burgh. In my opinion it is competent for the Town Council so to apply the common good, and I have nothing to add to the exposition of the law which has been given by Lord Kyllachy.

I therefore concur in the view that the action should be dismissed.

LORD KYLLACHY—I should perhaps explain that I entirely concur with the con-

cluding sentences of Lord Low's opinion.

LORD JUSTICE-CLERK—I have no hesitation in concurring with your Lordships in throwing out the action on the ground of want of title. I cannot see any reasonable ground upon which the title of the pursuer could be maintained on principle, and in view of the decisions already pronounced, I consider that that question is foreclosed.

I am glad, however, that your Lordships have dealt with the case on the merits on the assumption of a title to sue. I entirely concur in what has been said by your Lordships on that matter.

The Court dismissed the appeal and affirmed the interlocutors appealed against.

Counsel for Appellant—Hunter, K.C.—J. A. Christie. Agents—St Clair Swanson & Manson, W.S.

Counsel for Respondents—Blackburn—Hon. Wm. Watson. Agents—Dundas & Wilson, C.S.

## HOUSE OF LORDS.

Friday, March 30.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lords Macnaghten and Robertson.)

### BROWN v. JOHN HASTIE & COMPANY, LIMITED.

(In the Court of Session, November 8, 1904, reported 42 S.L.R. 52, and 7 F. 97.)

*Patent—Patents for Inventions—Master Patent or merely Patent for Mechanical Arrangement—Claim—Infringement.*

A patent, the object of which was "the prevention of leakage of steam in steering and the like engines by the introduction into the steam feed-pipe of a casing which contains a cut-off valve, operated from and acting in unison with the controlling valve of the steering or like engine," claimed—"In connection with the valves of steering and like engines, fitting in a passage or casing through which the steam enters the controlling valve casing, a double beat or equivalent valve having opposite inclines acted on by counter-part inclines moving with the controlling valve, the parts being arranged and operating substantially as and for the purposes hereinbefore described."

The owner of the patent maintained that it was a master or pioneer patent, no means up to its date having been invented for preventing the leakage of steam in steering engines, and sought to have declared as infringements later patents having the same object and using a cut-off valve, which valve, however, was operated by a different mechanical device.

Held that the claim must be construed as being merely for a mechanical arrangement, and consequently that the later patents, the mechanical device in which did not infringe the mechanical arrangement in the earlier patent, were not infringements.

The case is reported *ante ut supra*.

Hastie & Company, Limited (defenders and reclaimers) appealed to the House of Lords.

The claim in Brown's specification is quoted *supra* in rubric.

At delivering judgment—

LORD CHANCELLOR—This was an action for an infringement of a patent, and the question of the novelty of the invention was not raised upon the record, because that would have been derogating from a submission in a previous proceeding between the same parties. I do not desire to say anything whatever upon the subject of the novelty of the invention.

But, assuming that the invention was as novel as it appears to have been meritorious, I look at the claim in the appendix in order to ascertain whether or not there has been an infringement of this patent. It is superfluous to describe the mechanism of the patent, and of that which is alleged to be the infringement, for that has been done with the utmost clearness in the judgments of the Inner House, and also by the Lord Ordinary. In the result it appears to me that whether this is to be treated as an infringement or not depends upon the true construction of the claim at the end of the completed specification.

I have come to the conclusion that this claim cannot be enlarged in the manner proposed by Mr Cripps' argument. I think that the words in it, "having opposite inclines acted on by counter-part inclines," are the material parts of the claim as stated. I do not know whether the claim could have been stated otherwise—at all events it seems to me that we must treat this claim for the present purpose as being a claim for a mechanical arrangement, and once that is ascertained I do not think that it can be said that the mechanical device applied by the appellants is an infringement of the mechanical arrangement which has been described in the claim of the respondents.

Under these circumstances, with the greatest possible respect for the learned Judges in the Court of Session, I am of opinion that this appeal ought to be allowed, and I move your Lordships accordingly.

EARL OF HALSBURY—I am of the same opinion, and I have nothing to add.

LORD MACNAGHTEN—I agree.

LORD ROBERTSON—I entirely agree. The only point on which I shall add one word is as to what Mr Cripps has described in English phraseology, although this is a Scotch case, as an "estoppel." Now it seems to me to be perfectly clear that the whole effect of the consent decree pronounced in the previous action was that it

tied the hands of this appellant from ever disputing the validity of the patent in question, or disputing that they had in the previous case infringed the patent. To me it seems impossible to rear out of that consent to the decree a logical process which shall convict the present appellant of inconsistency in now arguing about a different machine altogether that he has in fact not infringed. His undertaking was not to infringe, and he seeks now to shew that he has fulfilled that, and I think he has succeeded.

Their Lordships reversed the judgments appealed with expenses.

Counsel for the Pursuer and Respondent—Cripps, K.C.—Sandeman. Agents—Steedman, Ramage, & Bruce, W.S., Edinburgh—Fowler & Company, London.

Counsel for the Defenders and Appellants—Solicitor-General for Scotland (Ure, K.C.)—H. Fletcher Moulton. Agents—R. H. Millar & Company, S.S.C., Leith—John Kennedy, Westminster.

Monday, June 25.

(Before the Lord Chancellor (Loreburn), and Lords Macnaghten, James of Hereford, Robertson, and Atkinson.)

WINDRAM AND OTHERS (OWNERS OF "BUCCLEUCH") v. ROBERTSON (OWNER OF "KYANITE.")

(In the Court of Session May 23, 1905, reported 42 S.L.R. 602, and 7 F. 665.)

Appeal—Appeal on Questions of Fact—Review by House of Lords.

Observations per Lord Chancellor (Loreburn) in a case depending on review of a finding in fact, found by both the Lord Ordinary and the Inner House.

The case is reported *ante ut supra*.

Windram and Others, the owners of the sailing ship "Buccleuch," appealed to the House of Lords.

At the conclusion of the appellants' argument, the respondents not being called upon—

LORD CHANCELLOR—The only point that was raised in this appeal was whether the lights of the sailing ship "Buccleuch" were what they ought to have been, or whether they were so dim and imperfect for one reason or another that the vessel must be held to blame on that account.

The question is wholly one of fact, and there is a great deal of contradiction of evidence. There is a finding against the "Buccleuch" on this point not only of the Lord Ordinary but also of all the Lords of Session in the Inner House, and it would be a strong thing for this House to differ upon a point which is exclusively a point of fact with the findings of both Courts below. Were the matter entirely *res integra*, I