

I desire respectfully to adopt the judgment pronounced in the Court below by Lord Cullen, every word of which aptly expresses the view which I entertain.

Their Lordships dismissed the appeal but without expenses.

Counsel for the Appellant—Blackburn, K.C.—J. S. Leadbetter. Agents—Russell & Dunlop, W.S., Edinburgh—Kekewich, Smith, & Kaye, London.

Counsel for the Respondents—Sol.-Gen. for Scotland (Morison, K.C.)—R. C. Henderson. Agents—Sir P. J. Hamilton Grierson, Solicitor of Inland Revenue, Edinburgh—H. Bertram Cox, C.B., Solicitor of Inland Revenue, London.

Thursday, May 9.

(Before the Lord Chancellor (Finlay), Viscount Haldane, Lord Dunedin, Lord Shaw, and Lord Parmoor.)

N. G. FERGUSSON & COMPANY,
LIMITED v. BROWN & TAWSE.

(In the Court of Session, June 12, 1917,
54 S.L.R. 485, and 1917 S.C. 570.)

Process—Furthcoming—War—Sist.

A British firm having arrested in the hands of another British firm a debt due by the latter to an alien enemy, which was not payable until twelve days after the outbreak of war, and an action of furthcoming having been brought against the arrestees, the House of Lords, on the ground that a question of importance was raised on which it was not desirable to express an opinion, *continued a sist* till the end of the war, and *dismissed without expenses* an appeal against an interlocutor sisting the action.

This case is reported *ante ut supra*.

The pursuers, N. G. Fergusson & Company, Limited, appealed to the House of Lords.

After the adjournment, counsel for the respondents being in possession—

LORD CHANCELLOR—Mr Gore Browne, their Lordships have been considering this case, and what they are prepared to do is to continue the sist with no costs of the appeal, the arrestees to find caution to pay the appellants the same sum as may be found to be due, the House to continue the sist until the end of the war merely on the ground of convenience, and expressing no opinion as to any of the grounds given for the sist in the Court of Session.

Mr GORE BROWNE—My Lord, I should assent with great reluctance to that judgment.

LORD CHANCELLOR—I do not ask you to assent to it. That would not be fair. We will hear with pleasure anything you have to say.

The learned counsel is heard to conclude his argument.

LORD CHANCELLOR—A question of great importance has been raised in this appeal, on which I do not think it is desirable that any opinion should at present be expressed. The course I suggest should be taken is this—That the sist should be continued; no costs of this appeal, the arrestees to find caution for payment to the appellants of such sum as may hereafter be found to be due. This House continues the sist till the end of the war merely on the ground of convenience, and expresses no opinion as to any of the grounds given for the sist in the Court of Session.

VISCOUNT HALDANE—I concur.

LORD DUNEDIN—I concur. I have no doubt that although as a rule a person is entitled to have the process of the Court made good to him on his claims there is always in the Scotch Court—and we are sitting as the Supreme Scottish Court—a right to sist a cause for any good reason.

LORD SHAW—I agree.

LORD PARMOOR—I concur.

Their Lordships continued the sist and dismissed the appeal, without expenses.

Counsel for the Appellants—Gore Browne, K.C.—Scott. Agents—Gardiner & Macfie, S.S.C., Edinburgh—Roney & Company, London.

Counsel for the Respondents—Macphail, K.C.—Ingram. Agents—Shield & Kyd, Dundee—J. K. & W. P. Lindsay, W.S., Edinburgh—Beveridge & Company, Westminster.

COURT OF SESSION.

Saturday, March 16.

SECOND DIVISION.

[Sheriff Court at Banff.]

M'CONNACHIE v. GEDDES.

Ship—Sale—Proof—Evidence—Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60), sec. 24 (1).

The Merchant Shipping Act 1894, section 24 (1), enacts—“A registered ship or a share therein (when disposed of to a person qualified to own a British ship) shall be transferred by bill of sale.”

Held that a contract for the sale of shares in a ship need not, notwithstanding the above enactment, be in writing, and could be proved by parole evidence.

Sale—Trust—Agent and Principal—Mandate—Act 1696, cap. 25.

The Act 1696, cap. 25, enacts—“... No action of declarator of trust shall be sustained as to any deed of trust made for hereafter, except upon a declaration or backbond of trust lawfully subscribed by the person alleged to be the trustee, and against whom, or his heirs or assignees, the declarator shall be intended, or unless the same be referred to the oath of party *simpliciter*.”