BAILII Citation Number: [1898] UKHL 1

HOUSE OF LORDS

Date: 25 April 1898

Between:

THE LONDON TRAMWAYS COMPANY, LIMITED **APPELLANTS**

- v -

THE LONDON COUNTY COUNCIL **RESPONDENTS**

EARL OF HALSBURY L.C. My Lords, I think your Lordships are very much indebted to Sir Robert Reid and his learned junior for the candour with which this question has been raised. It would undoubtedly have been extremely inconvenient if, after hearing the case argued for a considerable time, the fact had been pointed out to us that there was a decision of this House which was conclusive upon the point. By the candour of the learned counsel who very properly raised the question in the first instance, it has now been admitted that there is upon this very question a decision of this House.

My Lords, for my own part I am prepared to say that I adhere in terms to what has been said by Lord Campbell and assented to by Lord Wensleydale, Lord Cranworth, Lord Chelmsford and others, that a decision of this House once given upon a point of law is conclusive upon this House afterwards, and that it is impossible to raise that question again as if it was res integra and could be reargued, and so the House be asked to reverse its own decision. That is a principle which has been, I believe, without any real decision to the contrary, established now for some centuries, and I am therefore of opinion that in this case it is not competent for us to rehear and for counsel to reargue a question which has been recently decided.

My Lords, the only trace of authority for the proposition submitted to us by the learned counsel is that of Lord St. Leonards, and I give full effect to the argument of the learned counsel when I say that no doubt Lord St. Leonards did in the most unqualified manner lay down the proposition for which he contends. Whether that noble and learned Lord was altogether satisfied with his own reasoning I am not prepared to say. When I find the proposition coupled with such qualifications and such a preamble as Lord St. Leonards has introduced in his judgment, I entertain some doubt whether the noble and learned Lord was perfectly satisfied in his own mind as to the logic of his reasoning. Whether he was or was not, the main point is that this House has on more than one occasion acted upon the principle to which I have referred.

My Lords, no more conspicuous case could arise, I think, than what occurred in the case of Beamish v. Beamish.[(1)] In that case some of the learned Lords were of opinion that Reg. v. Millis[(2)] was wrongly decided, but nevertheless they acquiesced in that decision - that is to say, they held themselves bound by that decision in the subsequent case of Beamish v. Beamish[(1)], and treated that decision of your Lordships' House as conclusive upon the question then under appeal.

My Lords, it is totally impossible, as it appears to me, to disregard the whole current of authority upon this subject, and to suppose that what some people call an "extraordinary case," an "unusual case," a case somewhat different from the common, in the opinion of each litigant in turn, is sufficient to justify the rehearing and rearguing before the final Court of Appeal of a question which has been already decided. Of course I do not deny that cases of individual hardship may arise, and there may be a current of opinion in the profession that such and such a judgment was erroneous; but what is that occasional interference with what is perhaps abstract justice as compared with the inconvenience - the disastrous inconvenience - of having each question subject to being reargued and the dealings of mankind rendered doubtful by reason of different decisions, so that in truth and in fact there would be no real final Court of Appeal? My Lords, "interest rei publicæ" that there should be "finis litium" at some time, and there could be no "finis litium" if it were possible to suggest in each case that it might be reargued, because it is "not an ordinary case," whatever that may mean. Under these circumstances I am of opinion that we ought not to allow this question to be reargued.

My Lords, I only wish to say one word in answer to a very ingenious argument which the learned counsel set before your Lordships. It is said that this House might have omitted to notice an Act of Parliament, or might have acted upon an Act of Parliament which was afterwards found to have been repealed. It seems to me that the answer to that ingenious suggestion is a very manifest one - namely, that that would be a case of a mistake of fact. If the House were under the

(1) 9 H. L. C. 274, 338, 344, 349, 353.
(2) 10 Cl. & F. 534.

impression that there was an Act when there was not such an Act as was suggested, of course they would not be bound, when the fact was ascertained that there was not such an Act or that the Act had been repealed, to proceed upon the hypothesis that the Act existed. They would then have ascertained whether it existed or not as a matter of fact, and in a subsequent case they would act upon the law as they then found it to be, although before they had been under the impression, on the hypothesis I have put, either on the one hand that an Act of Parliament did not exist, or on the other hand that an Act had not been repealed (either case might be taken as an example) and acted accordingly. But what relation has that proposition to the question whether the same question of law can be reargued on the ground that it was not argued or not sufficiently argued, or that the decision of law upon the argument was wrong? It has no application at all.

Under these circumstances it appears to me that your Lordships would do well to act upon that which has been universally assumed in the profession, so far as I know, to be the principle, namely, that a decision of this House upon a question of law is conclusive, and that nothing but an Act of Parliament can set right that which is alleged to be wrong in a judgment of this House. For these reasons, my Lords, I move your Lordships that this appeal be dismissed with costs.

LORDS MACNAGHTEN , **MORRIS** , and **JAMES OF HEREFORD** concurred.

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