

Tuesday, November 7.

(Before Earl Loreburn, Viscount Haldane,
Lord Shaw, and Lord Parmoor.)

BEATTIE v. GLASGOW CORPORATION.

Appeal to House of Lords—Process—Issues—Competency of an Appeal on an Allowance of Issues—Court of Session Act 1808 (48 Geo. III, cap. 151), sec. 15.

The Court of Session Act 1808, sec. 15, enacts—“Hereafter no appeal to the House of Lords shall be allowed from interlocutory judgments, but such appeals shall be allowed only from judgments or decrees on the whole merits of the cause, except with the leave of the Division of the judges pronouncing such interlocutory judgments, or except in cases where there is a difference of opinion among the judges of the said Division.”

In an action to recover from a corporation damages for personal injury caused, as alleged, through defect in the lighting of a common stair for which it was by statute responsible, *held* that a judgment allowing an issue was an interlocutory judgment, and was, without leave and without a difference of opinion among the judges of the Division, not open for appeal to the House of Lords.

The Court of Session Act 1808 (48 Geo. III, cap. 151), section 15, is quoted *supra in rubric*.

Mrs Janet Ferguson or Beattie, wife of John Beattie, 5 William Street, Mile End, Glasgow, *pursuer*, brought in the Court of Session, against the Corporation of the City of Glasgow, *defenders*, an action to recover £500 as damages for personal injury received by her through the alleged defective lighting of the common stair at 108 Broad Street, Mile End, Glasgow, the Corporation being responsible under their Police Act of 1866 for supplying and lighting the gas in common stairs.

On 14th December 1915 the Lord Ordinary (ANDERSON) allowed this issue—“Whether on or about the 9th day of August 1915, and in the stairway of the tenement at 108 Broad Street, Mile End, Glasgow, the pursuer was injured in her person through the fault of the defenders, to her loss, injury, and damage?”

On 17th May 1916 the Second Division of the Court of Session (LORD JUSTICE-CLERK SCOTT-DICKSON, LORDS DUNDAS, SALVESEN, and GUTHRIE) unanimously adhered.

The defenders and reclaimers, Glasgow Corporation, appealed to the House of Lords. Objection was taken that the appeal was incompetent, the judgment appealed against being interlocutory.

At the conclusion of the argument on the preliminary objection—

EARL LOREBURN—In this case a preliminary objection has been taken. It is that by a Statute of 1808, cap. 151, sec. 15, this House is prohibited from entertaining this appeal. The section says—“. . . , [quotes,

v. supra in rubric] . . .” In this case there has been no difference of opinion and leave has not been granted.

Now no consent or waiver would authorise this House to entertain an appeal contrary to that section, and if (which I by no means say is the case) the House has in past time entertained any such appeals, then it must have been because the House has assumed that leave had been given. Is this appeal within this prohibition? The facts alleged are that an accident took place on a staircase in Glasgow in consequence of the Corporation of Glasgow not fulfilling their statutory duty of lighting that staircase. The defence was that no wrong had been committed for which an action would lie, that there was no duty to the pursuer, and that the accident was her own fault. The order under appeal now was an order directing an issue.

Now let us look at the nature of this statutory prohibition. As I read the statute it applies, first, to interlocutory orders, by which I mean orders which in substance are interlocutory, and not merely orders which are in form interlocutory. If in substance the order appealed from finally decides a right between parties, then this part of the prohibition will not apply. The prohibition applies, secondly, where the order is not on the whole merits of the cause. If it is an order on the whole merits of the cause, then this part of the prohibition does not apply. In order to escape the prohibition the order must in substance finally decide a right, and also it must be an order on the whole merits of the cause. There may be two rights in controversy. If the order in substance finally decides only one, and deals though not finally with the other, then that escapes the prohibition. But if either the order were in substance interlocutory, or the order was not on the whole merits, then the prohibition would apply. That, I think, is the best conclusion that I can arrive at with regard to the meaning of this statute, which I do assisted by the decision of this House in a former case.

To apply that to the facts of the present case and see what the real substance of the order was, I think the order did not decide any right except the right to ascertain the facts and to have the law laid down accordingly, which is intrinsically an interlocutory order. Therefore in my opinion the House is prevented by statute from entertaining this appeal.

VISCOUNT HALDANE—I agree. I do not desire to add anything to what has been said by my noble and learned friend on the Woolsack.

LORD SHAW—I entirely agree.

LORD PARMOOR—I agree.

Their Lordships dismissed the appeal with expenses.

Counsel for the Appellants—Dean of Faculty (Clyde, K.C.)—Solicitor-General for Scotland (Morison, K.C.)—Crawford. Agents—Sir John Lindsay, Town Clerk,

Glasgow—Campbell & Smith, S.S.C., Edinburgh—Martin & Company, Westminster.

Counsel for the Respondent—Scanlan—Scott, Agents—W. G. Leechman & Company, Glasgow—T. M. Pole, Leith—Herbert Z. Deane, Westminster.

HIGH COURT OF JUSTICIARY.

Tuesday, September 12.

(Before the Lord Justice-General, the Lord Justice-Clerk, and Lord Skerrington.)

PATRICK THOMSON, LIMITED v. SOMERVILLE.

Justiciary Cases—Statutory Offence—Shops Act 1912 (2 Geo. V, cap. 3), sec. 4—The Edinburgh Hairdressers and Barbers' (Shops Act) Half Holiday Order 1915—Application of Half Holiday Order to Large Drapery Store Containing Barber's Saloon.

A local authority, acting under the powers conferred by the Shops Act 1912, issued an Order applying to "all shops" within their jurisdiction in which the business of hairdresser or barber was carried on, and providing that all shops to which the Order applied should be closed on Wednesday at 1 p.m. The owners of a large shop in which they carried on the business of retail drapers and general warehousemen were convicted of a contravention of the said Order in respect that they failed to close certain rooms in their premises used as hairdressing saloons on a Wednesday afternoon. *Held*, on appeal, that it was no obligation under the Order to close the rooms used for hairdressing, &c., on the half-holiday prescribed.

The Shops Act 1912 (2 Geo. V, cap. 3) enacts, section 4—“(1) Every shop shall, save as otherwise provided by this Act, be closed for the serving of customers not later than one o'clock in the afternoon on one week-day in every week. (2) The local authority may, by Order, fix the day on which a shop is to be so closed (in this Act referred to as 'the weekly half-holiday'), and any such Order may either fix the same day for all shops or may fix (a) different days for different classes of shops; or (b) different days for different parts of the district; or (c) different days for different periods of the year.”

The Edinburgh Hairdressers and Barbers' (Shops Act) Half-Holiday Order 1915 provides—“1. This Order . . . applies to all shops in the city and royal burgh in which the retail trade or business of a hairdresser or barber is carried on. 2. All shops to which this Order applies shall be closed for the weekly half-holiday on Wednesday at 1 p.m., provided that any shopkeeper may substitute Saturday for Wednesday on affixing a notice to that effect in his shop. 3. Where any trade or business other than

that of a hairdresser or barber is carried on in any shop to which this Order applies, such shop may be kept open after the closing hour mentioned in article 2 of this Order for the purpose of the first-mentioned trade or business alone, provided that (a) after the said closing hour there shall be exhibited in some conspicuous places on the exterior and in the interior of such shop notices in letters of the size of not less than two inches containing the following words— 'Shops Act 1912. This shop is closed for to-day except for the (sale by retail of) or (the trade or business of) . . . ’

Patrick Thomson, Limited, North Bridge, Edinburgh, appellants, were charged at the instance of George Somerville, Procurator-Fiscal, respondent, in the Sheriff Court of the County of the City of Edinburgh, by summary complaint in the following terms, viz.—“Patrick Thomson, Limited, hairdressers, &c., North Bridge, Edinburgh, you are charged at the instance of the complainer that you, being the occupiers of a shop in North Bridge, Edinburgh, in which you carried on the retail trade or business of hairdressers or barbers, did fail to have said shop closed for the weekly half-holiday on Wednesday, 29th March 1916, at 1 p.m., you not having substituted Saturday for Wednesday by affixing a notice to that effect in your shop, contrary to 'The Edinburgh Hairdressers and Barbers' (Shops Act) Half-Holiday Order 1915,' section 2, and 'The Shops Act 1912,' section 4, subsections (1), (2), and (7), whereby you are liable to a penalty not exceeding £1.”

The appellants pleaded not guilty, and a joint-minute of admissions was lodged by the parties. The Bailie and Sheriff-Depute (BOYD) thereafter found the appellants guilty as libelled and fined them 5s., and at their request stated a Case for appeal.

The Case stated, *inter alia*—“The admissions contained in the joint-minute are as follows—1. The said Patrick Thomson, Limited, entered into possession of the premises occupied by them at 15 North Bridge, Edinburgh, on or about 16th March 1906.

“2. These premises consist of a complete block of stone buildings having a frontage of 230 feet to North Bridge, Edinburgh, and comprising ten floors in all, namely—(1) *Ground Floor*—The ground floor, which is on the level of Jeffrey Street, comprises electric laundry, engineering workshops, despatch and forwarding department, boilers, and machinery. There is an entrance to the premises from Jeffrey Street, but this entrance is used chiefly as a goods entrance. (2) *Second Floor*—The second floor consists of workrooms for dressmaking and millinery, stockrooms, and merchandise distribution room. (3) *Third Floor*—The third floor comprises the furniture and carpet department and upholsterers' workroom. (4) *Fourth Floor*—The fourth floor comprises the counting-house, letter order department, staff cloakrooms, departments for stationery, china, and glassware, ironmongery, and bazaar goods. (5) *Fifth Floor or Main Street Floor*—This floor consists of departments for boots and shoes, silks and