# REPORTS OF CASES IN HOUSE OF LORDS AND PRIVY COUNCIL DEALING WITH QUESTIONS OF INTEREST IN SCOTS LAW. *(Continued from page 702 ante).*

## HOUSE OF LORDS.

*Thursday, November* 26, 1908.

(Before the Lord Chancellor (Loreburn), Lords Macnaghten, Robertson, and Collins.)

### BUTTERWORTH *v.* WEST RIDING OF YORKSHIRE RIVERS BOARD.

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

*Public Health — River — Pollution — Polluting Liquid from Factory—Discharge into Public Sewer—"Person who Causes to Flow into Stream"—Rivers Pollution Prevention Act* 1876 (39 *and* 40 *Vict. cap.* 75), *secs.* 4 *and* 7.

A manufacturer who discharges polluting liquids into a public sewer which leads into a stream is a "person who causes to fall or flow or knowingly permits to fall or flow or to be carried into any stream any poisonous, noxious, or polluting liquid proceeding from any factory," and thereby commits an offence under the Rivers Pollution Prevention Act 1876, sec. 4. He is not exempted from the provision of the Act by proving a prescriptive right to use the public sewer in the manner complained of.

The appellants were manufacturers who for fifty years had discharged liquids from their factory into a sewer. The sewer was vested in the local sanitary authority and conveyed the liquids into a stream. The respondents, acting under powers conferred by the West Riding of Yorkshire Rivers Act 1894 (57 and 58 Vict. cap. clxvi) raised an action against the appellants in the County Court in which it was held that the appellants had committed an offence in terms of the Rivers Pollution Act 1876. This was affirmed by the King's Bench Division (PHILLIMORE and WALTON, JJ.) and by the Court of Appeal (LORD ALVERSTONE, C.J., SIR GORELL BARNES, P., and FARWELL, L.J.)

The manufacturers appealed.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—An examination of the Rivers Pollution Prevention Act 1876 has led me to the conclusion that the order before your Lordships ought to be affirmed. The appellants have for a long time drained their manufacturing refuse into a pipe communicating with a stream. In that way it falls into the stream. Their predecessors constructed the pipe long ago and permitted sewage from eight or ten houses to be discharged into it. Then it became a sewer within the meaning of the Public Health Act 1875. It is not disputed that the manufacturing refuse is a "polluting liquid." In these circumstances the respondents, the West Riding Rivers Board (who are entitled to take proceedings under an Act of 1894, to which I need not further refer) summoned the appellants for breach of sec. 4 of the Rivers Pollution Prevention Act 1876, in that they "caused and continue to cause to fall or flow, and knowingly permitted and still permit to fall or flow, or to be carried into a stream," &c., this refuse. The defence is that the appellants had a prescriptive right to discharge it into the sewer (which I will presume to be true), and that it was then the duty of the local sanitary authority to dispose of it so as not to break the law. They maintain that they did not cause this refuse to flow into the stream within the meaning of the section, because although it did flow into the stream by gravitation, all that they (the appellants) did was to cause it to flow into the sewer which is under the control of the local sanitary authority, and that they had no responsibility for its ulterior destination. The question raised is, no doubt, of great importance. The purpose of the Rivers Pollution Prevention Act 1876 was, as its name denotes, to prevent the pollution of rivers or streams. In the second, third, fourth, and fifth sections are contained prohibitions against introducing (I use a neutral word) into a stream the substances there separately classified. Roughly they may be stated as solid refuse of manufacture, sewage matter (whether solid or liquid), liquid polluting refuse of manufacture, and polluting refuse from mines (whether solid or liquid). Now, the thing forbidden to be done in each of these sections is described in the same language, except that there is a slight variation in sec. 2—"Every person who causes to fall or flow, or knowingly permits to fall or flow, or to be carried into any stream" the substance in question commits an offence. It is

clear to my mind that in regard to sewage matter dealt with by sec. 3 these words are intended by the Act to cover a case where a person causes such matter to flow into a channel or a sewer and thence to be carried in a stream. For the second paragraph of that section, and the last paragraph also, expressly excuse persons who under specified circumstances so discharge into a channel or sewer respectively. I think that this indicates that when the 3rd section speaks of causing to fall or flow, or knowingly permitting to fall or flow, or to be carried into a stream, it refers not merely to a direct discharge, but also to a discharge through some intermediate conduit, whether that be or be not a sewer under the control of a sanitary authority. If that is the meaning of the 3rd section, it will be so also of the 2nd section, with which we are here concerned. And indeed the language itself is so wide, so designedly wide in my opinion, that it would be difficult to apply any more restricted construction, unless, indeed, it were necessary in order to avoid clear injustice or absurdity, which cannot be supposed to have been meant. Accordingly, Mr Cripps, rightly treating these different, though similarly worded, sections as reflecting light upon each other, fixed upon sec. 3, and argued that an absurdity would follow if this wide construction were placed on section 3, which relates to sewage matter. Suppose, he said, that a householder whose house drain connects with a sewer finds that the sanitary authority controlling the sewer discharges the sewage into a stream without first deodorising it. In that case, is the householder, who is not to blame, and, indeed, has no alternative but to do what he has done, guilty of an offence? The answer seems to be sufficient, that in such case the householder is excused by the last paragraph of the 3rd section, because he has the sanction of the sanitary authority for so doing. By the Public Health Act 1875 the householder has a right to do it, and the sanitary authority is compelled to allow him to do so. When I turn to the 4th section of the Act of 1876, under which the present case comes, and also the 7th section, I find provisions which seem ample enough to prevent any unreasonable treatment of manufacturers. Every sanitary authority is obliged to give facilities for enabling manufacturers to convey their liquid manufacturing refuse into the sewers, provided it be not deleterious in the sense described "or otherwise be injurious in a sanitary point of view." But even if such refuse be "poisonous, noxious, or polluting," the manufacturer is not guilty of an offence when he causes it to flow into a stream through a channel constructed or in course of construction in 1876, when the Act was passed, and is using the best practicable and reasonably available means to render it harmless. All user existing in 1876 is thus protected on the simple condition that the manufacturer uses the best means to prevent a nuisance. In the present case the appellants or their predecessors had (I will assume) in 1876, and long before that, a right to discharge their refuse into the conduit which they still use, and thence into the stream. But they have not used the best means of making their refuse harmless. Accordingly, they have not the benefit of this proviso. I see no hardship in that. I must add that, under the 6th section of the Act of 1876, a further protection is afforded to manufacturers and mineowners. No proceedings can be taken against them for such an offence as is here charged without the consent of the Local Government Board. The Board in giving or withholding their consent must have regard to the industrial interests involved in the case and to the circumstances and requirements of the locality, and the Board cannot give its consent in a district which is the seat of a manufacturing industry unless satisfied that means for rendering the refuse harmless are "reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of the industry." In short, the natural construction of the 4th section seems to me to cover a case where refuse is discharged into a sewer and thence into a stream. Other clauses of the Act indicate that this is its meaning, and I see no injustice or inconvenience such as might lead me to suppose that a narrower construction was intended. In this opinion I am confirmed by the decision of the Court of Appeal in *Kirkheaton Local Board* v. *Ainley* ([1892] 2 Q.B. 274). Accordingly I move your Lordships to dismiss this appeal with costs.

LORD MACNAGHTEN — This appeal was apparently meant to bring under review the decision of the Court of Appeal in the case of *Kirkheaton Local Board* v. *Ainley* (*ubi sup.*), a decision pronounced in 1892. The Court then consisted of Lord Esher, M.R., Bowen and Smith, L.JJ. Holding themselves bound by the opinion of those eminent Judges as to the meaning and effect of certain expressions in the Rivers Pollution Prevention Act 1876, the learned Judges of the Court of Appeal in the present case affirmed the judgment of the Court below without giving any opinion of their own. The *Kirkheaton* decision was on the question of sewage pollution. Here the case is one of manufacturing pollution. In the Act of 1876 the two cases are kept quite distinct and are dealt with separately. But it is important to observe that in both the very same language is used to describe the doing of the thing which is constituted an offence by the Act. The Act of 1876 begins with a preamble which explains the scope, and indicates, I think, the scheme of the Act. It is in these words—"Whereas it is expedient to make further provision for the prevention of the pollution of rivers, and in particular to prevent the establishment of new sources of pollution." The creation of new sources of pollution is prohibited. Existing sources of pollution are to be regulated and reformed. Such being the purpose of the Legislature, the natural

and obvious course to be adopted in framing the Act was the course which the Act in fact follows. It declares that, subject to the provisions of the Act, every person who does any of the several things which the Legislature seeks to prevent as being sources of pollution commits a statutory offence. The net is cast widely. But there are checks and restrictions designed to obviate injustice to individuals and, in the case of manufacturing processes, injury to the industries of the country. The Act is divided into parts. Part 1 contains the "Law as to Solid Matters." With that we have nothing to do. Part 2, which is comprised in sec. 3, is headed "Law as to Sewage Pollution," and Part 3 "Law as to Manufacturing and Mining Pollutions." No proceedings were to be taken under Part 2 or Part 3 until the expiration of twelve months from the passing of the Act, and then two months' notice was to be given. As regards sewage pollution, the last clause in sec. 3 provides that a person other than a sanitary authority shall not be guilty of an offence under that section in respect of the passing of sewage matter into a stream along a drain communicating with any sewer belonging to, or under the control of, any sanitary authority, "provided he has the sanction of the sanitary authority for so doing." On this two observations may be made. In the first place the enactment shows that the interposition of a sewer is no protection to a person who passes sewage into a stream through the sewer. Then there is the proviso at the end of the clause to be construed. What is meant by "the sanction of the sanitary authority?" Happily it is not necessary to consider the question, for the proviso was practically repealed by the explanatory Act of 1893, which enacts that "When any sewage matter falls, or flows, or is carried into any stream after passing through or along a channel which is vested in a sanitary authority, the sanitary authority shall for the purposes of sec. 3 of the Rivers Pollution Prevention Act 1876 be deemed to knowingly permit the sewage matter so to fall, flow, or be carried." And accordingly I find that the West Riding of Yorkshire Rivers Act 1894, the Act under which the present action was brought, repeats the language of the Act of 1893 and omits the proviso altogether. The result of the Act of 1893 is that a person who drains into a stream through a sewer vested in a sanitary authority does not commit an offence under Part 2 of the Act of 1876, though the sewer communicates with it, and it is not necessary in any case to suggest or prove the sanction of the sanitary authority. In dealing with manufacturing pollutions the checks and restrictions are more elaborate. Of these provisions the most important is that contained in the latter part of sec. 4. No person running polluting liquid into a stream through a channel in use at the date of the Act is to be held guilty of the statutory offence if he shows to the satisfaction of the Court having cognisance of the case that he is "using the best practicable and reasonably available means" for rendering the effluent harmless. Then proceedings are not to be taken against any person under Part 3 save by a sanitary authority or without the consent of the Local Government Board. In giving or withholding their consent the Board are to have regard to the industrial interests involved in the case, and to the circumstances and requirements of the locality. They are forbidden to give their consent to proceedings by the sanitary authority of any district which is the seat of any manufacturing industry, unless they are satisfied after due inquiry that means for rendering the effluent harmless are reasonably practicable and available under all the circumstances of the case, and that no material injury will be inflicted by such proceedings on the interests of such industry. There are other provisions for the protection of manufacturers on which I need not dwell. In the last resort, if there are legal proceedings, a large discretion is given to the Judge. I may, however, observe that the certificate of an inspector appointed by the Local Government Board to the effect that "the means used by a manufacturer for rendering the effluent from his works harmless are the best or only practicable and available means under the circumstances of the particular case" is to be accepted in all courts and in all proceedings under the Act as conclusive evidence of the fact. A certificate to that effect seems to afford complete protection to a manufacturer who is discharging into a stream liquid coming from his works. The appellants have not taken any means for rendering harmless the effluent from their manufactory, nor do they propose to do so. They rely upon a contention which seems to me to be devoid of substance. They say—"We pass this poisonous matter into a sewer vested in the sanitary authority of the district; we have nothing more to do with it; if the sanitary authority pour it into a stream, they, not we, are guilty of an offence against the statute." That seems to me to be an idle contention. If a person sets in motion poisonous liquid in a course and in a direction which must take it into a stream, the person who sets the liquid going causes it to flow or fall into the stream whether he pours it in directly or passes it through a conduit vested in somebody else. That was the opinion of the learned Judges in *Kirkheaton Local Board* v. *Ainley* (*ubi sup.*). It seems to me to be a self-evident proposition, though it does not appear to have met with universal acceptance, owing, I think, at least in some measure, to an erroneous opinion which prevailed at one time, that under the Public Health Act 1875 manufacturers had the right of pouring their refuse into the sewers of the local sanitary authority. Then a point was made in argument of the fact that the appellants had, as was alleged, acquired a prescriptive right to use the sewer. I must confess that I could not quite follow the argument. It was not contended that a prescriptive right of fouling a stream could be of any avail against

an Act of Parliament which says that nobody shall foul a stream in future; and I have a difficulty in seeing how an indefeasible right of passage through a sewer for such liquids as may be lawfully passed into a stream can be an excuse for passing into the stream offensive liquids which nobody is allowed to put there. Some argument, too, was raised on section 7, which is in part 4. That section enacts that every sanitary or other local authority having sewers under their control shall give facilities for enabling manufacturers to drain into their sewers. I have some difficulty in seeing what this section has to do with the question before your Lordships. The appellants neither asked for nor obtained any facilities from the sanitary authority of the district for admittance to their sewers; and it seems to me that if they had obtained such facilities, and had poured into the sewer poisonous liquid, so as to flow into a stream, there is nothing in the Act to relieve them from the consequences of having committed an offence under part 3. I think that the appeal must be dismissed with costs.

LORD ROBERTSON—I think that this appeal fails, but my judgment is rested on a narrower ground than that which has been adopted in the Courts below. The first point to be remembered is that this is a case, not of sewage, but of manufacturing liquids; and it is necessary to see by what right the appellants get their liquids into the sewer. Now, the appellants have, not avowedly but actually, put forward two inconsistent theories. They say first that they have put their liquids into the sewer for fifty years, and they claim, therefore, a prescriptive right to do so. This, then, is a right as against the local authority—*in invitos*. The other theory is that, as *de facto* the liquids get into the sewer, the local authority must be held to have granted facilities in the sense of section 7 of the Act. It seems to me that, as matter of historical fact, there has been no grant of facilities, and that whether there be a prescriptive right or not the local authority has been entirely passive. It results that the appellants are not in the position of having the local authority interposed (as it were) between them and the stream, as the active recipients and transmitters of the liquids—and the result is that, in my opinion, they are liable just as if they directly sent this stuff into the stream. In adopting this ground of judgment I dissociate myself from the doctrine that a person who sends his household sewage into the sewer is liable because the local authority empties the sewer into a stream. The local authority is the appointed collector, recipient, and disposer of household sewage; and in my opinion the responsibility of the householder ends when he delivers his stuff into the sewer.

LORD CHANCELLOR—My noble and learned friend Lord Collins agrees with the conclusions at which your Lordships have arrived.

Appeal dismissed.

Counsel for Appellants—Sir C. A. Cripps, K.C.—Lowenthal. Agents—Van Sandau & Company, for Mills & Company, Huddersfield.

Counsel for Respondents—Danckwerts, K.C. — Jeeves. Agents — Clements, Williams, & Company, for H. F. Atter, Wakefield.

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## HOUSE OF LORDS.

*Thursday, December* 10, 1908.

(Before the Lord Chancellor (Loreburn), Lords Ashbourne, Robertson, and Collins.)

### BLAKISTON *v.* COOPER.

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

*Revenue—Income Tax—Office or Employment of Profit—Profits Accruing by Reason of Office—Clergyman—Voluntary Subscriptions—Income Tax Act* 1842 (5 *and* 6 *Vict. c.* 35), *sec.* 146, *Sched. E, rr*, 1-4.

Sums of money collected in a parish by voluntary subscription in order to augment the stipend of a clergyman, when there is a continuity of annual payments to him from such sources apart from any special occasion, are profits accruing to him by reason of his office, and are therefore assessable to income tax under the Income Tax Act 1842, Sched. E, r, 1.

The appellant was the vicar of East Grinstead, and had for some years received "Easter offerings" from voluntary sources described in the judgments of the House. The Court of Appeal (LORD ALVERSTONE, C.J., MOULTON and BUCKLEY, L.JJ.), reversing a judgment of BRAY, J., held that a sum so received was assessable.

Their Lordships gave considered judgment as follows:—

LORD CHANCELLOR (LOREBURN)—I agree with the Court of Appeal. The only question is whether or not a sum given by parishioners and others to the vicar at Easter 1905 is assessable to income tax as being "profits accruing" to him "by reason of such office." In my opinion, where a sum of money is given to an incumbent substantially in respect of his services as incumbent, it accrues to him by reason of his office. Here the sum of money was given in respect of those services. Had it been a gift of an exceptional kind, such as a testimonial, or a contribution for a specific purpose, as to provide for a holiday, or a subscription peculiarly due to the personal qualities of the particular clergyman, it might not have been a voluntary payment for services but a mere present. In this case, however, there was a continuity of annual payments apart from any special